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

PETITIONS

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

Defence: Involvement in Overseas Conflict Legislation

To the Honourable the President and Members of the Senate in Parliament assembled.

The Petition of the undersigned calls on the members of the Senate to support the Defence Amendment (Parliamentary Approval for Australian Involvement in Overseas conflict) Bill introduced by the Leader of the Australian Democrats, Senator Andrew Bartlett and the Democrats' Foreign Affairs spokesperson, Senator Natasha Stott Despoja.

Presently, the Prime Minister, through a Cabinet decision and the authority of the Defence Act, has the power to send Australian troops to an overseas conflict without the support of the United Nations, the Australian Parliament or the Australian people.

The Howard Government has been the first Government in our history to go to war without majority Parliament support. It is time to take the decision to commit troops to overseas conflict out of the hands of the Prime Minister and Cabinet, and place it with the Parliament.

by Senator Bartlett (from 136 citizens).

Education: Funding

To the Honourable the President and Members of the Senate assembled in Parliament.

This petition of certain citizens of Australia draws to 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 unjust 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,
• 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 Faulkner (from 12,523 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 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 Ridgeway (from 159 citizens).

Indigenous Affairs: Natural Law and Spirituality

To the Honourable President and Members of the Senate in the Parliament assembled.

Theme of the undersigned shows:
That the rule of Law, as defined by the Commonwealth of Australia Constitution Act 1901, and as per the Grievances listed in the Petition to the Senate by the Sovereign People of Australia is fraudulently and unlawfully being administered by the current de-facto Parliament.

That the system of Governance as currently administered by the Parliament, in which the Federal Police can refuse to investigate the claims of the Petition by the Sovereign People of Australia using their so called discretionary powers is in breach of Covering Clause S of the Constitution Act.

That the current unlawful Governance in the Commonwealth of Australia, as per the stated grievances above, has been and still is responsible for the Genocide of the Indigenous Peoples, their System of the Rule of Natural Law and Spirituality, their Culture and the land mass of Australia.

That the current system of Governance under the Westminster model is a class structured system which allows for corruption, injustice and inequity, is not only outdated it is inferior to the Rule of Natural Law and Spirituality as practised by the Indigenous People of this Land.

That the High Court of Australia has illegally and without authority rewritten the Commonwealth Constitution Act and Constitution, by not applying Covering Clause 5. “This Act, and all the laws made by the Parliament under the Constitution are binding on the courts, judges and the people....

That the Queen of the United Kingdom has abrogated her sworn duties under the Coronation Oath, and the Proclamation by Her predecessor, Queen Victoria. This is incorporated into the Commonwealth Constitution Act 1901, and is sworn by her representative the Governor General, to govern all People by Law under God, the creator of the Rule of Natural Law.

That the Sovereignty of this Land the 500 plus Nations of the First Peoples, and the system of the Rule of Natural Law and Spirituality has never been ceded to the U.K. Crown, nor to the Australian Crown.

Your Petitioners request that the Senate:

Take notice and

(1) Adopts as the guiding Principals of the Parliament of the Commonwealth, the System of the Rule of Natural Law and Spirituality, which is the Law, Spirituality and Culture of this land, as practised by the Indigenous People since the beginning of time.

(2) That all future laws made by the Parliament of the Commonwealth of Australia, be guided by the Rule of Natural Law and Spirituality.

(3) That the Rule of Natural Law and Spirituality given by the Great Creator Spirit of the Universe is a universal Law and the birthright of all the People of the Planet, and will be acknowledged, taught and respected as Law.

(4) That the Rule of Natural Law and Spirituality be acknowledged as the system
which connects the Land and its Ecosystems, the Sea and all marine life, the sky and the planets and stars and the Indigenous People through language and Spiritual connection and is a complete system, in which all parts are in balance and harmony.

(5) That this system of Natural Law and Spirituality, though a kinship relationship of 8 female and 8 male connects Land, Law and spirituality through Language and Culture to all things and to each other, and is the only system which offers sustainability for this planet and for future Generations.

(6) That this system of Natural Law and Spirituality is about the sustainability of all ecosystems of the Planet, equality of all People of the human race, Spirituality, interconnectedness and balance. This system does not allow for corruption, nepotism, environmental vandalism etc, which are the basis of capitalism, so called democracy and freedom, all of which are a primitive illusion. This system of Natural Law and Spirituality would not allow any leader, for example George Bush, John Howard or Tony Blair, or rogue nations and states to be above the Law. The Law is the Law is the Law.

(7) That this Petition and the Petition to the Senate by the Sovereign People of Australia, is to be taken as The Declaration of Sovereignty and Independence by the Indigenous People of the 500 plus Nations of the First Peoples of this Land. That it is Our intention to set up the first Aboriginal Government, on the site currently occupied and known as the Aboriginal Tent Embassy and that we require vacant possession of the Old Parliament House site immediately for the Law Council of Elders and Custodians of the Rule of Nil Law and Spirituality. That we will be pursuing International recognition through the United Nations and diplomatic communication with the governments of the World. That we will be pursuing reapportionment from the Government of the United Kingdom and the Crown for Genocide, stealing our Lands and Sawed sites, stolen Generations, the environmental vandalism, the spiritual, cultural and ethnographic cleansing of this Lands First Peoples, through the World Court and International Judicial Committees. That all moneys currently paid to and in trust and on behalf of Aboriginal and Torres Strait Islanders and their organisations are to be continued as part payment on the Inter on the Reparations sought before the World Cowry. We will be seeking reparation from the World Council of Churches for the same grievances that we have charged the Commonwealth Parliament and Government with. That all purported exploration and mining leases on so called Crown Land and Seas are hence forth Terminated, and that reparation will be sought for the Spiritual and environmental vandalism used by the Companies responsible, and that full restoration of those sites will be part of the Claims for compensation.

That all attempts to reconcile the unlawful Governance by the Commonwealth Parliament as stated in these 2 Petitions has failed. That all de-facto Members of the current Parliament are in denial of the facts and have been unable to disprove the grievances listed and unable to provide any lawful authority under the Commonwealth of Australia Constitution Act 1901. We the People of this Land are standing forward in the name of the Great Creator Spirit/God and telling the truth and exposing the Genocide, fraud and lies of the current Parliament. We open our hearts to all Peoples of Australia and the World to share this land/Law in respect of First People and the Rule of Natural Law and Spirituality.

That this Declaration of Sovereignty and Independence is based in Peace, Spiritual Law, and Respect for all People and the Land.

by Senator Ridgeway (from two citizens).

Indigenous Affairs: Government Policy

The Honourable President and Members of the Senate in the Parliament assembled.

The petition of the undersigned shows:

(1) The Letters Patent 1984 relating to the Office of Governor General, purporting to revoke
and issue new Instructions, are unlawful and have no Constitutional head of power under the Commonwealth of Australia Constitution Act 1901.

(2) That the statement tabled and not read to the House of Representatives on the 24th August 1984 by PM Bob Hawke, misrepresents the legality of Letters Patent and permanent Instructions 1900, and the constitutionality of the Letters Patents 1984.

(3) That the Queen of Australia, has no constitutional powers under the Great Seal of Australia, nor the Constitution Act 1901, to revoke Letters Patent and Instructions, issued under the Great Seal of the United Kingdom and Northern Ireland.

(4) That the correct heads of power to revoke, or issue new Letters Patent and Instructions, is Sec 2 of the Constitution Act 1901, and not Section 126, which refers to Deputies appointed directly by the Governor General.

(5) That no lawful Instrument exists, granting transfer of the legal Sovereignty of the Imperial Parliament, to the Commonwealth of Australia, upon attaining independence.

(6) That the said legal Sovereignty of the Imperial Parliament, could only be transferred to the body politic constituting the Commonwealth, and that is the people of the Commonwealth. (Quick and Garran, re Sovereignty p327, etc.)

(7) That the Executive Government of the Commonwealth has at some stage of Australia’s constitutional evolution into a Nation (H.C.A.), obfuscated and assumed the said legal Sovereignty, and “altered” the Commonwealth of Australia Constitution Act, without the knowledge of the People.

(8) That the people have not been consulted, nor have they granted, that the legal Sovereignty reside anywhere else, other than in the People.

(9) That the High Court of Australia, does not command the respect of the people because it has passed judgements that have no factual basis in law, and do in fact rewrite the Constitution, by way of so called legal positivism”.

Your Petitioners request that the Senate:
(a) Immediately holds a Public Royal Commission, plebiscite and or Senate Inquiry into the above grievances.
(b) That on the above grievances being correct at law, it would stand that no lawful authority resides in the current Parliament, nor Executive Government, and that all Members of the de facto Parliament, stand down.
(c) That no writs for the next Federal elections be issued, until this matter is settled.
(d) That a Council of Elders, 12 Indigenous and 12 non Indigenous persons, be appointed to oversee the Administration of the Commonwealth until the truth has been told to the People and plebiscites and valid elections can be held.

by Senator Ridgeway (from two citizens).

**Education: Educational Textbook Subsidy Scheme**

To the Honourable the President and Members of the Senate in Parliament assembled.

The Petition of the undersigned draws to the attention of the Senate, concerns that the expiration of the Educational Textbook Subsidy Scheme on June 30 will lead to an eight percent increase in the price of textbooks, which will further burden students and make education less accessible.

Your petitioners believe:
(a) a tax on books is a tax on knowledge;
(b) textbooks—as an essential component of education—should remain GST free;
(c) an increase in the price of textbooks will price many students out of education, particularly those students from disadvantaged backgrounds; and,
(d) the Educational Textbook Subsidy Scheme should be extended past June 30.

Your petitioners therefore request the Senate act to extend the Educational Textbook Subsidy Scheme indefinitely.

by Senator Stott Despoja (from 9,471 citizens).
Workplace Relations: Paid Maternity Leave
To the Honourable President and Members of the Senate in Parliament assembled:
We the undersigned citizens believe that paid maternity leave is a workplace entitlement for Australian women. It overcomes the disadvantage and inequity women face as a result of the biological imperative for women to break from the workforce when they have a child.
We recognise that the International Labour Organisation (ILO) Convention 183 on Maternity Protection provides women with the right to 14 weeks paid maternity leave and Australia is now one of only two OECD countries without a national scheme of paid maternity leave.
Your petitioners request that the Senate should at the earliest opportunity pass legislation to provide a national system of Government-funded paid maternity leave which provides at least a 14 week payment for working women at least at the minimum wage, with the ability to be topped up to normal earnings at the workplace level with minimal exclusions of any class of women.
by Senator Stott Despoja (from 2,196 citizens).

Education: Funding
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.
by Senator Wong (from 93 citizens).

Education: Funding
Petition for Australian Senate.
Legislation that will allocate the share of federal funding going to government and non-government schools will soon be debated in Parliament. Currently, about 70% of this funding goes to 30% of the students (in private schools), and 30% goes to 70% of students in government schools.
The States Grants Act needs to be amended to make the share for government school students fairer.
The petition is to federal senators asking that they support this.
by Senator Wong (from 148 citizens).

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 Wong (from 278 citizens).

NOTICES
Presentation
Senator Allison to move on the next day of sitting:
That the Senate—
(a) notes:
(i) the proposed memorandum of understanding between Australia and the United States of America (US) on missile defence,
(ii) the Senate resolutions of 29 June 2000, 1 March 2001, and 30 August 2001 on missile defence,
(iii) that the use of nuclear weapons in space is prohibited by the Outer Space Treaty, signed by Australia in January 1967,
(iv) Australia’s support for the 13 steps in the final declaration of the 2000 Nuclear Non-Proliferation Treaty Review Conference, and
(v) that the proliferation of weapons of mass destruction and missile delivery
systems is a serious international security issue; and

(b) urges the Government not to sign the proposed 25-year missile defence research, development, trials and operation agreement with the US until and unless:

(i) a public inquiry has been conducted by a Senate committee, and

(ii) the agreement is approved by both the House of Representatives and the Senate.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.31 a.m.)—I move:

That the following government business orders of the day be considered from 12.45 pm till not later than 2 pm today:

No. 11 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004

Family and Community Services and Veterans’ Affairs Legislation Amendment (Sugar Reform) Bill 2004

No. 12 Health Legislation Amendment (Podiatric Surgery and Other Matters) Bill 2004

No. 13 Industrial Chemicals (Notification and Assessment) Amendment (Low Regulatory Concern Chemicals) Bill 2004

No. 15 Veterans’ Entitlements Amendment (Direct Deductions and Other Measures) Bill 2004

No. 14 Excise and Other Legislation Amendment (Compliance Measures) Bill 2004

Customs Legislation Amendment (Airport, Port and Cargo Security) Bill 2004

Question agreed to.

Rearrangement

Senator STEPHENS (New South Wales) (9.32 a.m.)—by leave—I move:

That business of the Senate order of the day no. 1, relating to the presentation of the report of the committee on the structure and distributive effects of the Australian taxation system, be postponed till a later hour.

Question agreed to.

CORPORATE CODE OF CONDUCT BILL 2004

Exposure Draft

Senator STOTT DESPOJA (South Australia) (9.32 a.m.)—by leave—I table an exposure draft of a private senator’s bill relating to a corporate code of conduct for Australian corporations operating overseas, together with an explanatory memorandum.

COMMITTEES

Community Affairs Legislation Committee Reference

Senator NETTLE (New South Wales) (9.32 a.m.)—I move:

That the following matters be referred to the Community Affairs Legislation Committee for inquiry and report by 29 November 2004:

(a) the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2];

(b) the social and economic implications of increasing the co-payment for Pharmaceutical Benefits Scheme listed medicines, including the long-term implications for the health of Australians; and

(c) any related matters.

Question put.

The Senate divided. [9.37 a.m.]

(The President—Senator the Hon. Paul Calvert)
Senator STOTT DESPOJA (South Australia) (9.41 a.m.)—I move:

That the Senate—

(a) notes that:

(i) the University of New South Wales (UNSW) and Monash University bookshops were joint winners of the 2003 Australian Tertiary Bookshop of the Year award,

(ii) being a winner, the UNSW bookshop also recognises that students will be losers when the Educational Textbook Subsidy Scheme ceases on 30 June 2004 and has been trying to meet the demand of students who wish to purchase textbooks before prices rise,

(iii) the UNSW bookshop is concerned about the effect of the closure of the scheme on students’ access to educational resources at a time of increasing higher education contribution scheme fees and is saddened by the discontinuation of a successful scheme, and

(iv) booksellers will soon face the additional cost of updating or modifying their software, as they did 4 years ago, to accommodate the closure of the scheme;

(b) condemns the Government for effectively introducing a new tax from 1 July 2004, which will result in students paying price increases of up to 10 per cent; and

(c) urges the Government to extend the scheme.

Question put.

The Senate divided. [9.45 a.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes……….. 11
Noes……….. 35
Majority……. 24

* denotes teller

Question negatived.

EDUCATION: EDUCATIONAL TEXTBOOK SUBSIDY SCHEME

Senator STOTT DESPOJA (South Australia) (9.41 a.m.)—I move:

That the Senate—

(a) notes that:

(i) the University of New South Wales (UNSW) and Monash University bookshops were joint winners of the 2003 Australian Tertiary Bookshop of the Year award,
Carr, K.J.  
Colbeck, R.  
Cook, P.F.S.  
Crossin, P.M.  
Ferris, J.M. *  
Forshaw, M.G.  
Hutchins, S.P.  
Knowles, S.C.  
Marshall, G.  
McLucas, J.E.  
Patterson, K.C.  
Ray, R.F.  
Tchen, T.  
Watson, J.O.W.  
Wong, P.  

Chapman, H.G.P.  
Collins, J.M.A.  
Coonan, H.L.  
Fifield, M.P.  
Humphries, G.  
Kirk, L.  
Ludwig, J.W.  
Murray, A.J.M.  
Nettles, K.  
Ridgeway, A.D.  
Stott Despoja, N.  

* denotes teller

Question negatived.

COMMITTEES

Legal and Constitutional Legislation Committee

Reference

Senator BROWN (Tasmania) (9.48 a.m.)—I move:

That the Australian Energy Market Bill 2004 and the Trade Practices Amendment (Australian Energy Market) Bill 2004 be referred to the Legal and Constitutional Legislation Committee for inquiry and report by 31 August 2004, with particular reference to the constitutional implications and legal precedents that will be established by giving the South Australian Parliament the ability to modify Commonwealth law, regulations and rules.

Question put.

The Senate divided. [9.50 a.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes……….. 10
Noes……….. 34
Majority……. 24

AYES

Allison, L.F. *  
Brown, B.J.  
Greig, B.  

Bartlett, A.J.J.  
Cherry, I.C.  
Murphy, S.M.  

NOES

Bishop, T.M.  
Brandis, G.H.  
Calvert, P.H.  
Carr, K.J.  
Colbeck, R.  
Cook, P.F.S.  
Crossin, P.M.  
Ferris, J.M. *  
Forshaw, M.G.  
Hutchins, S.P.  
Ludwig, J.W.  
Mason, B.J.  
Moore, C.  
Murray, A.J.M.  
Payne, M.A.  
Stephens, U.  
Troeth, J.M.  
Webber, R.  

* denotes teller

Question negatived.

ENVIRONMENT: NATIONAL WATER INITIATIVE

Senator BROWN (Tasmania) (9.53 a.m.)—I move:

That the Senate—

(a) notes that the Council of Australian Governments (COAG) agreed in August 2003 to develop a national water initiative which would:

(i) ‘ensure ecosystem health by implementing regimes to protect environmental assets at a whole-of-basin, aquifer or catchment scale’, and

(ii) include ‘firm pathways and open processes’ for returning over-allocated surface and groundwater systems to environmentally-sustainable levels of extraction; and

(b) calls on COAG to reject any agreement on the national water initiative which fails to ensure ecosystem health or to provide firm pathways, including clear timelines, and open processes for reducing extraction from over-allocated surface and ground-
water systems to environmentally-
sustainable levels.
Question agreed to.

COMMITTEES
Environment, Communications,
Information Technology and the Arts
References Committee

Reference

Senator ALLISON (Victoria) (9.54
a.m.)—I move:


Question agreed to.

FOREIGN AFFAIRS: IRAN

Senator ALLISON (Victoria) (9.55
a.m.)—At the request of Senator Cherry, I move:

That the Senate—

(a) notes that:

(i) on 15 January 2004, 220 members of the British House of Commons and 85 members of the House of Lords issued a joint statement supporting the removal of the terrorist tag from the People’s Mojahedin Organisation of Iran (PMOI), recognising that the PMOI was ‘an essential part of the drive to halt the advance of fundamentalism in Iraq and the region’;

(ii) the British parliamentarians expressed the opinion that the deportation of any PMOI members from Iraq would be contrary to international law,

(iii) on 8 June 2004, the majority of the Belgian Senate, by way of a statement signed by 41 senators, called on the European Union to remove the PMOI from its list of terrorist organisations, and

(iv) on 10 June 2004, a majority of members of the Parliament of Luxembourg, in an all-party joint statement, called on the European Union to removed the PMOI from its list of terrorist organisations; and

(b) calls on the Australian Government to:

(i) acknowledge the important role that the PMOI has to play in halting the advance of fundamentalism in Iraq and the region,

(ii) call on the European Union, the United Kingdom and the United States of America to remove the PMOI from their terrorist lists,

(iii) remove the PMOI and its affiliate organisations from the Charter of the United Nations (Anti-terrorism—Persons and Entities) List, and

(iv) express its strong opposition to the decision of the Iraqi Governing Council to expel PMOI members from Iraq, which would constitute a breach of international law and the Fourth Geneva Convention.

Question negatived.

HEALTH: MIDWIVES

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

That the Senate—

(a) acknowledges that midwives have a critical role to play in birthing services, especially given the shortage of obstetricians and an increase in invasive caesarean section procedures;

(b) notes that:

(i) there is a chronic shortage of obstetricians, especially in rural, remote and outer suburban areas,

(ii) 60 per cent of births involve no complications and can be safely performed by midwives,

(iii) a 2002 report estimated a national shortage of more than 1 800 midwives,

...
(iv) 386 registered midwives are not currently practicing, primarily due to a lack of medical indemnity insurance,

(v) caesarean sections have been identified by the World Health Organization as occurring at twice the desirable level,

(vi) increasingly, women are embracing non-medical and non-invasive births; and

(c) calls on the Federal Government to:
   (i) recognise that the Victorian Government’s decision to fund midwifery birthing units as positive,
   (ii) include midwives in the 2002 Medical Indemnity package to increase the number of registered and practicing midwives, and
   (iii) increase funding for training services for midwives, to address the current shortage.

Question agreed to.

LANDS ACQUISITION AMENDMENT REGULATIONS 2004 (NO. 2)

Motion for Disallowance

Senator RIDGEWAY (New South Wales) (9.56 a.m.)—I move:

That the Lands Acquisition Amendment Regulations 2004 (No. 2), as contained in Statutory Rules 2004 No. 82 and made under the Lands Acquisition Act 1989, be disallowed.

Question negatived.

NOTICES

Postponement

Senator STOTT DESPOJA (South Australia) (9.56 a.m.)—by leave—I move:

That general business notice of motion no. 927 standing in my name for today, relating to human rights in Colombia, be postponed till the next day of sitting.

Question agreed to.

PARLIAMENTARY ZONE

Approval of Works

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.57 a.m.)—I ask that government business notice of motion No. 1, which relates to the approval of works in the parliamentary zone, be taken as a formal motion.

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

Senator Bartlett—Yes.

The PRESIDENT—There is an objection.

CRIMES LEGISLATION AMENDMENT (TELECOMMUNICATIONS OFFENCES AND OTHER MEASURES) BILL 2004

First Reading

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.58 a.m.)—I move:

That the following bill be introduced: A Bill for an Act to amend the Criminal Code Act 1995, and for related purposes.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.58 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.58 a.m.)—I table the explanatory memorandum relating to the bill and move:

That this bill be now read a second time.
I seek leave to have the second reading speech incorporated in Hansard.

Leave granted

The speech read as follows—

CRIMES LEGISLATION AMENDMENT (TELECOMMUNICATIONS OFFENCES AND OTHER MEASURES) BILL 2004

The past decade has seen the rapid expansion of the internet into our work, our homes and every aspect of our daily lives. Mobile telephones have likewise become a normal part of Australian life. In all areas of telecommunications, technology has become more advanced and more sophisticated.

The telecommunications environment has changed, and this Bill—the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill 2004—will ensure that Commonwealth criminal offences remain effective in this changed environment.

This Bill continues the Australian Government’s proactive approach to updating criminal laws in light of rapid technological change. For example, the Government developed the Cybercrime Act 2001 to provide a solid platform of criminal offences to assist Australia meet the challenges posed by computer hackers and ‘denial of service’ attacks. Importantly, the cybercrime offences are cast in technologically neutral terms. The same approach is adopted in many of these new and updated telecommunications offences.

The existing telecommunications offences in Part VIIB of the Crimes Act 1914 were enacted in 1989. This Bill will repeal existing outdated telecommunications offences and insert a package of revised and new telecommunications offences into the Criminal Code. Moving these offences from the Crimes Act to the Criminal Code continues the process of relocating all serious Commonwealth offences into the Criminal Code.

Among the offences included in the Bill are a range of important new measures dealing with use of the Internet to facilitate or exploit the sexual abuse of children.

The Bill contains new offences dealing with use of the Internet to access, transmit and make available child pornography and child abuse material, as well as the possession or production of such material with intent to place it on the Internet. These offences complement existing offences prohibiting the importation of such material into Australia and will carry a maximum penalty of ten years imprisonment.

Law enforcement agencies estimate that around 85 per cent of child pornography seized in Australia is distributed via the Internet. In September last year, German police cracked a global child pornography network involving over 26,000 Internet users. By focusing on the Internet, these new federal offences target the very heart of the abhorrent child pornography industry.

The new offences will also prohibit the use of a telecommunications service, including by means of the Internet, to procure or ‘groom’ a person who is under 16 years of age, for the purpose of engaging in sexual activity with that person or so that a third person can engage in sexual activity with that person. These offences carry penalties of 12 - 15 years imprisonment.

These new offences target adult offenders who exploit the anonymity of telecommunications services (for example, a ‘chat room’ on the Internet) to win the trust of a child as a first step towards the future sexual abuse of that child. This abhorrent practice is known as ‘online grooming’.

The new ‘procurement’ offences will also target situations where an offender, having won a child’s trust, then uses a telecommunications service to orchestrate a meeting with the child so as to engage in sexual activity.

These new offences would provide a firm legal basis for proactive AFP policing of this disturbing practice. The underlying rationale for the new offences is to allow law enforcement to intervene before a child is actually abused. A typical investigation may involve an AFP officer, or investigator at the Australian High Tech Crime Centre, assuming the identity of a fictitious child, interacting with potential predatory adults over the Internet, and arresting a predatory adult before they have an opportunity to sexually abuse a real child that they are also ‘grooming’. A Queensland prosecution has been successful on this basis.

The Parliament can take an important leadership role in this area. New federal offences will pro-
vide a springboard to a national approach to this issue.

Tough offences targeting sexual predators in this way aligns with the Government’s commitment to a nationally consistent child sex offender registration system, and the CrimTrac Agency’s work in this area.

The telecommunications offences package also contains new and updated offences dealing with interference with telecommunications and use of telecommunications to engage in inappropriate behaviour. Among these measures are:

- new offences dealing with the ‘rebirthing’ of stolen mobile phones and the copying of mobile phone SIM cards
- an updated version of the existing offence dealing with use of a telecommunications service to menace, harass or cause offence that is extended to cover Internet content that causes offence
- new offences dealing with use of a telecommunications service to make threats or hoaxes
- new offences dealing with improper use of emergency service numbers, including triple zero, and
- new offences dealing with use of the Internet to access, transmit or make available material that incites suicide, or promotes or provides instruction on a particular method of committing suicide.

In addition to the telecommunications offences, this Bill also introduces other significant offences, targeting credit card skimming and the contamination of goods.

The personal financial information offences introduced into the Criminal Code by this Bill are a key component of the Australian Government’s national strategy to crack down on credit card skimming and Internet banking fraud. Credit card skimming is the process by which legitimate credit and debit card data is illicitly captured or copied, frequently by means of an electronic skimming device.

These amendments will criminalise dishonestly obtaining or dealing with personal financial information without the consent of the person to whom the information relates. These amendments will also criminalise possession or importation of a device with the intention that the device be used to commit a personal financial information offence.

Internet banking fraud, including ‘phishing’—where online criminals use apparently legitimate emails to trick people into divulging banking details—will also be covered by the Bill. Any person who uses a deception to obtain another person’s financial information will be guilty of an offence.

The proposed laws will ensure that Australians can feel more confident about electronic, telephone and Internet banking, knowing that penalties of up to 5 years imprisonment apply to those who capture or misuse their confidential financial details.

Comprehensive new contamination of goods offences are also included in this Bill. These offences—to be inserted into the Criminal Code—will apply to a person who contaminates goods intending to cause economic loss, public alarm or anxiety, and in some cases, harm to public health. These offences also extend to persons who threaten to contaminate goods, or falsely claim to have contaminated goods. This recognises that the level of economic loss or public anxiety or alarm can be the same, regardless of whether the contamination is real, threatened or fictitious. It also reflects that in each case, the offender’s intention is to cause economic loss, public alarm or anxiety.

The offences will overlap and complement existing State and Territory offences. Importantly, the federal contamination offences will have some extraterritorial reach. For example, a threat to contaminate Australian goods which is made from outside of Australia would be covered.

Finally, this Bill will also make a number of amendments to a range of other criminal law and justice Acts. These include simplifying some procedures under the Mutual Assistance in Criminal Laws Act 1987 and amending the Crimes (Aviation) Act 1991 to outlaw child prostitution on board Australian-registered aircraft outside Australia, ensuring that the application of Australia’s criminal laws on board aircraft complies with the Optional Protocol to the Convention of the Rights
of the Child on the sale of children. It also includes amending Chapter 2 of the Criminal Code, and amending the Customs Act 1901 to make clear the elements of the serious drug offences in that Act.

I believe that this Bill represents a significant advance in upgrading the criminal law to ensure it meets the challenges posed by new technology and the opportunities which it provides to criminals.

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

TELECOMMUNICATIONS: VIDEOPHONE FACILITIES

Senator NETTLE (New South Wales) (9.58 a.m.)—I move:

That there be laid on the table, by 3 pm on 30 June 2004, the following documents:

(a) all correspondence between Environment Australia and Hutchison 3G in relation to the installation of videophone facilities in Oatley Park; and

(b) all correspondence between Environment Australia and Telstra in relation to the installation of videophone facilities in Leichhardt and Coogee.

Question agreed to.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.59 a.m.)—I ask that government business notice of motion No. 3, which proposes the exemption of bills from the bills cut-off order, be taken as a formal motion.

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

Senator BROWN (Tasmania) (9.59 a.m.)—by leave—I have an objection to the Australian Energy Market Bill 2004 being exempted from the cut-off but not to the other legislation being exempted. I suggest that the list be separated accordingly.

The PRESIDENT—As there is an objection to the motion being taken as formal, it will be dealt with later.

HUMAN RIGHTS: CHILDREN

Senator NETTLE (New South Wales) (10.01 a.m.)—I move:

That the Senate—

(a) notes that:

(i) it is estimated that at least 300 000 children under the age of 18 are currently taking part in armed conflicts around the world,

(ii) more than 2 million children have been killed in armed conflicts in the past decade, with a further 6 million seriously injured or permanently disabled,

(iii) an Optional Protocol to the Convention on the Rights of the Child has been developed that ‘prohibits governments that have signed up and armed groups from using children under the age of 18 in conflict’, and

(iv) Australia signed the Optional Protocol on the Involvement of Children in Armed Conflict on 21 October 2002, but has so far failed to ratify the Optional Protocol; and

(b) calls on the Australian Government to ratify the Optional Protocol without further delay.

Question agreed to.

FOREIGN AFFAIRS: CONVENTIONAL WEAPONS TREATIES

Senator NETTLE (New South Wales) (10.01 a.m.)—I move:

That the Senate—

(a) notes:
(i) the Senate resolution of 8 October 2003 that called on the Australian Government to support the development of a Protocol to the ‘Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects’ to prevent the creation of explosive remnants of war and reduce their impact on humanity,

(ii) that on Friday, 28 November 2003, the 92 nations that are signatories to this Convention adopted Protocol V to the Convention to deal with cleaning up explosive remnants of war after a conflict ends, and

(iii) that thousands of civilians continue to be killed and maimed by explosive remnants of war each year; and

(b) calls on the Australian Government to sign and ratify Protocol V of the Convention without delay.

Question negatived.

COMMITTEES
Publications Committee
Report
Senator FERRIS (South Australia)
(10.01 a.m.)—At the request of Senator Colbeck, I present the 18th report of the Standing Committee on Publications.

Ordered that the report be adopted.

BUDGET
Consideration by Legislation Committees
Additional Information
Senator FERRIS (South Australia)
(10.02 a.m.)—At the request of the Chair of the Foreign Affairs, Defence and Trade Legislation Committee, I present additional information received by the committee relating to hearings on the additional estimates for 2003-04.

At the request of the Chair of the Foreign Affairs, Defence and Trade Legislation Committee, I present additional information received by the committee relating to hearings on the additional estimates for 2003-04.

COMMITTEES
Australian Crime Commission Committee
Report
Senator FERRIS (South Australia)
(10.02 a.m.)—On behalf of the Joint Committee on the Australian Crime Commission, I present the report of the committee’s inquiry into the trafficking of women for sexual servitude, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

I seek leave to have the tabling statement incorporated in Hansard.

Leave granted.

The statement read as follows—

The Parliamentary Joint Committee on the Australian Crime Commission has a statutory responsibility to examine trends and changes in the method and practice of criminal activities. Accordingly the committee conducted an inquiry into the ACC’s involvement in assessing trafficking for the purposes of sexual servitude in Australia.

The committee’s Inquiry was in part prompted by reports alleging that government agencies had mishandled cases of trafficked women.

During the committee’s inquiry, the government launched its National Action Plan to combat Trafficking in Women. The plan includes a range of measures, funded by an allocation of $20m.

The Inquiry focused on three major issues:

- the extent of trafficking in women into Australia for the sex trade;
- the effectiveness of the National Action Plan; and
the adequacy of Australia’s relevant legislation.

Extent of the trade
The extent of trafficking in women for sexual servitude proved difficult to establish, principally due to differing definitions of the crime.

It seems that around 300 women are trafficked into the country each year for sex work. However, the number who can be considered to be kept in sexual servitude is likely to be relatively small, although estimates vary from 10 to 1000.

What is clear is that there is a continuum of those who have been trafficked into Australia. This ranges from those who enter with full knowledge and consent, those who enter with consent but are deceived as to their working conditions, to those who enter Australia completely deceived as to their work in the sex industry.

The committee found the evidence of working conditions for women in this industry deeply disturbing. The conditions under which many of these women work are Dickensian. Working a six- or seven-day week, with little freedom of movement, they suffer from poor nutrition and are often confined to their very basic accommodation.

The women must see as many as ten customers per day, with no control over which customers they see, or what sexual acts they are forced to perform. Many women are the victims of sexual and physical assaults and suffer a range of physical and emotional health problems.

Traffickers provide fraudulent documentation which allows women to gain entry visas to Australia. In exchange, the victim incurs a debt to the traffickers of around $35,000.

The committee was particularly alarmed at the ease with which traffickers appear able to obtain entry visas for the women they bring into the country each year. As a result, the committee has recommended that the Australian Crime Commission focus its investigations on the methods by which people traffickers are able to circumvent Australian immigration barriers through visa fraud.

Adequacy of the National Action Plan
The committee commends the government for the release of the National Action Plan. However, several potential weaknesses of the plan became apparent to the committee.

Firstly, although an interdepartmental committee has been formed to coordinate the government response, roles and responsibilities could be made clearer. The committee has recommended that its role be strengthened by the formal appointment of a Chairperson and Charter.

Secondly, the committee considers that the measures for the protection and support of trafficked women are inadequate. The new arrangements as announced in the government package are a distinct improvement on the old. However, while trafficked women are recognised as victims of crime, under the Victim Support Package, women receive only basic benefits equivalent to the ‘Special Benefit’ level. This is the same as that received by—among others—asylum seekers.

The committee does not believe this adequately reflects the level of danger faced by women who agree to assist Australian law enforcement agencies or the vital importance of their cooperation in the investigation and prosecution of traffickers.

To address this, the committee has recommended that the benefits payable to these women be benchmarked against those available under the Witness Protection Scheme.

Adequacy of relevant legislation
The final matter examined by the committee is the adequacy of Australian law in relation to trafficking.

The government’s National Action Plan includes a review of the relevant laws. The committee suggests that this review take place as soon as possible and it should focus particularly on the measures needed to ensure Australia’s compliance with the United Nations Protocol.

The committee also recommends the review include the following:

- the addition of Criminal Code provisions covering the recruitment and transportation of women;
- the expansion of the definition of deception to include deception regarding the kind of
services to be provided, whether of a sexual nature or not; and
• consideration of adopting the use of victim impact statements in sentencing.

The government has already indicated its intention to ratify the Protocol and the committee recommends that this occur as soon as possible.

It is important to ensure that Australian law reflects a consistent approach to what is an international problem. The implementation of the National Action Plan as well as ratification of the Protocol will go a long way towards realising this goal.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.03 a.m.)—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

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

Senator FERRIS (South Australia) (10.03 a.m.)—At the request of Senator Johnston, I present the report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund on the examination of the annual reports for 2002-03 in fulfilment of the committee’s duties pursuant to section 206(c) of the Native Title Act 1993, together with the Hansard record of proceedings

Ordered that the report be printed.

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:

Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2003

SUPERANNUATION LAWS AMENDMENT (2004 MEASURES No. 2) BILL 2004

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004 and informing the Senate that the House has disagreed to the amendments made by the Senate, and requesting the reconsideration of the bill in respect of the amendments to which the House has disagreed.

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

TAXATION LAWS AMENDMENT BILL (No. 7) 2003

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Taxation Laws Amendment Bill (No. 7) 2003 and informing the Senate that the House has agreed to the amendments made and insisted on by the Senate, and has disagreed to the further amendment made by the Senate, and requesting the reconsideration of the bill in respect of the further amendment 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.

CORPORATE LAW ECONOMIC REFORM PROGRAM (AUDIT REFORM AND CORPORATE DISCLOSURE) BILL 2003

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Corporate Law Economic Reform Program (Audit Reform
and Corporate Disclosure) Bill 2003 and informing the Senate that the House has agreed to certain amendments made by the Senate, disagreed to certain other 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.

**BUDGET**

**Consideration by Legislation Committees**

**Report**

Senator EGGLESTON (Western Australia) (10.07 a.m.)—At the request of the Chair of the Foreign Affairs, Defence and Trade Legislation Committee, Senator Sandy Macdonald, I present the report on the 2004-05 budget estimates, together with the *Hansard* record of proceedings.

Ordered that the report be printed.

**COMMITTEES**

**Free Trade Agreement Committee**

**Interim Report**

Senator COOK (Western Australia) (10.08 a.m.)—I present an interim report of the Select Committee on the Free Trade Agreement between Australia and the United States of America.

Ordered that the report be printed.

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

Leave granted.

Senator COOK—I move:

That the Senate take note of the report.

I have the privilege of tabling this interim report of the Select Committee on the Free Trade Agreement between Australia and the United States. Many of the issues we canvassed in this report were canvassed in the earlier report by the Senate Foreign Affairs and Trade References Committee called *Voting on Trade*. Unfortunately, the government did not pay heed to the issues we highlighted in that report and the recommendations we made about a whole host of matters, including matters of process for the proper scrutiny and approval of a free trade agreement. It was the view of that committee—a view that I trust is shared by this select committee—that the parliament is the appropriate venue for scrutinising the activities of the government and is the only institution accountable to the nation as a whole for the decisions it takes. While governments engaged in the making of international agreements are encouraged to be as transparent as possible in their deliberations, consistent with the need for confidentiality of negotiations, governments are ultimately accountable to the parliament, of which the Senate select committee process is part.

A notable feature of the agreement is the absence of a provision requiring a deadline for the consideration by the parliament of its terms. Notwithstanding, the parties to the agreement—Australia and the US—have declared that they have targeted 1 January 2005 as the date by which the agreement should come into force. Subject to the ability of the select committee to complete its processes, that date appears to be a reasonable target. The lack of a binding deadline, however, does enable the Senate to clarify issues and test the government’s understanding of the implications of this agreement. As many of the parties appearing before us have said and as the government itself proudly acknowledges, this agreement was completed in near record time. That fact alone requires the select committee to exercise care in satisfying itself about the terms of the agreement and in framing recommendations with respect to it because, should the agreement come into force, it will then be too late to correct any unanticipated anomalies.
The Senate has invested a significant responsibility in the select committee inquiring into the Australia-US free trade agreement. The agreement itself runs to well over 1,000 pages and examines in some detail every aspect of the Australia-US investment and trade relationship. There is also the accompanying explanatory documentation, national interest statements and the results of economic modelling on the impact of the agreement. Well over 500 submissions were received by the committee from various organisations and individuals. There have also been oral presentations and three specialist roundtable discussions, covering separately the Pharmaceutical Benefits Scheme, intellectual property and the economic and trade impacts of the agreement. Clearly, there is a wealth of material that has to be considered in order for the committee to frame its recommendations.

But, while mastering all of this information is essential to the discharging of the committee’s obligations, the true weight of responsibility cannot simply be measured by the volume of material before us and the effort necessary to render it intelligible to the Senate. When the Senate votes on the legislation implementing this agreement—which it will do shortly, I understand, because that legislation is to be put to the chamber by the government in the near future—the Senate will in effect be voting on whether the agreement as a whole comes into force or not. A vote which gives all the relevant bills passage without amendment triggers the agreement. Any amendment or rejection of a bill will have the effect of abrogating the whole agreement.

The select committee, mindful of its responsibility, has taken considerable care to seek input from a wide range of stakeholders and to question witnesses in detail about their views. As well, we have commissioned independent economic research from Dr Philippa Dee, an eminent expert in the field. Her report and all the relevant submissions and the proceedings of the select committee thus far are on the public record, enabling members of the public to follow our inquiry in detail. That, I submit, is important. We must not forget that trade agreements per se are a form of economic legislation. Removing barriers to exports obviously increases the competitiveness of Australian firms in foreign markets and often leads to an increase in the goods and services we can sell overseas and the jobs we can create in Australia. Greater foreign competition in Australia means, in turn, that market forces shape our economy, moving it in the direction of greatest efficiency—that is, where we are most competitive. Inefficient firms lose market share or even go under in these circumstances.

Having in place adjustment mechanisms to cushion the transitional effects of a shift to a more efficient economy is one of the most important issues in gaining public acceptance for trade agreements. Both individuals and industry sectors can be adversely affected by the market restructuring an FTA causes. This is not a reason to reject a trade agreement, however. But it is a reason, as was recently the case in the sugar industry in Australia, for us to be aware of the knock-on effects of change and for prudent government to act to ameliorate them. The structural adjustment required to deal with the effects of this agreement is an appropriate matter for the select committee to consider when giving thought to the overall effects of the agreement on the Australian economy and on the Australian community.

The issues that the earlier report Voting on trade pointed to as being significant matters requiring urgent and forthright attention have again surfaced in this inquiry as matters about which there remains considerable public disquiet. These include: the Pharmaceutical Benefits Scheme, intellectual property and the economic and trade impacts of the agreement. Clearly, there is a wealth of material that has to be considered in order for the committee to frame its recommendations.

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cal Benefits Scheme; the use of the negative rather than the positive list approach to market liberalisation; Australia’s national cultural objectives, especially in the media; the regulation of foreign investment; the rules of origin mechanisms; and intellectual property. Voting on trade also recommended that the government seek a thorough and independent assessment of the proposed agreement through the Productivity Commission. Unfortunately this was ignored. Instead the public have been presented with a series of modelling exercises that are in conflict with each other, generating in both the public and the professional realms more heat than light.

The Productivity Commission, the institution within the government structure designated to do this work, should have been used to do so and then there would have been, I believe, a much greater consensus about the results. Putting the modelling out to a private modelling company does invite criticisms of whether the government was seeking to get the information it required rather than whether it was seeking to obtain the impartial modelling necessary to inform the Australian community of the full implications of this agreement. I say that without any criticism of the professionalism of the modellers used on this occasion.

The Senate, through both the Senate Foreign Affairs and Trade Committee and the select committee, has consistently sought to play a constructive and educational role to ensure that the free trade agreement with the United States was pursued in an optimal fashion in terms of process and that negotiators attended to the key issues of the Australian public so that the national interest might be preserved and enhanced. Indeed, USTR Bob Zoellick said at the beginning of this process that he sought bipartisan support for this agreement in Australia. As this interim report is tabled, the government has introduced the domestic legislation by which it hopes to effect the implementation of the US free trade agreement. Therefore the select committee is only now in a position to turn its attention to that implementing legislation. This will be an important task because it is only by scrutinising that legislation that the select committee will be able to assess whether the issues and concerns that have persisted throughout both the Senate inquiries will be satisfactorily resolved.

I would like to conclude my remarks by making two observations. Firstly, this committee is well served by the staff of the secretariat and it is a credit to them that they have worked under considerable pressure to complete the necessary administrative and writing tasks on time. Secondly—and I must unfortunately raise this matter—there is in the government senators’ minority report in the second paragraph a reflection which, if made in this chamber, would be unparliamentary and which, if made in a committee of the Senate, would be unparliamentary. However, it has crept into this report. My view is that it should be withdrawn because of its unparliamentary nature. Mr President, I do ask that you look at the practice of where reports contain unparliamentary reflections and see what action can be taken to prevent that from occurring in the future.

The PRESIDENT—I will give the undertaking that I will have a look at that, Senator Cook, and take the appropriate action, if necessary.

Senator FERRIS (South Australia) (10.18 a.m.)—As chair of the United States-Australia Parliamentary Friendship Group I came to this committee with the attitude that was voiced by Ambassador Schieffer earlier this week when he said:

All of us need all the friends we can find in this world. And the more that we can do to enhance friendships the safer all of us will be.
This agreement is about more than just dollars and cents; it is about the quality of the relationship between Australia and the United States. This free trade agreement is truly a historic agreement that will enhance trade and investment between our two countries. It will more closely integrate our two economies and that will provide opportunities for our businesses and our farmers and jobs for all Australians. So the question is: do you support a closer relationship with the world’s biggest and strongest economy, with our closest ally and with our second largest merchandise export market? Or do you argue that we should retreat into isolated protectionism and forgo these opportunities whilst the rest of our competitors continue to negotiate and sign up bilateral trade agreements just as fast as they can?

As the international trade expert Alan Oxley told the committee:

We would be regarded as the most bizarre country in the world for having rejected a free trade agreement with the world’s biggest economy—an agreement that would actually give us access in agriculture, which is one of the most difficult areas ...

Agriculture was the key issue for me. It was clear from the outset that this was not a perfect agreement particularly when it came to sugar. But other significant opportunities have been provided. The National Farmers Federation in their initial reaction to the free trade agreement said that, while they supported the agreement, they were disappointed. I am pleased to say that NFF’s newly elected president, Mr Peter Corish, told me yesterday at a backbench committee meeting that the National Farmers Federation now strongly support the agreement.

So I came to this committee believing that it was extremely important that the free trade agreement be scrutinised as closely as possible so as to examine the benefits that it would bring to rural Australia—and scrutiny was exactly what was needed. It soon became apparent that the signing of this free trade agreement tragically and quite disappointingly incited a baseless and scaremongering fear campaign. Some of the alarmingly critical positions taken on this free trade agreement that never surfaced in relation to free trade agreements with Thailand and Singapore, interestingly enough, can only be explained as being motivated by a deep sense of anti-Americanism. One argument made before this committee that was highly speculative and quite dangerously erroneous was the claim that drug prices would skyrocket under the free trade agreement. How much more irresponsible could a claim along those lines be? But when this accusation was subjected to scrutiny by the committee it was shown to be completely groundless and totally false—always was, always will be—but we continually had irresponsible fearmongering by witnesses with another agenda.

Another argument, equally false and that proved to be groundless, was that Australia’s very strict and science based quarantine system was about to be ‘destroyed’ forever by the free trade agreement. Again, this totally outrageous accusation was categorically shown to be false. How much more irresponsible could it be for a group of Australians to come to a parliamentary committee and argue that our science based quarantine system that has served this country well and has made us one of the cleanest and greenest countries in the world would be undermined by an agreement that our government would initiate of its own making? How crazy, how irresponsible could this be?

The third aspect of this anti-American, antitrade, old-fashioned protectionist agenda of fear and loathing of the United States, which I am sad to say appears to be supported by some members of the Labor Party, was that changes to Australia’s intellectual
property laws under this agreement would result in significant economic losses. These losses were calculated based on the flawed assumption that all copyrighted objects would retain their market value in the same manner as the copyright attached to Mickey Mouse. The only thing relevant to Mickey Mouse was some of the comments by the witnesses in relation to this matter—fanciful assumptions. Ultimately it was the evidence of those with actual experience in international trade negotiations and the evidence from representatives of business and farmers—who will seek, as fast as their legs can carry them, to take up the opportunities that this agreement provides—and not the academics and the isolated theorists that was most compelling before the committee.

The Senate must pass this enabling legislation, which will bring this historic free trade agreement into effect. If Australia walks away from this agreement, not only will we be the laughing-stock of the rest of the world but we will have forgone a valuable opportunity worth billions of dollars to Australian business, Australian workers and Australian families—for Australian farmers, our wine industry, our seafood industry, our horticultural industry, our dairy industry, our car and car parts industry and our service providers. The government senators’ dissenting reporting correctly reflects our strong support for this free trade agreement with the United States.

The President—I call Senator Brown.

Senator Boswell—Mr President, Senator Brown is not a member of the committee.

Senator Brown—I have a right to speak on this.

Senator Boswell—Mr President, on a point of order: the advantage of speaking in these debates has always gone to the participants in the Senate inquiry who made up the committee. That is always how it has been. I would seek your ruling that only committee members or people who participated in the committee be given preference to participate in the debate before other people who wish to participate are allowed to do so.

Senator Brown—On the point of order, Mr President: there is no such standing order. The honourable senator must know that. Nor could there ever be a standing order which said that only committee members can speak on matters that have taken place in the committee—and nor should preference be given. This is a debate of the Senate and senators will be aware that my colleague Senator Nettle applied to be on this committee but did not, by vote of the Senate, make it. That does not diminish one iota our interest in the proceedings of this committee, its outcome and the comments that are made about it.

The President—you are only eating into your own time. The reality is that in the past the practice has been to give preference to members of committees, but it has also always been Senate practice to take one person from each side of the chamber. The fact is that Senator Brown stood up before and obscured Senator Ridgeway, so I called the first person I saw on my left, which was Senator Brown. If I had known Senator Ridgeway was on his feet, I would have called him first because the precedence has been that as a member of the committee he would have an opportunity to speak. But I have called Senator Brown and I cannot go back on that. I ask Senator Brown to be brief, if he could, to give other members of the committee an opportunity to speak.

Senator Brown (Tasmania) (10.27 a.m.)—Thank you, Mr President, for that ruling. This is an extraordinarily important matter and I thank members of the committee who are working on it. I must say that the submission we just had from Senator Ferris

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was quite outrageous. I do not think I have ever heard before a tirade of that sort against witnesses coming before a committee. Senator Ferris referred to Australians who are concerned about this issue as having ‘another agenda’, being ‘crazy’, being ‘irresponsible’, showing ‘fear and loathing’ of the US, ‘academics’ and ‘isolated theorists’, and ‘people who would forgo billions of dollars’. That of itself is outrageous. That we have a government member who has unleashed a tirade against people who have a different point of view in our democracy at that level is just outrageous and unforgivable. It shows that we actually have a government member—and I suspect there are more—who is so emotionally tied to this free trade agreement with the United States that she is simply not capable of objective assessment of the evidence coming before the committee, and that must be a big worry to the Senate.

It is quite extraordinary that at the interim stage such an outburst could come from the government side. It was a well-considered outburst, which shows that the level of mature consideration of witnesses coming forward that we would expect of a committee is missing from the government side. I hope that the government will apply itself a bit more diligently to listening to the evidence on the free trade agreement.

Let me say from the outset that it is not a free trade agreement. One has only to look at the provisions on agriculture to see that there is nothing free about this at all. It is very heavily loaded towards accepting the subsidy system which gives US agriculture in such things as beef and dairy an enormous advantage over Australia. Indeed, were it a free trade agreement which lifted levies, government support and prohibitions from agriculture, Australia would be in an undoubtedly advantaged position, but the United States has blocked that and there is blithe agreement by members opposite to accept that.

There are very real concerns by people in the arts and creative community in Australia that this agreement is going to effectively phase out those protections, for example, on content on television and on other media into the future. And that is what this agreement does: it removes the very limited protection for Australian culture and performing arts, for example, that is there at the moment.

When it comes to the Pharmaceutical Benefits Scheme, we have seen the hype that both the government and the opposition are now prepared to allow for that scheme. Very worrying indeed is the real argument coming from academic people who are deeply involved in this industry—scientific analysts—who believe that this will lead to an increase in the cost of pharmaceuticals in Australia and that the agreement is not explicitly spelt out in a way that will prohibit the US pharmaceutical giants from insisting on review, which is going to be inimical to the price of pharmaceuticals coming to Australia, not least for Australians. These are real concerns.

When we get a tirade from Senator Ferris of the variety we just heard I do wonder whether the government members on the committee are listening. Maybe it would be a far healthier situation if one of the government members gave up their seat to Senator Nettle so that we had a greater diversity and a more intelligent and thoughtful assessment of the information coming before this committee—in this nation’s interest. I am afraid that the tirade we just heard from Senator Ferris gives me no faith that there is going to be a balanced, mature and intelligent assessment of the information coming before the committee simply because she at least is locked into this idea that if the US says ‘Jump’, she says, ‘I’ll jump’; if the US says, ‘It is good’, she says, ‘It must be good’; if George W. Bush says, ‘This is for Australia’, then we say, ‘Thank you, this is for Australia.’ I expect an independent, mature, Austra-
lian based and Australian concerned assessment of the evidence coming before the committee, not a tirade of the variety that we just heard.

I hope that the government will be applying itself a bit more diligently and even-handedly for the rest of the committee’s deliberations so that when the final report comes to the Senate in August we can believe it has come out of mature, thoughtful and even-handed thinking—not the sort of biased one-sided dismissal of varying points of view from Australians coming before the committee that we just heard in such a negative fashion from Senator Ferris.

Senator Brandis—I seek leave to speak to this report for the 10 minutes provided for in the standing orders—and also on behalf of Senator Ridgeway and Senator Boswell, the other members of the committee seeking to participate in this debate.

Senator Brandis—I seek leave to speak to this report for the 10 minutes provided for in the standing orders—and also on behalf of Senator Ridgeway and Senator Boswell, the other members of the committee seeking to participate in this debate.

Senator Cook—I strongly support the granting of leave for those members of the committee to speak, but I do understand that the arrangement was 10 minutes to the Labor Party, 10 minutes to the coalition and 10 minutes to the Democrats. Senator Ferris has taken, as I read the clock—but the clerks will know—something like six minutes, which would leave a balance of about four minutes pertaining to the coalition. If the call is to be shared between Senator Boswell and Senator Brandis, it should be to take that four minutes between them, not to use this device to take another extra 10 minutes each because that would break the understanding that was reached. That understanding obviously is about the smooth running of the Senate. I also believe that if we run out of time—if the half-an-hour assigned to this debate expires—then leave should be granted for each party to speak for the 10 minutes as per the understanding reached. I have taken 10 minutes for the Labor Party and there are 10 minutes for the coalition to be consumed and 10 minutes for the Democrats to be consumed.

The PRESIDENT—I understand that leave will be granted for you, Senator Brandis, to speak for four minutes, which was the agreement made earlier between the whips, and then Senator Ridgeway for 10 minutes. Under those circumstances I call Senator Brandis.

Senator Brandis—I accede my time to Senator Boswell.

Senator Boswell—The agreement was that we would have 10 minutes each, and that was put.

The PRESIDENT—My understanding, Senator, is that 10 minutes was to be shared between Senator Brandis and Senator Ferris, Senator Ridgeway was having 10 minutes and Senator Cook 10 minutes. That is what I was told.

Senator Boswell—Senator Cook has agreed that both the Democrat senator and I have 10 minutes each.

The PRESIDENT—The coalition have 10 minutes, the Democrats have 10 minutes and the Labor Party have 10 minutes. That was the agreement, I believe from the whip.

Senator Boswell—I thought that agreement had been changed in the event of Senator Brown getting up and usurping the positions of the senators who were on the committee. I thought that you ruled, or someone agreed, that there be an extension of 10 minutes to the Democrat senator, Senator Brandis and me.

The PRESIDENT—No, under the practices I explained earlier I have to take a contributor from each side of the place. Senator Brown stood and obscured my vision of Senator Ridgeway. Had that not happened, Senator Ridgeway would have had his 10 minutes and then we would not be arguing.
Senator Boswell—I find it upsetting that the Democrats do not get a guernsey.

The PRESIDENT—They will get a guernsey.

Senator Boswell—How will they get a guernsey?

The PRESIDENT—Because we are going to agree to extend the time to allow them to speak.

Senator Brandis—How does the deputy chairman get the opportunity to speak, Mr President—or, indeed, Senator Ridgeway?

The PRESIDENT—I cannot have two people on their feet at once.

Senator Boswell—How does Senator Ridgeway and the deputy president of the committee have an opportunity to speak, because your view obscured? I am not questioning your ruling; these things happen. But I think when a mistake is made by the President then he must seek some sort of compensation.

The PRESIDENT—The opposition has agreed to grant leave.

Senator Boswell—To whom?

The PRESIDENT—To Senator Brandis and to Senator Ridgeway.

Senator Boswell—To speak for how long?

The PRESIDENT—for Senator Brandis to use the other four minutes of the 10 minutes that the coalition agreed to and for Senator Ridgeway to speak for his 10 minutes.

Senator Brandis—I will accede my time to Senator Boswell.

The PRESIDENT—Is leave granted for Senator Boswell to speak for four minutes?

Senator Boswell—Why do I have only four minutes?

The PRESIDENT—that was the agreement that was made between the whips, and you have got the balance of the coalition’s time, Senator Boswell—so you have got four minutes.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (10.38 a.m.)—by leave—Let me condense, in four minutes, my view of this agreement. The agreement opens up access to a market of 300 million people. Ours is a country of 20 million people. At the committee meeting Senator Cook said very succinctly to the citrus industry: ‘You are both going to get an advantage. How can you both get an advantage? There must be a winner and a loser.’ The citrus industry said very clearly: ‘We give Americans access to this market. They have 20 million people. We have access to 300 million people. We must get an advantage out of it.’ The tuna industry thought they had won the lottery. They are going to get access to the largest market in the world with the removal of tariffs. It is going to be worth about $4,000 to each dairy farmer in Australia. In fact there are very few who do not benefit, apart from the sugar industry. I must commend them for not having a dog in the manger attitude. They said, ‘We didn’t get anything out of it but we see it as an overall benefit to rural and regional Australia and therefore we agree with it.’

There is no primary industry that does not get an advantage out of this. Some of them get more advantage than the others, but there is no downside for anyone. The beef industry gets another 70,000 tonne, cutting in after three years. We rarely ever meet the quotas now. There is an immediate reduction of 4.4c a kilogram on beef. Inevitably, by the time it goes through exporters, butchers and wholesale butchers, probably the 4.4c a kilogram becomes 10c a kilogram that is paid for by the grazing industry. So there is no primary industry that does not see an advantage.
There has been a lot of interference by people who think that the Pharmaceutical Benefits Scheme prices are going to be increased. There is no provision in the agreement that gives any capacity for price increases affecting the Pharmaceutical Benefits Scheme. We have been told that by the negotiators, and there have been a lot of hares run out there and straw men being built up only to be knocked down.

Senator Brown—What about pork producers?

Senator BOSWELL—Pork producers are a special case, I will say that—but I do not think they have disagreed. They have got a problem with the World Trade Organisation, but they certainly do not have a problem with this free trade agreement.

The pharmaceutical benefits issue is a furphy. We have questioned people time and time again, and there is no capacity, no provision and no way that those Pharmaceutical Benefits Scheme prices can be increased. The increase is made by the government, and it is only the government that can do that. So, unless the Labor Party ever get into office and want to increase them, there is no capacity for a joint agreement between Americans and Australians to allow them to do that. (Time expired)

Senator RIDGEWAY (New South Wales) (10.43 a.m.)—It is wonderful to join in this debate on the interim report by the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America. It is an interesting one that is going to affect the entire country. I think there have been a lot of furphies told along the way. It is a little like waiting for the American tooth fairy to come along. We have to look at this as an important arrangement that will seriously affect Australia’s future. So in many respects we should not be put in a position of having to rush through the process just to fit the government’s legislative timetable, particularly given that the agreement itself does not start until January of next year. I ask why it has to be rushed through in the way that it is.

The Australian Democrats have said all along that it is a question of making sure that we analyse the impact of the deal carefully, to understand exactly what the impact will be not just on a very narrow set of definitions to do with economic outcomes but also on social, environmental and cultural outcomes. These are crucial to making some sort of fair judgment about whether or not this is going to be in the national interest. I have asked on many occasions, both here and through the processes of the various inquiries, whether or not the government would be prepared to go back and deal with an assessment of the social, environmental and cultural outcomes. On every occasion the government says, ‘It can’t be quantified,’ or, ‘Those things will be taken care of as a result of the economic gain.’

The government have shown no commitment to the principles of accountability and proper process in this respect. The fact is that the overwhelming benefits they keep speaking about are not there; they just do not exist at all. The most important thing that we need to keep in mind is that we ought to be asking the government, as Professor Ross Garnaut said, why the Productivity Commission was never asked to undertake a national interest assessment. We would not be having this debate at all but for the fact that the government designed a program that has brought the debate on. There are concerns out there, and it seems that the government are not listening to those concerns. They are only interested in spouting the government line and protecting the official propaganda.

I think those concerns need to be put on the record. For example, the government has
repeatedly assured the Australian public that the Pharmaceutical Benefits Scheme will not be affected by the FTA. But when you look at the details of the text of the deal you see that they tend to indicate otherwise. The free trade agreement does establish a process whereby the US drug companies can seek independent review of decisions made by our Pharmaceutical Benefits Advisory Committee about the listing of drugs on the PBS. That may lead to more expensive drugs being included in the scheme, which inevitably will increase the cost of the PBS to the taxpayer—that is, the Australian people. We have to wear the cost of an agreement that the government cannot give any assurances on. By our signing the FTA and committing Australia to the establishment of an independent process to allow big US companies with large profits at stake a role in our process, those companies will see great advantages in being able to appeal, particularly if a drug is not accepted for subsidy at a price they want.

There are also issues in relation to Australian content in broadcast media. The FTA does include provisions for quotas of Australian content on television. However, the quotas are locked at specific levels and can never be increased by the current government or future governments. If the quota levels are ever lowered by any government in the future, they can never be returned to their current levels. This ought to be a concern for the Australian people. Further, the FTA provides that the US can challenge any regulation for Australian content in new media. This will severely limit future government regulatory options that may be required to deal with any of the new technologies or new modes of service delivery, particularly in respect of audiovisual content.

The government keeps talking as if this were a free trade agreement and a fair one. In respect of intellectual property, it is nothing of the sort. The Democrats have always warned against allowing the free trade agreement to take the American route of giving extraordinary power and privilege to giant software companies which can then be used to stifle competition. Aspects of the US Digital Millennium Copyright Act, along with the software patents of the US, have seen major software companies in that country frustrate and block smaller companies and IT research companies by using the law to threaten and financially exhaust any competition.

In respect of public services, something that we in this country ought to respect, the government have chosen through the FTA process to take a negative list approach to services which is clearly ambiguous. Given that so many of our essential public services have either been privatised or are in the process of becoming so under this government, many are supplied in a competitive environment. But essential services such as water, energy and waste disposal are not included in the reservation and are therefore not protected. The government make these claims about everything being fine. We ought to ask why the government never went to the extent of making sure that these protections were put in place. The Democrats are committed to ensuring that the FTA does not compromise the ability of governments at all levels in Australia to deliver essential public services to their communities.

It is clear that, as a result of the FTA, the US will now even have the capacity to have considerable influence over our quarantine measures. I have heard what Senator Boswell has had to say about the agricultural sector and I want to make a point about sugar in particular, because we are going to have to wear the cost of that not being included in the CIE report. First and foremost, an article in the Courier-Mail on 18 June said that although the US ‘steadfastly refused to allow
any increased access for Australian sugar in the FTA—a decision that caused anger amongst Australian farmers as well as food manufacturers—they have now opened the door to talk to our trade competitors. Why has sugar now, all of a sudden, become okay to deal with in trade agreements with the US for all other countries but not Australia? I think we have to ask whether we have been dudged in this process.

I also want to talk about the dissenting report that has been provided by the government members. In their first sentence they accuse the interim report of being a waste of time and resources. The interim report, it has to be said, was their idea. At a meeting of the committee on 12 May Senator Brandis proposed that the reporting date be 21 July. On 13 May the committee agreed, as a compromise, that an interim report would be delivered by 21 July, with a final reporting date of 12 August. That was because of the government senators—not because of any other senators on the select committee—who no doubt wanted the reporting date set so early so that they could fit in with the government’s timetable to push the FTA through the parliament as soon as possible, with as little criticism as possible.

The second point the government members make in their response is that the economic modelling commissioned by Dr Dee of the ANU has not had time to be properly considered. This is quite simply a lie, because the draft report of Dr Dee was circulated weeks ago. Around 27 May the committee agreed that the draft could be circulated in confidence by the senators for consultation purposes. The government members and all members of the committee have had this report for weeks and have had an opportunity to consider it over that period of time. It gets worse. A public hearing was scheduled yesterday to consider Dr Dee’s report, and the government senators were not present at that meeting. They did not come along. They rant about insufficient consideration but do not turn up when consideration is scheduled to take place.

The committee wants a considered and thoughtful report, but the timetable set by the government senators has made it impossible to thoroughly consider the evidence before it. We had hearings set—at the government senators’ request, I should say—and during the hearings the behaviour towards witnesses, I would say, has been very disappointing and discouraging. Whilst the government talks about unfairness in the process, I go back to the point I made earlier—that is, proper accountability and proper process in how we deal with an analysis of the free trade agreement. Trying to shoot the messenger through this particular report is not going to win any points. At the end of the day we ought to recognise that this debate was one created by the government, not by the opposition and certainly not by the Australian Democrats. I stand by the interim report and look forward to the rest of the assessment. (Time expired)

Senator Brandis—Mr President, I claim to have been misrepresented.

Senator Murphy—Mr President, I rise on a point of order. I have a question with regard to the matter that Senator Brandis has raised in claiming to be misrepresented. I understand that normally you would do that at the conclusion of certain business. At the moment we are still dealing with the report. I do not have a problem with Senator Brandis claiming to have been misrepresented, but I just want a clarification because I would like to say something in respect of this report.

The President—Senator Murphy, anybody can get up and seek leave. Senator Brandis is seeking leave at this point in time and we will see what happens. Senator Brandis, you are seeking leave?
Senator Brandis—If that is the appropriate procedural formula for me to use, yes. I claim to have been misrepresented in two respects by statements just made by Senator Ridgeway. If I need to seek leave to make that explanation, I do.

The PRESIDENT—Is leave granted?

Senator Conroy—With the indulgence of the chair: no doubt Senator Brandis feels that he has been misrepresented and that he is entitled to a response. But to get the process completed and allow the speakers to finish, I agree with Senator Murphy’s point that in actual fact there is a particular time and place where those matters should be raised and now is not the appropriate time. I have no difficulty with Senator Brandis wanting to respond to some of the things that were just said; it is just that we have a very limited amount of time available right now. I think we should deny leave on the basis that we should be completing this business, but I do urge Senator Brandis to come back at the appropriate time and make his statement.

The PRESIDENT—I understand that the arrangements made by the whips—which have been extended somewhat—mean that the time for this debate is now completed. Senator Murphy was going to jump to his feet and seek leave to continue his remarks, I suspect.

Senator MURPHY (Tasmania) (10.55 a.m.)—Mr President, I would like to take note of the report and seek leave to continue my remarks later. May I say that, in doing that, it is my intention to seek to have this report brought back for further consideration at a later hour. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

PERSONAL EXPLANATIONS

The PRESIDENT—Senator Brandis, now that that matter has been concluded, you have an opportunity to seek leave to state where you were misrepresented. Are you seeking leave?

Senator BRANDIS (Queensland) (10.56 a.m.)—I seek leave to make a statement.

Leave granted.

Senator BRANDIS—In the speech that he has just completed, Senator Ridgeway said two things, both of which reflected on me and in a more general sense on government senators, and both of those statements were inaccurate. Senator Ridgeway said that the interim report was the government senators’ idea. That is not so. It is the case that government senators, at a private meeting of the committee, proposed an earlier reporting date. That is true. That proposal was rejected by a majority of the committee at a private meeting. From that, there emerged a proposal for an interim report. But what the government senators wanted was the final report to be concluded by now, just as the Joint Standing Committee on Treaties, which had broadly the same remit, was able to conclude its final report in time to bring down the report in the House of Representatives yesterday morning. The representation that this device of an interim report came from the government senators is false.
Secondly, Senator Ridgeway said that the statement made jointly by the government senators in our report that the committee has not had time to consider the modelling of Dr Philippa Dee was a lie. Mr President, that statement made about me, Senator Ferris and Senator Boswell, the joint signatories of the minority report, is of course unparliamentary. But, leaving aside that matter, it is also untrue. Dr Philippa Dee, the consultant retained by the committee to engage in some economic modelling, did develop a document which was circulated some time ago, that is true, but what Senator Ridgeway omitted to say was that, to this time, the committee has not heard from Dr Philippa Dee. Dr Dee, although a consultant to the committee, held a press conference yesterday afternoon in which she advocated certain views, but the committee has yet to receive her evidence.

Senator Conroy—Mr President, I rise on a point of order. We gave leave on the basis of a misrepresentation. I put to you very strongly that Senator Brandis is now abusing the leave he was granted, that he has long strayed from the points on which he claimed to be misrepresented and that you should either sit him down or bring him back to where he was misrepresented.

The PRESIDENT—Senator Brandis has already pointed out his first consideration. I would ask him to come to a conclusion on the second matter.

Senator BRANDIS—I have very little more to say. The point that I wish to make is that it is not true to say that I, Senator Boswell or Senator Ferris have lied in saying that we have not had an opportunity to consider Dr Dee’s modelling when to this day and to this hour we have not even had Dr Dee before us.

Senator COOK—Mr President, I am the chairman of this committee. I might say that, if I had known how difficult it was, perhaps I would not have offered to be the chairman, but I am the chairman of this committee. I have knowledge of the events referred to in the chamber just now. That knowledge of events conforms with what Senator Aden Ridgeway has said to the chamber. I believe that what Senator Ridgeway has said represents the view of the committee in the majority and is certainly an accurate portrayal, as far as I am concerned. The second point was about whether or not the committee has had an opportunity to examine Dr Dee. It has not. One of the reasons it has not is that last night government senators chose, by their own decision, to remove themselves from the committee, rendering the committee inquorate and unable to proceed.

The PRESIDENT—Senator Cook, you claim that you have been misrepresented. Could you please explain to the Senate where you have been misrepresented?

Senator COOK—I have been misrepresented in that Senator Brandis claimed to say what happened at the committee. That means that, according to his statement, as chairman of the committee my doing certain things as alleged by Senator Brandis would have been true. I do believe that that does misrepresent my position.

Senator Brandis interjecting—

The PRESIDENT—Senator Brandis, you cannot speak twice on this matter. I believe that that concludes this matter at the moment. Leave was given to continue remarks. We will move on to the next item.
PARLIAMENTARY ZONE

Approval of Works

The PRESIDENT (11.02 a.m.)—Before the minister makes a statement, I wish to make a statement from the chair.

Senator Conroy—Have you been misrepresented?

The PRESIDENT—No, I have not been misrepresented, and I hope I do not misrepresent the Senate. The motion under the Parliament Act 1974 seeks works approval for certain works in the parliamentary zone, namely a proposal by the Department of Parliamentary Services to enhance the security around Parliament House. The motion is being moved by the government on behalf of the Presiding Officers. This work is principally the construction of a low-line wall around the grass perimeter of the building—that is, on the inside of Parliament Drive—to replace the white plastic barriers.

The work also includes placement of a temporary fence at the top of the grass slopes on the roof and the installation of retractable bollards on the Senate, ministerial and House of Representatives side roads. The result of the work will be to remove the plastic barriers, reopen the grass slopes to the general public and provide a permanent but more aesthetic solution to enhance the perimeter of Parliament House. It will improve public access, balanced with a recognition of security considerations. Funds were appropriated in the last budget and the Appropriations and Staffing Committee has been briefed.

The Department of Parliamentary Services is still settling arrangements regarding staff ingress and egress at the side entrances and is still to provide advice to the Presiding Officers on that specific aspect. I give an undertaking to honourable senators that no action will be taken to restrict the current nature of access to the side entrances as a consequence of these works until the Speaker and I have received further advice from the Department of Parliamentary Services and until we are satisfied that appropriate arrangements can be put in place for staff access, particularly with regard to pick-up and drop-off of senators, members and staff. Once further advice is received on this particular aspect, I will report back to the Senate. With this undertaking, I commend the forthcoming motion to the Senate.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.04 a.m.)—At the request of Senator Hill, I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the Department of Parliamentary Services to enhance the security around Parliament House.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (11.04 a.m.)—Mr President, thank you for that statement. Many times when we have motions here approving works in the parliamentary zone they are waved through without any debate at all. That is understandable as none of us here are architects or planners—at least, not that I am aware of—and these plans are put forward and worked out by people with responsibility for that. But the fact is that this motion, and indeed a couple of previous motions which in hindsight I regret not having more focus on before they were agreed to, will, among other things, permanently affect the visual appearance of Parliament House.

There are a range of matters that arise from the proposal but they boil down to two main concerns. One is the impact on the appearance of the building and the experience, if you like, of visitors to the building and the public areas of the building, particularly the front entrance and the roof. The second concern is the potential impact on staff who work in this building, who of course number
in the thousands, and on visitors to the non-
public areas. I have raised these concerns in
two letters to the Presiding Officers, who
have responded promptly, and I thank the
President for that. I have also had a briefing
from the Usher of the Black Rod and the
Secretary of the Department of Parliamen-
tary Services. I would have to say that my
concerns are partly addressed but not com-
pletely addressed.

To outline the process, there was a brief-
ing offered in general to MPs and staff last
week. It was from that briefing, which a
couple of my staff attended, that my con-
cerns grew stronger and, hence, my corre-
spondence with the Presiding Officers. I will
not go through all those in detail, given the
limited time. But to ensure they are on the
record I seek leave to have those letters in-
corporated in Hansard.

Leave granted.

The letters read as follows—
17 June 2004
The Hon Neil Andrews MP
Speaker of the House of Representatives
Senator the Hon Paul Calvert
President of the Senate
Dear Mr Speaker and Mr President
I am writing to express my concerns about some
aspects of the proposed security enhancement
works. Whilst Australian Democrat Senators be-
lieve that the building’s occupants should be ade-
quately protected from harm, I have some con-
cerns about the extent of works and access of staff
and visitors to the building through the Represen-
tatives, Ministerial and Senate entrances. I hope
that you are able to address these concerns before
these proposals are dealt with by the Parliament.

Extent of the works
One of the very great features of parliament house
is its openness and availability to the public. I
have always enjoyed the thought of school chil-
dren being able to walk over the top of Parliament
House. It is an important indicator of our national
psyche that this is no longer possible and I very
much regret that this level of security is consid-
ered important and ask you to consider other
ways of achieving the safety of the occupants if
possible.

There will also be an impact on the building as a
major tourist attraction. Whilst security is para-
mount, and tourists benefit from this as well of
course, I am concerned about unnecessary impact
on visual amenity and subsequent attractiveness
to visitors. This could impact negatively on the
number of visitors and the impression that they
take away.

Pick-up and drop-off arrangements
I understand the arrangements will require people
being picked up and dropped off on Parliament
Drive or in the public car park. Access to Parlia-
ment Drive is either through the car park or up
and down external concrete stairs with no weather
protection. Staff and visitors with disabilities or
carrying luggage could have significant difficul-
ties entering or leaving the building—particularly
in wet and windy conditions. I think these issues
need to be resolved

I am also concerned about the safety and well-
being of staff, particularly female staff, leaving
the building late at night. My staff advises me that
they regularly wait for up to 20 minutes for taxis
on some nights. In cold and wet weather they will
be waiting down in the (inadequate) bus shelters,
rather than inside the Senate entrance as is cur-
cently the case. I also note that they are currently
able to ring for taxis and follow up non-arrivals
from the entrance but this will not be possible
from the roadside. I am concerned that their per-
sonal safety will be compromised.

Can you please assure me that, if these proposals
do go ahead, that appropriate arrangements will
be made for the safety of staff and the proper
management of traffic in these busy areas? I
would appreciate details of these arrangements
before this matter is dealt with.

May I suggest a quick survey of building occu-
pants to identify those people who will be af-
fected by these new arrangements? Such a survey
could seek suggestions from staff about how the
new security arrangements can be best imple-
mented. I also ask if you have sought any advice
or views from organisations with expertise in
disability access to see if these changes raise?
Finally, can you please advise me on the extent of
consultations already undertaken, including with
the wider Canberra community?
Yours sincerely
Senator Andrew Bartlett
Leader of the Australian Democrats

Senator Andrew Bartlett
Leader of the Australian Democrats
Parliament House
CANBERRA ACT 2600
Dear Senator Bartlett
Thank you for your letter of 17 June 2004 about
the proposed works to enhance security at Par-
liament House.
We share your regret that new security measures
will have the effect of limiting certain public ac-
cess in the Parliamentary Precincts. The new,
more permanent arrangements, will remove the
unsightly white plastic barriers which currently
cut across the grass slopes with a fence much
more in line with the aesthetics of the building.
Mr Romaldo Guirgola, AO, the original principal
architect of Parliament House, has been involved
in the development of the retaining wall design.
The new fence will contain a number of points
where pedestrians can gain access to the grassed
roof.
A new temporary fence will be placed at the top
of the grass ramps to the roof. This temporary
fence will be coloured to blend into the back-
ground, and may be removed once more perma-
nent steps can be taken to protect the building’s
skylights. These changes permit unfettered access
to almost all of the roof area of Parliament House.
Access to the area beneath the flagpole will still
be possible via the internal lifts.
In regard to pick-up and drop-off arrangements at
the Senate and House of Representatives en-
trances, further work is still to be done on this. As
you may know, the House Committee arranged a
special briefing for Senators and Members and
their staff last week, which included a ‘virtual’
video of the new arrangements. Concerns were
raised about restricting access to the driveways to
each side entrance, particularly for those people
who have to carry luggage, and we have asked the
Department of Parliamentary Services to consider
these matters further.
Options being considered include allowing drop-
off access to the entrances for staff who hold pho-
tographic passes. Similarly, on the basis that a
taxi has been ordered for a particular staff mem-
ber, it may be possible to permit security-checked
taxi to pick-up at the entrances. For general visi-
tors who do not hold photographic passes, the
covered car-park, which provides direct access to
and from the basement, or alternatively, to the lift
adjacent to the Main Front Entrance is being con-
sidered as the appropriate drop-off and pick-up
point. Similar arrangements can be implemented
for disabled staff and disabled visitors for drop-
off and pick-up. Additional disabled car spaces
are being considered for both the public car park
and Ministerial Basement car park. As the retract-
able bollards on the side driveways will not be in
place for some months, we expect to have a per-
manent solution well before the changes are com-
pleted.
We can indeed give you an assurance that appro-
priate arrangements will be put in place to moni-
tor the safety of staff and traffic. In particular,
security staff will continue to monitor the side
entrances during the evenings when staff mem-
bers are departing the building at the end of sit-
tings, which as you know can often be late in the
evening.
In regard to consultation, two years ago we insti-
tuted regular security circulars, and we have made
periodic statements to each Chamber, and to staff
and other building occupants, as needs arise. The
Department of Parliamentary Services has also
maintained close consultation with the National
Capital Authority and the relevant ACT Govern-
ment agencies. The Security Management Board,
which provides advice to us on these matters,
includes representatives of agencies with relevant
expertise. In regard to disability access, we take
our obligations under the relevant Common-
wealth legislation seriously and we have asked the
Department of Parliamentary Services to take
particular care with that, as they do in all other
aspects of the administration of the Parliamentary
Precincts.
Thank you for raising these issues with us. You can be sure that we will continue to balance carefully our desire for the greatest extent of public access to Parliament House with our obligations to the security of occupants—whether parliamentarians, staff or the visiting public.

Yours sincerely

NEIL ANDREW  PAUL CALVERT

22 June 2004

The Hon Neil Andrew MP
Speaker of the House of Representatives
Senator the Hon Paul Calvert
President of the Senate

Dear Mr Speaker and Mr President

Thank you for your prompt response to my letter of 17 June. However, my concerns about the accessibility of the building are only partly allayed by your letter and I would still like further information and assurances before the Senate considers this matter.

I remain unhappy that we are appearing to be creating an unnecessary climate of insecurity. I understand that the new barriers that will prevent visitor access up the grassy slopes will thankfully be more aesthetically pleasing than the current white, plastic barriers. I am also pleased that the original architect has been involved in planning these barriers. However, it does not resolve my underlying concern as to whether public access should be fully restricted in this way, particularly as this appears to be a move towards permanent restrictions.

As I do not profess to be either a security or an architectural expert, I have been willing to accept the changes—temporary and more permanent—made over the past year or two, albeit somewhat grudgingly. However, I must admit my scepticism has been growing about how necessary, and appropriate, some of these measures have been.

With regard to staff and visitor pick-up and drop-off arrangements at the Senate and House of Representatives entrances, my concerns about staff safety in particular remain. I acknowledge your assurances that a number of options are being considered and that you have consultation mechanisms in place. However, I would like stronger assurances that staff and visitors will still be able to be dropped off at the entrance to the building, not at the level of Parliament Drive. My staff advises me they are not confident that their safety can be ensured through “monitoring” arrangements or that they will be able to manage luggage up and down the external stairs—particularly in inclement weather.

I am pleased that you are taking on your responsibilities and obligations to provide disability access to the building and look forward to your specific advice on how this will be achieved in the new security arrangements.

Further to my concern about our role in creating a climate of fear and insecurity, I do wonder if this level of security really is required. I do not wish to compromise in any way the security of all occupants and visitors to the building. I note in the “Podger Report” that Recommendation 1 in Section 2.5 calls for a “detailed security threat assessment” and a “five-year strategic security plan”. Can you please arrange for me to view the threat assessment and the security plan? I understand that this may require a confidential briefing. My reason for requesting this information is because an attachment to the Podger Report details major security incidents at Parliament House would not appear to justify the proposed security arrangements. I can only wonder if you have knowledge of threats not obvious to me.

Finally, you advise me that you have consulted on these matters—both internally and externally. I note that you have not mentioned the relevant unions or staff consultations. I do not consider that the provision of a security circular or statements to the Chambers provides much more than information. Whilst this is valuable, it is only part of a consultation process. I ask for your specific assurance that you will seek the opinions of staff and other building occupants on the new security arrangements and details of how this consultation will occur.

I do believe there should also be broader consultation with the Canberra community. Whilst I note your reference to the NCA and the ‘relevant ACT Government agencies’, it is not just a cliché to call Parliament House the “peoples’ house”, and I think the broader local community should
have a chance to express a view about some of the significant changes being made regarding the roof and the forecourt areas.

Thank you again for your prompt reply and I look forward to your further advice.

Yours sincerely
Senator Andrew Bartlett
Leader of the Australian Democrats

Senator Andrew Bartlett
Leader of the Australian Democrats Parliament House
CANBERRA ACT 2600
Dear Senator Bartlett

Thank you for your letter of 22 June 2004 about the proposed works to enhance security at Parliament House.

As you will know, on 11 June 2004 the Secretary of the Department of Parliamentary Services (DPS) issued a circular to all Senators and Members inviting them or their staff representatives to a comprehensive briefing arranged by the Joint House Committee on 16 June 2004. The circular advised that other building occupants will be briefed once Parliament has approved of the works.

As mentioned in our earlier letter, the briefing included a video presentation showing a ‘virtual’ view around Parliament House once the new security enhancements are completed. We appreciate that other commitments may have prevented Australian Democrats senators from attending this briefing, and we do not know whether any of your staff were among the staff present. We would be happy to arrange for the relevant officers of the Department of Parliamentary Services (DPS) to show you this video, which we believe may allay many of your concerns about the visual impact of the new works.

We reject the suggestion that these measures are creating ‘a climate of fear and insecurity’. Parliament House is a major public institution in Australia and we have obligations to people who work in it and visit. As Presiding Officers, we, not any other ACT or Commonwealth agency, also have statutory responsibility for the Parliamentary Precincts and we will discharge that appropriately in relation to measures to protect occupants and visitors to Parliament House. There are, however, certain elements which you will understand for security reasons we will not make public.

We are happy for you personally to have a confidential briefing from Ms Hilary Penfold, Secretary of the Department of Parliamentary Services, and Ms Andrea Griffiths, the Usher of the Black Rod, on the reasons for security measures.

Yours sincerely
NEIL ANDREW  PAUL CALVERT

Senator BARTLETT—On the first of my two main concerns, the issue of appearance, it should be stated that the works authorised by this motion will lead to an improvement in appearance in significant respects. It will mean the removal of the white plastic barriers, often referred to as the oversized LEGO blocks. I have spoken in this chamber before about how much I loathe their appearance and impact and will be pleased for them to be gone, so their removal will be a good thing. The issue, however, is that some of the changes that will be made will be permanent and so we need to look very carefully at what we are authorising.

A couple of the concerns I have relate to the degree of consultation. These changes relate to security and we are therefore placed in a difficult position: none of us wants to make the building unsafe for occupants, for ourselves or for the million-plus visitors who come to this place each year, but we need to balance that with the overall impact of the parliament. The longer I have been in the Senate the more the importance of the symbolism of things like Parliament House has grown on me, but I am also interested in other people’s views. To have consultation you do not have to go to the public and say: ‘We’ve got this particular security weakness that we will describe to you in detail. What do you think about it?’ Obviously you do not want to draw people’s attention to and give
people ideas about security risks. But it is quite possible to ask the community a general question such as: ‘How important is it to you to be able to walk up the grass slopes onto the top of Parliament House?’ People have not been able to do that for a couple of years now because of the LEGO blocks, and it will continue not to be able to be done. This change will enable people to have access back onto the grass slopes and to walk a fair way up them. That is positive. But to actually get onto the roof they will have to be screened through the security inside and go up in the lift.

I have spoken to a number of people about this. Some people say, ‘You can go up there anyway—what difference does it make if you catch the lift rather than walk?’ Other people talk about the absolute fundamental symbolic importance of people being able to simply walk openly up from outside onto the top of the roof. You could say that all this talk of symbolism is just people getting a bit carried away with poetry and that we have to talk about pure functionality. That is one attitude. On the other hand, you could say that this is a significant, potentially permanent change to the whole symbolism and perception of our Parliament House. By way of examples, I recommend that people read Margo Kingston’s new book. It is an interesting read overall, but there is a section with a couple of people’s perspectives—this book has other people’s views, not just the author’s—about access to Parliament House. One section is written by somebody who talks about the importance and the eternal symbolism that ‘in a democracy the people stand above their elected representatives’. Some might think that is just flowery language of no great significance. Others might say it is of fundamental importance. I think we could ask people those sorts of questions—how important it is and how much they are willing to pay.

There are costs to the different approaches to this, of course. Putting in a fence is a lot cheaper than doing other things that might have less impact but might cost tens of millions of dollars. How important are these things to people? I think that degree of consultation is possible. I have often been annoyed at the cheap criticism some people make about the cost of this building, saying that it is the politicians’ palace and that we are happy to spend lots of money on it. It is not. It is the people’s building, and it is often called the people’s building for good reason. But if it is the people’s house then we need to make some attempt to consult the people if we are going to make significant changes to it. That is why I think that if significant permanent changes are going to be made they need to be given more thought rather than just the limited examination that they will have, which is unfortunate. An opportunity has been missed to have taken perhaps an extra six months, or all the period of time while we have had those horrendous LEGO blocks there, to ask people those sorts of questions.

There is no doubt visitor numbers to parliament have dropped significantly since the LEGO blocks went up—by around 10 per cent, according to the figures I have seen. That may be due to a range of factors, not just the LEGO blocks. But there is not only the issue of how many people come here; there are also the issues of what people see when they visit and how people feel when they see the parliament when they visit it and when they leave. It is a key symbol of our nation, not just for Australians but for international visitors. It is a portrayal of Australia. It is an incredibly unique and, I think, a magnificent building. These proposals will not totally destroy that, let me say; I am not wanting to overstate this by any means. But I do think that when we are passing a motion to make permanent alterations to the access
and the visual amenity of the building and the way people experience it—we have over a million visitors a year to this building, many of them from overseas—it does need some proper scrutiny.

I am fortunate enough to have visited a few parliaments around the world, and when I think about how people perceive other nations one example I compare with some others is the fabulous vista in the US capital outside the front of their Congress. That single thing gives an impression of a nation, in particular a democratic nation, and the way people perceive that building as a representation of their democracy. We have had the Prime Minister making a big deal of symbols in recent times over the flying of flags in schools, so I do not think we can suggest at all that the symbolism is not significant. How we feel about ourselves as a democracy, how a democracy is represented and how we as a nation are represented are, in significant part, represented by this building. These changes here, as I have said, have some positives to them. They will remove the LEGO blocks and people will be able to walk further up the grass. There will be, as is described here in the President’s statement, only temporary fencing, but it will still prevent access to the roof. So I think many people could be asked how significant they feel that is. It is particularly a question for the people of Canberra.

It is obviously a Parliament House for the nation, but for the people of Canberra in particular it is a central part of their community, it is a pivotal part of the design of their city and, of course, many of the citizens of Canberra work in this building. I think there could have been more general consultation with them about this sort of thing. The changes that will be put in place, one of which is a very low wall around the front, which will still allow people to walk through and up the grass slopes, are certainly better than the LEGO blocks. The changes to the forecourt and what I think is called the parade ground out the front will certainly be better than the LEGO blocks. My understanding is that protesters will still be able to gather in the area that they have traditionally gathered in and the removal of the LEGO blocks or the plastic white barriers will also be better for them.

It is still a step backwards, though, from the situation prior to 2003. Because these changes will be more permanent, I think these sorts of things must be noted. I know that every effort has been made to minimise the visual impact. The original architects were consulted and I think they had a fair say in the choice of what was done. Nonetheless, I think these sorts of things should be noted and I still feel that in particular the inability to access the roof is unfortunate. I think it is something that should not be done without major consideration.

The other point that must be made about the access of staff to the building—I note the President’s statement and it is reaffirmed in correspondence with me—is to reinforce that this is not just a politicians’ palace. We politicians—226 of us—are here for only part of the year and are well and truly outnumbered by the permanent staff in this building as well as the others that come here when parliament is sitting. That number is well and truly in the thousands. Despite all the extra information that has been given, clearly more thought has to be given to the impact on the staff and the potential issues that are raised if there are going to be changes to access, in particular access for people with disabilities. There are not only changes to the car park in front of the ministerial wing but also changes if staff have to go further away from the Senate or House of Representatives entrances to be dropped off or picked up.
I know that is still to be worked out. But the fact is that, once changes are authorised to prevent access to the slip roads leading to the Senate and Reps entrances, it reduces the leverage of the people who come to this building to be able to insist on agreement before changes to access are put in place. There are issues with people waiting in inhospitable or less safe places if they have to wait further away from the building. Canberra, despite being a wonderful place, is occasionally not the sort of place where you want to spend a lot of time sitting outside in the elements, and those things need to be worked through. I know commitments have been given that they will be, but I do believe that more should be done before these sorts of things are authorised rather than afterwards.

When you are looking at security issues, it is always a balancing act as to how far you go. Certainly, no-one is talking about putting eight-foot high concrete walls all the way around the perimeter or anything like that. So, clearly, there are decisions being made about balancing those factors, but I do think the simple, fundamental issue of how people perceive our democracy is inextricably intertwined with how they perceive our Parliament House. Those factors cannot be dismissed lightly or without very significant examination. Frankly, in retrospect, I would have to say that allowing the white plastic barriers to be put there in the first place and to stay there for so long was a mistake. It has badly affected the visual impact of the parliament and the experience of the parliament for many people.

It is not just the numbers that come here and it is not just the dollars that they bring to the city, although I do not ignore the importance of that to the local economy; it is how people perceive our parliament and our democracy and it is how they feel when they leave. Without wanting to overstate those things, I think that they must be given significance and that is why I insisted on speaking in this debate—because it does deserve acknowledgment and the concerns need to be put on the record. I am pleased that the President has addressed some of those, both in his statement and in the correspondence that I have incorporated.

If you look at the controversy surrounding the restrictions that happened with the visits of President Bush and President Hu from China—I am not talking about the controversy surrounding what happened in the chamber; obviously some of that controversy was driven by people’s feelings about the policies of the visitors—there were broader, quite significant concerns and literally distress about the extremity and enormity of the restrictions in place, what they meant and how people felt about being denied access to their parliament.

I do not think those concerns can be dismissed out of hand and I am not saying that the Presiding Officers are dismissing those concerns out of hand, but I think that the fact that those concerns were so strong—stronger than I expected they would be, and people still talk about how it made them feel—should be acknowledged. That is why these sorts of changes should be given more examination than they will be and have been given. That is why I think more should be done to consult with the broader community, particularly the community of Canberra, as well as, to a lesser degree, with those who visit the parliament, about how they feel about various things.

We do want to ensure that people get the best feeling possible about this place. It is a building and a design that I think is fantastic. The vista from the top of the Parliament House roof down across Old Parliament House and up Anzac Parade to the War Memorial is one of my favourites in the country,
if not the world; I think it is a fantastic vista. The vista in the other direction looking up towards Parliament House and the flagpole is also fantastic—and it will be even better with these changes because the white plastic barriers will be removed. If we think of the importance of that vista and its unquantifiable but nonetheless very significant benefit, then we realise what would be lost if its amenity were degraded.

That is why these sorts of changes should be examined properly. I think that, even with the walls that will be put in place—low as they are—the idea of access and the feeling of openness will be lost. These changes are certainly far better than many other things that could have been done; they are certainly far better than the white plastic barriers. But I am still regretful that we might be doing something that need not have been done the way it has—and there could have been more consultation on it beforehand. Having said that, I want to reinforce that we will be following this through.

I urge the relevant people to consult closely with staff, their unions and other relevant organisations about issues like disability access and occupational health and safety in terms of staff access to other areas, because these are very significant changes and people do spend a lot of time in this place. They do that not for fun but because they believe in what they are doing. We need to make sure that the staff who work here are not just an afterthought but are integrally involved in considering these issues. Obviously they want the place to be secure as well—they do not want to be at greater risk of opportunist attacks of any sort. But it is a place people spend a lot of time in, and we need to take into account those issues.

Question agreed to.

BUSINESS

Consideration of Legislation

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.24 a.m.)—At the request of Senator Ian Campbell, I move:

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

Customs Legislation Amendment (Airport, Port and Cargo Security) Bill 2004
Family and Community Services and Veterans’ Affairs Legislation Amendment (Sugar Reform) Bill 2004
Higher Education Legislation Amendment Bill (No. 2) 2004

Senator BROWN (Tasmania) (11.25 a.m.)—Earlier, I asked the government to separate out the Australian Energy Market Bill 2004 from the list that has been supplied. The Greens are opposed to that bill being afforded exemption from the cut-off. It needs very close scrutiny on a wide scale and input from the Australian community before it proceeds to be debated in this place. It should be referred to a committee, and I have a motion on that matter to move very shortly.

It should be referred to a committee to establish whether this bill for the establishment of the Australian energy market ought not to be based on an improvement of the MRET aim of the government to 10 per cent, rather than the two per cent it has at the moment—that is by 2010—to bring us in line with other nations. It is also a great opportunity for the National Electricity Code to have inserted into it environmental and social objectives. Through the committee system, we should be establishing what those objectives might be—for example, the legislation
should bring the market and the code within the ambit of the Environment Protection and Biodiversity Conservation Act.

In particular, I am concerned about the fact that this bill brings the national electricity law directly into Commonwealth legislation. If you look at the bill, you realise that it will incorporate the National Electricity (South Australia) Act 1996 of South Australia. The mechanism of recognising a South Australian act in Commonwealth law rather than introducing it as a Commonwealth act is constitutionally dubious. There is a very important constitutional matter at stake here. The Commonwealth parliament is effectively ceding power to the South Australian parliament. Regulations introduced in the South Australian parliament cannot be disallowed by the Commonwealth parliament. Only the government, not the parliament, can change the law—through the Ministerial Council on Energy.

Those two matters—firstly, the ceding of power by the Commonwealth parliament to the South Australian parliament, because it sets the regulations; and, secondly, the situation where a ministerial council becomes the arbiter, not the national parliament, and the relevant minister becomes the arbiter, not the national parliament—should not be allowed without input from the Australian people. This is an untried area of constitutional innovation being brought into the parliament by the government. We believe that demands that this matter go to a committee and not be subject to the exclusion from the cut-off. I have asked the government to separate this bill out. If they will not, I will oppose the motion.

Question agreed to.
The first amendment addresses the existing situation whereby a person who is reasonably suspected by a Customs officer of committing a serious Commonwealth offence or is the subject of an arrest warrant, or bail condition preventing their departure, can not be detained pending the arrival of a police officer or prevented from leaving Australia.

This amendment will enable a Customs officer to detain a person in two circumstances. The first is where a Customs officer suspects on reasonable grounds that the person has committed or is committing a serious Commonwealth offence, which are certain offences punishable on conviction by imprisonment for a period of 3 years or more.

The second circumstance is where there is a warrant for the arrest of the person in relation to a Commonwealth offence, or the person is on bail subject to a condition that the person not leave Australia and the bail relates to a Commonwealth offence.

For each circumstance there is a requirement for the Customs officer to notify and to transfer a person detained under this amendment as soon as practicable to a police officer.

The Bill also enables a Customs officer to question a person in a Customs controlled area about their purpose for being in the area, and to improve Customs ability to check the authority to move goods in a Customs place. These measures are aimed at ensuring the movement of people and goods in defined Customs areas is lawful.

The Bill also requires certain aircraft and vessel operators to provide information about departing passengers and crew. Customs has facilities in most airports and in one cruise vessel port for the processing of passengers using electronic systems. In other places Customs is required to collect information as people board the vessel or aircraft and send that information back to a Customs House for processing. As a result it may not be possible to check all passengers and crew before the ship or aircraft leaves Australia.

In requiring certain aircraft and vessel operators to provide details of passengers and crew before departure Customs will be in a position to ensure that checks can be made against all passengers and crew before departure.

The appointment of ports amendment only applies to seaports and complements the Maritime Transport Security Act 2003. This amendment will improve border security in the maritime environment by linking the appointment of ports under section 15 of the Customs Act to security plan requirements under the Maritime Transport Security Act.

The amendment provides the CEO of Customs may take into account Maritime Transport Security Act port security plans in deciding whether or not to appoint a sea port for the purposes of the Customs Act.

This Bill also introduces ‘all-ports’ cargo reporting. At the moment, reporters provide advance details of cargo that is due to be unloaded at the next port or airport that the vessel or aircraft will be arriving at in Australia. In some cases, cargo enters several ports or airports but is not reported until just before its final destination. This method of reporting made sense when the major objective was to facilitate trade and to assess the risk of particular cargo—including narcotics or revenue-evading goods—being unloaded. In a climate of increasing security threats, however, Australia needs to know about all of the cargo on board, so that overall risks can be properly assessed before a vessel or aircraft reaches our shores.

Finally, the Bill provides for the timing requirements of impending arrival, cargo, crew and passenger reports for ships on their way to their first port in Australia to be prescribed by regulation. Currently these reports are required to be made not less than 48 hours before the arrival of the vessel or, if the journey from the last port is likely to take less than 48 hours, the reports must be made not less than 24 hours before arrival.

As part of the Government’s maritime security initiatives it is proposed to require these reports to be made earlier than 48 hours before the ship arrives.

Amendments in this Bill will provide for the timing of these reports to be prescribed in regulations. This means a ship on a long voyage to Australia will have to report before the time pre-
scribed in the regulations, for example 96 hours, before its arrival.

This amendment also provides for kinds of journeys to be prescribed for the purpose of reporting and for shorter reporting periods to be prescribed for those journeys. This means for a ship on a short voyage to Australia, for example a journey from Papua New Guinea, the regulations will specify a shorter period before which a report has to be made before the ship’s arrival.

The amendments recognise the role of Customs in contributing to Australia’s national security through the protection of the border. Effective control of the border is a critical component of Australia’s national security, and these measures contribute to this capacity.

Debate (on motion by Senator Buckland) adjourned.

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

FAMILY AND COMMUNITY SERVICES AND VETERANS’ AFFAIRS LEGISLATION AMENDMENT (INCOME STREAMS) BILL 2004
Second Reading

Debate resumed from 23 June, on motion by Senator Troeth:

That this bill be now read a second time.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (11.30 a.m.)—We completed the speeches in the Family and Community Services and Veterans’ Affairs Legislation Amendment (Income Streams) Bill 2004 second reading debate last night, with some extra help from people who decided they would come in and fill up the time. I am not going to take up the time of the Senate, other than to say that questions asked in one of those extra speeches on the second reading have already been answered on notice. I commend the bill to the chamber.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

BUSINESS
Rearrangement

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (11.31 a.m.)—I move:

That intervening business be postponed till after consideration of the government business order of the day relating to the Higher Education Legislation Amendment Bill (No. 2) 2004.

Question agreed to.

HIGHER EDUCATION LEGISLATION AMENDMENT BILL (No. 2) 2004
Second Reading

Debate resumed from 23 June, on motion by Senator Abetz:

(Quorum formed)

Senator CARR (Victoria) (11.34 a.m.)—I rise to speak in the second reading debate on the Higher Education Legislation Amendment Bill (No. 2) 2004. I am sure that those who take an interest in these matters would be somewhat surprised that here we are, at this time in the session, discussing yet another higher education bill. They would be also surprised that at this time in the session, some six or so months after we concluded the debate on the government’s higher education reform bills, the government has felt it necessary to bring forward yet another amendment bill. They would be surprised that at this time in the session, the government’s shoddy, destructive, intrusive policies were debated and rushed through this parliament in the dead of night and that amendments were put forward by the opposition and unilaterally rejected by
the minor parties and Independents on the crossbenches without even being given consideration. We now have a situation where the government finds it necessary to correct the mistakes that should never have been made.

I was recently down at the council meeting of the ANU. It was the final council meeting I would attend, of course, because all the politicians have been thrown off that council. It has been explained to me that that was done really to get rid of Senator Mason, because they thought he was such a threat to the government’s policy. Nonetheless, I enjoyed my last council meeting. What did I discover? I discovered that the government need to amend the ANU Act as well because they made mistakes in that. There was a litany of mistakes made by the government in their desperate rush to get through a bodgie package—an ill-considered, ill-conceived and not properly funded package—which then had to be amended again and again to buy votes in here. We now have a situation where the government need to buy votes outside here. That is essentially what we have before us in this bill today—a cynical political fix put together by the government in a desperate attempt to patch together a higher education policy.

It is not surprising, therefore, that upon a closer examination in the light of day the government finds it needs to fix up its mistakes. I recall that last December one vice-chancellor described the Higher Education Support Act as an ‘uncontrolled experiment’. We are now seeing that uncontrolled experiment coming into full view. The policy is devoid of structural integrity and devoid of a real understanding of the way universities actually operate. This is a deeply cynical political exercise designed to strengthen the position of the already privileged and of those who have already been able to benefit from the advantages of 150 years of public investment in some universities, which came at the expense of universities in other parts of the country that have not enjoyed those benefits.

It is not just about the government benefiting the universities as institutions; it is about benefiting the people who go to these institutions. That is what this government is all about. It is about providing public resources to reinforce the power and the privilege of those in our society who are already doing particularly well. In that sense, it is fundamentally undemocratic. It is not about evening up the score. It is not about making sure there is equality of opportunity. It is about reinforcing power and privilege, and inequality.

What do we have in this bill? At one level we have routine housekeeping. The government has to clean up the mess left behind by its drunken party. On another level it is a much more cynical exercise—it is about pork-barrelling in marginal seats. This bill provides 12 medical places for James Cook University. It will surprise the Senate to find out that JCU is in the marginal seat of Herbert—there is a margin of 1.5 per cent. I have absolutely no doubt that somebody in the Public Service was given the job of finding out a device by which the government could be assisted with the marginal seat of Herbert. The bill provides 400 aged care nursing places which will be distributed in various places of political significance to the government. It provides funding for the Point Nepean campus of the Australian Maritime College, in the seat of Flinders—where the government is under some threat.

A medical school is being proposed for the University of Western Sydney. In Western Sydney there is a whole string of marginal seats that the government feels particularly vulnerable about. The New South Wales government, a partner to these arrangements,
has not been consulted and has not accepted the arrangements. It appears that the proposal did not come out of the Public Service—it came out of the minister’s office. When senior officials of the department were putting together the budget, they made a discovery: ‘Oh dear, we have to find money for a new medical school in Western Sydney’—because Western Sydney had been dunned in every other part of the package. To try to buy favour, Minister Nelsen told the department, ‘Find the money.’ Where did the money come from? It came out of the ANU. The money was taken out of other projects to fund this vote-buying exercise in the west of Sydney.

We have seen a whole range of devices in that regard. The bill seeks to provide assistance for Open Learning Australia with a grievance resolution process that I am particularly interested in because the legislative changes seem designed to exclude people in a whole range of areas. The bill seeks to provide some additional moneys for some universities, and there are some additional places in the package. What troubles me most is that the political cynicism of providing support to marginal seats is central to the political calculations that have been undertaken in this bill.

Recently, the last-minute efforts in regard to Western Sydney have been brought undone. The local member, Miss Jackie Kelly, has put the view that the people of Western Sydney do not worry about this sort of stuff because they do not go to university. Not only do they not go to university, according to her, but also they do not aspire to go to university. This is the woman who runs around wearing a T-shirt with ‘I love Penriff’ written across her chest. She belittles her electorate and holds her constituents in contempt by suggesting that the University of Western Sydney is not entitled to additional support for the things that matter to it. This is a stunt—providing money for a medical school which the government knows will never get off the ground. It is not intended to get off the ground—it is a device designed to get the government through an election, not to provide more medical services for the west of Sydney. Juxtapose this against the position of the local member of parliament, who says, ‘The university has taken a critical view of this government’s higher education reform package and it is to be punished.’ It is to be punished because the vice-chancellor has taken a view, in defence of the university, that there should be proper funding for the core services of the university to assist the people of Western Sydney—some of the most disadvantaged people in the country. The university caters for some of the poorest communities in this country and should have some additional assistance provided to it by this government—but not for a medical school, because we all know that is just a headline-grabbing gimmick.

Through the estimates process we have been able to establish that the minister decided to hand out these cash amounts to people in marginal seats with a view to assisting the political fortunes of the government, not necessarily the fortunes of the constituents in those marginal seats. The government knows that the chances of the medical school being established are almost non-existent, but claims that it is providing assistance to communities who are hard-hit by the government’s decision. The department’s officials have told the Senate committee that they had no part in proposing this arrangement; they had no part in assessing the effectiveness of the spending for the proposed medical school; they had no part in discussing these matters with the New South Wales government. They were not part of the process. It was only ever intended to be a political stunt by the government.
It is no wonder that the Premier of New South Wales, Mr Bob Carr, was shocked. He told the *Campus Review*:

No State Government has been asked to sign up for a deal like this since the 1970s.

You would therefore have to expect, given the situation with nursing education in New South Wales and the problems associated with the costs of maintaining medical schools such as this, that the government of New South Wales were not likely to march to the Commonwealth’s tune when they were not asked beforehand and were expected to pick up the tab afterwards.

The member for Lindsay seems unable to forgive or forget that the University of Western Sydney did seek to defend its position with regard to the education debate last year. She seems unable to control her temper when it comes to assessing the needs of public institutions in her electorate. According to the *Sydney Morning Herald* last week, she said, ‘No one in my electorate goes to university,’ and she added that they ‘do not aspire to either’. That is her view. The census data tells us that 3,300 of her constituents are currently enrolled at university. But, according to the member for Lindsay, apparently they do not exist. She seems to be suggesting that the 8,200 of her constituents who already have university degrees do not exist either. She has clearly misjudged the community mood. A series of letters have been published in the *Sydney Morning Herald* over the last couple of days. For instance, Chris O’Neill says:

I live in Lindsay and my local MP says I should never have got my degree from UWS—or even aspired to. I shall burn my degree immediately, quit my job, have some kids and enrol at Centrelink ASAP. Thank you, Jackie, for showing me the error of my ways.

Sandra Eckersley says:

Congratulations, Jackie Kelly. Your comments have cemented the North Shore and eastern suburbs vision of western Sydney as the barefoot and pregnant utopia of the non-aspirational masses. John Howard must be so proud.

Adriana Maxwell says:

Are ladders regarded with suspicion in Jackie Kelly’s aspirations-free electorate?

And Lynne Egan says:

So, Jackie Kelly, tell that to the thousands in your electorate that have gone or are still going to uni, including my husband, children and many of their friends. This comes from the woman who presented the Prime Minister with an ‘I love Penriff’ T-shirt. You are a disgrace and an insult to your electorate and deserve to lose your seat in the next election by a landslide.

You know nothing about the people in the electorate you are supposed to represent.

It is apparent that Jackie Kelly has done a great disservice to herself and, of course, to the people that she claims to represent in this place. It is a tragedy, frankly, that a former minister of the government, an alleged favourite of the Prime Minister, holds such backward and primitive views. It might suggest something about this government, a government that essentially has the notion that education should be for the elite, that education should be about reinforcing the power and privilege of those already powerful and privileged. It strikes me that Jackie Kelly has not only failed her electorate and the University of Western Sydney, but also highlighted the extraordinary ignorance of the government in this regard. The government’s policies are aimed at allowing universities to charge fees of over $100,000 for degrees. The universities around the country, one after another, are imposing by government decree fee increases of 25 per cent. In fact to date 17 universities have charged the full 25 per cent which is allowed for under the legislation.

It is not surprising that they have done so. I used the word ‘decree’ because the government has decreed that it is legitimate and appropriate for universities to charge these
sorts of fees. Universities throughout the country will make it more difficult for people to go to university. As a result of these policies we will see the opportunities for a genuine equality of opportunity declining. We have a situation where the contrast between the government and the opposition on this issue could not be starker. Labor’s clear case is that there should not be fees of this type being charged, and Labor will abolish full fees on the undergraduate award courses. We are saying that university entrance should be on the basis of merit, not on your capacity to pay. We take the view that the policy of the cream of society—the rich and the thick—being given special privileges is not appropriate for an advanced social democracy. We take the view that it is appropriate for the government to support our public institutions in a manner that provides genuine equality of opportunity for all. We take the view that there should be high-quality education in a society that encourages a highly productive economy in which everybody gets a fair go. There ought to be opportunities for high-wage, high-skilled jobs to be available for all, not just for those with a capacity to buy their way to a privileged life.

While the opposition will not be opposing these bills—clearly we do not want to deprive people of money in this regard—I am deeply concerned about the consequences of the government’s policies which will exacerbate inequality, will exacerbate a decline in our education system, will mean a decline in our international reputation and will undermine our capacity to provide genuine services for people from all walks of life. It strikes me that what we have here is a government that, frankly, is stumbling through its education policies. I have no doubt that, should the parliament return for the next session—although I doubt that very much—there will be further amendments to try to fix up the mess that the government has created by its hasty and ill-conceived legislative package from last December. It is quite apparent to me that the wheels are falling off this educational cart, that the deals done behind closed doors in the dead of night last December are being exposed for what they are. We have a situation where all the commitments, all the promises made last year about the fee increases are now being exposed for the hypocrisy that they were. It is a situation where university after university around the country is taking full advantage of a government policy which leaves them very little option but to increase the burden on families, increase the cost of higher education and increase the levels of inequality in our society.

Finally, I turn to the ANU, a great national university and one that is standing against the tide in this regard—all strength to its arm. I trust that its position will in fact be enhanced and that the university will prosper. I believe it will because it will be able to maintain high access and high-quality programs and demonstrate that it is a genuinely national university without having to resort to the policies of this government, without having to follow the ill-conceived, ill-considered, inequitable policies that are being pursued by Dr Nelson and the Liberal government.

Senator STOTT DESPOJA (South Australia) (11.54 a.m.)—Senator Carr just referred to the hastiness with which the deal was cooked up last year by the government with the four Independents—and I note they are not on the speaking list today—to defend the latest necessary change to higher education legislation as a consequence of some of the shoddy deals that were done last December. I do not know when Senator Carr saw the Senate bill for the first time but I seem to recall it being circulated yesterday, so it is no surprise that this is being rushed through at this June sitting period as we all try to get
other legislation through. It is worthy of comment. The legislation that was passed last year, as we know, was severely flawed to begin with and, even with the ameliorations that were made through amendments by the government, remained a flawed legislative document. As a consequence, some of the changes proposed today in this legislation, the *Higher Education Legislation Amendment Bill (No. 2) 2004*, are intended to fix that.

Senator Carr—through you, Mr Acting Deputy President—you referred to the ANU, and I endorse your comments, but I also want to put on record today the decision by the Curtin University of Technology. As has been made public today, Perth’s Curtin University of Technology has voted against increasing HECS fees for 2005. According to the AAP, that makes them the first major metropolitan university to do so. I am not sure how the ANU feels about that. The university council made a decision last night, and it was a recommendation moved by their Vice-Chancellor, Professor Twomey, not to increase fees. No doubt that position was supported by academic and general staff as well as student representatives, and we commend that institution.

But we also know what a difficult decision it was for that institution because, as was pointed out by the previous speaker, universities that have made the decision to increase their fees have usually done so reluctantly. At least that is what they have said, and certainly we acknowledge the fact that they have been forced to do so by consistent years of underfunding and underinvestment by this government—and previous governments, I might acknowledge. Many of these institutions have felt blackmailed into increasing fees in order to ensure the quality of their university work and to look after their university infrastructure, staff et cetera. So I commend the Curtin University of Technology. But I do recognise that there is a sadder side to this picture, and that is that, to date, 23 universities have made the decision to increase their fees. They have taken so-called advantage of the government’s legislation of last year and have decided to hike up their HECS fees, despite the fact that they acknowledge in many cases—and most of us know—that this is a potential deterrent to university participation, particularly for disadvantaged groups.

In my home state of South Australia, all three universities—the University of South Australia; my alma mater, the University of Adelaide; and Flinders University—have now made the decision to hike up their HECS. So in South Australia, if you are a student or an aspiring student, from next year you will have a massive increase in your HECS debt—and it is a massive increase. When people are talking about $14,000 for an arts degree that is quite a daunting sum of money, particularly for groups who may have found debt a financial and psychological disincentive. In that respect it is a very sad day for South Australian education, but I think university students across the board are under no illusions as to what this government’s record means for their university aspirations.

I do not think that anyone here today is surprised to see this legislation. It is another bill designed to amend shoddy legislation that was passed in 2003, and we know that legislation was flawed from the start. It was one of the reasons that the Australian Democrats did not want the legislation rushed through the Senate, as Senator Carr said, during the night last December, but the minister, who was in haste to make those deals with the Independents, was keen to get it through. Of course, many of the vice-chancellors believed—naively so or correctly so, I do not know—that this was their last or only chance to see reform to higher educa-
tion legislation in Australia. In fact, that was what they were told: that this was their only shot at it. Despite the fact that their funding was guaranteed for this year, they believed they had to sign off and support a government package in order to ensure the viability of their institutions in future years. And what did they get? Apart from so-called fee flexibility—and we know how that is going to affect students—they got a promise to review indexation. Whoop-de-do—a promise to review indexation!

There were no guarantees that an adequate indexation provision would be introduced, no guarantees that the government would act on that review and certainly nothing in black-letter law that saw the introduction of indexation—the single biggest factor affecting universities and their finances. This has occurred not just under this government—let us not forget the Labor Party’s role in failing to provide adequate indexation. Indexation is the single biggest issue. I understand that the AVCC have some remarks to make; they are putting out releases today identifying some of their key points in relation to the elections, and indexation still remains a pivotal issue. Yet what have they got from this government?

Does the minister have something to report on the mechanics of that review, what is happening and what will be done with its recommendations? I am happy to stand corrected but I am very keen to hear an update on that. As much as I enjoy meeting with vice-chancellors on occasions, I am starting to get sick and tired, after eight—almost nine—years of meeting with vice-chancellors and hearing them tell me that the problem is still indexation. Yet these are the same people who, unfortunately, signed off on a government package last year that delivered them zippo in relation to indexation except the promise of a review in order to get the support of the four Independents.

**Senator McGauran interjecting—**

**Senator STOTT DESPOJA**—I missed that, Senator McGauran, but don’t bait me today on this stuff! You would think that, after two reviews and a legislative review, Dr Nelson would get this legislation right. Instead of accepting some of the criticisms of the legislation in the Senate Employment, Workplace Relations and Education References Committee’s report—aptly titled *Hacking Australia’s Future*—he ignored the report and as a consequence we are faced with legislation such as this today which is designed to fix up those original flaws. We have over 100 amendments to an act, and it is only seven months old. And that is not even taking into account previous amendments that have been made or, indeed, what I would consider to be the flawed underpinnings of the legislation. We have over 100 improvements to fix up the shoddy flaws that passed last year. Not only that, the government had to make 100 amendments to their own bill last December. Despite all these bandaids, it still leaves the wounds festering, if you like, in the higher education sector. They still have difficulties, they still have problems, and in terms of international comparisons we are not pulling our weight.

Flexible HECS is Dr Nelson’s biggest scam. It is a cost-shifting exercise and it is disingenuous of governments to claim they are spending all this increased money on education when in fact we know where that money is coming from. It is coming from students through a user-pays system and, in some respects, from their families. The result of this higher education package and the higher education policy of this government is that it will now shift $1 billion over four years of the cost of universities onto students, through increased HECS fees at the majority of universities from 2005 and increased numbers of full fee paying domestic
students—basically through the Higher Education Loans Program, aptly named HELP.

Many of those universities that have announced increases to HECS for 2005 have indicated, as I have mentioned, poor government funding as the motivation behind their decision to reluctantly increase fees. Through the HECS increases many universities, I acknowledge, have committed to funding numerous scholarships for equity group students. That is over and above those being provided by the government. The government may have allocated $5 million in the budget over five years to exempt fee waiver and fee pay scholarships from social security income tests but the real burden will be on the universities that have to fund these scholarships themselves or find someone willing to do so for them. Not only this, but for universities to be eligible for funding through the Higher Education Equity Program they must, among other measures, offer institutional equity scholarships. This is problematic. The AVCC in their response to the HEEP review state:

The AVCC is also concerned that the Government reduces students’ income support payments where students receive scholarships from universities. Since the Government is to require universities to offer such scholarships it should not be financially advantaged by universities doing so.

That is the quote from the Australian vice-chancellors, who, preceding the legislation, outlined some of their concerns with the scholarships. Some of those issues remain, despite some of the changes to last year’s legislation. In the Higher Education Support Act 2003 the government did exempt Commonwealth learning scholarships from social security income tests but no other cash scholarships. Fee waiver and fee pay scholarships are also exempt from the social security income tests, but the AVCC state:

... some institutions may prefer ways to provide financial support to students that extend beyond the traditional concept of scholarships.

The tight restrictions on scholarships are discouraging universities from offering scholarships for fear of not sufficiently enhancing the students’ life or education. In their submission, therefore, the AVCC recommend:

... that universities’ scholarships that provide students with financial support should not be treated as income for the receipt of Government income support benefits;

The Australian Democrats have long supported this view. We certainly support this view of the Australian Vice-Chancellors Committee and we call on the government to introduce legislation to achieve that outcome—any legislation that will ease in some way the pain of students who are currently receiving Austudy but are not eligible for, for example, rent assistance. Remembering that student income support was the black hole of the Crossroads review and of the subsequent legislation, it is one area we know can keenly affect participation rates in higher education, even more so than fees—even I have to acknowledge that. It is the key determinant in assisting traditionally disadvantaged groups in terms of participating in higher education. Therefore it should be a priority area for consideration and for action.

I am glad to say that the Senate agreed to the Democrats initiated student income support inquiry through the Senate inquiry process. That is under way. I am not sure how that will be affected by an election being called, but already we have received a number of submissions. We are yet to have public hearings for that inquiry, which will essentially be the first of its kind. I know there was the Price review and other broader reviews in terms of education, but I think it will be the first Senate inquiry ever to specifically investigate the issue of student income support. I hope that the government
will look at the recommendations contained in that report, and I hope that they will listen to not only the factual but also the anecdotal and other evidence provided to that committee. That will be the next area of government work and action in relation to higher education. When it came to Crossroads, there was a distinct lack of work in that area. Certainly there were no measures that arose out of that process designed to assist students in relation to income support.

Clearly, as a minimum and as a priority, rent assistance should be available to those Austudy recipients who are not able to access it at this stage. Austudy recipients, as we know, are living 35 per cent below the Henderson poverty line. Although I did not see the story myself, *A Current Affair* apparently did a story as recently as last week indicating what students are prepared to do these days in order to fund an education. We know from independent and quality research, such as the AVCC's paper *Paying their way*, that most students are working throughout their degree—I think a minimum of two days a week. These are full-time students who are working sometimes full-time or part-time jobs in order to get through their degrees. We know from that evidence that students increasingly find their academic work and performance affected by their work commitments—that there are students who miss classes as a consequence of work commitments. We no longer have a situation in Australia where education is valued in such a way that it is a full-time occupation. In fact it is considered an add-on benefit, and it is increasingly affected by the decision of students to participate in the work force so that they can fund their own education.

I heard Senator Carr say that there was a stark contrast between the Liberal Party's and the opposition's policies on education. Indeed there was when we had this debate in December last year. I was glad to see most of the amendments proposed and positions taken by the Australian Labor Party. I acknowledge today that he and his party are talking about the eradication of up-front full-cost fees for undergraduate places, I presume if they get into government. If they do get into government, I look forward to seeing that legislation promptly introduced. The Democrats will support that legislation.

I say that recognising the concerns of the vice-chancellors. I understand that the vice-chancellors have concerns about any uncertainty in the sector and about losing that revenue. And why wouldn't they? It is a perfectly legitimate call by the vice-chancellors to come and see me and any other legislator in this place to say, 'We don't want to lose this money.' Obviously there is a test here for governments. There is a priority that has to be struck by governments, and that relies on governments not simply taking away that so-called flexibility provision of charging fees so that universities get that additional revenue. They cannot abrogate their responsibility, then, to fund those institutions. So, Labor, if you are going to pursue that policy, you know you are going to have to find some way of providing that additional money to institutions. That means a better record on higher education spending and funding than you have had in the past.

Certainly in the early nineties we saw higher education—or certainly EFTSU per student funding—at a peak. It sharply declined at the same time relevant ministers such as Beazley and Crean failed to act on the issue of indexation. So, Labor, a word of warning: we will hold you to your promises but we will not expect you, this time around, to abrogate your responsibility to fund public education at all levels but at university level in particular. I hope Senator Carr and Ms Macklin will make sure that the Labor Party's policy on that is particularly sound. I have circulated the Democrats second read-
ing amendment. I note that Senator Carr has a copy. I move:

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

(a) notes that:

(i) to date, 23 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, and

(iii) 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 fees increases and increases in domestic full-fee paying student numbers; and

(b) condemns the Commonwealth Government for:

(i) the failure of ‘Backing Australia’s future: Our universities’ to produce a diverse level of HECS fees in 2005 across the higher education sector through the partial deregulation of HECS as stated by the Minister for Education, Science and Training (Dr Nelson); and

(ii) condemns the Government for under-funding universities for the past 8 years to such an extent that universities are now turning to students to provide a short-term increase in funding”.

(Quorum formed)

Senator STOTT DESPOJA (South Australia) (12.16 p.m.)—by leave—I amend my second reading amendment by deleting paragraph (b)(i).

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

BUSINESS

Rearrangement

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.18 p.m.)—I move:

That intervening business be postponed till after consideration of government business notice of motion no. 4 proposing the restoration of the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2] to the Notice Paper.

Question agreed to.

Consideration of Legislation

Senator VANSTONE (South Australia— Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.18 p.m.)—At the request of Senator Ian Campbell, I move:

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 BARTLETT (Queensland—Leader of the Australian Democrats) (12.19 p.m.)—This motion seeks to reintroduce the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2] to increase the prices of the Pharmaceutical Benefits Scheme. We will have people speaking to the legislation itself. I am simply speaking to the motion to reintroduce it, and I am doing that because—as the response of people to my even wanting to speak to this indicates—there is a total at-
mosphere around here of people all being pressured to be quiet and let all the 20 or so bills go through before we go to what may be an early election to suit the Prime Minister’s timetable. The Democrats are not going to excessively delay anything but, given that we have repeatedly pointed out that we have not had sufficient sitting days and we have moved motions to have extra sitting weeks to consider the amount of legislation and have been denied all the time by votes of both the larger parties, I am not going to be pressured into not expressing a view about matters or not drawing people’s attention to what is being put through the chamber. It is appropriate to note that, in addition to the more than 20 pieces of legislation that we are still expected to be dealing with in this final day or two, we have another one brought on without notice. I do not blame the government for bringing it back on—obviously there has been a change of view of one of the other parties and they can now get this legislation through, so they will bring it back on—but it does need to be noted that it is an additional piece of legislation on a major public policy issue. It should be noted that what is being brought back in is a measure that impacts on many in the community and its being brought in will compact the time available for all of the other matters that are required to be debated and given consideration.

We will express our views on the legislation when the debate comes on, but I do think it needs to be noted that another consequence—amongst all the others—of this being brought back into the program after having been rejected by the Senate twice is that it will now take up time that would otherwise have been available to deal with the many other public policy issues that need to be considered. All of us want the time available for the bits we think are important and think everyone should shut up about all the rest. However, I think we should all, within reason, have the opportunity to ensure not just that our views are expressed but that, by expressing the views, attention is drawn to what we are actually dealing with and what the impacts on people may be. That is particularly the case when you have 20 or more different matters to be considered—many of them very different, many of them with significant impacts—and they should not just be waved aside without people knowing what is going on. That was simply all I was attempting to do in speaking to the motion. I am not quite sure why it was such a drama that I wished to do so. I was simply trying to draw attention to that fact and the consequence of the reintroduction of this legislation. The major policy components of the legislation, which we are on the record as strongly opposing for a number of years, are another reason why we do not support this move.

Senator ALLISON (Victoria) (12.23 p.m.)—I also rise to speak on this motion regarding the reintroduction of the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2]. As Senator Bartlett says, we are dealing with a bill unnecessarily—not only unnecessarily but also unwisely. Two years ago we debated this same bill, and it would be useful to know what has happened in the last two years that means that we are now dealing with the bill and that the ALP has decided that it will support it.

It would have been useful for us to have referred this to a committee to find out what has changed since 2002. Has there been a further unsustainable growth in PBS? How successful have the government’s measures been in containing the costs of the PBS? We hear a lot about the measures that could reduce, for instance, the cost of wholesaling the PBS. It is currently a flat 10 per cent which, by various estimations, could save us
$50 million a year. Has there been progress on the development of that idea?

The government, as I understand it, called for a review, and the review document sat on the minister’s desk and has still not seen the light of day as far as I know. Are we dealing with this bill because the Labor Party has had some advice from the government that that review indicated that this was not possible, that there were no savings to be made by tendering out the wholesaling? How is the government going in promoting generic brands of pharmaceuticals? Has the Labor Party suddenly been told in the last 24 hours or so that this has been unsuccessful, that it has not worked, and so suddenly we have to go back to having a co-contribution increase? Is that the reason we are here today doing this bill? We do not know.

Suddenly, this bill is on the agenda for this sitting week when as recently as a few days ago even the Labor Party’s health spokesperson, Ms Julia Gillard, said that she did not anticipate there would be any change in the Labor Party’s position. Why are we suddenly dealing with this bit of legislation when there is so much else on the legislative agenda for today and tomorrow? Why are we suddenly looking at the PBS? I think the ALP needs to answer this question as much as the government does. I remind this place of statements made as recently as 25 February, when in a story in the Age David Wroe wrote:

"Labor denied claims it is softening its position to higher subsidised drug copayments...

A spokesman for ... Gillard said Labor was looking at a range of options to rein in the soaring cost of the ... Scheme—

but were not considering the copayments. The article continued:

Labor industry spokesperson Kim Carr strenuously denied any knowledge of such a plan."
will achieve is to once again leave all Australians, in particular the sickest and poorest Australians, under the peril of not being able to afford the essential medicines they need. Commonsense tells us that essential medicines will keep people healthier longer. The reality is, if prescriptions go unfilled because Australians are unable to afford them, their health will suffer. As a consequence this will lead to greater expenses for medical assistance down the track.

Senator Forshaw also joined the fray. He said:

What does this bill do? It directly attacks Australian families and pensioners who need access to vital medicines. It is clear that it will make some medicines simply unaffordable. It will dramatically increase the financial pressure on Australian families. The proposal in this bill is to increase Pharmaceutical Benefits Scheme copayments by almost 30 per cent.

We understand that the Pharmaceutical Benefits Scheme is one of the great hallmarks of the Australian health system. It is a pillar upon which our health system—which has been regarded internationally as the best in the world—stands. Along with Medicare and the public hospital system, working with the private hospital system, the PBS is an integral part of the fabric of the Australian health system. It is something that Labor governments and the Labor Party have always supported and will always fight to maintain. We introduced Medibank. The Liberal coalition government got rid of it.

On each occasion the Australian public have given the coalition parties the message that they will not accept any downgrading of our health system—Medicare, the PBS or other components of it—and they will not accept it on this occasion. We will oppose this legislation. It will go down. If the government has any sense it will put it in the dustbin along with its inequitable proposals on unfair dismissal laws and start focusing on the real issues—that is, how to assist Australian families to ensure that we maintain the health system they deserve. Senator McLucas said:

Increasing copayments undermines the integrity of the PBS because it makes it increasingly difficult for Australian families to access affordable medications. Families are struggling already.

Maybe they are not now struggling. Has the situation changed? Are families not struggling anymore? Senator McLucas went on:

Sustaining the PBS is essential to ensuring a secure future for all Australians. However, this legislation attacks the universality of the PBS by making medicines too expensive for many in the community, and it hits the consumer for the failure of the Howard government to effectively administer the cost-effectiveness of the PBS.

Here I hear an argument for looking at other ways in which we can contain that cost. She went on:

Australians value the Pharmaceutical Benefits Scheme just as they value Medicare. If the Howard government wants a double dissolution election on the Pharmaceutical Benefits Scheme, I say bring it on.

Even Senator Patterson in her speech on the bill said:

Under Labor, from 1983 to 1996 the general PBS patient copayment increased by 420 per cent—from $4 to $16.80. In 1986, Labor imposed a one-off increase in the general copayment of $5; in 1990, they imposed another one-off increase of $4. The average annual increase was 17.75 per cent. Do you know what? The coalition ... probably got up and complained about it, said how terrible it was and said that the then government could not organise themselves out of a paper bag ...

But, of course, today things are different. Today we suddenly have reason to put this bill back on the agenda for a vote. The Democrats do not support this move. Earlier today we did support—sadly the two major parties did not—a referral of this bill to a committee, because we would like to know what has happened since 2002 to make it necessary for us to debate this bill again.

What is the new information? Is it just that this will free up money to be handed back to
people in tax cuts? Is it just that Labor has supported the government on so many very generous schemes which have used up all the money that was previously in surplus in the coffers—the war chest, as it were? Is that the reason we are dealing with this bill today? Let us hear it in this debate. Let us find out why we are dealing with this bill when we do not need to. Let us find out why Australians suddenly need to pay extra for their medicines. Let us find out why the sickest and the poorest are going to be hit by this legislation. Let us hear the ALP go back on their words, which have been expressed in so many ways at so many times in this place, about the PBS and why we should not be dealing with this bill and should not be passing it.

It should have been referred to committee. It should have been dealt with. We should have given people an opportunity to say: ‘What’s happened since 2002? Is it now okay to pass this legislation? Have all the reasons that were brought up by this side of the chamber suddenly been overcome? Is there no problem now?’ Is the Australian public likely to welcome this huge slug, given that they have extra money in their pockets? Labor supported family payments and all sorts of things in this place. Are Australians now relaxed and comfortable because they have extra money in their pockets through tax cuts? Are they now saying, ‘We don’t mind paying a little bit extra on our copayment’? If that is the case then let us hear it. Let us hear it in this place instead of pretending that this is just some sleight of hand that the ALP has made and is saying, ‘It’s a hard decision we have to make.’ What has changed? What has suddenly made this a hard decision that has to be made, as opposed to a hard decision that should not be made—a hard decision that should be rejected? That is what we want to hear today in this debate before we get into the argument about whether this copayment is justified. Let us work out what it is that has changed that suddenly puts this on the agenda again.

Senator NETTLE (New South Wales) (12.35 p.m.)—We are here debating a motion to bring back a piece of legislation—the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2]—that was here two years ago. It is a piece of legislation that says that the government thinks sick people in this country should pay more for their medicines. This morning the Greens proposed a motion to send this piece of legislation to an inquiry so that we could look at the social and economic implications of increasing the copayment for the PBS. We proposed to send it to an inquiry to look at the consequences of making sick Australians pay more for their medicines and the long-term implications for the health of Australians.

Since the backflip by the Labor Party, we have heard the Australian Consumers Association come out and say that this is slugging the poor and the sick. We have heard the Australian Medical Association come out and say that people will not take their medicines if they cannot afford to pay for them. In 2002 the government said that five million people were not taking up their scripts—they were not paying for their scripts and getting them made out—because they could not afford it. That is what would have happened if the copayment had gone up in 2002. The copayment has gone up twice since 2002. How many millions of Australians will not be able to pay for their scripts if the copayment goes up today?

This morning we proposed to look at that. We said, ‘Here’s a measure that was proposed by the government two years ago in a budget speech, and for two years we’ve heard the Labor Party say that this is about the government’s budget bottom line.’ We proposed to send it to an inquiry to ask,
‘What are the implications of this? What are the consequences of making this decision?’ Both of these two major parties sat on the side of the chamber and said, ‘No, we don’t want to know. We don’t want to even look at it or discuss it. We don’t want to debate the consequences of making sick Australians pay more for their medicines.’ Here we are, again, just wanting to put it up with no review, no looking at it, no deciding what other things we could do.

But it was not just this morning that the Greens gave the Senate, the Labor Party and the government the opportunity to look at the consequences of increasing this copayment—the consequences of making Australians unable to afford their life-giving, life-saving medicines. On 6 March 2003 the Greens proposed to refer to a committee the issue of the financial sustainability of the Pharmaceutical Benefits Scheme. That is the argument the government has been putting forward for two years as to why we need to increase the copayment. We proposed a raft of measures that we needed to look at in a references committee at the beginning of last year. We said, ‘Let’s look at financial sustainability, the social and economic impacts of increasing the copayment, the long-term consequences for Australians, whether the PBS provides value for money and alternative ways of funding the PBS. Perhaps we could abolish the $2.3 billion of private health insurance rebate money that this government puts every year into insurance companies rather than buying public health services. Perhaps we could use some of that $2.3 billion of taxpayers money to make sure that the Pharmaceutical Benefits Scheme is financially sustainable.’ In March last year the Greens said, ‘Hey, let’s have a look at this.’ We had a vote, and Bob and I sat on one side of the chamber and every single other senator in this place sat on the other side of the chamber.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—‘Senator Brown’ rather than ‘Bob’.

Senator NETTLE—Senator Brown and I were the only two people on that side of the chamber. Everyone else said, ‘We don’t want to talk about the financial sustainability of the PBS and the consequences of increasing the copayment and making sick Australians pay more.’ This morning they did it again. This morning both major parties sat on the side of the chamber and said, ‘We don’t want to know what the consequences are. We don’t even want to talk about it. We just want to ram through this legislation because the Labor Party have caved in.’ That is what we are seeing here today. The Labor Party decided that they wanted to give $14.7 billion in tax cuts out of the last budget to people who are earning more than average income in this country. Then a couple of people sat in a back room and said, ‘Whoops! We don’t have the money for that. Whoops! We, like the government, have an addiction to tax cuts and we need to get that money from somewhere.’ Looking around, they said, ‘Where do you reckon we should get that money from? I know—there are a whole lot of sick Australians out there. Perhaps we could slug them $1.1 billion and that will help us fund our tax cut addiction!’ That is not good public policy; that is bad public policy. The Australian Greens will never make decisions like that. We do not support giving tax cuts to the wealthy. We do not support taking money out of our essential services—our public health system—in order to fund tax cuts for the wealthy. This is not a long-term vision for this country.

Today we have the government and the opposition saying to the Senate and to the Australian people, ‘We’ve got a long-term vision for this country. It’s about the sick paying more money for their medicines. It’s about more than five million Australians not
being able to fill their scripts because they cannot afford to.’ That means the chronically ill. People who are going to the doctor every week getting scripts for their asthma, diabetes, anti-cancer drugs and life-saving medicines are going to have to make decisions on whether or not they can afford to buy them. Is that the kind of decision that the government and the opposition want to see ordinary Australians—mums with sick kids—making every day? Is that the vision for this country that the Prime Minister has? Is that the vision for this country that the Leader of the Opposition has—that mums with their sick kids will have to make a decision whether they will buy the medicines which their doctor says their kids need but which will mean they cannot pay the rent?

How many Australians do we want to see making that decision every day? That question is being answered right now in this motion. The government is saying, ‘We want to make those Australians make that decision. We want to force sick Australians to pay more for their medicines.’ And Labor members are saying, ‘Me too, because that is the only way we can fuel our tax cuts.’ The Greens say that we need to invest in the long-term future of this country and that means the long-term public health needs of this country. The Greens want to see mums with sick kids, people suffering from chronic illnesses like diabetes, people who need to take anti-cancer drugs, people who need to buy their Ventolin because they are asthmatics and people who have HIV and need to be able to buy their medicines being able to buy those medicines, and that means we have got to invest that money in public services.

If we keep throwing more and more money into tax cuts every budget, particularly tax cuts for people who earn far above average weekly earnings in this country, we are going to see people making those decisions: ‘I can’t afford to take my kids to the doctor. I can’t afford to go and get the check-up that I need to determine whether or not my diabetes has got worse. I can’t afford to go to the doctor to have that cancer check-up to see if I have bowel cancer. I can’t afford to go and have that mammogram to check whether I have breast cancer.’ These are the decisions that the government and the opposition—right now, right here today—are saying they want Australians to have to make. That is not good enough. That is not a long-term vision for this country. That is not a vision that any party which believes in universal public health care in this country could ever hold. So much for the lie that the Labor Party wants to save Medicare! The PBS is a part of Medicare, you know. The Labor Party brought in Medicare and the PBS is a central part of it, yet we have them standing here today with the government saying, ‘We want to destroy it.’

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! It being 12.45 p.m., the Senate will now proceed to the consideration of government business.

AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT (EXPORT CONTROL) BILL 2004

Second Reading

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

That this bill be now read a second time.

Senator FORSHAW (New South Wales) (12.45 p.m.)—The Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004 exposes in sharp form the failed administration of the agricultural portfolio by the current minister. Four years ago, Mr Truss received a report from a panel of experts, the Independent Reference Group, that placed a spotlight on the problems with the livestock export trade. It is important to
note the group was chaired by Australia’s Chief Veterinary Officer, Dr Gardner Murray, the most senior veterinary officer in the land. That report made a number of recommendations but its findings were largely summed up by the following paragraph. The export of livestock has developed as a legitimate trade activity, and Australia has considerable expertise in the procedures involved. However, the IRG advises that unless robust systems are put in place to support animal health and welfare, and to address customer and community concerns, the ongoing viability of the livestock export trade will be jeopardised.

So the warning was pretty clear. But, at great cost to the reputation of the industry—as well as Australia’s reputation as a country with high standards of animal welfare practices—the minister ignored that advice. The inevitable happened and the industry again experienced unacceptably high mortalities. But rather than act on the recommendations he already had before him, Mr Truss again sought advice from the independent reference group. In 2002, the IRG provided him with another report. The report from that review stated:

The IRG considers that the recent spate of livestock export incidents, particularly in shipments originating from Portland, is evidence of systemic failures within the whole live animal export program and associated framework.

The IRG recommends that industry and government urgently address these incidents in a transparent and comprehensive manner, otherwise Australia’s reputation could potentially be damaged.

The report then made a telling statement:

The IRG strongly believes that its report of February 2000 remains highly relevant as the basis for delivery of sustainable animal welfare outcomes for the live animal export trade.

There was no action taken by the minister to put this industry on a sustainable path.

We then saw the Cormo Express fiasco unfold. It was reported prominently in the international media and was very damaging to this country’s reputation. Its impact on our reputation was made far worse by the minister’s mismanagement. Indeed it was Senator Heffernan who sorted it out in the end. The mismanagement of this portfolio by Mr Truss is, in fact, keeping Senator Heffernan in a job. The minister was forced to initiate another review of the trade. That review, undertaken by Dr John Keniry, was completed in December last year and a report was provided to the minister. The review found that, while the industry had made some progress in improving its performance, its approach to problems had been both reactive and incremental. The report stated that, if the trade is to continue, there needs to be a substantial improvement in animal welfare outcomes in a short time frame.

The purpose of this bill is to give effect to the government’s response to these recommendations by amending the Australian Meat and Livestock Industry Act and the Export Control Act. The bill provides the basis for increasing government regulation of the live animal export trade by allowing the minister to determine a set of principles, known as the Australian Code for the Export of Livestock, that must be taken into account by the secretary and authorised officers in exercising powers or performing functions under the Australian Meat and Live-Stock Industry Act; improving the integration between the provisions of the AMLIA and the ECA by requiring compliance under one act to be taken into account when determining matters under the other; enabling the secretary to deal with the licences of associates or previous associates of applicants or holders of a livestock export licence under the AMLIA; providing a legislative basis for the scheme relating to accredited veterinarians under the ECA; and creating seven new offences in
relation to the scheme for accredited veterinarians under the ECA which apply to both accredited veterinarians and other persons, including exporters.

The conclusions reached and the recommendations made in the Keniry report largely follow Labor’s analysis of the live export sector and the reforms proposed in our policy released last July. The report provides for the establishment of an effective mechanism of enforcement for strengthened standards, as proposed in Labor’s policy. The amendments proposed in this bill will establish that. This will be achieved through the formal linkage of these procedures to the relevant Commonwealth legislation. But there are a number of initiatives in Labor’s plan not recommended by Keniry that I consider essential if this industry is to be properly managed.

Timely advice on how this industry is operating is essential. This could be achieved through the IRG or a similar independent group monitoring the industry’s performance and providing ongoing advice to the minister. There is no point in the minister seeking advice only when there is a crisis. It is important that Livecorp ensures its board contains a majority of special qualification members to enhance its independence from industry participants. There has been considerable talk about this happening, but no result to date. A properly constructed Livecorp board is essential if these new arrangements are to have any chance of working.

The current reporting arrangements for shipments that experience high mortalities must be reformed. The department must coordinate reporting by both AQIS and the Australian Maritime Safety Authority. There must also be better accountability by the government to the parliament, and I propose to move an amendment that goes to this issue. Comprehensive mortality data and details of transgressing export companies should be published on the AFFA website. There is a need for Australia, as a major live exporter, to promote an international standard for vessels that transport live animals by sea.

If this industry is to have a future, it must significantly upgrade its efforts to improve animal management practices in those countries that take our animals. That increased effort must include additional funding for infrastructure and training programs. After we win the next election, Labor will develop a five-year plan to improve animal welfare practices in all export destinations. The five-year program would be developed in consultation with the governments of each of the destinations and with industry stakeholders. The implementation of this program would be the subject of annual audits. Labor support the bill but, as I said, I propose to move an amendment that will require the minister to report the details of high mortality incidents to the parliament every six months.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (12.58 p.m.)—I move:

At the end of the motion, add “but, the Senate believes that the live animal export trade involves unacceptable levels of cruelty to animals and should be phased out over the next 5 years, by 31 December 2009.”

The Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004 addresses an issue of major concern to the Australian public. I remind the Senate that it has received petitions containing the signatures of over 100,000 Australians concerning the live animal export trade. Whilst, sadly, we do not tend to pay much attention to petitions made to the parliament these days—they are not read out any more or even incorporated in Hansard—I think a petition of that size should not be ignored and should not pass unremarked. It is easily the largest petition presented to this chamber
in the last few years. So this is clearly an issue that concerns a large number of Australians quite passionately and deeply.

Senators would know that I have an interest in animal welfare and animal rights issues. This is often dismissed as a second- or third-tier issue. It is not seen as a vote changer or something that really needs to be taken seriously. Occasionally governments will say the right words, but it is not something that they think is a sufficiently important matter. I actually agree that people are much more likely to make the final decision about who they vote for based on whether or not they can put food on the table, whether they can find a doctor for their kids, whether they have a decent school down the road, whether they can find a job and those sorts of things. There is nothing wrong with that at all. But that should not be mistaken for thinking that people do not care about this issue.

In my experience, animal welfare issues draw the strongest responses from the public, both in number and in intensity. This is reflected in the size of the petition. The continuing disgrace of the battery caged hen is another animal welfare issue that draws a strong response. I have also received quite strong responses in one or two other areas, not the least of which is a certain tax that had a fair bit of publicity some years back. It is a fact that unnecessary suffering, whether of humans or of animals, generates abhorrence, distress and extreme concern amongst many in the community. Although it might not be a vote changer, that is not to suggest that people do not think it is important or that they do not really care, because they do. I am sure all senators here would acknowledge that the live sheep and cattle trade has been a cause of great public concern, anger and outrage for many years.

A Senate select committee into animal welfare was set up over 20 years ago by a former Democrat leader, Don Chipp. One of its first inquiries was into the live sheep trade. Twenty years ago the report of the committee identified that there were serious, legitimate concerns about the animal welfare impact of the live sheep trade. Twenty years later, despite any number of inquiries and statements from governments that say that things are improving and the issue is being addressed, it is still not good enough and not even close to good enough.

I do not dispute that there have been improvements in the last 20 years, but those improvements have not come close to addressing the fundamental problem of excessive cruelty to animals. That is a simple fact. There were a couple of exposes on 60 Minutes about this issue. A lot of the time community concern is relied on to draw out the truth about this issue, and committed people have incurred costs and personal risk to provide evidence of what the animals go through. When the truth is revealed, the community opposition is clear.

This legislation is, in effect, an end product of one wave of that community opposition. The outrage over the Cormo Express debacle, with a ship sailing around aimlessly with thousands of sheep slowly dying, caused enormous controversy in Australia. Flowing out from that debacle was the Keniry inquiry and report. Whilst the Democrats welcome some action in this regard, we believe that that inquiry’s terms of reference were too narrow and that it did not examine all of the things that needed to be examined. The inquiry handed down recommendations which, whilst not going as far as we would like, clearly acknowledged that there were serious problems and that major changes were needed. It is very frustrating that even those recommendations, the product of a limited inquiry, have still not all
been adopted by the government. Whilst this legislation makes some changes that are an improvement on the current situation, and therefore the Democrats will not oppose it, it does not go anywhere near far enough. The Democrats’ view is that the live export trade should be phased out. They have had 20 years to get it right, they have not got it right and there is no evidence that they are going to get it right. We need to recognise that and stop trying to patch it up. That is our view, our policy and our preferred position.

I have typed up independently a second reading amendment, which I have given to the minister and to the opposition whip, and hopefully Senator Forshaw now has it. I intended to move a number of amendments in the committee stage but they appear not to have been drafted as yet. Given that they were going to be opposed anyway, I thought I would simply make the point via a second reading amendment, which I assume will also be opposed. However, to enable the bill to be considered and passed during our consideration of non-controversial legislation, I hope the Senate will accept that. My second reading amendment reads:

... the Senate believes that the live animal export trade involves unacceptable levels of cruelty to animals and should be phased out over the next 5 years ...

I acknowledge quite readily, as people should when they take positions like this, that there is an impact on people—farmers and others involved in the transportation—whose livelihoods are involved. That is why I believe it is appropriate that there be some period of time to enable adjustment. But it is worth looking at the overall big picture purely in economic terms. There is plenty of evidence that shows that this trade has cost jobs in other parts of the community—in the abattoirs, slaughter houses and meat processing works in Australia. There have been significant job losses in those areas. In my state of Queensland, the abattoir in Rockhampton, which was closed down a couple of years ago, has had a limited reopening recently. It has been quite clearly stated by the owners that they were not able to operate because of a shortage of cattle—it was not that the costs were too high; it was because of a shortage of cattle. In my view, cattle numbers were being increased in overseas live trade, and that cost jobs. That has had an enormous impact on the community in Rockhampton and it has to be acknowledged as being linked in part to this trade.

The livestock trade is like any other export when we talk about the need to value add in Australia. As people would know, I am a vegetarian—I am not particularly keen on slaughtering animals for any purpose—but I acknowledge that other people in the community are not vegetarians. If we are going to have a product, then it should be value added here, wherever that is possible—and it is possible—rather than exported in its rawest form. Many of the arguments that have been put forward by the industry over time—such as people in the Middle East having to have live animals for cultural reasons or because they do not have refrigeration—have been shown to be very flimsy. There is accredited halal slaughtering and accredited export of halal slaughtered meat from Australia, and that could be expanded. There are refrigeration facilities in many parts of the regions we are talking about. The video evidence that has now become available of some of the slaughterhouses in these areas—such as the shocking footage shown recently on commercial television—shows not only an appalling level of cruelty but also that the slaughtering is not done in accordance with halal principles. Some of the animals are slaughtered, refrigerated and exported to other countries in the region. It is a fact that many of the arguments put for-
ward are either false or have far less impact and substance than suggested.

It is also a fact that there are economic and employment costs to Australia, including in the rural sectors, from this industry. I draw the attention of the Senate to a recent Western Australian government report following an inquiry into this very issue. It found that, in effect, the onshore industry is subsidising the live trade through various fees and charges and the way quarantine and export processing costs occur. That is another piece of evidence to add to the legitimate concern that, whilst the trade might be providing jobs and money in one area, it is costing more jobs in another part of the country. If we are going to point to the flow-on consequences of this trade, we have to be honest and look at them in both directions. The existence of the live export trade is costing jobs, money and export earnings for Australia.

I also reaffirm the basic principle of animal welfare. People say that animal welfare is important but that jobs are also important. Of course they are both important. When people weigh them up, they will come down on different sides of the equation. But I think we have to acknowledge that many Australians feel the enormity of the cruelty involved in this trade and the entrenched nature of it will not be properly addressed. Sure these extra measures in the legislation are welcome, but they are not going to go anywhere near as far as they need to. If we are going to export animals, we cannot just say, ‘We only have to worry about their welfare until they leave the port in Australia, and then they are someone else’s problem.’ That is not the case. The concern of the hundreds of thousands of Australians over the Cormo Express incident shows clearly that that is not the case. The fact that the sheep were in someone else’s waters did not stop Australians feeling outraged at what these animals were being put through. The way in which animals in the live trade are off-loaded, the way in which they are further transported and the way in which they are slaughtered involves enormous cruelty, and I do not see any sign that that will be seriously addressed in the short or medium term.

Our view is that community values are such amongst the majority of Australians that the trade should be phased out purely on animal welfare grounds. On top of that, there are clearly economic arguments against the trade, such as the employment consequences. It should be remembered that there is already a slaughtered meat and processed meat trade five times the size in value of the live animal trade. If a similar amount of government energy, commitment, priority, resourcing, promotion and reorientation of fees and charges were put into promoting that trade, then I am sure that it would more than outstrip any loss from phasing out the live animal export trade.

This issue does need to be commented on. It is an issue of concern to many Australians. The measures in this bill are a step forward but they still fall far short of what is needed or, in my view, what is realistically possible. I think the views of the hundreds of thousands, if not more, Australians should be heard. Over time social attitudes, social priorities and community values change. When the view is: ‘Okay, certain things are regrettable but necessary,’ people reach a certain threshold where they have to say: ‘No, that is going too far. That is not acceptable. We should not endorse or be part of that.’ I believe this trade is one of those issues that breaches that threshold. Whilst I do not ignore the economic or other flow-on consequences of removing the trade, I think that if it were phased out appropriately and equal energy were put into an alternative trade, the large bulk of those impacts could be avoided. That is the Democrats’ preferred position and the rationale behind our second reading.
amendment. I acknowledge that it is not going to get support at this stage and so obviously I will not call a division on it, but I think it is important to put it on the record.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.13 p.m.)—The Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004 amends the Export Control Act 1982 and the Australian Meat and Livestock Industry Act 1997 to increase the regulation of the livestock export trade by allowing the minister to determine a set of nationally consistent principles, known as the Australian Code for the Export of Livestock, that will influence all aspects of the regulatory regime applicable to livestock exports. It will also improve the integration between the Australian Meat and Livestock Industry Act 1997 and the Export Control Act 1982 for livestock exports by enabling the secretary to take into account the compliance of an exporter under one act when determining matters under the other. It will also enable the secretary to deal with the licences of associates or previous associates of applicants or holders of livestock export licences under the Australian Meat and Livestock Industry Act 1997 for the purposes of preventing exporters from simply relying on licences of other persons.

In addition, the bill provides a legislative basis for the scheme relating to accredited veterinarians under the Export Control Act 1982. It creates seven new offences in relation to the scheme for accredited veterinarians under the Export Control Act 1982, which apply to both accredited veterinarians and other persons, including exporters. It requires the minister to table a report every six months relating to the carriage of livestock on voyages to ports outside Australia. It represents an important step in the government’s overhaul of the livestock export trade. It responds to current domestic and international criticism and reflects the government’s strong commitment to rectifying the problems of the trade as a matter of urgency. I commend the bill to the Senate.

Question negatived.

Original question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BROWN (Tasmania) (1.16 p.m.)—by leave—I move Australian Greens amendments (1), (2) and (3):

(1) Schedule 1, item 2, page 5 (after line 7), before the definition of associate, insert:

animal means any member, alive or dead, of the animal kingdom, other than a human being.

(2) Schedule 1, page 5 (after line 34), after item 3, insert:

3A At the end of subsection 10(1)

Add “but not so as to permit an eligible live animal, including livestock, to be delivered for slaughter at a place outside of Australia.”

(3) Schedule 1, page 5 (after line 34), after item 3, insert:

3B At the end of subsection 12(1)

Add:

and (f) the applicant will not deliver an eligible live animal, including livestock, for slaughter at a place outside of Australia.

The Greens support the Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004 because it improves the regulation and the oversight of the export livestock industry from Australia. However, we believe the industry should come to an end. The cruelty that is involved—which was exemplified on the Four Corners program last Monday night—has
led to an enormous reaction from the Australian people. We should be confining the export of livestock to slaughter before the journey rather than the cruelty which has occurred in recent years. In the last five years nearly 400,000 sheep and more than 10,000 cattle have died en route to export venues overseas. On top of that there has been extraordinary cruelty involved in the death and suffering of animals aboard. I believe it is incontestable: the industry has had time to get its act in order but it has failed to do so.

The Greens amendments would bring an end to the export of live animals from Australia for slaughter overseas. This debate is very short. It is under the banner of ‘non-controversial’. This is a controversial issue but we want to see the bill, with the regulatory improvements that it has, go through. However, we could not allow this bill to go through the parliament without moving to end the trade. That is where the Greens stand on the issue. I commend the Australian Greens amendments to the committee.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.18 p.m.)—The government will not be supporting these amendments. Briefly, I wish to place on record why. These amendments would prevent the export of live animals for slaughter. The government’s view is that livestock exports are a legitimate trade, providing farmers with a valuable alternative to domestic slaughter. The trade supports some 9,000 regional jobs in a wide range of businesses, including farming, feedlots, transport, feed mills and at ports, generating $1 billion a year in rural economies. A loss of this trade would have a serious and adverse impact on rural Australia. A range of markets prefer to import live animals rather than frozen or chilled meat for religious, cultural or other reasons.

There is no evidence to support the case that, if Australia were to withdraw from livestock exports, an increased trade in carcasses would result. For example, when livestock exports to Saudi Arabia were suspended during the 1990s, there was no significant increase in the meat trade during that period. Nevertheless, the government will not tolerate cruelty and has acted quickly to improve standards within the livestock export industry. Through the concerted efforts of the government and industry, cattle mortalities have already reduced from 0.34 per cent of stock shipped in 1999 to 0.1 per cent in 2003. Sheep mortalities follow a similar trend, declining from 1.34 per cent in 1999 to 0.99 per cent in 2003.

The government has an ongoing commitment to animal welfare and that is demonstrated by its response to the report of the Keniry review into livestock exports. One of the key measures arising from that government response is increased regulatory control of the trade by the government, and this bill will provide the legislative framework for implementation of this important measure.

Senator FORSHAW (New South Wales) (1.20 p.m.)—I indicate on behalf of the opposition that we will not be supporting the amendments moved by Senator Brown. They will, as is known I think to everybody, we will be moving further amendments, which we believe will improve the transparency and the conduct of that trade.

Senator BROWN (Tasmania) (1.21 p.m.)—I do not accept the government’s assurance that it has not allowed cruelty in this trade. What happened with the Cormo Express was outrageous and was due to lack of control by the government. This bill is testimony to the public outrage at the 6,000 sheep that died, let alone the many that caught diseases which left them suffering,
last year. Last year alone, 74,000 sheep and more than 2,000 cattle died in this trade. The government has a lot of work to do if it is going to turn around the feeling of millions of Australians who are appalled by what happens on some of these ships.

One good thing about this bill is that it now brings ministerial responsibility into play. I urge the government and the opposition, whichever party is in office after the forthcoming election, to pay particular attention to this trade because the responsibility on the shoulders of whoever is the minister will be greater than ever to stop the unnecessary and broad-scale cruelty which has occurred aboard these ships in the past.

Question negatived.

Senator FORSHAW (New South Wales)
(1.22 p.m.)—I move opposition amendment (1), circulated in my name, on sheet 4308:

(1) Page 17 (after line 3), at the end of the Schedule, add:

Part 4—Report to Parliament on livestock mortality

Australian Meat and Live-stock Industry Act 1997

25 At the end of Part 2 Add:

Division 5—Report to Parliament

57AA Report to Parliament

(1) Within one month after the end of each reporting period (see subsection (5)), the Secretary must give the Minister a report in accordance with subsection (2).

(2) The report must contain the information set out in subsection (3) that has been provided to the Secretary during the reporting period in relation to the carriage of live-stock on any voyage to a port outside Australia (whether or not during the reporting period).

(3) The information is to be based on reporting by the master of the ship under the Marine Orders (see subsection (5)) and is to set out the following:

(a) the name of the exporter;
(b) the month and year in which the completion of the loading of the live-stock occurred;
(c) the port or ports at which the loading took place;
(d) the port or ports at which the live-stock were discharged;
(e) the month and year in which the completion of the discharge of the live-stock occurred at each port;
(f) duration of the voyage;
(g) the type or types of live-stock;
(h) the number of each type of live-stock loaded;
(i) the total mortality for each type of live-stock;
(j) the percentage mortality for each type of live-stock;
(k) any action taken by the Secretary in relation to the exporter as a result of the reporting by the master of the ship.

(4) The Minister must arrange for a copy of the report to be tabled in each House of the Parliament within 15 sitting days of the House after the report is given to the Minister.

(5) In this section:

Marine Orders means orders under subsection 425(1AA) of the Navigation Act 1912.

reporting period means:

(a) the period of 6 months starting on 1 July or 1 January (whichever occurs first) after the commencement of this section; and
(b) each subsequent period of 6 months.
We believe—and I am sure all would agree—that a feature of the administration of the livestock export sector must be transparency. Certainly industry must be properly accountable to the government, but in our view it is equally important that the industry, through the minister, is accountable to the community and to the parliament. So we propose this amendment which will require the Secretary of the Department of Agriculture, Fisheries and Forestry to provide a detailed report on live animal exports to the minister, based on reporting by the master of the ship under the Marine Orders. The requirements as to what information must be provided are set out in the amendment under item (3). They are the name of the exporter, the month and year of each shipment, the ports where the loading took place, the duration of the voyage, the ports where the animals were unloaded, the type and number of animals shipped, mortality rates and any action taken by the secretary in relation to the exporter as a result of the reports. The amendment further requires that the minister then table that report in each house of parliament. I urge the Senate to support the amendment.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (1.24 p.m.)—The Democrats support Senator Forshaw’s amendment. We think it is a valuable extra piece of accountability. I point out the difficulties that people have had from time to time in getting adequate information about aspects to do with the trade. Certainly I have had difficulty in the past in getting information, and even returns to order agreed to by this Senate have not been successful in getting information, about aspects to do with the trade—commercial-in-confidence being one of the reasons put forward and the government claiming that it is not their responsibility; that it is the responsibility of Livecorp as a separate organisation.

Some of the changes that will be made by this legislation should alleviate that problem by pulling some extra accountability back towards the government. This amendment will also add to that. Of course, not just senators have had trouble getting information but also those in the community—and animal welfare organisations, in particular—who seek to examine and get the facts out into the open have had a lot of trouble over the years. Anything that assists in that regard should be supported and is welcome. It obviously does not change our core view that the trade is inappropriate but, whilst it continues, we should do everything we can to get information out in the open. Frankly, the more information that gets out in the open, the stronger the case and the community support for the trade to be ended will become.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.26 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

FAMILY AND COMMUNITY SERVICES AND VETERANS' AFFAIRS LEGISLATION AMENDMENT (SUGAR REFORM) BILL 2004

Second Reading

Debate resumed from 23 June, on motion by Senator Abetz:

That this bill be now read a second time.

Senator FORSHAW (New South Wales) (1.27 p.m.)—I seek leave to incorporate the
first part of my speech in *Hansard* and then I will continue my remarks.

Leave granted.

*The statement read as follows—*

There was an interesting story on the AAP wire on 17 June.

It was headed ‘Australia sugar trade deal no precedent, US says’.

The story quotes evidence from Mr Allen Johnson, chief US agricultural negotiator to the House of Representatives Ways and Means Committee.

Mr Johnson said that to get an agreement that would pass Congress the Bush administration insisted on terms that provided only minimal new market access for Australian beef and dairy products and none whatsoever for sugar.

He said that in talks underway with Thailand, Colombia, Panama and other countries, the United States was mostly on the offensive and trying to pry open new markets for its farm goods.

He said that in order to get those countries to open up their sensitive farm markets to US exports that everything would have to be on the table.

So we were duded on sugar in the FTA but it seems it is on the table in negotiations with everyone else.

Despite all the rhetoric from the Prime Minister down about how sugar would be a deal breaker in the FTA negotiations this government rolled over almost immediately.

So much for the benefits of the close personal relationship between Prime Minister Howard and President Bush.

So now we have the fourth sugar assistance package since 1998 and this bill gives effect to one aspect of that package.

The Sugar Industry Reform Program 2004 provides $444 million for a range of measures to assist cane growers in Queensland, Western Australia and my state of New South Wales.

**Senator FORSHAW**—The $444 million of assistance under the Sugar Industry Reform Program 2004 will be provided through a combination of short-term measures to help sustain the sugar industry through its immediate difficulties and longer term measures designed to help the industry reform. Sustainability grants—a one-off payment in two parts to sustain both growers and mills through a transition phase—have a budget of $146 million. The first of these payments should be in the hands of growers this week. This bill proposes amendments to the social security law and the Veterans’ Entitlements Act to provide a three-year window of opportunity during which the intergenerational transfer of cane farms will be exempt from the usual gifting rules. Labor have always been strong supporters of the sugar industry. It is important that this important regional industry, and major generator of jobs, be given assistance to ensure that it has a viable future. We note that the Howard government have had four goes at getting this industry onto a long-term sustainable footing. We hope that they get it right this time. On that basis we are prepared to support this bill today.

**Senator CHERRY** (Queensland) (1.29 p.m.)—The Family and Community Services and Veterans’ Affairs Legislation Amendment (Sugar Reform) Bill 2004 is part of the government’s sugar reform package to provide assistance to the sugar industry. It provides that where sugarcane farm owners of age pension age wish to gift the farm to eligible descendents—children and grandchildren who have had active involvement in farming for at least three years—then no deprivation of assets will be deemed to have occurred. Currently, if a person disposes of an asset for no or inadequate remuneration, the value of the asset is maintained for a five-year period when assessing income support payment. This bill will exempt sugarcane farmers who have owned property currently valued at less than $500,000 for at
least 15 years. Additionally, the cane grower’s and their spouse’s income from all sources must have been less than the maximum annual rate of age pension.

The bill will allow farmers to retire and will encourage a new generation of farmers to consider alternative farming strategies. This bill is of course part of the sugar reform package that was announced by the Prime Minister in Bundaberg. I want to speak briefly about the adequacy of that package and the previous package from 2002 in dealing with the crisis facing the sugar industry in Australia, particularly in my home state of Queensland.

The Democrats have been extremely concerned that the government has not been taking sufficiently seriously the scope of the crisis facing the sugar industry, and nor has the Queensland government, in our view. Indeed, the Queensland government has opted for the approach of taking an industry that is on its knees and kicking it flat on the ground by choosing to deregulate it at a time when farmers have very little scope for dealing with such shocking change. The changes that have now occurred as a result of the low world prices and deregulation have significantly reduced the capacity for farmers right across the Queensland coast to have any effective control over their prices or their economic future.

The government’s package announced in Bundaberg does provide sustainability payments at least for this season and partly into next season but nothing beyond that. Indeed, by that stage the deregulation plans put together by Minister Truss and Premier Beattie will be having their full impact. That means that farmers will be facing a much more difficult negotiating environment when dealing with the milling sector. The Democrats are very concerned about this. I have spoken in this place on many occasions about the need to recognise that farmers need an adequate level of bargaining power in dealing with processes, retailers and further on in the market. I should note for the record the very disappointing reforms of section 46 and the misuse of market power provisions announced by the Treasurer yesterday.

Senator Boswell—What about the Dawson reforms?

Senator CHERRY—The Dawson reforms are an advance in terms of collective bargaining but they still are not the comprehensive reform—

Senator Boswell—What about thanking the National Party for that?

Senator CHERRY—I thank the National Party for lobbying very hard for that—something that, had the National Party lobbied much harder for over a longer period of time, we would have got much earlier than this. Section 46 does need to be reformed to ensure that there are genuine misuse of market power provisions, and that needs to underpin the bargaining arrangements that exist between farmers and processors. I am concerned that the approach taken, particularly by the Beattie government, will significantly reduce the bargaining power of farmers. I acknowledge the role the National Party played in the Queensland state parliament in opposing the changes to arbitration processes in Queensland. Unfortunately, at this stage it has not been successful. I am certainly hopeful that the government will continue to push to ensure that growers have a reasonable access in terms of getting some decent outcomes from bargaining.

The other thing that growers need desperately, more than the sorts of reforms we are talking about today, is a decent income stream. Whilst we are in the difficulty of a world sugar price that remains deflated because of the corruption of the world sugar market, it is disappointing, as Senator For-
shaw pointed out, that sugar was not included in the free trade agreement. That would have reduced at least some of the pressure on Australian sugar farmers if it had been included.

More important than that, what is also disappointing is the failure of both the Labor opposition and the federal government to produce other new energy related income streams for the sugar industry in Queensland. I was very disappointed yesterday that the Senate rejected a motion jointly moved by me and Senator Allison calling on the government to mandate ethanol for inclusion in petrol. This measure has been advocated by Queensland Labor Premier, Peter Beattie, for some time now. I commend Premier Beattie on the position he has taken. It is disappointing that the Labor opposition is yet to replicate that policy. It is disappointing that the federal National Party and the federal Liberal Party are yet to replicate the policy of the state opposition of calling for mandating for ethanol in petrol. The mandating of ethanol in petrol and the development of an ethanol industry have the potential to increase sugar incomes by about 22 per cent, according to research done by AEC Economics. That would be a significant benefit for that industry.

But more important even than ethanol is the issue of the renewable energy target. This is where the government has comprehensively let down the Australian sugar industry. According to research by AEC Economics, if the mandatory renewable energy target were raised from its current level of under two per cent to five per cent then it would increase the incomes flowing to the sugar industry by upwards of 44 per cent. That is a huge increase, an extra $480-odd million a year, which could flow to the industry as a result of being able to sell sugar as an energy crop back into the electricity grid. That is not going to occur in the absence of a mandatory target. We know that the government has provided a range of incentives in the energy package, but we know that incentives will not work unless the market is there to buy the product that comes out at the other end. That will not happen without a mandatory renewable energy target, which has the potential to create 12,000 new jobs in regional Australia, reduce greenhouse gas emissions by four per cent and develop a whole new renewable energy industry across Australia.

In dealing with this bill today it is good that we are dealing with the notions of pensions, social security and the whole aspect of how the social security safety net will pick up sugar farmers in Queensland, but the Democrats would prefer that we were talking about improving the income streams of sugar farmers. That is really about value adding sugar into an energy crop, into renewable energy, into ethanol, into bioplastics and into all the other products that can be formed. That is not going to happen while this government remains committed to propping up the fossil fuels industry at the expense of all other agricultural commodities.

**Senator TROETH** (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.36 p.m.)—Before I briefly outline the Family and Community Services and Veterans’ Affairs Legislation Amendment (Sugar Reform) Bill 2004, I want to respond to Senator Cherry’s comments on the scope of the government’s attention to the sugar industry. I can assure him that this has been absolutely ongoing and that we understand, like many players in the sugar industry, that the difficulties it faces are the result of many factors including low world prices, a corrupt world market and increasing competition from major producers such as Brazil. I know for a fact that the Prime Minister consulted widely with many aspects of the sugar industry in Queensland in bringing together this legisla-
tion. We have delivered a commitment, and this legislation is part of it, to work in partnership with the sugar industry to facilitate a viable and sustainable future in the long term. It is now up to industry participants to make use of this assistance, to seriously consider their options for the future and to position themselves accordingly. This bill is part of that.

The Sugar Industry Reform Program 2004 and this bill, the Family and Community Services and Veterans’ Affairs Legislation Amendment (Sugar Reform) Bill 2004, are part of that package. The whole package will deliver up to $444.4 million over four years for a comprehensive range of measures to help the sugar industry. This particular bill will facilitate intergenerational transfer in the sugarcane industry. Such a scheme will support sugarcane growers dealing with challenge and change while, at the same time, increasing the involvement of young people in setting the future directions of the sugar industry. It will provide sugarcane growers who satisfy certain criteria with a three-year window of opportunity to gift their farms without attracting the gifting rules that apply to social security and veterans’ affairs payments. The scheme will allow low-income sugar farmers to retire and access income support payments. Schedules 1 and 2 deal with matters relevant to the social security law while schedule 3 provides for those matters relevant to the veterans’ affairs portfolio. I commend the bill to the Senate.

Question agreed to.
Bill read a second time.

Third Reading
Bill passed through its remaining stages without amendment or debate.

HEALTH LEGISLATION AMENDMENT (PODIATRIC SURGERY AND OTHER MATTERS) BILL 2004

Second Reading
Debate resumed from 13 May, on motion by Senator Ian Campbell:
That this bill be now read a second time.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.39 p.m.)—The Health Legislation Amendment (Podiatric Surgery and Other Matters) Bill 2004 amends the Health Insurance Act 1973 regarding podiatric surgeons and hospital casemix protocol data provision arrangements. It also amends the National Health Act 1954 regarding deceased pharmacists and makes minor technical amendments to two other pieces of legislation within the health portfolio. These amendments will enhance the health insurance product for fund members by providing them with more choice about who will perform their foot surgery. I commend this bill to the Senate.

Question agreed to.
Bill read a second time.

Third Reading
Bill passed through its remaining stages without amendment or debate.

INDUSTRIAL CHEMICALS (NOTIFICATION AND ASSESSMENT) AMENDMENT (LOW REGULATORY CONCERN CHEMICALS) BILL 2004

Second Reading
Debate resumed from 15 June, on motion by Senator Troeth:
That this bill be now read a second time.

Senator ALLISON (Victoria) (1.40 p.m.)—I rise to express the Democrats’ cautious support for the Industrial Chemicals (Notification and Assessment) Amendment (Low Regulatory Concern Chemicals) Bill
We see the bill providing a broad framework for the regulation of chemicals of low regulatory concern. However, we note that its current shape requires significant development of regulations in order to effectively define chemicals of low regulatory concern. It is also essential that we use this framework to rigorously assess the impact these chemicals will have on the health of constituents and on the environment. Consideration of environmental and health impacts, both short and long term, must form a substantial part of the regulation of all chemicals. We hope that this framework will provide the basis by which we avoid problems as a result of import, manufacture and use of those chemicals within its scope. Over time, some of the chemicals covered by this bill may be imported and used in large quantities, so a thorough assessment of cumulative impacts prior to use may avert expensive environmental clean-up operations and tragic health issues in the future.

I hope that passage of this bill will give both the community and industry access to more comprehensive information about industrial chemicals and assist those who use them in better defining to what use they will be put. Under current arrangements, if a chemical is used in a different way from that for which it was assessed, then it may cause environmental or health damage that would be unknown to the user. We are pleased that this bill should see this problem solved.

In a forum held on 11 June this year, representatives of the National Industrial Chemicals Notification and Assessment Scheme—known as NICNAS—heard concerns from members of the community, making up the community engagement forum. We understand that agreement has been reached on a number of issues and encourage NICNAS to openly consult and communicate with all interested parties.

We note the LRCC amendment bill creates categories to enable low risk, low hazard and other categories to be established through regulation. However the bill, as it exists, will not make these criteria operational. Definition of exactly what is a chemical of low regulatory concern seems central to this bill. As the regulatory authority, we understand NICNAS have committed to a process whereby the CEF will have a lead role in the development and consultation processes for the acceptance of low risk, low hazard and other criteria. NICNAS reportededly agreed to equitable community representation on technical working groups for the development of criteria. We urge the authority to ensure that these representatives are adequately resourced to enable them to participate effectively.

We would also see great benefit in NICNAS adopting the CEF’s community engagement strategy as its process for consultation on definition and criteria to ensure equitable representation of all definitional working groups. We understand the CEF has agreed to nominate experts to represent community interest on technical working groups for low hazard, low risk and other criteria and has committed to working with NICNAS in developing criteria under section 21(4)(b) in relation to low-volume chemicals. We encourage those community groups to fulfill their commitments in this regard.

The Democrats hope to see the regulatory authority and community groups committed to consensual resolutions with full disclosure and explanations of the rationale behind decisions. The community engagement forum has indicated that NICNAS is committed to providing the CEF with analyses of low-volume chemicals currently used. We believe the resultant analyses could provide a strong basis for legislative or regulatory amendment to ensure that low-volume exemptions present no unacceptable public health and/or
environmental risks. We also note that this amendment bill makes a new provision—a new section 21(4)(b)—to prescribe in regulations certain requirements relating to the introduction of low-volume chemicals concerning use, packaging or labelling addressing cumulative volumes though regulation. We hope this section will be put to good use in better identifying and labelling these chemicals in the marketplace.

We are aware that the bill saddles small operators with responsibility for self-assessment. We hope they will be provided with the benefits of a review by the regulatory authority or the minister to which the authority reports. We note that few of these operators currently have the expertise to effectively self-assess and we consider that a commitment to a review will provide them with the support of the regulatory authority. We think that it would also be appropriate to ensure that sufficient resources are allocated to see that this process is both functional and useful to those who must use it and to those members of the community interested in being involved in the process.

We support moves for an annual audit plan for self-assessment certificates performed by NICNAS and hope to see these initiatives fit within the scope this bill provides for regulations and administrative processes. We hope that commitments to ensure the audited self-assessment process is balanced by public access to more chemical safety information and mandatory registration of chemical introducers come to fruition. The Democrats look forward to working to continue development of those regulations further defining low regulatory concern chemicals, which will tighten up the framework this bill provides. We are happy to provide our support for this bill in order to ensure that the framework for further regulation is put in place.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.47 p.m.)—This bill makes a number of changes to the Industrial Chemicals (Notification and Assessment) Act 1989. The amendments in this bill have been developed in response to industry concerns and in consultation with industry, government and the community. The reforms are for the fast-tracking of assessment processes, and are counterbalanced by enhanced public access to information, increased record keeping requirements and enhanced compliance activity.

The amendments do not change the object of the act but introduce flexibility into the current assessment process for industrial chemicals to enable the fast-tracking of low regulatory concern chemicals while maintaining the existing levels of worker safety, public health and environmental standards. The amendments are designed to introduce a new process for audited self-assessment for low regulatory concern chemical categories, new permit categories for low regulatory concern chemicals, new exemptions for low regulatory concern chemicals and improved public access to chemical safety information. These new categories are accompanied by annual reporting and record keeping obligations. The bill also introduces new offence and penalty provisions to support the new measures.

In relation to the audited self-assessment process, NICNAS will include in its annual reports, which are tabled in both houses of parliament, the following details: how many self-assessment applications followed the correct procedures, how many met the criteria and how many required additional information. In addition, in consultation with the community engagement forum and the industry-government consultation committee, NICNAS will develop and undertake an annual audit plan for self-assessment certifi-
cates. The amendments that this bill presents deliver real reform by creating long-term sustainable competitive advantage for the chemical and plastics industry. They offer an innovative approach to introduce flexibility into the regulation of industrial chemicals while improving health, safety and environmental standards and public access to chemical safety information. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

VETERANS' ENTITLEMENTS AMENDMENT (DIRECT DEDUCTIONS AND OTHER MEASURES) BILL 2004

Second Reading

Debate resumed from 22 June, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator CROSSIN (Northern Territory) (1.50 p.m.)—On behalf of Senator Bishop, I seek leave to incorporate his speech in the second reading debate on the Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Bill 2004.

Leave granted.

Senator MARK BISHOP (Western Australia) (1.50 p.m.)—Senator Bishop's incorporated speech read as follows—

This Bill is pretty straightforward.

In short it provides for a number of amendments to the Veterans' Entitlements Act some of which could affect a very small number of veterans and widows.

They flow directly from a number of anomalies and technical drafting issues which need to be addressed to provide for some minor items of fairness.

I won't go into the detail as that has already been done on my behalf by the Member for Cowan in the other place.

There's little to add to that, except that one reform is very worthwhile.

That's the direct deductions amendment.

Flowing from this will be an ability for the first time, for veterans and war widows to have regular payments deducted from their pensions by the Department of Veterans' Affairs.

This'll be of enormous benefit to veterans who now either have to pay in cash or by cheque.

For things like rent payable to a public housing authority, this is very difficult.

Sometimes it involves a great deal of inconvenience—as well as for families.

The same will be possible for deductions into other accounts, and for mortgage repayments, for example.

This is an enormous convenience for older people who've trouble getting out.

It also means they don't have to worry about paying on time because it's done for them.

They don't have to risk paying penalties for late payment any more.

However, given that this should have been done long ago, why has this Bill taken since 25 March to get through the House of Representatives?

One can only wonder why it is that the Minister for Veterans' Affairs seems to be asleep at the wheel.

The rest of the Bill is quite uncontroversial.

As usual we find with these omnibus bills some technical corrections fixing drafting or unforeseen issues.

It's also unfortunate that sometimes we see amendments to the Veterans' Entitlements Act made necessary by previous changes to the Social Security Act.

In this case there's one such change with respect to superannuation assets, which was made to the Social Security Act in 1995.

But 9 years later, it's now introduced into the VEA.
Why does it take so long for these two Acts to be brought into line?
In fact, how did they get out of line in the first place?
Perhaps there’s actually been a task of reconciliation undertaken to identify the inconsistencies and to fix them.
If that’s the case then credit is due, but the fact remains that the gaps should not be allowed in the first place.
As I commented on another Bill in the Senate earlier in the week, there does seem to be some dysfunction between these two departments.
In fact it seems to me there’s direct conflict on some policy. But it’s a conflict which is full of contradictions.
This may well be the last piece of veterans’ legislation to come before the Parliament before the election.
I say that advisedly because I understand there is another Bill just introduced implementing changes to the VEA flowing from the Prime Minister’s vote buying in the sugar industry.
It’s appropriate therefore, in the time available to me, to reflect on the consideration of the Parliament of veterans’ issues over the last three years.
To begin with I must say that typically, there’s been very little concentrated focus on veterans issues at all.
True, there’s been a very large piece of legislation passed for a new military rehabilitation and compensation scheme.
While it has some major imperfections and unsatisfactory compromises, it’s at least one scheme.
It does remove the system of dual eligibility which has been so messy for over 30 years.
But of course it affects nobody—yet.
The current unsatisfactory system of two schemes being administered side by side will continue for another 80 years at least.
I know the Minister is so proud of what she sees as a major accomplishment.
But I think most would agree that it was achieved in spite of her. That Bill was foreshadowed as long ago as 1994.

In fact the only contribution made by this Government in the veterans’ affairs portfolio in the last three years has been one of procrastination.
There’s no greater symbol of this than the Clarke report. Costing $1.7 million this review was set up for one reason.
That was to keep the veterans’ portfolio policy free for three years.
That way the Minister could defer for three years any hard questions for which veterans needed answers.
And that’s exactly what happened.
In the meantime the ministerial diary could be devoted to lots of ribbon cutting around the world and posing for photo opportunities.
In fact I must say that of all the feedback I’ve received from the veteran community, the strongest is the objection to the politicisation of veterans’ affairs.
Veterans’ view of the Government is that veterans are only of use for publicity purposes.
This point is made so aptly by Vietnam veterans who have recently seen the Long Tan scholarships converted to a media stunt for Government Members and Senators.
These scholarships worth $6000 for one year of study for veterans’ children, are advertised for selection late in the year, for announcement well before the academic term begins in the following year. Not this year.
The Minister, in typical fashion converted the entire process to one of her own glorification.
The entire process was commandeered.
Functions and morning teas were organised and the Department was pressed into service to produce media releases for all Government backbenchers and Senators.
As a result the announcement was delayed until May. This is simply disgraceful.
It is one thing to manipulate veterans in the Government propaganda machine, but it is something entirely different to use their children.
Too late Minister.
Too cynical and too self serving.
That of course does highlight again the poverty of the Government’s attitude to veteran policy. The policy with respect to the health of veterans’ children is a case in point. The 1998 morbidity study of Vietnam veterans’ children provided a sharp shock to veterans for what it revealed about the health of their children. What they suspected was confirmed. That is, there were some very serious problems indeed. In short, congenital abnormalities varied from three to eleven times the expected rate. Death from suicide was reported at three times the expected rate. The reported incidence of cancer was also found to be higher. In the following year a validation study was undertaken which in large part confirmed these reported findings. Little has happened since. Yet veterans continue to be concerned at the health of their children. Labor has already announced that when elected to government we’ll conduct a detailed fresh study of the health of Vietnam veterans’ children. We simply cannot allow this issue to fade away unattended. Some credit is of course due. Labor has always been willing to recognise initiatives which benefit veterans. That’s why we inevitably agree to legislation providing better benefits. Those included in the Bills that passed the Senate last Monday evening are a case in point. We were pleased to be able to support the initiatives giving rent assistance to war widows. Likewise we support the effective exemption of disability pension from the means test. This is notwithstanding the technical policy issues which sometimes leave a lot to be desired. In fact there is nothing we have failed to support. However, we in Labor do not resile from our responsibility in attacking the Government whenever it reneges on commitments.

That is our responsibility on behalf of veterans. There have over the course of the last three years been numerous instances of this. As the election approaches it is timely to remind veterans that there remain at least two open sores. The first is the cutback to the Home Care program costing $4 million next year. The Minister’s lame defence is that the budget is pegged to the number of card holders. But this is not a suitable measure. As we all know, frailty increases with age. Services required need to increase. Any reduction in card holders is more than made up for by increasing need. The second is the continuing and increasing refusal of medical specialists to accept the Gold card. The Government’s budget announcement does not take effect until next January. And even then there’s absolutely no assurance that specialists will find what’s on offer nearly attractive enough. I’ll leave my remarks there. This particular Bill isn’t controversial. It’s a great pity that it was not put before us many months ago. Thank you.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.50 p.m.)—The Veterans’ Entitlements Amendment (Direct Deductions and Other Measures) Bill 2004 gives effect to a number of minor policy measures that will enhance services to veterans and their dependants. It continues this government’s commitment to improving the repatriation system to ensure it operates as effectively as possible in meeting the needs of the Australian veterans community.

Question agreed to.

Bill read a second time.
Third Reading

Bill passed through its remaining stages without amendment or debate.

EXCISE AND OTHER LEGISLATION AMENDMENT (COMPLIANCE MEASURES) BILL 2004

Second Reading

Debate resumed from 22 June, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator MURRAY (Western Australia) (1.51 p.m.)—The Excise and Other Legislation Amendment (Compliance Measures) Bill 2004 seeks to amend excise and customs legislation to provide the Australian tax office with greater compliance and administrative powers with respect to the payment of excise, the target appearing to be those who seek to avoid the payment of excise on tobacco. This need arises as a result of the transfer of the responsibility for excise collection in the case of goods for export from Customs to the ATO. This bill will allow the ATO to better control the movement and transportation of tobacco leaf plants and tobacco seeds. The Democrats will be supporting the legislation.

However, I do want to raise the health consequences of imbibing or using tobacco. You can tell I am not a smoker because I cannot find the right words. Over $5 billion is collected annually through tobacco excise. This figure dwarfs the piddly amount of $2 million spent annually on antismoking initiatives, even though such initiatives have proven to be highly effective. The total cost of tobacco smoking to the community, in money terms alone, is estimated to be a staggering $21 billion, and smoking is estimated to seriously affect more than 19,000 Australians every year. Of course, the social costs of tobacco smoking are far greater. When viewed against the $21 billion cost to the community and the nearly 20,000 Australians every year who lose their lives or whose health is seriously affected, a $2 million investment does not stack up. The Democrats recommend to the government that they do more in order to prevent the tragic and unnecessary loss of life as a result of tobacco smoking. I use this opportunity to again call on the government to do so. We support the administrative arrangements in the bill and we commend its passage.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.53 p.m.)—I thank Senator Murray for his comments. This bill contains amendments to the Excise Act 1901 to strengthen compliance provisions for revenue protection and improve administrative arrangements, and I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

Sitting suspended from 1.54 p.m. to 2.00 p.m.

ABSENCE OF THE PRESIDENT

The DEPUTY PRESIDENT—Order! I inform the Senate that the President is absent this afternoon, as he is attending the state funeral in Hobart of the late Jim Bacon, former Premier of Tasmania.

MINISTERIAL ARRANGEMENTS

Senator HILL (South Australia—Minister for Defence) (2.00 p.m.)—by leave—I inform the Senate that Senator Eric Abetz, the Special Minister of State, the Minister representing the Minister for Small Business and Tourism and the Minister representing the Minister for Employment and Workplace Relations will be absent from question time today. Senator Abetz is in
Hobart, also attending the state funeral of former Tasmanian Premier Jim Bacon. During Senator Abetz’s absence, Senator Minchin will take questions on his behalf.

QUESTIONS WITHOUT NOTICE

National Security

Senator LUDWIG (2.01 p.m.)—My question is to Senator Ellison, the Minister for Justice and Customs. Is the minister aware that the Attorney-General, Mr Ruddock, launched a report yesterday entitled Keeping secrets: the protection of classified and security sensitive information? Is he aware that the same report recommends amending sections 70 and 79 of the Crimes Act to prevent the disclosure of classified or security sensitive information? How does the minister reconcile these recommendations with the deliberate leaking of a top secret ONA report on Iraq from the office of the Minister for Foreign Affairs, Mr Downer, to the journalist Andrew Bolt? How does he reconcile the Attorney-General’s ‘tough on leaks’ initiative, launched on the anniversary of Andrew Bolt’s publication of the highly classified ONA report, with his failure to prosecute Mr Bolt?

Senator ELLISON—I do not think it has been made out that Mr Bolt had a copy of the report. The AFP investigated the matter, and there were potentially a number of recipients of that report—in fact quite a number, I understand. The AFP carried out an extensive investigation and decided that the matter should not proceed. The stance of the Attorney-General in releasing the report would be an appropriate stance for any Attorney-General of any government to take. In this case there was an investigation of an alleged leak of a classified document. It was carried out, correctly, by the Australian Federal Police, and the Australian Federal Police have concluded their investigation with a determination that the matter not proceed further.

The opposition believe that there is some inconsistency in the way this has been handled and they hold that view on the basis that the AFP have necessarily adopted a different attitude to this investigation than to numerous other inquiries into leaked documentation. I totally reject that. The Australian Federal Police have been entirely consistent in their approach to all of these matters, this investigation included.

Senator LUDWIG—Mr Deputy President, I ask a supplementary question. Does the minister acknowledge that Andrew Bolt, by his own admission in his article of 23 June 2003, received and communicated the ONA report? Does the minister also acknowledge that sections 70 and 79 of the Crimes Act make it an offence to receive and communicate national security classified information? Why is he not initiating action to prosecute Mr Andrew Bolt?

Senator ELLISON—Section 79 of the Crimes Act is an extensive provision which deals with a number of situations, among which is the mental element involved in the possession of a document. The matter was fully investigated by the Australian Federal Police. The government had no role in that investigation, nor should it have had. The answer to the question as to what the government says about this is guided by what the Australian Federal Police has done. It is not my job, as the minister for justice, to go behind an investigation duly carried out by the Australian Federal Police. If I did that, the opposition would be the first to complain.

Environment: Water Management

Senator FERRIS (2.05 p.m.)—My question is to the Minister for Fisheries, Forestry and Conservation, Senator Ian Macdonald. Will the minister outline to the Senate how the Howard government is protecting Australia’s very precious water resources? Is the
Senator IAN MACDONALD—Senator Ferris highlights one of the most critical decisions that the Council of Australian Governments has ever been called upon to make. I know that, as a South Australian senator, Senator Ferris—like all of her South Australian colleagues and, indeed, all of us on this side—has a very great interest in that. Senator Ferris will know that in August last year COAG agreed to the Prime Minister’s proposal for a national water initiative to progress water reform and the water reform agenda. The NWI aims to improve investor confidence and economic efficiency whilst also protecting resource conditions and environmental assets. The key features of the national water initiative include secure and nationally compatible water access entitlements; improved water trading; accountable, outcomes focused provision and management of environmental water; addressing the overallocation of the systems; and improved water planning, accounting, processing and pricing policies. The initiative will also address issues of concern to urban water users, such as water reuse and stormwater efficiency.

This policy initiative is complemented by the agreement to provide some $500 million of funding to address overallocation in the Murray-Darling Basin. Five hundred gigalitres of water will be returned to the river in order to restore the environmental health of the six River Murray icon sites, and that will be done on a no-regrets basis. The Howard government is committed to making the Murray River a healthy working river. Tomorrow’s COAG meeting will aim to finalise the agreement on the national water initiative. Many interests and many communities are dependent upon a healthy river and the stakes, therefore, are particularly high. The NWI is a historic opportunity for all governments to provide water users with a secure supply. Tomorrow the states will have to stop prevaricating and obfuscating, and try to pull together to get a final decision on this system.

I am asked whether I am aware of any alternative policies. The Labor Party first mentioned the River Murray by announcing that they were going to contribute $150 million—that is well short of the amount required—to purchase the environmental flows that the Labor Party claimed they wanted. A month later—just a month ago, actually—the Leader of the Opposition reinforced his commitment to that measly sum of $150 million. I highlight that the coalition government and the state Labor governments are putting up $500 million. Mr Latham thinks that $150 million will do. But four weeks later, a promise suddenly appears on the ALP web site to put in 450 gigalitres of water—that is 50 gigalitres less than the coalition proposal. There is also a statement that they will now provide $350 million for that. From somewhere out of the blue, this extra $200 million has come. It is unaccounted for. It is like everything Labor do—you simply cannot trust them when it comes to money. That increase over one month is 133 per cent. That is even greater than the increase that the Labor Party get from Centenary House every month with the escalation clause—and that is saying something. The Labor Party have sent their magic pudding down the river, and they will sell us down the river as well. (Time expired)

Senator FERRIS—Mr Deputy President, I have a supplementary question for Senator Macdonald. Can he continue to explain to me the alternative policy approaches?

Senator IAN MACDONALD—It is important that suddenly this $200 million appears out of nowhere. That is what the Labor Party is all about.
Senator Faulkner—Mr Deputy President, I take a point of order. The President of the Senate, I think, has consistently ruled out of order such supplementary questions relating only to unspecified alternative policies. There is no other element in this supplementary question at all. I wondered if you felt that it conformed with the standing orders. Perhaps Senator Ferris has just made a last-day mistake—unsuccessfully, under the pressure that we are all under here—in basically mucking up a supplementary question.

Senator IAN MACDONALD—On the point of order, I understand Senator Faulkner’s concern. The only river the Labor Party is concerned about is the river of gold that comes from Centenary House. His point of order is quite out of order.

The DEPUTY PRESIDENT—Senator Faulkner, I have sought advice from the Clerk. The Clerk advises me that the question that has been asked by Senator Ferris does not necessarily fit within the rulings that have been given by the President on previous occasions.

Centrelink: Debt Recovery

Senator BUCKLAND (2.11 p.m.)—My question is to Senator Patterson, the Minister for Family and Community Services. Can the minister confirm whether her pre-election debt moratorium in relation to one-off family payments and family tax benefit debts extends to debt recovery on age, carer and disability pensions? Can the minister confirm that Centrelink customer service centres are now putting on hold all debt recovery action for all payments in the run-up to the election? Minister, how many debts have you parked until the day after the federal election?

Senator PATTERSON—The question gives me the opportunity to talk about compliance, and about the issue of ensuring that people get what they are entitled to and that people who, because they have misinformed the department or for other reasons, have received an overpayment or a payment for which they are not eligible pay it back. Before we got into government, Senator Richardson, who was then Minister for Social Security, said the program was trim, taut and terrific—there were no more savings to be made. Mr Baldwin said in 1995:

In fact, what we do by way of compliance is now recognised as being of world leading standard in many respects.

What happened in the first year that we were in government, when Senator Newman was Minister for Social Security? I will read from the Hansard, from a speech that she made on 27 November 1996 talking about the number of compliance reviews that were being done:

... the department in the past year has increased the number of compliance reviews by 27.6 per cent. That is over one-quarter more reviews, with the resulting increase in payment cancellations nearly 30 per cent. The figure that really exposes Mr Baldwin’s posturing is that recovery of debts has increased by $26 million in the quarter—

This is one of the first quarters that we were in government—

Senator Conroy—Mr Deputy President, I take a point of order. My point of order is on relevance. It has been nearly two minutes. This question was asked yesterday. The minister ignored the question yesterday. She is doing it again today. Can she simply answer the question of whether the Centrelink customer service centres are now putting on hold all debt recovery? That is all. That is the
question. I ask you, Mr Deputy President, to ask her to address the question. It is a very important question.

The DEPUTY PRESIDENT—Senator Conroy, there is no point of order and you know it.

Senator PATTERSON—We are saving now over $44 million per week. Senator Bishop needs to take note of that because he was quite surprised when he heard that. That is $44 million per week we are making when people are being paid in excess of what they are entitled to. That is $6.3 million a day, or for as long as it takes to make a cup of tea it is about $22,000. Compare this with Labor’s contract with Centenary House: over the life of the lease taxpayers are required to pay to the ALP $36 million over the accepted market value. They do not want to hear this. They do not mind the money going to the pockets of the ALP but they do not care about the fact that we are actually making sure that people who get more than they are entitled to actually repay it. You have no record and your history is appalling in this matter. It must gall you to know that we are now running the economy in a way whereby we can now actually give families the benefits of that. We are running the social security system well so we can give families benefits. Centrelink is still undertaking its normal compliance processes.

Senator BUCKLAND—Mr Deputy President, I ask a supplementary question in light of the minister’s failure to answer the first question. Can the minister confirm that debt recovery activity related to the government’s spousal income pilot has recovered an average of $3,724 from carers and that this debt collection has been suspended so that carers eligible for the government’s $1,000 one-off payment aren’t hit with debts which outstrip their election bribe? Can the minister confirm these debts have also been parked until the day after the federal election?

Senator PATTERSON—I answered this at the end of my last question but obviously Senator Buckland was so busy getting ready for his supplementary question that he did not hear me. Let me say slowly and clearly: the government has not instructed Centrelink to stop compliance and review programs to recover overpayments. Let me say it again: Centrelink is undertaking its normal compliance programs. We are saving over $44 million a week from a system that Senator Richardson said was as slick as you could get it and that Mr Baldwin when he was social security minister said was the best compliance program. You saw Senator Newman in that first year make enormous savings because Labor had done nothing. They could not run the social security system. They cannot run the economy. They do not deserve to be in government.

Defence: Budget

Senator SANDY MACDONALD (2.18 p.m.)—My question is to the Minister for Defence, Senator Robert Hill. Minister, will you advise the Senate how the Howard government’s responsible management of the economy allows appropriate expenditure on
new capabilities for the Australian Defence Force necessary for the defence of Australia and our interests? Are you aware of any alternative policies?

Senator HILL—I thank Senator Sandy Macdonald for his important question. The Howard government is delivering to the Australian Defence Force the capabilities it needs to ensure it is ready for anything in these uncertain times. In this financial year alone it has approved 34 projects worth more than $3.1 billion. Since the release of the white paper in 2000 the government has approved around 120 new major projects or phases of projects representing expenditure of over $18 billion. When I was present recently at the signing of the agreement to purchase two additional early warning and control aircraft I was very pleased to note that the flight of the first of the Wedgetail aircraft had occurred on time. This is typical of today’s projects that are being delivered not only on time but also on budget and achieving their intended capability.

In contrast, Labor has spent the last three years carping from the sidelines but offering no alternative. From a flyer I received about Senator Evans’s speech to the United Services Institute last night I thought we were going to finally see the opposition defence policy. When nothing appeared in the newspapers this morning I thought it was because of the Chatham House rules, but in fact it was because the paper contained nothing. There was nothing to report. In fact it turned out not to be a policy statement at all. It is true that Senator Evans, after nearly three years in the job, said that terrorism is a problem, a big problem, and that it is important to have a balanced force structure. That was his contribution in lieu of a policy last night. Essentially, Senator Evans committed to nothing except pulling apart the Defence Capability Plan that I have detailed, presumably so that Labor can cut projects to cover the emerging black hole that Mr Latham is so busy trying to fill.

Labor offered no commitment to any of the projects we are delivering to ensure that the ADF can combat threats to Australians at home and abroad. There was no promise to maintain the special forces capabilities we have built up to counter terrorism since September 11. There was no support for the major platforms recommended by the Army, Navy and Air Force to ensure Australia’s future, such as the Abrams tanks, air warfare destroyers and Joint Strike Fighter aircraft. By contrast, the Defence Capability Plan is not just a shopping list of platforms; it is a decade-long $50 billion blueprint, a contract between government and industry for the future shape of our Defence Force. The level of detail and certainty in that DCP would have been unthinkable under Labor.

Centrelink: Debt Recovery

Senator CROSSIN—My question is to Senator Patterson, the Minister for Family and Community Services. Can the minister explain her extraordinary comment in a media statement last night, when she said:

As under general social security provisions, if Centrelink had made a mistake there would be no attempt to recover the bonus payments.

Is the minister aware that under normal family tax benefit legislation all debts are recovered unless Centrelink is solely responsible for errors and families are suffering extreme financial hardship? Why did you publish this deliberately misleading material?

Senator PATTERSON—Yet again, this gives me another opportunity to tell and remind Australian families that, as a result of this government’s good economic management, over the last week they have received $600 per child for each family eligible for family tax benefit A during this financial year. Families have been able to have the
benefit of a social dividend because this government has managed the economy well. Not only that, many carers—and all of them in families; some of them in those same families—have received $1,000 if they are in receipt of carer payment and $600 if they are in receipt of a carer allowance. Some people have carer allowance for two people for whom they care.

This government is very proud of the record we have had in assisting families. The family allowance was an initiative of a former minister in this government. It is for people who care for somebody who requires care for 20 hours a week. Because of good economic management, we have been able, in this budget, to extend that to carers who do not live with the person for whom they care but who requires care for 20 hours a week. But Labor does not want to know about that. Labor does not want to know about those benefits or this benefit that we have been able to give families.

I have been advised that Centrelink has paid people who are eligible for family tax benefit A during this financial year. Labor will trawl around for the one example where there may have been an error out of two million families who have received payments for 3.5 million children over the last week, but Labor does not want to know the good news. I do not know whether Labor thinks that we should not have given families that benefit, but some people are writing and telling us how much it has meant to them. If you look at the Daily Telegraph of the Central Coast area, you will see that a young mother, Jodie Sharpe, has written about the benefit the family bonus has been to her. She also writes about the importance to her of the Medicare safety net, since she has a young child who was born with a congenital heart disorder. She said:

... although he was treated as a public patient at the Children’s Hospital at Westmead, we have been out of pocket for some of his ongoing medical care—including chest X-rays, ultrasounds, check-ups with a paediatrician, etc.

It’s comforting to know that once our family reaches the $300 threshold, 80 per cent of all our out-of-pocket costs over and above the rebate will be covered for the rest of the ... year. She goes on to say:

... the government is showing me what I want to see—that it cares about young families and the children who are the future of our country. That is the result of good economic management. We have been able to give two million families with 3.5 million children a $600 bonus for each child if they are eligible for the family tax benefit and give carers a bonus, and we have been able to ensure that we can give an increase in the family tax benefit of $600 this year and into the future. Labor has failed to guarantee that $600 beyond the next financial year.

Senator CROSSIN—I am still waiting for an answer on why misleading material was deliberately published but, Mr Deputy President, I ask a supplementary question. How does the minister respond to reports of alcohol fuelled family violence and a sharp rise in gambling activity since the government’s one-off payments have been made? In light of this experience, what action will the minister take before the $3,000 maternity payment is made to prevent this one-off payment being the cause of further family violence and gambling?

Senator PATTERSON—I respond by saying that the spokesperson for the Family and Community Services portfolio said, ‘I’m sure the great majority of parents do the right thing with this money.’

National Radioactive Waste Repository

Senator ALLISON (2.27 p.m.)—My question is to the Minister representing the Minister for Science. I refer to the nuclear waste dump that this government is trying to
foist on the minister’s home state of South Australia. What is the government’s fall-back position now that the Federal Court has stopped your government’s compulsory acquisition of Arcoona sheep station? Minister McGauran says the government is looking at other options. What are they? Will the government now look at the more sensible approach of each state dealing with its own nuclear waste?

Senator MINCHIN—I am happy to respond to this because the government, I should remind the Senate, is fulfilling a policy enacted initially by Simon Crean as the then responsible minister, who announced back in the early nineties a sensible policy of establishing a national waste repository. He did so with the support of all state governments, including the state Labor government of South Australia. All the governments and all the advisers to those governments agreed that it was critical that Australia develop a national waste repository for all low-level waste, which is currently stored irresponsibly and unacceptably in universities and hospitals around the country, including in the state of South Australia where there is waste lying in basements on North Terrace.

As a result of Mr Crean’s actions, a national search was undertaken and, during the period that I was science minister, the independent scientific panel established by Mr Crean to identify the best site in Australia reported that the best site in Australia was indeed the central north of the state of South Australia. As a result, that site was declared as the site at which the national repository—agreed by all governments, Labor and Liberal alike—would be established. In so doing, the government has set about identifying the particular site, and a particular site has been declared.

In a desperate act of political opportunism, the Rann Labor government has said that it will do all that it can to oppose the establishment of this national waste repository, contradicting everything that Mr Crean said at the time, contradicting everything that was said by the state Labor government at the time and contradicting the essence of the national obligation to ensure that we have safe storage facilities for low-level waste in this country. I remind the Senate that the federal opposition is committed to the establishment of a national waste repository. Even the federal opposition understands that Australia’s low-level radioactive waste should be properly stored in a purpose built low-level waste repository.

The opposition would have the nation believe that, despite a 10-year search undertaken by the best experts in this country that identified the safest site as the central north of South Australia, it is going to abandon that decade-long search that identified the safest site and put it in another state. We ask the opposition to identify how on earth it is going to go about this process. Is it going to take another decade and another set of millions of dollars to identify what by definition must be the second-best or third-best site in the country for the establishment of the national waste repository which the opposition has declared is its avowed policy? No-one in South Australia should believe for a minute that a Latham government would undertake such a course of action. Of course a Latham government, committed as it is to a national waste repository, will establish it where the scientists told us is the safest place, and that is the central north of South Australia.

It is regrettable that the state Labor government is using taxpayers’ money to try to prevent this nationally important objective being fulfilled. It is regrettable and disappointing that three judges of the Federal Court have found that the acquisition of the site is contrary to the act, despite a single judge of the Federal Court already having
found that that action was proper. The government will appropriately take legal advice and it would be, subject to that legal advice, our intention to appeal this decision to the High Court because we do believe the land was properly acquired in the national interest to establish this very important facility.

Senator ALLISON—Mr Deputy President, I ask a supplementary question. The minister finally got around to answering, partially at least, my questions. I ask what other options there might be. If there is an appeal to the High Court, on what grounds would this appeal be mounted? How much money has the government already spent on advice and in legal proceedings in its attempts to dump a national nuclear waste dump on South Australia? Wouldn’t it be better to get all the states together instead of wrangling in the courts? Minister, where does this leave the government’s plans for an intermediate waste dump or will we hear about that after the election as well?

Senator MINCHIN—The irresponsibility of the Democrats on this issue knows no bounds. I remind Senator Allison that the states all got together with the Commonwealth back in about 1989 or 1990 and all agreed that the nation should have a national waste repository and all agreed to the process enacted by Mr Crean, the responsible federal minister at the time. The process enacted by all the states resulted in the central-north of South Australia being identified as the safest site. It is ridiculous for the states now to say, ‘Oh, let’s all have our own repository.’ Are we suggesting that we are going to have nine waste repositories in the country—one for the Commonwealth, one for every state and one for the territories? Not one state has done anything about that in any event. This is utterly irresponsible behaviour by the Rann state government and by the Democrats in denying this nation what it needs, a national waste repository.

Education: University Funding

Senator CARR (2.33 p.m.)—My question is to Senator Vanstone, representing the Minister for Education, Science and Training. Is the Howard government supporting the University of Western Sydney’s bid for additional multicampus funding, or is the member for Lindsay, Mrs Jackie Kelly, reflecting the government’s view when she says in today’s Sydney Morning Herald that the University of Western Sydney has ‘not a chance’ of any extra money and, ‘over my dead body. Never ... they don’t need it.’ Does the government agree with Mrs Kelly when she accuses the University of Western Sydney’s Vice-Chancellor, Professor Janice Reid, of committing ‘untruths and disgraceful behaviour’ for speaking out against the government’s higher education policies? Is Mrs Kelly speaking for the Howard government when she issues this threat to Professor Reid:

... you want to get in the political arena and play my game, I’ll cut you off at the knees.

Senator VANSTONE—I thank the senator. I had not realised that he had such a thespian capacity to read from a press release that he has prepared or someone else’s press release. I have not seen the remarks of Jackie Kelly. You do give me the opportunity, however, to point out that on three occasions Labor candidates have tried to get rid of Mrs Kelly and it appears that her electorate very strongly support her because they keep returning her to parliament. You have to be a bit sympathetic to people who are in the House of Representatives and representing their area—if they get re-elected it generally indicates that they are doing a good job. It gives me the opportunity to remind you that the majority up until now for the last eight years have been supporting this government, which is why I have the job of answering your thespian question. My answer to you is this: I am not aware of the statements and I
do not have any information on them. I will take the question on notice.

Senator CARR—Since the minister is so ignorant of what her prime ministerial preferred marginal seat candidate is saying, does the minister agree with Mrs Kelly’s on-the-record comments cited in the *Sydney Morning Herald* that the people of Lindsay do not attend university and do not aspire to? Does she also share the view of Mrs Kelly that Mr Costello is ‘a risk’ and ‘everyone hates him’ and that private health funding is a waste and she will give it up when her kids are grown up?

Senator VANSTONE—The latter part of that question I will not take on notice because it does not relate to government policy.

**Trade: Free Trade Agreement**

Senator MURPHY (2.36 p.m.)—My question is to the Minister for Defence, Senator Hill. On February 10 I asked the minister about the effect of the US free trade agreement on the Australian shipbuilding industry. Of course no answer was provided. In yesterday’s *West Australian* the minister said he will lobby for the industry when he is in Washington next month. Minister, despite not answering my question earlier, doesn’t your statement in the *West Australian* suggest that the US FTA has completely failed Australian shipbuilders, and isn’t your statement just hollow rhetoric in light of the fact that your government has just signed off on an FTA that will not allow for Australian ships to be included in the US market?

Senator HILL—I am sure Senator Murphy was as pleased as anyone on this side of the chamber to learn a week or two ago that the Western Australia based shipbuilder Austal had been selected as one of the final two contestants for the huge American littoral combat ship program. This listed Australian company is teamed with General Dynamics. Austal designed the boat that they will be now submitting and in fact will now be contracted to produce two of these boats to take into the final contest against Lockheed Martin. That an Australian shipbuilder has got to this point in a major US naval ship acquisition program is a tremendous achievement and a first. It is good to see that Australian shipbuilder doing so well. At the same time, for the benefit of Senator Murphy I would like to say how pleased I am with the successes of Incat, which has been able to lease its fast catamarans to the United States forces and is well placed to submit its product for another major shipbuilding program that is on the United States books.

I am not standing here and saying that it is easy for Australian shipbuilders in the US market, but the best of them are finding ways to get into that market, and I congratulate them on their achievements. What I say is that they can expect every support from the Australian government in doing so. There are some obstacles within the Congress; we know that. Support to the Australian companies, with the background of those obstacles, is in fact very important. What I have said to industry is that my commitment is to continue that support and continue to lobby the relevant American authorities so that the Australian shipbuilder, which is now producing a world-class product, has a fair opportunity to access the largest market in the world for these products.

Senator MURPHY—Mr Deputy President, I ask a supplementary question. Again I get very much a non-answer. I say to the minister that I am still waiting for the comprehensive answer that he promised me before. I hope that was not it. Minister, can I also ask you: what has the government done with respect to the pleasure craft building industry in this country, which is also subject to a nine per cent tariff?
Senator HILL—The free trade agreement does not deliver everything Australia would like to see—nobody has ever suggested it does. But it does provide an unprecedented opportunity for trade into the largest market in the world. It does reduce and relieve many significant obstacles. In our ideal world we would have liked it to do even more. We would have particularly liked a positive decision in relation to sugar but, in terms of the benefits to the Australian economy as a whole and to so many specific sectors within that economy, it is a huge opportunity and something that I certainly hope Senator Murphy will support. It will not be long now until Senator Murphy will have the opportunity to vote for Australian industry—to vote to give them unprecedented opportunities in the US market and to vote for what we hope, therefore, will be unprecedented prosperity.

Women: Domestic Violence

Senator KIRK (2.41 p.m.)—My question is to Senator Patterson, the Minister Assisting the Prime Minister for the Status of Women. Can the minister confirm that the violence against women booklet distributed nationwide carries the statement that it is written by Senator the Hon. Eric Abetz, Special Minister of State, Canberra? As minister responsible for women’s issues, does she agree with the following statement from page 14 of that booklet: ‘Sex without consent is sexual assault—there is no room for confusion’? Why is the Howard government confused on this issue? Can the minister clarify for her colleague Senator Abetz that sex without consent is actually rape?

Senator PATTERSON—I would expect Labor to behave like this. We have got an issue of incredible importance, about which hundreds of women have rung the help line, and Labor is going to nitpick through a book when the TV advertisements say very clearly that sex without consent is rape. If we did not do one thing, they were criticising. If we did not do another thing, they were criticising. The booklet outlines very clearly to people the forerunners, often, to abuse, where people are overpossessive, checking on people all the time—I cannot remember the exact details in the book, but it talks about when people are monitoring people on a regular basis. It goes through the actual behaviours that may indicate that a person would be more likely to commit an act of violence towards someone or an abusive act.

Labor cannot bear to bring itself to say that it will support the campaign. Mr Latham, when he first became leader, said that if the government was doing the right thing—I cannot remember the exact words—then he would support it. This is a campaign that is part of an ongoing prevention of domestic violence and a campaign against sexual assault that the government has been running. We have rolled out 230 local programs. This is a program which involves television advertisements. The program includes a booklet giving parents information so that they can actually raise the issue with their daughters and their sons. It is an issue that is of very great concern when you look at the research that has come out of Victoria. It says that for women under 45 domestic violence has the highest impact on their health. Instead of the Labor Party coming behind us in a joint effort for ‘Violence against women: Australia says no’, we have Senator Kirk nitpicking about one sentence in the booklet.

The advertisements on the television indicate that rape is a crime and that sexual intercourse without consent is not acceptable. Senator Kirk, I would have thought, would have had a little more of the parliamentarian than the politician in her and would have got behind this campaign and supported it, when we have hundreds of women ringing the help line for assistance. It is a national campaign.
It is a campaign of which we are very proud. It is just a shame Labor cannot get on board and work with us to actually eliminate something which is totally unacceptable, whether it is violence against women, violence against men or violence against children. We should as a parliament come together and fight this together.

Senator KIRK—Mr Deputy President, I ask a supplementary question. Isn’t the Howard government’s confusion over the fact that sex without consent is actually rape just a symbol of its inability to deal with the reality of sexual violence against women? Or does the minister claim that it is only Senator Abetz, as the author of this misleading statement, who is so out of touch with what actually constitutes rape in modern Australia?

Senator PATTERSON—I actually despair about Labor. I despair that they will not get behind the very clear message that any form of violence, whatever it might be—whether it be sexual assault, whether it be sex without consent, whether it be pushing somebody or whether it be verbal abuse—is not acceptable. Whether it is male to female, female to male or anybody towards a child, it is totally unacceptable. Come on and be parliamentarians and actually put aside your political stunts and get behind this campaign and say, ‘Violence against women: Australia says no!’

Howard Government: Economic Policy

Senator WATSON (2.47 p.m.)—My question is directed to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Will the minister inform the Senate of the benefits of responsible economic policies that are fully funded and fully costed? Is the minister aware of any alternative policy approaches?

Senator COONAN—I thank Senator Watson for his question. One of the reasons why the Australian economy has been able to grow despite the Asian financial crisis and the United States recession is that we have fully funded and fully costed policies and have run balanced budgets—that is, we do not promise what we cannot pay for. This government has now repaid $70 billion worth in net terms of Labor’s $96 billion debt. The debt to GDP ratio in Australia is now about three per cent. But all of this could be threatened by a Labor government and its big-spending agenda. The price tag for Labor’s growing list of promises has now topped $10 billion over four years, and the *Sun-Herald* at the weekend reported that Labor’s proposed new tax policy, which we are yet to see, is to give a further tax break of $520 a year to low-income workers at a cost of over $11.2 billion. Where is the money coming from?

Labor have said that they have got a secret list of savings of about $8 billion. I am aware that $270 million on this list of savings was part of an earlier decision by Labor that they would not support this government’s international tax reforms. But last week, thankfully, Labor backflipped and supported these important reforms, so that this money is no longer available to pay for spending. Most of us can see a few problems, however, with $8 billion in savings and $21 billion in spending. Obviously Labor are getting a bit panicky about how they can pay for their $21 billion in spending because yesterday we saw a more spectacular backflip from Labor when they decided to reverse their opposition to the government’s 2002 budget Pharmaceutical Benefits Scheme reforms. These reforms are about ensuring the PBS is more sustainable so that Australians will not be denied access to high-quality and new drugs but, after two years of obstruction, Labor’s only concern is to get their hands on the estimated $1.1 billion in savings to finance their other election promises. Like I-a-w tax
cuts, this is just another example that with Labor what you really have to look at is what they do, not what they say.

When Labor said they would not support the PBS reforms ‘not now, not ever’, what they meant was ‘we will when it is expedient’. But while Labor are in the mood for backflips, I can advise of another savings measure that will deliver savings for Labor of $3.9 million in 2004, $4.4 million in 2005, $4.9 million in 2006 and $5.5 million in 2007—a total of around $19 million over four years. How can they do that? Labor can achieve that with nothing much more than a phone call. They can do it by getting rid of the Centenary House rent rort. That would provide $19 million worth of savings for the Australian taxpayer over four years. That would be, of course, genuine savings, not the sort of rubbery nonsense that we see with Labor’s attempt to find even $8 billion worth of savings.

Labor have a great problem in how to make it all add up, but what does add up is that Labor are familiar with big budget deficits—they are Labor’s legacy in government. In Labor’s last five years in government, when the Asian and United States economies were booming and there was no drought, the Labor government managed to rack up $69 billion worth of deficits over five budgets, and their Labor state and territory counterparts are no different. The contrast between Labor’s addiction to deficits and the responsible economic management of this government could not be more stark. This government makes promises we can keep and—

(End of time)

Senator WATSON—Mr Deputy President, I ask a supplementary question. I am just concerned about the impact on the bottom line or the budget surplus of all those extravagances that Senator Coonan has just outlined. Can she give us any indication of the impact on the budget surplus? Will be budget go into deficit?

Senator COONAN—I thank Senator Watson for his supplementary question. What I said was that the Labor Party are addicted to deficits. Of course, if they cannot pay for $21 billion worth of promises, that is going to have a serious impact on the budget bottom line. We know that the Labor Party are addicted to deficits, we know that they wack it all on the bankcard and we know that they are going to leave a huge debt for future generations of Australians. This government is going to continue to take the tough decisions and to roll out a policy that will benefit all Australians.

Science: Cooperative Research Centres

Senator McLUCAS (2.53 p.m.)—My question is to Senator Vanstone, the Minister representing the Minister for Education, Science and Training. Is the minister aware that it has now been eight weeks since panic-stricken government backbenchers—

Senator Hill—Panic-stricken government backbenchers?

Senator McLUCAS—that is correct—claimed that the government was constructing a rescue package for defunded cooperative research centres carrying out critical work in the Barrier Reef and in the rainforests? Since then, what additional funding has been identified to assist these CRCs to continue their crucial work?

Senator VANSTONE—I was of the view that the only panic in the parliament over the last couple of months has been Labor frontbenchers and backbenchers who now have to, presumably, write to people and inform them that they have changed their mind on the PBS—to all the people they asked to sign petitions saying that the changes that the government wants to make to the PBS are a bad thing. All the Labor senators are now panicking because they have to write back to
all these people to say, ‘We’ve changed our mind; we think it is a good thing now.’ There is a real sense of panic in the Labor Party over that issue.

If there has been a delegation on a particular issue to the education minister, I have not been advised of it. I will ask him about it and I will ask him about the detail of your question. It might have been leading a little bit with your chin, Senator McLucas, to suggest that there is panic on this side when you have had this massive backflip warranting a full page in the *Australian* about this double pike somersault. Now you have to write back to people. And I am sure you will write back to them saying you are opposing something and then just going doggo when you change your mind. Surely you would not do that.

**Senator McLucas**—Mr Deputy President, I ask a supplementary question. Could the minister also ask the education minister this question if she does not know the answer: contrary to the government’s claims that the CRCs have two years to find the additional funding, will the minister now confirm that the current agreements require wind-up proceedings to commence by the end of next financial year?

**Senator Vanstone**—I will do better than that for Senator McLucas: I will ask the minister for an answer to that and I will ask him if he will give you a personal briefing on the CRCs if you would care to have one.

**Environment: Burnett River**

**Senator Brown** (2.56 p.m.)—My question is to the Minister representing the Minister for the Environment and Heritage. How on earth could the minister have given the go-ahead for the inundation of 42 kilometres of the Burnett River in Queensland, including critical habitat for at least five rare and endangered species such as the Queensland lungfish, which is known around the world as one of two species connecting the emergence of species onto land from the oceans 350 million years ago? If the minister is prepared to have these rare and endangered species—which also include a turtle, a quail, a parrot and a rare and endangered palm—being driven closer to extinction under his authority, what is the use of the Environment Protection and Biodiversity Conservation Act? Indeed, is it worth the paper it is printed on under this government and this minister?

**Senator Ian Macdonald**—I cannot say how delighted I am for I think the second time in three years to have a question on the environment from the so-called Greens environmental political party. One of the things that always very much concerns me about the hypocrisy of the Greens is how they masquerade as environmentalists and very rarely in this chamber do they ever talk about the environment. Do they ever ask a question about it? Do they ever make a point about it? Do they ever come to the estimates committees dealing with either conservation or environment matters? They never do. And they compound that deceit by then getting on the radio, as Senator Brown did, and telling little fibs about why they were not at the estimates dealing with the environment.

These sorts of questions about the Burnett River and the biodiversity issues there are the classic sorts of questions that, if you had turned up at the estimates committees—and they were on for two weeks—you would have been able to go through in fine detail. You would have been able to question all of the relevant public servants about what you say is an important issue. One of the reasons why Senator Brown does not turn up at estimates committees is that when he asks these questions—which rarely are based on fact—the public servants—
Senator Brown—Mr Deputy President, I rise on a point of order. I am sure the Senate enjoys hearing the minister’s estimation of the Greens, who have gotten under his skin, but this question was about the flooding of the Burnett River and the driving towards extinction of several species.

The DEPUTY PRESIDENT—Senator Brown, is this a speech?

Senator Brown—with just two minutes to go, I ask that you bring the minister to order and have him answer the question.

The DEPUTY PRESIDENT—There is no point of order, Senator Brown, and you know it.

Senator Brown—I do not accept gratuitous comments like that from the chair. There is a point of order and I put it because I believe you should administer it.

The DEPUTY PRESIDENT—There is no point of order.

Senator IAN MACDONALD—How sensitive the Greens political party are when their fraud and hypocrisy is exposed to the Australian public! The point I am making is directly on the question that Senator Brown has asked. If there are issues, if the premise is correct, there is a great opportunity for you, Senator Brown, to get all of this, chapter and verse. But the reason they do not turn up and ask this at estimates is that, with all the experts there, these people with these questions will be shown up for the environmental frauds that they actually are. They are good at running the old Communist Party, or Trotskyite, lines that went out of fashion even in the USSR a decade ago, but—

Senator Brown—Mr Deputy President, I rise on a point of order. I will always concede to the minister’s knowledge of Trotsky, but I have to ask you to bring the minister to order. He was asked a question and he has made no attempt to answer it.

The DEPUTY PRESIDENT—Senator Brown, you know that I cannot instruct the minister to answer the question in a particular way but I do draw the minister’s attention to the question that was asked. The minister now has one minute and 22 seconds in which to respond to Senator Brown’s question.

Senator IAN MACDONALD—Mr Deputy President, I thank you for that because, as all other senators will appreciate, what I am saying is directly on the point of the question. Senator Brown turns up at rallies in Sydney about bringing the troops home and the sorts of rallies that the Communist Party of Australia have. They still do exist, I should tell everyone. I had a look at their web site the other day. It is almost indistinguishable from your web site, Senator Brown. All the issues that you have on your web site are exactly the same issues that the Communist Party of Australia have on their web site. Senator Brown, if you have a genuine concern about any aspect of the environment, if you are serious about this and if the premise on which you raise the question is genuine, they are the sorts of questions that I can get you a very precise answer on. Do you know where I can get it for you? You can get the answers to these questions from the expert ecologists, the scientists and the people who understand these questions. Senator Brown can argue about it. He could spend two or three days on it if he minded to turn up at the estimates committees where these sorts of issues are discussed. (Time expired)

Senator BROWN—Mr Deputy President, I ask a supplementary question. I asked a question about this minister’s home state and I have never heard such a blathering failure to even get to the point. I hope there were Queenslanders listening.

Honourable senators interjecting—

CHAMBER
Senator BROWN—What a failure! The minister has said that he is going to have a fish way, which will help the lungfish get round this pathway to extinction that he has devised. But the expert from Macquarie University, Jean Joss, has said that the lungfish have been shown to be very faithful to their spawning sites, so their ability to migrate to a nonexistent spawning site will do nothing to ensure recruitment to the population. Is the minister’s decision not a ticket towards extinction for the lungfish?

Senator IAN MACDONALD—The Howard government has done more for the environment and biodiversity than any government in history. The lungfish is a particularly important species that has received considerable funding from this government for research and otherwise. Senator Brown could have learnt all about that had he turned up at estimates. I can understand why the Labor Party are supporting Senator Brown in trying to mislead the public as to the environmental credentials of the Greens. It is because the Labor Party want the preferences of the Greens. They like the Greens political party fooling the public about their environmental credentials because they can then get the flow-on of votes to the Labor Party from the Greens political party. This sort of hypocrisy needs to be exposed. These particular issues are the things that the Howard government will continue to look after as we have done—(Time expired)

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

ANSWERS TO QUESTIONS ON NOTICE

Question Nos 2853 and 2854

Senator ALLISON (Victoria) (3.05 p.m.)—Pursuant to standing order 74(5), I ask the Minister representing the Minister for Agriculture, Fisheries and Forestry and the Minister for the Environment and Heritage for an explanation as to why answers have not been provided to questions on notice Nos 2853 and 2854, which I asked on 19 April.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.05 p.m.)—I am not sure whether Senator Allison has followed this—and I do not blame her for it if she has not—but there is a normal convention. You have let Mr Truss know. I have to say that I am embarrassed that obviously my staff have not given me the response that I am sure Mr Truss would have given to Senator Allison. I can only plead guilt, ask for forgiveness and say to Senator Allison that I will attempt to obtain from Mr Truss the answer she requires and make it available to her at the earliest possible time—hopefully some time later today.

Senator ALLISON (Victoria) (3.06 p.m.)—I move:

That the Senate take note of the explanation.

I ask the Senate to also note that these two questions are about advertising and the amount of money which this government has spent on advertising. The first question is about the National Action Plan for Salinity and Water Quality. I asked, for the financial year 2003-04, how much was spent on advertising and marketing under the National Action Plan. In question No. 2854, I asked how much was spent on advertising and marketing in relation to the NAP. In question No. 2854, I asked how much was spent on advertising and marketing under the Natural Heritage Trust and a range of questions about investments in the Natural Heritage Trust in two financial years. This kind of information ought to be available to the parliament.

This follows on from questions that I have asked previously—in fact, that I asked yesterday—about how much money had been spent on the Scoresby Freeway advertising. At that stage Minister Campbell said that he did not have an answer to that question, de-
spite the fact that it was three months old. He did not even make any undertakings as to when he would get back to me with an answer to that question. This morning we had notice from the Table Office that that question has now been transferred to the minister for roads. It was with the minister for transport and now it has been transferred to the minister for roads. Presumably we will wait another three months until that question is answered as well.

The amount of money that has been spent on advertising is totally irresponsible. My colleagues and I continue to draw to the government’s attention the Auditor-General’s guidelines for advertising. I thought it might be useful if I spelled out a couple of those guidelines, which I think should be taken into account when those answers are provided to us. One guideline says:

• no campaign should be contemplated without an identified information need by identified recipients based on appropriate market research.

I would argue that there was absolutely no need for the huge, full-page press advertisements that there were for the Scoresby Freeway, as no doubt there were for the advertising and marketing campaign for the National Action Plan for Salinity and Water Quality. There was no ‘identified information need by identified recipients based on appropriate market research’. Let us look at a couple of others. The guidelines under ‘3. Material Should Not Be Liable To Misrepresentation As Party-Political’ say:

Communication may be perceived as being party-political because of any one of a number of factors, including:

• what was communicated;
• who communicated it;
• why it was communicated;
• what it was meant to do;
• how, when and where it was communicated;
• the environment in which it was communicated; or
• the effect it had.

Whether we are talking about Medicare, the Scoresby Freeway or the National Plan for Salinity and Water Quality, those points that the Auditor-General has raised need to be considered in these advertising programs and need to be considered in answering the questions that were put. The Auditor-General’s guidelines go on to say:

Material should not directly attack or scorn the views, policies or actions of others such as the policies and opinions of opposition parties or groups.

That is exactly what happened over Scoresby. That was an attack on the Victorian state government. As I said yesterday, I am not here to defend the Victorian state government and whether or not they promised tolls. It is of no interest to me whether they were returned on a promise that they had made previously. What I am interested in is the amount of money which has been totally wasted, thrown at the wall, by this government in advertising over the last year or so—maybe even longer than that. The Auditor-General’s guidelines continue:

Information should avoid party-political slogans or images.

We would not see a lot of those. Nonetheless, those guidelines, taken as a whole, would indicate that the current program of advertising certainly would not fall within them under anybody’s interpretation. The government needs to take a really hard look at the way it wastes taxpayers’ money. I actually do not think that people are all that fooled. Those I speak to say, ‘I saw another Medicare advertisement that told me nothing.’ They are going to throw a brick at the television or stop their subscription to the Age or the Herald Sun. So I do not know that is doing the government a lot of good. What it is
doing is wasting huge amounts of taxpayers’ funds that could be much better spent, in the case of the National Action Plan for Salinity and Water Quality, on cleaning up our rivers and on solving some of those very serious salinity problems around the country. It is the same for the Natural Heritage Trust. A lot of that money is being wasted. A lot of it is being wasted on trees that did not grow and on work that went ahead without proper research being done. But we do not mind spending squillions of dollars on advertising that the government has spent the money—not on advertising that gives anybody any clear idea about the right way to proceed with salinity or with Natural Heritage Trust spending but purely on advertising the government’s largesse in these areas. I look forward to getting an early answer to those questions. They are worthwhile questions and the government should turn its mind to them.

Question agreed to.

Question Nos 2855, 2856, 2857 and 2858

Senator ALLISON (Victoria) (3.13 p.m.)—Pursuant to standing order 74(5), I ask the Minister representing the Minister for the Environment and Heritage for an explanation as to why answers have not been provided to questions on notice Nos 2855, 2856, 2857 and 2858, which I asked on 19 April.

Senator IAN MACDONALD (Queensland)—Minister for Fisheries, Forestry and Conservation) (3.13 p.m.)—In this case we have a different minister and, again, I must say that I am not aware of Senator Allison alerting us to the fact of these. If I am given notice that these things are to be raised in the chamber, I do my utmost to ensure that I either have the answers or have a plausible explanation of why the answers are not available. But, again, because this is the first I have heard of this, I simply cannot respond to the request from Senator Allison.

Senator ALLISON (Victoria) (3.14 p.m.)—I move:

That the Senate take note of the explanation.

I advise the minister that my office did in fact contact the minister’s office and advise that these questions would be—

Senator Ian Macdonald—When?

Senator ALLISON—The notification was, in this case, emailed to Mr Phil Connole at 12.14 today. I think that is the time. If there is more accurate detail of the timing in which the notice was given then I will provide that. I will not hold up the Senate any further but it is an obligation, as people know in this place, for ministers to respond to questions on notice. We get a very poor response to both questions without notice and questions on notice in this chamber. It is the case that many questions either are shoved off to another department or come back with inadequate and incomplete answers. It is not good enough.

These questions are asked in good faith for good reason. It is time that ministers in this place paid a lot more attention to providing meaningful answers so that we can do the work that we are sent here to do, which is to represent our constituents and to scrutinise government spending on advertising or government spending, in this case, on the Natural Heritage Trust in each of the states that I had asked questions about. These are legitimate questions; they are not onerous and they ought to have been answered by now because they are two months overdue. Even if the fact that I wanted to raise this did not get through to the minister, I would have expected, once 30 days had expired, that the minister would contact our office and say, ‘We’re sorry; this is taking longer to put together than we thought but we’ll have an answer to you within a fortnight or three weeks.’ But no—we just get an arrogant silence from the minister’s office and the min-
ister’s department over these questions that are asked.

Question agreed to.

**Senator IAN MACDONALD** (Queensland—Minister for Fisheries, Forestry and Conservation) (3.17 p.m.)—by leave—I have just checked with Mr Connole, who is my chief of staff. He tells me he has no email from Senator Allison or her office either on his APH web site or on his AFFA web site.

**QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS**

**Environment: Burnett River**

**Senator IAN MACDONALD** (Queensland—Minister for Fisheries, Forestry and Conservation) (3.17 p.m.)—by leave—Whilst I did give a very full and comprehensive answer to Senator Brown on his questions about the lungfish, Dr Kemp with his usual efficiency has provided me with some further information which I think would be useful to Senator Brown. After listing the lungfish as vulnerable under the EPBC Act, Dr Kemp reviewed the approval of the Burnett River dam and added new conditions to protect this species. These conditions were based on suggestions from Burnett Water Pty Ltd. Dr Kemp congratulates Burnett Water for taking steps to address the long-term future of the lungfish.

While the fish transfer device is a new design it is being developed in consultation with the Queensland government, and Dr Kemp will be monitoring it very closely to ensure the lungfish is protected. Monitoring of lungfish populations in the Burnett River by Queensland government agencies occurs regularly. Burnett Water Pty Ltd will initiate further intensive monitoring of lungfish populations upstream and downstream of the intended dam location shortly.

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

**Centrelink: Debt Recovery**

**Women: Domestic Violence**

**Senator JACINTA COLLINS** (Victoria) (3.19 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 today relating to family payment debts and to a booklet concerning violence against women.

What lies behind Senator Patterson’s non-answers for pretty much most of this week and also today in question time about misleading material circulated by the government is what I would characterise as chapter 159, volume 3 of the politicisation of the Public Service by the Howard government and in particular Public Service chiefs. This is a story contrary to Dr Shergold’s attempt last night to debunk claims that public sector chiefs have gone from, in his words I gather, ‘noble knights’ to ‘grovelling courtiers’. It relates to the budget measure that the Senate processed hastily with respect to the government’s constructed bribe for families to try to dampen the outrage of family payment debts.

The government implored Labor to quickly pass legislation making these bribes legal. We took the government on faith. What did we discover? We discovered that the government had changed the indexation of family tax benefit so that the value of its budget bribe would be wiped out within five to seven years. This is nothing short of a massive swindle—a post-election clawback from families. We should have known that something tricky was afoot. After six years of providing the forward estimates for each program within the Family and Community Services portfolio, suddenly in this budget this was withheld. Suddenly the government
decided that we should not see the spending projections. It is no wonder, when you are planning to rip away an election bribe after the election, that you would try these tactics.

The secretary of Senator Patterson’s department, Mr Mark Sullivan, was at pains to deny all this in the recent budget estimates. He was so keen that he personally undertook at his own initiative to provide the committee with the answers to our questions about the proposed clawback of payments. Let me refer to the *Hansard* on this matter, because earlier this week the minister misrepresented what occurred within that committee. When we refer to the *Hansard*, we have from Mr Sullivan the suggestion:

This is a highly technical discussion. One way we could deal with this is if we could get a series—

not one question, but a series—

of questions, say, by Monday—

Senator JACINTA COLLINS—By close of business on Monday?

Mr Sullivan—Yes—we will commit to answering those questions by Friday.

He has failed to deliver. As of tomorrow, that Friday will be three weeks ago. So he is three weeks late. There has been no phone call, no apology and no explanation. Nothing has been provided to the committee about Mr Sullivan failing to deliver on what was his initiative to deal with these issues. His position has now been seriously compromised in the government’s desperate attempt to hide its tricky little plan to rip the rug out from under families after the election. Yesterday we heard of reports that the government has temporarily suspended its debt collection activities until after the election. Senator Patterson dealt with that issue in part—in a very limited way—in question time today. Yesterday she failed to respond to that question. Late last night she finally cobbled together an explanation.

The difficulty this minister and the chief of her department face is that they no longer have credibility. We know that the family tax system has been designed to withhold debts until September. Now we have heard reports that Centrelink has been advised by the minister’s office to withhold other debt collection processes until after an election. The minister has finally denied those reports. Unfortunately, because of a whole series of incidents, she lacks credibility and her head of department lacks credibility—as, indeed, does the whole Howard government in relation to its politicisation of the public service. *(Time expired)*

Senator HUMPHRIES (Australian Capital Territory) *(3.24 p.m.)*—I understand that there is a standing order against tedious repetition. Although I doubt it applies to the debate to take note of answers to questions asked in question time, I am close to forming the view that we are hearing tedious repetition from the opposition on this issue of the government’s reforms to family payments. The fact is that these payments are generous. They are a significant increase on what was available to Australian families before this government came to office. They amount to a very significant benefit to the Australian community—a benefit so significant that those opposite try desperately, question time after question time, to smear and discredit the government.

The $19.2 billion which the Australian government is putting into assistance to Australian families over the next five years stands on its own as a stark testament to the success of this government’s programs to date in delivering higher levels of benefits to families. Nobody is fooled by the very transparent tactics of those opposite. In today’s little foray of the smear campaign, the Labor members opposite not only attempted to tarnish the government’s general program in the area of family and community services but
also had a swipe at a couple of the government’s senior public servants.

I do not know what the reason for any supposed delay on the part of Mr Sullivan in answering some of Senator Collins’s questions might be, but I have to say that Senator Collins put a colossal number of questions on notice in the estimates committee process. If there are a few that Mr Sullivan has not gotten around to yet, I would be the last person to blame him for that. Senator Collins also made a reference to Dr Shergold’s remarks at a meeting last night. He rejected the claim that there has been a politicisation of the Public Service. I think it could be assumed from what Senator Collins had to say this afternoon that, in some way, Dr Shergold was endorsing the comment that Australian public servants have transitioned from being noble knights to grovelling courtiers. In fact he said precisely the opposite: he said that that was not the case and he spent much of his time refuting that claim. Let us be clear about that.

In 2002-03, the Australian government achieved annual savings through compliance measures and reviewing activity within this portfolio of something like $2.3 billion. So it returned to the public purse, to the buying power of the taxpayer, $2.3 billion because it took steps to ensure that the rules were complied with. That is a lot of money. Are Senator Collins and her colleagues saying that this claw-back, if you like, of money that taxpayers should legitimately have back in their collective purse—should not go on? Until she makes clear exactly what her alternative is to the policies being pursued by this government—policies that achieve $2.3 billion in savings each year—we simply do not know where she stands.

That $2.3 billion is twice the saving made by the announcement yesterday of the PBS backflip—it is equivalent to two PBS backflips in one fell swoop. Has Senator Collins told Mr Latham, the shadow Treasurer and others on her team that she is proposing to give up savings of $2.3 billion in order to not have to put in place compliance measures? Let us see what Labor put forward as an alternative to the compliance policies of this government. Then we will take them seriously. Until we see what those policies are, this is nothing more than a stunt staged every few question times—and, frankly, I think it is wearing a bit thin.

Senator CROSSIN (Northern Territory) (3.29 p.m.)—With all due respect, Senator Humphries, the stunt before us is the way in which this government believes it can con and buy the votes of the people of Australia through another cash payment under its family tax benefit A and family payments system. Back in 2001, prior to the last election, families were given $1,000 up front. Then we had the federal election and compliance notices were sent out to families. In the Northern Territory, the average debt owed was $1,800. People came through my office as if there was a revolving door out the front. They were not complaining about the fact that they had been overpaid or that they had to repay the money; they were happy to do that. They were complaining about the system. That is the issue that the government has fundamentally failed to grasp. It is the administration and the system that is at fault here. The government thinks that somehow it can every three years—weeks and probably days before a federal election is called—wave a magic wand, hand people a large cash payment and erase people’s memories. It is as if a cheque is a whiteboard eraser and families are going to forget. Families are not going to forget. I have been reminded a number of times in recent weeks that people are very cautious and cynical about the motives of this government.
Yesterday Minister Patterson was forced to put out a press release entitled ‘Centrelink continues with compliance programs’. In it she says, ‘The Government is running its normal compliance programs.’ In question time today she reiterated that. That may be true. The compliance program may well be running. The review process may well be running. But we wanted the minister to clarify for us today—and she failed to do so—whether the collection of that money was still proceeding or whether it had been put on hold.

Our shadow minister for family and community services, Wayne Swan, this morning indicated that in some instances that collection and compliance process is under way. He cited a case of just this week where a family was paid $1,200 into their bank account and posted a $1,200 cheque as well. Technically, that family has been given $2,400, and I am assuming from this transcript that they were entitled to only $1,200. Minister Patterson yesterday also said this:

As under general social security provisions, if Centrelink had made a mistake there would be no attempt to recover the bonus payments.

One would only assume that, because Centrelink has made a mistake in this case—that is, in depositing money into a bank account and sending a cheque—there will in fact be no debt recovery from this family. But the minister was unable to categorically rule that out today in question time. The underlying fine print of all of this is really that what Senator Patterson wants to say but will not say is that the election payment—or the election bribe, as it has become commonly known—will not be recovered until after the election. You just have to look at the runs on the board. We are not talking about something hypothetical here. This government has a track record of giving with one hand—that is, of conning people into believing that perhaps this is a good public policy when in fact it is a bad public policy in its administration—and then taking back once the election has been held. The government will not tell families before the election what their debts are, but it will be pretty quick to jump in there and ensure that families get a debt collection notice the minute the election is over.

Some of the reports we have had, particularly from the Northern Territory, are that the bad aspect of this public policy is that a cash payment of $600 per child—and in some instances, for parents who have four or five children, we are talking about thousands of dollars—is that it is paid all at once and up front. People who are not used to handling money or managing that amount of money have not spent it well. A better public policy approach would have been to have had this money paid fortnightly over a period of time so that people could clearly understand what it was and have the opportunity to manage it properly. We would have then minimised the problems in the Territory that we have heard about in the last 24 hours. (Time expired)

Senator FIFIELD (Victoria) (3.34 p.m.)—Listening to Senator Collins and Senator Crossin, you could be forgiven for thinking that Labor when in government actually ran a generous and efficient social welfare system. Neither is true. We heard from Senator Patterson earlier today that Graham Richardson, when he was social security minister, said that social security under Labor was trim, taut and terrific. You could have got the impression that the system was as tight as a drum. The reality is that, under Labor, people could get away with overpayments. Under this government we are saving $44 million per week, or $6.3 million per day, or $22,000 every other minute. Centrelink is undertaking its usual compliance program. Any statements to the contrary are just false. We on this side of the house believe that people should be entitled only to money which they are due. Whether it is the tax system or the social security sys-
tem, the Australian public think that if you are entitled to a payment it is fine but you are entitled only to what is your due. In the tax system, people should pay their fair share but no more. In the social security system, people should receive their entitlement but no more, and if there is a mistake on their part then they should pay it back. This government has not suspended compliance activity.

We on this side of the house also believe it is a good thing to put more money into the pockets of Australian families. We think it is a good thing that there is a $19 billion package of family assistance. We think it is a good thing that under this government people will have a minimum family payment of $1,615 compared to $600 under Labor. We also think that Australians should have the right to determine what they do with that money. It is the most outrageous paternalism I have heard in a long time that certain Australians should not be trusted with those $600 payments. That sort of paternalism is something that I thought we had left behind. To claim that these payments are leading to an increase in gambling is outrageous. If senators opposite have an issue with gaming they should take it up with the state Labor governments, which are addicted to gaming revenues. State Labor governments are more than happy to take those revenues. If you have an issue with gaming, take it up with them.

We have not heard Labor express concern before about the failure of the government to seek to recoup overpayments. It is very interesting that we are hearing this now. I think the reason for it is the same as the reason for the PBS backflip: Labor have a budget black hole. Labor always have a budget black hole. We remember the Beazley black hole, we remember the Latham Liverpool black hole of $2.7 million, and we saw Michael Egan’s budget black hole in New South Wales. Labor have a problem and they know it. They know they have to fix it. That is why Labor are now paying attention to recouping overpayments—because they are desperate to pursue every avenue to fund their policies. Labor need to detail to this chamber their revenue policy. On the Jon Faine program Mark Latham promised to release his tax policy in the week of the budget, detailing how he would provide tax relief for PAYE taxpayers. Mark Latham told us—

The ACTING DEPUTY PRESIDENT (Senator Knowles)—‘Mr Latham’, please.

Senator FIFIELD—Mr Latham told us that when he became opposition leader there was going to be a big, bold, ambitious, almost Whitlamite program. All we have seen is junk food, free books, and plastic bags. How can Labor tax less, spend more and have more money left over? Labor have to give us their tax policy. Their tax policy, I think, will have three elements: an increase in company tax, an increased focus on debt recovery and a sleeper. Labor hold office in every state and every territory, and we know that to increase the rate of the GST you need not only the agreement of both houses of this parliament but also the agreement of every state and territory. If Labor win the next election, they will be in a unique position to increase the GST. Federal Labor would keep the difference between the current take—

(Time expired)

Senator BUCKLAND (South Australia) (3.39 p.m.)—I also wish to take note of the answers given by the Minister for Family and Community Services, Senator Patterson, to questions asked today. We are talking about $2.5 billion worth of wrong payments—2.9 million payments that have been wrongly made to 1.6 million families, who have been overpaid an average of $900 each. This is a case of wrong payments, wrong measures to ensure proper scrutiny and the
wrong person charged with the responsibility of being a responsible minister.

I have some time for Senator Patterson; I find her to be a good and decent person. But she is the wrong minister for this portfolio. She has not got her eye on the ball. All these wrongs add up to a government that is prepared to duck and weave and go into all sorts of rhetorical contortions to avoid facing up to the problems they have with family payments. The reality is that the government cannot pay families their correct entitlements when they need them—that is, each fortnight. The minister lacks the ability to manage family payments and to oversee the actions of her department. But as if this $2.5 billion blunder, thanks to the minister, were not bad enough, we have the government’s claw-back of pensions. It is screwing the best part of $40 million out of the disabled, their carers, the sick and the elderly—screwing money out of the needy, who have done absolutely nothing wrong. These people have complied with the obligations to notify Centrelink of changes in their income, but the information has simply never been checked by Centrelink.

Senator Vanstone—Oh, that’s rubbish!

Senator BUCKLAND—There is no rubbish attached to that, Senator Vanstone. We heard the minister today talk about compliance by Centrelink. It was repeated by Senator Fifield just moments ago. The only people complying are those who are gaining benefits or who hope to gain benefits. They are complying. Centrelink and the minister are not. We also heard Senator Humphries talk about tedious repetition when Senator Collins was on her feet. The only tedious repetition in this place has been the repetition of the minister when she could not answer questions. She has not been able to answer the questions put to her in relation to this matter. So, after years of failure to account for payments they have been making, the government are belting the sick, belting the old, and belting the disabled and their carers for no other reason than that the minister and the government simply got this whole issue wrong.

Centrelink has been ordered to suspend all debt collection until after the election. Why? It is simply because the one-off $600 payment to families has been wilfully paid to people who are clearly not entitled to it. The government do not want to get embarrassed. It is something they want to go to the polls with—they are giving money. Now they are running a moratorium. But, believe me, after the election—the very day after—the government and Centrelink will be sending out the accounts. (Time expired)

Question agreed to.

COMMITTEES

Reports: Government Responses

The ACTING DEPUTY PRESIDENT

(Senator Knowles)—On behalf of the President, and in accordance with the usual practice, I table a report of the parliamentary committee reports to which the government has not responded within the prescribed period. The report has been circulated to honourable senators. With the concurrence of the Senate, the report will be incorporated in Hansard.

The document read as follows—

PRESIDENT’S REPORT TO THE SENATE ON GOVERNMENT RESPONSES OUTSTANDING TO PARLIAMENTARY COMMITTEE REPORTS AS AT 24 JUNE 2004

PREFACE

This document continues the practice of presenting to the Senate twice each year a list of government responses to Senate and joint committee reports as well as responses which remain outstanding.

The practice of presenting this list to the Senate is in accordance with the resolution of the Senate of
14 March 1973 and the undertaking by successive governments to respond to parliamentary committee reports in timely fashion. On 26 May 1978 the then Minister for Administrative Services (Senator Withers) informed the Senate that within six months of the tabling of a committee report, the responsible minister would make a statement in the Parliament outlining the action the government proposed to take in relation to the report. The period for responses was reduced from six months to three months in 1983 by the then incoming government. The then Leader of the Government in the Senate announced this change on 24 August 1983. The method of response continued to be by way of statement. Subsequently, on 16 October 1991 the then government advised that responses to committee reports would be made by letter to a committee chair, with the letter being tabled in the Senate at the earliest opportunity. The current government in June 1996 affirmed its commitment to respond to relevant parliamentary committee reports within three months of their presentation.

This list does not usually include reports of the Parliamentary Standing Committee on Public Works or the following Senate Standing Committees: Appropriations and Staffing, Selection of Bills, Privileges, Procedure, Publications, Regulations and Ordinances, Senators’ Interests and Scrutiny of Bills. However, such reports will be included if they require a response. Government responses to reports of the Public Works Committee are normally reflected in motions in the House of Representatives for the approval of works after the relevant report has been presented and considered.

Reports of the Joint Committee of Public Accounts and Audit (JCPAA) primarily make administrative recommendations but may make policy recommendations. A government response is required in respect of such policy recommendations made by the committee. However, responses to administrative recommendations are made in the form of an executive minute provided to, and subsequently tabled by, the committee. Agencies responding to administrative recommendations are required to provide an executive minute within 6 months of the tabling of a report. The committee monitors the provision of such responses.

An entry on this list for a report of the JCPAA containing only administrative recommendations is annotated to indicate that the response is to be provided in the form of an executive minute. Consequently, any other government response is not required. However, any reports containing policy recommendations are included in this report as requiring a government response.

Legislation and other committees report on bills and the provisions of bills. Only those reports in this category that make recommendations which cannot readily be addressed during the consideration of the bill, and therefore require a response, are listed. The list also does not include reports by legislation committees on estimates or scrutiny of annual reports, unless recommendations are made that require a response.

A guide to the legend used in the ‘Date response presented/made to the Senate’ column

* See document tabled in the Senate on 24 June 2004, entitled Government Responses to Parliamentary Committee Reports—Response to the schedule tabled by the President of the Senate on 4 December 2003, for Government interim/final response.

** Report contains administrative recommendations only—response is to be provided direct to the committee in the form of an executive minute.

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<td>Treaties (Joint Standing)</td>
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<td>Extradition—a review of Australia’s law and policy (40th report)</td>
<td>6.8.01</td>
<td>13.5.04</td>
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<td>12.2.04</td>
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<td>1.12.03</td>
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<td>4.12.03</td>
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Committee and title of report | Date report tabled | Date response presented/made to the Senate | Response made within specified period (3 months)
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Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (58th report) | 23.3.04 | - | No
Treaties tabled in December 2003 (59th report) | 31.3.04 | - | Time not expired
Treaties tabled on 2 March 2004 (60th report) | 16.6.04 | - | Time not expired
The Australia-United States Free Trade Agreement (61st report) | 23.6.04 | - | Time not expired

PETITIONS
Iraq
Senator BROWN (Tasmania) (3.44 p.m.)—by leave—I table a petition from 7,659 people which condemns Australia’s role in the occupation of Iraq and asks the Prime Minister to withdraw troops from Iraq.

DOCUMENTS
Auditor-General’s Reports
Report Nos 56 and 57 of 2003-04 and Report by Independent Auditor
The ACTING DEPUTY PRESIDENT (Senator Knowles)—In accordance with the provisions of the Auditor-General Act 1997, I present the following reports of the Auditor-General:
- Report no. 56 of 2003-04—Performance audit—Management of the processing of asylum seekers;
- Report no. 57 of 2003-04—Business support process audit—Administration of freedom of information requests;
- Report by the independent auditor of the Australian National Audit Office on the results of a performance audit of “Value for Money” provided by the ANAO.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.46 p.m.)—by leave—I move:
That the Senate take note of the documents.
The Auditor-General’s report Management of the processing of asylum seekers deals with a matter which is a very contentious and significant issue for the community. Firstly, the report itself is, in terms of the specifics of issues like procedures and the type of support provided for decision makers, quite a positive one for the department. Given that I am quick to point out negatives in relation to the department’s actions in this area, I should acknowledge the positives when they appear as well.

I should put some context around the nature of what the Auditor-General looks at with the processing of asylum seekers and the distinction between assessing whether record keeping is done appropriately and whether speed of information flows within the department is good, and whether the quality of the assessments that are made is good—and they are two different things. The report does emphasise that it is essential that protection against refoulement be provided to those in need through an efficient and speedy decision-making system. Refoulement, for those who are not aware, is sending somebody back to a situation where they are likely to face persecution. The issue of refoulement is at the core of asylum-seeker processing. Basically, you are assessing whether it is safe to return somebody and, if not, whether it is appropriate to give them protection or asylum here in Australia. Speed and efficiency are very important, and those aspects the Auditor-General gave a positive response to. But the issue of the correctness of the decision making is something that the
Auditor-General is less in a position to assess. Whilst it is appropriate to acknowledge the positives that have been determined by the Auditor-General, I do not think they should be misinterpreted as saying that the Auditor-General has assessed that decisions are correct. I say that because there is a significant degree of evidence that shows that many of the decisions that are made do need to be called into question.

Firstly, I will talk about some of the cases that are on the public record. Alvaro Morales, who was deported from Australia to Colombia, had his claims for refugee status in Australia refused in 2001. He chose to go voluntarily instead of taking the option of being forcibly deported so that he could travel to Argentina to seek asylum. Argentina put him back on a plane to Colombia and he was gunned down by the paramilitary in Colombia. So that is one person who was sent back, having been assessed as not meeting eligibility refugee status. Then there is the case of Ahad Bilal, who had applied to DIMIA to be granted protection as a refugee and was rejected, aged 18, and deported from Villawood in 2002. He was reported to have been murdered back in Pakistan by being forced to ingest poison and had extensive bruising around his neck consistent with a fierce struggle. They are a couple of cases that have been documented and there are other cases being documented by the excellent work of the Edmund Rice Centre which I should note. I urge the government to pay heed to this research which shows that we are not getting it right all the time. It highlights the horrendous potential consequences when we get it wrong.

I also note that in the report the Audit Office identified shortcomings with the country information service. Decision makers stated that at times the information contained within the country information service did not provide them with the level of detail that they required and they needed access to other sources of information such as the Internet. If a decision maker does not have up-to-date country information it is then up to them whether they decide to seek further information on which to make their decision. There have been a number of decisions revoked by the courts on the basis that the decision makers were inappropriately selective in the information that they used, choosing only to include the information that would assist them in rejecting claims. Stating that people did not get sufficient updates or the level of detail they required from the country information service is not just a minor bureaucratic problem. It is a major issue and with some of the judgments and findings I have read of the Refugee Review Tribunal it is sometimes the pivotal issue in determining whether a person’s claim is successful.

There is a mention in the report about external factors outside DIMIA’s control that impact on timeliness. These include such things as delays whilst applicants receive overseas penal clearances. A husband and wife in Baxter detention centre received a positive decision from the Refugee Review Tribunal over 10 months ago but are still waiting for their police checks to be completed. DIMIA can say that that is not their fault, that they are waiting for the police check, but the living current result is that a couple had been assessed as refugees but have still been detained for over 10 months because of the delay. That, in my view, is not acceptable unless there are absolutely clear-cut security risks to the community.

The other statistic I point to is the number of overturns of decisions by the Refugee Review Tribunal, because that is also an indication of the accuracy or otherwise of the decision making by departmental officials. If you look at the tribunal statistics for cases where an asylum seeker has appealed against the refusal of DIMIA to grant a visa where that
person was in detention, you can see there is a much higher success rate than those appeals against decisions made for people who are in the community and seeking asylum. You have to ask the question about why that is the case.

If you look at the cases of the set aside rate as compared with the affirmed rate—which I think gives a clearer contrast than cases that are withdrawn, because there are a range of reasons for withdrawals—that the tribunal published for the last financial year for asylum seekers in detention, 26 per cent of appeals against negative primary decisions were won by asylum seekers, 23 per cent for the year before that and 46 per cent for the year before that. You cannot get every decision right, and I acknowledge that, but they are all decisions that were not correct in the first place. Not only does that increase the risk of a person being refouled but it also means that they are longer in detention, if they are in a detention centre. If they are not in a detention centre they are often in the community without support, so they are longer in the community without support.

There are the extra costs to the taxpayer of having to go to the tribunal. So there are extra flow-on costs both for the applicant and for the community each time a decision is not correct.

The RRT also showed that in the last 10 years 16 per cent of the decisions not to grant visas were appealed in courts and 13 per cent of those that made it to a hearing were overturned by the courts. The government points to the ones that are withdrawn. Sure, there are people who put in an application to the courts as a delaying tactic and then withdraw as it gets to the hearing, and I acknowledge that. But, as I acknowledge that, the government also has to acknowledge that others withdraw because a precedent has been set by another court decision which gives them the ability to pursue other options without having to pursue the case through the courts themselves. Thirty per cent of judicial review cases are dismissed with the consent of the parties. Even if half of those cases were dismissed at the request of the asylum-seeking applicants, which is high unlikely, that brings the total per cent of RRT negative decisions repealed to at least 28 per cent.

The point I make here is firstly to reinforce how absolutely critical it is that we do everything possible to get these decisions correct in the first instance. The figures, including some recent enormously high figures of overturns at the tribunal for Afghani asylum seekers or refugees seeking further protection visas, show that we do not always get it right. The costs in inefficiencies from that are significant, and those aspects are not reflected in the Auditor-General’s report because it was not within the scope of their assessment. I say all that not to detract from an overall positive result for DIMIA, because that should be acknowledged, but to say it is much wider than that. At least the areas the Auditor-General highlighted in broad get a reasonable bill of health, and that is very welcome, but there are still a lot of areas that need addressing and should be examined. The price that people pay if the decision is wrong is far too high and there is still much more that needs to be done to improve the effectiveness of decision making to ensure that the risk of anybody— *(Time expired)*

Question agreed to.

**Health: Midwife Services**

The ACTING DEPUTY PRESIDENT (Senator Knowles)—I present a response from the New South Wales Minister for Health (Morris Iemma) to a resolution of the Senate of 3 March 2004 concerning midwife services.
COMMITTEES
Reports: Government Responses

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (3.57 p.m.)—I present the government’s response to the President’s report of 4 December 2003 on outstanding government responses to the parliamentary committee reports, and I seek leave to incorporate the document in Hansard.

Leave granted.

The document read as follows—

ASIO, ASIS AND DSD (Joint Statutory)
Private review of agency security arrangements
The government is considering its response to the report.

A CERTAIN MARITIME INCIDENT (Select)
A Certain maritime incident
The response is under consideration.

COMMUNITY AFFAIRS REFERENCES
The patient profession: time for action—Report on nursing
The response is in the process of being cleared and is expected to be tabled shortly.

CORPORATIONS AND SECURITIES (Joint Statutory)
Report on aspects of the regulation of proprietary companies
The response is being finalised and will be tabled in the near future.

CORPORATIONS AND FINANCIAL SERVICES (Joint Statutory)
Review of the Managed Investments Act 1998
The government is considering the recommendations and will table a response as soon as possible.

Report on the regulations and ASIC policy statements made under the Financial Services Reform Act 2001
The response is in the final approval stage and will be tabled shortly.

Inquiry into Regulation 7.1.29 in Corporations Amendment Regulations 2003 (No. 3), Statutory Rules 2003 No. 85
The response is in the final approval stage and will be tabled shortly.

Inquiry into the disclosure of commissions on risk products
The response was tabled on 17 June 2004.

ECONOMICS REFERENCES
Report on the operation of the Australian Taxation Office
The report is being considered and a response will be tabled in due course.

Inquiry into mass marketed tax effective schemes and investor protection—Interim report
The report is being considered and a response will be tabled in due course.

Inquiry into mass marketed tax effective schemes and investor protection—Second report: A recommended resolution and settlement
The report is being considered and a response will be tabled in due course.

Inquiry into mass marketed tax effective schemes and investor protection—Final report
The report is being considered and a response will be tabled in due course.

A review of public liability and professional indemnity insurance
ELECTORAL MATTERS RELATIONS (Joint Standing)

Territory representation: Report of the inquiry into increasing the minimum representation of the Australian Capital Territory and the Northern Territory in the House of Representatives

The response was tabled on 25 March 2004.

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES

Bridging the skills divide

The response is being finalised and is expected to be tabled in due course.

Hacking Australia’s future: Threats to institutional autonomy, academic freedom and student choice in Australian higher education

This report has been overtaken by events and a response is no longer appropriate as Parliament subsequently passed the Higher Education Support Act 2003 on 4 December 2003 which gives effect to the Government’s Our Universities: Backing Australia’s Future package of higher education reforms.

ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS LEGISLATION

Provisions of the Telstra (Transition to Full Private Ownership) Bill 2003

The issues raised in the report of the Committee were discussed during the debate of the Bill in the Senate on 27-30 October 2003 and 29-30 March 2004.

ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS REFERENCES

Inquiry into Gulf St Vincent

The response was tabled on 11 March 2004.

The value of water: Inquiry into Australia’s urban water management

A response is in the early stages of drafting.

Libraries in the online environment

The government is currently considering the recommendations and a response will be tabled in due course.

Regulating the Ranger, Jabiluka, Beverley and Honeymoon uranium mines

The response will require an extensive consultation process. It is unlikely that a draft response will be ready before the second half of 2005.

FINANCE AND PUBLIC ADMINISTRATION REFERENCES

Recruitment and training in the Australian Public Service

A response will be tabled shortly.

Staff employed under the Members of Parliament (Staff) Act 1984

The response is being considered and will be tabled in due course.

Administrative review of veteran and military compensation and income support

The response is being finalised and will be tabled as soon as possible.

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION

Aspects of the Veterans’ Entitlements Act 1986 and the Military Compensation Scheme

The response will be tabled shortly.

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES

The (not quite) White Paper: Australia’s foreign affairs and trade policy, Advancing the National Interest

The response is under consideration and will be tabled as soon as possible.

Voting on trade: The General Agreement on Trade in Services and an Australia-US Free Trade Agreement

The response will be finalised shortly.

A Pacific engaged: Australia’s relations with Papua New Guinea and the island states of the south-west Pacific

The response is in progress.

FOREIGN AFFAIRS, DEFENCE AND TRADE (Joint Standing)


The response was tabled on 11 March 2004.
Expanding Australia’s trade and investment relationship with the countries of Central Europe

The response was tabled on 13 May 2004.

INFORMATION TECHNOLOGIES (Select)

In the public interest: Monitoring Australia’s media

The report is being considered and a response will be tabled in due course.

LEGAL AND CONSTITUTIONAL LEGISLATION

Provisions of the Migration Legislation Amendment (Sponsorship Measures) Bill 2003

The response was delivered on the floor of the Senate when the report recommendations were debated and amendments voted upon and eventually agreed by the Senate and then the House of Representatives.


Provisions of the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003 and the Migration Agents Registration Application Charge Amendment Bill 2003

The response was delivered on the floor of the Senate when the report recommendations were debated and amendments voted upon and eventually agreed by the Senate and then the House of Representatives.

After being scrutinised carefully by a Senate Committee, Parliament passed amendments to the Migration Act 1958 (the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003 and the Migration Agents Registration Application charge Amendment Bill 2003) on 24 March 2004.


LEGAL AND CONSTITUTIONAL REFERENCES

Inquiry into sexuality discrimination

On 25 November 2003, Senator Greig introduced the Sexuality and Gender Identity Discrimination Bill 2003 which seeks to prohibit discrimination on the grounds of sexuality, transgender identity or intersex status. Given that this bill seeks similar forms of protection to the lapsed Sexuality Discrimination Bill 1995, the Government believes that a response to the Committee’s report on the 1995 Bill is no longer necessary.

Reconciliation: Off track

It is expected that the response will be tabled shortly.

MEDICARE (Senate Select)

Medicare—healthcare or welfare?

The response is to be amalgamated with the responses to the Senate report: Medicare Plus: the future for Medicare and is expected to be tabled shortly.

MIGRATION (Joint Standing)

2003 Review of Migration Regulation 4.31B

The response was tabled on 13 May 2004.

NATIONAL CAPITAL AND EXTERNAL TERRITORIES (Joint Standing)

In the pink or in the red? Health services on Norfolk Island

The response will be incorporated into the final response to the Governance and Financial Sustainability Reports.

Norfolk Island electoral matters

Two of the three recommendations have been implemented. The third recommendation relates to the involvement of the Australian Electoral Commission and a formal response is expected shortly.

Not a town centre. The proposal for pay parking in the Parliamentary Zone
Comments have been received from all interested parties on the proposed response to the recommendation and it is expected to be tabled shortly.

Quis custodiet ipsos custodes? Inquiry into governance on Norfolk Island
The first part of the report was tabled in December 2003 and the second part of the inquiry is due to be tabled in the next six months. The response to this report will be in two phases. The initial response is expected to be finalised in August; the second response will be developed once the financial sustainability report is available.

NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND (Joint Statutory)
Second interim report for the s.206 inquiry: Indigenous land use agreements
The response is being finalised and is expected to be tabled shortly.

Effectiveness of the National Native Title Tribunal in fulfilment of the Committee's duties pursuant to subparagraph 206(d)(i) of the Native Title Act 1998
The government is considering its response to the report.

PUBLIC ACCOUNTS AND AUDIT (Joint Statutory)
Corporate governance and accountability arrangements for Commonwealth Government business enterprises, December 1999 (Report No. 372)
The government is currently considering the recommendations and a response will be tabled in due course.

Review of independent auditing by registered company auditors (Report No. 391)
The response is being considered in light of the government’s position on CLERP 9 reforms and will be tabled as soon as possible.

Review of Australia’s quarantine function (Report No. 394)
The response was provided to the Joint Committee of Public Accounts and Audit on 3 February 2004 by way of executive minute.

Inquiry into the draft Financial Framework Legislation Amendment Bill (Report No. 395)
The response is expected to be tabled shortly.

Review of Auditor-General’s 2002-2003 reports First, Second & Third quarters (Report No. 396)
The response was tabled on 13 May 2004.

REGULATIONS AND ORDINANCES
Legislative Instruments Bill 2003 and the Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003
In his speech at the conclusion of the Second Reading stage of the Bill in the Senate on 2 December 2003, the Minister for Justice and Customs, Senator the Hon Chris Ellison, thanked the Committee for its report and outlined the Government response to the recommendations of the report.

RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION
An appropriate level of protection? The importation of salmon products: A case study of the administration of Australian quarantine and the impact of international trade arrangements
The response is now undergoing final preparation and should be tabled shortly.

SCRUTINY OF BILLS (Senate Standing)
Sixth report of 2002: Application of absolute and strict liability provisions in Commonwealth legislation
The response was tabled on 17 June 2004.

SUPERANNUATION (Senate Select)
Superannuation and standards of living in retirement—Report on the adequacy of tax arrangements for superannuation and related policy
The government is considering the recommendations and will table a response in due course.
Planning for retirement

It is expected that a response will be tabled shortly.

Draft Superannuation Industry (Supervision) Amendment Regulations 2003 and draft Retirement Savings Account Amendment Regulations 2003

The government is considering the report in the context of further developing the draft regulations.

SUPERANNUATION AND FINANCIAL SERVICES (Senate Select) Report on early access to superannuation benefits

The report is being considered and a response will be tabled in due course.

TREATIES (Joint Standing) Extradition—a review of Australia’s law and policy (40th Report)

The response was tabled on 13 May 2004.

The Statute of the International Criminal Court (45th Report)

The response was tabled on 12 February 2004.

Treaties tabled in March 2003 (52nd Report)

The response was tabled on 17 June 2004.

Treaties tabled May and June 2003 (53rd Report)

Consultations with relevant portfolios are still proceeding. The response will be tabled as soon as consultations have been completed.

Treaties tabled June and August 2003 (54th Report)

A response is not required.

Treaties tabled 9 September 2003 (55th Report)

The response will be tabled as soon as consultations have been completed.

Treaties tabled 8 October 2003 (56th Report)

The response has been finalised and will be tabled shortly.

Foreign Affairs, Defence and Trade Committee: Joint Report

Senator PAYNE (New South Wales) (3.57 p.m.)—I present the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade entitled Human rights and good governance education in the Asia Pacific. I seek leave to move a motion in relation to the report.

Leave granted.

Senator PAYNE—I move:

That the Senate take note of the report.

Good human rights education is a key to ensuring that the concept of human rights underpins our legislative framework, our social policies and the way we think about others and ourselves. The protection of human rights depends on them being accepted, observed and protected by each and every member of our society. This requires, in turn, that people are educated and informed about human rights principles, the relevant international human rights instruments and the impact of human rights on their daily lives.

Similarly, it is increasingly recognised that the way a society is governed has a direct correlation to the success of social, political and economic development, including the protection and promotion of human rights.

The decade 1995-2004 was designated as the United Nations Decade for Human Rights Education. As a contribution to achieving the goals of the decade and to addressing the increasing recognition of the importance of good governance to development and the promotion and protection of human rights, the committee was invited by the Minister for Foreign Affairs to review and take stock of Australia’s contribution not only to the decade but to the broad promotion of human rights and good governance in the region. This is the report of that inquiry.
The committee received 45 submissions and took evidence from representatives of 16 organisations during public hearings. The committee found a lack of consensus on the level of community understanding of human rights and good governance in Australia, demonstrating that current promotional and educative approaches are probably not having the desired impact. The relationship between human rights education and good governance education was not clearly addressed in the submissions to this inquiry and the two terms were, on the whole, conflated.

This leads to confusion as to the relationship between education in human rights and education in good governance and the qualifications and training that are required to be considered an effective educator in either area. The committee recommends that Australia works towards developing consensus on definitions of human rights and good governance regionally, with the aim of promoting the development of a regional human rights education agreement.

The committee also concluded that there is a need to provide better coordination of human rights and good governance education efforts in Australia. At present, domestic efforts appear to be a collection of worthwhile but fragmented programs that are not well integrated into the core curriculum in Australian schools and universities, and there is a noticeable lack of community based initiatives. There is a need for coordination frameworks to provide direction and assist with the better use of resources and sharing of knowledge and experiences. Such coordination should bring together all the parties involved in human rights education in Australia in an effort to combat divergence and the confusion this leads to in achieving the goals of the decade.

The issue of coordination of human rights and good governance education initiatives should properly have been addressed at the beginning of the UN Decade for Human Rights Education in 1995. It is with this in mind that the committee believes the development of a discrete national plan of action for human rights education should be a priority for government, for the Human Rights and Equal Opportunity Commission and for the National Committee for Human Rights Education. In its report the committee notes that the role played by the Human Rights and Equal Opportunity Commission in domestic human rights education is an important one and supports HREOC’s continuing focus and responsibility in this area.

The committee believes human rights education should be provided to all Commonwealth public sector employees, particularly those whose work is affected by international human rights instruments and the observation thereof. This should include pre-deployment training provided by the Department of Defence, including a specific human rights education program that focuses on international human rights law. Further, the committee recommends that human rights education be incorporated into all levels of civics and citizenship education initiatives in Australia. At a regional level, there are many activities being undertaken in the Asia-Pacific region in the broad area of human rights and good governance education. However, again this work is generally not well coordinated either between states or organisations.

The committee also recommends that human rights and governance education be clearly identified as a key component and outcome in the strategies and objectives of AusAID’s governance programs and projects. Although Australia continues to support progress towards a regional human rights mechanism and to ensure that human rights education is central to any such agreement, the committee believes that more
effort needs to be applied to better utilise existing regional structures in meeting the goals of the decade.

Australia is actively involved in human rights and good governance education across a broad spectrum of activities. As one of the world’s oldest democracies, and arguably one of its most successful, Australia is in a strong position to make a contribution to the promotion and protection of human rights and the development of good governance in the Asia-Pacific region through its efforts in human rights and good governance education.

The committee identified the media as a very important instrument in the provision of human rights and good governance education. It is therefore suggested that AusAID review its definition of ‘good governance’ to include a reference to the role of the media and that the National Committee for Human Rights Education work with professional bodies and tertiary schools of communication to develop and implement a specific human rights awareness program for the media.

In response to calls for a second UN Decade for Human Rights Education the committee recommends that the Australian government call for the United Nations to conduct a rigorous evaluation of the effectiveness of achievements of the current decade at the earliest opportunity, and certainly prior to further discussion on an additional decade.

In conclusion, and on behalf of the committee, I would like to thank the range of groups and individuals that contributed to this inquiry. I particularly want to thank the members of the secretariat who assisted in the preparation of this report. The secretariat experienced a number of staffing changes during the period of the inquiry and it has been very difficult to bring the report together. I am very grateful to them and to my colleagues. I commend the report to the Senate.

Question agreed to.

IRAQ

Return to Order

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.04 p.m.)—by leave—I wish to make a short statement on behalf of the Minister for Defence in relation to a motion moved by Senator Crossin on behalf of Senator Faulkner and agreed to by the Senate on 23 June 2004 that there be laid on the table by the Minister for Defence no later than 4.00 p.m. today a copy of part of the Office of National Assessments’ classified document log. The Minister for Defence has received advice from the Office of National Assessments that the document requested in the motion was and remains classified. Consistent with the practice of this government and of all previous governments it is not the practice to table classified information in the parliament.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.05 p.m.)—by leave—You have to ask yourself what the government is trying to hide here. We have asked for ‘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 2003 ONA report on the humanitarian impact of the war in Iraq, during the period 16 June to 23 June 2003’. Bear in mind, firstly, that this is simply the record of who this report was marked out to during a one-week period. It is an administrative document; it is not a national security secret. Secondly, the document itself, its title and classification and most of its content, has been published verbatim by Andrew Bolt. To withhold information about the movement of the document, on the basis of its classification, is ludicrous. The minister’s words in the
chamber that this very small part of that report ‘was and remains classified’ can be seen as nothing other than a transparent cover-up.

Briefly, I want to retrace why the opposition has asked for this document. The report entitled *Iraq: humanitarian dimensions* was published by ONA in December 2002. It was written by Andrew Wilkie, a former ONA analyst. It was highly classified—‘top secret AUSTEO’. So it contained highly sensitive intelligence, which ONA believed would be seriously damaging to Australia’s national security interests should it be communicated more widely. That is the rationale for such a classification. The report was issued to a limited number of addressees on a need to know basis. Its distribution was recorded in a log in accordance with ONA’s classified documents handling procedures.

On 20 June last year the office of the Minister for Foreign Affairs, Mr Downer, requested a copy of the report. This was the only request for the report in the six-month period since its publication. Three days after the report was provided to Mr Downer’s office, it appeared in print in the *Herald Sun* in an article by Andrew Bolt. ONA, conscious of the seriousness of the leak, asked the AFP to investigate. Senator Ellison announced last Friday that this investigation had concluded, although the following Monday he was not sure whether it had and said that he would have to check with the AFP. Mr Downer’s office, and obviously I, will fully cooperate with the police … What we want to know is: did they? Did they fully cooperate? Did Mr Downer’s staff answer questions put to them by the AFP or did they decline to do so? That is what we want to know. Of course, Mr Downer refuses to answer, and I ask you to draw your own conclusions. We also want to know what the government intends to do in relation to Mr Bolt. He was the one who received the highly classified report, knowing full well the significance of the classification and who published it in the *Herald Sun*. He made no secret of it at all there in his own article. In the *Herald Sun*, 23 June 2003, one year and one day ago, he said:

… when I go through the only secret report that Wilkie ever wrote about Iraq as an Office of National Assessments analyst …

That is what Mr Bolt said in his own article. He then goes on in that article to quote di-
rectly from that report at length—direct quotes at length, published in the Herald Sun. As Senator Ray and I pointed out in the Senate yesterday, Simon Lappas and Jean-Philipe Wispelaere are serving jail terms for trying to sell Australian secrets—and so they should be. But what about publishing Australian secrets in a newspaper as opposed to trying, unsuccessfully, to sell them? The Russians, the Chinese, the North Koreans and the Saddamites could have bought a copy of the Herald Sun on 23 June 2003 and thereby gained access to the most highly classified intelligence from our premier intelligence assessment agency.

Section 79 of the Crimes Act makes it an offence punishable by up to two-years imprisonment to receive national security classified information and to communicate it. So ask yourself this question: why isn’t the government prosecuting Andrew Bolt? They do not even have to bother to question him; they only have to read the article that he wrote. I will tell you why they will not prosecute. Firstly, the Howard government will never take on a media empire, particularly one that is closely aligned to their own politics. Secondly, the Howard government will never take on Andrew Bolt. Why would they? He is a loyal mouthpiece and lickspittle who will print anything that they give to him. More importantly, any prosecution of Mr Bolt would run the risk of exposing the leaker. A prosecution would expose the leaker—and that would never do.

We are supposed to believe that the Howard government is serious about national security. That is a joke, and it stands exposed today as a joke. The seriousness extends only as far as it serves the political interests of the Howard government. It is a supreme irony that yesterday, while Mr Downer and Senator Ellison were dancing on pinheads to avoid incriminating themselves for being responsible for or complicit in the deliberate leaking of classified national security sensitive information, their colleague the Attorney-General, Mr Ruddock, was launching a report entitled Keeping secrets: the protection of classified and security sensitive information. Mr Ruddock was out there yesterday puffing himself up and saying on the public record:

A vital component in the protection of our national security is safeguarding confidential and security sensitive information which, if disclosed, could prejudice the security of the nation. That is what Mr Ruddock said. I know that is pretty hard to believe. This report was tabled in the Senate yesterday. Of course, I looked at it with great interest. What did I find on page 91 of the report? I found this:

Cases involving espionage, terrorism and the leaking or misuse of national security information have been—and hopefully will remain—quite rare in Australia.

What else did I find in the report? I found this:

There is a very important additional dimension in the need for the protection of classified or sensitive national security information, since the risks of disclosure in these circumstances extend to the very security and defence of the nation, as well as to our strategic interests—not least, Australia’s relationships with other nations and our arrangements for the continued acquisition and exchange of intelligence information.

On page 14 of the report, it states:

Practice and procedure in the classification and handling of sensitive material by government agencies should be improved ...

Against, it states:

The use of injunctive relief should be facilitated to prevent the threatened publication of classified or security sensitive information.

All this is in the report that Mr Ruddock had tabled yesterday on the anniversary of the publication of the Bolt article. The recommendations in the report included a proposal to amend sections 70 and 79 of the Crimes...
Act to prevent disclosure of classified or security sensitive information and to introduce a new summary offence of strict liability to deal with the unauthorised disclosure of classified information.

I ask myself: did the Attorney-General deliberately choose yesterday, the anniversary of the publication of the Bolt article, to launch this ‘tough on leaks’ initiative? How cute of him, if he did! Did he know that, while he was out there trying to persuade the public that the government took its responsibilities to protect national security information seriously, his own ministerial colleagues were demonstrating the fact that the Howard government has nothing but contempt for them? How else can we interpret the circumstances surrounding this leak and Mr Downer’s and Senator Ellison’s evasive and confused responses to questions that were asked directly of them in this parliament?

I have quoted from some of the report that was launched by Mr Ruddock yesterday. I am not going to quote from it more extensively. That is not due to any restraint on my part. It is due to my inability to decipher much of the report, which—I kid you not—is printed in hieroglyphics. Perhaps this is the government’s fiendishly subtle alternative to the more traditional method of blacking out classified elements of reports. I do not know—but some of this report is literally printed in hieroglyphics.

But I suppose the truth of the matter is that the government have been as careful about their production of this report—unreadable in so many places—as they have been about protecting classified and national security information. This is one of the most serious matters this parliament has dealt with. It may well be the most important matter dealt with during the life of this parliament, from 2001 to 2004. The response of the government on this matter is an absolute disgrace. They stand condemned for it, and they stand condemned for not providing that small amount of information that would at least assist the parliament and the public to establish who was responsible for this egregious breach of national security and this outrageous publication of the material in the *Herald Sun* newspaper.

**Senator ROBERT RAY** (Victoria) (4.24 p.m.)—I seek leave to make a statement.

**Senator Coonan**—I am of course disposed to grant leave for Senator Ray to speak—there is no problem. Given the importance that Senator Faulkner obviously places on this matter, I did not seek any time limit for speakers and I just remind Senator Ray that we go back to considering legislation at 4.30 p.m.

Leave granted.

**Senator ROBERT RAY**—Thank you, Minister, for your assistance. One of the things members of this parliament do is place trust in executive government when it comes to security matters. We do not have the same scrutiny; we do not have the same insight. This is something we trust the government on—protecting the secrets of our country. We do not approve of people like Mr Andrew Wilkie walking out of ONA one day and making political comment about it the next. That is exactly what happened on this occasion. Mr Wilkie walked out and became a prime critic of the government. How did this government react? It betrayed all principles by leaking Mr Wilkie’s report to a friendly journalist so he could be denigrated. That is it in a nutshell. That is a betrayal of the trust that this parliament extend to the executive. I could just imagine if in the Hawke-Keating days a similar incident had occurred. We would have had select committee after select committee looking into it.

The government does have and has had a chance at least to retrieve its reputation by
honestly addressing the issue—but it has not. Every time we have asked a precise and well-based question, all we get back is dissembling and waffle. We asked whether Mr Downer’s staff cooperated—no answer. We asked whether Mr Downer made his phone records available—we got no answer whatsoever. Even today Mr Downer will not confirm whether he made his phone records available on this.

Why do we suspect Mr Downer? Because we know, the report having been issued in December 2002, that all copies were accounted for on a return and burn basis. No other copy is sought for six months. Suddenly one copy is sought by Mr Downer’s office, and it appears in the Herald Sun through a friendly journalist three days later. It beggars belief that that was not the source of that document. It is so Nixonian, a government leaking a report so a journalist can do over a victim. It is very similar to the Wilson case in the US where the administration wanted to assassinate the reputation of Ambassador Wilson, so they revealed the fact that his spouse was an employee of the CIA. This is absolutely the same modus operandi.

This return to order has been denied on the specious ground that it is classified material. It is nowhere near as classified as the report that was given to Mr Andrew Bolt. Why are they so terrified? Because they do not want official confirmation that in fact Mr Downer’s office got this special delivery of the report.

Where do we take it from here? We will not give up on this subject—it is too important to the nation’s security to give up on. But there are other alternatives available to us. We acknowledge that the Federal Police have found insufficient evidence to take this further in terms of the leak. There is another course open to the government—under the Crimes Act it is a crime to receive this material and it is a crime to disseminate it. But there has been no reference, apparently, to the Federal Police on this subject. It does not appear that they have investigated the second half of this problem.

So I say here today, if the government does not act, Mr Varghese, the head of the Office of National Assessments, should put a fresh reference to the Federal Police. He has a duty to protect the secrets of this country and he has a duty to make sure no-one abuses that privilege extended to him. So, even if the government is not willing to take this matter further, I ask the very talented Mr Varghese to give a reference to the Federal Police on the basis that the recipient of this material could well have committed a serious offence under the Crimes Act, carrying a sentence of up to two years imprisonment.

You do not get a ‘get out of jail free’ card simply because you are a member of the Journalists Association. You get many privileges, most of which say you do not have to reveal your sources et cetera, but there is no protection for traitorous activity by a journalist in this country. They must abide by the rules, the same as the rest of us. No such privilege should extend to parliamentarians either. I say to Mr Varghese, ‘Get out there, give the Federal Police a reference and let’s see what the recipient has to say on this matter.’

Debate interrupted.

SUPERANNUATION LAWS AMENDMENT (2004 MEASURES NO. 2) BILL 2004

Consideration of House of Representatives Message

Consideration resumed.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.30 p.m.)—I move:
That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Senator CONROY (Victoria) (4.30 p.m.)—We are insisting upon our amendments.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.31 p.m.)—We are dealing with the Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004. The intent here is twofold: one is to benefit employees and the second is to do so in a way that balances the needs of employers to make the necessary adjustments with the objective of standardising the earnings base. The government considers that a start date of 1 July 2010 will allow a reasonable time period and a smooth transition to a standardised earnings base. The commencement date of 1 July 2010 will allow six years, or approximately two industrial bargaining cycles, for employers and employees to consider and incorporate these changes into the bargaining process. The government believes that the proposal to bring forward the commencement date to 1 July 2005 is simply impractical. It also runs the risk of reducing employees’ wage growth more sharply to offset increases in superannuation payments, which is about the last outcome that anyone in this chamber would wish for. A longer transition period will also provide greater capacity for employers to increase superannuation payments through increased productivity thereby not adversely affecting employees or employers.

From our consultations, the government is of the view that it is highly unlikely that employers will wait until 1 July 2010 to revise the earnings base. To do so would remove all bargaining power from the employer on this issue and make it very difficult to offset a wage increase against increased superannuation entitlements or in any way link superannuation entitlements to productivity increases. It is for this basic reason that the government believes that the superannuation entitlements will move progressively towards nine per cent of ordinary time earnings and for many employees will reach nine per cent of ordinary time earnings prior to 1 July 2010.

I also repeat my remark of yesterday that this approach is consistent with the original superannuation guarantee legislation that phased in superannuation increases gradually over 10 years. Whilst I am cognisant of the arguments that it would be a very good thing if employees had the benefit of standardised ordinary time earnings at the earliest opportunity, the government is of the view that two industrial cycles that will allow this to be factored in will both safeguard the interests of employees and accommodate the need for employers to move to a standardised base.

Senator CHERRY (Queensland) (4.34 p.m.)—The Democrats will be insisting on the amendments at this stage of the debate. We have taken the opportunity since the debate yesterday to get in contact with both major peak bodies—the ACCI from the employer side and the ACTU from the union side—to check the concerns that the government has raised about this matter. It is a legitimate matter about the extent to which you phase in a change to an earnings base, which will obviously affect remuneration. It is something which the chamber has to be aware of. We cannot be absolute about it. I do not think the arguments put up by the ACCI frankly stack up, and that is the difficulty I have had.

Right throughout the debate about the superannuation guarantee—unfortunately, I have a very long memory—in 1989, 1990, 1991, 1992, 1993 and 1994, the ACCI constantly argued they could not afford to pay superannuation. It would break the bank—Senator Campbell would remember all the
arguments at the time—it would be the end of civilisation as we know it and everybody would end up unemployed. That was their broad summary of the economic analysis at the time—in fact, it has been their broad summary of the economic analysis at every national wage case ever since. Each of those assertions has been found to be largely not held out within the economy as a whole.

I put the argument to the ACTU that if we did not hold out on 2010 we might be disad-\nvantaging workers, and they felt that was an argument that did not stack up. They were quite confident that they would establish a reasonable outcome within one bargaining round that would be beneficial to both employers and employees rather than having to wait for two bargaining rounds. They also made the point—and I think it is an important point—that the original introduction of the superannuation guarantee in 1990, 1991 and 1992 was a national wage case offset and that the workers have actually already paid for their superannuation by reduced wage increases during the nineties. The workers in this area, because of the anomaly in the treatment of the determination of the wage base, have actually been disadvantaged for 13 years for a wage rise they have already paid the offset on. The ACCI are arguing that they want those workers to pay for their offset twice: once in 1992 in terms of the wage base and again now by being able to hold it over their heads over two bargaining rounds.

I really do not think this chamber should be in the business of benefiting employers against unions in a bargaining round dealing with the phase-in of this particular measure. I accept that there is a need for a reasonable phase-in period, but I do not believe that two bargaining rounds are reasonable in defining that. I accept it might be reasonable to do it over one bargaining period—\n\nbut certainly two bargaining periods would be unreasonable. The workers have already paid for this superannuation increase in the wage offsets during the national wage cases of the 1990s and they should not have to pay for it again now.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.37 p.m.)—I disagree with Senator Cherry’s assertion that employers have had 13 years to implement this proposal. The Superannuation Guarantee (Administration) Act recognises grandfathered earnings bases. There was no sunset clause and no suggestion that employers should start to move to ordinary time earnings as the earnings base. Now that the government has made a decision—and I am wholly supportive of the decision—it is only reasonable to give employers a phased period of time to implement the change. This is a significant change for some employers. For it to commence in 2005 is absurd. Six years is a reasonable transition period and avoids the risks that certainly would be real and apparent if there were to be a shorter transition.

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

The committee divided. [4.43 p.m.]

(The Chairman—Senator J.J. Hogg)
Ayes............... 29
Noes............... 32
Majority......... 3

AYES
Boswell, R.L.D. Brandis, G.H.
Campbell, I.G. Chapman, H.G.P.
Coonan, H.L. Eggleston, A.
Ellison, C.M. Ferguson, A.B.
Ferris, J.M. Fifield, M.P.
Heffernan, W. Humphries, G.
Johnston, D. Kemp, C.R.
Knowles, S.C. Lightfoot, P.R.
Macdonald, I. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J. *
that, with great regret, we will not insist on the amendment. The only reason for that is that there are benefits to charities in this bill. We are deeply uncomfortable with the measures.

**Senator CHERRY** (Queensland) (4.48 p.m.)—I think, on balance, that the Democrats will not insist on our amendment. We think it is a good amendment that recognised ACOSS and its affiliates in the list of deductible gift recipients. But, given that the government has modified its position, we will not be insisting on the amendment at this stage.

**Senator BROWN** (Tasmania) (4.48 p.m.)—The Greens will insist on the amendment.

Question agreed to.

Resolution reported; report adopted.

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**BUSINESS**

Consideration of Legislation

Debate resumed.

*(Quorum formed)*

**Senator BROWN** (Tasmania) (4.50 p.m.)—My colleague Senator Nettle gave an extremely clear argument before the lunchbreak as to why the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2] should not be restored to the Notice Paper. I want to put it on record that I totally agree with her. This is a disgraceful backflip by Labor. It is a reprehensible sell-out of the people that Labor, in the last 12 months, has been defending so strongly. Glory knows what the reason is behind that. Labor has not been able to spell it out yet. It will be interesting to see how it defends its backflip over a targeted safeguard for the poor in this country, like the PBS, for some new policy. Frankly, I do not believe it can do it. Whatever its defence is, Labor’s policy is not going to be as well targeted to look after the interests of the poor...
and the sick in this country as the maintenance of the current contribution scheme for the PBS. In agreement with the Howard government, here goes the Latham opposition saying, ‘We’ll allow that to blow out for both families and pensioners.’ Of course it is going to hit those least able to pay, as Senator Nettle so clearly put it. We oppose bringing this bill back onto the Notice Paper for a second reading. We do so for the reasons that she so strongly put. Through the parliamentary process, we will fight against this hike in fees for people wanting medicines.

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

The Senate divided. [4.56 p.m.]
(The Acting Deputy President—Senator P.R. Lightfoot)

Ayes…………… 42
Noes…………… 10
Majority……… 32

AYES

NOES

* denotes teller

Question agreed to.

NATIONAL HEALTH AMENDMENT (PHARMACEUTICAL BENEFITS—BUDGET MEASURES) BILL 2002 [No. 2]

Second Reading

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (5.00 p.m.)—I move:

That this bill be now read a second time.

Senator CHRIS EVANS (Western Australia) (5.00 p.m.)—Labor will be supporting the passage of the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2]. It has obviously been a very difficult decision, but we will be supporting the government’s PBS copayments legislation.

Senator Brown—Shame on you!

Senator CHRIS EVANS—There is no need for overacting, Senator Brown. You will get your turn in a second.

Senator Brown—It is not overacting; it is a great statement of fact.

Senator CHRIS EVANS—You will have your chance for mock outrage later. Just let me get through my speech and it will all be okay.

The ACTING DEPUTY PRESIDENT (Senator Watson)—Address the chair, please, Senator.

Senator CHRIS EVANS—Would you deal with the interjections then, Mr Acting Deputy President? It is controversial legislation, and I understand there is a great deal of interest in the matter, but we will be looking
to support it. The revised implementation date is 1 January 2005. There are two key points I want to make today about Labor’s decision to support the government’s PBS measure. First, the Latham Labor team is prepared to make hard decisions to deliver budget surpluses. We are prepared to do it in opposition and obviously we would be prepared to do it in government. We are determined to make sure that we deliver strong budget surpluses to keep downward pressure on interest rates. It is a top priority for us. Secondly, the decision shows the contrast with the government’s approach in the way that Labor can deliver budget savings and also work to improve the PBS. Labor is very serious about the need for measures to ensure the long-term sustainability of the PBS and to balance that with Australia’s access to affordable quality medicines.

The challenge Australia faces is to ensure that the $5 billion that is spent on subsidising PBS medicines is well spent and provides us, as individuals and as a nation, with the best health outcomes. I think everyone agrees we need to keep the PBS sustainable. The contrast is that the Howard government seems to have only one method of doing that, and that is by trying to increase the copayment. Since 2002, Labor has been keen to point out a number of better alternative methods to achieve savings. As recently as a fortnight ago, Labor wrote to the government to highlight budget savings arising from drugs moving off patent to generic status. This is obviously a very major change, and these savings could, we believe, deliver up to $900 million in savings to the budget. The only response emanating from the government to these constructive alternatives has been silence, even though those alternatives will deliver savings without the social consequences of a large increase in the copayment.

Irrespective of the government’s inflexibility, Labor believes it can do better. In government we will do what the Howard government has refused to do: we will seek to increase the effectiveness and efficiency of the PBS. A Latham Labor government will review the copayment rise proffered by the government. Labor maintains that a substantial proportion, if not all, of the savings can be achieved through administrative reforms to the PBS and through making proper allowances for the savings likely to be achieved as a result of drugs moving off patent and the subsequent availability of cheaper generic drugs. A key difficulty is that it is impossible for Labor in opposition to adequately cost the savings that could be achieved by reforming the PBS.

Because the Howard government has refused to look seriously at those issues and help us deliver both savings and sustainability to the PBS, Labor was left with little choice but to support the copayment legislation. This was a difficult decision for Labor, but it should be noted that it is a government measure. Labor has simply decided to support it after our attempts to achieve savings for the PBS by making it more cost-effective were stymied by the government. Labor is stuck with the government’s refusal to compromise. For two years Labor has been offering alternative ways of achieving budget savings, but the government will not compromise. For the coalition, it appears that the only answer to the PBS sustainability issue is to increase the price to consumers. But let us be clear about the key point: if we win government at the next election, we will be implementing reforms to the PBS, and the savings made at that time will be used to offset these increases. These savings will be passed back to the Australian community and, in doing this, we will achieve what the Howard government has not even tried to achieve. We will achieve a strong sustainable PBS with increased access.
The current cost of the PBS to the Australian people is $5 billion annually, and there is a responsibility to ensure that the very best use is made of this money. It is not the government’s money; it is the money of all taxpayers. The Howard government has ignored its responsibilities. It has said, ‘We don’t care if the effectiveness can be improved; just put up the costs and let the people carry the can,’ Labor does not support this approach. There are better, more socially responsible ways of achieving PBS sustainability. The Howard government will not accept a socially responsible alternative. Labor will, if elected to government, look to implement that alternative. Labor’s decision signals our preparedness to match our commitment to our social policy agenda, with an equal preparedness to make the tough fiscal decisions required to deliver Labor priorities. We accept the responsibilities of being a serious alternative government.

In conclusion, let me be very clear on this point: there is a clear choice to be made at the next election. It is a choice between supporting the Howard government, which is a vote for what is now an increase in excess of 21 per cent in the PBS copayment, and supporting Labor, which means that any and all of the savings achievable in the PBS through the reforms we will initiate will be passed back to the Australian people. Re-election of the Howard government will mean that on 1 January all medicines on the PBS will be much more expensive for Australians. However, Labor has a better and more effective PBS copayment approach that we think can seriously reduce costs for consumers. Our priority is to reduce this increase as much as possible. Each and every cent of the savings we make by making the PBS fairer and more efficient will be used to minimise the copayment increase. We believe we can do better than the government, and we will. That is the Labor commitment. But Labor will be supporting the bill as proposed by the government as well as the government amendments.

Senator NETTLE (New South Wales) (5.07 p.m.)—There we go: no argument, no explanation, no rationale. There is an admission of the social consequences of the decision that the opposition are making today, but nothing more—absolutely nothing more than that. The National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2] would be more appropriately titled: ‘Make the sick pay for their medicines’. The government think it is a good idea and now the opposition think it is a good idea too. They do not think that we should look for a way to share the increasing costs of medicines. The group in our community that have been identified as the one that should be paying for increasing costs in medicines are the sick.

We have had this bill in the chamber twice before, and we have rejected it twice before for good reason: we should not be slugging the poor to pay for increasing costs of medicines. But both major parties in this chamber have an addiction to tax cuts, and the price of that addiction is scraping back money from poor and sick Australians who want to be able to buy essential life-giving medicines. The least advantaged in our community are being asked to bear an unfair burden whilst Labor and the government throw money at the wealthy in an election year. This is cynical, treacherous politics of the worst kind.

Members of the Labor Party know how cynical this decision is, and some of them have the decency to be embarrassed about it. It is more than just cynicism. It is a betrayal of those people who think that the Labor Party still stand for public health. It is a betrayal of those people who think the Labor Party still stand for social justice. It is a betrayal of those people who genuinely
thought, until this week, that the Labor Party cared about the poor and the sick in our community. From this week, Labor’s claim in the election campaign to protect the disadvantaged members of our community will mean nothing. By supporting this increase in the cost of essential medicines, Labor have joined the government in deciding that it is the poor who shall pay for the tax cuts that they want to give to the rich in our community. This legislation will inflict hardship on millions of struggling Australians, working men and women, that Labor claim to represent and whom they are betraying today in the Senate. The sick and the poor will pay dearly because of this price rise.

A recent study by the *Australian and New Zealand Journal of Public Health* found that 15 per cent of households already say that they cannot afford to fill the prescriptions that their doctor writes for them. The people who are most likely not to be able to afford essential medicines—thanks to this legislation—will be people with chronic illnesses, people on low incomes and working families with children. These are the people who have told the researchers that, every time one of their kids gets sick, they have to make a decision that no parent in Australia should have to make: ‘Can I afford to take my child to the doctor? Will my family suffer in order for me to pay for the scripts that, for the health of my child, I must pay?’ The government and the Labor Party are saying today that they think it is appropriate that millions of families around the country will have to ask those questions. That is the consequence of the decision being made today. We have a clear indication today that the government and the opposition think that it is a reasonable and decent vision for this country. Well, it is not.

Medical organisations have repeatedly told us that more and more prescriptions written out by doctors are not being filled by people because they do not have the money. In 2002 the government estimated that five million scripts per year were not being filled and would not be filled if the copayment were increased. As a result of the decision being made today to increase the copayment, more than five millions scripts are not going to be filled. The Labor Party are conspiring with the coalition to make the situation worse. The people who will suffer most from this measure do not live in Liberal Party electorates. The individuals who will suffer under this legislation live in the heartland of Labor electorates.

The PBS copayment has always been a creation of Labor and Liberal governments working together. Until the last Labor government came into office, pensioners had been exempt. Now the Labor Party have decided to slug them too. The Howard government introduced not only a quiet and automatic CPI increase at the beginning of each year but also massive increases to the copayment in a couple of huge and socially damaging leaps. Until this week, the Labor Party had joined with the Greens and other opposition parties in the Senate to stop this legislation. Before us today is the latest, most savage and most damaging increase in the copayment. When the first bill was introduced, the ALP health spokesperson at the time said:

It is bad health policy and it is bad economics.

The spokesman went on to say that it was ‘hitting the sickest and poorest’. The shadow minister for finance, Bob McMullan, says that Labor now have higher priorities. What higher priorities does Labor have than ensuring that sick people in our community are able to access affordable medicines? We did not hear an answer to that question today, so we are left to assume that the Labor Party would rather give tax cuts to people earning over $52,000 a year. They would rather hand this money to individuals earning well over
average weekly earnings in this country than provide for a strong public health care system. We are left to believe that Labor think tax cuts are more important than public health. That is the question for Labor today: do you think tax cuts are more important than public health? And the answer that we have heard is: yes.

The Pharmaceutical Benefits Scheme is a critical part of Medicare. It is designed to provide essential life-giving medicines at affordable prices to all Australians. Drugs are listed on the PBS only after lengthy evaluation of their cost-effectiveness. The PBS is a scheme that has been promoted internationally by the World Health Organisation, yet here the political party that developed the system is undermining it. So much for Labor's commitment to Medicare, and so much for the claim that they believe in universal public health care. Today it is evident that they do not.

Under this bill the cost of a standard PBS prescription drug will rise from $3.40 to $4.30 for health concession card holders and from $23.70 to $28.60 for everyone else. That might not seem like a big increase to people sitting in this chamber, but it makes a huge difference to people who are already on tight budgets and to people with chronic illness and life-threatening conditions. The Australian Medical Association predicts that people will not take their medication if this bill goes through, because they will no longer be able to afford it. The Australian Consumers Association says that the price rise will unfairly penalise the poor and the sick. Francis Sullivan, from Catholic Health Care Australia, said on the radio this week:

"... we now have Labor being prepared to support policy and legislation which will ... mean that the lowest paid in Australia will pay up to nine per cent of their take home pay on medicines, whilst the better off in this country will only pay two per cent."

That was based on a NATSEM study in February 2002. It was based on future predictions and did not take the copayment into consideration. If it is not enough that Labor says that the poor should pay nine per cent of their income on medication and the rich should pay two per cent, with the copayment that differentiation will be even more pronounced and regressive.

The Chronic Illness Alliance has just undertaken a study of 400 people. It is yet to be released publicly but it looks into the health costs of people living in rural Victoria. The study found that low-income earners spend 27.5 per cent of their income on health related costs and that medication is the largest component of this. People earning less than $13,000 are spending $3,500 a year on their health related expenses. These people, who access the PBS drugs at a concession rate, spend $334 on PBS drugs. Low-income earners are also big users of over-the-counter medicines—they spend around $570 per annum. That means that their total medication cost per annum is around $900, and it will be more now, thanks to this bill. Those people who earn between $26,000 and $36,000, mainly families, spend $4,356 per annum on their health costs. They spend $839 per year on Pharmaceutical Benefits Scheme drugs and $885 on over-the-counter medicines, which is a total of $1,724 per annum on medication. These people also get it at the concessionary rate.

The Chronic Illness Alliance says that these people are making a choice between whether to eat, whether to have heating or whether to take their medication. This includes people with very serious illnesses such as asthma, diabetes and cystic fibrosis. The Mental Health Council and the Royal Australian and New Zealand College of Psychiatrists warned yesterday that the price rise would have a significant impact on people who required regular long-term medication.
The chair of the Mental Health Council said that people living with mental illness are already experiencing extreme levels of poverty and homelessness. He said:

Our fear is that increasing their financial burden may push many people with a mental illness into further poverty and lead to increased homelessness.

The Consumer Health Forum is concerned about the disincentive for people who already spend a lot of money on medication and are on low wages or work part time. It is concerned about the disincentive for these people to stay in paid work. If the financial burden of their medication grows, they may decide they are better off quitting work so that they can get their medicines for the concessionary rate. So the Consumer Health Forum is predicting an increase in unemployment as a result of this decision today. Higher prices for essential medicines will also discourage people who are not ill but require medication to prevent them from becoming seriously ill or having complications. If they do not fill their scripts, they will end up sick and they will end up in hospital.

The Hepatitis C Council says that people who have hepatitis C and are awaiting a liver transplant or who have had one will be hard hit by this increase. Diabetes Australia says that people with type II or adult onset diabetes see their GP twice as often as the average patient. They need to fill their diabetes drug scripts seven or eight times a year. In addition to medication, there are other costs, such as test strips for checking blood glucose levels and pumps for insulin. This is on top of the additional costs of living with diabetes—the higher cost of food, insurance and specialist check-ups. As a result of this decision by the Labor Party to cave in, people with diabetes will pay more. People living in aged care facilities, who have an average of $35 a week left after paying their rent, will find it difficult to pay higher prices for medication.

Why should these individuals suffer so that the ALP can deliver tax cuts? Are these the adverse social consequences that the ALP referred to when it announced this decision—when it announced this backflip?

I want to make a couple of comments about the sustainability of the PBS. This is the argument that the government likes to put forward about why we need this increase in the copayment. It does not follow that in order to maintain the long-term sustainability of the PBS we need to slug patients for more money. We question the assumptions that underpin the government’s claim that we need to increase the copayment. Research by the Parliamentary Library shows that the PBS growth rate over the last decade has not been uniform. The latest growth rate, for 2002-03, was 9.6 per cent. That is down from 20 per cent between 1999-2000 and 2000-01. Over the last decade growth rates have fluctuated. They have not followed a trend of slowing, accelerating or remaining the same. This leads the Parliamentary Library to conclude that this should caution against concluding solely on the basis of recent past experience that PBS expenditure is likely to continue its growth at an annual average of around 12 per cent.

The high projections for future costs to the PBS are based, in part, on spikes. The listing of a couple of drugs, one of which might have been prescribed for conditions other than that for which it was listed, and the government’s decision in 2001 to extend concession card status to self-funded retirees earning up to $50,000 a year, and $80,000 a year per couple, allowing them to buy their medication at the concessionary rate—these have been significant factors in the cost of the PBS to the budget. Projections by the Department of Health and Ageing and by the National Centre for Social and Economic Modelling estimate that the average annual
growth rate in the PBS between 2001-02 and 2006-07 will be 5.8 per cent per annum.

We do not need to be panicked into slugging patients more. What we need is a considered examination of how to deal with the sustainability of the PBS. That is why in March last year the Greens moved for an inquiry into the sustainability of the PBS and to look at the different options and paths we could take. We were the only ones in the chamber who said, ‘Let’s have an inquiry into the sustainability of the PBS.’ No-one else wanted to look at that, yet today we have the government and the opposition saying that the only thing we can do to deal with the issue of financial sustainability of the PBS is to increase the copayment. That is just unbelievable. The Australian Consumers Association has calculated that, if the measure had come into effect when it was introduced in the 2002 budget, by 2006 it would have been paying for fewer than 12½ days of the cost of the PBS. So even if you increase the copayment there will be no significant benefit to the cost of the PBS. In fact, there is hardly any benefit relative to the total cost of the PBS. Yet there is enormous suffering by sick individuals and poor individuals and their families. This move will cut a lot of people out of health care and it will not make a jot of difference to the future of the PBS. I will now move a second reading amendment that was moved by the Labor Party last year.

I move:

Omit all words after “That”, substitute “the Senate rejects this bill for the following reasons:

(c) by depriving sick and elderly Australians of the medicines they need, there will be an increased need for greater medical interventions in public hospitals and nursing homes at even greater cost to taxpayers;

(d) there are other, more effective, means by which the long-term sustainability of the Pharmaceutical Benefits Scheme (PBS) could be assured, means which would put appropriate responsibility on the pharmaceutical industry and the medical profession rather than on those least able to bear the burden, and on which the Government has been silent since the 2004-05 Budget reply; and

(e) the true rationale for the bill is to restore the budget bottom line and has nothing to do with the long-term sustainability of the PBS or with genuine health outcomes for Australians”.

(Time expired)

Senator ALLISON (Victoria) (5.27 p.m.)—Once again the Democrats reject the notion of asking the sick and the elderly to bear the cost of the government’s inability to put in place appropriate processes for maintaining the PBS as a world-leading program for providing access to medications. The Democrats rejected the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2] in June 2002 and in March 2003, and we do so again today.

This was poor policy when it was introduced the first two times, and it remains poor policy. We are appalled at Labor’s backflip which will allow the government to shift costs onto those who can least afford it. As recently as Monday of this week, Labor were saying that they would do anything they could to protect the PBS and the ability to deliver medicines to consumers at world-beating prices, yet the very next day they declared that they would now support huge increases in costs to the sick. Clearly, when
Labor spoke about protecting the PBS they did not mean protecting the Australian public from increasing prices. It does make one wonder what this means for the ALP’s strong commitment to protecting the PBS under the proposed FTA.

I think it is amazing that ALP senators came out so strongly against this legislation on the previous occasions it was introduced yet now they suddenly believe it is the right way to go. What happened to the belief that the result of this bill being passed would be a ‘less accessible and less fair PBS system’? That was said by Senator Hutchins. Then there was Senator Buckland’s statement:

The only thing this bill will achieve is to once again leave all Australians, in particular the sick-est and poorest Australians, under the peril of not being able to afford the essential medicines they need.

I see that Senator Forshaw is in the chamber right now. He said that this bill:

... directly attacks Australian families and pensioners who need access to vital medicines. It is clear that it will make some medicines simply unaffordable. It will dramatically increase the financial pressure on Australian families.

What happened to the call by Senator McLu-cas for the Howard government to ‘bring it on’ if they wanted a double dissolution election on the PBS? What has happened to change their minds? Has Labor simply fallen for the government’s scaremongering over the PBS, or is there more to it? What sort of deal has been done, we ask in this chamber, to get this kind of short-sighted inequitable legislation through?

Then again, perhaps we should not really be surprised that Labor have finally weakened and let copayments go through—after all, under Labor the general PBS copayment increased by 420 per cent from $4 to $16.80. We argue now, as we have in the past, that increasing copayments is a very lazy and short-sighted way of bringing down the costs of the PBS for the government. Any minor savings that may occur through increasing that copayment will not last very long, because this measure does not do anything to address the inefficiency and waste that exists in the system. I would have thought that the Labor Party could have used this as some sort of leverage over the government, could have pushed them into making the sorts of changes to the PBS system that they have long promised to make. But no, we have it in its entirety. Apart from dates and so forth, the bill is unchanged from the last two times we dealt with it.

In order for copayments to have any real long-term benefits there would have to be increases similar in size to those we are fac-ing today on a regular basis. Is this how the government and Labor are going to protect and maintain the PBS as a world leading program? Copayments will not have any effect on most of the factors that are contributing to waste and inefficiency in the PBS. The government and Labor have not looked at the great benefits of some of the reasons why the costs have increased. The new medications that have come on board are very expensive but nobody from the government or the ALP, as far as I can see, has come out and said there are savings to be made in our health system generally because of those medicines.

Copayments will not deal with the inefficiencies in the system. They will increase the burden on those in our community who are least able to bear that burden, however. Eighty per cent of PBS beneficiaries are con-ceSSION card holders, most of those elderly. They clearly have a limited ability to pay more for their drugs without having to go without in some other necessary area of their lives. Low-income patients who do not qualify for a concession card will be particularly hit. People with chronic illnesses who need access to medication are more likely to be on low incomes. They will not have the same
access to the lower copayment rates as concession card holders and therefore will face having to spend greater proportions of their income on medication.

I want to quote from an email I received yesterday—one of the many that are starting to come through from people shocked and alarmed at what is going on in this place. I will read the full text of that email because I need to help the ALP, should they change their mind on this PBS decision, to understand what it means to be chronically ill and to face these increases:

I was extremely disappointed to read that Labor has decided to support the Liberal Party’s plan to increase the PBS by 30%. Previously I had believed that this move would be blocked by the Labor Party, but I am now faced with the realisation that this policy is likely to make it through both houses of parliament. In order for you to see the impact that this will have on many thousands of Australians, I am going to share some personal details about myself.

I have been an insulin dependent diabetic for over 30 years. I was diagnosed with kidney disease approximately seven years ago and told I could expect to be on dialysis within five years. I sought further advice and was told that if I could keep my blood pressure under control with medication and diet that this may not be the case. My doctor found a mix of tablets which achieved this, and my kidney deterioration has been kept at a steady level.

This year I have been diagnosed with heart disease. Once again I have been told that medication is the only thing which will help my situation. I am now taking 14 prescription tablets a day and four injections. I maintain this expensive regime so I can continue to work as a teacher and provide for my family. Because I work I am not eligible for a healthcare card and although the safety net helps it still takes six months to reach this limit. That means we have to find $150 a month that other families do not have to find. That extra $150 a month means my family is missing out on something other similar families, without acute medical problems, have.

This 30% increase in the benefits scheme co-contribution and safety net will mean my medical expenses will now be close to $200 a month. That means my family will suffer even more. I will have less to put away for my children’s future. My children may have to go without something they might otherwise have had.

I do not think of myself as unique or as a person who will be most disadvantaged because of this decision, but that should not lessen my argument. Ordinary Australians with acute medical conditions should not be made to pay for other programs. We are already suffering enough. Please block the passage of this bill.

We will, but if Labor do not then the bill will go through and this constituent will be slugged around $200 a month as a result of his chronic conditions.

Evidence from overseas has shown that copayments result in patients not filling their scripts. A 2002 study reported in Health Affairs journal found that 21 per cent of Australians did not follow their doctor’s advice or treatment plan because it cost too much, and nine per cent skipped doses of their prescription medications to make the medication last longer. This situation can surely only get worse if copayments go up even further and drugs become even more unaffordable for the people who need them.

The government is expecting to save money from people who stop filling their prescriptions. This is another example of the government’s short-sighted and narrow minded approach to health care. In the long term, stopping people from having access to medication will simply cost the health care system more money because conditions which may have been prevented completely, or prevented from progressing to a more serious state, will not be prevented as a result of this legislation. Consequently, people will end up requiring more acute, more expensive health care than they otherwise would. Increases in copayments are likely to lead to
simply shifting costs in the health care system to other areas—for example, more GP visits and more hospitalisation. It is highly likely that this will actually cost the government more in the long run.

This government continually refuses to recognise the substantial evidence that shows that spending money on prevention saves money in the long term by preventing the need for more expensive services. PBS spending cannot be seen in isolation. It is only one component of a comprehensive health care system. Costs in this area also have implications for other areas. What will happen to people’s inability to participate in the work force—if their health suffers because they cannot afford medication? What are the costs for the Australian public associated with this? What are the costs associated with increased needs for carers and for those people whose health will suffer from lack of access to medications? What are the costs to the community of providing this additional care? The PBS is no more expensive than in comparable countries. Australia is a relatively wealthy country that can afford to pay for health care for all of the community, if spending is managed in a responsible and equitable way.

The Democrats support changes to the PBS that will stop wastage in the system and make the PBS more efficient. There are many more cost effective and socially responsible ways to make these changes and to save money, without hitting the poor and the sick. If people have to pay increased copayments, they will simply be paying more to subsidise an inefficient system. The government will be asking people to pay more money, and this money will be going in waste and inefficiency. There are many measures that the government has not used sufficiently to decrease costs within the PBS. Leakage is a major problem within the PBS, and the government’s efforts at addressing this problem have quite frankly been pathetic. I will acknowledge that some progress has been made. But, given the very long list of promises the government made, it is not much of an effort.

Increasing the use of price volume agreements, where higher sales of particular drugs lead to decreases in the price of that drug, need to be used much more extensively. I do not think there is any evidence of the government going to industry and saying, ‘This drug is suddenly being used much more than we might have anticipated. Let’s renegotiate the price so that increased price volume can be recognised.’

When greater than expected uptake of drugs occurs, manufacturers are not only getting more money from higher and often unnecessary sales of their products—in the case of leakage and conditions for which they are not prescribed—but also getting them at a higher price. Is it fair that we ask concession card holders and low-income Australians to pay more for their drugs so that manufacturers can make higher profits? The provision of more resources so that doctors, pharmacists and consumers are routinely informed about the existence of cheaper non-brand medications that are just as effective as more expensive branded medications would stop the waste of money on these more expensive options. I know many pharmacists are doing this, but to what extent is that happening? I think we need to understand this before we start increasing copayments—or at least the ALP should.

Tendering out the wholesaling of PBS medication distribution would save money, as would other measures to encourage price competition between generic manufacturers. The government promised to tender out wholesaling of pharmaceuticals some years ago. In fact, it did a report on this which
showed that it was likely to save a great deal of money—millions a year. But the government has not moved on that. I am looking forward to the committee stage of this bill to ask the minister why this is the case. The government must undertake routine reviews of the cost effectiveness of listed drugs to ensure that drug prices reflect the most up-to-date information on clinical effectiveness and patterns of use. Changes occur in diseases and in the drugs that are available to treat them. Drugs are frequently used for a range of conditions, with differing levels of effectiveness. Prices for drugs should reflect the different uses and the different levels of effectiveness and should be reviewed to accommodate any changes that occur over time. But this is not happening.

These measures do not target the consumers, though, in the way that copayments do. The types of price signals and market measures that I have just described are aimed primarily at manufacturers, pharmacists and doctors. That is much more appropriate than targeting consumers, as these groups are the ones that have the most influence over the costs of pharmaceuticals, much more than members of the public. It is the public who will be asked to pay. I guess it is easier for the government to shift costs onto those people who have little input into the cost of drugs than it is for government to use its monopolistic power to work with the groups involved in the manufacture and distribution of those drugs. This is another case of the government targeting the end user to try to solve a complex, systemic problem.

The Democrats would ask: why is it that the government can find $1 billion to fund an unjustified war in Iraq? As reported in a Herald Sun article last year, ‘$665 million for feel-good advertising’—and I am sure that does not include some of the advertising that was the subject of questions I have asked in this place, such as those about the Scoresby Freeway.

The government continues to find $2.1 billion for the private health insurance rebate. We know that the private health insurance rebate has delivered very little by way of benefits to the general public. It has been a huge waste of money. That amount was much more than the government was going to save from these increased copayments, not to mention of course tax cuts for the wealthiest in our community. The current estimate of political advertising in the lead-up to this federal election is already more than $100 million. They are just a few examples of wastes not just within the PPS system but outside it that this government should have addressed before it started charging the sick.

I foreshadow second reading amendments that will delay the start-up of this legislation until and unless the government takes action to move on the measures that it promised or had recommended to it in terms of reducing the cost of the PBS system. I seriously hope that we will at least get Labor’s support for doing that. It makes a lot of sense to us to ask the government to, firstly, do what it promised and, secondly, to do what is reasonable, responsible and what will not have this very bad effect on those people who most need pharmaceuticals.

Senator CHERRY (Queensland) (5.45 p.m.)—In announcing the decision of the Labor Party to backflip on the issue of the Pharmaceutical Benefits Scheme co-contribution, its shadow finance minister, Mr McMullan, said:

Nobody ever got elected who did not make a tough decision.

When politicians start talking about tough decisions it is always the case that someone is going to get hurt. You know when a politician starts talking about a tough decision that it is usually the poor, the sick, the unem-
ployed or the aged who will get slugged. In this case it was all of them. It is very disappointing when you look at what the Labor Party has done. They made what was, for them, a tough decision, but for the aged, sick, poor and unemployed in Australia it is an even tougher decision which they will have to live with year in and year out, week after week. The coalition and the Labor Party stand condemned for imposing, apparently on the basis of balancing the budget, an impost on the most vulnerable in our society. They should stand condemned. There is another quote from Mr McMullan which I found fascinating. He said:

Labor continues to disagree with the measure. But we have higher priorities for the $1.1 billion currently set aside to fund the shortfall generated by Labor’s opposition to the measure. They have higher priorities than helping the aged and the sick in our society. I look forward to seeing what that higher priority could be, for what higher priority can there be than looking after the most disadvantaged in our society? Is it going to be tax cuts? Are we going to see the ALP putting tax cuts for middle-income earners at a higher priority than dealing with the aged and the sick? It would be typical, I suppose, in some respects—when you look at Labor’s long history in this area—for that to end up being where the higher priority lies. But it would be very disappointing in my view, and in the view of the Democrats, if the higher priority that Mr McMullan was talking about ends up being tax cuts for middle-income earners.

The Labor Party, as we well know, have already come forward and supported the tax cut for high-income earners—$14.7 billion over four years for people earning higher incomes. In relation to the $1 billion hole that came from the PBS, let me give the Labor Party a bit of advice about some of the less tough decisions they could have made to find that $1 billion in their forward estimates. If they had pared back the tax cuts for high-income earners—lowering the top marginal tax bracket from $80,000 to $75,000—they would have found the $1 billion needed to plug the hole. That would have reduced the excessive and outrageous tax cut for high-income earners from $21 a week to $16 a week. The Labor Party would still have plugged the hole and the aged and sick would have been okay. If the Labor Party had put that in the forward estimates they would have made a tough decision that would have been tough on high-income earners—they would only get $16 a week rather than $21 a week—but they would have plugged the hole in the forward estimates. Would that have lost the Labor Party votes? It may have lost a small number of votes in that area, but every opinion poll shows that 66 per cent of Australians would prefer to see money going into health and education expenditure rather than into tax cuts, particularly for the top marginal tax bracket. That would have made more sense to me. That would have been a true Labor social justice statement. Instead, we see this slugging of the poor and the sick.

I should read into the Senate Hansard the comments yesterday of Francis Sullivan from Catholic Health Australia. I think he sums up the problem that this has caused for the Labor Party’s standing on public health issues. He said:

So much for Labor’s supposed commitment to a universal health system where the lower paid and the sick are subsidised by the young and well. Due to Labor’s acquiescence low income people, the sick and chronically ill will pay up to 9% of their take home pay on medicines whereas the better off, who can afford more, will only pay up to 2%.

Labor is confusing pursuing good health policy with an expedient strategy to bring tax comfort to some at the expense of the sick and lowly paid.
As it now stands the poor and those who suffer from illness and chronic conditions no longer have a voice in the major parties.

There was another quote in the media yesterday which really jumped out at me. It was from another expert on public health matters, the Premier of Western Australia. He is a Labor premier. In the *West Australian* this morning he said:

I am disappointed in that decision and I would have liked to have seen our Commonwealth colleagues look after the battlers a bit more.

I think there will be a lot of people out in Labor land today who will be saying that. They would have like to have seen Mr Latham, Mr McMullan and Ms Gillard look after the battlers a bit more. I think Dr Gallop is right on the money in saying that. We were expecting from the alternative government an alternative vision—a vision of where we are going to be going, of a fairer Australia where families were looked after and where the ladder of opportunity ensured that people could go from the bottom to the top of their society. Instead, the ladder of opportunity has had a couple of rungs knocked out of it today. The rungs have been knocked out for the aged and the sick in terms of getting access to affordable, quality health care.

I think Mr Latham will suffer a real message about this in coming weeks from the electorate. The electorate does not like people who do not hold to a principle. The electorate does not like people who say one thing and mean another. The electorate does not like people who engage in this extraordinary backflipping on policy. People want their politicians to believe in things. They would like to believe that the Labor Party believes in social justice, particularly for the aged, the sick and the people who are least advantaged in our community.

With this backflip we have seen the Labor Party leaving those people behind. The Democrats will be opposing this bill. The Democrats will be opposing the increase in the co-contribution. We oppose the increase in the co-contribution because it is unnecessary. As a health economics measure it is unnecessary and unneeded. It was based, as Senator Sherry pointed out when we debated this last time, on shonky modelling in the Intergenerational Report released by the Treasurer. It is based on shonky assumptions in the forward estimates about health costs rising in the future. It is based on a reluctance by the government to deal with the administrative issues from the Pharmaceutical Benefits Scheme outlined by my colleague Senator Allison.

It is true that spending on health has increased over time in Australia. In fact, according to the Australian Institute of Health and Welfare, national expenditure on health was the equivalent of 9.3 per cent of GDP in 2001-02 compared to 8.9 per cent in 1999-2000. Nevertheless, our health expenditure to GDP ratio has been found to be below the OECD average for comparable countries. Even with our per person health expenditure below that of other countries, the coalition government made sure that its share of total health expenditure fell 1.3 per cent between 1999-2000 and 2001-02. If you look specifically at the PBS, there is no reason for alarm over the government’s share of Australia’s total pharmaceutical costs. A recent Productivity Commission report found that the government’s share of the total pharmaceuticals bill is low in comparison to other OECD countries, although the US public sector does pick up a lower percentage of drug costs than does the Australian sector. Given this government’s willingness to follow in the footsteps of the US in other areas, maybe this is the template it is using. Despite all this scaremongering, the reality is that there is no
unsustainable blow-out in health costs in general or in the costs of the Pharmaceutical Benefits Scheme. Nevertheless, the government continues to spin its line about needing to curtail costs, and Labor are now also saying that they have to make tough decisions about spending priorities.

It is so extraordinarily disappointing to see this decision. I wanted to believe when Mr Latham became leader that we were seeing a new type of politics where families were put first and where the least advantaged in our community were reached out to and given an opportunity to move forward. I wanted to believe that we would not see the opportunism of previous Labor Parties of engaging in a bidding war on tax cuts with the coalition. But it seems that the new politics that Mr Latham spoke about are over and the old politics are back. In the next election campaign we will see what Labor’s higher priorities are and whether they will produce a reasonable health system for the poor and the aged, but I certainly would be very concerned if that higher priority turns out to be simply tax cuts, tax cuts and more tax cuts—a Dutch auction of who can appeal to the lowest common denominator in our electorate.

**Senator LEES (South Australia) (5.54 p.m.)**—I rise to speak on the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2]. I do not want to suggest that to change one’s mind is a bad thing; indeed, in politics it is good to keep an open mind. Perhaps one of the best examples I can give is that of our committee process. No-one likes to go into a committee hearing with everyone having made up their minds—we might as well write the report before we start. But, in my 14 years in politics, this is one of the most unfortunate changes of mind and about-faces that I have come across—and one of the strangest—because this has nothing to do with health. If there were actually some health reasons here, perhaps you could understand it. If there had been, perhaps, some new research or new information to explain why we needed to increase the cost of medication for those people in our community who are the sickest amongst us, perhaps you could understand it, but this has nothing to do with health.

For the Labor Party this is really a paper transaction. It is all about numbers, figures, bottom lines and balance sheets. It is all about what they are going to promise to Australians come the election. I thought, as Senator Cherry has just said, that we were going to have a new Labor Party with a new vision, new ideas and a new direction—but it seems not. It seems they are going to have another bidding war where we put aside what is actually in the best interests of Australians and see what appeals to the hip pocket. I say again that this is really one of the most—if not the most—unfortunate and harmful changes of mind that I have seen in my time in this place.

I will not go through the Labor Party speeches. I could, but I realise that there are some Labor Party people who feel extremely uncomfortable about this. One could sympathise with them, but they are members of the Labor Party and they know the rules. One of the reasons I could never be a member of the Labor Party is the strict conditions that you face—even about speaking out, let alone voting differently. So I will not go back through individual senators’ speeches, because I know that there are quite a number of Labor senators in this place who realise what they have done and who are very uncomfortable and very unhappy about it.

The Labor Party have put pressure on the sickest members of this community. By definition, they are the ones who are going to have the most scripts. While there are two safety nets there, it takes many months to get
there. It is going to put pressure on people who are on the disability support pension, the majority of whom would have fairly high medication use. Most of the medication for most people I know on a disability support pension is not actually listed on the PBS. This is for a raft of reasons. Some of them are not listed because they are not approved or because they are vitamins or other non-prescription drugs—in some cases I guess you could best describe them as alternatives.

As well as medications, people on the DSP have a raft of other imposts. Living on the DSP is really putting oneself in survival mode day by day. What this bill will do is take over $1 billion from those in our community who rely heavily on medications. For those who are on high incomes, generally the fittest members of our community, this will be of little concern because $6 perhaps once every couple of months—and maybe, if you are lucky, only once or twice a year—is not going to be noticed. That would not be noticed by someone on $50,000, $60,000 or $70,000. Those in the community who are the sickest also tend to be the poorest because they simply cannot work full time—if they can work at all—or hold down high-pressure, high-paying, stressful jobs.

As has been said, if we went into some of the Labor Party speeches, we could find all of the reasons for which they originally opposed this. Those reasons are well known. One I want to stress is that research—including work done here—shows us that, if people are having trouble paying for medication, they will not even go to the doctor. They will end up in our hospital system or they will simply get sicker. In some cases, not going to the doctor will not matter—it may be something that a couple of days in bed will fix. In those cases you just need a decent rest, not medication. But it seems from research that at least half of those who put off going to the doctor or put off buying medication will only get sicker and sicker. For children this can be quite devastating. Those who will not get scripts filled or who end up in our hospital system are going to put even more pressure on our public health system than they would have if we had made sure that they could afford the medication in the first place.

I will make two other points before I close. One is that there are other things happening and other options within the PBS to rein in costs. This government—and I congratulate it for it—has looked at a number of ideas. I have been pushing for years the idea of a lifestyle script, which is being trialled and in some cases has been put in place. There are rafts of things, such as better prescribing systems for doctors and education programs for Australians so they know that they do not always need antibiotics. There will be less pressure to look at ways of saving money and keeping the PBS sustainable. Then, of course, there is allied health, which is now within Medicare thanks to the negotiations of the four of us on the crossbenches with the new Medicare package. With allied health where it should be, it will reduce some pressure on the PBS.

In closing, this has got nothing to do with health; it is all about some challenge the Labor Party feel to be more economic rationalists and better economic managers than the government. The message that they have sent to the people of Australia is that the Labor Party are little different from the Liberal Party. The feedback I am getting is: ‘They’re all much the same. Why bother changing?’ I say to the ALP: rather than this taking you forward in your quest to become the government, I believe it has moved you backwards. The strategists who thought this up should be sacked.

Senator RIDGEWAY (New South Wales) (6.01 p.m.)—I also rise to add my concerns
to those of my colleagues in relation to the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2]. It is an absolute disgrace that we are debating this matter yet again and that, after two years of strong Senate action protecting the rights of the sickest and poorest in our community, the Labor Party seem to have folded like wet laundry and the government have jumped in on this opportunity with glee.

An article by the Australian Consumers Association about the ALP PBS backflip states:

80% of PBS expenditure goes on people with health care concession cards. These are people who are generally on low incomes—they just do not have the capacity to pay higher prices for their medication. Also bear in mind that the threshold for qualifying has increased by 30%.

We are talking about punishing people with chronic illness—people with arthritis, cancer, diabetes and asthma—all of whom have high medication costs.

Ms Ballenden of the ACA said that families would also be paying more for their medicines. The article continues:

Families who have a couple of kids with asthma for example are going to find it expensive to get through winter. Also they have to spend much more to qualify for the safety net.

If there is a full 30% increase, on average ordinary consumers would be paying just over $7.00 extra per prescription and an extra $1.14 for concession card holders. The safety net threshold will increase from $197.60 to $256.00 for concession card holders and from $726.80 to $944.84.

This was bad policy two years ago when the Government introduced it—

and there is no reason to suggest that it is anything other than bad policy now—

It appears that the ALP wants to build its reputation—

as Senator Lees said—

as an economic manager at the expense of sick people.

I think it is absolutely disgraceful that this decision has been taken.

I will focus my remarks on two areas. The first is the Australia-US free trade agreement, which has caused much debate in this place already today. The Pharmaceutical Benefits Scheme has been a point of much concern in relation to the FTA, and the ALP’s decision to support the bill makes me somewhat sceptical about the strength of their stance when it comes to the free trade agreement implications for the PBS. The second is the decision’s impact on the most disadvantaged group in our community—in this case, Indigenous people. I will focus the rest of my remarks on the impact of this legislation on Indigenous communities. I am sure Senator Crossin will have a keen interest in this, particularly for her constituents in the Northern Territory.

The government has repeatedly assured the Australian public that the PBS will not be affected by the free trade agreement. However, the details in the text of the deal indicate otherwise. The free trade agreement establishes a process whereby US drug companies can seek independent review of determinations of product listings, which may lead to more expensive drugs being included in the scheme, which will increase the cost of the PBS to the taxpayer.

By signing the free trade agreement and committing Australia to the establishment of an independent process to review the determinations of product listings, the Prime Minister went directly against the advice of the government commissioned Tamblyn report. Big US companies with large profits at stake will see great advantages in appealing should a drug not be accepted for subsidy at a price
they want. This has the potential to create logjams and overwhelm the bureaucracy, courts and experts. Further, the need for this independent process is questionable, given that decisions to subsidise medicines already rely on independent expert advice and are ultimately a government responsibility about what is in the best interests of the public.

The government has already tried to erode confidence in the PBS by calling it ‘unsustainable’. The Australian Democrats have always supported the PBS and its success in giving Australians the drugs they need at an affordable price. We will continue to resist any efforts to compromise its effectiveness.

There has been much expert evidence given to the Senate select committee on the FTA from such eminent and respected sources as Dr Thomas Faunce, the Australia Institute and the AMA. All of them say that the PBS is under real threat because of this agreement.

The ALP have been vocal about the concerns they have about the impact the FTA will have on the PBS. In fact, they have said that the PBS is their deal breaker—that is, if they are not convinced that it will be protected, they will not vote for the FTA legislation. This would seem reassuring—after all, we are in a position now where the ALP have the casting vote on this matter. Everyone else has declared their hand. It is up to Labor to decide whether this agreement gets through the parliament. So far, whilst they have sat on the same inquiries the Democrats have, have heard the same evidence and have voiced the same concerns, there has been no reassurance from Labor. With their decision to reverse their position on this bill, they have sold out the sickest and the poorest in our community.

My colleague Senator Allison spoke on this matter in the Senate earlier today. She quoted various Labor senators who, over time, have strongly expressed their commitment to opposing this bill. For instance, Senator Hutchins said on 4 March this year:

The result of the bill being passed would be a less accessible and less fair PBS system. The Australian Labor Party supports the right of Australians to have access to affordable medicines. Health care is something which should not be determined by the ability of individuals to pay, because it is essential that all Australians live healthy and comfortable lives.

Senator Buckland—and I am glad to see that he is in the chamber—said:

Labor rejected this bill the first time, and today we are rejecting it again. The only thing this bill will achieve is to once again leave all Australians, in particular the sickest and poorest Australians, under the peril of not being able to afford the essential medicines they need.

These are pretty strong statements, indeed. They are statements I support. They represent what we thought was a strong commitment. However, we now find out that we were mistaken. The ALP have not followed through on their promise. How are we to take them seriously with their supposed commitment to protecting the PBS in the free trade agreement? They have stated that they are going to support the free trade agreement in the House of Representatives. If they are serious about their concerns about the impact of this deal, why not say so where it matters? I think we will all be forgiven for our scepticism about Labor holding firm on the FTA. They have paid lip-service to the vast and pervasive problems within the agreement, but with their decision to backflip on this legislation the future of the PBS is looking fairly bleak.

I turn now to the urgent matter of the crisis in Indigenous health and the impact of this legislation, especially on Indigenous communities in this country. At a time of record national prosperity, the health and wellbeing of Indigenous Australians is in
crisis. It is slipping further and further behind the health and wellbeing of all other Australians. That is not surprising when you look at the figures: Australian Indigenous life expectancy is 20 years below the national average. When you look at the percentage of the population that is expected to live to the age of 65, you will see that most Indigenous people in this country will probably not get there. Indeed, compared to Third World countries, Australian Indigenous life expectancy is far below life expectancy rates in Nigeria, Nepal, Bangladesh, India, Thailand, Vietnam and so on.

The statistics go on: twice as many Indigenous children are born with low birth weight, and in remote areas they are three times as likely as non-Indigenous children to die before their first birthday. The major cause of illness is preventable infections. Adult Aboriginal people are hospitalised at about twice the rate of non-Indigenous people. The rate of rheumatic heart disease is six to eight times higher. The rates of diseases of the circulatory system are about three times higher. Respiratory disease is four times more common, and diabetes occurs four times more often. The rate of kidney disease among Indigenous people is nine times higher than the general rate for non-Indigenous people and, in some regions, 25 and even 60 times higher. This is a situation of national shame, and we ought to remember these things in the context of the ALP’s decision to backflip and support the government in this folly.

There is a common myth that this emergency affects only a few Indigenous people in remote areas. This is simply not true. It affects all Indigenous people, though many health problems are more visible in remote communities. Aboriginal and Torres Strait Islander populations live in urban, regional and remote areas and as a whole suffer from the health problems I have just described. As the Fred Hollows Foundation has pointed out, Indigenous Australians have less access to GPs, so they gain little benefit from the MBS and PBS funding system. In 1998-99, the Australian Institute of Health and Welfare calculated that for every $1 spent per person for the general population on these schemes, only a measly 37c was spent per Indigenous person. In 2000, a Commonwealth government inquiry found that, despite the Indigenous population being much sicker than the non-Indigenous population, Commonwealth funding for Indigenous health care through the MBS, the PBS and community controlled health services was around $100 per person per year less than other Australians receive from the MBS and PBS alone.

The changes to the PBS that will be implemented as a result of this legislation will have a devastating effect on the already wretched state of the health of Indigenous people in this country. The increased cost of medicines will have a direct and major impact. These people are already struggling. People with low incomes, no work or insecure jobs, or who feel excluded from mainstream society, are likely to have poorer health. It is not surprising then that Indigenous peoples, in particular, have poor health in a wealthy country. Again, the Hollows Foundation recently stated:

- about 30% of Indigenous households (about 120,000 people) are in income poverty; a distinguishing feature is the depth of poverty across a range of welfare indicators;
- in 2001, 20% of Indigenous people were unemployed, approximately three times higher than the rate for non-Indigenous Australians;
- Indigenous people have lower incomes. In 2001, the average Indigenous household income was $364 per week …

That is about a third less than anyone else in the broader community receives. You might
think that a difference of only a couple of dollars is not very much, but for people in these circumstances, whose health is already in a critical state, the outcome of this bill will be particularly devastating. In that respect we have to condemn the ALP’s decision to backflip and support these changes, given the direct effect they are going to have on the least powerful, the least wealthy and those least in a position to afford to pay for medicines in this country. It is an absolute shame that the Labor Party have gone down this path. It is an absolute disgrace that they would support these changes. I encourage them to go back, sit down in their caucus, possibly even change their mind and send a message not just to the government but also to the Australian community that they really care.

Senator GREIG (Western Australia) (6.15 p.m.)—I am keen to speak to the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2] tonight largely to put on record some of the concerns we have in relation to how the proposal will affect the many Australians living with a disability. We know, for example, that some 19.3 per cent of the Australian population has some form of disability. These disabilities are clearly associated with a wide range of health problems and issues, many of which require medications. Many of these people are already spending a lot of their income—if not most of their income—on essential things such as rent, food and electricity. The use of medications by people with health problems can significantly contribute to the quality of their lives by managing symptoms, slowing the progress of their conditions and helping them engage in more fulfilling and productive lives. The government is now expecting these people to spend more of what little money they have left on what are often lifesaving medicines—certainly, on what are quality of life saving medicines.

A recent survey by the Chronic Illness Alliance in Australia found that the greatest cost that households with people who have a chronic illness face is the cost of medications—and this was before the new price increases. These people included people who have multiple sclerosis, cystic fibrosis and diabetes. Only 65 per cent of people with chronic illnesses were eligible for health care cards. Households with incomes below $13,000 per annum paid out 27 per cent of their income in health related costs, and 25 per cent of this was on medications. This was even with a health care card making them eligible for the concessional payment. Households with incomes between $26,000 and $36,399 that are still eligible for a health care card paid out 14 per cent of their total income on health related costs, and 40 per cent of these costs were for medications.

Depression is another very common disability within the Australian community. The 1998 national Australian Survey of Disability, Ageing and Carers found that approximately one per cent of our population suffered from depression. Depression is associated with family and marriage problems, reduced work productivity and increased risk of suicide. There were 2.45 million prescriptions for Zoloft, an antidepressant, in the year ending March 2004. This was the highest volume PBS subsidised antidepressant of that year. Antidepressant medication has been found to be very effective at alleviating the effects of this devastating illness. Yet we now see the government, with the support of the opposition, introducing measures that will increase the price of this medication. This may well stop people taking medication and they would, therefore, continue with their difficulties.
Epilepsy is another common condition in Australia that requires high levels of medication. Between one per cent and two per cent of Australians will suffer from epilepsy in their lifetime and require access to lifesaving anti-epileptic drugs. Sadly, epilepsy is most common in young children and the aged. Between 40 per cent and 50 per cent of the disability population will have epilepsy and require medication long term. Often, they are on multiple medications, so the costs to them are compounded. There are also approximately 14,000 Australians living with HIV, most of whom are gay men and many of whom are already struggling to meet medical and prescription drug costs. According to the National Association of People Living with HIV/AIDS, working people with HIV-AIDS typically spend $150 or more per month on prescription medicines. A 30 per cent increase, as is proposed in this bill, will see their costs increase to something like $200 per month. A press release from the Australian Consumers Association this week said:

“A spokesperson for the Australian Consumers’ Association said today that the ALP’s backflip—the reversal of decision—on PBS co-payments was a disappointment and a surprise, and would unfairly penalize the poor and the sick.

Two years ago the Government proposed a 30% increase in PBS consumer co-payments to counter what it said was a blow out in the PBS. The ALP and the minor parties—including we Democrats—blocked the measure in the Senate so that it could not be implemented. The ALP has now changed its position and will support the co-payment.

Ms Ballenden, the Senior Health Policy Officer for the ACA, said—quite rightly—that the poor and the sick would be particularly disadvantaged by the change in position.

“80% of PBS expenditure goes on people with health care concession cards. These are people who are generally on low incomes—they just do not have the capacity to pay higher prices for their medication. Also bear in mind that the threshold for qualifying has increased by 30%. We are talking about punishing people with chronic illness—people with arthritis, cancer, diabetes and asthma—all of whom have high medication costs”

Ms Ballenden said that families would also be paying more for their medications. “Families who have a couple of kids with asthma for example are going to find it expensive to get through winter. Also they have to spend much more to qualify for the safety net.”

If there is a full 30% increase, on average ordinary consumers would be paying just over $7.00 extra per prescription and an extra $1.14 for concession card holders. The safety net threshold will increase from $197.60 to $256.00 for concession card holders and from $726.80 to $944.84.

“This was bad policy two years ago when the Government introduced it and it is still bad policy. It appears that the ALP wants to build its reputation as an economic manager at the expense of sick people.” Ms Ballenden said.

I echo that sentiment and express my surprise and exasperation at the policy shift. I can understand political parties shifting policy from time to time when there is good argument, good cause and good reason. Normally policy shifts of that nature would come from the grassroots membership—at least that is the experience within my party and the way we work. It is not for me to offer gratuitous advice to the Labor Party on what policies it should take to the next election—that is entirely for it to decide—but I express the very real disappointment, and I suspect surprise, of most people in the Australian community who, with an eye to the looming election, will be asking themselves: ‘Who is it that I’m going to vote for? I can re-elect the Howard government or I can give consideration to a Latham government. But what is the product differentiation? Where are the
points of difference? What are the key fundamentals between the two which decide where I should park my vote in choosing government?’ Most people who may have been looking to the prospect of a Labor government will now be asking, ‘What’s the point?’

The Democrats argue that if Labor’s argument, its position, is that it needs to act responsibly economically then for goodness sake look at other areas of the economy where money can be raised. Do not raise it from the most vulnerable, the sick and the poor. If, for example, Labor were to tax family trusts as companies rather than targeting the sick and the poor, the resulting revenue raised from that would adequately cover the money it is looking for. There are ample opportunities within Australia to expand the revenue base without increasing existing taxes. There are opportunities to gather revenue from those who can most afford it. This legislation does not do that. It targets those who can least afford it, and I condemn it.

Senator BROWN (Tasmania) (6.24 p.m.)—I want to say at the outset that we are working to have a dinner break at about seven o’clock. The Greens, because this legislation was not on the slate when party leaders and whips met on Tuesday, are anticipating that the Senate will rise at midnight and resume sitting at nine o’clock in the morning. There is no way, with the addition of the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2], that we are going to get anywhere near dealing with all the bills that the government has on the list.

Tonight we have heard everything. The Labor Party say they are now going to support the huge hike in costs for Australians wanting prescription drugs because the government will not compromise. The government will not compromise, so the Labor Party will. What a deplorable backflip. There are echoes of the Labor Party serially compromising on the draconian way in which the government treated refugees before the last election, saying to the electorate, ‘We’ve got to go along with the government, but if we get in we’ll be much more humanitarian.’ Here we have the ALP saying, ‘We’re going to back down to the government but, trust us, after the election we’ll find the money to reverse what we’re voting for now.’ How can you support an alternative government which says, ‘We’re going to vote against a major social measure which we will implement after the election,’ or the reverse way, ‘We’re going to vote against a socially negative measure like hiking fees on prescription drugs and then after the election we’ll fix it up’? How can you trust whatever other policies are going to come out of the mind that thought that up?

I have had a look in Hansard at the debate just over a year ago when the opposition was in full flight against what it is tonight supporting. I have a couple of quotes from the honourable member for Fremantle, Carmen Lawrence. She described the legislation as: …betraying the promise they made to the people of Australia.

That is, the government betraying their promise. Now we have Labor doing that. The representative for Fremantle also said that it is possible to contain the costs of the PBS. The then health spokesperson for the ALP, Mr Stephen Smith, said:

It is bad health policy and it is bad economics … hitting the sickest and the poorest …

He also said:

Australian pensioners and concession cardholders will go without almost five million prescriptions, and Australian families will also go without almost half a million prescriptions, as a result of the proposed increase.
Now we have Labor saying that Australian families can go without half a million prescriptions and that Australian pensioners and concession card holders can go without almost five million prescriptions because Labor have joined the Hon. John Howard, the Prime Minister, in putting this legislation through the House today. Senator McLucas, whom I respect enormously, said—and I bet this is still her opinion, but of course I am only surmising—that this particular legislation was ‘a desperate bid by the government to get itself re-elected’. She also said the legislation:

... will punish ordinary Australians ... the working poor with small children at home ... it whacks the consumer ...

Senator Crossin said it ‘has continued to peddle the lie that this measure is tough but fair’. She also said:

... making patients pay for the tactics of the drug industry and the wayward prescribing habits of some doctors is patently unfair.

Senator Crossin, whom I also greatly respect, has been put in the invidious position of being forced by the Labor caucus to vote against her argument that ‘300,000 Australians are in families that will pay an extra $190 a year for essential medicines, while pensioners and cardholders can expect to pay an extra $52 a year’. Mrs Crosio said:

We will not on this side of the House be bullied by the Treasurer’s rantings ...

Won’t we? Labor has been bullied by the Treasurer’s rantings, and it has backed down. Michelle O’Byrne, the member for Bass in my home state of Tasmania, describes the bill as:

... oppressive, sneaky, ill-conceived, illogical and a breach of faith with the Australian people ...

Here we now have Labor being oppressive and sneaky, having ill-conceived logic, breaking faith with the Australian people—

from its own description. Ms O’Byrne also said:

I wonder how long ago it was that any member of the government experienced a personal cash flow problem.

Let me now put that to the opposition. I wonder how long ago it was that any member of the Labor Party experienced a personal cash flow problem. I suggest that they go back to listening to the community. Let me go on to a general outline of this legislation—and I admit at the outset that I am plagiarising. There has been a bit of that recently, or at least there have been accusations of it flying at the opposition, so let me express my guilt over this matter before I even get under way. The Greens oppose this bill. I will leave it to you, Mr Acting Deputy President, to see if you can spot my clues:

It is bad policy. It is bad health policy and it is bad economics. The second reading amendment that—

Senator Nettle is—
happy to have circulated in—
the name of the Greens—
reflects the basis of the—
Greens’—
opposition to the measure. It states that the—
Senate—
should reject this bill for the following reasons. Firstly, it will increase the cost of essential medicines by nearly 30 per cent, hitting the sickest and poorest in our society. Secondly—
and I have already quoted this—
Australian pensioners and concession cardholders will go without almost five million prescriptions, and Australian families will also go without almost half a million prescriptions, as a result of the proposed increase. Thirdly, by depriving sick and elderly Australians of the medicines they need, there will be an increased need for greater medical intervention in public hospitals and nursing homes, at even greater cost to taxpayers. Fourthly, there are other more effective means by which the
long-term sustainability of the Pharmaceutical Benefits Scheme could be assured—means which would put appropriate responsibility on the pharmaceutical industry and the medical profession rather than on those least able to bear the burden, and means on which the government has been silent since the—

2002—

budget reply. Fifthly, the true rationale for the bill is to restore the budget bottom line and it has nothing to do with the long-term sustainability of the Pharmaceutical Benefits Scheme or with genuine health outcomes for Australians.

The member I am quoting said that he would formally move the amendment that Senator Nettle has now moved, and Senator Nettle can look forward to me seconding it. I will give a further clue here that I am plagiarising Labor:

The measure ... is a government budget measure which has previously been rejected by the parliament. To remind members and the community of the effect of the measure, the effect would be to increase the co-payment, insofar as pensioners and concession cardholders are concerned, for the Pharmaceutical Benefits Scheme ...

The figures quoted there were from $3.60 to $4.60. The figures now will go from $3.40 to $4.30 for a health card holder and from $23.70 to $28.60 for everyone else. It continued:

... an increase of almost 30 per cent. When the measure was introduced the day after budget day, the Treasurer said that people should not be concerned because it was just a dollar. What we have shown since that point in the cycle is that, while the Treasurer might think it is just a dollar, we know that over a million pensioner and concession cardholder scripts will not be taken up over a four-year period and half a million scripts from families, particularly families under financial pressure, would not be taken up over a four-year period. There is only one consequence of that.

That is, of what is now this Labor endorsed measure. It continues:

It might take five days, five weeks, five months or five years, but the pensioners and the families under financial pressure not taking up those scripts would find themselves at some point in the cycle in our public hospital systems, presumably in emergency departments, seeking medical attention and requiring a far greater medical intervention at a far greater cost.

This measure—this Labor measure, as it is now—has never been about health. It has never been about trying to secure a better health outcome for the nation or a better health outcome for Australians and their families ...

No, that is not what Labor is about. Says my author:

... it has always simply been about the Treasurer’s and the Prime Minister’s budget bottom line.

That is what Labor is supporting tonight. It continues:

Everyone will remember how in the run-up to the last election the government splurged its budget surplus—anywhere up to $14 billion was splurged—in a desperate bid to get itself re-elected.

How these things come around again. It continues:

When it came to this budget, facing a deficit, the government had to find some easy money, and there is no easier money to find than by whacking the sickest and poorest in our community.
Let me reread that sentence in the current context:
When it came to this budget, facing a deficit, the—
Labor Party—

had to find some easy money, and there is no easier money to find than by whacking the sickest and poorest in our community.

There it is. But it continues:
When you look at the government’s—

I am sorry, I have to get my mind into this parallel track: it is the Labor Party’s—
justification in part to this measure, the—

Labor Party—
said that in the financial year 2000-01 in the run-up to the last election there was a 20 per cent increase in the cost of the Pharmaceutical Benefits Scheme. The average annual increase for the cost of the scheme over the last decade and a half has been in the order of 11, 12 or 13 per cent. The... calculations and figures that we gleaned from the Mid-Year Economic and Fiscal Outlook, from the final budget outlook and from industry figures show that the growth in the cost to the taxpayer of the Pharmaceutical Benefits Scheme over the financial year 2001-02 has been in that traditional order—in the order of 10, 11 or 12 per cent.

When you look at what caused the exponential increase in the run-up to—
the 2002 election—

the 20 per cent increase in the cost of the Pharmaceutical Benefits Scheme—the truth is that it was all the government’s own work.

It then talks about Celebrex, the anti-arthritis drug, and the huge cost that came as a result of its being listed. It goes on to say:

... in the run-up to the last election, the increase in the cost to the Pharmaceutical Benefits Scheme was all the government’s own work. The opposition in the run-up to the last election asked the government, ‘Are you concerned about the cost, for example, of Celebrex?’ ... former Minister Wooldridge—well known for house and email fame—‘You don’t need to worry about the cost of Celebrex, because the fact that it is costing money means consumers are benefiting.’ That was the government’s argument in the run-up to the last election: ‘Don’t worry about the cost of the PBS because the consumer is benefiting.’ That is a classic case of one story before the election and another story after.

Here we are being told the reverse by the Labor Party: ‘Our story before the election is that we have to slug the poor and the sick to pay for tax cuts we are about to announce, but we will fix it up after the election.’ This is a backflip, or a turning back of the government argument that was being criticised just 12 months ago. There is so much more of this in the speech; it really is quite an extraordinary diatribe on what the government was doing. Let me go to the end of the speech:

There is a challenge for the—

Labor Party—

there is a challenge for the—
opposition—

and there is a challenge for the parliament, but it is a challenge this—

Labor Party—

will not take up. This—

Labor Party—

is trying to pretend that somehow whacking pensioners and struggling families is a long-term sustainability measure, and it is not. It is just an easy way to try to rescue a budget deficit.

There is more:

On the government department’s own admission—

I am sorry, on the Labor Party’s own admission—

their own calculations—the effect of this measure will essentially cease after four years.

... ... ...
Before the election it was sustainable ...

If you look at this issue objectively and if you listen to what people in the health industry are saying, you will find any number of organis-
tions—whether it is the AMA, the divisions of general practice, the Catholic Health Association or the Australian Healthcare Association—saying the same thing across the board. Every association out there that is interested and involved in public or private health and in the health care of the nation is, to a man and a woman, mantrchanting a chorus to the—

Labor Party—

‘Don’t go down this road.’ This is a short-term measure. It might help rescue the budget bottom line. It will not do anything to advance the health outcomes of the nation. It will not do anything to advance the health outcomes of individuals. It will not do anything other than, further down the track, see people ending up in the emergency departments of public hospitals because they have not been taking out their scripts. They will end up with a more difficult health problem requiring greater medical intervention at greater expense to the taxpayer.

How do we know this? We know this because, whether it is a Pharmaceutical Benefits Scheme copayment or a copayment that a non bulk-billing doctor requires, it is invariably the case that those people who are least able to afford it are also those people most at risk of chronic illness or serious disease. If you are on a fixed income, a low income or if you are a pensioner—we know that pensioners might be at greater risk of chronic illness or serious disease than most other classes of Australians because of their age—what does the—

Labor Party—

do? It imposes a measure affecting those people who are least able to afford it; those people who are most at risk of a chronic illness or serious disease and who, therefore, are most in need of either the primary care that a GP can give by way of bulk-billing or the preventative care, through pharmaceuticals and advice, that a general practitioner can provide.

Commonsense tells you that if you sensibly spend some money on pharmaceuticals now, it might actually save you some money down the track. On one occasion in the other place—

it was put to the minister for health that an American study had shown that a dollar spent on pharmaceuticals when it was needed saved that American jurisdiction $4 down the track. The minister for health—

I presume it is now the shadow minister for health—

derided that study.

I have to give a further clue. It goes on to say:

When I became the shadow minister for health—

That is a little further down the track, as far as the Greens are concerned—a couple of years maybe. I repeat:

When I became the shadow minister for health—

I have to reveal that the then shadow spokesperson on health, Mr Stephen Smith, said—

I called for the various research and clinical studies which would enable me to mount a scientific, best-evidence argument as to why sensible spending on pharmaceuticals might save money down the track. The truth is that there is a paucity, if not a complete absence, of that material.

Mr Smith ended by saying:

As I indicated at the outset—

And I am changing the words because I am using his speech: the Greens—

oppose(s) this legislation ... I hope the Senate ... dispatches it to the same place it dispatched the bill on the first occasion.

Question put:

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

The Senate divided. [6.48 p.m.]

(The Acting Deputy President—Senator A.B. Ferguson)

Ayes............ 10

Noes............ 39

 Majority........ 29

AYES

Allison, L.F. * Bartlett, A.J.J.
Brown, B.J. Cherry, J.C.
Thursday, 24 June 2004

Senator ALLISON (Victoria) (6.53 p.m.)—I move the Democrat amendment on sheet 4311:

At the end of the motion add “but the Senate is of the opinion that the bill should not come into effect until the Government has reviewed and reported on the efficacy of the following alternative measures for maintaining the long-term viability of the Pharmaceutical Benefits Scheme (PBS):

(a) the greater use of price-volume agreements with manufacturers;
(b) encouraging price competition between generic manufacturers;
(c) the initiation of regular reviews of the cost-effectiveness of listed drugs to ensure that drug prices reflect the most up-to-date clinical and utilisation information;
(d) the tendering out of the wholesaling distribution of PBS medications;

(e) increasing measures to ensure that doctors, pharmacists and consumers are routinely informed about less expensive, non-brand alternative medications and encouraged to use them; and

(f) increasing preventative non-pharmaceutical and non-medical measures to prevent the development of health conditions, so that the need for the ongoing use of expensive drugs is reduced”.

Question put: The Senate divided. [6.54 p.m.]

(The Acting Deputy President—Senator A.B. Ferguson)

Ayes............ 10
Noes............ 31
Majority......... 21

AYES

Allison, L.F. * Brown, B.J. Greig, B. Murphy, S.M. Nettle, K.


NOES


* denotes teller

Question negatived.

Original question put:
That this bill be now read a second time.

The Senate divided. [6.54 p.m.]

(The Acting Deputy President—Senator A.B. Ferguson)

Ayes…………. 31
Noes…………. 10
Majority………. 21

AYES


NOES

* denotes teller

Question agreed to. Bill read a second time.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (7.01 p.m.)—I move:

That consideration of this bill in Committee of the Whole be made an order of the day for a later hour.

Senator BROWN (Tasmania) (7.01 p.m.)—Now is a very good point for us to determine the procedure for the rest of the evening. I recommend that we now suspend for a dinner break and that it be flagged to the Senate that we will, according to that agreement on Tuesday, rise at midnight and resume again at nine o’clock in the morning—that is, unless there is an assessment that says it is possible to get through all the legislation we have on the slate, plus this bill and one other piece of legislation. I do not think that is possible, and I am trying to be sensible about this. I think the committee stage of this bill will take some little time and it would be best for everybody’s good humour if we were to have a dinner break now and come back in, say, 45 minutes.

Question agreed to.

COMMITTEES

Australian Crime Commission Committee Meeting

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (7.03 p.m.)—I seek leave to move a motion to enable the Joint Parliamentary Committee on the Australian Crime Commission to meet during the sitting of the Senate today.

Leave not granted.

NATIONAL HEALTH AMENDMENT (PHARMACEUTICAL BENEFITS—BUDGET MEASURES) BILL 2002 [No. 2]

Consideration resumed.

In Committee

Bill—by leave—taken as a whole.

Senator ALLISON (Victoria) (7.04 p.m.)—by leave—The Democrats oppose schedule 1 in the following terms:

1. Schedule 1, item 16, page 4 (lines 17 to 22), TO BE OPPOSED.
2. Schedule 1, items 25 to 28, page 6 (lines 2 to 12), TO BE OPPOSED.

These proposals would at least keep the safety net at the status quo. The point has been made many times in this place that this is in fact a double jeopardy. Not only are
people paying more for their copayment but the safety net threshold has been raised by a similar amount: 30 per cent. People are not only being required to pay more for their copayments but it is going to take them longer to get to that safety net. So whilst the Democrats will not be supporting this bill at the third reading stage we would like to ameliorate the damage it will do, and we are moving that the safety net be maintained at the current level.

While I am on my feet, there are some questions that I want to ask the minister with regard to the measures that have been taken in recent times for reducing the cost of the PBS. In particular, has there been any movement on the promise that the government made some time ago that it would embark on tendering out for wholesale distribution of the PBS? As I understand it there was a review done. I do not know that the results of that review were made public. Because this bill has come on so quickly, it has not been possible for us to do a great deal of research, but it was my understanding that there was a report of that review which indicated that quite some millions could have been saved had wholesale distribution been tendered out. Can the minister report to the chamber on progress in that respect?

Senator ALLISON (Victoria) (7.07 p.m.)—Can the minister indicate the date on which the report was first provided? As I understand it, it was in 2002. If the minister can confirm that, can he indicate why it has taken two years or more to finalise the report—whatever ‘finalise’ means? When is it expected that the report will be finalised and when will we have some movement in this area?

A quorum having been called and the bells being rung—

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.07 p.m.)—I make the point that Senator Brown has raised the issue of a dinner suspension. I have told all senators that it was the government’s intention to call a dinner adjournment after the completion of this bill, and that is what I intend to do. Senator Brown has said that this matter will only take ‘a little time’. It is our intention to have a dinner suspension after the completion of this bill so that we can have a short break. The concept is we are trying to get a large program completed. People have strong views about many of the bills on the program. All senators need to have a cooperative approach to the program, if we are to complete the program within a sensible time. But, if we are going to have harassment tactics and calling of quorums then clearly we will not achieve that. I repeat my commitment and indicate—because Senator Brown is concerned about having his dinner—that we would like to have a dinner suspension at the completion of this bill.

Quorum formed

Senator BROWN (Tasmania) (7.09 p.m.)—The point here is that there is no defined time for the completion of this bill. It may take quite some time. I did not say it will take a little time. I do not know what other senators want to contribute to the
committee. But it is a very important committee. The suggestion I had was that we suspend at a specified time—I suggested seven o’clock for dinner—and then come back and complete this matter. What the Manager of Government Business in the Senate is suggesting puts us all under pressure to not have the committee that we want to have, but to shorten it so that everybody can go to tea, and it is not acceptable. I suggest—and we can come to an agreement here—that we set a time for dinner, break at that time, come back 45 minutes later and get on with the program.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.10 p.m.)—I would be happy to do that if we could have a defined conclusion to this debate. We have a lot of bills to do, we know this is an important bill, we know people have very strong feelings on it, but we have a responsibility to try to manage the chamber for the good of the parliament and for all of those in it. I think it is only reasonable that people have an idea of when this bill will finish. There are people asking, ‘When’s the next one coming on?’ People would like to know when their dinner will be. They would like to know when this bill will finish. And if you are able to give the chamber a solid indication that it is prepared to stand by as to a finishing time for this bill, give or take five minutes, then of course we can suspend for dinner immediately. But I would like to know a firm finishing time or a period that is reasonable in which to have a committee stage. Otherwise, we will be here at midnight doing this bill, we will be here next day doing some more bills, and we will be back on Saturday and Monday, and we do not want to do that. We think that you need to have a cooperative and sensible approach to how you manage the timetable and that can only be done with cooperation. I am happy to cooperate.

Senator BROWN (Tasmania) (7.11 p.m.)—Then I suggest that the government move that we have a dinner break either at the completion of this bill or at eight o’clock.

Senator ALLISON (Victoria) (7.11 p.m.)—I want to remind the minister that I asked him a few questions. If the minister is expecting the rest of us to be cooperative, I remind him that straightforward answers to straightforward questions would be useful.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.11 p.m.)—I have been asked one question. I answered it in a most straightforward manner. I got a direct response from the advisers who know the answers. I gave an honest and frank answer to that question, and I was listening to Senator Allison’s second question and seeking advice on the answer when a quorum was called. The benefit of the quorum would be that the advisers probably now have a fulsome and accurate response, which I would be happy to relay to the chamber. But I do think the issue of resolving when a dinner suspension takes place and when this debate will end would be quite useful in the meantime. I would be happy to have a suspension, as I have said, when this bill is completed, so I accept that from Senator Brown. I am very happy to do that, and if we know that this debate on the bill will be limited to a certain period then I am happy to call for a suspension right now.

Senator ALLISON (Victoria) (7.12 p.m.)—I will go through the subsequent question again in case the minister has forgotten or needs a little more time to get the answer to it. The question was: when was the report provided to the minister? As I understand it, it was in 2002. Why has it taken two years for it to be finalised—whatever ‘finalised’ means? When does the minister expect it to be finalised, and what is anticipated to
be saved by the tendering out of the whole-
sale distribution of the PBS, if indeed that is
the intention?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government,
Territories and Roads) (7.14 p.m.)—As I
have said, I have no advice on when the re-
port will be finalised. Clearly, as I have said,
the Commonwealth are very keen to get the
best outcome in providing the best medicines
to people at the lowest possible prices, and
we are going through many of the issues that
Senator Allison raised in question time, I
think, yesterday. They are all issues that the
Commonwealth pursue. This is one measure
that we are discussing tonight, besides all
those other actions the Commonwealth are
taking, even including the action in relation
to the wholesale tendering for distribution.
We are pursuing that. It has taken a while. It
is obviously not a simple thing. Clearly we
need to wait for the finalisation of the report
to give a detailed answer on the cost benefits
of that process, otherwise we would not have
commissioned a report.

Senator ALLISON (Victoria) (7.15
p.m.)—This is an absolutely ridiculous re-
sponse to the chamber. We are charging older
people and people who are sick extra in the
copayment, and the minister cannot even
demonstrate that there has been any move-
ment whatsoever to a commitment which
was made by this government before the last
election. It is just not good enough that for
two years the minister has been sitting on
this report. Why has he been sitting on the
report? My guess is that it is because pres-
sure has been applied by the pharmaceutical
industry, and the minister is not willing to
honour a commitment made at the last elec-
tion that savings would be made through
wholesale distribution tendering. It defies
credibility that two years was needed to
finalise—not even to take any action—on a
report. The minister says these are complex
matters and difficult to do. It is not so diffi-
cult to finalise a report—unless the report
indicates something which the government
does not want to tell us and unless the report
indicates that the government ought to be
acting but is not.

We are left to speculate on what this re-
port says, what it means and why the gov-
ernment is not honouring the commitment
that it made. I do not believe that in this
place we should support a piece of legisla-
tion to reduce the cost of the PBS when a
measure—I have mentioned just one meas-
ure; there are plenty more—which was been
a long-term commitment of the government
has not even been tried. We want to know
why the government has not tendered out the
wholesale distribution of pharmaceuticals. It
cannot be that difficult to make that kind of
decision. The Democrats are not interested in
this disappearing as an issue when this gov-
ernment is so prepared to slug people who
are sick and people who are old. The deci-
sion we have to make in this place is: is this
reasonable? Is it reasonable to charge an ex-
tra copayment? Has the government done its
job in finding alternatives to reducing the
cost of the PBS? Where are the efficiencies
in the system? The minister is not prepared
to tell us.

I have another question: what progress has
been made in incorporating price volume
arrangements when drugs are listed on the
PBS, and how much has been saved already
by this measure? Or is the government ditch-
ing this proposal as well? Is this something
that was not acceptable to the pharmaceutical
industry? Tell us. Let us have some sort of
indication about what has happened to this
suggestion. We did not come with it. For
many years price volume arrangements have
been seen as a way in which the government
could save money in relation to this sector
and the PBS, but it is my understanding that
very little has happened. One or two con-
tracts have been negotiated which have included price volume arrangements but there were many more that could have been negotiated. I may be wrong. As I said, we have had about 24 hours to prepare for this debate and that is not much time to ask a few questions and find some data. No doubt the minister will know, or his advisers may be able to tell him, how many contracts have incorporated price volume arrangements. How many do not? How many should? These are the sorts of things we need to know in order to determine whether we will support this bill. It is just one of the other measures where it would appear, to us at least—I am not sure whether this was a commitment on the government’s part at the last election; maybe the minister can inform us about that—savings could be made. How much are the savings? When are we going to make them? When are we going to do it? Maybe the minister can inform us about that.

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that schedule 1, item 16, stand as printed.

Senator ALLISON (Victoria) (7.19 p.m.)—This is going to be a very tedious debate if the minister refuses to answer any of these questions. We will be forced not only to call quorums every five minutes but to find other ways of frustrating this debate. We all want to go home. The minister says he is going to be cooperative but this is hardly cooperation. He is not even answering the most simple or fundamental questions about costs in the PBS. If the minister is not prepared to do that he can hardly be said to be cooperating. I will just keep asking that question. If the minister is not prepared to answer then I will stand here all night asking the question—it does not worry me. I think that Australians have a right to know the answers to these questions and we will certainly pursue them.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.20 p.m.)—It is hardly non-cooperative if we have the same question answered three or four times in slightly different ways. I would like to provide the chamber with more details about some of the measures that the Commonwealth is putting in place to ensure that we get good value for money out of the Pharmaceutical Benefits Scheme. What does that mean? Senator Allison would know better than most people in this place that it means ensuring that people—particularly people on low incomes and people with concession cards—receive world’s best medicines at affordable prices. Senator Allison is quite right: to achieve that policy goal you need to ensure that there is no waste in the system—that we are not wasting money—and that medicines get to the people by being distributed efficiently and effectively through Australia’s pharmacy system, and that they are available to people where they need them, when they need them, at the best possible price.

There are a number of measures the Commonwealth has taken in relation to this. This is not an exhaustive list; I do not have an exhaustive list. We are dealing with one measure tonight but all of these measures working together can help achieve that policy outcome. Firstly, we have run community awareness campaigns about the sensible use of PBS medicine—for example, there has been a focus on encouraging people not to hoard their medicines. Secondly, we have had very aggressive negotiations with pharmaceutical manufacturers. Thirdly, there has been a requirement for Medicare numbers to be recorded at pharmacies, as one of the measures to improve integrity and stop fraud. Fourthly, there has been much better policing and very hefty fines for sending PBS drugs overseas. Those are some of the measures
which ensure that significant resources go to meeting the policy goals and do not get sifted away through fraud and lack of integrity or through people’s behaviour in hoarding medicines.

Senator ALLISON (Victoria) (7.22 p.m.)—It is pleasing that the government has made some progress in this respect. It does not answer the questions that I have raised. If I can focus on those four measures: what has been saved over the last financial year, and what is expected to be saved from those measures in the next financial year? While the advisers might be putting together those figures, I will go back. I am sorry, Senator Ian Campbell, but you have not answered that first question. You have said that the report is not finalised. That is about all I have had by way of a response. What I asked you was: why has it not been finalised even though it is two years, as I understand it, since it was provided to the minister? When can we expect it to be finalised? It would be useful to have some indication as to where the government is going on this. Perhaps the minister can indicate whether the government is still committed to this process of wholesale tendering of distribution of PBS drugs. The review, as I understand it, identified the savings that might be made. Perhaps the minister can inform us as to what they are.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.23 p.m.)—This is the answer to the penultimate question. Firstly, we do not have those figures available. We do not have them here tonight, but I am told by the advisers that it is relatively easy to get them. We would seek to take that on notice and provide them to the chamber at the earliest possible convenience—maybe even as early as in the next few days. Secondly, the savings through wholesale distribution are clearly considerations within the review that is being carried out. We would not seek to make those public or to present them until the review process has been properly completed.

Senator ALLISON (Victoria) (7.24 p.m.)—I ask that question again: when will the review process be properly completed? There was a review, as I understand it, and a draft report was prepared. What is the process now, two years after the report? We last debated this two years ago. What has happened since that time? How is the report going to be finalised? Is the government waiting for more data? I think we need to know what it is that is holding it up. Ideally that report should have been finalised in order for this debate to consider it. If we had had more than 24 hours notice that this bill was coming forward, obviously the chamber would have referred it so we could have discussed this with the industry and found out whether or not there was a saving to be made by tendering out wholesale distribution. Minister, just as you are asking us for a commitment about how long this debate is going to take, I think we need some commitment from you as to when that report will be finalised and when the government will take action.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.25 p.m.)—The reason we are debating this tonight is that there has been a significant change in the level of support for this bill. The Commonwealth have been committed to this measure since the budget announcement some 25 months ago. That is why we are here tonight. The other programs and policies we have been pursuing, including the one that Senator Allison has an intense interest in, are things that in the normal course of business we have been going on with anyway to ensure that we get the best outcome, particularly for low-income earners and concession card holders when it comes to delivering PBS medicines.
That is what we are committed to: not only best outcomes for the next six to 12 months but also ensuring that we have a robust, affordable Pharmaceutical Benefits Scheme. It really is something that the rest of the world looks at with envy. We would all like to see it supporting low-income earners, concession card holders and the rest of the Australian community in a decade’s time and beyond. That is why we are doing this and the other measures. But I have said I do not have a time for the finalisation of the review and I am very happy to refer the question to the minister and seek a response.

Senator ALLISON (Victoria) (7.26 p.m.)—Perhaps, Minister, while you are doing that you could ask what progress there has been on the Audit Office’s 1997 recommendation that the PBAC’s drug utilisation subcommittee should be adapted and properly resourced to become a pricing review subcommittee, that that subcommittee secretariat should be strengthened and that additional economic evaluation capacity should be added to the Pharmaceutical Evaluation Section. There has been a lot written about the need for evaluation of drugs. Things move on. The cost-effectiveness of listed drugs can change over time; however, it is my understanding that, once listed, not much happens by way of updating clinical and prioritisation information or revisiting the question of cost-effectiveness. Can the minister indicate whether that recommendation of the Audit Office has been acted on—and, if not, why not—and the extent to which reviews are conducted of cost-effectiveness of pharmaceuticals?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.28 p.m.)—I am informed that the drug utilisation subcommittee do in fact review these drugs. They review them as a matter of course 12 months after they have been listed. They look at issues like utilisation and effectiveness, so I think we can put Senator Allison’s mind at rest in that regard.

Senator BROWN (Tasmania) (7.28 p.m.)—Following on from the excellent questions from Senator Allison, could the minister say whether Celebrex has been reviewed? If so, what is the cost-effectiveness of that very expensive drug on the PBS? Has the government brought in any new consideration about that or any other drug on the PBS in the last 12 months?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.29 p.m.)—A review of the whole group of drugs that Celebrex is in was completed in March of this year and is currently before the minister.

Senator BROWN (Tasmania) (7.29 p.m.)—Because we are dealing with the legislation here tonight, could you give us an indication of what the review has shown and whether there can be some change? For example, to get to the basics in the argument, for many, many people Celebrex has no advantage over other anti-arthritis. I ask the minister: is that information before the minister available to the committee? We are considering this tonight. If he cannot give the specifics, can he give a general indication of what has happened with that review of that group of drugs?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.30 p.m.)—I cannot help Senator Brown any more. That report is before the minister. I understand it is not the normal course of events for those reports to be released until the minister has made a decision.

Senator BROWN (Tasmania) (7.30 p.m.)—In the last 12 months have any other reports come before the minister which have
led to a change in the listing or the conditions for listing any drugs at all on the PBS?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.30 p.m.)—I am informed that none have been de-listed as a result of any review in the past 12 months, but I will make sure that is absolutely accurate. I will take it on notice in case I have got that wrong, but the advisers are not aware of any drug that has been de-listed as a result of that process.

Senator ALLISON (Victoria) (7.30 p.m.)—Another area identified two years ago as being an opportunity for savings is tendering for generic drugs. This is a third major area of cost control, according to the ACA. When a drug comes out of its 20-year patent period, the original manufacturer may be joined by several other makers. This is in contrast to the patent drug industry, where there is widespread market failure because manufacturers seldom compete on price, even when their products are interchangeable. Generics makers can be highly competitive. However, with few and minor exceptions, the PBS continues to pay the same price for out of patent drugs, no matter how many manufacturers have entered the market. At the time that this was written, it was said that if competition was allowed to function it could be expected to reduce prices by between 20 and 60 per cent. Has there been any progress on the tendering of generic brands? What has been the reduction in prices? Is it somewhere close to those figures? Can the government report on what has been achieved so far and project that out over the next few years in terms of what the savings might be?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.32 p.m.)—We do have, as Senator Allison would know, a program to promote the use of generic drugs. The benefit of when the patent drugs come out of patent is that the availability of generics does tend to pull the price down. I would be quite happy to provide some indications of the long-term impact of that. We certainly do not have those figures available here tonight, but I would be very happy to provide those when we can get them. It would be a very useful exercise.

Senator BROWN (Tasmania) (7.33 p.m.)—It is very difficult for a committee to function if information like that is not available to the committee. We do not set the agenda here, but the committee has a right to be informed. However short or long the government’s scheduling might be, the committee has a right to be equally informed. I want to ask the minister about the patenting system and the ramifications of the free trade agreement, which might impact on the PBS in the next couple of years. Can the minister give the committee any information about whether there is a potential for change of the length of patents on drugs if, for example, there is pressure put on by the big drug corporations from the United States? Or, to put that around the other way, can the minister give a guarantee that under the free trade agreement there will not be a change in the length of patents of drugs being used in Australia which are patented by American corporations?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.34 p.m.)—I am very happy to give as much information as I have available to me about the PBS. I think we should confine the debate as much as possible to this particular measure. Many of the questions have been about a range of other issues that are related. Senator Allison’s questions have been related to how you deliver PBS medicines at the best possible price, and they are very fair questions. This
measure is substantially about maintaining the sustainability of the PBS from a financial point of view. Questions about the impact of the US-Australia free trade agreement are quite legitimate. The Commonwealth has put an enormous effort into ensuring we have a free trade agreement that gets a very good outcome for medicines availability in Australia, particularly in relation to the availability of generics when patents conclude.

But we will be, as Senator Brown knows well, debating the detail of the US-Australia free trade agreement in this very place within six or seven weeks. I think those specific questions are very important questions. The government have been committed to making sure the PBS is protected under that agreement. We are certain that it is, but it is a very fair question for the Senate to be investigating. I know there is a select committee that is looking into that in detail at the moment, and that committee would certainly have far more detail at its hands than I have got here tonight. I do respectfully suggest that we address those issues when that agreement and the legislation that creates that agreement come before this chamber in a few weeks time.

Senator BROWN (Tasmania) (7.36 p.m.)—No, this is absolutely the right time. We are looking at the sustainability of the Pharmaceutical Benefits Scheme, the costs and the availability of drugs to Australian consumers. It is very fair for this committee to put to the minister whether there are any other factors that are going to impact on the government’s projections over the coming years. The free trade agreement is of course extremely important to that. Do I take it from the minister’s answer to the last question that the government cannot give a guarantee that under the free trade agreement the length of patents will not be extended and that under the free trade agreement there is not an opportunity for US corporations to vary the length of patents as against those that currently pertain in Australia or would pertain in the absence of the free trade agreement?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.37 p.m.)—I am advised that there is nothing in the US-Australia free trade agreement that affects the length of patents.

Senator BROWN (Tasmania) (7.37 p.m.)—So the independent review component of the free trade agreement cannot in any way lead to a debate and therefore a potential change on the patenting system? It is very important that we get this advice clear and on the record because the potential impact of the free trade agreement on the PBS is a very important point in the debate.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.38 p.m.)—The minister and the government will, of course, be announcing the details of that review process as soon as possible but I am further advised that the review process that is under consideration will not have anything to do with the length of patents.

Senator BROWN (Tasmania) (7.38 p.m.)—We are not going to get any further on that but one has to comment that this free trade agreement has been signed by the government. It is an extraordinary situation where the minister does not know what the impact is going to be but the signature is on the document as far as the government is concerned. This review process should be absolutely available and made clear to this committee. It is something the government has finalised in its mind. How can you be continuing to work out what the impact of the review process will be? Clearly, until we hear otherwise, this committee has every right to believe that the review process is going to potentially impact on the price of
pharmaceuticals as the massive power of the US pharmaceutical corporations comes to bear through the review system on the Pharmaceutical Benefits Scheme.

We all know that Mr Zoellick has been indicating that there is going to be a better deal on drugs in Australia. There has to be some way in which he has made that assessment. I do not believe the assurances that we are getting from the government, but I do believe that we should have the government here giving us an ironclad guarantee that the free trade agreement is not going to impact on the price of pharmaceuticals and the cost of the Pharmaceutical Benefits Scheme. That is not what we are hearing here tonight. I do not believe anything is going to change between now and a debate in six or 12 weeks time. We will get this same spin, which is short of the guarantees that we should be getting from a government which has signed such a document.

Senator ALLISON (Victoria) (7.40 p.m.)—I would like to raise another area of potential savings, which is leakage. It has been said that the cost of leakage to the PBS has been underresearched. We know very little about it—since this was written it may well have been researched; perhaps the minister can inform us about that—but estimates have ranged from $50 million a year, by the Australian Pharmaceutical Manufacturers Association, up to a billion dollars a year, by former PBAC members. Most experts accept that the likely cost is in the hundreds of millions of dollars. PBAC researchers indicated that around two-thirds of the prescriptions for proton pump inhibitors, for instance, were for patients who did not fit the approved indication. The three drugs in this class cost the PBS more than $250 million in 2000-01.

Celebrex, as Senator Brown mentioned a moment ago, is another drug where there has been a lot of leakage. There are presumably others. Maybe some of the newer drugs are in the same category. I do know the government has clamped down a bit on this but, again, the questions are: have we got the research to say where that leakage is, what sort of savings have been achieved in recent years and what is the projection for savings into the next budget period?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.42 p.m.)—I was listening to an adviser with one ear and to you with another ear, Senator Allison, so I apologise if I did not get the full gist of the question, but the issues are around leakage. As I understand it, that occurs when the PBAC have approved the use of a drug for a specific population group and that drug is used outside that population group. We do not have figures on the costs of that potential leakage. We are aware of it and have faced the fact that that can occur. Where we have identified a risk of that occurring we have sought to negotiate price agreements with the suppliers around the provision of those medicines.

Senator ALLISON (Victoria) (7.42 p.m.)—I take it that we do not have the research that was called for two years ago. I do not know whether leakage was considered in the review that we are not allowed to see. Maybe the minister can tell us that. I think this is important. If it is a billion dollars a year, which, as I said, former PBAC members indicate it might be, then that would be as much as the copayments increase that is being proposed here—in fact that would be less than that. If we are looking at a likely saving of a billion dollars a year then perhaps the ALP would consider pursuing this with a bit more vigour than this government has been prepared to, to make those savings to spend on whatever it is Labor has in mind to announce.
Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.43 p.m.)—I have taken advice on this. We are not aware of a specific review of this issue in recent times. The issue that is challenging for anyone who looks into this area is that, to make an accurate assessment of the amount of leakage and therefore the cost to the Commonwealth, you would effectively have to prove fraud on behalf of the doctor who was prescribing that drug. That, of course, would be very difficult to do and a very hard process. So it is very hard to define the size of it. It would seem on the face of it, however, that estimates of up to $1 billion would be pretty hard to imagine when the entire cost of the PBS is around $5 billion. One would hope that leakage of this sort did not represent 20 per cent, but it is obviously a very important issue. If it were anything like that level it would be alarming, of course. I would be happy to provide any available information on leakage to the Senate.

Senator ALLISON (Victoria) (7.45 p.m.)—I ask as well whether there is a response to the question of research. The paper that I am referring to here calls for research. Obviously, the minister does not know the answer and does not have the information with him. If he can get back to us on that, it would be useful. Another area which is said to offer great opportunities for saving is in reviewing the clinical and economic performance of drugs. It is my understanding that drugs are approved on the basis of a small number of clinical trials, sometimes only one. These studies will have tracked patients for periods of as little as three months and seldom more than a year. Trial study groups are highly self-selected. They are more likely than the general population to comply with dosing regimens, they are more closely monitored and they are often people in whom the study drug is more likely to show an effect. Long-term side effects are likely to be underestimated or undetected. All these factors can contribute to the tendency of many drugs to perform less well in real life than in initial studies.

If a drug performs differently in the post-listing environment, either better or worse, its cost-effectiveness is likely to be affected and the price, it is therefore argued, should be reviewed up or down. Can the minister indicate the frequency with which this happens? Are we a bit tighter now on how trials are conducted and over what length of time? What savings would the minister anticipate as a result of a clampdown, if you like, or a change in the way that clinical trials are conducted or the way in which they are reviewed in what is referred to as real-world performance?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.48 p.m.)—I am informed that there has been no change as to how the reviews are conducted. The reviews which I referred to earlier, which dealt with the group of drugs within which Celebrex is contained, are conducted in the normal way. That is part of normal procedure. In terms of the outcomes of those reviews, we do not have any financial projections as to potential savings from that.

Senator ALLISON (Victoria) (7.48 p.m.)—I do not have further questions for the minister, but I think we have demonstrated here this evening that the government has not taken adequate steps to contain the price of the PBS. Increasing the copayments will be a temporary measure at most—less than $1 billion will be saved from it—but the minister and the government appear to have nothing in place to ensure that the cost of pharmaceuticals is sustainable. That is really what we should be most focused on.
There has been some progress in community awareness certainly and in negotiations with pharmacists. I myself have experienced that. When I was with my mother recently, a pharmacist said to me that she could have a generic brand and it would be cheaper. As it turned out, he did not have them in stock, so it did not happen, but I was impressed. He did not know who I was and I was impressed that this was happening. So progress has been made there.

But the difficult tasks and the difficult challenges within the system have not been tackled. It has been quite obvious in this evening’s debate that the minister and the government are not interested in making those hard decisions in contracting out and tendering where either generic or wholesale distribution might offer savings opportunities. The minister is not able to tell us what savings are the result of the reviews of cost-effectiveness. I still hear people criticising the cost-effectiveness of pharmaceuticals. I am not confident that the government really has a grasp of the PBS system and knows how to keep it at a sustainable level.

It is the case that new drugs coming on are expensive—there is no question about that—but often they are very effective. We need to be sure that the government is taking every possible step to protect the people, the consumers, from the kind of pressure which results in a copayment increase. This idea that you back off from any measures which might be unpopular with the pharmaceutical industry and instead allow the extra cost of pharmaceuticals to flow on to the sickest in society—it cannot be said often enough, in my view—seems to me to be the wrong way to go. It is a great shame because it is people who are sick who are going to miss out as a result.

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that schedule 1, item 16, stand as printed.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that schedule 1, items 25 to 28, stand as printed.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.52 p.m.)—by leave—I move government amendments (1), (3) and (4) on sheet RA301:

(1) Clause 2, page 1 (line 7) to page 2 (line 6), 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>
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<tbody>
<tr>
<td>Column 1</td>
</tr>
<tr>
<td>Provision(s)</td>
</tr>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
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<tr>
<td>2. Schedule 1</td>
</tr>
</tbody>
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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.
(3) Schedule 1, item 20, page 5 (line 2), omit “2003”, substitute “2005”.

(4) Schedule 1, item 24, page 5 (lines 10 to 22), omit the item, substitute:

24 Transitional provision relating to section 99G

The indexed amount for an amount to be indexed under section 99G of the National Health Act 1953 on 1 January 2006 is to be worked out as if:

(a) the amount to be indexed were the current figure for the purposes of the formula in subsection (3) of that section; and

(b) the index number for the September quarter in 2004 were the previous index number for the purposes of the formula in subsection (4) of that section.

We also oppose schedule 1 in the following terms:

(2) Schedule 1, item 16, page 4 (lines 17 to 22), omit the item.

I table a supplementary explanatory memorandum relating to the government amendments. This memorandum was circulated in the chamber earlier today.

Senator Nettle (New South Wales) (7.53 p.m.)—I need to read the supplementary explanatory memorandum for the government amendments because I have some questions on those amendments which may be answered in that. I have a couple of general questions that I will ask the minister now. Does the government think that there will be adverse social, economic or health consequences of increasing the copayment as proposed in this bill?

Senator Ian Campbell (Western Australia—Minister for Local Government, Territories and Roads) (7.54 p.m.)—I think that is a very good question. Clearly the Commonwealth has had to, as the parliament has to, make a decision as to the benefits of these measures. The government’s position is very much that the Pharmaceutical Benefits Scheme provides significant assistance, particularly to people in difficult financial circumstances and difficult social circumstances, and that the best thing this government can do and this parliament can do is support a measure that ensures that this quite outstanding scheme will continue to deliver those benefits in an affordable way in the long term. This means that, with an ageing population and more and more people moving into an age group where they become frail and need assistance with their health, the very best drugs are available at affordable prices.

I do not have the brief in front of me, but I know from preparing for question time yesterday when Senator Allison asked me a question about this that the percentage of total PBS costs contributed to by the patient has fallen from around 20.2 per cent to 14.5 per cent literally over the last 10 years or so. So there has been a significant reduction. This measure will marginally increase that. For people on low incomes, particularly those people who are concession card holders, the increases are well defined in the explanations and in the explanatory memorandum to both the bill and these amendments.

The benefit of these measures is that this scheme will be there for people in the long term. It would be terrifically politically popular if the government were to front up to the Australian people and say that we can just keep allowing the cost of this scheme to expand in the way that it has over the past 10 years and pretend that that is affordable into the future. It would be a lot more politically popular for us to just bury our heads in the sand and pretend that that can go on without putting in place some measures to ensure it is sustainable. We would be a lot more popular if we did not have to do this, but we believe that there needs to be a balance between what is politically popular in the short term...
We have to face up to the fact that we have an ageing population. More and more people, as a percentage of the population, are moving into the over 50, over 60 or over 70 age brackets. We need to ensure that, as that occurs and as that phenomenon increases within the demographics of Australia, people have access to drugs at affordable prices. It is a fantastic investment. The great marvel and wonder of modern drugs is that if people have access to good medical advice—through GPs, specialists and other ancillary medical providers—and access to the world’s best and most advanced medicines at affordable prices then they can in fact, by the combination of those two quite distinct and amazing facets of the life of modern, post-industrial mankind, prolong life and much older people can live much longer and more productive lives. Very importantly, we can keep them out of hospital and away from surgery and invasive procedures which can in themselves be very risky.

Senator Nettle has asked an important question. We have had to make decisions about how you balance the social costs and benefits. We have sought to do that over the long term because we believe that the best thing governments here in the federal parliament can do over the next few years is make some of the decisions that need to be made to ensure that Australia is the successful, happy, healthy country that she is to raise children in and to live in. If we want to bestow that upon future generations then we need to make those sorts of decisions now so that our children and grandchildren get the benefit of programs like this that we have enjoyed.

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happy to take that on notice as I would be interested to see that myself.

Senator BROWN (Tasmania) (8.04 p.m.)—What happens if you do have a doctor—and I know from my days in the profession that you will have—who continually prescribes expensive drugs to people where it is right out of kilter with what other more prudent doctors would prescribe? If this behaviour continues, what measure is available to the government to curb the cost on taxpayers and the potential negative impact on patients of the overprescribing of expensive drugs or indeed any drugs by individual doctors?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.05 p.m.)—I am informed by my left-ear and right-ear advisers that doctors who are in that situation and who are picked up are actually counselled in relation to that, which I think sounds like an adequate response.

Senator BROWN (Tasmania) (8.05 p.m.)—I do not think it is. Are there any means of insisting that overprescribing stops?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.06 p.m.)—Counselling is the only answer I have got. I think that it is very hard for a bureaucracy to get inside the surgery. You would need to know what the patient group was and what the patient details were. But counselling occurs. Senator Allison has mentioned her own experience in relation to the prescribing and provision by pharmacies of prescriptions. From the anecdotal evidence I have received—and I spend a long time in doctors’ surgeries with three young children; we always seem to be there for something—following the measures put in place I presume by the Health Insurance Commission or those implemented through the health department and the PBS itself there seems to have been a significant change in the last few years. I have noticed it. But I think that Senator Brown asks a very sensible question about trends in relation to that and I think that would be useful information for the parliament to have before it. I will seek to get some information on trends. If there is any more information I can add in relation to what happens once the surveillance and audit systems pick up heavy levels of prescription by a particular doctor and in relation to what occurs after counselling, I would be happy to provide it. Are there recidivist doctors out there doing this? If there is more information I can add in relation to that, then I would be happy to do so.

Senator BROWN (Tasmania) (8.07 p.m.)—Yes, I would be very interested to see, rather than the trend, what the spread is amongst doctors and the cost of their prescribing. Obviously, if you look at family doctors, there ought to be a pretty close correlation across the board and, if you look at general physicians, ditto. I would be interested to know what that spread is. But I am hearing from the minister that if you do have a recidivist it is very difficult to do anything about it. I would be very interested indeed to know what the spread is because, in my view, the doctors who prescribe the least are very often the best. I am aware that one-third of the people in our hospitals, for example, are there because of a reaction to treatment they are receiving.

So we have this difficulty here between the on-costs of overprescribing, or wrong prescribing—or unforeseen reaction as well—and the problem that will arise out of this legislation because, as the prices of pharmaceuticals go up, some people will go without and end up in the hospital system costing the taxpayer more money anyway. That is my next question: has that factor been taken into
account in the assessment of the benefits to the public purse of this legislation? Has the factor of the potential increase on the hospital system of people going without pharmaceuticals been factored in or is it a zero factor as far as the assessors are concerned?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.09 p.m.)—There are two matters. Firstly, I tend to agree with Senator Brown about some of the best doctors being those who prescribe the least. My favourite doctor, with whom I lived for 43 years, generally used to give me a disprin and a glass of water and say, ‘Go to bed, son.’ But, in relation to picking up the trends in people going off their medication and therefore seeking hospitalisation, people stop their medications—as Senator Brown would well know—for lots of different reasons, depending on the circumstances in which they find themselves. We do not have any specific research in relation to this piece of legislation that would assist us in that regard.

Senator BROWN (Tasmania) (8.10 p.m.)—I suggest that the government does that, because I think it is probably a multi-million dollar factor and should be taken into account. Talking to the minister about this reminds me of one of the worst dressing downs I ever had in practice, which was from a very angry young mother when I prescribed panadol one night. She was insisting on antibiotics, of course, and I refused and got reported to the AMA. Mind you, I did not hear anything from them as a result of that. So there is pressure. It is not just doctors; there are pressures from a good many members of the public for prescriptions too, and that adds to the problem. My final question is: what is the take-up of cheaper generic drugs from pharmacies, where that option is pretty widely offered now—and I take my hat off to the pharmacists for this—as against the patented name drugs that are very often used by doctors in prescribing?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.11 p.m.)—I can supply Senator Brown or the entire Senate with some statistics, but we do not have them available here. As I said earlier, the government has supported a program to help pharmacists promote the availability of alternative and generic drugs. I do believe we have some measure of the success of that program, albeit not in the Senate tonight. I would be happy to provide that directly to Senator Brown or to table it in the Senate as soon as possible.

Senator NETTLE (New South Wales) (8.12 p.m.)—The minister did confirm for me just before eight o’clock that the government had done no studies as to any increased hospitalisations that may occur as a result of people not taking their medicines through them being too expensive as a result of this legislation and the increase in copayment. I am wondering whether the government has done any studies on the health consequences of the increase in copayment.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.12 p.m.)—I sought to answer that in my rather rambling response to Senator Nettle’s first question about the social consequences. The same answer applies to that.

Senator NETTLE (New South Wales) (8.12 p.m.)—The minister did confirm for me just before eight o’clock that the government had done no studies of the social consequences of increasing the copayment. Given that Senator Brown was asking about any implications for the budget perhaps as a result of additional funding to Australian health care agreements due to increased hospitalisations from this measure, has the gov-
ernment done any economic studies about the consequences of this increase in the co-payment?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.13 p.m.)—I will make a brief point to reiterate that we want to ensure that the PBS provides good quality medicines to Australians at affordable prices for the long haul. We also want to ensure—and I did not say this earlier but it is an equally important thing—that we continue to afford to list state-of-the-art world-leading drugs and make sure they are available. As you reduce the financial viability of the PBS as the ageing of the population sees an expansion of the use of drugs—as people get older and need more drugs to keep themselves healthy—the capability of listing new drugs as they come onto the market diminishes. So the financial affordability and this measure to secure that are very important for the health and the social wellbeing of the Australian population.

Senator NETTLE (New South Wales) (8.14 p.m.)—Minister, I am not trying to debate this with you. That is something I could do, but what I am trying to do here is get answers to questions. You gave me an answer to the question that I asked about social studies. You said no, the government had not done any social studies. I went on and asked that same question in relation to health and economic studies. You said no, the government had not done any social studies. I went on and asked that same question in relation to health and economic studies.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.15 p.m.)—Sorry, it was an incomplete answer and I apologise for that. The government has, of course, had a close look at the economics of the scheme, the affordability of the scheme and the sustainability of the scheme. I have quoted already tonight and previously in the Senate some statistics about the cost of the overall scheme, the increase in the costs and the average percentage of patient contributions over the past 12 years. We did the Intergenerational Report, which looks at a whole range of policies of the federal government, particularly social policies and the need for us to make policy adjustments now. If we do not make those policy adjustments now they will get a lot harder to make in the future, if not see the collapse of some of the fundamental social policy underpinnings that have made Australia such a well regarded and compassionate society. That regard is held within most of Australia and around the world, so it is something we should all be proud of, but it will not just stay that way unless we make these decisions. So, yes, the answer is that we have done an economic analysis of these measures.

Senator NETTLE (New South Wales) (8.16 p.m.)—I think we are getting there. So we have a no to the study of social consequences and we have a yes to the study of economic consequences. What about health? Has the government done a study on the health implications of increasing the copayment? These are some of the issues that we talked about earlier, and I will elaborate whilst the minister is getting an answer: the health consequences whereby people do not take their medication, have complications, have difficulties and get hospitalised. I have asked about the economic aspects and now I am asking about the health aspects.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.17 p.m.)—There has been no particular study in relation to this measure but I reiterate, as I have throughout the debate, that this is one part of a package of measures to ensure that we have excellent accessibility to excellent medicines at affordable prices and integrate that with a significant reform of the availability of medical care, access to hospitals.
and a whole range of other measures to improve the health of Australian people in the short term, the medium term and, very importantly, the long term.

Senator NETTLE (New South Wales) (8.18 p.m.)—Okay, we are getting there. We have got no social consequences and no health consequences, just the economic consequences. In 2002 the government estimated that five million scripts would not be filled per annum as a result of the increase in the copayment. Have the government revised their estimation of how many scripts will not be filled as a result of the increase in the copayment?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.18 p.m.)—No revision.

Senator NETTLE (New South Wales) (8.18 p.m.)—Does the minister agree with the department of health and the National Centre for Social and Economic Modelling estimation that the average annual growth rate in the PBS between 2001-02 and 2006-07 will be 5.8 per cent per annum?

Senator BROWN (Tasmania) (8.19 p.m.)—Mr Temporary Chairman, I inform the minister that the dining room stops serving at nine o’clock and that the longer we go into this process the more impossible it is going to be for those people involved in this debate to get any dinner.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.20 p.m.)—We do not have revised figures for those growth estimates and they will have changed slightly because the 25 months has made an effective change to the real value of the prices we are talking about. I am sure we would be happy to revise them and provide them to Senator Nettle when the revisions have been made.

Senator NETTLE (New South Wales) (8.20 p.m.)—I was not actually asking whether the government had revised those costings.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.20 p.m.)—I am sorry; I can now answer that. You have quoted some figures. They would naturally be figures that were derived roughly two years ago. I would presume those figures would have changed a little bit since then.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that government amendments (1), (3) and (4) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question is that schedule 1, item 16 stand as printed.

Question negatived.

Senator NETTLE (New South Wales) (8.22 p.m.)—by leave—I move Australian Greens amendments (1) and (2) on sheet 4306:

4 Review of operation of Act

(1) The Minister must initiate, at the expiration of eight months after the day on which this Act receives the Royal Assent, an independent review of the socio-economic and health impacts of this Act.

(2) The review required by subsection (1) must be completed within 11 months of the day on which this Act receives the Royal Assent.

(3) In initiating the review required by this section, the Minister must call for nominations only from academic or scientific research institutions and, by written instrument, appoint a three person panel from nominations received.
(4) The Minister must cause the instrument appointing the panel in accordance with subsection (3) to be tabled in each House of the Parliament.

(5) Either House may, following a motion upon notice, pass a resolution disallowing the appointment notified in the instrument described in subsection (4). To be effective, the resolution must be passed within 5 sitting days of the House after a copy of the instrument of appointment was tabled in that House.

(6) If neither House passes such a resolution, the instrument of appointment takes effect on the day immediately after the last day upon which such a resolution could have been passed.

(7) Where:

(a) a notice referred to in subsection (5) is given with respect to an appointment; and

(b) at the expiration of the period during which a resolution disallowing the appointment could have been passed:

(i) the notice has not been withdrawn and the relevant motion has not been called on; or

(ii) the relevant motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

the appointment is deemed to have not been made.

(8) If an instrument of appointment is not tabled in each House of Parliament in accordance with this section, it cannot take effect.

(9) The review panel may only be appointed if the provisions of this section have been complied with.

(10) The Minister must cause to be tabled in both Houses of the Parliament a copy of the report of the review within 15 sitting days of receiving the report.

(2) Page 2 (after line 11), after clause 3, add:

5 Cessation of operation of Act

This Act, unless sooner repealed, ceases to operate at the expiration of 12 months after its commencement.

Amendment (1) provides for a review of the act to be carried out eight months after the act comes into effect. That review would look at the socioeconomic and health impacts of this piece of legislation. The minister has already told the committee during this debate that the government has not done any social or health studies on the consequences of this act. This amendment from the Australian Greens proposes that, eight months after the act has come into play, an independent review be carried out which looks at the social, economic and health consequences of the act.

This is something which the Australian Greens moved on 6 March 2003 as part of a broader reference to look at the overall financial sustainability of the PBS, and Senator Brown and I were the only two senators who thought it was worth looking at having an inquiry into the broader financial sustainability of the PBS. This morning the Australian Greens moved an amendment to send this piece of legislation to a legislation committee to look at the social, economic and health consequences of this bill, and both the major parties opposed that. So this is, if you like, a third time lucky attempt to see whether anyone in the chamber is interested in looking at the social, economic or health consequences of this particular piece of legislation. There is an opportunity in this particular amendment, framed by the Australian Greens, for people to actually support the bill—because I know there are people in here who want to support the bill—and still get that opportunity to review the consequences of supporting the bill. The other amendment which the Australian Greens have moved, amendment (2), is a sunset clause to the bill.
which would come into effect 12 months after commencement of the act.

These two amendments are designed to enable the opposition, who announced that they were going to be supporting this measure, to review this decision if they get into government. Indeed Senator Evans, when contributing to the second reading debate on this bill—the only contribution that we have heard from the Australian Labor Party as to why they are supporting this bill—indicated that the Australian Labor Party would be reviewing this decision and the consequences if they get into government. So these amendments are designed to enable the opposition to enact that commitment that Senator Evans made to the Senate earlier this evening, which is to review the legislation by looking at the social, economic and health consequences—which the government tells us were not looked at before the bill was introduced—and then for the bill to cease after 12 months.

The reason the Australian Greens are expecting to see the support of the Australian Labor Party in relation to these two amendments is that we have had statements from the shadow minister for health and the shadow minister for finance to say that the opposition are confident that they will be able to find these savings—$1.1 billion over four years—through other changes to the PBS when they are in government. The proposal the Australian Greens are putting is: let us look at the consequences and, given that the Labor Party have said that they are confident they will be able to find the savings some other way, we anticipate that they will be able to say, ‘Yes, we want to see the impact of the decision we’ve made. It will be interesting to look at the social, economic and health consequences. After that review has been carried out, we are quite confident that we will be able to support the sunset clause being put forward by the Greens because we have told all and sundry in our announcement about this backflip that we are confident we can find these savings elsewhere.’

If Senator Evans wants to get up and tell us that the opposition is going to go further than that and that, if they do get into government, they will repeal this decision they have made, I would be stoked to hear that. But what we have heard so far is that they will review it. What we have here is an option to review that decision and have a sunset clause, so I will be particularly interested to hear what the opposition has to say in relation to these two amendments put by the Australian Greens.

Senator CHRIS EVANS (Western Australia) (8.27 p.m.)—I respond to Senator Nettle’s invitation and indicate that, as keen as I am to have her ‘stoked’ as a show of goodwill, I am going to have to disappoint her. It could be third time lucky or it could be three-time loser. I think it is going to be three-time loser on this issue, I am afraid. I accept many of the sentiments that Senator Nettle expressed. We are concerned about the consequences of these increases in the PBS. We have committed to reviewing the arrangements and will try to reduce the impact on consumers. But, quite frankly, that is a core function for a Labor health minister. It is a core function for Ms Gillard if we win the election, and I do not think the review as proposed, a sort of rather bureaucratic response, is the answer. We accept the responsibilities that I outlined in my contribution to the second reading debate. It will not be something we will be looking for a committee to do; it will be something for the new Labor minister for health to drive very seriously as part of their core function. That is an undertaking we have made and that I know Ms Gillard is very committed to. In terms of imposing a review on the government, the point has been made that they are not inter-
ested in those issues, so I do not see any value in that. We will not be supporting the amendment.

Senator BROWN (Tasmania) (8.29 p.m.)—Third time failure, and the argument does not hold up. We all know from opinion polls and experience that the government has the potential to be returned, just as the opposition has the potential to form the next government with or without the other entities in the House of Representatives. A responsible opposition’s job is to look at the interests of the Australian people. Senator Nettle’s amendments for the Australian Greens say: ‘If Labor gets in, this is your opportunity to review the PBS. Then in good time make the changes that are required and legislate to reduce these costs on the PBS, and the Greens would support that.’ Being mature and sensible about this, if the government gets back in and Labor is left impotent on the opposition benches again—

Senator Ian Campbell—You can get drugs on the PBS for that.

Senator BROWN—I will have to give way to the minister’s knowledge and experience on that.

Senator Ian Campbell—Stick with Disprin!

Senator BROWN—Yes. If the government gets back in, these amendments will keep it bound. That is good and prudent legislation. These are very important amendments. The opposition should be taking them on. By not taking them on, it reveals that the opposition really does support the government’s position on the PBS. It really is not saying, ‘We’re going to safeguard the interests of Australians and not allow these increases to persist after the next election, come what may. We are simply going to allow the need for us to find money to avoid a budget deficit to hit the poor and the sick.’ If the government gets back in, bad luck for the Australian people. The ALP does not care.

Senator NETTLE (New South Wales) (8.31 p.m.)—I take this opportunity to ask the opposition if they want to elaborate on the kind of review of this measure they are proposing. Senator Evans indicated in his contribution that he thought this review would be bureaucratic—I think that was the word he used. I was wondering if Senator Evans might like to elaborate on what kind of review and what kinds of benchmarks the opposition were proposing. Are we talking a parliamentary review? Are we talking an internal review carried out by a department? What kind of review and what kinds of benchmarks are the opposition proposing?

Senator CHRIS EVANS (Western Australia) (8.32 p.m.)—I will respond to this once. I do not intend using the committee stage to provide policy statements on our latest election position to the Greens. It is not really the committee’s role. But in the spirit of goodwill I am happy to indicate that in my speech during the second reading debate and in my earlier answer I made very clear that we regard the review of the increases in the PBS and the attempts to lessen the cost increases through other measures as core functions for a Labor health minister. We are not going to have committees, boards and inquiries. It is a commitment to political action on behalf of the minister responsible for the PBS, and we say there are other avenues for making savings to relieve the cost to the consumers. We say it is a core function of a Labor health minister to drive the change to try to achieve those savings and reduce the impost of the PBS on consumers. The core function of a Labor minister, first day on the job—that is, the review process—is a commitment to a different policy, a commitment to taking responsibility and driving changes which will allow us to relieve the cost on consumers. That is the commitment. There
will not be committees, inquiries et cetera. We have made it clear we have an understanding about what the problems and opportunities are. We will be looking to drive those to reduce the cost of the PBS.

Senator NETTLE (New South Wales) (8.34 p.m.)—I am disappointed, Senator Evans. I was thinking perhaps we could have under a Labor government an inquiry into the social, economic or health consequences or even the financial sustainability of the PBS, as we proposed last year. You can rest assured we will be pursuing our concern about the sustainability of the PBS. We intend to continue to push for that level of wide-ranging inquiry whoever is in government so that we can look at a whole raft of measures. Part of the problem in this debate is that we have not seen any studies from the government about the different methods they have looked at for maintaining the sustainability of the PBS. All we have is one response saying, ‘We thought we’d do it by increasing the copayment.’

As I have previously outlined, this does not give financial sustainability to the PBS. The government have said after four years that it is effectively neutral in terms of the impact on the cost of the PBS. We have a government saying, ‘We are not going to give you what the studies we have done say. We have come up with one measure; we are going to make sure that sick Australians pay more for their medicines. That is the one we have chosen.’ And then we have had the opposition say, ‘Yes, all right.’

In his contribution earlier Senator Evans said there are other ways to do it, and he is absolutely right. There are other ways to do it. The Greens called for an inquiry so we could look at the range of measures available and make an informed decision. We are not making an informed decision here; we are making a decision on the basis of no study of the social or health consequences. The minister indicated there had been a study of the economic consequences. He did not offer to table it. He simply offered a proposal as one way forward, and that is what is in this bill.

I have two more areas of questioning. Is it correct that currently, for almost a third of all PBS drugs, the prices are lower than the non-concessional copayment—in other words, the people buying a third of all drugs currently on the PBS do not actually get any subsidy, because the cost is lower than the non-concessional rebate? Can the minister indicate whether that is the case—for almost a third of all PBS drugs there is no subsidy provided?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.38 p.m.)—I am informed that that is because they are below the general patient copayment but not below the concessional copayment.

Senator NETTLE (New South Wales) (8.38 p.m.)—Has the government done any studies or does the government have a view as to what percentage of PBS drugs would, as a result of this increase in the copayment, be below the non-concessional copayment rate?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.38 p.m.)—We have made no predictions on that.

Senator NETTLE (New South Wales) (8.38 p.m.)—Thank you—well, thank you for giving us an answer anyway. My last question is: can the minister explain for the chamber the economic rationale for increasing the price of essential medicines for people who are earning less than average weekly earnings, thereby saving the Commonwealth $1.1 billion over four years, whilst at the
same time providing tax concessions to people who are earning more than average weekly earnings, thereby costing the Commonwealth purse $14.7 billion over a four-year period?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.39 p.m.)—If I did that I would label myself as an economic rationalist, and I would hate to do that.

Senator NETTLE (New South Wales) (8.39 p.m.)—If you are not prepared to label yourself as an economic rationalist, perhaps I should ask the opposition whether they have an argument for supporting $1.1 billion in price hikes for sick Australians buying medicines, whilst at the same time supporting $14.7 billion worth of tax concessions to people earning above average weekly earnings. Are there any admissions as to the economic rationalist nature of people on this side of the chamber?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.40 p.m.)—To say that all people who benefit from the PBS are sick is demonstrably wrong. There are a lot of people walking around our country who are well but who take drugs to stop themselves from becoming sick. That is one of the hugely important aspects of the government trying to make sure we can sustain this program going forward so that we can have a lot of healthy Australians walking around, running around, skipping around and dancing around this country, feeling happy and healthy—

Senator Crossin—around the flagpole.

Senator IAN CAMPBELL—Asthmatics, Senator Crossin, and people with high-cholesterol counts. People with cancer are sick, obviously, and we hope to make them healthy as well. But there are a lot of very healthy people who benefit from the Pharmaceutical Benefits Scheme. It may not be there in 10 years time if it cannot be sustained through this measure, the sorts of measures that Senator Evans wants to introduce if he gets elected, those that Senator Allison is urging upon us or the whole group of measures we have been putting in place to try and deliver better medicines at lower prices to people—that is our rationale for doing it.

Senator NETTLE (New South Wales) (8.41 p.m.)—The minister was not here during my speech in the second reading debate when I talked about the fact that it is not just sick Australians who are going to be slugged the cost of this increased copayment; it is also going to slug those people who are not sick but who take medication that is on the PBS to prevent themselves from becoming sick and to keep themselves well.

The minister is absolutely right when he says that what this legislation does, and what the government and the opposition have decided to do, is not just to make sick Australians pay more for their medicines; well Australians, who are taking preventative medicine in order to keep themselves well—for example, people with diabetes—and to look after their condition, are going to be hit by this. People who are well but happen to have hepatitis C and take medication are also going to be hit by this increase in the copayment. People who are well but have asthma and need to buy Ventolin are also going to be hit by this price increase. I could give my whole speech again if you like, Minister, because you were not here in the chamber when I gave it before. But let me assure you that many Australians will be paying the extra prices that your government and this opposition have asked them to pay as a result of this.

My previous questioning related to whether the government had looked at the
consequences of those people paying more. What are the consequences for the public purse of additional health expenditure? What are the consequences socially for people who have mental illness? They are often in extreme poverty and may find themselves homeless as a result of not being able to afford the medication that they are buying, as the Mental Health Council said yesterday. What are the consequences for those people? That is where we have gone in this committee stage. Not only are the government and the opposition interested in ensuring that sick and well Australians pay more for their medicines but also they are not interested in the consequences. They are not interested in studying the previous consequences and making them known to the chamber before asking us to make a decision. They are not interested in studying the consequences even after the piece of legislation comes in.

It is utterly irresponsible of any present or future government to not be interested in studying and determining the social, economic and health consequences of the decisions they are making. It is going into the decision absolutely blind. That is what we have heard tonight. Not just the government but also the opposition are going into this measure absolutely blind. They are aware—because the good health organisations I have mentioned have told them—of what the consequences will be. All we can assume is that they are not interested in those consequences. They are not interested in having the study, because they think that saving $1.1 billion is more important than looking after a Medicare system, of which the PBS is a part. They are not interested in looking after the public health of this country into the future or, indeed, in looking after the future sustainability of the PBS.

Question put:

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

The committee divided. [8.50 p.m.]

The Chairman—Senator Hogg)

Ayes............ 10
Noes............ 38
Majority........ 28

AYES

Allison, L.F. * Bartlett, A.J.J.
Brown, B.J. Cherry, J.C.
Greig, B. Lees, M.H.
Murphy, S.M. Murray, A.J.M.
Nettle, K. Ridgeway, A.D.

NOES

Barnett, G. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Campbell, G.
Chapman, H.G.P. Collins, J.M.A.
Cook, P.F.S. Crossin, P.M.
Eggleston, A. * Evans, C.V.
Faulkner, J.P. Ferguson, A.B.
Fifield, M.P. Forshaw, M.G.
Hogg, J.J. Humphries, G.
Hutchins, S.P. Kirk, L.
Knowles, S.C. Ludwig, J.W.
Lundy, K.A. Marshall, G.
Mason, B.J. McGauran, J.J.J.
McLucas, J.E. Moore, C.
Patterson, K.C. Payne, M.A.
Ray, R.F. Santoro, S.
Stephens, U. Tchen, T.
Troeth, J.M. Watson, J.O.W.
Webber, R. Wong, P.

* denotes teller

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.
Third Reading

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.54 p.m.)—I move:

That this bill be now read a third time.

Senator BROWN (Tasmania) (8.54 p.m.)—Let me go through the reasons why the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2] should be rejected. It will take me four or five minutes. Firstly, it will increase by nearly 30 per cent the cost of essential medicines, hitting the sickest and the poorest in our society—according to the Labor Party. Secondly, Australian pensioners and concession card holders will go without almost five million prescriptions and Australian families will also go without almost half a million prescriptions as a result of the proposed increase—according to the Labor Party. Thirdly, by depriving sick and elderly Australians of the medicines they need, there will be an increased need for greater medical intervention in public hospitals and nursing homes at even greater cost to taxpayers—according to the Labor Party. Fourthly, there are other more effective means by which the long-term sustainability of the PBS could be assured, means which would put appropriate responsibility on the pharmaceutical industry and the medical profession rather than on those least able to bear the burden and on which the government has been silent, and now on which the Leader of the Opposition has been silent—according to the Labor Party. Fifthly, the true rationale for the bill is to restore the budget bottom line and has nothing to do with the long-term sustainability of the PBS or with genuine health outcomes for Australians—according to the Labor Party.

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! There is far too much audible noise in the chamber. Senator Brown has the call.

Senator BROWN—I guess noise is the best way not to listen to what is being said, because what we have here tonight is a monumental backflip by the Labor Party to meet its own budget bottom line at the expense of poor and sick Australians—using the Labor Party’s own words. What a terrible backdown by the once great party of social justice in this country. What an abandonment of Labor voters in this country. What an abandonment of the battlers in Australia by both government and opposition. What a terrible indictment of economic rationalism by both parties that they would put the health and the wealth of poor people in this country second to their need to make a budget bottom line which has been threatened by tax cuts for the rich.

Sure, Labor are going to say, ‘We’ve got some tax cuts for people who aren’t as rich.’ How are they going to fund it? By increasing the cost of medicines for the very people they are going to give the tax cuts to. Labor are going to say ‘We’re giving with this hand’ while they are stealing from people’s pockets with the other hand. They are going to say, ‘We’re going to give you a tax break, but the result of that is going to be the increased cost of medicines.’ This bill is targeted at those most in need by a party that could not get its books right. The big mistake happened on budget night with the knee-jerk reaction by the Labor Party when it said ‘Us too’ to $14 billion worth of tax breaks over the coming four years.

The ACTING DEPUTY PRESIDENT—Order! There is far too much audible talk on my left. Senator Brown has the call.

Senator BROWN—What a monumental mistake the Labor Party made when they said ‘Us too’ to $14 billion of tax cuts for the rich. It immediately boxed them in. It was
not responsible opposition; it was thoughtless opposition. It boxed them in straight off, because they did not want to be seen not to be supporting tax cuts for people earning $52,000 and up—and the further up you go the bigger the return from the government’s tax cuts. That is pure Tory philosophy. You would expect that of the Hon. John Howard, the Prime Minister, but not Labor. How on earth did Latham Labor allow themselves to be locked in and to say, ‘Yes, us too’?

The penalty for that—it was not silliness; it was irresponsibility—is showing up here tonight. They were boxed in and had nowhere else to go, so they said, ‘We’ve got to purloin something. We’ll get a billion dollars or a little bit more from the Pharmaceutical Benefits Scheme by making people pay more for their prescriptions, including families and pensioners.’ Whichever way you look at it, the Labor Party got it wrong. It was bad policy, bad politics and bad public delivery of what should have been an extremely open field for the Labor Party. They had $14 billion over the next four years to redirect to more socially just targets, but they squandered it. Within hours of Mr Costello getting up and giving his budget speech, they said, ‘Us, too. If that is the Conservative line, we are Conservatives too. If that’s the Tory line, we are Tories too. If that’s going to help big business and people who are rich, we’ll do it too, and then we will try to find some crumbs at the end of that process to feed to our traditional constituency, which is poorer Australians.’ They found they did not have enough crumbs, so they said, ‘We’ll take some off them and by this double manoeuvre we’ll give them something back.’

A terrible mistake has been made by the Labor Party here to put an impost on people’s prescription drugs to pay for an election promise coming down the line—a big mistake—and the Greens will not have a part of it. We have opposed it all the way down the line and we will oppose it on this third reading. And finally, to add insult to injury, Senator Nettle brings up an amendment that says, ‘Let’s review this within 12 months and let’s have that locked in, because if Labor don’t win the election we’ll be able to at least get the government to have to justify before this parliament this 30 per cent increase in prices into the future,’ and Labor say, ‘No, we won’t even do that; we won’t even try to put some halter on what the government does in the future.’ Because they did not do that, we know that they are not going to deliver on the return of this 30 per cent to the electorate after the election. Of course they are not. Who believes that? No-one believes that. I do not think there is even a person on the opposition benches who believes that.

It is a terrible failure by the Labor Party. Thank goodness for the crossbenchers who have been able to stand up for the absolute arguments that this opposition was putting forward not just 18 months ago but 18 days ago. It has been a pleasure working with Senator Allison from the Democrats and with my colleague Senator Nettle tonight, even though it is an appalling outcome that we are going to get because the Labor Party backflipped.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.03 p.m.)—Whilst I acknowledge Senator Brown’s kind words about my colleagues, I should chide him because I am sure that was slightly more than the four minutes he said it was going to be. It was closer to eight, but that is the way it goes. I shall, however, be briefer. I will not profess to say what is good or bad politics—I am probably not in a position to say that to others—but it is certainly bad policy and it certainly will affect people in the community who could do without this sort of impost. It will affect them and it will be locked in for the longer term. That is the point that needs re-emphasising. We must
remember the role of this Senate. The Senate's role is to assess government proposals in legislation. It is a house of review. That is what it was put in place in the Constitution for, and I think all of us would acknowledge that, when it is working at its best, the Senate has become more effective than ever in the role of scrutinising government policy and seeing whether or not it is overall in the national interest, whether it is good public policy and whether its impact on people is justified. The Democrats' consistent view has been that this legislation is not justified, that it is not just. It is for that reason that we oppose it at the third reading, as we have previously.

I want to make the broader point that clearly the decision of the Labor Party to now support this measure after opposing it for so long is based significantly on their overall desire to win government. Whether or not they have made the right move from that perspective is for commentators to decide. I do not blame them for wanting to win government, I guess that is part of their role, but it is not part of the Senate's role, and that is the key point I want to emphasise. I really think, as we look at the future direction of our democracy and how it can work as effectively as possible in the way it has evolved over the last hundred or so years, we need to think again about how we can ensure the Senate is as effective as possible.

The real problem here and the reason this result has occurred—and the reason we have had such appalling public policy in a range of areas passing through this chamber in the last couple of weeks—is that both the larger parties have their sights well and truly set on the contest for government in the next month or two. That contest for government, that immediate priority for those two parties, has superseded any responsibility of deciding whether or not to support something on the basis of its being good policy. That is understandable, given our system, but it has not led to the best result for the public and the public interest. It emphasises, once again, the need to really consider as fully as possible those two questions that people consider at the election: it is not just who you determine will be Prime Minister but also who you determine is to represent you in the Senate.

They are very distinct roles and we should not have people in this place, elected to the Senate, who occasionally examine policy proposals and legislative proposals on the basis of the good or bad they do for the public interest and then do not do that when there is an immediate short-term political interest that gets in the way. I think it proves once again that we need fewer members of the larger parties in the Senate and many more Independents or members of small parties who are focused on the Senate role and the specifics of examining legislation on its merits without the completely separate issue of the self-interest of getting into government getting in the way of those decisions.

The need to make the Senate as effective as possible is stronger than ever because of the greater amount of power that the executive, the government of the day, is getting. The Senate's role can only be made stronger, I would suggest, by having fewer representatives from the parties that are focused on winning government and more representatives from parties or more individuals who are focused specifically on the Senate's role. That will mean fewer poor results like the one we are having now with this legislation. Frankly, far worse legislation was passed in here in the last week. The tax cuts were extraordinarily economically irresponsible.

It is ironic that this measure is being passed because of Labor's need to take, in their words, 'tough decisions' to be economically responsible. It is also ironic that, when we have opposed this bill in the past,
the government have attacked the Democrats and others in this place for not being economically responsible because of the need to have the money for budgetary purposes—a billion dollars over four years or something. Yet, at the same time, they can come down with a budget that hands out tens of billions of dollars to the highest income earners in the country, along with poorly targeted lump sum payouts to people. The government are spending the money not to ensure in any way long-term assistance to address need but to hand out short-term politically aimed lump sums in the lead-up to an election. We get appallingly irresponsible economic results when the political need of the government of the day gets in the way of good public policy. I think the Senate’s role is distinct. The more we can get that recognised by the public and by those who examine and focus on what happens in this parliament, the better.

Question put:
That this bill be now read a third time.

The Senate divided. [9.13 p.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes............ 42
Noes............ 10
Majority......... 32

AYES

Barnett, G.  Bishop, T.M.
Boswell, R.L.D.  Brandis, G.H.
Buckland, G.  Calvert, P.H.
Campbell, G.  Carr, K.J.
Chapman, H.G.P.  Collins, J.M.A.
Cook, P.F.S.  Coonan, H.L.
Crossin, P.M.  Eggleston, A.
Evans, C.V.  Faulkner, J.P.
Ferguson, A.B.  Ferris, J.M.
Fifield, M.P.  Forshaw, M.G.
Hill, R.M.  Hogg, J.J.
Humphries, G.  Hutchins, S.P.
Kirk, L.  Knowles, S.C.
Ludwig, J.W.  Lundy, K.A.
Marshall, G.  Mason, B.J.
McGauran, J.J.J. *  McLucas, J.E.
Moore, C.  Patterson, K.C.
Payne, M.A.  Stephens, U.
Tchen, T.  Troeth, J.M.
Vanstone, A.E.  Watson, J.O.W.
Webber, R.  Wong, P.

NOES

Allison, L.F. *  Bartlett, A.J.J.
Brown, B.J.  Cherry, J.C.
Greig, B.  Lees, M.H.
Murphy, S.M.  Murray, A.J.M.
Nettle, K.  Ridgeway, A.D.

* denotes teller

Question agreed to.
Bill read a third time.

COMMITTEES

Australian Crime Commission Committee Meeting

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.16 p.m.)—by leave—I move:

That the Parliamentary Joint Committee on the Australian Crime Commission be authorised to hold a public meeting during the sitting of the Senate today, to take evidence for the committee’s examination of the Australian Crime Commission annual report 2002-03.

Question agreed to.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.17 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 3 ( Appropriation (Parliamentary Departments) Bill (No. 1) 2004-2005 and four related bills).

I will circulate in the chamber in the next few minutes a list of the next four or five bills that the government intends dealing with this evening, so that people know what they are doing.
Question agreed to.

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

In Committee
Consideration resumed from 23 June.

APPROPRIATION BILL (No. 1) 2004-2005
Bill—by leave—taken as a whole.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.18 p.m.)—by leave—At the request of Senator Stott Despoja, I move:

That the House of Representatives be requested to make the following amendments:

(1) Schedule 1, page 11, Department of Education, Science and Training, omit “2,283,346”, substitute “2,308,346”.
(2) Schedule 1, page 13, Department of Education, Science and Training, omit “1,299,930”, substitute “1,324,930”.
(3) Schedule 1, page 64, Department of Education, Science and Training, omit “1,299,930”, substitute “1,324,930”.
(4) Schedule 1, page 65, Department of Education, Science and Training, outcome 2, omit “865,018”, substitute “890,018”.

Statement pursuant to the order of the Senate of 26 June 2000
These amendments are framed as requests because they are to a bill which appropriates money for the ordinary annual services of the government.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000
As this is a bill appropriating money for the ordinary annual services of the government, the amendments are moved as requests. This is in accordance with the precedents of the Senate.

Senator BARTLETT—These amendments will extend the Educational Textbook Subsidy Scheme for the next financial year. Senators would be aware that the Democrats, and particularly Senator Stott Despoja, have been drawing attention to the imminent defunding of this scheme at the end of this financial year. The scheme only costs around $25 million per annum and these amendments or requests add $25 million to the appropriations for the Education, Science and Training portfolio administered expenses. Specifically, amendment (4) puts the $25 million into outcome 2 under the Department of Education, Science and Training appropriations on page 65, schedule 1 of the bill. The other amendments carry that $25 million appropriation through to other parts of the bill.

The Educational Textbook Subsidy Scheme alleviates the majority of the costs of the GST on educational textbooks for schools, TAFEs and university students. The Democrats believe it is outrageous that a government that can afford $15 billion in tax cuts over four years for the highest income earners cannot afford $25 million to ensure that the cost of textbooks does not rise significantly. The opposition also supported those tax cuts. Even though their leader, Mr Latham, has spoken repeatedly about the value of books and education, his party so far have not supported maintaining this subsidy so that students and their families can afford to pay for them. Today a motion moved by Senator Stott Despoja was the last parliamentary attempt to force the government to extend the scheme before it is due to expire in a week or so. The motion was defeated, with the government and the ALP opposed. I thank Senators Harradine, Murphy, Harris,
Brown and Nettle for their ongoing support on this issue, as well as the Independents in the lower House, particularly Independent MP Mr Tony Windsor, who is the member for New England in New South Wales.

Senator Stott Despoja launched a petition just a couple of months ago to save the scheme, which has already gleaned around 35,000 signatures, along with postcards and stickers, around the country. The Democrats have been supported in this campaign to extend the scheme by the Australian Vice-Chancellors Committee, the National Tertiary Education Union, the National Union of Students, the Council of Australian Postgraduate Associations, the National Indigenous Postgraduate Association Aboriginal Corporation, the Australian Publishers Association, the Australian Booksellers Association, the Australian Campus Booksellers Association, the Australian Society of Authors and the Australian Medical Students Association, among others.

Senator Stott Despoja made extensive comments about the scheme in her second reading contribution and when she introduced a private senator’s bill also aimed at extending the scheme. I think that all senators know enough about the scheme, but I reinforce the basic fact that we have had a lot of debate in this chamber about not just this scheme but the importance of higher education. Whilst there has been significant disagreement about major policy approaches to deal with the issue, the justification used for those different policy approaches has been the importance of enabling people to access education and to participate in the opportunities it provides. This very simple, non-expensive measure goes to the core of that philosophy that each of us say we share. I do think it is important to make a final attempt at this late stage to ensure that this subsidy scheme does survive.

The TEMPORARY CHAIRMAN (Senator Greig)—The question is that the requests moved by Senator Bartlett be agreed to.

Question negatived.

Bill agreed to.

APPROPRIATION BILL (No. 2) 2004-2005

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (9.25 p.m.)—I wish to move an amendment on sheet 4296. This amendment is in my name but, for the record, I would like the amendment to be recorded both in my name and in the name of Senator Faulkner. Senator Faulkner will no doubt address the chamber shortly. I move amendment (1) on sheet 4296:

(1) Page 10 (after line 8), after clause 14, insert:

14A Advertising expenditure

(1) Expenditure must not be made from amounts issued under this Act, or any other Act, for the purposes of an advertising or public information project, where the estimated or contracted cost of the project is $100,000 or more, unless a statement is provided setting out:

(a) the purpose and nature of the project;
(b) the intended recipients of the information to be communicated by the project;
(c) who authorised or is to authorise the project;
(d) the manner in which the project is to be carried out;
(e) who is to carry out the project;
(f) whether the project is to be carried out under a contract;
(g) whether such contract was let by tender;
(h) the estimated or contracted cost of the project;
and certifying that the project conforms with the Audit guidelines.

(2) For the purpose of subsection (1), a statement is provided when a minister:

(a) presents the statement to the Senate; or

(b) presents the statement to the President of the Senate under procedures of the Senate providing for the presentation of documents when the Senate is not sitting.

(3) In subsection (1), Audit guidelines means the principles and guidelines set out in appendix 1 of Report No. 12 of 1998-99 of the Auditor-General.

The issue of government advertising and expenditure and public information is a very considerable one, not just because of the amount of money involved but because of the acute political sensitivities that attach to it and the very precise nature of public opinion. I use the word 'precise' deliberately because I do not find much equivocation or mixed opinion on this matter. It is a precise view that advertising of this sort should be free from political benefit to the governing party, which is able to have access to taxpayers’ funds for this purpose. Of course, as you near an election that matter of political ethics becomes far more important. In the Australian on 24 June, above an article headlined by Patricia Karvelas, is a graph showing the amount of government advertising expenditure. The graph is fairly unexceptional in that it shows that governments always do advertise, and there is no-one on any side of this chamber or from any party who disagrees with government advertising and information expenditure. But if that expenditure is politically partisan and if it accelerates very considerably towards an election period, I am afraid the political and community hackles will rise.

The research done by the opposition, digging away in estimates hearings, is that something like $123 million of government expenditure on advertising is now under way, or is to come into play. The concern is that it is being manipulated and misused so that, effectively, it is of benefit to the Liberal and National parties. This has been of such great concern to previous governments that by 1995 the opposition, who were then in government, felt obliged to introduce government advertising guidelines and processes in reaction to media, political and community commentary. The present government claims that it follows those processes. In a short speech during the take note of answers debate the other day I quoted from some estimates questioning of mine. I will quote the paragraph from my speech in the Hansard of 23 June, which is relevant. I said:

The opposition in estimates have established that leading up to this election there will be approximately $123 million of expenditure on government advertising. This is a taxpayer funded party political campaign in large part, and it is unacceptable in our democracy. We have noted that the process by which the 1995 guidelines are utilised is extremely defective. The question asked of the expert adviser to the committee approving government advertising was:

Is there a minister or a person representing the minister who signs off the project and signs that it is in accord with these guidelines?

Mr Williams answered:

There is no formal process there, no.

The government’s entire case for credibility and ethical behaviour is that its committee, its departments and its secretaries producing these advertisements are going through a process that is sanctioned by the 1995 guidelines. But the fact is that Mr Williams indicated in evidence—I am paraphrasing—that it was highly unlikely that any minister would be aware of the detail of those guidelines and that it was his responsibility to look
at the advertisements against a general understanding of those guidelines. But having said that, when questioned whether there is actually a sign-off that the advertisements or information programs accord with the guidelines, Mr Williams said that no responsible minister or bureaucrat signs a document saying that those public information matters are in accord with the guidelines. So, even if you rest your case on the fact that you are complying with the 1995 guidelines, there is no evidence and no truth in that assertion.

The Senate took the view that the 1995 guidelines were superseded by better guidelines, which were developed by the Australian National Audit Office in performance audit No. 12 of 1998-99, entitled Taxation Reform—Community Education and Information Programme. For those of you interested in accountability, appendix 1 has the guidelines. So the Senate, being alert to—and alarmed at—the flavour of some of the advertising, placed a Senate order down that the coalition government should abide by the new guidelines. The coalition simply defied the Senate, which it is able to do. It is the executive government; it has its hands on the money. Short of locking up a minister—which, even some of the more radical senators would not consider for a moment, you will be relieved to know, Senator Minchin—there is nothing the Senate can do.

The next step is for us to try to do so through legislation. It is so hard to amend every single act to reflect the Senate’s will that the appropriate place to do it is through the appropriations program, which deals with the expenditure of money and with all acts on the basis, as presented to us tonight, of the appropriation bills. There then comes the question of whether this is refusing supply. The Democrats pledge, unlike the Liberal Party and the Australian Greens—which is about the only thing you have in common, Senator Minchin—never to disrupt or block the ordinary supply of government. But this is not the ordinary supply of government, in the same way as the PBS is not and the disability bill that is a double dissolution trigger is not, or in any other way.

Nevertheless, I will say to the minister right up front that this amendment is an exercise in requiring the government, both here and in the House, to justify one last time before we have an election, your policy and your behaviour in terms of government advertising information. In case you take that amiss, let me make it absolutely clear that neither I nor my party think that all the government advertising or information is amiss or wrong—of course we do not. There are many good things that both this government and the previous government have advertised, and necessarily so. However, going back to the issue of blocking supply: when this comes back, which no doubt it will—unless a miracle happens at the other end—we will not insist on this amendment. The purpose of this amendment is an exercise in calling the government to account in both houses of the parliament, quite properly. I think that is a vital matter.

The amendment stands for itself. It effectively replicates the Senate order. It has a very clear reference to the guidelines as developed by the Auditor-General, and the intent is quite clear. We are not satisfied with the 1995 guidelines. We are certainly not satisfied with the process supposedly used with respect to the 1995 guidelines. There is no sign-off, there is no examination of what you are doing against those guidelines and the Senate has said to the government, three times now from memory, ‘We really want you to upgrade to the Auditor-General guidelines.’ This is not the last anyone will hear of this issue. Minister, if you do end up on the opposition benches next time around, I do hope you will be assisting me in tightening
up the guidelines, because we will continue the fight.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.36 p.m.)—The Labor Party will be supporting this particular amendment and is happy to co-sponsor the amendment with Senator Murray from the Australian Democrats. We know in this chamber that the Howard government has made an art form of plundering the public purse to support and fund its own election campaigns. Just look at what it is currently spending or has committed to spend in the lead-up to this forthcoming election: a whopping and outrageous $123 million so far. Apparently the government contest this figure now, but it is what their own officials have told us in Senate estimates committees, and frankly I would be putting my money on the figures of the officials before the figures in the propaganda that has come from Senator Abetz.

I want to quote the Prime Minister, Mr Howard, because he told parliament this week:

The truth of the matter is that all governments … from time to time have advertised and explained the features of new policies. What this government is doing is no different from what has been done in the past.

That is what Mr Howard said. No different? Of course, it is very different. It is different in quantity, it is different in concentration and it is different in its highly political nature—and you have seen it all in those campaigns that are incessantly blaring from our TV screens and the radio, and appearing in newspapers across the country. Today I noticed an article in the government mouthpiece newspaper, the Australian, which cites a Parliamentary Library report and claims:

The Labor campaign against the Coalition’s … has been undermined by the finding Paul Keating was just as extravagant in his use of tax-payer funds as John Howard.

Only the Australian could come up with something like that. Of course, it is absolutely wrong. Firstly, the statistics used do not back up the statements or the headlines and, secondly, those statistics include advertising Defence Force recruitment and AEC advertising prior to an election and, if you exclude those particular calculations, it is a very different story.

Do not forget that the Auditor-General, in his 1998 report on government advertising, also excluded Defence Force recruitment, AEC advertising, as well as asset sales campaigns. So when you include advertising of that nature, there is a mountain of difference between the Howard government’s campaign advertising expenditure and that of previous governments. The proper thing to do is to compare the figures under the Howard government with the figures under the previous Labor government. In the last five years the Howard government has spent $630 million or nearly triple the amount—which was $223 million—that the Labor government spent in its last five years of government. Is this no different to what has been done in the past? What Labor finds most objectionable, aside from the soft propaganda aspects of the government’s campaign advertising, is the way that the expenditure is concentrated in pre-election periods. What other explanation can there be for those huge spikes in expenditure that we see in the lead-up to election campaigns?

Around $32 million was spent on campaign advertising in the four months leading up to the 1998 election. That figure can be found in the Auditor-General’s report No. 12 of 1998. In 2001 the Howard government spent around $66 million in the months preceding the election. The $123 million minimum that is currently being spent or is committed to be spent in the period up to the 2004 election is at least $20 million per month. So we know that expenditure in the
four months leading up to this next election will be at least $80 million. Compare that with the situation under the previous Labor government. Again, let us just use the Auditor-General’s report as the source. We find that in the four months leading up to the 1996 election campaign there was in fact a dip in government advertising expenditure. It dropped from $6 million in July 1995 to $2 million in January 1996, and for a four-month period from October 1995 to January 1996, a total of approximately $7 million. In the months preceding the 1993 election, expenditure on campaign advertising was around $11 million. In the months leading up to the 1990 election, it was around $10.5 million. These were admittedly blips, but they are nothing like—no comparison at all—these huge spears and spikes that characterise spending by the Howard government.

A newspaper article today includes a claim from Senator Abetz’s spokesman that the Keating government spent $78 million in its last year of government. That is just plain wrong. I do not know why these journalists just take what someone as discredited as a member of Senator Abetz’s staff would say but, apparently, they just gobble it up, swallow it hook, line and sinker. But what are the facts? The Auditor-General’s report of 1998 clearly shows that, in the last calendar year of the Labor government, only $40 million was spent on campaign advertising. The only way that someone like Senator Abetz could have arrived at the figures he used is by including essential government expenditure, such as Defence Force recruitment and AEC advertising. So you should compare apples with apples, campaign expenditure with campaign expenditure. Perhaps Senator Abetz was just spinning a line—probably with a big fat dollop of his paranoia in there as well—and then, with a couple of conspiracy theories thrown in, he probably came up with these sorts of figures. But it is not true; it is deliberately misleading.

Yesterday Senator Abetz issued a press release, again misleading the public on government advertising. He claimed that there is a $30 million hole in Labor’s $123 million figure on current and pending government advertising in this election year. Let us have a look at that. First, Senator Abetz said the super co-contribution advertising would not cost $15.9 million but $9.2 million. He is wrong again. The Senate Economics Legislation estimates on 4 June 2004, pages 12 and 13, state that over $8 million will be spent over and above the current spend of $7.9 million on the super co-contribution campaign.

Second, Senator Abetz claims that the More Help for Families campaign is costing the taxpayer $13 million. Again, that is completely wrong and deliberately misleading. That campaign, as explained during the Senate estimates committee process and outlined in Budget Paper No. 2, will cost the taxpayer $21 million. Third, Senator Abetz claims that the Keeping the System Fair campaign will only cost $4 million. That is blatantly false. The Family and Community Services portfolio budget statement 2004-05, at page 68, indicates the Keeping the System Fair education campaign will cost the taxpayer $17 million in the 2004-05 financial year.

Fourth, Senator Abetz says that the regional telecommunications campaign will cost the taxpayer $3.5 million. Again this is wrong and deliberately misleading. The Senate Environment, Communications, Information Technology and the Arts Legislation Committee estimates on 24 May 2004, pages 125 to 126, says the campaign will cost $5.9 million. Time and again, Senator Abetz in public and in parliament misleads on the facts about government advertising. He has done it again in the cases that I have outlined.
tonight. I call on him to correct the record on these matters immediately.

So much for the government’s inaccuracy; I want to move, in the time available to me, to the government’s hypocrisy on this matter. Back in 1995 the then Leader of the Opposition, John Howard, promised this:

We will ask the Auditor-General to establish a set of guidelines and we will run our advertisements past the Auditor-General and they will need to satisfy those guidelines.

At the time Mr Howard also said that ‘propaganda’ should be paid for by the political parties. He argued:

This soiled government is to spend a massive $14 million of taxpayers’ money over the next two months as part of its pre-election panic.

He also described these political advertisements as a ‘disgraceful scam’ and a ‘grubby tactic’ and he claimed that political parties should be paying for this sort of ‘propaganda’.

Of course the $14 million expenditure was a mirage and a Liberal beat-up. The reality was that Labor government expenditure on advertising dropped sharply in the period leading up to the 1996 election. Since winning the 1996 election Mr Howard has spent a whopping $780 million on political advertising. His 1995 statement attacking a ‘massive $14 million’ looks ridiculous to everybody in retrospect. As the cliche goes, you have got to look at what the Liberal Party do on advertising; do not look at what they say. Despite all the promises in 1995, Mr Howard has never asked the Auditor-General to draw up guidelines on government advertising. It was just another low-grade, low-rent, non-core promise from Mr Howard. When the Auditor-General did draw up guidelines in 1998, the government ignored them—and it has ignored them steadfastly ever since. It is time the abuses of this sort of government advertising ended. It is time to apply strict and fair guidelines to advertising to ensure that this sort of advertising cannot be used for political purposes. I can assure you that if Labor are elected to government at the next election we will put an end to this corrupt scam of the Liberals.

What the Democrats and Labor are proposing in this amendment to this appropriation bill is a mechanism which would at least put a brake on government ministers’ plundering of the public purse. We believe it is workable and warranted in these disgraceful circumstances. I acknowledge that it is very rare for the opposition to move or support an amendment to appropriation bills. We remain committed to the principle of not blocking supply in the Senate—unlike those opposite, who would not know a principle if they fell over one. We actually believe in some of these principles.

Senator Boswell—Come on!

Senator FAULKNER—You have done it; you have shown what you stand for. So, while we commend this amendment to the chamber, like the Australian Democrats I say clearly that we will not insist on it. But this is a very important statement. Stop this government corruption on advertising. Stop this plundering of the public purse. Let us get some decency and fairness into these sorts of standards for this forthcoming election and future elections, whoever is in officer and whoever is contesting them. What the Howard government has done is a disgrace, and all those responsible stand condemned for it.

(End of time allowed)

Senator CONROY (Victoria) (9.51 p.m.)—I rise to support Senator Faulkner’s and Senator Murray’s amendment. I arrived in Canberra a couple of weeks back. I went home and, as I normally do, flicked on the TV after I finished my meetings—

Senator Minchin—In Washington, with factional heavies.
Senator CONROY—No, this was here in Canberra. To my surprise, in about a one-hour period just at the tail end of some movie that was on, there were three different government ads—and not just once but in heavy rotation. Sunday night movie and heavy rotation—I thought an election must be in the air. How else do you explain this government being so desperate and so prepared to undermine fundamental principles, except that we are getting close to an election when all the rules go out the door? This is a government that is all spin and no substance, and nothing demonstrates this more than this government’s wanton disregard for anything proper when it comes to spending taxpayers’ money to get itself re-elected. The Howard government’s advertising bill has climbed to $123 million and rising. The placement cost for the Medicare campaign alone is $15.7 million—and this is only the beginning. There are 21 campaigns currently in the media or in the pipeline. Let us go to the list of them, just to give us a flavour of how Orwellian this government is. It wants to talk about government achievements—how Orwellian.

The super co-contribution campaign is underway at the moment. We have all seen the ‘big pig’ campaign, as it became known, where the government were so embarrassed by their own ad that they cost taxpayers some more money. They filmed the ad with a smaller pig because they were worried about the pork barrel image. Give us a break! They were worried about the pork barrel image. They are throwing cheques out the window like confetti. They were so paranoid that they had sprung themselves that they re-filmed the ad and made the big pig smaller. It is just extraordinary.

There is a quarantine campaign. Senator Boswell sits on the other side of the chamber. I am not surprised they have a quarantine campaign, Senator Boswell, because the National Party have got a lot of explaining to do. We have seen the banana decision, the pork decision and the apple decision. We all know that what is going on in this country is that the government have politicised our quarantine regime. We have seen, by the release of information dragged kicking and screaming from this sleazy government that will spend hours and hours in front of parliament and hours and hours in front of the Senate estimates process, that the public servants have come to learn that you just do not give any answers. You avoid, you distort, you meander and you just try to stonewall. It does not matter if you are caught absolutely red-handed; you must not admit the truth. In this quarantine debate, we have seen the National Party and Senator Boswell talk a big fight. It is no wonder that they have to run a quarantine campaign while they are rolling over on political pressure in the quarantine process. It is Orwellian—farmers have to swallow a quarantine ad campaign designed to cover up the fact that the government have caved on basic scientific principles and are selling out farmers in this country.

We are seeing a regional telecommunications campaign. Amazing! They are doing the job for Telstra. Telstra have done such a bad job over the last 10 years that people in the country know that they have got lousy service. They know that it will take ages to get their faults fixed. They know that the government are stripping back every decent service in regional areas. They are allowing banks to desert. They are allowing banking services and bank branches to be stripped. They have closed Medicare offices. They have closed the offices of the CES—or whatever the CES has morphed into after the government made such a hash of it. So what do they do to try to hide the fact? They do an advertising campaign.

We have got waste oil, New Apprenticeships, smart travel, citizenship, Medicare, tobacco, elimination of violence, More Help
for Families, environment resource management, Commonwealth regional information services—and we have got more to come. Do not, Senator Murray, think for a moment that this government is prepared to stop there.

Senator Murray—You want one on CLERP!

Senator CONROY—Do not even give them a suggestion, Senator Murray—they will be out there saying how they have cracked down on the big end of town and how they have been tough with the big end of town. It does not matter that they have actually knocked back real reforms. It does not matter that they have caved in to the big end of town time and again. Even the Business Council today—Senator Murray, did you see the release?—have admitted executive remuneration is out of control in this country and that there is no link between the performance and the pay. Even the Business Council admitted that. And what are the government doing? They sat there and knocked back your and my amendments which would actually have given shareholders the power. So please do not give them a suggestion. They will have an ad campaign telling how they have cracked down on the big end of town, Senator Murray, and you and I will just not be able to sleep at night after watching it.

We have a campaign on national security. We have more fridge magnets coming: ‘Be alert; don’t be alarmed.’ It is just Orwellian, really. There are campaigns for philanthropy and AusLink—more advertising in the bush to try to convince them that the government are doing something for them and to try to desperately cover up the fact that the National Party have rolled over time and again. The only time they know that Senator Boswell and his friends will come knocking on the door is a few months before the election with a cheque in their hand and an ad running on the TV. That is the only time they see or hear from the National Party—when they want their vote, they are out there.

We have a drugs campaign, higher education reforms, Smartraveller, and keeping the system fairer. What an effort—you have to admire them! And it is no surprise that they are having to run Medicare ads. Let us be serious here: this is a Prime Minister who has committed his entire political life to destroying Medicare. He considers it socialisation of medicine. It is not surprising he has to spend all this money to pretend to Australians he is actually trying to save Medicare. He has spent eight years poking holes in it, ripping apart its fabric and subsidising alternative schemes, and then he runs an advertising campaign saying, ‘I am Superman—I am here to save Medicare!’ It beggars belief.

Fortunately, Australians are not being sucked in by this. They know that when it comes to health care issues in this country this government is missing in action. It is a government that knows no shame. It is the sleaziest effort in the history of Australia. You just have to look at what we could be doing with this money if it were not being wasted trying to buy votes to get the government re-elected. This $123 million could get you 4.8 million bulk-billed visits to the GP. That is right: 4.8 million bulk-billed GP visits. If the government were prepared to put the money into the health system instead of trying to tell people that it was fixing it, we could have 2,000 more nurses in public hospitals. Hospitals are crying out for nurses. This government wants to run ads when what we need is nurses in hospitals.

We could have 2,000 more teachers in the education system, but what do the government want to do? Run ads to promote themselves. We could have 3,000 aged care beds; but, no, this government would prefer to
spend taxpayers’ money—every Australian’s money—in an effort to buy votes. We could have 500,000 extra dental procedures. We have a dental waiting list of enormous proportions. If the government would just spend some of the taxpayers’ money on dental programs and the health system, we would be able to substantially reduce the difficulties and pain hundreds of thousands of Australians experience every day.

The government is spending $123 million on advertising, yet there are critical shortages in long day child care in outer metropolitan areas, including Penrith, Blacktown, Melton, Brimbank, Hume, Wanneroo, Joondalup and Stirling. In fact, $110 million could have purchased around 55,000 additional long day child care places in these outer metropolitan areas. It is a scandal. This government will sink to any depth to abuse taxpayers’ money and take advantage of any system to get re-elected. That is all this government cares about. It does not care about the interests of families. All it cares about is keeping its bums on that side of the chamber. It does not care how it does it.

The same thing applies to superannuation. The Howard government is spending $8 million on the big pig ads, as I have said, yet it has failed to ensure proper disclosure of fees and charges. Senator Murray, you and I have disagreed about this, but I know at the end of the day you are offended by a government that is prepared to spend all its money on getting itself re-elected, leaving taxpayers in the lurch when it comes to buying a superannuation product.

Another example is education. The Howard government is spending around $123 million on advertising while students are struggling to pay increased HECS debts. Again, this government is all spin and no substance. That $123 million would be better spent on fixing services, not talking about them and using the money to get itself re-elected. If a shop assistant in Parramatta, a mechanic in Richmond or a schoolteacher in Browns Plains were asked whether they would prefer $15 million spent on Medicare ads or restoring bulk-billing, I am willing to bet I know what they would say. Australians want better quality services. They do not want millions of dollars of their money spent on political spin just because this government is desperate.

In 1995 John Howard said that the shadow cabinet had met and decided that if they won government they would ask the Auditor-General to draw up new guidelines on what was the appropriate use of taxpayers’ money in the area of advertising. Nine years on this government has abused the system like no other, and it shows no shame and no guilt—just blatant hypocrisy. When asked in the other place whether the $110 million worth of advertising complies with those guidelines, the Prime Minister declined to respond. It is no shock whatsoever. This is a government that lives off the back of untruths. It needs a big advertising budget to get away with what it has been doing.

We all know about the debacle in Iraq and the mistruths about why we are there. In the last few days in this chamber we have learnt that this is a government that will go as far as it wants. It will leak national security documents. It will leak top secret documents. It will sit back and happily leak documents that should never be in the public domain if it is in its own political interests. That is what it is about.

The government wants to cover up the fact that it has so badly stuffed up the family payments system that it is now throwing money out the door three months before an election to try to cover it up. Taxpayers know, because they have been down this path over the last three years, that it does not
matter what it says as, ultimately, the government is going to reach out and claw back that money. Australians know that. And what do they get instead? Advertising campaigns. The government has refused to crack down on the banks. It is backing the big end of town as always. Self-regulation has been a green light for corporate greed in this country. So what is the government’s answer? It will run an ad campaign. It will spend taxpayers’ money. It does not care how much it spends. It does not care that it is Orwellian and designed to pull the wool over Australians’ eyes. It is the master of spin, it is the master of deceit and it deserves to be repudiated with this amendment. (Time expired)

Senator CARR (Victoria) (10.06 p.m.)—I support the amendment moved by Senator Murray and Senator Faulkner. The previous two speakers have highlighted accurately and fairly and have exposed clearly the lies, the deceptions and the deceits that have been told in recent times about the history of this matter with regard to the governments over the last 20 years. We have seen quite clearly the irrefutable contrast in the way in which previous governments have approached the question of government advertising and the approach that this government has been taking.

Today is probably the last day of this parliament. We do not know that for sure, but it is probably the last day of the parliament before we face an election. We clearly are on the eve of a federal election in which, I would say, this government is facing the fight of its life. In all reasonable and objective assessments, there is a very good prospect that this government will be defeated. It is appropriate that we now consider what sort of legacy this government will leave behind. We are entitled to ask, particularly when we will see a lot of people leave this parliament—and I suggest that the Prime Minister is one of them—what sort of legacy will this Prime Minister pass on to any future generations? How will we assess his record in office?

We are entitled to ask what approach this Prime Minister took in establishing basic benchmarks for public administration, basic benchmarks for the behaviour and actions of ministers and basic benchmarks of public morality when it came to the expenditure of public money. We have, of course, a situation where this government is now being exposed for the moral bankruptcy of its leader—a characteristic which has spread throughout this government. We see a perfidious, panic-stricken Prime Minister facing the prospect of political oblivion and the prospect of his political reputation being shredded, and in response he has resorted to the most cynical and desperate measures in attempts to shore up his position.

We have seen this week, yet again, the Prime Minister repudiate the commitments that he made when he was Leader of the Opposition in 1995. The two previous speakers have highlighted the contrast in the actions of the government and the promises that were made. In a question from Mr McMullan in the House of Representatives, the Prime Minister refused yet again to commit to the principles that he said were so extraordinarily important in the behaviour of any reasonable government. We have seen exposed the rank hypocrisy of the government. The government so grossly abused the standards that were operating under the previous regime—in fact, it said at the time that those standards were not good enough—but we now see that they have become the measure of this government’s performance.

We have been told by this government that the community should be grateful for the bribes that are being offered and handed down by the government. That highlights the extraordinary contempt that the government
show towards the people of this country. Not only are the people of this country treated as the sorts of gormless, greedy idiots that the government expect them to be but they say: ‘We’re not only going to try to bribe you to get your vote—we’re going to spend millions of your dollars persuading you, in fact gloating to you, how we have done it—but we expect you, in return, to be grateful for our largesse.’ The manner in which this exercise has been undertaken is effectively spitting in the faces of the Australian people. This is one of the most naked examples of the misuse of public money that we have seen by a government throughout the history of the Commonwealth. We see a desperate government, basically corroded throughout, seeking to undertake actions that in the past would have made any other Prime Minister blush.

I can recall the much maligned Malcolm Fraser’s political campaign. Remember the fistful of dollars campaign? People at the time were aghast at its crudity, when Malcolm Fraser sought to run that scare campaign about capital gains tax. In contrast to this government’s performance, Malcolm Fraser’s behaviour is piddling. When you compare the behaviour of Malcolm Fraser’s fistful of dollars exercises to that of the current Prime Minister, it is quite clear that Malcolm Fraser was, in fact, a piker.

Anyone reading this week’s papers would have been struck by the three great winter sales under way in the commercial contents of those papers: the sale by Myer, the sale by David Jones and the sale by the Howard government. Of course, the Howard government has had its political integrity up for sale at discount rates, being flogged off courtesy of the taxpayer. This is the government that sought to make a virtue of its economic management but which now stands condemned for its economic profligacy and its vote buying. This government, frankly, sees that money is no object when it comes to its desperate efforts to be re-elected. The political conventions that we have all come to expect—and you would have expected this all the more, I would have thought, from a government that claims to be conservative—are being thrown to the wind.

Today on the front page of the Age there is an article referring to the totally inappropriately use of the defence forces in Liberal Party political campaign actions. This is the sort of behaviour that you could never have expected from a government of in the past—not rightly. You would never have even expected to, but that is exactly what we have in these circumstances. We have a Prime Minister who has now compromised his own political legacy.

This government stands condemned by its immorality and its unprincipled actions. There are now inquiries into the Labor Party and inquiries into the trade unions. There has been almost a standing royal commission into the CFMEU. This government came to power making great claims of its moral superiority and said that it was going to turn around the nature of public administration in the country. But what we have seen is a government that has turned its back on the traditions of the Commonwealth. We have seen that in the name of saving the skin of John Winston Howard.

There is a clear case to be put here that the hypocrisy of the government knows few limits. But what is really galling is the high-handed sanctimonious moralising with which the government goes about its business. What you see in these advertisements is high Tory philistinism, where basic prejudice is dressed up with a halo. The government has presented itself as having higher moral values than everyone else but in fact has descended to the depths of political despair. We have seen a deceitful and wasteful display of
its political legacy. We see the constant use of the chicenery of a government that has effectively squandered any claim it might have had to being within the Liberal tradition. We have seen a record, over eight years of deceit, which has been marked by the 'children overboard' scandal, attacks on public servants and the politicisation of the Public Service. We have seen great assaults on public institutions, such as the judiciary and the ABC. The end result of all of that is an undermining of public confidence in public administration and public life in this country.

I think we are also entitled to ask: what has the Treasurer done about all this? He is the great guardian of financial rectitude. His rugger-bugger bluster cannot disguise the fact that he has been a willing accomplice in this whole tawdry business—and he has been a pathetic one at that. He, in turn, has squandered respect, trust and public confidence in his capacity to deliver good government. We have seen a Prime Minister who has effectively turned his back on his own reputation for integrity within public administration. We have seen a cynical attempt by this government to use the instruments of government against the people of this country in a desperate attempt to secure another term in office. I do not think many people are really taken in by this, if the truth be known. I think this strategy will fail because I do not believe the Australian people respect a government that behaves with such callous disregard for public decency.

Many of those on the other side talk about their interest in the history of Liberalism. I am reminded of Disraeli’s famous comment that a Conservative government is an organised hypocrisy. This government claims that it does not believe in interfering in people’s lives, but it is determined to interfere—to annoy and to harass Australian households relentlessly. In the countdown to the forthcoming election we now see further perversions of the democratic processes by the Howard government. This is the government that gave us core and non-core promises. This is the government that elevated calculated misrepresentations to art forms of lying in public office. This is the government that has presided over the systematic politicisation of the Public Service. It has made a mockery of Public Service ethics and it has unashamedly promoted its acolytes and apparatchiks within the Commonwealth. We have seen a government that has made a virtue out of its lax standards. It is held together, effectively, by one common denominator—common greed. We have seen a process by which this government has treated its own constituency with contempt. We have seen a final desperate attempt to buy the forthcoming election.

Senator Faulkner demonstrated again tonight the depths of despair to which this government has descended with its various vote-buying advertising programs. Ministers such as Minister Abetz, the Special Minister of State, act pretty much like spivvy used car salesmen. He does not persuade anybody with his attempts to justify the unjustifiable. This is a government seeking to spend $123 million on advertising, $21 million of it to let eligible voters know that their family payments have arrived in their bank accounts. That will not be a surprise to them, I am sure. The amount of $4 million has been allocated later this year to tell students just how good the government’s policies are on making their fees higher. The government has allocated $3 million to tell voters in marginal seats about the money they are being given for roads and rail. The amount of $5 million has been allocated for messages on illicit drugs.

Then there are the training ads. We know about the famous efforts by the minister for education to secure a ute to roam the country
and appear at country shows in marginal seats in an attempt to give particular attention to the government’s interests. We have seen political campaigns which, like that for ‘Strengthening Medicare’, do not tell the truth about what the government is doing. In regard to their attitude on drugs, we see that essentially a subliminal message is being offered that the Labor Party is soft on drugs—a situation which is quite a long way from any justification in providing legitimate information about government programs.

When you watch the SBS in particular and see the ads coming on in great blocks, you see just how extraordinarily crass this has become. I mentioned the Fairfax press earlier. It is extraordinarily how heavy the advertising is and the extent to which this government seems to have overblown its own desperate measures to get itself re-elected.

A common message through all of these efforts—I do not think there is any rocket science in this—is that the government’s policies are right and the Labor Party’s policies are wrong. What we have in effect is a government that is prepared to buy on a grand scale. The money that the government is spending now represents $10 for every elector on the electoral roll, and that is just the tip of the iceberg. When you think about the handouts and the giveaways that the government is instituting through its various programs, this advertising campaign is the mere froth on the surface of this government’s campaign, this desperate campaign, to essentially buy its way back into the good books in this country. It strikes me that the electorate will not support such a bombardment by any government. This is clear, crass propaganda. (Time expired)

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.21 p.m.)—We have got a long legislative list to get through. We have spent an hour and a half tonight debating what is, at the end of the day, a fatuous amendment to the most important legislation we have to consider—that is, the supply bills. It is clear that a majority of the chamber are going to vote for this fatuous amendment. I am pleased to hear that the Democrats and the Labor Party will not insist on this amendment. The amendment will be rejected in the House of Representatives and I understand that when it comes back here it will not be insisted upon, so I will not delay the Senate any longer.

Maybe I have been around politics too long, but it is my experience that all governments advertise, all governments will advertise and all oppositions will complain about that advertising. We have state governments, all of the Labor persuasion, advertising right now. When I go home to Adelaide I am bombarded by nothing other than the voice of Mr Mike Rann on my radio and television telling me what a wonderful government he has and why all South Australians should be terribly proud and pleased that we have him in government. We do not have John Howard doing that at this level. It is a fact of life in politics that that is what happens. In opposition, we probably complained about Mr Keating’s rampant government advertising. That is a fact of life. It does not surprise us that we have had all this pontificating and complaining tonight about government advertising. The only truthful comment that may have been made tonight is that the court of public opinion, at the end of the day, decides these things. This is a fatuous amendment. We are disappointed the Senate would play with something like the appropriation bills. We welcome the fact that this fatuous amendment will not be insisted upon, so I will not prolong the chamber any longer.

Question agreed to.

Bill, as amended, agreed to.
Appropriation Bill (No. 1) 2004-2005 reported without requests; Appropriation Bill (No. 2) 2004-2005 reported with an amendment; report adopted.

**Third Reading**

**Senator MINCHIN (South Australia—Minister for Finance and Administration)**
(10.25 p.m.)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

**COMMITTEES**

**Membership**

The **DEPUTY PRESIDENT**—The President has received letters from a party leader seeking variations to the membership of certain committees.

**Senator MINCHIN (South Australia—Minister for Finance and Administration)**
(10.26 p.m.)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

**Community Affairs References Committee**—

Appointed—

Substitute members: Senator Allison to replace Senator Lees and Senator Forshaw to replace Senator Moore for the committee’s inquiry into aged care facilities

Participating members: Senators Lees and Moore

**Economics Legislation Committee**—

Appointed—

Substitute member: Senator Ridge-way to replace Senator Murray for the committee’s inquiry into the provisions of the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 scheme) Bill 2004 and a related bill

Participating member: Senator Murray

**Finance and Public Administration References Committee**—

Appointed—

Substitute member: Senator Murray to replace Senator Ridgeway for the committee’s inquiry into government advertising and accountability

Participating member: Senator Ridgeway

**Scrutiny of Bills—Standing Committee**—

Appointed—Senator Marshall

Discharged—Senator Crossin.

Question agreed to.

**PRIVILEGE**

The **PRESIDENT** (10.26 p.m.)—The Community Affairs References Committee, by a letter dated 24 June 2004 from its chair, has raised a matter of privilege under standing order 81 in relation to an unauthorised disclosure of its draft report arising from its inquiry into hepatitis C and blood supply in Australia. There is little room for doubt that an unauthorised disclosure has occurred as the draft report is explicitly referred to in press items. The committee has carried out its obligations under the resolutions of the Senate of 20 June 1996 relating to unauthorised disclosure of committee documents by conducting a preliminary investigation into the matter. The committee has also concluded that the unauthorised disclosure has caused potential or actual substantial interference with its work. The matter accordingly meets with the criteria which I am required, under the standing order, to consider and, therefore, determine that precedence be given to a motion to refer the matter to the Privileges Committee. I table the correspondence from the committee in accordance with standing order 81. A motion may be moved immediately to refer the matter to the Privileges Committee.
Senator McLUCAS (Queensland) (10.27 p.m.)—I move:

That the following matter be referred to the Committee of Privileges:

Having regard to the letter dated 23 June 2004 from the Community Affairs References Committee to the President, whether there was an unauthorised disclosure of a draft report of that committee, and whether any contempt was committed in that regard.

Question agreed to.

ASSENT

Messages from His Excellency the Governor-General were reported, informing the Senate that he had assented to the following laws:

Australian Federal Police and Other Legislation Amendment Act 2004 (Act No. 64, 2004)
Customs Tariff Amendment (Fuels) Act 2004 (Act No. 65, 2004)
Excise Tariff Amendment (Fuels) Act 2004 (Act No. 66, 2004)
Age Discrimination Act 2004 (Act No. 68, 2004)
Postal Services Legislation Amendment Act 2004 (Act No. 69, 2004)
Farm Household Support Amendment Act 2004 (Act No. 70, 2004)
Parliamentary Superannuation Act 2004 (Act No. 72, 2004)
New International Tax Arrangements Act 2004 (Act No. 73, 2004)
Tourism Australia Act 2004 (Act No. 74, 2004)
Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004 (Act No. 77, 2004)
Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004 (Act No. 79, 2004)
Bankruptcy Legislation Amendment Act 2004 (Act No. 80, 2004)
Bankruptcy (Estate Charges) Amendment Act 2004 (Act No. 81, 2004).

COMMITTEES

Community Affairs References Committee

Extension of Time

Senator McLUCAS (Queensland) (10.28 p.m.)—by leave—I move:

That the time for the presentation of the report of the committee on children in institutional care be extended to 31 August 2004.

Question agreed to.

Community Affairs References Committee

Additional Information

Senator McLUCAS (Queensland) (10.29 p.m.)—On behalf of the Community Affairs References Committee, I present additional information received by the committee on its inquiry into hepatitis C and the blood supply in Australia.

Economics Legislation Committee

Corrigendum

Senator FERRIS (South Australia) (10.29 p.m.)—On behalf of the Chair of the Economics Legislation Committee, Senator Brandis, I present a corrigendum to the report of the committee on the Superannuation Budget Measures Bill 2004 and two related bills.

Ordered that the document be printed.
BUSINESS
Rearrangement

Senator MINCHIN (South Australia—Deputy Leader of the Government in the Senate) (10.30 p.m.)—I move:

That intervening business be postponed till after consideration of the following government business orders of the day:

No. 4  Superannuation Budget Measures Bill 2004.
Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003, consideration in committee of the whole of message no. 630 from the House of Representatives.
Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 2004, consideration in committee of the whole of message no. 618 from the House of Representatives.

Question agreed to.

SUPERANNUATION BUDGET MEASURES BILL 2004
Second Reading
Debate resumed from 15 June, on motion by Senator Troeth:

That this bill be now read a second time.

Senator CONROY (Victoria) (10.30 p.m.)—I seek leave to have my speech incorporated in Hansard.

Leave granted.

The speech read as follows—

Once again we see this Government introducing measures that only benefit a minority of Australians—and in this case those Australians who earn high incomes. The Superannuation Budget Measures Bill will provide a substantial and “exclusive” tax cut to those earning a surchargeable income of more than $99,700 in the 2004/5 financial year with the highest benefit going to those earning $121,075 and more.

This Bill of course contains two measures:

• The superannuation surcharge tax reduction; and
• The extension of the co-contribution scheme.

The government has argued that the co-contribution—which it claims benefits low income earners—offers benefits to low income earners which match those offered by the surcharge tax reduction to high income earners.

This is a ridiculous proposition.

The high income earners surcharge tax reduction benefits pass automatically to all individuals earning a surchargeable income, an income as of 1 July 2005 of $99,710.

On the other hand the co-contribution scheme is not automatic. It is contingent, I repeat contingent, on those individuals who qualify for the scheme finding the money—and I would remind the Government that this money has to be found from after tax income—to make the personal co-contribution necessary to get the co-contribution.

And let us not forget about those who earn between $58,000 and $99,710 who qualify for neither superannuation measure—no surcharge tax reduction nor co-contribution for them.

What is more, this is the second superannuation surcharge tax reduction the government has proposed. The higher income earners who will benefit from this measure have already been given one surcharge tax reduction by this Government and now it wants to give them an even larger one—to effectively halve their surchargeable tax rate on contributions from 15% to 7.5%.

Now we all remember when the Government introduced this superannuation surcharge. They introduced it as an equity measure. The Treasurer Peter Costello stated in his Budget Speech on 20 August 1996 that:
“The measures I am announcing tonight are designed to make superannuation fairer. A major deficiency of the current system is that tax benefits are overwhelmingly biased in favour of high income earners”

and he went on in this speech to explain in detail that bias towards high income earners.

This was obviously an aberration on the Treasurer’s and the Government’s part because since that time most of the superannuation measures introduced by the Government, like the surcharge tax reductions, are to the benefit of high income earners.

In fact it appears that the government has two retirement income policies.

The first policy could be described as the “higher income earners policy” that provides tax breaks and subsidies to a small group of individuals.

And a second policy for the rest of Australia, the Treasurer’s “Work until you Drop” policy!

As the Treasurer himself said “there will be no such thing as full-time retirement”

But back to the substance of this Bill and in particular, the proposed reduction to the superannuation surcharge.

Although the Treasurer went to great lengths to point out how the surcharge tax would apply to him in the 1996 Budget speech, and quote:

“...the point I would like to make is that on Budget night the first Treasurer in history—me—stood up and put a surcharge in respect to high income earners and applied it to himself and every other politician, you know, we’re the good guys in relation to this.”

We don’t see him now running around telling us all about the benefits he and his government colleagues will obtain from this measure—a reduction in the superannuation surcharge tax.

We have costings that tell us that the Treasurer himself personally could benefit between $3000 and $4000 a year from halving the surcharge tax.

Labor does not support this exclusive tax reduction for higher income earners. Labor does not believe that this group should benefit at the expense of the average worker who earns well below the superannuation surcharge threshold.

It is Labor policy to reduce the contributions tax, a tax paid by most Australians who are members of superannuation funds, by 2%, and fiscal considerations permitting, to eventually eliminate the contributions tax.

Labor’s contributions tax reduction measure is fairer as the benefit will flow to most in the superannuation system—as with Labor’s approach to income tax cuts Labor believes that any tax cuts should be shared among the many, not the few.

Labor will consequently be opposing this tax reduction on the basis the government first introduced it, on the basis of equity. If the implementation of the superannuation surcharge was based on equity then if follows that any reduction is inequitable.

Labor will not support an inequitable measure such as this.

As it has done in the past, the Government has decided to try to force Labor’s hand on the surcharge reduction by including this measure with a more acceptable measure—the extension of the superannuation co-contribution to:

- Include individuals earning up to $58,000; and
- increasing the government co-contribution from $1.00 for $1.00 contributed to a government co-contribution of $1.50 for every $1.00 contributed by the fund member;

The Senate yesterday also passed a bill that lowered the work test for the co-contribution.

As Labor has already argued in regard to this Bill and Superannuation Laws Amendments Bills 1 and 2, that Labor has some serious concerns about the targeting and fairness of the co-contribution.

The government’s co-contribution is a very pale imitation of Labor’s universal and fully costed 3% for 3% co-contribution, a scheme that the Liberal government pledged to implement in its 1996 election promises but dumped once in office in its 1997 budget.

And although the government’s co-contribution has the appearance of being a measure with a modicum of equity, in reality it is hard to see how
it will in fact achieve its purported aim—to assist low-income earners in saving for retirement.

It is indeed Labor’s opinion that the co-contribution is very poorly targeted and is most likely to be utilised by those least in need of it—families that have high total incomes but where one spouse earns high income and the other spouse a low income.

As Labor has pointed out in the debate on the new work test, this new work test makes the co-contribution even more easily accessible by the wealthy.

An individual can now be receiving a substantial amount of passive income from the family trust or the family company and by merely putting in a couple of hours a week of work in the family business can be eligible for the co-contribution.

And yet the ordinary tax payer, the average Australian worker, will see their taxes being used to contribute to the retirement savings of these people.

It appears that this Liberal government also has great difficulty coming to terms with the reality of the lives of real low income families—where every cent of disposable income goes towards everyday living costs.

How many of those opposite would be able to support their family on $28,000 a year and manage to put aside $100, let alone $1000 a year.

And does the Government really believe that changing the work test so that individuals earning less than $450 a month can participate, will actually encourage more low income earners to participate?

How on earth does the Government think an individual earning $5,400 a year and less is going to find $1000 per year?

With increased medical costs because of the government’s destruction of Medicare; increased costs of education, with ever increasing costs of fuel and food and of course the inequitable burden that the GST places on low income earners, most families are struggling to keep their heads above water, let alone save anything.

The government says that these people only have to save the cost of a couple of cups of coffee a week—that is they should give up their lattes and save the money for super.

This is how out of touch with reality this government is—families living on incomes of $28,000 per year and less do not sit around drinking coffee in trendy cafes. There is no coffee to go without to provide the savings.

Remember this last budget provided no tax cut to those earning less than $52,000 a year to give them extra after tax money that might be used to make the co-contribution.

On the other hand, the high income earner spouse who has already received from this government a substantial income tax cut, cannot only provide the money for their low income earning spouse’s co-contribution—he or she can also make a spouse contribution and get the appropriate tax rebate for the spouse contribution. And let’s throw in a co-contribution for any low income earning adult children as well.

Labor does not deny that there will be some genuine low income earners who will benefit from this measure—there will be some genuine low income earners who may be able to get some spare cash to contribute to this measure.

But Labor also recognises that many who neither need nor deserve a government co-contribution will be able to access and benefit from it—and all at the expense of the average Australian taxpayer.

Labor believes that a much fairer measure and a better use of the Australian taxpayer’s money that will support these poorly targeted budgets measures should be used to reduce the superannuation taxation burden for most which is why Labor proposes a reduction in the contributions tax.

So this government can only give low income earners a contingent benefit—it is not willing to provide a real benefit to them. Yet it has already spent $8 million of their money on a propaganda campaign promoting the co-contribution—a misleading campaign that has left many who took the advertisements on their face value—such as the low income self employed—disappointed when they find out they are ineligible.

And the Government is going to spend a further $8 million on this misleading advertising campaign.
Essentially this Liberal government is spending $16 million of taxpayers’ money on misleading advertising in the guise of promoting the co-contribution scheme when in fact it is a really preliminary election campaign.

That is disgraceful.

Labor, as I have already pointed out, supports a fair tax cut, a reduction in the universal contributions tax, but it cannot support an “exclusive” tax cut that will go to less than 5% of individuals earning high incomes.

(Quorum formed)

Senator CHERRY (Queensland) (10.32 p.m.)—I had expected to speak in about 10 minutes.

Senator Ferguson—You could have incorporated your speech, too.

Senator CHERRY—Given I did not know this bill was coming on tonight, I am in no position to incorporate. The Superannuation Budget Measures Bill 2004 is a very significant bill arising out of the budget. It builds on a very significant policy that the government enacted into law last year, and that is the development of a low-income earners co-contribution for superannuation. The Senate would remember that, at the last election, the government took to the people a superannuation package that had two components. One was the creation of a low-income earners co-contribution, funded at roughly around $90 million a year, which was to provide $1,000 matched dollar for dollar for people earning less than $20,000. In addition to that, the government proposed a 4½ per cent cut in the high-income earners surcharge, which in a full year was going to cost roughly twice that of the low-income earners co-contribution.

The life of the co-contribution clearly started out as a piece of political cover for the surcharge cut. There is no question of that. As senators will remember, in the lead-up to the 2001 election the high-income earners surcharge had become a matter of some controversy in coalition land and it was a matter that backbenchers were regularly criticised about in various meetings. Then, through the Senate Select Committee on Superannuation, we received a large amount of evidence that suggested that the co-contribution for low-income earners, rather than just being a bit of political cover for a surcharge cut, could actually provide a significant change to savings behaviour if it were well structured. At that stage the Democrats took a proposal to the government to double the funding for the low-income earners co-contribution and, in exchange, to halve the funding for the superannuation high-income earners surcharge proposal. This would have resulted in expanding access to the co-contribution to a much wider group of low-income earners and in curtailting the benefit going to high-income earners.

As a result of extensive negotiations between me and Senator Coonan, the government eventually agreed to do that, and the funding for the low-income earners co-contribution last year was increased from $460 million to $920 million over the next four years. The proposed cut to the high-income earners surcharge was pared back to a mere 2½ per cent. That is where we got to up until the budget. On budget night the government announced a substantial expansion of the co-contribution proposal. The co-contribution was to be extended from the $40,000 income the Democrats negotiated right up to $58,000 by an extended taper. In addition, instead of providing dollar for dollar for the first $1,000 in savings, the government proposed to provide $1.50 for a dollar for the first $1,000 in savings. These measures will take the costings for the co-contribution in a full year from roughly around $220-odd million to over $1 billion a year, promoting people’s savings.
I must confess I was pretty excited about that, although my excitement was tempered when I thought about the way the government had structured it. I should note that the change from a dollar for dollar savings contribution to the $1.50 for a dollar savings contribution will not do a great deal to encourage people to save more. I noted some research that came out from IFSA that was commissioned from Eureka Research that highlighted this point. It shows that the participation rate for a person earning $40,000 to $45,000, on a dollar for dollar contribution from government, suggests that around 45 per cent of households would participate. But going to $1.50 for a dollar would raise that to only 49 per cent. For people earning between $20,000 and $30,000, which is the group who get the maximum co-contribution, the increase in participation rises from just 33 per cent to 35 per cent.

Raising the savings ratio from $1 for a dollar to $1.50 for a dollar is not a particularly efficient way to encourage extra savings for low-income earners, but promoting the co-contribution for incomes from $40,000 to $58,000 will encourage extra savings. When we talk about the co-contribution tonight, we are not really talking about a low-income earner’s co-contribution; we are talking about a middle-income earner’s co-contribution. I think we have to be aware of that, because the vast bulk of the beneficiaries of additional co-contributions will be in the $40,000 to $58,000 range and the vast bulk of the extra savings will be coming from that group.

The other aspect of the package that we are dealing with tonight is the surcharge reduction. The government proposed in the budget a five per cent surcharge reduction. It appears the government were thinking that, if they were going to provide a big increase in the co-contribution for low- and middle-income earners, they would suddenly earn a huge amount of political cover to start phasing out the high-income earners’ superannuation surcharge. In 2007-08, by the time the high-income earners’ surcharge reduction is phased out, the co-contribution itself will be costing $790 million, but the tax cut to high-income earners will be around $385 million. By the time this package is fully implemented, a third of the benefit will be going to high-income earners and two-thirds will be going to low- and middle-income earners.

It is worth considering that five per cent of taxpayers, some 286,000 taxpayers, earn over $100,000 a year and most of them are paying the surcharge. By contrast, about 60 per cent of taxpayers, or around 5.8 million taxpayers, are earning less than $58,000 a year and, as a result, are eligible for the co-contribution. I might add that most of them will not take it up. In this package, we are talking about a third of the benefit going to five per cent of taxpayers who will probably all take it up and two-thirds of the benefit going to 60 per cent of taxpayers, of whom probably only 20 or 30 per cent will take it up.

When we are talking about this bill, we should be aware that the largest benefits on an individual basis are going to high-income earners while the smaller benefits on an individual basis are going to low- and middle-income earners. But, because of the aggregate numbers involved, it looks as though the package is skewed towards low- and middle-income earners. A significant point to consider in terms of structuring is whether the government is allocating money in the best and fairest way to achieve an equitable and decent savings incentive. From the Democrats’ point of view, we do not believe that the government has achieved the best outcome in promoting savings and equity in retirement savings.
We believe that this package is skewed too much towards high-income earners. We believe that this package needs to be reformed significantly to make it more balanced and more socially responsible in terms of where the funds are going. We do not believe that it is appropriate that one-third of this package should be going to the top five per cent while only two-thirds will be going to the bottom 60 per cent. From that point of view, we certainly believe that it is time for the government to reconsider and look at other alternatives.

In the committee stage the Democrats will be moving amendments to this bill. We will be moving amendments to delete the entire schedule dealing with the surcharge reduction. We are doing that because we do not believe these two measures should be linked together. We do not believe that the only way to get out of this government a benefit to flow to low- and middle-income earners should be to provide political cover for another tax cut for high-income earners.

Senators would recall that only last week the Senate voted for a $14 billion tax cut over the next four years for high-income earners across Australia. We are being asked tonight to approve another $385 million a year for very high-income earners—people earning over $100,000 a year. I believe that, if the Senate really thought about this and if the government really thought about this, they could think of better ways of spending $385 million a year to promote national savings, equity, socially responsible investment and a better future for Australia.

It is important that we consider these aspects when looking at this bill. That is why the Democrats are saying to the government: ‘This bill needs to be split.’ We believe the co-contribution measure for low- and middle-income earners stands on its own. It is probably not the best way of targeting savings to promote a savings incentive, but it is not a bad proposal. Even if it works out that providing $1.50 for a dollar rather than $1 for a dollar for low-income earners does not result in significant additional savings by that particular cohort, at least we know that there will be an extra $500 a year going into the savings accounts of those individuals. That in itself is a positive. At least we know that by extending the co-contribution up the income scale, beyond $40,000 to $58,000, we will be providing a significant savings incentive that will be picked up in fairly large numbers by middle-income earners.

From that point of view, that part of this bill is positive. It should be encouraged, and it will be supported by the Democrats. But we do not support the principle that just to get those benefits through the Senate, the Senate must hold its nose and vote for another tax cut for high-income earners. We believe that matter should be discussed in a separate piece of legislation. If it stands on its merits as the best way of promoting national savings, if the government can prove it is the best way of promoting national savings, that it is the most equitable use of $385 million a year, then it should stand on its own. It should not be linked to this proposal. They should not be linked, and the Democrats in the committee stage will be moving to separate those proposals. It should not be the case that the six million Australians who are earning up to $58,000 will be relying on the Senate delivering a tax cut for high-income earners for them to get access to a co-contribution. That is a linkage the Senate should reject and the Senate should make clear to the government that it rejects it. If the government want to bring forward a bill to reduce surcharge, let that bill stand or die on its merits, but do not let it be linked to providing benefits for low- and middle-income earners.
The Democrats congratulate the government for bringing forward the low-income earners co-contribution package, for doubling its funding, following discussions with the Democrats last year, and for quadrupling the funding for the low-income earners’ co-contribution in the budget. I believe that over time the co-contribution will have a much higher take-up rate than has been expected by many people. I believe it will be a significant savings incentive for low- and middle-income earners. It will make a significant contribution to turning around the net negative household savings ratio in this country, but it should not be tied to providing a tax cut for high-income earners who, frankly, just do not need it.

While I am dealing with the issue of surcharge, it should be pointed out that the superannuation taxation system in this country is highly regressive. It is a flat rate tax, a 15 per cent contributions tax. As a result, people on high incomes, in the top marginal tax bracket, receive a much larger tax concession than those on low incomes, in the bottom tax bracket. A 15 per cent flat tax against a 47 per cent marginal tax rate means they are being given a tax concession of 34c in the dollar. Those who are in the bottom tax bracket, in the 17 per cent tax bracket, are being given a concession of only 2c in the dollar. You can see why the superannuation surcharge was introduced—with Democrat support, I might add—in 1997. It was to try to reduce the excessive concession that was available to high-income earners vis-a-vis low-income earners. A disproportionate percentage of superannuation tax concessions in this country goes to the top five to 10 per cent of taxpayers. The surcharge was about putting some tax equity into the superannuation system.

From that point of view, the surcharge remains defensible. Whilst the government talks about its desire to phase it out, the Democrats believe that we should shift to a more equitable system of superannuation that is not based on a flat rate contributions tax but on a flat rate rebate across all income streams. Rather than talking about a surcharge or a flat rate contributions tax, which clearly discriminates against low-income earners, we should be talking about providing the same rate of rebate for all income brackets so that people in all income brackets are encouraged to save for their retirement. At the moment, the maximum tax bracket benefit resides between $60,000 and the cut-in of the surcharge at around $95,000 to $100,000. People in this bracket get the full 34c in the dollar. At least we have managed to pare back the benefit to people on the surcharge, at the very top of the tree, by 12½c. Even though it has been pared back by 12½c in the dollar, people earning above $100,000 will get a bigger tax concession for every dollar they save than someone earning less than $50,000. That is something the Senate should be concerned about. When looking at the merits of this bill, it is a factor the Democrats will be taking into account.

Senator LEES (South Australia) (10.46 p.m.)—I would like to begin where Senator Cherry left off on the Superannuation Budget Measures Bill 2004 and say that we do need to look at the system as a whole and to find a simpler, fairer system of dealing with the mix of tax and super. However, to deal with this quite important bill before us tonight, I note that it does contain the two measures. While ideally we could have and should have dealt with them separately, this is how the government has determined to deal with it. However, to deal with this quite important bill before us tonight, I note that it does contain the two measures. While ideally we could have and should have dealt with them separately, this is how the government has determined to deal with them and this is the way we will deal with them. The bill has within it both the extension of the co-contribution scheme and measures to reduce the super surcharge. For my home state it means that some 512,000 people will now be eligible for some co-contribution, and that is one thing that is on
my mind as we work through how to deal with this piece of legislation. Also in South Australia some 18,900 people may be affected by the surcharge reduction.

I will deal with these two issues separately. Firstly, on the co-contribution, the amount paid into the accounts of low-income earners is currently $1 for every dollar they contribute, up to $27,500, and it phases out gradually until you earn $40,000. Beyond that, none is paid. This bill increases the co-contribution to $1.50 for every dollar a person voluntarily contributes, up to an income of $28,000. The phase-out will continue to the new top level of $58,000. The changes are designed to provide further incentives. I agree with the government that it will provide additional incentives, perhaps not quite at the levels that some expect, but it is another way for people to be encouraged to save for their retirement. I believe that, whilst some people have difficulty putting anything away, this scheme is working. I am pleased to be one of the four senators that made it possible for the legislation to pass through this chamber. People are now thinking more about their retirement, their retirement savings and what they will do for the future. Whilst some people in the lowest income brackets—perhaps people with mortgages or children to worry about—will not be able to contribute at the moment, they may in the future. They will have this option and can work hard to put more away for their retirement.

This bill will attract some of those now being brought into the scheme—those who fall between the old upper limit of $40,000 and the new limit of $58,000. They will probably be the largest group to benefit and will save more as a result. I see this as a very worthwhile move. It certainly should be supported in this chamber tonight if we can find our way through some of the difficulties and some of the issues others have with the second part of the bill. This is the part that reduces the super surcharge for those on high incomes, and this is the controversial part of this piece of legislation. Some have simply looked at this, declared it unfair and ruled it out. Apparently they will vote the entire bill down because of that.

Senator Cherry interjecting—

Senator LEES—I was referring to you, Senator Cherry. Don’t get upset; it’s too late in the night. Research on this issue is quite interesting. A lot of it was put before the Senate Economics Legislation Committee when it looked at this bill and the other bills. It showed that there is not a consistent group of people who are caught by the super surcharge. According to the evidence put before the committee, many of those who find one year that they are liable for the surcharge are out of it the next. Also, people who find themselves liable for the surcharge have not reached adequate levels of savings for their retirement. I will quote a small section from page 5 of the committee report:

... almost half the people paying surcharge have a balance under $50,000—in their super accounts—and a further 25 per cent of people have a balance of between $50,000 and $100,000. So, overall, 75 per cent of people investing with Colonial First State who paid surcharge have a balance under $100,000 which, clearly, is not close to being able to fund their own retirement.

The second point I make here is that older Australians, particularly women, are being caught. Women are frequently disadvantaged because, often, they have either been completely out of the work force for a number of years raising children or have had long periods when they have worked part-time or casually and therefore accrued very little, if any, super. This means that, when they finally do get back into the work force—their children are off their hands, they get a decent
job with a good wage and start almost from scratch trying to save some super—they are hit quite hard by the surcharge.

There are some obvious winners, and they are in that top 25 per cent who are and have been consistently earning over $100,000 a year. I think we do need to find a way through. I congratulate Senator Murphy on his persistence in working to find a way through all of this. He will be talking further on the option that has been put to the Senate—that is, rather than drop the rate to 7½ per cent we drop it to 10 per cent. In that way a reduced benefit but still some benefit will flow through to people on high incomes and, hopefully, that will continue to encourage people to invest in super rather than look for other things to do with their money.

I will leave it to Senator Murphy to speak in more detail on those amendments, and we will be dealing with them in the committee stage of the bill. The other issue I recommend to the minister, which is where I began and where Senator Cherry finished, is that we do need to look at the whole system. We need to stop and have a complete review of how this all fits together. I think that, at this point in time, it is unwieldy and unfair.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.53 p.m.)—I will now sum up on behalf of the government. I wish to make a short statement in relation to the second reading speech on the Superannuation Budget Measures Bill 2004, which was incorporated in the Senate Hansard of 15 June 2004. Treasury has advised me that the estimate used in the speech that over a million people were expected to benefit from the extension provided by this bill includes people in addition to those originally estimated to receive a co-contribution under the existing scheme.

This is the biggest boost to superannuation incentives since the introduction of the superannuation guarantee, and possibly the biggest boost to superannuation incentives ever. The total value of this package is $2.7 billion over three years. It is possibly the most significant superannuation bill this chamber has ever considered. Importantly, 78 per cent of the benefits in this package target low- and middle-income earners. This is a government that believes in incentives. We believe that all Australians should have the opportunity to obtain a better standard of living in retirement than that provided by the age pension and superannuation guarantee alone. The fully implemented superannuation guarantee arrangements, in conjunction with the age pension, provide a firm financial base for people’s retirement incomes and mean that Australians will retire with higher living standards than ever before.

Treasury estimates that the superannuation guarantee and the age pension are projected to provide a spending replacement rate of 76 per cent for a single male on medium earnings of approximately $35,000 after 30 years of contributions, or 85 per cent after 40 years of contributions. Whilst this provides a sound retirement base, the government encourages people to consider the standard of living they desire in their retirement and to save accordingly. The existing dollar for dollar superannuation co-contribution for employees earning less than $40,000 has, I am very happy to say, already generated a lot of interest in superannuation and, hopefully, is encouraging people to plan for their retirement. I finally believe that people are now engaged with superannuation.

Extending the co-contribution to employees earning between $40,000 and $58,000 and increasing the matching rate is expected to further increase interest in superannuation. This is a significant extension that is worth an estimated $2.1 billion over three years. If
the Senate supports this bill, the co-
contribution is estimated to boost the super-
annuation savings of over a million employ-
ees in 2004-06. This will include people un-
der the current scheme, under the extension
passed by the Senate yesterday and under the
extension in this bill. The expanded co-
contribution can significantly boost retire-
ment incomes, and I want to place on record
an example: an eligible person on $25,000
receiving the maximum government co-
contribution for 30 years is projected to ex-
perience an 86 per cent, or $106,000, in-
crease in their real superannuation balance.
The equivalent figure for a medium-income
earner on $36,000 is a 28 per cent, or
$51,000, real improvement.

I want to say a few words about the sur-
charge, which is the other important part of
this bill, although disproportionately fewer
dollars devoted to it. Certainly anecdotal
evidence suggests that the surcharge does
represent a significant disincentive for some
people to save for their retirement, particu-
larly those who can afford to and who would
be able to boost the retirement system with
their personal savings. This bill provides
additional reductions in the maximum sur-
charge rates to further reduce the disincentive
for higher income individuals to make superannuation contributions. More than half
a million Australians will have higher super-
annuation savings as a result of this initiative
to reduce the superannuation surcharge rate.
I am aware of people who are not in the top
marginal tax bracket—that is, people who
earn below $62,500—who pay the superan-
nuation surcharge. They are not affluent or
rich people. They are perhaps well-off by
some standards but you would not describe
them as being rich. The superannuation sur-
charge net captures average professionals, as
noted in the *Australian Financial Review*
yesterday by Mr John Vines, the Chief Ex-
ecutive Officer of the Association of Profes-
sional Engineers, Scientists and Managers
Australia, which is an ACTU affiliated un-
ion.

So I do urge senators to consider the fact
that this has been a very carefully balanced
package, one that builds on the previous co-
contribution and reduction of the surcharge
measures which the Senate saw fit to pass
with the assistance of the Independents. It
has significantly generated interest in the co-
contribution and has better engaged people
in taking an interest in their own savings. I
will not speak any longer, because we obvi-
ously need to spend time on amendments. I
commend the bill to the Senate.

Senator Murphy—Mr Acting Deputy
President—

The ACTING DEPUTY PRESIDENT
(Senator Marshall)—Senator Murphy, the
minister has actually closed the debate on the
second reading.

Senator Murphy—I will just say that I
am prepared to let it go through the second
reading but that I might not vote for the bill
in the committee stage.

Question agreed to.
Bill read a second time.

In Committee
Bill—by leave—taken as a whole.

Senator MURPHY (Tasmania) (11.00
p.m.)—I think everybody knows that the
current taxation arrangements for superannu-
ation are a bit of a dog’s breakfast. Indeed,
we now have a proposal by the government
to further reduce the super surcharge, which
commenced in 1999. That was supposed to
be a good thing, now we are gradually trying
to get rid of it because it is not a good tax. It
is administratively very costly, it is very dif-
ficult and the general tax rules that apply to
superannuation have, for a long time, not
been very equitable. My preference would be
to see a more equitable system put in place.
To do that I have proposed that a review be conducted by the appropriate experts in the field to bring about a system of taxation in respect of superannuation that improves the equity of the current arrangements for superannuation taxation, improves the security of retirement incomes for superannuation fund members and reduces the compliance burden on superannuation funds.

That seems a responsible approach to take. I understand that the government may not be prepared to support such an approach, which is disappointing. I think it is very important that we take this step because of the ad hoc approach that is being taken even in this current bill. I do welcome the co-contribution, although I have some serious concerns in respect of the eligibility criteria. I know that we have dealt with part of the eligibility criteria in a previous bill, but there is a worry in respect of just how well it will work.

In my amendments (2) to (4) I am proposing that the surcharge not be reduced to below the 10 per cent level. I do that because the bill that the government has put forward proposes a reduction to 7½ per cent in the out years, although I understand that the government’s position is to ultimately remove the surcharge altogether. That is what brings me back to this point about having a proper review of taxation measures on superannuation. I will listen with interest to why the government are not prepared to consider that. As I said, it is a very important aspect of the overall approach to how we deal with superannuation in the future and it may or may not cause me to ultimately vote against the bill. I move amendment (1) on sheet 4327:

(1) Page 2 (after line 2), after clause 3, add:

4 Review

(1) The Minister must initiate an independent review into the taxation aspects of the superannuation system to consider, propose and recommend alternatives which:
(a) simplify the current arrangements for superannuation taxation;
(b) improve the equity of the current arrangements for superannuation taxation;
(c) improve the security of retirement incomes for superannuation fund members;
(d) reduce the compliance burden on superannuation funds;
and prepare a report of that review.

(2) In initiating the review required by this section, the Minister must call for a nomination from each of:
(a) the superannuation industry;
(b) the banking industry;
(c) superannuation consumer interest groups;
and appoint a three person panel from nominations received, to conduct the review.

(3) The Minister must cause to be tabled in both Houses of the Parliament a copy of the report of the review no later than 30 June 2005.

Senator CONROY (Victoria) (11.04 p.m.)—I indicate that, while I support almost all of the sentiments of Senator Murphy’s amendment—Labor, as I am sure Senator Murphy knows, has campaigned extensively against the administrative complexity—there was a very simple and straightforward method that could have been used if the government were not being pig-headed and none of that complexity would exist. But the government have been pig-headed now for eight years and inflicted these costs right across every fund, even those that are not paying the tax. The bottom line is that a reduction of the rate, of any degree, does not affect the complexity of the system one bit. It would be of the same complexity if it were one per
cent as it would if it were 15 per cent, because that is what you have to go through.

I think the idea of holding a review with eminent people and experts is very worth while, but it would be better to have the review before agreeing to changes. It is putting the cart before the horse to vote for changes and then say, ‘Let’s have a review.’ The fundamental bottom line is that the complexity exists because of the system designed by the government and it does not matter whether the rate is one per cent or 15 per cent, that same level of complexity is required for every fund member to be able to establish whether it is paying the tax. That disaster that is the surcharge administration is unaffected by your proposal. So, while being very sympathetic to all the points you have made, I am not sure this amendment would achieve what you hope it would achieve.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (11.06 p.m.)—I must say that to a large extent Senator Conroy has put his finger on the problem here. The government opposes this amendment and I will provide some reasons why. I accept Senator Murphy’s very genuine intentions here to try to deal with some of the issues to do with complexity. In saying the government does not support the amendment is in no way impugning Senator Murphy’s motives in trying to find a pathway to understanding and simplifying the superannuation system.

However, I would just question the value of a review process at this time, as outlined in the amendment. I think it is round the wrong way. The proposed review, in the way it is cast, is extremely broad in its scope as to what it proposes. It is proposing a comprehensive review, involving a panel of only three people. That might not be sufficient. It proposes to do justice to fundamental issues such as simplicity, equity, security and a reduction in the compliance burden in the superannuation industry and to report in only 12 months time. It has not been scoped at all, so it would be very difficult to agree to it the way it is. The government is aware of calls for a substantial review of the superannuation system, so it is not that I am unmindful or unreceptive of perhaps taking something of that kind forward, but I do think it needs to be set in a time frame that will enable the government to carefully consider how it would draw up the terms and how it would do it.

I also draw the attention of the chamber to the fact that only yesterday I announced a comprehensive government review, headed by Treasury, in consultation with the Australian Government Actuary, the Australian Taxation Office, industry and other stakeholders, into the safety and tax avoidance risks of defined benefit pensions. That is a very complex design issue that needs to be properly reviewed. The review will examine the continued demand, if there is one, for complying defined benefit pensions, having regard to the market linked pensions coming onstream and whether such a product can feasibly be provided by a small fund in a manner that is not detrimental to the integrity of the retirement income and tax system. Sometimes it is better if you can bite off a bit and do it very thoroughly. I note that this review is much more specific in its terms, but it is likely to produce more practical and substantial results than the proposed review. It is also relevant that, over the course of this government, significant changes have been made to the superannuation system. We have seriously endeavoured to address some of these issues to make the system more flexible and more responsive, as indeed we all want to see. We must continue to do that.

The changes have included key things such as portability of superannuation accounts, which was subject to a Senate com-
mittee; choice of superannuation fund—of course that has been around for a very long time and subjected to quite exhaustive examinations; quarterly superannuation guarantee arrangements; increasing the fully deductible amount for superannuation contributions by self-employed people; and the co-contribution design. My view is that the community just needs to be given an opportunity to understand the benefits of and to adjust to these changes without having to face perhaps the inherent uncertainty about what the future might hold for their superannuation savings. It is very difficult, because every time you change something there is a whole lot of new grandfathering that impacts on other aspects of the system.

One might not have wanted to ever design the system the way it is, Senator Murphy, but it is a system that is very entrenched and longstanding. I think we have to be very careful where we unpick it. It is a bit like pulling a thread in a carpet: it goes everywhere and requires you to have scoped it very carefully. I would be very concerned as to any suggestion that there was not stability in the superannuation arrangements. Obviously, we want the community to be confident that they can go ahead with the arrangements that the parliament puts in place with confidence, and confidence which will not otherwise be unravelled.

A comprehensive review of the system cannot be put in place before you see how all this legislation actually beds down and works. My primary objection to a review is that it is round the wrong way, as Senator Conroy pointed out. But, in the interim, I want to give you this assurance: the government will get on with implementing its current agenda for improving and enhancing the system. A major step in this regard is the very important incentives that we are considering tonight to boost superannuation savings. You can take it from me, Senator Murphy, that I am taking on board the sentiments that you have expressed in your amendment, even if I cannot agree to the way in which it is framed and the time frame sought.

Senator MURPHY (Tasmania) (11.12 p.m.)—I find some of the comments that have been made interesting. Listening to the minister’s explanation as to why the government cannot support my amendment, she said, ‘We want to bed down the particular measures that we are now seeking to implement rather than cause some uncertainty by proposing or allowing some review to take place.’ I think it is acknowledged by everybody that the current surcharge is a very administratively difficult and costly exercise to apply. Thinking back to when the government introduced the surcharge, I do not recall any review being held before it went down the road of implementing a surcharge. There have been many other changes in taxation that have affected superannuation, and I do not recall any significant reviews having taken place. I have proposed to the government a time frame of 30 June next year. If it takes longer, then I am open to suggestions from the government for a longer period for a review.

It worries me that when Treasury people and bureaucrats get hold of this sort of thing you usually do not get very good outcomes. I would like to see practical people confront this problem and provide future Australian superannuants with a solution to retirement incomes policy that is much more soundly based than the current practice. It is a dog’s breakfast—the government knows it is a dog’s breakfast—and we ought to work towards sorting it out. It ought not to have anything to do with what the government is proposing in the bill regarding the co-contribution. As I said, most people would welcome the co-contribution. There are some concerns about the eligibility criteria in some areas, what the take-up will be and who will
make up the majority of superannuants who take up this opportunity—and there is a concern about the reduction in the surcharge. If I recall the debate in 1999 or 2000, when the surcharge was introduced, the opposition opposed it and I think—

Senator Cherry—We voted for it.

Senator Murphy—That is right, the Democrats voted for it. It was an ad hoc approach to taxing superannuation. Now we have the government trying to remove it—firstly taking it down to 7½ per cent and ultimately getting rid of it. I think that having a review of the taxation measures applied to superannuation is a good idea. If the government feels that the time frame may be too short then it ought to suggest a longer time frame. Frankly, I do not see why that would be a problem. I could imagine the problem existing if it was given to Treasury or somebody, but if it was given to people who have practical application I am sure they could do it by 30 June 2005. That does not mean that all of a sudden the whole world would change with respect to superannuation—it would not—but you might end up with a more sound policy approach and a far more equitable taxation approach to the superannuation moneys of Australian workers. We might get a system in place which will work properly, will benefit Australians and will make it simpler for fund management. That is what this is about.

I am very disappointed that the government cannot see its way clear to supporting such an approach. I think it is ridiculous. If we can put in place a process of review to allow that to happen we should take the opportunity. If the government thinks, ‘We didn’t suggest it, therefore we are going to oppose it,’ then it should say that. If that is the model, then okay—fine. Realistically, we ought to take some steps to bring about a far better taxation approach to superannuation than we have now. This provides the opportunity and I urge the government to reconsider its position.

Senator Cherry (Queensland) (11.18 p.m.)—I would like to note for the record that the Democrats will support this amendment. We do so because we think a review of superannuation taxation would be a meritorious thing and something the government should seriously consider. I note for the record, though, that there already has been a review of superannuation taxation by the Senate Select Committee on Superannuation, which made some marvellous recommendations that I commend to Senator Murphy. Those recommendations deal with many of the issues he has dealt with. I also point out that the government has a very poor record in accepting recommendations of taxation reviews. As you would remember, the Trebeck fuel taxation inquiry review was junked on budget night last year, and the recommendations of the review of taxation on housing by the Productivity Commission were junked by the government only yesterday. So I do not hold much hope that this review, even if it ever came to pass, would actually result in much change.

Question negatived.

Senator Murphy (Tasmania) (11.19 p.m.)—by leave—I move amendments (2) to (4) on sheet 4327:

(2) Schedule 2, item 1, page 5 (lines 13 and 14), omit paragraph (d) of the definition of maximum surcharge percentage.

(3) Schedule 2, item 2, page 5 (lines 25 and 26), omit paragraph (d) of the definition of maximum surcharge percentage.

(4) Schedule 2, item 3, page 6 (lines 6 and 7), omit paragraph (d) of the definition of maximum surcharge percentage.

As I partly explained earlier, the purpose of these amendments is to restrict the reduction in the surcharge to 10 per cent rather than
going down to 7½ per cent. We have been here a long time and I do not want to take up any more of the chamber’s time than is necessary but I want to reiterate the point that the government wants to remove the surcharge altogether. The government put in the bill that the surcharge will go down to 7½ for the years out. I suggested taking it down to 10 per cent in 2005-06 as outlined at (c) in the bill and excluding (d), which would take it down to 7½ per cent in 2006-07 and ‘later financial years’—whatever that means. I propose that this amendment be agreed to but, as I said earlier, it is disappointing that we do not have a proper review, which would put in place some concrete arrangements for taxation measures in the future. I hope the government will accept this amendment but, even if it does, I remain unconvinced as to whether I can support this bill at the end of the day.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (11.22 p.m.)—We are considering an amendment to restrict the budget measure that relates to the reduction of the surcharge. It will reduce the surcharge to 10 per cent rather than 7.5 per cent in total. The government are disappointed that the chamber is attempting to amend the surcharge rate reductions in this bill. The government will accept this amendment but, even if it does, I remain unconvinced as to whether I can support this bill at the end of the day.

Surveys by my association indicate that more than 45 per cent of members are paying the superannuation surcharge.

Mr Vines went on to say:
...

... it is clear that the surcharge is targeting average-income earners in the professional sector.

Furthermore, and I must say I could not agree with this sentiment more, he said:

With an ageing population, superannuation policy must be focused on encouraging self-funding of retirement, rather than lowering retirement incomes.

I would also add that I am aware of individuals who are not in top marginal tax brackets who are caught up in the surcharge. The surcharge does not just hit the wealthy and high-income earners, as Senator Lees mentioned.

Following on from these comments, I would draw the chamber’s attention to the research that IFSA, the Investment and Financial Services Association, recently presented to the Senate committee that considered the bill. Amongst other things, it indicated that almost half of the fund members

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hit by the surcharge in their survey had superannuation balances of less than $50,000 and that three-quarters of them had balances of less than $100,000. It is clear that these people have not already accumulated adequate savings for their requirement, yet they are being hit by the surcharge.

It is important to remember that the measures in this bill are aimed at boosting the superannuation savings of Australians and at providing opportunities for people to gain a better standard of living in retirement. The government had already legislated for a reduction in the maximum superannuation surcharge rates for higher income individuals from 15 per cent in 2002-03 and previous years to 12.5 per cent in 2005-06. This bill accelerates that process and takes it even further, reducing the rate, as I said, to 7.5 per cent in the 2006-07 financial year. The government announced these additional reductions in the maximum surcharge rates to further reduce the disincentive for higher income individuals to make superannuation contributions. More than half a million Australians will have higher superannuation savings as a result of this initiative to cut a surcharge that is imposed on individual super contributions. In total, the rate reduction measure in this bill is estimated to cost $610 million over the forward estimates.

These amendments would mean that those individuals affected by the surcharge would not receive the full benefit of the surcharge rate reductions. Specifically, these amendments would mean that the last surcharge rate reduction would be down to 10 per cent in the 2005-06 financial year. Individuals would not benefit from the last reduction in this bill—down to 7.5 per cent in the 2006-07 and subsequent financial years. The current superannuation co-contribution scheme offers a dollar-for-dollar matching of low-income employees' personal superannuation contributions up to a maximum of $1,000. This bill will take that measure further. For the 2004-05 and subsequent income years, the government co-contribution will be increased to a $1.50 for a dollar up to a maximum of $1,500 for employees on incomes of up to $28,000. As a result a person earning less than $28,000 who makes a $1,000 personal contribution will now receive a $1,500 government co-contribution, instead of $1,000 previously, for no additional personal contributions.

I mention these things because this is a package. If senators are going to vote down the bill or the surcharge, it is also going to mean that those who would otherwise receive the great benefit of this co-contribution will miss out. The bill will boost the savings of low-income employees even more than the current co-contribution scheme, as I said a little earlier. The bill also increases the upper income threshold where the co-contribution phases out, up from $40,000 to $58,000. The initiatives will boost the retirement savings of over a million employees in 2005-06. I think it is a huge responsibility on senators' heads if they are going to not pass this bill. The extension passed by the chamber yesterday and extensions in this bill include people under the current scheme. The effect of opposing these amendments would unfortunately mean that the government's balanced set of measures would not be delivered to anyone. In that light, the government do not want to deny the co-contribution benefits to low- and middle-income employees and two out of the three government surcharge rate reductions. In this light and for these reasons, the government will not be opposing these amendments in the chamber but, subject to how this bill is later voted on, we will reserve our right to reconsider the position on these amendments once the bill is returned to the House of Representatives.

Question agreed to.
The TEMPORARY CHAIRMAN (Senator Marshall)—The question now is that schedule 2, as amended, stand as printed.

Senator CHERRY (Queensland) (11.30 p.m.)—The Democrats oppose schedule 2 in the following terms:

(1) Schedule 2, page 5 (line 1) to page 10 (line 11), TO BE OPPOSED.

The Democrats seek to delete this schedule from the bill. It is important that it be deleted from the bill because it is totally and utterly inappropriate to be dealing with the low-income earners co-contribution and the high-income earners surcharge in the same bill. The Democrats strongly support the issue of the co-contribution being proceeded with in this bill, but it is essential that we ensure that this bill is pure in dealing with the co-contribution issue. The surcharge issues should live or die on their own merits in a separate discussion and a separate debate. They should not be linked, as has been suggested by Senator Coonan and others, to this measure. Whether or not we would pass the surcharge reductions is something I would like to leave for another day.

I would note that the surcharge reductions as a whole are a tax equity measure designed to reduce the concession that was there for high-income earners. At the moment under the taxation system a high-income earner, even with a 12½ per cent surcharge, is getting a tax concession of 48.5 minus 12.5, which is 25 per cent for every dollar that their employer puts into superannuation. By contrast, a person earning an average of $40,000 gets a concession of only 16½ per cent. Even with the current 12½ per cent surcharge, the high-income earners are getting a higher percentage benefit than a middle-income earner. When you compare them with a low-income earner in the 17 per cent tax bracket, they are getting only a two per cent tax concession on superannuation. We think the surcharge should be debated separately from the co-contribution. Whether it be a 2½ per cent cut, a five per cent cut, a 7½ per cent cut or abolishing the thing, we should be debating that separately in principle from the issue of the continuation of the co-contribution.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (11.32 p.m.)—The government does not support the Democrat proposal. The bill provides three-quarters of its benefits to low- and middle-income earners through the co-contribution measure. Only a quarter of the benefits go to the surcharge payers. It should be noted that not all surcharge payers are wealthy or have high super balances, as I said in my earlier comments. The government will be opposing this deletion.

Senator CONROY (Victoria) (11.33 p.m.)—For the clarity of senators, I was wondering whether Senator Cherry could run us through this again. I was just outside the chamber, unfortunately. I was hoping to get a clarification on the intent of his proposal.

Senator CHERRY (Queensland) (11.34 p.m.)—The Democrats seek to delete schedule 2 from the Superannuation Budget Measures Bill 2004. This would mean that all aspects of the bill which deal with the surcharge reduction for high income earners would be deleted. It would leave the co-contribution in the bill, ensuring that that could proceed as a full measure, as it is supported by the vast majority of the chamber. I think that the surcharge should be dealt with at a separate time, as I said earlier.

Senator CONROY (Victoria) (11.34 p.m.)—I am informed that we oppose the Democrat proposal.

The TEMPORARY CHAIRMAN (Senator Marshall)—The question is that schedule 2, as amended, stand as printed.
Thursday, 24 June 2004

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25047

Question agreed to.

(Quorum formed)

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (11.37 p.m.)—I move:

That this bill be now read a third time.

Senator CHERRY (Queensland) (11.37 p.m.)—At this particular point in time, the Superannuation Budget Measures Bill 2004 is very disappointing because linked in it are the co-contribution measure, which the vast majority of the Senate supports, and the surcharge reduction, which is not necessarily supported by many people in this chamber. It is a great disappointment to me that the bill has resulted in this situation.

At this stage, I am uncertain of the views of the various Independents as to whether they want this bill to proceed in this form, and I am sure we will find that out shortly. I am still not quite sure what the view of the Labor Party is, which I thought was one way but I am not exactly sure what it is at the moment. I hope that will be revealed to me shortly as well. Certainly, from the Democrats point of view it is very disappointing that at this stage the bill contains a co-contribution measure, which is a very positive measure, and a surcharge measure, which should not necessarily be contained in this particular bill.

The Senate should ultimately, at the third reading, vote against this bill. The Democrats will be voting against this bill because as it stands it needs to be amended further to ensure that it provides for the co-contribution and the surcharge to be dealt with separately. It would be preferable for the co-contribution to proceed in a stand-alone bill and, in principle, not to be linked in any way, shape or form to the surcharge reduction.

Senator MURPHY (Tasmania) (11.39 p.m.)—Again, I encourage the minister to endeavour to take the steps necessary to get a review of taxation measures on superannuation in place. I am not suggesting that the people I suggested in the amendment that I moved, which was defeated, were the perfect solution, nor was the timing, but it is a very important issue. I hope the government will take steps to put a review in place. I am not suggesting a review by Treasury but an independent review by people with the appropriate qualifications and practical application to bring about something that will work for all Australians’ superannuation.

Question agreed to.

Bill read a third time.

SUPERANNUATION LAWS AMENDMENT (2004 MEASURES No. 2) BILL 2004

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004, informing the Senate that the House has insisted on disagreeing to the amendments made and insisted on by the Senate and has made amendments in place of those amendments, and requesting the concurrence of the Senate in the amendments made by the House.

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

House of Representatives message—

(1) Clause 2, page 2 (table item 3), omit the table item, substitute:

3. Schedule 1, 1 July 2008. 1 July 2008 items 5 to 7

(2) Clause 4, page 3 (line 2), omit “2010”, substitute “2008”.

CHAMBER
Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (11.41 p.m.)—I move:

That the committee does not further insist on its amendments to which the House of Representatives has disagreed and agrees to the amendments made by the House in place of those amendments.

Senator CONROY (Victoria) (11.41 p.m.)—by leave—We are insisting on our amendments. I move:

(1) Amendment no. 1, omit “2008” (twice occurring), substitute “2006”.

(2) Amendment no. 2, omit “2008”, substitute “2006”.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (11.42 p.m.)—I note Senator Conroy’s position. The government requests that the Senate not insist on the amendments that have now been disagreed to by the House of Representatives for the second time. Instead, we ask the Senate to consider the amendments moved by the government in the House of Representatives to bring forward the commencement date of the measure to simplify the superannuation guarantee earnings base provisions from 1 July 2010 to 1 July 2008.

The government still considers that a start date of 1 July 2010 would have allowed the optimal time period to move to a standardised earnings base. The government is disappointed that the Senate has twice rejected the concerns of some in business, particularly the Australian Chamber of Commerce and Industry, in relation to the ability of employers to move and adhere to an unreasonable time frame for implementation proposed by the opposition. I note that it is impossible to comply with 1 July 2005 commencement.

The government are committed to increasing equality for both employers and employees in the retirement income system. We do want to see greater equity for employees in the superannuation guarantee arrangements but recognise the need to moderate the impact on some businesses, because otherwise it would simply have an impact on employees. For that reason, the government have given consideration to a revised date and propose to amend the commencement date to 1 July 2008 for this measure. I encourage the Senate to consider and accept this compromise. A transition period of less than four years runs the risk of reducing employees’ wages growth more sharply to offset increases in superannuation payments. The revised transition provides what the government consider is the minimum time requirement for employers to meet the increase in superannuation payments through increased productivity, thereby not adversely affecting employees or employers.

The revised time frame contained in the amendment will allow at least one industrial bargaining cycle for employers and employees to consider the change to a standardised earnings base in the context of productivity and other general workplace considerations. In my view the government are proposing a reasonable time frame for implementation. We consider that it is highly unlikely that employers will wait until 1 July 2010 to revise the earnings base. To do so would remove all bargaining power from the employers on the issue and make it very difficult to offset a wage increase against increased superannuation entitlements or in any way link superannuation entitlements to productivity increases. It is for these reasons that the government believe that superannuation entitlements will move progressively towards nine per cent of ordinary time earnings and, for many employees, will reach nine per cent of ordinary time earnings prior to 1 July 2010. It is a measure that is intended to be beneficial for employees but not to unduly impact on employers. We need a balance here. How-
ever, in the interests of obtaining passage for this bill the government propose to bring forward the commencement date to 1 July 2008.

Senator CONROY (Victoria) (11.46 p.m.)—I indicate for the record—because there was a little confusion at the last vote—that the Labor Party opposed the third reading of the last bill, the Superannuation Budget Measures Bill. That is just to avoid any confusion in the future. I enjoyed very much Senator Coonan’s passionate speech, except that she was speaking about the wrong amendment. We are substituting 2006, not 2005. But I am sure that that will not change how the government intends to vote on it.

Senator CHERRY (Queensland) (11.46 p.m.)—Could I just clarify what we are doing here? As I understand it, Senator Coonan is moving an amendment to go to 2008 and Senator Conroy is moving an amendment to go to 2006. Is that right?

Senator Conroy—Yes.

Senator CHERRY—Excellent. I wish to advise for the record that the Democrats will be supporting Senator Coonan’s amendment at this point.

Senator Ian Campbell—I thought he’d go for 2007.

Senator Conroy—Split the difference!

Senator CHERRY—Maybe 2007½ would have been the ultimate compromise. As I said in my contribution to this debate earlier today, the Democrats recognise that there needs to be some accommodation of bargaining rounds, but we believe that the date needs to be brought forward from 2010. I would have preferred an earlier date, but 2008 is what the government has come back with. In the interests of getting this bill through we will support that. If the bill does not go through then we will have no change to the ordinary time earnings base at all, and people will be waiting forever—as they have been waiting for the last 13 years—for change. I know we are just haggling now between 2006, which is the opposition’s most recent compromise, and 2008, which is the government’s new compromise. The Democrats will support the government at this stage to get this bill through. We thank Senator Coonan for coming forward with a compromise which at least will give those workers in my home state of Queensland access to this measure earlier than they would otherwise have had it.

The TEMPORARY CHAIRMAN (Senator Marshall)—The question is that the amendments moved by Senator Conroy on behalf of Senator Sherry be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that the committee does not further insist on the amendments to which the House of Representatives has disagreed and agrees to the amendments made by the House in place of the Senate amendments.

Question agreed to.

Resolution reported; report adopted.

CORPORATE LAW ECONOMIC REFORM PROGRAM (AUDIT REFORM AND CORPORATE DISCLOSURE) BILL 2003

Consideration of House of Representatives Message

Consideration resumed.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.49 p.m.)—I move:

That the committee does not insist on its amendments nos 12 to 20, 28 to 34, 36, 43, 44, 85, 86, 91, 92, 108 to 110, 114 to 119, 127, 130, 134, 135, 137 to 147, 154 to 178, 223 and 225 to which the House of Representatives has disagreed.
Senator CONROY (Victoria) (11.50 p.m.)—I have indicated to the Government Whip a desire to incorporate my speech. Before I do that—

Senator Ian Campbell—I think Mr Reilly is in the gallery.

Senator CONROY—I was just going to say that the two stalkers from the Institute of Chartered Accountants and the Australian Society of Certified Practising Accountants can now be removed from the gallery. They deserve a commendation for their unflagging support for the parliamentary process. They have attended every single CLERP 9 hearing and all of the debate. I am not sure what that says about the two individuals, but they are certainly giving value for money to their employers. I see that Senator Murray has arrived, so I seek leave to incorporate my speech in Hansard.

Leave granted.

The speech read as follows—

Introduction
The CLERP 9 Bill goes some way to strengthening the regulatory framework. The Bill contains a number of Labor’s policy proposals including:

• Giving shareholders a non-binding vote on the remuneration report;
• Expanding the disclosure requirements for executives from the top 5 executives to the top 10 executives within the corporate group;
• Recognising the need to amend the disclosure obligations in section 300A in relation to executive remuneration;
• Requiring the auditor to attend and answer questions at the AGM; and
• Enhancing the disclosure of beneficial owners.

The bill also implements Professor Ramsay’s recommendations in relation to audit.

However, the CLERP 9 Bill does not go far enough. Labor takes the view that the Bill:

• fails to sufficiently hold boards accountable; and
• fails to sufficiently empower shareholders.

We are also concerned that some of the recommendations made by Justice Owen in his report into HIH have not been included in the Bill. For example, Justice Owen’s recommendations in relation to aggressive accounting techniques, four year cooling off-periods and the issue of whether an auditor’s independence ‘might’ be impaired, have been rejected by the Howard Government.

Labor believes that the failure to implement Justice Owen’s recommendations will result in a weaker system of financial reporting in Australia than could otherwise have been established.

Executive Remuneration
Labor welcomes the Government’s decision to accept a number of Labor and the Democrats amendments.

The payment of obscene salary packages and massive termination payments, (often in light of poor corporate performance) has resulted in an uproar from shareholders, employees and retirees.

The community is outraged that there appears to be one rule for corporate executives and another rule for the rest of the workforce.

Accordingly, during the CLERP 9 debate Labor put forward a range of amendments to increase transparency and accountability in relation to the remuneration for directors and executives.

The Government has accepted a number of Labor’s amendments in relation to executive remuneration.

I’ll briefly describe the amendments that have been accepted by the Government.

The first amendment which the Government has accepted requires detailed disclosure about performance conditions in relation to remuneration.

In Labor’s view, disclosing information showing the link between pay and performance is critical.

In order to make an informed decision about an executive’s salary package, shareholders are entitled to know the basis upon which the remuneration is based.

These amendments require the disclosure of the performance conditions attaching to remuneration packages including:
• a summary of the performance conditions;
• an explanation as to why the performance conditions were chosen;
• if the performance conditions include factors external to the company—a summary of those factors; and
• disclosure of the relationship between the remuneration policy and the company’s performance including the consequences of the company’s performance on shareholder wealth in the current financial year and previous 4 financial years.

These disclosures are particularly important given that shareholders will be voting on the remuneration report.

The second amendment which the Government has accepted relates to the disclosure of option payments.

Our amendment requires the disclosure of the value of options when they are granted, when they are exercised and if they lapse.

We also require the disclosure of the percentage of the value of the person’s remuneration that consists of options.

The third amendment that the Government has accepted relates to key terms in contracts between the company and the director or the executive.

Shareholders are entitled to know certain information in relation to directors’ contracts.

If this bill is passed, companies will be required to disclose the following information to shareholders:

• the duration of the contract;
• the notice periods in relation to termination for the contract; and
• details of the termination payments provided for under the contract.

In our view, it would be preferable for the avoidance of doubt if section 300A(1)(e)(vii) referred to agreements as well as contracts.

The Government has also accepted the following amendments from Labor and the Democrats:

• an amendment to require the disclosure of the qualifications and experience of company secretaries in the annual report;
• an amendment to require a discussion in the directors report about whether the accounts provide a “true and fair” view; and
• an amendment to require the company’s auditor to answer certain questions about the conduct of the audit and related matters at the AGM.

The ability of shareholders to ask auditors questions at the AGM is a critical issue. This matter was considered by the Parliamentary Joint Committee on Corporations and Financial Services (PJC).

The PJC’s report made a number of recommendations in relation to the role of the auditor at the AGM which were unanimously supported by the Labor members, the Government members and the Democrats.

**Amendments not accepted**

Some of our amendments in relation to executive remuneration have been rejected by the Government.

This means that if the CLERP 9 Bill is passed:

Directors will still be able to receive termination payments amounting to up to 7 years salary (without shareholder approval);

Directors will still be able to obtain non-recourse loans from the company; and

Shareholders will still be in the dark as to whether their directors have entered into equity value protection schemes.

**Proxy Voting**

Labor is disappointed but not surprised that the Government has chosen not to take the opportunity to shine some light into the voting practices of institutional investors who control (behind closed doors) billions of dollars of investments in the share market.

Why should institutional investors be allowed to operate in secret?

Labor believes that fund managers in Australia should disclose their voting records and voting policies.

The result is that Australia is being left behind and does not meet international best practice in this area.
Australia is lagging behind both the US and Canada.

The OECD Principles of Corporate Governance also call for enhanced disclosure by institutional investors.

The Howard Government is fighting against a global tide in relation to disclosure of proxy votes by institutional investors.

It’s not surprising, that given the choice between backing shareholders or IFSA, this Government has chosen to back IFSA.

To vote in favour of a policy which is opposed by IFSA (and the largest institutional investors in this country) takes courage—a characteristic which is in short supply in the Howard Government.

This Government talks about enhancing disclosure but the fact is they only want enhanced disclosure when it suits them and IFSA.

It’s clear that a change of Government will be required before shareholders and the market, will be fully informed about the way that institutional investors vote their shares.

Other Amendments

By not accepting Labor’s amendments the Howard Government has voted against:

- Enhanced accountability in relation to audit;
- 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.

By rejecting Labor’s reforms to empower shareholders, the Howard Government has voted against reforms which will increase shareholder activism in Australia.

Anyone who owns shares, anyone with superannuation, and anyone who has been outraged by obscene termination payments to directors and executives, will be disappointed that the Howard Government has voted against Labor’s amendments.

Cultural change

I hope that this Bill will have a significant impact on the culture within Australian companies.

If the requirements in this Bill are delegated to the compliance division within companies to address, then this Bill will not have achieved its full potential.

To achieve meaningful reform, it is necessary for the boardrooms of corporate Australia to do a “stock-take” and consider whether their culture and their internal processes and procedures implement the principles enshrined in this Bill.

Cultural change within Australian boardrooms is as important as the black letter laws which Parliament will pass.

The recent PricewaterhouseCoopers (PwC) report into the National Australia Bank highlighted the importance of cultural issues and made the point that an organisation’s culture is a board responsibility.

The PwC report found that, quote:

“The Board must accept responsibility for the “tone at the top” and for the environment in which management did not report openly on issues in the business.”

I hope that this Bill acts as a catalyst for the boards of all Australian companies to consider the “tone at the top” (in other words the culture) of their organisations and consider whether that culture is conducive to the interests of their employees, shareholders and customers.

Labor appreciates the support of the Democrats for the amendments. Labor supports the Bill as amended.

Senator CONROY—Senator Murray and I would like to insist on our amendments, although I understand we are probably not going to get there. Our turn will come, Senator Murray.

Question agreed to.

Senator MURRAY (Western Australia) (11.53 p.m.)—by leave—I, and also on behalf of Senator Conroy, move the following amendments on sheets 4323, 4324, 4325 and 4326:
Sheet 4323

(1) Schedule 5, page 192 (after line 16), after item 11, insert:

**11A After paragraph 300A(1)(b)**

Insert:

(ba) if an element of the remuneration of a director, secretary or senior manager is dependent on the satisfaction of a performance condition:

(i) a detailed summary of the performance condition; and

(ii) an explanation of why the performance condition was chosen; and

(iii) a summary of the methods used in assessing whether the performance condition is satisfied and an explanation of why those methods were chosen; and

(iv) if the performance condition involves a comparison with factors external to the company:

(A) a summary of the factors to be used in making the comparison; and

(B) if any of the factors relates to the performance of another company, of 2 or more other companies or of an index in which the securities of a company or companies are included—the identity of that company, of each of those companies or of the index; and

(2) Schedule 5, item 12, page 192 (line 25), omit “year.”, substitute “year; and”.

(3) Schedule 5, item 12, page 192 (after line 25), after paragraph (c), insert:

(d) if an element of the remuneration of a person referred to in paragraph (c) consists of securities of a body and that element is not dependent on the satisfaction of a performance condition—an explanation of why that element of the remuneration is not dependent on the satisfaction of a performance condition; and

(e) for each person referred to in paragraph (c):

(i) an explanation of the relative proportions of those elements of the person’s remuneration that are related to performance and those elements of the person’s remuneration that are not; and

(ii) the value (worked out as at the time they are granted and in accordance with any applicable accounting standards) of options that are granted to the person during the year as part of their remuneration; and

(iii) the value (worked out as at the time they are exercised) of options that were granted to the person as part of their remuneration and that are exercised by the person during the year; and

(iv) the value (worked out as at the time they lapse) of options that were granted to the person as part of their remuneration and that lapse during the year; and

(v) the aggregate of the values referred to in subparagraphs (ii), (iii) and (iv); and

(vi) the percentage of the value of the person’s remuneration for the financial year that consists of options; and

(vii) if the person is employed by the company under a contract—the duration of the contract, the periods of notice required to terminate the contract and the termination payments provided for under the contract; and
(f) such other matters related to the policy or policies referred to in paragraph (a) as are prescribed by the regulations.

(4) Schedule 5, item 13, page 192 (before line 33), before subsection (1A), insert:

(1AA) Without limiting paragraph (1)(b), the discussion under that paragraph of the company’s performance must specifically deal with:

(a) the company’s earnings; and

(b) the consequences of the company’s performance on shareholder wealth;

in the financial year to which the report relates and in the previous 4 financial years.

(1AB) In determining, for the purposes of subsection (1AA), the consequences of the company’s performance on shareholder wealth in a financial year, have regard to:

(a) dividends paid by the company to its shareholders during that year; and

(b) changes in the price at which shares in the company are traded between the beginning and the end of that year; and

(c) any return of capital by the company to its shareholders during that year that involves:

(i) the cancellation of shares in the company; and

(ii) a payment to the holders of those shares that exceeds the price at which shares in that class are being traded at the time when the shares are cancelled; and

(d) any other relevant matter.

Sheet 4324

(1) Schedule 1, item 117, page 113 (lines 12 to 15), omit paragraph (a), substitute:

(a) allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or the auditor’s representative questions relevant to:

(i) the conduct of the audit; and

(ii) the preparation and content of the auditor’s report; and

(iii) the accounting policies adopted by the company in relation to the preparation of the financial statements; and

(iv) the independence of the auditor in relation to the conduct of the audit; and

(2) Schedule 1, item 117, page 113 (after line 20), after subsection (2), insert:

(3) If:

(a) the company’s auditor or their representative is at the meeting; and

(b) the auditor has prepared a written answer to a written question submitted to the auditor under section 250PA;

the Chair of the AGM may permit the auditor or their representative to table the written answer to the written question.

(4) The listed company must make the written answer tabled under subsection (3) reasonably available to members as soon as practicable after the AGM.

(3) Schedule 1, item 120, page 114 (table item 70, cell at column 2), omit the cell, substitute:

Subsections 250T(1) and (4)

Sheet 4325

(1) Clause 2, page 2 (before table item 3), insert:

2D. Schedule 2A The later of:

(a) 1 July 2004; and

(b) the day after this Act receives the Royal Assent.

(2) Page 164 (before line 2), before Schedule 3, insert:
Schedule 2A—Financial reporting (true and fair view)

Corporations Act 2001

1 After subsection 298(1)

Insert:

(1A) If the financial report for a financial year includes additional information under paragraph 295(3)(c) (information included to give true and fair view of financial position and performance), the directors’ report for the financial year must also:

(a) set out the directors’ reasons for forming the opinion that the inclusion of that additional information was necessary to give the true and fair view required by section 297; and

(b) specify where that additional information can be found in the financial report.

2 At the end of section 306

Add:

(2) If the financial report for a half-year includes additional information under paragraph 303(3)(c) (information included to give true and fair view of financial position and performance), the directors’ report for the half-year must also:

(a) set out the directors’ reasons for forming the opinion that the inclusion of that additional information was necessary to give the true and fair view required by section 305; and

(b) specify where that information can be found in the financial report.

3 After paragraph 307(a)

Insert:

(aa) if the financial report includes additional information under paragraph 295(3)(c) or 303(3)(c) (information included to give true and fair view of financial position and performance)—whether the inclusion of that additional information was necessary to give the true and fair view required by section 297 or 305; and

4 Before subsection 308(4)

Insert:

(3B) If the financial report includes additional information under paragraph 295(3)(c) (information included to give true and fair view of financial position and performance), the auditor’s report must also include a statement of the auditor’s opinion on whether the inclusion of that additional information was necessary to give the true and fair view required by section 297.

5 Before subsection 309(6)

Insert:

(5B) If the financial report includes additional information under paragraph 303(3)(c) (information included to give true and fair view of financial position and performance), the auditor’s report must also include a statement of the auditor’s opinion on whether the inclusion of that additional information was necessary to give the true and fair view required by section 305.

(3) Schedule 12, item 2, page 251 (before line 4), before section 1466, insert:

1466A Schedule 2A to the amending Act (true and fair view)

The amendments made by Schedule 2A to the amending Act apply to directors’ reports for periods that start on or after 1 July 2004.

Sheet 4326

(1) Schedule 8, page 230 (after line 16), after item 14, insert:

14A At the end of subsection 300(10)

Add:
and (d) the qualifications and experience of each person who is a company secretary of the company as at the end of the year.

(2) Schedule 12, item 2, page 253 (after line 8), after subsection 1471(2), insert:

(2A) The amendment made by item 14A of Schedule 8 to the amending Act applies to reports for financial years that start on or after 1 July 2004.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.54 p.m.)—I will speak very briefly to the amendments because it is late. In discussions with senators, particularly Senator Murray and Senator Conroy, the government have agreed to accept a number of amendments. They relate to changes to AGM procedures so that the chairman can allow shareholders a reasonable opportunity to ask company auditors questions, the chairman can permit an order to table written answers to questions from shareholders, the disclosure of qualifications of company secretaries and some amendments picking up the JSC Public Accounts and Audit Report No. 391 review of independent auditing standards, among some other things.

We appreciate the cooperation of the Democrats and the Australian Labor Party in finding some common ground. We know the ALP have a different policy platform and so do the Democrats. We have said, in earnest, that we would like to review the recommendations of the joint parliamentary committee, which I know both Senator Conroy and Senator Murray put an enormous amount of work into with other members of the committee—including the chairman, Senator Chapman. I am glad that the other parties respect the fact that the Commonwealth government cannot look at all of those recommendations and make decisions literally in a day or two. However, we have said that we will look at those diligently over the next few weeks and come back with a considered response when parliament resumes. The fact that CLERP 9 can pass into law is a great thing for Australia and it is a reflection of the high quality corporate law debate we have generated in this country over many years. I thank you both, gentlemen, for your support.

Senator MURRAY (Western Australia) (11.56 p.m.)—I do not plan to make a long speech and I do not have one to incorporate, but I will confirm what the minister has just said. The amount of work done by Senator Conroy and his adviser, by me and my adviser and by the parliamentary committee was huge. For the record, I note that the number of pages of amendments—and they are printed in small font—to the CLERP 9 bill was 55. Of those 55 amendments, at least half of them were government amendments. Those amendments arose because of the committee’s work and further consultation and further effort. Sometimes in this sometimes gladiatorial chamber and adversarial place, we forget the real effect and impact of the review of government legislation. Standing behind the amendments that the government have accepted is the ghost of Senator Chapman and his committee, on which Senator Conroy and I both sit, as well as our own amendments.

We know CLERP 9 is a very important advance for Australian corporate governance and corporate standards, and because 1 July looms, in that same spirit of cooperation Senator Conroy and I—who have exhibited that cooperative attitude by jointly moving these amendments—have agreed to let just 12 of our 74 amendments pass. This is about 15 per cent, if my maths is correct. This is an indication of a cooperative attitude and of a real concern that we advance this very important topic. Whilst I am dishing out bouquets, I conclude with a bouquet to the minister at the table, Senator Ian Campbell. Al-
though he no longer has responsibility in this area, he did put immense effort into the CLERP process so this represents an achievement for him as well.

Question agreed to.

Resolution reported; report adopted.

Sitting suspended from 12.00 a.m. until 9.00 a.m. on Friday 25 June

Friday, 25 June 2004

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

COMMITTEES
Economics References Committee
Report
Senator STEPHENS (New South Wales) (9.01 a.m.)—I present the report of the Economics References Committee on the structure and distributive effects of the Australian taxation system, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator STEPHENS—I seek leave to move a motion in relation to the report.
Leave granted.

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

I seek leave to have a tabling statement incorporated in Hansard.

Leave granted.

The statement read as follows—
Mr President, this inquiry was referred by the Senate in late 2002. It has been an unusual tax inquiry, because it has had a wide remit, and has been conducted over a long time—a year and a half, or half of the current parliament.

Generally, the Senate’s examination of taxation matters must take place in a shorter timeframe, as the Senate itself, and the Economics Committee in particular, deals with particular taxation legislation. In this report, however, the Committee has had an opportunity to step back and take a broader view of our taxation system, and how it affects Australian taxpayers and families.

The submissions and evidence gathered in relation to this inquiry reflected this broader purpose. The Committee received evidence from individuals and community groups struggling to deal with the current tax system, from charities and welfare groups trying to pick up the pieces, from businesses, and from academics who spend their professional lives on research into the tax system.

The evidence went beyond the technical discussion of taxation provisions, and spoke instead about the real impact of the tax system, on real Australians.

The consensus which emerged overwhelmingly from all of those stakeholders is that, years after the massive changes to both business and personal taxation implemented by the Howard government, the tax system remains confusing and inequitable, rewarding tax avoidance and hence eroding the tax base, and making it difficult for those in the welfare system to escape.

In fact, evidence drew attention to so many problems with the current taxation system that it very quickly became apparent to the Committee that one report, undertaken in a mere 18 months, could not hope to recommend solutions, or even undertake a comprehensive analysis, of all of them. Instead, this report identified those issues, explains why they are of concern, and sets out the basis for a series of further references, to be conducted over the course of the 41st Parliament, to examine these tax challenges in much greater detail.

Mr President, in this report the Committee Majority recommends further examination of six areas of tax policy: Effective marginal tax rates; tax avoidance; tax expenditures; intergenerational issues; the tax treatment of the self-employed; and the tax treatment of superannuation.

Effective Marginal Tax Rates
The most significant problem identified by the Committee, and one which is raised almost every week in the financial press, is the problem of effective marginal tax rates. Effective marginal tax rates are the combination of income tax and lost
welfare benefits which arise when a person on welfare enters the workforce.

Under the current system, high effective marginal tax rates mean that some people coming off unemployment benefits and some people approaching the payment thresholds for family tax benefits and child care benefits, find themselves facing effective marginal tax rates in excess of 80 percent. That is, for every dollar they earn, only twenty cents ends up in their pockets. A rational person, faced with the opportunity to go and work, but also faced with the prospect of keeping only 20 percent of their wage, is most unlikely to take that work. They'll stay on welfare.

This report identifies some possible answers to the problem of high EMTRs. The Tax Credit schemes operating in the US and UK bear further consideration. One thing is certain, though, and that is that the problems of high EMTRs will not be fixed by merely adjusting thresholds and taper rates as the Government did in the recent budget. These so-called solutions merely change which taxpayers, at which earning levels, pay high EMTRs. At the very best, reduced taper rates spread the pain a little more broadly.

The Committee majority proposes that the very first reference arising from this inquiry should be an examine of the issue of high EMTRs in Australia. We are setting a challenge to the Senate, to the financial and academic community, and to taxpayers, to use this forthcoming inquiry as an opportunity to address the issue of high EMTRs in Australia in an unprecedented way.

Tax avoidance

The second important issue raised was tax avoidance. Gone are the days where Australians supported the idea that you should get away with whatever you can at tax time. Evidence before the Committee suggested that honest taxpayers are sick and tired of seeing those around them rorting the system. They’re sick of seeing workers with creative accountants structuring their affairs through trusts to avoid tax. They’re sick of supporting their university children, while higher-earning families rort their way into full Austudy. They’re sick of seeing business people rolling in wealth but claiming to have next to no income. And they expect the Parliament to do something about it.

Tax expenditures

Tax expenditures, that is, the delivery of welfare benefits and other forms of government assistance as tax rebates rather than as direct expenditure, are a growing favourite of the current government. The problem with the delivery of services as tax expenditures is that it effectively circumvents parliamentary scrutiny of that expenditure. The Parliament can hardly, it is claimed, scrutinise the collection and use of revenue which is not actually collected! In the Committee’s view the Parliament must develop new tools to scrutinise the use of tax expenditures by the Government. This report calls for an inquiry to consider this issue.

Intergenerational Issues

The Committee received compelling evidence about the relationship between the tax system and families in Australia. In fact, at almost every significant milestone of life, tax is a significant issue. We have learned that people are considering whether to marry, whether to purchase a house, whether to attend university, whether to have children, how many children to have, whether to accept employment promotion, and whether and when to retire, all in the context of how these events will affect their tax obligations and financial wellbeing.

If the Government is serious about encouraging families in Australia, it needs to do much more than buy their votes at a price of $600 a kid. It needs a fundamental reconsideration of how the tax system can allow Australians a rewarding family life without punishing them financially.

Mr President, I note that the Government Senators have felt unable to support this report. This is unfortunate, because Senators of all parties participated in this inquiry process with a positive spirit of co-operation and, I had thought, a genuine desire to explore these issues outside the hurly-burly of day to day political debate. It is a pity that, rather than supporting this report, Government Senators have chosen to posture on this issue.

As always, the Committee has received outstanding support from the Secretariat in completing this inquiry. Because of its length, the number of officers who have made a contribution is sub-
substantial, and includes the Secretary, Dr. Sarah Bachelard, Principal Research Officer Dr. Anthony Marinac, Judith Wuest, and previous Economics Committee staff including Kathleen Dermody, Geoff Dawson, David Pengilly, Phil Bailey and Barbara Rogers.

I commend the report to the Senate. The Economics Committee looks forward to pursuing the further inquiries it proposes.

Senator STEPHENS—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Public Accounts and Audit Committee Report

Senator FERRIS (South Australia) (9.01 a.m.)—On behalf of Senator Watson and the Joint Committee of Public Accounts and Audit, I present the 400th report of the committee entitled Review of aviation security in Australia. I seek leave to move a motion in relation to the report.

Leave granted.

Senator FERRIS—I move:

That the Senate take note of the report.

I seek leave to have a tabling statement incorporated in Hansard.

Leave granted.

The statement read as follows—

This report presents the Committee’s review of Australia’s aviation security. The review arose from the Committee’s statutory obligation to review reports of the Auditor-General, namely Audit Report No. 26, 2002–2003, Aviation Security in Australia which was tabled in January 2003.

Australia’s aviation industry services approximately 50 million international and domestic passenger movements each year and involves some 70 000 employees who contribute in one way or another to aviation security. The industry is regulated by the Department of Transport and Regional Services.

The Committee has reviewed over five hundred pages of submissions, over four hundred pages of transcript of evidence taken at six public hearings, and inspected Sydney airport and two regional airports.

Mr President, the headline for the Committee’s review is that it provides a positive report card for aviation security in Australia at this point in time.

The Committee has assessed the current threat environment within which Australia’s aviation industry operates, the opportunities and costs of security enhancements, the aviation security framework, and the human aspects of security, including the culture of security.

In summary, the Committee has found that the security measures under which aviation security operates in Australia are appropriate to the current level of threat, there is flexibility to adjust the framework to meet changing threats, and the culture of security is positive.

The Committee has identified the security culture as being one of the more important aspects of security and is pleased with the attitude of employees at the interface between the aviation industry and the travelling public. The Committee has drawn on its own experiences of airline travel in Australia and overseas and notes the friendly, yet firm and professional attitude of the staff involved in aviation security.

This security attitude in Australia contrasts markedly with the attitudes of security personnel, particularly screeners, in some other countries. The alternative—belligerence, heavy handedness, and arrogance—will not engage the public and will hinder security outcomes.

The Committee has made five recommendations aimed at:

• clarifying the interaction between the newly created Australian Government airport security committees and existing airport security committees;
• strengthening the regulations by the inclusion in them of the non-negotiable aspects of the security framework;
• improving the procedures for the return of expired aviation security identification cards;
• broadening security awareness training to cover everyone who has access to security-controlled areas at airports; and
• maintaining the positive security culture through the introduction of educational measures aimed at promoting a robust security culture.

Overall, the Committee is satisfied that the standard of security at Australia’s airports and on aircraft is sufficient to meet the current threat environment. From time to time there will be security incidents triggered by circumstances at various layers in the system. Sometimes an incident which may appear trivial to the casual observer will cause major disruption. The Committee believes this shows aviation participants are taking their security responsibilities seriously.

In conclusion, Mr President, I would like to express the Committee’s appreciation to those people who contributed to the inquiry by preparing submissions, giving evidence at public hearings, and providing briefings to the Committee at private meetings and during inspections of airport facilities.

I also wish to thank the members of the Sectional Committee involved for their time and dedication in conducting this inquiry. I also thank the secretariat staff: the acting secretary to the Committee, Mr James Catchpole; inquiry secretary, Dr John Carter; research staff, Ms MaryEllen Miller; and administrative staff, Ms Maria Miniutti and Ms Jessica Butler.

Mr President, I commend the Report to the Senate.

Question agreed to.

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

Second Reading

Debate resumed from 14 June, on motion by Senator Troeth:

That this bill be now read a second time.

Senator CONROY (Victoria) (9.02 a.m.)—As I indicated last night, I have sought approval from the Opposition Whip and I now seek leave to have my speech on the Tax Laws Amendment (2004 Measures No. 3) Bill 2004 incorporated in Hansard.

Leave granted.
will not be connected with the investee company after the investment is made.

New integrity rules will ensure that venture capitalists cannot over time purchase connected entities of a group and claim the concessions for each purchase.

Schedule two deals with worker entitlement funds.

Worker entitlement funds are funds that provide for employee entitlements such as leave and redundancy payments. They are used extensively in the building industry to allow workers to transfer their entitlements between employers and ensure that workers entitlements are secure in the event of insolvency.

The transfer of entitlements between workplaces is particularly important for workers in the building industry.

Workers may be employed in the building industry for years, but miss out on redundancy and long-service leave entitlements because of the nature of the industry—workers commonly move from employer to employer as projects are completed.

The ATO issued a taxation ruling in 1999 which would have resulted in payments to worker entitlement funds being subject to Fringe Benefits Tax (FBT) from 1 April 2003. This would have resulted in payments to worker entitlement funds effectively being taxed twice—once on the way in and then when payments were made to workers.

In response, the government, after extensive pressure from both employer and employee groups, introduced legislative changes in Taxation Laws Amendment Bill (No. 4) 2003 to exempt payments to prescribed employee entitlement funds from FBT.

In order to allow existing funds adequate time to comply with the requirements for prescription under the legislation, an FBT exemption was provided for certain contributions until 30 May 2004. However, some worker entitlement funds are still making adjustments to their arrangements to comply with the requirements of the FBT exemption. To ensure that these funds are not adversely affected, the Bill extends the exemption period until 30 May 2005.

Schedule 3 contains minor technical amendments that ensure that provision for allowing foreign tax credits to arise in certain circumstances will continue to operate properly following changes to the foreign tax credit provisions that were made as a result of the Timor Sea Treaty.

These changes are needed due to changes in the numbering of sections in the Income Tax Assessment Act 1936 in relation to the Timor Sea Treaty.

Senator MURRAY (Western Australia) (9.03 a.m.)—The Tax Laws Amendment (2004 Measures No. 3) Bill 2004 is an excellent bill and should be passed.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.03 a.m.)—Far be it from me on the part of the government to disagree. The Tax Laws Amendment (2004 Measures No. 3) Bill 2004 completes the government’s commitment to establish a best practice venture capital investment regime and I commend it to the house.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

AUSTRALIAN ENERGY MARKET BILL 2004

TRADE PRACTICES AMENDMENT (AUSTRALIAN ENERGY MARKET) BILL 2004

Second Reading

Debate resumed from 23 June, on motion by Senator Abetz:

That these bills be now read a second time.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.04 a.m.)—We have just commenced the adjourned second reading debate on the Australian Energy Market
Bill 2004 and I make it clear I am speaking as a private senator to avoid the calling of a quorum because I believe my namesake Senator George Campbell is on his way to the chamber to speak on this legislation. We always think it is preferable to make some short remarks while honourable senators make their way to the chamber. The energy bill, as Senator Minchin will say in his summing up in his capacity as Minister for Finance and Administration, is an important piece of legislation which will, as I understand it, put in place a national energy market for the first time in Australian history. It will be of great benefit to providing outcomes that will see energy used in the most effective way, that will keep pressures on prices and that will give good conservation outcomes. One of the important ways to solve greenhouse gas emission problems is to make sure that there is a fair—is there a Labor speaker on the bill? I will yield to Senator Ludwig.

Senator LUDWIG (Queensland) (9.06 a.m.)—There is no doubt that Labor supports the creation of a truly national energy market. The Australian Energy Market Bill 2004 and the Trade Practices Amendment (Australian Energy Market) Bill 2004 go at least part of the way towards achieving that outcome. As we already understand, they require the states and the Commonwealth to come together on 1 July for the operation of the national energy market. It is helpful that this is one area where the Commonwealth has been able to at least negotiate sensibly with the states on providing a national forum.

One of the failures of this government in the introduction of this bill is that they still have not been able to decide on designing a national emissions trading system. The government have been unable to grasp the significance of the national energy market and ensure that there is an emissions trading system with it. There is no increase in the MRET. When you also look at this government’s failure to deal with this whole area, you see no focus on electricity and gas infrastructure investment, no focus on reducing oil import dependency and no focus on consumer advocacy or input into the COAG process. That seems to be a complete failure of this government. The state energy ministers will be supporting Labor’s position federally and running the emissions trading system in the MRET, as I understand it. This government’s real failure is not being able to think further than simply where we are at this point in time with the energy market. They should listen to Senator George Campbell, who will be able to take the whole debate to the government, convince them that Australia does in fact need those things that I have outlined and press home the failures that I have already outlined.

Senator GEORGE CAMPBELL (New South Wales) (9.08 a.m.)—Thank you to my colleague Senator Ludwig for holding the fort for me this morning. After eight lost years in energy reform under this government, it is encouraging to finally see these bills, the Australian Energy Market Bill 2004 and the Trade Practices Amendment (Australian Energy Market) Bill 2004, brought to the parliament to establish the bodies necessary to move closer to a truly national energy market. The Australian Energy Market Bill will enable the electricity market rules to apply consistently across all participating government jurisdictions, including Commonwealth offshore areas. The Trade Practices Amendment (Australian Energy Market) Bill provides for the establishment of the Australian Energy Regulator and its governing regime. The aim is to create a single national energy regulator. Unfortunately, because gas will not be rolled in until 2005 and distribution and retail arrangements will not be rolled in until 2006, the net effect today is that there will be one additional regulator.
A second body, the Australian Energy Market Commission, will be created as part of the energy market reforms. The AEMC will be responsible for rule making and market development, but it will be established by South Australian legislation rather than by Commonwealth legislation. Initially the AER and the AEMC will have electricity functions. The AER and the AEMC will receive their functions under both Commonwealth and state and territory legislation. Both bodies will have three members, one of whom will be common to both. The Commonwealth has the right to nominate one member of the AEMC and one member of the AER. The AER will have responsibility for economic regulation of Australian energy markets and will perform functions and exercise powers as conferred by Commonwealth, state and territory legislation. It will initially be responsible for regulation of electricity wholesale and transmission arrangements. The AER will combine and subsume the relevant regulatory functions which are currently the responsibilities of the ACCC and the National Electricity Code Administrator. However the ACCC will retain its existing responsibilities under the Trade Practices Act with respect to competition law enforcement, authorisation and access regulation.

While Labor will support the passage of these bills—it was a Labor government that commenced the reform process to give Australians a national energy market—we do have some concerns that we will bring to the table when a federal Labor government becomes party to the COAG process. One of our concerns is that the bills do not provide adequately for standing in relation to judicial review, in particular for consumer and environmental advocates. Given that both consumer and environmental issues, particularly climate change, are inextricably linked to energy policy and regulation matters, this is a significant shortcoming. Similarly, we would like to have seen a requirement that the Australian Energy Regulator includes members specifically versed in consumer and environmental advocacy, and also that the ACCC be obliged to take into account public submissions in its decision-making processes.

One of the common themes I note as I travel around the country is that Australians do not want dirt cheap electricity if it means falling levels of reliability of supply. They want a very reliable supply of electricity at a reasonable cost. But, unfortunately, leadership on energy policy has not been forthcoming at the Commonwealth level. As the policy-setting body for the NEM, the Ministerial Council on Energy needs to strongly convey the reliability message to network regulators, and this should be one of its highest priorities—so, too, should be finishing the energy market reform agenda Paul Keating began in the early nineties. The success of the reforms of the nineties cannot be denied. Nor can the fact that much more needs to be done.

COAG recognised this by commissioning the Parer report, but little action has been taken at the Commonwealth level. This is typical of the Howard government’s approach—committee after committee, inquiry after inquiry, task force after task force, but no action by the Commonwealth and no decision taking. The Parer committee’s report identified all the deficiencies in our energy markets. Suffice to say that our electricity and gas sectors are burdened by excessive regulation, overlaps in regulatory roles, slow and cumbersome code change processes, anticompetitive marketing practices, poor market design and poor, if any, planning mechanisms. Yet despite all the deficiencies highlighted by Parer, we have had nothing more than Clayton’s reform of electricity and gas. The truth is that all the Howard government has done on the reform front is replace NECA with the AEMC—in fact, changing a Corporations Law company to a commis-
sion—and create an AER whose relationship to the ACCC remains unclear. Absent still is any real commitment to move distribution regulation from the states to the national body. The end result is that you still have all the state regulators and an additional national regulator to deal with—more layers, not less.

On top of this, the industry is going to be slugged with a levy to fund the AER when at present the ACCC is funded from the federal budget—another new Howard government tax and a nice little piece of cost shifting from the Commonwealth budget to industry and, ultimately, the consumer. Before every election Peter Costello and John Howard make the promise that they will not be introducing new taxes or increasing existing taxes but the record shows that they have introduced new taxes or increased existing taxes on 151 occasions since 1996. The energy regulator that this bill creates will be funded by an industry levy. This is provided for in clause 7 of the Australian Energy Market Bill. This new levy is a new tax and there is no doubt about that. It all just goes to show that Peter Costello will say one thing before an election and do the opposite after. It just adds to Costello’s colossal legacy of 151 new or increased taxes and the highest tax take ever. There is no way he can avoid the label of being the highest-taxing Treasurer in Australia’s history.

My last point relates to climate change. The government must match Labor’s pledge to ratify Kyoto and implement a single national carbon trading system. In both electricity and gas, investor sentiment will be timid until someone delivers some certainty on the question of greenhouse gas emissions. Labor will deliver certainty on this front. We will sign up to Kyoto and we will have a national emissions trading system of some kind. The details will be worked out in consultation with the states and with industry. We will not unilaterally impose a scheme on industry stakeholders. The Prime Minister is denying Australian industry the benefits that could come with ratifying Kyoto. He already concedes that Australia is on track to meet its Kyoto targets, thanks to a Queensland Labor government whose initiative to phase out land clearing will deliver this result for Australia. Why then is he denying Australia access to flexibility mechanisms?

Labor is happy for these bills to proceed, on the basis that they have been the subject of extensive negotiations between the relevant state governments and the Commonwealth as part of the Council of Australian Governments, COAG, process. All the parties have agreed to the Australian Energy Market Agreement, an intergovernmental agreement to build a truly national electricity market. Whilst some concerns have been noted that the effect of one of these bills is to give the South Australian parliament the ability to modify Commonwealth law, regulations and rules relating to energy regulation, this is not necessarily an issue. The legislative power of the Commonwealth parliament carries with it an ability to delegate that power, provided the ability to revoke the delegation is always retained. The policy aim of the arrangements is to build a unified national scheme of energy regulation through the Australian Energy Market Agreement, which includes the arrangements with respect to the Australian Energy Market Commission, established by the South Australian parliament. Labor fully supports this policy objective and the agreement that has been reached through the COAG process. Australians have waited a long time for energy market reform and a truly national market, and Labor is of the view that no further delays are warranted.

Senator ALLISON (Victoria) (9.18 a.m.)—The Australian Energy Market Bill 2004 establishes a national framework for electricity regulation and codes. The Austra-
lian Democrats generally support the bill but we do have concerns about potential constitutional problems that were identified in the Bills Digest and the lack of environmental standards and social accountability included in this bill and the Trade Practices Amendment (Australian Energy Market) Bill 2004, as they are drafted. In particular, we are quite concerned about the lack of any recognition within this legislation of the role electricity generation plays in greenhouse gas production and, as a result, climate change. We understand that the Council of Australian Governments Ministerial Council on Energy recommended the establishment of two new statutory commissions, to be established on 1 July next year; the Australian Energy Market Commission, AEMC, with responsibility for rule making and market development, and the Australian Energy Regulator, AER, responsible for market regulation. It appears there may be significant constitutional problems in asking South Australia to be responsible for energy regulation for the rest of the Commonwealth—although I note that the government assures us otherwise—especially in light of the fact that the South Australian legislation to be used as a model for other states falling under these bills has yet to pass through the South Australian parliament.

We are concerned that the government have not fully examined the complexities of this issue in their rush to push the legislation through. On greenhouse issues, we urge the Senate to recognise that the electricity sector contributes 34 per cent of Australia’s greenhouse emissions and that it has been estimated by the Electricity Supply Association of Australia that deregulation resulted in an increase of over 30 per cent in greenhouse emissions. The global threat that climate change poses to our society is well recognised. However, recognition of the energy sector’s contribution to this growing threat is not adequately addressed in either the Australian Energy Market Bill or the Trade Practices Amendment (Australian Energy Market) Bill. Considering the importance of ensuring electricity generation fits within Australia’s best interests as to climate change, the Democrats believe that both of these bills require amendment to see those problems addressed.

We believe the AER, proposed in the Australian Energy Market Bill, must be required to promote and maintain ecologically sustainable development within the meaning of the principles of ecologically sustainable development set out in section 3A of the Environment Protection and Biodiversity Conservation Act 1999. While we have had preliminary assurances from the government that these issues will be addressed in future legislation to fall within this framework, we consider these issues to be so fundamental to adequate energy regulation that they must appear as part of the structure of these bodies designed to perform the regulation. As the industry currently stands, pricing within the electricity market does not include long-term environmental costs, and these bills fail to address that problem. We suggest that all energy policy and legislation should require that all new generating capacity be assessed using last-cost planning which would include environmental costs associated with production processes.

We believe both the AER and the Australian Energy Market Commission must encourage activities relating to the reduction of greenhouse gas emissions and at every opportunity must encourage the reduction of emissions associated with the production and use of electricity. The failure of the government to provide momentum for change to renewables through realistic mandatory renewable energy targets, within its white paper on energy reform that has just been presented, has left a number of renewable and alternative fuel providers with little scope to
expand and further develop environmentally friendly technologies. Once again, with these bills, the government has failed this sector.

Globally, solar and wind technologies are growing quickly and this government’s policy will see Australia’s renewable energy sector fall behind on both technology and market share. In considering the formation of the proposed AER, we believe that at least one member of the AER must have knowledge of and experience in environmental and greenhouse gas emissions. At least one member of the AER must have knowledge of and experience in low-income consumer and demand side participation issues. All members of both the AER and the AEMC must be appointed on merit. During the passage of these two bills through the House of Representatives, the ALP condemned the government for:

(1) failure after eight and a half years, to produce a policy which guarantees reliable, affordable and environmentally sustainable supplies of energy to all Australians ...

The Democrats urge that, in order to address these concerns, the Senate support the amendments which my colleague Senator Murray and I will be putting forward, which would see a substantial change within the culture of electricity regulation.

The amendments we propose would mean that environmental and social concerns are placed alongside market directives within the objectives of the AER and as a result would also be considered by the AEMC. The regulator must be required to have regard to the need for efficient and equitable demand side participation via customers. It is broadly recognised that the national electricity market is a supply side market and that this structure is at the direct expense of consumers, the environment and efficiency in general. There appears to be little legislative change here that would provide motivation for the electricity market to address inefficiencies in electricity use at the consumer end.

As to the National Electricity Code, it needs substantial amendment and must also reflect the need to reduce greenhouse emissions. In developing this legislation, we believe that it was an oversight on the part of the government in neglecting to ensure that the Australian Competition and Consumer Commission has the responsibility to be provided with information and submissions by the community and that consumer and environmental groups are able to seek judicial review. We reiterate that we strongly believe that decisions in relation to the national electricity market have broad consequences over a wide range of social and environmental issues. The opportunity for judicial review for all of those affected by such decisions is essential. As it stands the Trade Practices Amendment (Australian Energy Market) Bill 2004 suggests that the AEMC may disregard submissions from the Commonwealth, the states or any other person. We think that this is unacceptable, especially for a regulator that is charged with the regulation of a monopoly network in the interests of a competitive market.

In summary, we have a number of significant concerns with these two bills as drafted. They require little effort on the part of an industry known to contribute substantially to Australia’s greenhouse emissions to take their environmental impacts into account or to act to see them addressed. The bills provide no incentives for the supply side industry to move to see greater efficiency from their customers and they leave little room for community groups or members of the public to seek judicial review should they have significant problems with their electricity supplier. We do not think this legislation represents the best possible avenue for electricity reform and we urge the Senate to seriously consider the constitutional issues the bills
raise. The speed with which the government has sought to push these bills through the legislative process is of concern, as they will be vitally important to shaping the ecologically sustainable or environmentally damaging future of Australia’s electricity market. The Senate ought to be aware that efforts have been made to send these bills to committee. It is a great shame that this has not happened before the bills have been presented for us to make decisions.

Senator BROWN (Tasmania) (9.26 a.m.)—The Australian Energy Market Bill 2004 applies the national electricity law regulations and code as Commonwealth law in offshore areas—that is, between the states’ three-mile limits and the edge of the continental shelf beyond the three-mile limit. Therefore, it picks up on entities such as offshore energy production and Basslink passing between Victoria and Tasmania in the near future.

The Trade Practices Amendment (Australian Energy Market) Bill 2004, which comes with the first bill, creates the Australian Energy Regulator as a Commonwealth body to regulate the national energy market. Not only is it confined to offshore areas but it has national application. As earlier speakers have said, both bills will work by recognising South Australian legislation in Commonwealth law rather than by introducing complementary or stand-alone national legislation. You can compare that with the national Corporations Law, which was introduced in the ACT but which is under direct Commonwealth authority. Having the bills contingent on or levered on South Australian legislation is constitutionally dubious. I, and no doubt others, will be asking the minister about this in the committee stages of these bills. There is no precedent and this measure fails the test of democratic accountability.

The Commonwealth parliament is effectively ceding power to the South Australian parliament—for example, regulations introduced in that parliament cannot be disallowed by the Commonwealth parliament. Only the government, not the parliament, can change the law through the Ministerial Council on Energy. This is a very troubling move towards sidelining the Australian parliament through the workings of ministerial councils and, in this case, state law which will be outside the direct reach of this chamber and the parliament as a whole. The national electricity market operates under the rules of a code which is authorised by South Australian legislation, which in turn is to be authorised by Commonwealth legislation—in other words, it is three steps removed from this parliament’s scrutiny. This mechanism is reminiscent of the regional forest agreement legislation—failed legislation which ties the hands of the Commonwealth and puts it at a removed distance from the obligations it has on the ground for national environmental upkeep, for example.

I have looked very carefully through this legislation. I note that the national electricity market is Australia’s biggest single greenhouse gas polluter but there are no environmental or social rules in the code under which it operates and which the Commonwealth is mandating in these bills. It is extraordinary that in 2004—with the spectre of global warming becoming environmentally devastating and with an enormous economic penalty already being paid in Australia and social dislocation coming from that; witness the impact of the fires here in Canberra last year—there is no assessment or implementation in this legislation which even recognises that this phenomenon needs to be tackled nationally as part of international action to prevent the worst of its prospective depredations, not just on the human community but
on the planetary biosphere. The Prime Minis-
ter has asserted:

But for the foreseeable future, coal, oil and gas
will meet the bulk of Australia’s energy needs.

This demonstrates his total lack of under-
standing of important issues. Under his ad-
ministration, Australians have become the
world’s worst greenhouse gas emitters per
capita. This is not the fault of the Australian
people. Polls show that the majority of Aus-
tralians want governments to legislate to turn
around the profligate use of coal and fossil
fuels in this country. We are one country, for
example, that does not have a carbon tax—as
most similar countries elsewhere in the
world do have. We are also a country in
which over $1 billion per annum worth of
reductions in diesel and petrol taxes has been
flagged by the Howard government to reduce
prices by a third, increasing consumption and
making Australia increasingly dependent on
imported oil when internationally the age of
finding big new oilfields is over. This is
short-sighted and irresponsible. It is not just
environmentally irresponsible behaviour but
also economically irresponsible behaviour
from this government.

The government’s white paper on energy
favours expenditure on coal and geoseques-
tration over renewable energy in the order of
$32 to the polluter for every $1 spent on
clean, renewable energy. We also find in that
white paper the abolition of excise for diesel
used in electricity generation, which cuts
$140 million per annum from the market for
remote renewable power generation. That
cuts right across the prospect of renewable
power generation in the bush and all of the
thousands of jobs that could come with that—not including the export potential of
Australia’s renewable energy technology
market and its ability to meet the thirst for
such technology in the Asia-Pacific, let alone
around the world. At the same time, the
Howard government has allocated only a
trivial $40 million for energy efficiency, the
best option of the lot. I wonder how many
members of this chamber understand what
energy efficiency is, let alone recognise it is
the best alternative for tackling the produc-
tion of greenhouse gases. It not only reduces
greenhouse gases; it actually gives you a
negative balance.

The government cap on MRET means that
Australia’s renewable energy industry will
hit a brick wall by 2007. Jobs are already
being lost, including in my home state of
Tasmania, where the future of the production
of wind energy infrastructure is threatened.
The remote area renewables market will be
badly hit by the excise decision and the
MRET decision resulting from the govern-
ment’s blinkered thinking in the year 2004.
Australia’s renewable energy industries and
environment groups are so concerned that
they convened a crisis meeting on 18 June.
Conjointly—and this was not just environ-
ment groups; it was the industry as well—
they said:

The group is of the strong view that the failure to
increase MRET—
the government has it stuck at two per cent
or lower when it should be going to 10 per
cent by 2010 and 20 per cent by 2020—
defies international trends, is out of step with
community expectation and signals the end of the
growth of the clean energy industry in Australia.

We are leaving it to other countries to gain
all the benefits, including jobs, of that
growth. There is an enormous potential for
the growth of the renewable energy industry
here in Australia. At the Bonn Renewables
2004 conference earlier this month in Ger-
many it was demonstrated that political will
and government policy are the critical driv-
ers for the shift to renewable energy, which
we are seeing in countries like Japan, Tai-
wan, Korea, Germany, Denmark and Britain
but not here in Australia.
The global renewables energy industry is poised to take off. Wind power is growing by 29 per cent per annum and solar power by over 20 per cent per annum. In 2003 an estimated $US20.3 billion was invested in new renewables. That is one-sixth of total global investment in power generation equipment. And the Australian government says that they will wind it back. China is about to adopt legislation similar to the highly successful German ‘feed in’ laws for renewable energy, which guarantee a price for the different types of renewable energy. For example, if you have got energy production through solar power in your domestic unit, you get a guaranteed price for that when you feed excess into the grid. China is aiming for renewables to meet 10 per cent of installed power generation by 2010. Australia is aiming at less than two per cent. China, 10 per cent; Australia, less than two per cent. China, 10 per cent; Australia, less than two per cent. I guarantee that did not get through to Mr Howard either, obsequious as he is to the Chinese government on so many other things.

Germany now has 130,000 renewable energy jobs compared with 100,000 in coal and nuclear combined. German Environment Minister Trittin said at that renewables conference that it is now cheaper to produce wind energy off the German coast than it is to produce nuclear energy. But, of course, energy efficiency is cheaper and more job rich than wind energy. I guarantee that if Mr Howard were asked about it he simply would not be able to explain what was meant by energy efficiency. He simply does not know. Yet we have got this legislation now to set up a national energy market and a form of regulation with clauses for penalising those who default, which of itself has major constitutional concerns, as I said earlier. We will deal with those in the committee stage and I flag a number of amendments from the Greens at that time. I move:

At the end of the motion add “but the Senate is of the view that:

(a) the mechanism of recognising a South Australian Act in Commonwealth law, rather than introducing it as a Commonwealth Act, may insufficiently subject the exercise of legislative power to parliamentary scrutiny in accordance with Standing Order 24(1)(a)(v);

(b) this bill should proceed no further until the National Electricity Law in Schedule 1 to the National Electricity (South Australia) Act 1996 of South Australia is incorporated in legislation of the Commonwealth of Australia; and

(c) the commencement of the Australian Energy Market Act 2004 is contingent on increasing the Mandatory Renewable Energy Scheme targets”.

Senator LEES (South Australia) (9.40 a.m.)—The bills before us, the Australian Energy Market Bill 2004 and the Trade Practices Amendment (Australian Energy Market) Bill 2004, establish and recognise powerful new bodies for the regulation of electricity in the newly-forming national energy market. They are seen to be providing ‘effective policy leadership to meet the opportunities and challenges facing the energy sector and overseeing the continued development of a national energy policy’. In some ways these bills do do what they claim to be doing, and it is a good example of cooperative federalism that we have actually got the states working together for once. Let us hope that they do the same today on water. Here we have seen the design of template legislation to ensure the uniform application of new electricity laws.

However, what we do not have is recognition of the huge environmental impacts that the energy sector has. These bills fail to ensure that the new energy market will deliver
sustainable outcomes. The vast majority of our energy needs still come from coal-fired power stations. To those, including Senator Minchin, who say that we have lots of coal, I simply say again that we have lots of sun and lots of wind and we should be using them. Thanks to the failure to lift the MRET or, indeed, even to insist that at least the two per cent promised is achieved, renewable energy industries such as wind and solar continue to be on the fringes and face a complete stall by 2007.

I am as concerned about the cost of electricity as anyone else, particularly for people in South Australia who are struggling to pay their domestic energy bills. I was recently in Port Lincoln and there some 180 families can no longer afford to have electricity connected. They have been through various programs, most of which try to support them in a time payment system, but now they can no longer afford electricity. Various community organisations are supporting them so that children can have warm showers and hot food. So there are obviously major issues with affordability. But we are not going to see any crisis in affordability if we gradually move to sustainable alternatives such as wind and solar. If wind, for example, is given a fair go, by around 2015 it will be competitive with coal.

So an effective energy policy has to ensure price competitiveness. It has to ensure that our economy is able to be powered. But it should also ensure these things without environmental impacts. The concern is that because our energy sector is such a large emitter we are now seeing, not only with the lack of any move on MRET but also with this legislation, no real acknowledgment by government of the impact on the environment and no acknowledgment of the greenhouse gas emissions from energy. We do not have an effective or sustainable energy policy at the moment and there is a lack of interest not only on the part of this government but, as the states have signed up, on their part as well.

To see how this has evolved we need to go back to around 1995 and the original COAG agenda on energy policy when it was folded into national competition policy. It seems there has been a failure of nerve to carry some of these original decisions through into what we now have in front of us. The COAG principles agreement back in 1995 connected competition policy to ecologically sustainable development. The initial attempt to establish a national energy market in 1990 was concerned to encourage and coordinate the most efficient economic and environmentally sound development of the electricity industry. If we jump a decade, we find these principles affirmed. The Ministerial Council on Energy report to COAG on the reform of energy markets says that COAG has agreed to a set of core national energy policy objectives and principles. One of the objectives of the national energy policy framework is:

... mitigating local and global environmental impacts, notably greenhouse impacts, of energy production, transformation, supply and use.

That agreed principle is a recognition of the importance of competitive and sustainable energy markets in achieving the agreed objectives. It shows that we did have policy makers who were trying to achieve efficiency—competition—as well as sustainability and who had a concern for environmental impact.

However, in the new regulations that govern the workings of the national electricity market as it is being set up I can find no mention at all of sustainability. The regulations are called the code. The code is a bit like the bible of the energy market. This text says that one of the objectives of the national electricity market is that the market should be competitive. I could find no mention of
sustainability being an objective anymore. Indeed, I cannot find sustainability mentioned anywhere in the code. It gets worse. If you dig further into the code you find that it says that the specific clause that outlines the market objectives is a protected provision. That means the objectives cannot be amended except by unanimous approval of all the ministers; so back we go to COAG, and we know how hard it is to get through that process.

So we have this huge problem of two very different sets of values. On one hand there are the policy makers and their national objectives of a competitive and sustainable energy market. On the other hand there is the code, the final document, which is apparently influenced by the free marketeers—the technocrats who just want to make it quick and simple. Things get worse because we cannot change the code. We now have a process, and I will be asking some questions at the committee stage about how we go about putting sustainability into it. It is not clear to me that we can—not certainly not as we debate this legislation in this chamber today. It is basically a done deal and the code is a black box. We have little opportunity to do so now but perhaps when we get to the next tranche of legislation, which is due in September and is to establish the powers and functions of the national regulator, we can apply some pressure and see some changes, some refocusing on environmental outcomes as well as an efficient and affordable electricity sector.

As we look at why we need to do this I say to the government again—because I do not think the message has got through—that we cannot keeping relying just on coal; we have to start moving away from that. We have to start giving some incentives and making sure that the emerging industries—the wind industry, the solar industry and particularly co-generation—are all supported through various mechanisms, including MRET, but also through the aims and objectives of our national electricity market. The coal-fired power stations are not going to vanish, but we certainly need to move away from the heavy reliance we have on them now. The ramifications are enormous, not just for us but for the rest of the world as we see this planet of ours slowly warming. If we do not do something soon we will see even more devastating droughts. All the predictions are of highly unstable climate patterns. What that means for Australians generally, and particularly for our agricultural sector, is enormous—not to mention Adelaide’s future at the other end of the Murray.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.49 a.m.)—I thank everybody for their contributions to the second reading debate on the Australian Energy Market Bill 2004 and the Trade Practices Amendment (Australian Energy Market) Bill 2004. The Australian Energy Market Bill 2004 is an enormously important piece of legislation because it shows that cooperative federalism can work. I commend Minister Macfarlane for his leadership in bringing together the states and territories, in a magnificent piece of cooperative federalism, and bringing about for the first time in Australian history a genuine national energy market. It is historic. It is about delivering cheap, efficient power to all Australians, which has to be good for our living standards, for our international competitiveness and for jobs.

We welcome the Labor Party’s support for this legislation. We note the concerns of the minor parties and the amendment moved by the Greens. We think that those are for another day and another debate. They are not for the issue of putting in place a cooperative scheme to ensure the efficient national regulation of Australia’s energy market. For that reason we totally reject the second reading
amendment moved by Senator Brown. This is not the time for those sorts of amendments. Let us get this national scheme in place. Let us get it operating for the benefit of all Australians, Australian industry and Australian business; because it does mean jobs and prosperity for Australians.

Question negatived.

Original question agreed to.

Bills read a second time.

In Committee

AUSTRALIAN ENERGY MARKET BILL 2004

Bill—by leave—taken as a whole.

Senator CHERRY (Queensland) (9.53 a.m.)—I move Democrat amendment (2) on sheet 4301R(1):

(2) Page 6 (after line 20) after clause 10, insert:

10A Appointment of Commissioners to Australian Energy Market Commission when applying National Electricity Law

(1) Where the Australian Energy Market Commission (AEMC) exercises power in accordance with this Act, its Commissioners shall be appointed in accordance with this section.

(2) One of the persons to be appointed as a Commissioner of the AEMC must have a knowledge and understanding of environmental and greenhouse gas emissions issues related to the supply and use of electricity.

(3) One of the persons to be appointed as a Commissioner of the AEMC must have a knowledge and understanding of low-income consumer and demand-side participation issues.

I am standing in for Senator Allison but I have only just found this out, which is why I am happy to move the amendment with the shortest speech in the entire world. This amendment would add a requirement to the Australian Energy Market Bill 2004 for the appointment of a commissioner to the Australian Energy Market Commission when applying national electricity law. The provision would require that, when the Australian Energy Market Commission is exercising power in accordance with the act, its commissioners shall be appointed in accordance with the section. It says that one of the persons to be appointed as a commissioner must have knowledge and understanding of environmental and greenhouse gas emissions issues, particularly in relation to electricity.

We also propose that one of the persons appointed as a commissioner of the AEMC must have knowledge and understanding of low-income consumer and demand-side participation issues. The Democrats believe that this approach to the appointment of commissioners is essential if we are to get the balance of both environmental and social issues into the regulation of electricity by this very important regulator. It is essential that the make-up of the board allows for environmental and social issues to be fully considered. I commend the amendment to the chamber and refer to the comments that Senator Allison made earlier in the discussion.

Senator BROWN (Tasmania) (9.55 a.m.)—The Greens will be supporting the amendment.

Question negatived.

Senator BROWN (Tasmania) (9.56 a.m.)—I move Australian Greens amendment (1) on sheet 4307:

(1) Clause 2, page 1 (line 8) to page 2 (line 9), omit the clause, substitute:

2 Commencement

This Act commences the day after section 40 of the Renewable Energy (Electricity) Act 2000 is amended to provide that the required GWh of renewable source electricity for the year 2010 is at least 25 000 GWh and for the year 2020 is at least 50 000 GWh.
The amendment would require the government to legislate so that renewable energy will provide 10 per cent of Australia’s electricity by 2010 and 20 per cent by 2020, bringing us into line with Germany and Britain and behind California, which will reach the latter figure by 2017. It would help us to catch up with China, for goodness sake, which is in such a disadvantaged position in the production of energy but which is going to streak the field, as far as Australia is concerned, with renewable energy.

Let me say this, again: the government is acting culpably in having Australia’s renewable energy and its energy efficiency technology repressed by government measure while it stimulates the fossil fuel sector of the economy, which the whole of the rest of the world is trying to replace with renewable energy. We have an environment minister who recognises—because he has read it from the CSIRO—that Australia, like other nations, will need to be producing 60 per cent of its power from renewable energy by 2050 but who has no plan at all. The minister might be able to get up and say what the plan is, how it is being being targeted and how it will be brought into being, if I am wrong about this, but it is not there. History will show that this government, this cabinet, has done Australia enormous damage economically and in terms of job creation by making us mendicants to technology from other countries. When we should have been a pacesetter and an exporter, we will end up being an importer.

As a result of the government’s black paper on energy of the last month, we are seeing already magnificent technology in this country going offshore to Germany and looking at going to the US and Japan. This industry minister is stimulating the export of technologists and establishing the production of renewable energy elsewhere in the world. In other words, this is an expulsion government. If you are going to be the world’s best in renewable energy or energy efficiency, you will be economically expelled from this country by this government because it is in the service of the coal industry and fossil fuels industries generally. It is a case not of lacking imagination but of lacking responsibility. This amendment would get us back on track.

The aim of the legislation for an Australian energy market is nowhere near as important as having the Australian energy production brought into line with the rest of the world—and what is going to be a punitive regime on Australia, starting with the Kyoto protocol, if Australia does not join the rest of the world. It is not just going to be a case of losing the race in the development of technology in this country; this country and its businesses are going to be penalised, as we are excluded from global carbon trading and other mechanisms that come into play to penalise those countries who are deliberately—as the Howard government is deliberately—setting their face against the world’s need to tackle global warming.

Senator CHERRY (Queensland) (10.01 a.m.)—The Democrats will be supporting the Greens’ amendment. It is an important issue and I think we should take every opportunity we can in this place to send the message that the government needs to review the mandatory renewable energy target. The renewable energy target set by the government has not been changed in the most recent white paper on energy. It is hopelessly inadequate and it is not going to promote the development of a renewable energy market in this country. I think that is an important point. I have been travelling extensively through country Queensland and, I must say, there was a lot of excitement there about the possibility of a higher mandatory renewable energy target, because there would be a future for the sugar industry and there would be extra value add-
ing opportunities for some of our grains industries.

According to research by AEC Economics, there was a potential of a 40 per cent increase in incomes if we moved to even a five per cent renewable energy target. That would create the market necessary for the investment to go into the sugar mills to produce co-generation power, which can then be sold back into the grid. Research by AEC Economics also found that, if we move to even a five per cent renewable energy target, we would be talking about 19,000 new jobs in regional Australia, a four per cent reduction in greenhouse gas emissions and a 40 per cent increase in incomes for sugar producers alone, before we even talk about the issues of solar, wind and the other industries. All these industries will ultimately be developed in regional areas of Australia.

From the Democrats’ point of view, a new growth industry is something that regional Australia needs. We also need the reduction in greenhouse gas emissions that would flow from that, because without the reduction in greenhouse gas emissions we will not be making our contributions to reducing global warming. All the forward projections of CSIRO on science show that Australia will be one of the countries to pay a big price if we do not get greenhouse and global warming under control.

From that point of view, the Democrats will be supporting Senator Brown’s amendment. We would urge the government to take more seriously the whole issue of developing a renewable energy target. I believe that 10 per by 2010 and 20 per by 2020 is achievable, but even if the government came forward with a five per cent target or a 7½ per cent target or an eight per cent target, it would be better than the pathetic target we have now, which has already been met by industry, which is years ahead and which is not going to encourage any new investment in the renewable energy sector over the next 10 years.

**Senator LEES (South Australia)** (10.04 a.m.)—I will also be supporting the Greens’ amendment. I cannot understand the excuses given as to why we did not increase the mandatory renewable energy target. Some of them seem to be simply a reaction to anything vaguely environmental on behalf of some on the government benches. This is an area where the rest of the world is moving, including even the American states. Look at California: it now has a target of 20 per cent. Look across at Europe and see what they are doing. Look at China and Japan and even countries like India. In Australia we are making solar cells that are now being used in solar lanterns right across India.

If we do not do something fairly soon to give our energy industries—solar and wind in particular—some hope that there will be a domestic market, they will disappear. Already over 90 per cent of the solar cells we are making in this country are exported, and that is going to grow. So I say to the government: one of the major holes, if not the major hole, in your environment policy is the failure to understand that it will not be any impost on industries like the aluminium industry, which, by the way, has a 15-year guarantee on the electricity price anyway. Their negotiated contracts mean that it is not going to affect them for many years.

I presume that, in relation to the electricity industry, it has been the coal industry that has done the lobbying to undermine efforts of other industries—far more job intensive industries—to get a minimum of a real 3½ per cent. No matter what report you look at when you scour the library shelves, the bookcases and the universities, you do not find anyone saying that there will be even the slightest problem at 3½ per cent real.
That is still jobs growth, and none of our major industries will suffer.

I believe that we can go to 20 per cent without any suffering, but for those who want to take the conservative line and say, ‘No, we’re too worried about our existing industries; we’ve really got to support them,’ 3½ per cent is the lowest target I can find that people recommend without any worries whatsoever about existing industries and which has all the benefits for the renewable sector such as blade manufacturing, turbine manufacturing and the solar oasis project in Whyalla. There is a long list of possibilities and projects that will not have any negative impact on the major users of electricity.

The way the sums have been done by those on the ‘say no, use coal’ side are just extraordinary in their audacity to suggest that it will be a huge cost to the economy. I say to the government: please have another think about this. I am not sure what the Labor Party’s energy policy is, but at least they are committed to five per cent MRET, which is a start. But as we go to the election, one of the gaping holes in your environment policy is that you do not recognise that Australia is being left behind by the rest of the world.

Senator MURPHY (Tasmania) (10.08 a.m.)—I support this attempt to bring about a process for renewable energy targets in this country. I cannot say that I agree with the figures that Senator Brown has in his amendment, but I do agree with the principle. The mandated renewable energy target was supposed to be two per cent, but somehow in amongst the negotiations it was fixed at 9,500 gigawatt hours. If you had a real two per cent figure today, it would be 13,400 gigawatt hours. So we do not have a real two per cent. In another two years time, it will probably be less than one per cent because of the growth in the energy market and in energy production. It is a disaster for the government to not even contemplate implementing a real two per cent figure. The further this goes, the more difficult it will become for the renewable energy sector. It raises a serious question about the government’s commitment to renewable energy.

There is nothing wrong with having a commitment to old energy, but I am curious as to why there is such a significant emphasis on protecting the existing old energy sources. We cannot dig up enough coal to supply the Chinese market. It is just amazing to say, ‘We’re not going to have any increase in the mandated renewable energy target because it is a threat to the fossil fuel sector.’ It just does not stack up. The requirement for fossil fuels like coal will continue for a long time in countries like China. There is nothing wrong with cleaning up fossil fuels to generate energy, and we should certainly do that for the energy sector in this country. If we did so, it would make our coal even more attractive to overseas users. The government’s current position in respect of a renewable energy target is incomprehensible. There is no logic to it. In my state, it is a very significant issue. The fact that the mandated renewable energy target has been set at 9,500 gigawatt hours poses a significant threat to the development of a new manufacturing industry in the state, which would have brought national benefits. It also raises the issue of two additional wind farms that I hope will be developed.

The government’s white paper proposed expenditure of $18 million to develop technologies to store renewable energy such as wind power. It is almost inconceivable that $18 million would be spent to try to buy an escape. It is illogical to spend $18 million—it is a drop in the ocean compared with what is being spent on developing those technologies around the world. There is nothing in the white paper about how we might better regulate power flows, and I am not talking
about administrative regulation. If we are to maximise the utilisation of energy generators to improve the utilisation of coal-fired thermal power stations, we should work on how to better regulate energy flows. But there is nothing in the white paper—there is no commitment to that. That is where we should be looking if we want to spend $18 million.

We should look at how to get better flows of energy. I do have some bias in this respect, because it is in the interests of the renewable energy industry. Hydro schemes and, to a large extent, wind schemes can supply instant energy. We ought to look at how we can regulate energy flows to maximise the opportunity, when the wind is blowing and the water is available, to feed them into the national energy grid and get much greater benefits—to make these coal-fired power stations more efficient and to make wind and hydro more efficient.

As Senator Lees and others have pointed out, there is no cost here—even if go to a real two per cent, which is what the government said it was going to do at the outset. It was a con job on the industry when the government fixed the figure. I know this is probably not the right bill to be dealing with the renewable energy target measures, but the fact of the matter is that when a government seems to want to bury its head in the sand on this issue, we have to take any opportunity that becomes available. I will support Senator Brown’s amendment if for no other reason than to continue to bring to this government’s attention the sheer stupidity of its position on the MRET.

Senator GEORGE CAMPBELL (New South Wales) (10.15 a.m.)—I will take the opportunity to put on the record what Labor’s energy policy is. I make the point that we are not supporting these amendments, because I accept the point made by Senator Murphy that this is not the appropriate area to be dealing with the renewable energy target. I want to make it very clear that Labor have already committed to ratifying the Kyoto agreement and to an emissions trading scheme. It is the emission trading that will create the right market for renewable energy technologies to thrive. In addition, Labor have committed to a genuine five per cent MRET, as has already been stated by Senator Lees. At the same time, Labor are committed to cleaning up coal-fired electricity supplies, the vast majority of demand, and will continue to do so for decades. No obvious greenhouse policy can ignore the need to clean up coal. The most effective way of dealing with these issues is to ensure that over the next three months Labor form the next federal government, because it will move immediately to put in place some of these key elements that form part of Labor’s policy with respect to energy emissions.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.17 a.m.)—The government is opposed to the amendment moved by Senator Brown. As Senator Murphy and Senator George Campbell have acknowledged, this is not the right bill for a discussion about MRET. This bill is about the national energy market and an efficient, effective regulation of the energy market. If you want to have a debate about MRET then you need to do so under the Renewable Energy (Electricity) Act 2000. So we do oppose this amendment. We note that the Labor Party also opposes this amendment. We note Senator George Campbell’s confirmation that a Labor government would embark on a job destroying program to reduce Australia’s international competitiveness and drive investment offshore. We think that is a pity. We therefore hope a Labor government will not ever have an opportunity to do that, but that is a debate for another day and not in relation to this important piece of legislation.
Senator BROWN (Tasmania) (10.18 a.m.)—What is the minister’s definition of ‘renewable energy’?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.18 a.m.)—This is not a bill about renewable energy; it is about the efficient operation of the national electricity market.

Senator LEES (South Australia) (10.18 a.m.)—I want to follow up that question with another question. The minister just said that industry would be driven offshore. Can he please explain how?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.18 a.m.)—Again, I am not going to prolong a debate about a matter that has nothing to do with this bill. As anyone with even a vague connection with the reality of markets and pricing knows if you increase prices you make yourself less competitive and you therefore have fewer jobs and less investment.

Senator BROWN (Tasmania) (10.18 a.m.)—The amendment is about renewable energy. I ask the minister what his definition of ‘renewable energy’ is.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.19 a.m.)—The government opposes this amendment because this bill is not about renewable energy; it is about the efficient operation of the national electricity market as the result of a magnificent piece of cooperative federalism, led by Minister Macfarlane, to bring the states and the Commonwealth together to implement an efficient mechanism for regulating the national electricity market.

Senator BROWN (Tasmania) (10.19 a.m.)—There we have it: an extraordinary ignorance right at the heart of government. The minister does not know what renewable energy is. In a world which is moving to renewable energy, in which government policy has so recently dealt with renewable energy, he cannot give this chamber even a first thought on what it is. I will ask him now: does he know what energy efficiency is? Can he give the chamber the government’s definition of what energy efficiency is?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.20 a.m.)—I will not rise to the bait of the insults from the Tasmanian senator, who represents some five per cent of the voters for the Senate around Australia at best. This bill brings together all governments in Australia together with the federal opposition to bring about much needed reform of the energy market in Australia. I am not going to sit here and be insulted by Senator Brown, who plays school teacher by trying to examine me on definitions. We have plenty of business to do today. I am not going to indulge him in his infantile behaviour. Let’s get on and bring this very important piece of legislation into effect so that Australians can have a national energy market, producing cheap, reliable energy to ensure that they have jobs, high standards of living and international competitiveness.

Senator BROWN (Tasmania) (10.21 a.m.)—Report card: Minchin—fail. What can you do? By the way, I am very pleased to have got more votes in Tasmania than Prime Minister Howard got in Bennelong. It really is an appalling situation when the Minister representing the Minister for Industry, Tourism and Resources does not know what he is talking about. Here we have legislation that is critical to the energy market—he wants to transform the energy market in Australia—and he does not know the definition of the basic terms that are at the heart of the debate on energy in this country and right around the world. We have an ignorant government on this matter. The minister talks about jobs, investment and the future. All those are go-
ing to lose out under this government because of the ignorance at the heart of government on central matters about the worldwide energy debate.

It is notable that this government could not even get a minister to go to the global renewable forum in Bonn in Germany at the start of this month. It is not just ignorance; it is studied ignorance. Australia will lose out in terms of jobs, the economy and certainly the environment in the future because of this appalling ignorance at cabinet level and at prime ministerial level on the basics, which are absolutely essential for ministers to get their head around if they are going to debate this issue from an informed point of view. I want to ask the minister about the constitutionality of this legislation. Is there any precedent for making state—

Senator MINCHIN

(10.22 a.m.)—If Senator Brown chooses to insult me by claiming that I am ignorant, I am happy to return the favour by pointing out to the chamber his extraordinary ignorance of the operation of similar legislation, in one case for some 30 years. I am advised that the Petroleum (Submerged Lands) Act 1967 operates in exactly the way that this act is intended to operate. We also have the Gas Pipelines Access (Commonwealth) Act 1998. We have legal advice to the effect that this arrangement is valid and has been in operation, as I say, in one case at least for some 30 years. So I am disappointed at the ignorance of the Tasmanian senator on this matter.

Senator Brown—To which states do those two pieces of legislation refer and upon which states laws are they contingent?

Senator MINCHIN—I am advised that the legislation is embraced by every state in the Commonwealth.

Senator BROWN (Tasmania) (10.23 a.m.)—No. This legislation is based upon and gives authority to the South Australian legislature—for example, to make regulations through which the power will flow. The minister mentioned the petroleum legislation and the gas pipeline legislation. I ask him: which equivalent states are named in that legislation as the exemplar upon which the legislation depends? I do want to give him time to get advice, because he is not around this legislation. He cited two pieces of legislation—he said one piece has been in place for 30 years—which he said are models for this legislation. This legislation depends on South Australian law. The simple question is: which individual states do those pieces of legislation depend upon? I am not talking about a suite of states. There are no other states mentioned in this legislation—only South Australia—with the South Australian parliament having the ability to make regulations which, we will find as we go along, the chamber cannot disallow. I ask the minister: where is the example of that in previous legislation? That is an obvious and fair question for the committee to receive an answer on.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.24 a.m.)—I detect an insult to my fine, proud state of South Australia, which I am delighted to say is the template for this particular model legislation. I will not sit here and have my state insulted by Senator Brown. I point out to Senator Brown that the Gas Pipelines Access (Commonwealth) Act uses exactly the same approach that we are adopting here, with South Australian legislation as the template.

Senator BROWN (Tasmania) (10.25 a.m.)—Thank you for that. I think South Australia is a terrific state. The minister twisting and turning in his chair will not alter my opinion on that. It is a pity that South Australia does not have a better representa-
tive. In what way does the petroleum act that the minister cited depend upon South Australian law?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.26 a.m.)—I did not say that the petroleum act depended on South Australian law. Senator Brown asked me for examples of a cooperative federalist approach, which this act employs, and I cited those two acts. In relation to the different question of which legislation or precedent uses South Australian legislation, I cited the Gas Pipelines Access (Commonwealth) Act.

Senator BROWN (Tasmania) (10.26 a.m.)—I did not ask about cooperative federalism; I asked about states upon which federal law is dependent. He gave the answer of the petroleum act. I ask the minister to tell the committee which state is dependent. And, with respect to the Gas Pipelines Access (Commonwealth) Act, is it dependent only on South Australian law?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.27 a.m.)—It is Senator Brown who is twisting and turning now. I have already said that there are two previous examples of this sort of approach to legislation: one is the cooperative federalist approach. In relation to the separate question of precedent for using South Australian legislation as a template, it is the Gas Pipelines Access (Commonwealth) Act.

Senator Brown—Other states have mirror legislation, why not the Commonwealth?

Senator MINCHIN—The nature of this approach is by way of application. We apply South Australian law at a Commonwealth level.

Senator BROWN (Tasmania) (10.28 a.m.)—So not mirror legislation as the states have. Following on from what the wailing minister had to say, how can the Commonwealth parliament scrutinise provisions of the national electricity code or regulations made under the South Australian electricity act?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.28 a.m.)—I think that question related to the scrutiny of legislation. We are dealing here with the coming together of a number of governments—democratically elected by their peoples, controlling their lower houses in their parliaments, therefore reflecting the majority rule of the lower houses in their states—and the Commonwealth to produce a uniform approach to the regulation of the electricity market. To get to that point has taken—as Senator George Campbell, I think, perhaps unfairly said—a very long time because of the extraordinary scrutiny which is undertaken in each of those jurisdictions to get each of those jurisdictions to agree on a common approach. To reach agreement, it requires a level of scrutiny, an agonising analysis and agonisingly long periods of negotiation to reach agreement—the likes of which this parliament itself would rarely see. Therefore, to get to a situation where the Commonwealth—and the majority of the states in this case have agreed on a uniform approach, among democratically elected governments, representing by definition 50 per cent of their peoples—is a truly historic, remarkable and great day for Australia.

Senator BROWN (Tasmania) (10.29 a.m.)—If we get a new government shortly—let us say the Greens come into office—how does that government deal with regulations made under the South Australian Electricity Act? How does this Senate
deal with such regulations if the majority in the Senate believes they are not good law?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.31 a.m.)—I do not mind hypothesising but to hypothesise that a party that at best can gain five per cent of the support of the Australian people could ever form a government is the greatest nonsense I have ever heard. I am not quite sure of the specifics of the question but to the extent that this parliament has to consider this act or any regulations pursuant to it then obviously the processes of this chamber will be at work. Of course it is open to this parliament to reject this legislation that the government is putting forward. If Senator Brown had any capacity to convince a majority of the parliament to defeat it then it would be defeated or amended. As I understand it he does not have anything like that support. That is the technical fact in relation to the parliament dealing with this bill. Of course it is open to this parliament to amend it or defeat it.

Senator BROWN (Tasmania) (10.32 a.m.)—Is the minister telling the chamber that regulations made under the South Australian Electricity Act will need to be brought before the Senate and will be disallowable instruments by the Senate?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.33 a.m.)—The way the system works—and I presume it works in relation to the Gas Pipeline Access Act, which has been operating for six years—is that the policy making body is the Ministerial Council on Energy, which represents all the democratically elected governments involved in this national electricity market. They, representing as they do their peoples, decide upon a policy direction and they must do so unanimously for there to be any change and then that change, having been decided upon at policy level by the Ministerial Council on Energy, is given effect by passage of legislation in the South Australian parliament.

Senator BROWN (Tasmania) (10.33 a.m.)—Where does the Senate have a say in this process in the future?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.33 a.m.)—In relation to a federation like Australia, with governments elected at state and federal levels, those governments would come to an agreement on a process like this to achieve a desirable uniform approach to the regulation of a market such as energy. It is done through the establishment of a Ministerial Council on Energy representing all those governments and then by agreeing that there will be template legislation and that that legislation can only be changed if it has the unanimous support of all those governments. Those governments then agree that that change will be effected by amendment at the level of the template legislation, in this case in the South Australian legislature.

Senator BROWN (Tasmania) (10.34 a.m.)—That is the fact. The House of Representatives and the Senate are disempowered by this legislation, and the government—which, by the way, got 39 per cent of the vote at the last election; certainly much less than 50 per cent—takes over the power of the majority and dictates through COAG what this Senate should or should not do in a transfer of power out of this parliament into an unelected COAG which sets regulations which are brought down in the South Australian parliament. We have no authority over that. We will be opposing this piece of legislation on that basis as well as on the basis of other matters we are bringing before this chamber.

This is a transfer of power out of the national parliament. It takes the review role—one of the important roles of the Senate—
away from the Senate and lodges it, through a meeting from time to time decided by heads of state who can be minority voted heads of government, with legislation through the South Australian parliament. There is no inhibition on the South Australian parliament to regulate, by the way. There is no law that says the South Australian parliament cannot do what it wants. Whether it were the Victorian, Tasmanian or Queensliland parliament would not matter. This is a transfer of power away from the Australian parliament and an entering into an agreement through federal legislation which disempowers the Senate. It disempowers the House of Representatives, for that matter, but that house has been made a rubber stamp by the executive, certainly in this period of government. Where it is different is that the Senate should not be giving away that power in this fashion.

The Trade Practices Amendment (Australian Energy Markets) Bill, which sets up the national energy regulator, relies on state legislation to confer enforcement powers. What is the precedent for that? How vulnerable is it to challenge as a defence when a company is charged with breaches? The constitutionality of this depends on the interpretation of a High Court decision in the Hughes case which said that a Commonwealth body using a state law for enforcement would need a specific constitutional head of power. What is that head of power?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.37 a.m.)—I think Senator Brown is, unfortunately, reflecting in this chamber his own ignorance. There is no constitutional head of power per se in relation to energy, of course. There is power to regulate trade and commerce between the states, but there is no head of power in relation to energy. The federal government has not historically had anything to do with energy. Energy markets and energy regulation has always been a function of the constitutionally proper level of government for that purpose, and that is the states. There is nothing being taken away from the Commonwealth. That shows his ignorance. What is happening here is that the Commonwealth is actually acting as a facilitator to bring together those disparate states in a way that enables a more uniform approach to the regulation of the energy market in Australia and brings in the one area where we have some jurisdiction, and that is offshore. In relation to the latter matter raised by Senator Brown, I am advised that this legislation does have proper provision for the issues raised by that High Court case.

Senator BROWN (Tasmania) (10.39 a.m.)—Can the minister inform the committee whether the definition of ‘uniform energy law’ which we see in clause 12 of the Australian Energy Market Bill means that any state energy law can by regulation alone become a uniform energy law which applies as the law of the Commonwealth?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.39 a.m.)—If Senator Brown wants an answer to that question he will need to repeat it so the advisers can hear his question.

The TEMPORARY CHAIRMAN (Senator Kirk)—Senator Brown, would you please repeat the question.

Senator BROWN (Tasmania) (10.39 a.m.)—The Australian Energy Market Bill, which we are dealing with here, has a clause 12 headed ‘Application of other uniform energy laws in adjacent areas’. Is this effectively a definition of what that clause is about: any state energy law can become a uniform energy law which applies then as a law of the Commonwealth? Can any state do that by regulation alone?

Senator MINCHIN (South Australia—Minister for Finance and Administration)
25082

SENATE

Thursday, 24 June 2004

(10.41 a.m.)—As I am advised, a state law could apply offshore—that is, in the Commonwealth jurisdiction—under this application of laws procedure, but, importantly and perhaps to the great delight of Senator Brown, subject to disallowance in this chamber.

Senator BROWN (Tasmania) (10.41 a.m.)—How would a state regulation before a state parliament become disallowable in this chamber?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.41 a.m.)—As I am advised, that would happen as a result of the passage of this legislation under the uniform energy law definition. But again, as I am advised, any offshore application that is within Commonwealth jurisdiction is subject to disallowance.

Senator GEORGE CAMPBELL (New South Wales) (10.42 a.m.)—I have just one question, and it is perhaps a refreshing redirection of the discussion. When I pointed out what Labor’s proposed policy approach would be on taking government, I noted that when I mentioned the ratification of Kyoto the chorus from your side of the chamber was that that would be job destroying. Yet on the same hand your government claims to be meeting the targets for 2012, albeit thanks to the activities of the Queensland government. How can, on the one hand, the ratification of Kyoto be job destroying and, on the other hand, meeting the targets not be job destroying? Can you identify for me where the jobs are going to be destroyed if we go down that track? In fact, Minister, isn’t it true that by not ratifying the agreement we are missing out on opportunities for Australian industry to take advantage of and benefit from the flexibility mechanisms that are in the agreement?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.43 a.m.)—I could easily spend all day explaining to the Senate in committee and to the people of Australia why it would be very disadvantageous for this country to go down the path of signing a flawed protocol that will not be signed by the major emitting nations of the world and that will result in the transfer and dislocation of investment out of this country. But that has sought to do with this legislation, which is about the efficient regulation of Australia’s energy market. The debate over Kyoto is for another day.

Senator George Campbell—The truth is that you can’t answer the question.

Senator BROWN (Tasmania) (10.44 a.m.)—Yes, you’re right: the truth is he can’t answer the question. To go back to my question and the minister’s earlier answer, does this mean that effectively a state can regulate and that then becomes de facto Commonwealth regulation? The response to that would be that the creation of a regulation brought before this parliament by the Commonwealth which could be allowed or disallowed would effectively be the creation of law here through regulations.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.44 a.m.)—I thought I had answered that by indicating that such application of a state law or regulation to the Commonwealth’s jurisdiction, which is offshore, is subject to disallowance.

Senator BROWN (Tasmania) (10.45 a.m.)—Say a state, Tasmania, regulates—in what way does this parliament disallow that state regulation before the House of Assembly in Hobart?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.45 a.m.)—I do not know if Senator Brown is misunderstanding me. What I am talking about is that any purported application of any state regulation or law to the
Commonwealth—that is, to the Commonwealth jurisdiction, which is offshore—is disallowable by this chamber.

Senator BROWN (Tasmania) (10.46 a.m.)—The South Australian parliament is currently debating the Australian Energy Market Commission Establishment Bill—as you would know, Minister, South Australia being your home state—and it is coming back for debate next week. What is the status of that law under this bill?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.46 a.m.)—I am advised that bill actually establishes the Australian Energy Market Commission, which is the commission that will apply to the regulatory arrangements for this national energy market.

Senator BROWN (Tasmania) (10.46 a.m.)—Will that therefore bind the Commonwealth?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.47 a.m.)—We are not quite sure what Senator Brown means by that. We are putting to this parliament legislation that is the result of years of discussion and negotiation with the states to bring about national regulatory arrangements for the energy market in Australia. So we the government and, in this case, the opposition are coming together in this parliament to give effect to an agreement reached with those states and their respective governments, after many years of negotiation, on the basis that we are satisfied with the efficacy of the proposals that are contained in this legislation.

Senator BROWN (Tasmania) (10.47 a.m.)—Will the Commonwealth be under any obligation as far as the Australian Energy Market Commission Establishment Bill in the South Australian parliament is concerned?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.48 a.m.)—I am not sure what Senator Brown means by an ‘obligation’. We, as facilitator in this process, have agreed that, in bringing the states and the Commonwealth together to give effect to this agreed uniform approach, there will be this commission, so it is part of the agreed framework for this national uniform approach.

Senator BROWN (Tasmania) (10.48 a.m.)—The Commonwealth has agreed to the Australian Energy Market Commission and therefore, ipso facto, to be bound by that law and those regulations. Nothing has been said here to the contrary. I ask where that law and those regulations are before this Senate. Where are they?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.49 a.m.)—Senator Brown’s constitutional ignorance is again reflected in this sort of question. He seems to assume that we had some great constitutional authority and have been regulating the energy market around Australia. We have not been; we do not. The states do; the states have been. I am a great federalist—I actually do believe in federalism—but we have had a myriad of different state regulatory arrangements with no essential Commonwealth involvement because there is no direct head of power. What this does is enable the Commonwealth to play a leadership role in bringing together those disparate states, with their disparate constitutionally based approaches to the regulation of their energy markets, into a more nationally uniform approach which allows us to develop a national energy market. This commission is the agreed mechanism by which we will develop that energy market, with the Australian Energy Regulator as the enforcer of the agreed rules for the operation of that market.
Senator BROWN (Tasmania) (10.50 a.m.)—We all understand that. The problem here is that the government is creating law with national application and regulation by agreement with the states through the South Australian parliament with the national parliament sidelined. There is an arrogance and a lack of democracy involved in that approach which cannot go unrecorded. If there is a national energy market commission being established in the South Australian parliament or any other parliament which has effect nationally that impacts on the Commonwealth, then that matter should be brought before this parliament. The whole point of this debate is to show that there is some innovation going on, which is to establish a nationally agreed authority and set of rules without this parliament being involved, without this parliament debating the nature, the structure and the regulations that are being established. It is going through COAG but it is not going through this parliament. This is the arrogance of executive government sidelining the parliament—that is the whole point.

That is what we so vehemently object to. We also think that there are pitfalls in that. There is much debate about this process and how well it will stack up if it is challenged further down the line in the High Court. The government is aware of that. Whatever the legal situation is, the democratic situation is that when you set up an Australian Energy Market Commission in which the Commonwealth is involved and which does have obligations for the Commonwealth then that should be vetted by this chamber and indeed by this parliament. Clause 14(2) of the Australian Energy Market Bill 2004 appears to allow a regulation to exempt a uniform energy law from any other Commonwealth law. Can the minister say whether, for example, offshore oil and gas exploration or extraction could be exempted, for example from the Environment Protection and Biodiversity Conservation Act, by regulation through this mechanism?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.53 a.m.)—I can give a guarantee that that will not be the case. This is only in relation to the applied laws in relation to the national electricity market. It will not override the operative effect offshore of any other Commonwealth law.

Senator BROWN (Tasmania) (10.53 a.m.)—I am glad to hear it. Clause 14(3) appears to allow the National Electricity (Commonwealth) Law, which is part of the South Australian electricity act, to be modified by a Commonwealth regulation. Is that also correct?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.54 a.m.)—Yes, that is the case. It is disallowable and that could be described as a safeguard from a Commonwealth point of view.

Question negatived.

Senator BROWN (Tasmania) (10.54 a.m.)—I move Australian Greens amendment (2) on sheet 4307:

(2) Page 5 (after line 24), after clause 7, insert:

7A Addition to the National Electricity Rules

(1) The Australian Energy Regulator, in consultation with the Australian Energy Market Commission, shall, in addition to the objectives set out in section 7B, establish a joint set of Commonwealth environmental and social objectives for inclusion in the National Electricity Rules (including the National Electricity Code) in accordance with the National Electricity Law set out in subsection 6(1) of the National Electricity (South Australia) Act 1996 and with sections 51AE and section 88 of the Trade Practices Act 1974.
(2) It is a condition of participation under subsection 9(1) of the National Electricity (South Australia) Act 1996 that a participant agrees, in writing to the Australian Energy Regulator, to abide by the Commonwealth environmental and social objectives included in the National Electricity Rules.

7B Commonwealth environmental and social objectives

(1) National Electricity Rules (including the National Electricity Code), as in force from time to time, made under the National Electricity Law set out in Schedule 1 to the National Electricity (South Australia) Act 1996 must include the following Commonwealth environmental and social objectives:

(a) compliance with the principles of ecologically sustainable development in section 3A of the Environment Protection and Biodiversity Conservation Act 1999;

(b) establishment of targets and timetables for the reduction in greenhouse gas emissions from generation, transmission, distribution and consumption of energy;

(c) equal consideration of energy conservation measures with energy sources and technologies;

(d) provision of fair access to energy services, in particular for low-income consumers.

(2) The Australian Energy Regulator will be responsible for administering adherence to the Commonwealth environmental and social objectives contained within the National Electricity Rules, in accordance with sections 44AE and 44AG of the Trade Practices Act 1974 and will prosecute any breaches by participants when exercising Commonwealth powers under this Act.

This amendment inserts a provision for an addition to the national electricity rules as set out. Then part 7B, which would be inserted, is to establish Commonwealth environmental and social objectives.

Senator CHERRY (Queensland) (10.56 a.m.)—The Democrats will be supporting the amendment.

Senator BROWN (Tasmania) (10.56 a.m.)—This is a 21st century amendment to the 19th century point of view embodied in the legislation. It is high time there was social responsibility brought into legislation like this. It is high time that the Commonwealth at least took national responsibility for environmental and social issues of national and international importance. I know that Senator Minchin does not understand the alternatives that are available or the need for this sort of legislation, but it is central to the thinking of the Greens and we will continue to argue for this knowing that—and all the polls show it—the majority of Australians believe that there should be national responsibility, for example, in curbing the emission of greenhouse gases through the burning of fossil fuels. The government gets away with that at the moment, but the tide of public concern is growing all the time. We ought to have a government that is ahead of it, but it is behind. This mechanism is nothing other than sensible law along the lines of that invoked in many other comparable countries.

Question negatived.

Bill agreed to.
R(1A) Schedule 1, page 6 (after line 31), after item 44AG insert:

44AGA Objectives of the AER

(1) The AER, when exercising the functions and powers conferred on it by section 9, has the objectives set out in this section.

(2) The AER must have regard to the need to maintain ecologically sustainable development (within the meaning of the principles of ecologically sustainable development set out in section 3A of the Environment Protection and Biodiversity Conservation Act 1999) by the development of appropriate policies that take account of all the feasible options available to protect the environment.

(3) The AER must actively encourage, and intervene in the market to achieve, diversification of electricity suppliers.

(4) The AER must actively promote all possible means of electricity production.

(5) The AER must have regard to the need for efficient and equitable participation by consumers with the aim of achieving lower costs of electricity.

(6) The AER must recognise the need for Australia’s electricity supply system to reduce greenhouse gas emissions by:

(a) seeking to internalise into the electricity market the long-term environmental and economic cost of greenhouse emissions; and

(b) providing for the calculation of the impact of the operation of the National Electricity Market under the National Electricity Code on Australia’s greenhouse emissions; and

(c) encouraging activities relating to the reduction of greenhouse gas emissions; and

(d) encouraging the reduction of greenhouse gas emissions associated with the production and use of electricity; and

(e) encouraging participation in activities to offset the production of greenhouse gas emissions.

(7) The AER must, in regulating the market, have regard to the impact of the market on low-income consumers.

This amendment seeks to change the objectives of the Australian Energy Regulator to make it much clearer that the Australian Energy Regulator, in exercising its functions, must have greater regard to the need to reduce greenhouse gas emissions. This is an essential part of the objectives of a modern regulator in a modern society. In his earlier contributions, Senator Minchin spoke about the desirability of reducing cost, but cost is not everything. When you include in cost only the immediate up-front economic costs, you deny the longer term economic costs of failing to reduce greenhouse gas emissions.

The government would be well aware, because CSIRO has advised them on a regular basis, of what the long-term costs of not addressing greenhouse gas emissions in this country will be. For a start, there is a significant health cost, there is a significant cost in terms of potential lost agricultural production, there are significant costs in terms of environmental changes and there are significant costs in terms of insurance. I think all of these things need to be recognised when we are talking about cost, because the way the government defines the notion of cost, in terms of promoting an efficient market, is a very narrow version of what cost genuinely is. The government have of course at least
recognised that by committing significant amounts of money to reducing greenhouse gas emissions; it is just that, to date, none of it has been successful. In fact greenhouse gas emissions in this country continue to rise.

We think it is essential that the Australian Energy Regulator play its role in trying to encourage the reduction of greenhouse gas emissions. We think that if this bill is actually going to play a role in properly balancing environmental and economic objectives then it should recognise that the Energy Regulator should have a clear objective of playing its role in environmental policy by seeking to reduce greenhouse gas emissions. The amendment outlines in some detail what those objectives would be. I commend it to the Senate.

Question negatived.

Senator CHERRY (Queensland) (11.01 a.m.)—by leave—I move Democrat amendments (1) and (2) on sheet 4316:

(1) Schedule 1, item 9, page 7 (after line 7), at the end of section 44AH, add:

(2) The functions of the AER include those set out in section 44AHA.

(2) Schedule 1, item 9, page 7 (after line 7), after section 44AH, insert:

44AHA Investigations conducted by AER

(1) The AER may request an investigation and report to be made by the AEMC in accordance with this section, and may:

(a) specify a period within which the report is required to be made public;

(b) require a draft report to be made available to any specified persons or bodies, during the investigation;

(c) require the AEMC to consider specified matters when making its investigations.

(2) The AEMC is required to give notice of any investigation and of the terms of reference of an investigation under this section, for the purpose of obtaining public comment, in a newspaper circulating in the State or Territory and on the AEMC’s website.

(3) The AEMC is required, after considering any public comments on any such terms of reference, to within a reasonable time, settle the final terms of reference in the matter in consultation with the AER.

(4) The AEMC may also report to the AER on any matter it considers relevant that arises from an investigation into a matter under this section. Any such report may be part of the principal report to the AER or may be a separate report.

(5) The AER must arrange for a copy of a report of an investigation by the AEMC to be tabled in each House of the Parliament within 5 sitting days of the AER receiving the report.

These amendments are to do with investigations by the Australian Energy Regulator. The Democrats find it absolutely extraordinary that we are establishing a new energy regulator that does not have an investigations power. The amendments we have here will ensure that the Australian Energy Regulator can initiate an investigation and that reports will be made by the Australian energy management commission in accordance with this section. The notion of establishing a regulator under law and not actually giving it powers to regulate is just astonishing, and it shows just how hollow and pathetic the legislative package the government is presenting here today actually is.

I acknowledge that this is a facilitating bill, but I ask the minister, if he is listening, to advise the Senate exactly how, in terms of the establishment of the Australian Energy Regulator, the investigations power will be put into the bill, when it will be put in and what powers the AER will have. I acknowl-
edge that this is a facilitating bill and that there will need to be discussions with the states, but I seek the government’s assurance on this. If they are to oppose putting in the investigations power the Democrats are proposing then surely they would have a proposal to ensure the power to investigate and report is there for the regulator—otherwise why are we calling it a regulator?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (11.03 a.m.)—As Senator Cherry noted, we are the facilitator in the establishment of this national energy regulator. Its powers and its authority will be derived from the national electricity law, which will be passed uniformly by the states. That will dictate the authority which this regulator will have to do its job of regulating this market. The vehicle for that is not this particular piece of legislation; it is the national electricity law, which will, in effect, be passed uniformly by the states.

Senator CHERRY (Queensland) (11.04 a.m.)—I seek the minister’s further assurance—in fact I have not received any assurance yet—that, in seeking to negotiate the national electricity management law, the Commonwealth will ensure that there are proper investigative powers in the Energy Regulator to ensure that where there are breaches, whether they be of the environmental or the economic criteria of the regulator, they are dealt with. I also seek his assurance that the Australian Energy Regulator will have a role in trying to ensure that all states play their part in reducing greenhouse gas emissions in terms of energy efficiency.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (11.04 a.m.)—The Commonwealth are actively involved at an officials level in just that exercise: in ensuring that this body does have all the powers that it needs to ensure the efficient economic regulation of the national electricity market—and with a view to our own particular interest in its application to our jurisdiction, which is offshore.

Question negatived.

Senator MURRAY (Western Australia) (11.05 a.m.)—I move Democrat amendment (1) on sheet 4299 revised:

(1) Schedule 1, page 22 (after line 12), after item 13, insert:

13A Subsection 46(1)

After “take advantage”, insert “, in that or any other market.”.

The Trade Practices Amendment (Australian Energy Market) Bill 2004 is part of a package of legislation to provide for the operation of an Australian energy market. It is, therefore, germane to the debate to introduce amendments which affect competition. The pre-eminent section which affects competition is a very ineffective—it has been proven to be ineffective by the courts, I might say—section 46.

There has been a long battle, because of the sheer force and power of big business antagonism to making section 46 more effective, for it to operate in accord with the original parliamentary intention. The Dawson report was pathetic on the issue and the Senate Economics References Committee report of March 2004 is the document to which all who seek to modernise and to make effective this section of the Trade Practices Act should refer.

It is of particular note that in that report there was unanimity on many of the recommendations by the parties represented—the Labor Party, the Liberal Party and the Democrats. I think that unanimity has a wider voice amongst political parties and I am certain that other members of the crossbenches are strongly supportive of this area, as is the National Party. The inquiry was very effectively chaired by Senator Ursula Stephens.
from the Labor Party and had a deputy chair who was very expert in this area, Senator George Brandis. I would draw the attention of the chamber to the fact that there were 17 recommendations by the committee, of which the government senators supported between eight and nine. I have for this purpose selected just 2½ of those amendments and I have selected those on which there was accord, absolute unanimity in the committee. I am aware—and I thank them for it—that the Labor Party have been very strong and publicly on the record in committing themselves as a policy matter to these measures, so I have no compunction in moving them.

The other point I should make is that it is often claimed that wide consultation is needed in such matters. These have been endlessly consulted on at every level. I am quite certain that come the next parliament if the coalition government are returned they will have to move on these. Because I believe that Labor have made a firm commitment that they will honour, I know that they will move on them. So there is no point in waiting. Let us do what we can now in some of the least difficult areas, which is what I have chosen to do.

Turning back to item 1 specifically, I will refer directly to the considerations in the committee report on pages 25 and 88 to reinforce my point that it would be inconceivable for this to be rejected either by the Senate or by the House of Representatives. If the House of Representatives is foolish enough to reject it, I will do my very best to make as much noise as I can in the small business community about that betrayal of their interest and of a unanimous view which is strongly held by all parties. On page 25 of the report, recommendation 5 reads:

The Committee recommends that s46 be amended to state that a corporation which has a substantial degree of power in a market shall not take advantage of that power, in that or any other market, for any proscribed purpose in relation to that or any other market.

The committee said that it was responding to the ACCC at 2.63 in the preceding text. It said:

The ACCC further noted that ‘it is clear that s46 will apply for a corporation engages in conduct in the market where it holds substantial market power, with the purpose of excluding competition in a second market’.

Further on at 2.65, it says:

Until recently, according to the ACCC, it also appeared ‘that a corporation with substantial power in one market could contravene s46 through using that power to engage in conduct in a second market for one of the proscribed purposes’. This understanding was based on the Federal Court’s decision, upheld on appeal to the Full Federal Court, that the Victorian Egg Marketing Board had contravened s46 by having power in the Victorian market and using it for proscribed purposes in the ACT egg market.

Then it goes on at 2.67:

The Full Federal Court, distinguished Rural Press from Victorian Egg Market Board v Parkwood Eggs and determined that, for a breach of s46 to occur, the market power must be taken advantage of in the market in which substantial market power is held. The High Court declined to overturn this finding.

Point 2.68 says:

The ACCC was critical of the High Court ...

At 2.69 it says:

Woolworths, however—who is surprised—argued that the Rural Press leaves open the question of misuse of market power in a second market.

At 2.70 it stated:

The committee considers that s46 should prevent corporations who have a substantial degree of power in one market from taking advantage of that power for a proscribed purpose in another market. Rural Press is an excellent example of why. On the basis of the various judgments in this
matter it is clear that _Rural Press_ had substantial market power in one market, that it used that market power (together with financial and economic power) to threaten a competitor with dire consequences, and that its actions had an anti-competitive result.

Turning to the government senators’ report, I must say that the prelude to their actual commentary was a very good restatement of many good committee principles. The government senators said:

The purpose of this recommendation—these are items 38 and 39 on page 88—is to reverse the effect of the decision of the High Court in the _Rural Press_ case, which narrowed the operation of s46 by deciding that the section was not infringed when a corporation with substantial power in one market took advantage of that power to engage in proscribed conduct in another market.

Government senators agree with the views of the ACCC (set out in section 2.62-2.71 of the Majority Report) that this decision leaves a significant and undesirable gap in the operation of s46, which should be legislatively reformed. They accordingly agreed with this recommendation.

I have deliberately used the specific text of the committee’s report to make it clear that support for this amendment is unequivocal. One of the techniques used by both the opposition and the government when they want to reject an amendment is to claim that there are technical deficiencies in it, that the drafting could be slightly improved and so on. I can assure you that in this amendment there are no technical difficulties or drafting problems. I will expect support for it because I think it is a much needed clarification of section 46 and would be extremely helpful in the operation of an Australian energy market as intended by this bill.

Senator LEES (South Australia) (11.16 a.m.)—I support this very important amendment and I note Senator Murray’s comments that this was indeed supported by all on the committee. I cannot understand how anyone could think that the misuse of market power in a second market is something that we should let slip through. So I hope that not just the Labor Party—who also supported this through the committee processes and have indeed talked before on this issue—but also the government will support this amendment and give smaller generators, small businesses, a real opportunity.

Senator BRANDIS (Queensland) (11.17 a.m.)—I want to make a brief rejoinder to Senator Murray’s contribution. Much as I am flattered by Senator Murray’s remarks—and of course I welcome wholeheartedly the government’s announcement that it will legislate to amend section 46 of the Trade Practices Act along the lines of the government senators’ report in the inquiry on the effectiveness of the act in protecting small business—I think it very important that this legislative reform, particularly in an area which is somewhat more difficult than most areas, not be dealt with in a piecemeal or haphazard way. The Treasurer has announced what the government’s position is in relation to the Trade Practices Act. There is now a process of consultation under the COAG agreement with the state and territory governments as a result of which statutory language to give effect to those proposals will be published.

We do not know what the ultimate shape of that statutory language will be. It would be very bad practice and very bad for consistency of competition law if the statute now before us were to be amended in a particular way which may not reflect the ultimate expression of the amendments to—if I can call it this—the head competition statute, the Trade Practices Act, as a result of the amendments that the Commonwealth, after the consultation process with the state and territory governments, will ultimately publish. So, Senator Murray, I appreciate your words. I think in principle you are right. The
government, in dealing with the overall issue of competition law, concurs with the government senators’ view in that particular report which was the basis of your contribution. But this is not the time or the place in the process to be grafting those words on this statute when the ultimate language to be used to amend section 46 of the Trade Practices Act is still a matter of discussion and deliberation.

Question put:
That the amendment (Senator Murray’s) be agreed to.

The committee divided. [11.24 a.m.]
(The Chairman—Senator J.J. Hogg)

Ayes............ 9
Noes............ 46
Majority........ 37

AYES
Allison, L.F. * Bartlett, A.J.J.
Brown, B.J. Cherry, J.C.
Greig, B. Lees, M.H.
Murray, A.J.M. Nettle, K.
Ridgeway, A.D.

NOES
Barnett, G. Bishop, T.M.
Bowtell, R.L.D. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Carr, K.J.
Chapman, H.G.P. Conroy, S.M.
Cook, P.F.S. Coonan, H.L.
Crossin, P.M. Eggleston, A.
Evans, C.V. Faulkner, J.P.
Ferguson, A.B. Ferris, J.M.
Fifield, M.P. Forsyth, M.G.
Hogg, J.J. Humphries, G.
Johnston, D. Kemp, C.R.
Kirk, L. Knowles, S.C.
Ludwig, J.W. Lundy, K.A.
Macdonald, J.A.L. Marshall, G.
Mason, B.J. McGauran, J.J.J. *
McLucas, J.E. Minchin, N.H.
Moore, C. Patterson, K.C.
Payne, M.A. Ray, R.F.
Santoro, S. Scullion, N.G.
Stephens, U. Tchen, T.

* denotes teller

Question negatived.

Senator MURRAY (Western Australia) (11.27 a.m.)—If I were wicked, I would call a few more divisions just to show the number of backflips that are possible in a week. If Labor decide they want to recommit the vote, I will agree because they have just voted against a firm commitment by Mr Latham to support that amendment. He used very strong language to express how strongly he felt about section 46 being amended. If Labor find out that they have made a mistake and want to recommit, I will understand that. It is a Friday and it is late; I will be more than happy to recommit later if they so desire. But I assure Labor that the small business press will run hot with that one. I want you to vote with me.

Senator George Campbell—Very cheeky, Andrew!

Senator MURRAY—No, it has been circulating for days, so there is no excuse. I will turn to amendment (2) which is very strongly and vigorously supported by both the Liberal and Labor parties. I refer to the excellent Economic References Committee report of March 2004, with Senator Ursula Stephens as chair and the expert Senator Brandis as deputy chair. In respect of this amendment, this is what the committee had to say:

The Committee recommends that s.46 be amended to clarify that a company may be considered to have obtained a substantial degree of market power by virtue of its ability to act in concert (whether as a result of a formal agreement or understanding, or otherwise) with another company.

At pages 25 and 26 is the committee commentary on that, and it says at 2.72—again using the ACCC’s information:
In its submission, the ACCC noted that s.46 matters typically deal with the misuse of market power by single corporations, although subsection 46(2) allows for the market power of related entities to be considered jointly. The ACCC stated, however, that:

It is not clear to what extent Australian jurisprudence recognises the application of s.46 to the coordinated use of market power by unrelated firms.

An example of that behaviour is at 2.73, and it refers to the Boral case. At 2.75, it states: Likewise in Boral, Chief Justice Gleeson and Justice Callinan suggested that where conscious parallelism or coordinated interaction can be established, they may be relevant to an analysis of market power. Their judgement said that although the ACCC’s attempt to establish conscious parallelism in the behaviour of Boral Besser Masonry and Pioneer had failed, ‘if it had succeeded, the case may have taken on a different complexion’.

At 2.76:
The ACCC suggested that legislation in other jurisdictions explicitly recognises that two or more corporations may exercise coordinated market power, and argued that ‘consideration should be given’ to amending s.46 to encompass the concept of coordinated use of market power.

At 2.77:
The Trade Practices Committee of the Law Council of Australia referred to these same judgements to argue that ‘there is nothing in any recent case which suggests that s46 cannot cover an oligopolistic market’. The Trade Practices Committee also advised that ‘there is a substantial body of law about collective dominance in Europe which could support the proposition that members of an oligopoly may each have substantial market power’.

At 2.78:
The Committee considers that the use of coordinated market power for a proscribed purpose has the same negative impact on competition as does the use of an individual company’s substantial market power.

At page 88 of the report the government senators had this to say with respect to this recommendation:

In the view of Government Senators, recommendation 6 merely restates the existing law, as decided by Lockhart J. in Dowling v Dalgety Australia. Although the recommendation does not in our view change the law, we consider that it is appropriate that such an important principle be expressed in the statute itself. Therefore Government Senators support this recommendation.

So there we have it—a unanimous view of the Liberal and Labor parties, supported by Mr Latham in a public statement as Labor policy. Accordingly, I move amendment (2):

(2) Schedule 1, page 22 (after line 12), after item 13, insert:

13B After subsection 46(2)

Insert:

(2A) In determining for the purposes of this section whether a corporation has a substantial degree of power in a market, the Court may consider the corporation’s degree of power in a market to include any market power arising from any contracts, arrangements, understandings or covenants, whether formal or informal, which the corporation has entered into with other entities.

Question negatived.

Senator MURRAY (Western Australia) (11.32 a.m.)—This is delicious. At page 19 of the committee report, recommendation 3 states:

The Committee recommends that the Act be amended to provide that, without limiting the generality of s.46, in determining whether a corporation has breached s.46, the courts may have regard to:

• the capacity of the corporation to sell a good or service below its variable cost.

The Committee recommends that the Act be amended to state that:
where the form of proscribed behaviour alleged under s.46(1) is predatory pricing, it is not necessary to demonstrate a capacity to subsequently recoup the losses experienced as a result of that predatory pricing strategy.

At page 87 of the report the government senators had this to say at item 34:

Government Senators therefore agree with the first part of recommendation 3.

They suggest that the effect sought might be achieved by amending s.46 to include the following words:

In determining for the purposes of this section whether a corporation
(a) has a substantial degree of power in a market; and
(b) has taken advantage of that power for a purpose proscribed by s.46(1) the Court may have regard, so far as is relevant, to the capacity of the corporation, relative to other corporations in that market, to sell in the market a good or service at a price below the cost to the corporation of producing or acquiring the good or supplying the service.

For those of you who are alert and who are able to compare the two, you will see that we have taken that recommendation and put it in as an amendment. Government senators with probably the foremost expert in the chamber in this field, Senator Brandis, made that recommendation, and we have put it forward as an amendment for consideration by the chamber. I move amendment (3):

(3) Schedule 1, page 22 (after line 12), after item 13, insert:

13C After subsection 46(3)

Insert:

(3A) In determining for the purposes of this section whether a corporation:
(a) has a substantial degree of power in a market; or
(b) has taken advantage of that power for a purpose described in paragraph (1)(a), (b) or (c); the Court may have regard to the capacity of the corporation, relative to other corporations in that or any other market, to sell in that or any other market a good or service at a price below the cost to the corporation of producing or acquiring the good or supplying the service.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—Senator Murray, I take it that you are not going to move amendment (1A)?

Senator MURRAY (Western Australia) (11.35 a.m.)—Mr Temporary Chairman, I think we would be wasting time to now proceed with (1A).

The TEMPORARY CHAIRMAN—Thank you for your guidance, Senator Murray. The question is that the bill stand as printed.

Question agreed to.


Third Reading

Senator MINCHIN (South Australia—Minister for Finance and Administration) (11.36 a.m.)—I move:

That these bills be now read a third time.

Senator GEORGE CAMPBELL (New South Wales) (11.36 a.m.)—The Australian Energy Market Bill 2004 and the Trade Practices Amendment (Australian Energy Market) Bill 2004 relate to the establishment of a framework for the national energy market. They are not, in our view, the place to address the legitimate concerns raised with respect to the environment, greenhouse and consumer protection. However, Labor in government would show stronger leadership to ensure that these issues are addressed as
part of a COAG process. As I said earlier, we have already lost eight years in energy market reform under this government. Labor are more than happy that these bills proceed on the basis that they have been the subject of extensive negotiations between the relevant state governments and the Commonwealth as part of the Council of Australian Governments, or COAG, process.

As I stated earlier, all the parties have agreed to the Australian energy market agreement, which is an intergovernmental agreement to build a truly national electricity market. The policy aim of the arrangement is to build a unified national scheme of energy regulation through the Australian energy market agreement, which includes the arrangements with respect to the Australian Energy Market Commission established under the South Australian parliament. Labor fully supports this policy objective and the agreement that has been reached through the COAG process. Australians have waited a long time for energy market reform and a truly national market. Labor is of the view that no further delays are warranted.

Senator BROWN (Tasmania) (11.38 a.m.)—These bills in effect are antidemocratic, they are constitutionally dubious and they are environmentally nihilist. The Greens will not support them.

Question put:
That these bills be now read a third time.

The Senate divided. [11.42 a.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes......... 42
Noes......... 9
Majority....... 33

AYES
Campbell, I.G.  Carr, K.J.
Chapman, H.G.P.  Conroy, S.M.
Cook, P.F.S.  Crossin, P.M.
Eggleston, A.  Faulkner, I.P.
Ferguson, A.B.  Ferris, J.M.
Fifield, M.P.  Forshaw, M.G.
Heffernan, W.  Hogg, J.J.
Johnston, D.  Kemp, C.R.
Kirk, L.  Ludwig, J.W.
Lundy, K.A.  Macdonald, J.A.L.
Marshall, G.  McGauran, J.J.J. *
McLucas, J.E.  Minchin, N.H.
Moore, C.  Patterson, K.C.
Payne, M.A.  Ray, R.F.
Santoro, S.  Scullion, N.G.
Stephens, U.  Tchen, T.
Troeth, J.M.  Watson, J.O.W.
Webber, R.  Wong, P.

NOES
Allison, L.F. *  Bartlett, A.J.J.
Brown, B.J.  Cherry, J.C.
Greig, B.  Lees, M.H.
Murray, A.J.M.  Nettle, K.
Ridgeway, A.D. * denotes teller

Question agreed to.

Bills read a third time.

APPROPRIATION BILL (No. 2)
2004-2005
Consideration of House of Representatives Message

Message received from the House of Representatives returning the Appropriation Bill (No. 2) 2004-2005 and informing the Senate that the House has disagreed to the amendment made by the Senate, and requesting the reconsideration of the bill in respect of the amendment to which the House has disagreed.

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

Senator MINCHIN (South Australia—Minister for Finance and Administration) (11.46 a.m.)—I move:
That the committee does not insist on its amendment to which the House of Representatives has disagreed.

As foreshadowed last night, the House of Representatives has disagreed to the amendment made by the Senate. We had a long debate about this last night. The opposition and minor parties indicated they would not insist on this amendment when it came back to the Senate. I therefore suggest we proceed with this motion forthwith.

Senator Murray (Western Australia) (11.46 a.m.)—I confirm that the Democrats will not insist on this amendment. The debate has been had and I do not intend to add to my remarks, but the minister should understand that we feel strongly that this issue needs to be pursued and we will continue to pursue it in future parliaments.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (11.47 a.m.)—Yesterday, when I first spoke on this amendment to Appropriation Bill (No. 2) 2004-2005, I did acknowledge that it is rare that the opposition would move or support an amendment to the appropriation bills. Labor remains committed to the principle of not blocking supply in the Senate, unlike those opposite, who trash those sorts of principles in the hunt for political expediency. Accordingly, while again commending this amendment to the Senate, I make clear that it is not our intention to insist on it.

I do think it is important in this debate, however, to point out that this amendment should not be necessary. If the Prime Minister had held to the commitments he made back in 1995, the Senate would not have had to follow this course because a proper system of accountability, supported by all sides in the parliament, would be in place. Imposing proper standards of accountability and transparency on the government now headed by Mr Howard is the objective that has been behind this particular amendment. I remind senators that this is the same John Howard who, in 1995, in committing a coalition government to introducing guidelines for government advertising, said:

We will ask the Auditor-General to establish a set of guidelines, and we will run all of our advertisements past the Auditor-General and they will need to satisfy those guidelines.

Of course, he has not done that at all. The government has steadfastly resisted all attempts to introduce tighter guidelines. Instead, it has been left to the Senate to act as the only method of scrutinising and exposing this sort of expenditure and left to the Senate to try to impose some standards on the Howard government’s wilful use of advertising for political purposes. I said last night that the Prime Minister had made the outrageous statement in parliament this week—another mislead of the parliament by the Prime Minister:

The truth of the matter is that all governments ... from time to time have advertised and explained the features of new policies.

That element of his statement is true. Then he went on to say, which is not true:

What this government is doing is no different from what has been done in the past.

We know just how different what this Prime Minister and this government are doing is. It is different in its quantity, it is different in its concentration, it is very different in its highly political nature and it is different in its timing, which occurs just before every election. It did it before the 1998 election, before the 2001 election and there is this massive amount of taxpayer funded, partisan political promotion for the government on every television screen, on radio and in the newspapers as we speak. This is absolutely corrupting government expenditure, in the view of the opposition.
We have had false statistics and misleading and inaccurate figures being shovelled out by Senator Abetz and the other apologists for the government—these propagandists who claim that there is some sort of realistic comparison between the Howard government and the previous Labor administrations. I do say to those in the media, to any objective observer: do not be conned by what government ministers are saying. The statistics used do not back up those statements. The statistics that the government is shovelling out include, from during the life of the Keating government, advertising on Defence Force recruitment, the Australian Electoral Commission advertising and the like, while studiously avoiding the advice that the Auditor-General made that those sorts of figures should not be included in the statistics. Of course, they were not included in the statistics of the Auditor-General in his report in 1998.

For the opposition’s part, we have always excluded those sorts of figures in our calculations. They are clearly necessary, they are clearly uncontroversial and, of course, they exaggerate the peaks. Of course the Electoral Commission’s advertising costs are at their highest just prior to an electoral event and, if you included those sorts of costs, it would distort the figures. I suppose that that distortion could even be helpful to the very strong case that Labor make against the Howard government, but we do not include those figures. We exclude them because it would be a distortion. The Howard government’s own behaviour makes the case on this well enough for all to see. When you exclude that sort of advertising expenditure, there is a mountain of difference between the Howard government’s campaign advertising expenditure and that of previous governments, and the comparison is stark. In the last five years the Howard government spent $630 million or nearly triple the amount—which was $223 million—the Labor government spent in its last five years of government.

It is only the Senate that has pursued the rising levels of taxpayers’ dollars being thrown at blatant political advertising, mainly through questioning at Senate estimates committees of bureaucrats in portfolio agencies and in the Government Communications Unit of the Prime Minister’s department. We know that, prior to the 1998 election, the Howard government spent $15 million of taxpayers’ money in a three-week period on advertising to promote what was then only a Liberal Party policy for the 1998 election to introduce a new tax system. That of course was the catalyst for the Auditor-General proposing a set of guidelines for government advertising to prevent its misuse for political gain.

Subsequently, the Joint Committee of Public Accounts and Audit, having examined the proposed guidelines and making some small amendments to them, unanimously recommended to parliament in September 2000 that they be adopted by the government. The government has ignored that recommendation, just as much as it has ignored the report and the recommendations of the Auditor-General. Of course, the Howard government got caught out trying to illegally manipulate the electoral roll to send a pro GST letter to electors from the Prime Minister. After abusing the opposition for daring to question the legality of that proposed mail-out, what happened? The government was forced to pulp eight million letters when the Solicitor-General found that it was a breach of the Electoral Act.

In January and February last year the government spent $19 million on an antiterrorism campaign, posting fridge magnets to all Australian households. The government set up a terrorism hotline, in conjunction with the campaign, but forgot to put the hotline
number in the White Pages, and now they are going to try to do it all again in this desperate and sleazy—and in my view, corrupt—bid to win votes in the forthcoming federal election. In 2004, information from both government documents and estimates committees pointed to a planned expenditure from the public purse of $123 million to advertise blatantly partisan, blatantly political material, and that is nothing other than the most massive abuse of taxpayer funds.

Of course, in stark contrast to what the Howard government is doing, and has done, the opposition has committed to introducing strict guidelines on government advertising to prevent it being used as political propaganda. These guidelines will be based on those recommended by the Auditor-General in his audit report, and of course based on the report and recommendations of the Joint Committee of Public Accounts and Audit.

The Howard government has routinely used national television advertising for public information campaigns in order to extract the maximum political dividend. A Labor government will ensure that public information campaigns, which target a particular audience—for example, farmers, pensioners—use the most appropriate and economic means of communication for targeted mailouts or advertisements in particular publications, if they need to be done, rather than broad brush advertising for self-promotion of the government.

I have focused on the issue of the government’s blatant pre-election advertising, which serves of course the government’s political purposes, but I do want this politicisation of the public education process to be seen against the wider distortion by this government of so-called public relations activity. There are now more media advisers assisting ministers than ever before, more people working in media units assisting the government overall, more people in the public affairs units of government departments and more oversight and coordination strategy of actions through the so-called Ministerial Committee on Government Communications. The government itself and, distressingly, public agencies, which are meant to serve the nation, are less concerned with facts and more concerned with spin than has ever been the case in the history of the Commonwealth of Australia. The prevailing attitude is, ‘Don’t worry about facts, don’t worry about values, if there’s a problem, just chuck it to the spin doctors and see if you can get some political benefit from it.’ That is now, and it always has been, very bad public policy, an appalling way to do business—and that is the way this Howard government operates.

That is what these recent expensive campaigns are all about—not about real programs and real expenditure in the public benefit but about putting on the best political spin for the maximum political benefit of the government. The actions of this government in relation to these matters are utterly despicable. This is the most contemptible waste and abuse of taxpayers’ funds for the purpose of political self-promotion that we have ever seen. It is an utter disgrace. It highlights the massive need we have for proper standards of accountability and transparency to be reintroduced into federal government advertising practices and it highlights the point that only a Labor government will do it. Only a Labor government has the decency, the integrity and the principle to do that. The Howard government stands utterly condemned for its actions in this area.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—The question is that the committee does not insist on the amendment.

Question agreed to.
Resolution reported; report adopted.

TREASURY LEGISLATION AMENDMENT (PROFESSIONAL STANDARDS) BILL 2004

Second Reading

Debate resumed from 21 June, on motion by Senator Ellison:

That this bill be now read a second time.

(Quorum formed)

Senator CONROY (Victoria) (12.04 p.m.)—As I indicated to the whip earlier, I now seek leave to have my speech on the Treasury Legislation Amendment (Professional Standards) Bill 2003 incorporated in Hansard.

Leave granted.

The speech read as follows—

I welcome the opportunity to debate the Treasury Legislation (Professional Standards) Bill 2003. This Bill is a key part of a proposed framework of Commonwealth, State and Territory professional standards legislation.

This regime will give professionals such as accountants, lawyers and engineers the ability to obtain a cap on their liability for economic losses sustained by consumers as a result of professional negligence or misleading conduct.

The essence of the professional standards legislation that has been proposed is a trade off. In return for improved risk management, compulsory insurance cover, better professional education and appropriate disciplinary mechanisms: professionals covered by prescribed schemes obtain a cap on liability.

I would like to state quite plainly that the Opposition strongly supports improved professional standards.

It is absolutely clear that improved standards are the best path to lower premiums.

Higher standards will lead to fewer consumers suffering economic loss through professional negligence.

In a competitive insurance market, lower claims costs should lead to lower premiums.

Labor’s concerns with the proposed professional standards regime relate to the fact that it ties improved standards to caps on liability.

This was the focus of the Senate Economics Committee Inquiry into this Bill.

Capped liability is the Holy Grail that has been sought by the professions for decades.

Contrary to common belief, it is not something that has been proposed as a response to the recent difficulties in the insurance market.

Until recently, for sound reasons, policymakers have resisted this push. I would like to briefly discuss some of the problems that are inherent in a regime that caps professional liability.

Firstly, it is clear that capping involves the transfer of risk from professionals to consumers of professional services.

Liability for losses above a cap is transferred to consumers.

This shift in liability raises concerns as a matter of fairness and because of its impact on the management of risk.

As the ACCC noted during the Senate Economics Committee’s Inquiry into this Bill, “capping really shifts risk from the person best placed to manage the risk to the person least able to manage the risk”.

The ACCC’s position based on the principles of the ‘economics of accidents’.

This application of these principles to professional standards legislation was well described by former ACCC Chairman Professor Fels in 2002 when Commonwealth support for capping was first mooted.

Professor Fels stated: “Mistakes happen and someone has to pay, and generally its best if that’s the person who can best avoid the accident and that’s the profession.

Any change to the law should be viewed with great caution as it transfers the cost to someone who isn’t at fault.”

It is important to remember that the loss caused by negligent or misleading conduct does not simply disappear because there is a cap—it is transferred to consumers.
Significantly, capping also changes the incentives faced by professionals.

Insulated from the risk of catastrophic losses, professionals may take less care in assessing risk. This may, of course, lead to more accidents or mistakes.

In economic terms, this is known as the risk of moral hazard.

The potential for the failure of a professional firm is an important discipline in the market. Depending on the size of the cap, capping may protect firms from failure with adverse consequences for the management of risk.

Labor is also concerned that the Bill exposes taxpayers to risk of bearing the consequences of professional negligence or misleading and deceptive conduct.

The Commonwealth is a large consumer of a wide variety of professional services including legal, accounting and engineering services. Misleadingly, the explanatory memorandum for this Bill states that it will not have a financial impact on the Commonwealth. It is a fact, however, that the Bill will effectively prevent the Commonwealth from seeking damages for losses above any cap that is force.

At the very least, the Government should acknowledge that the introduction of a capping regime has the potential to transfer risk from professionals to the taxpayer.

If the Government disputes this, I would invite the Minister to give the Senate a guarantee that taxpayers will never be called upon to bear any losses sustained as result of the implementation of the capping regime for professional negligence.

The final point I would like to make on the capping issue is that the proposition put by some professional groups that they will not improve their professional standards unless they have the incentive of a cap is a very disturbing one.

Until recently, the government also questioned why this sort of trade off was required.

Less than 2 years ago the Government stated in its CLERP 9 paper: “While the objective of improving professional standards, including the introduction of compulsory professional indemnity insurance and risk management programs is admirable, professional bodies should be implementing such measures as a matter of best practice and should not require the incentive of a capping regime to achieve them.”

The Minister might like to explain in her contribution to the debate why the Government has changed its view on this matter.

The Treasury was clearly unable to explain the change of policy during the Senate Committee hearings into this Bill. In fairness to the Treasury officers, the Government’s about face put them in a very difficult position.

Professional standards legislation is ostensibly a response to the difficulty professionals have in obtaining insurance in the last few years particularly since the collapse of HIH, which chronically underpriced its premiums.

In truth, however this Bill has nothing to do with the insurance difficulties currently being experienced by professionals.

In evidence to the Senate Economics Committee, the professional standards council conceded that the professions have been campaigning for caps on liability for at least twenty years.

In the early 1990s the need for federal legislation supporting capping was considered and rejected by the then Labor Government.

The detrimental effects of capping would be more acceptable if it could be shown that capping would make a significant difference to premiums. However we have it on very good authority that this is not the case.

The Insurance Council of Australia was quite forthright about this issue during the Senate Committee inquiry.

When asked about the importance of capping to reducing premiums, Mr Booth, the Deputy Chief Executive of the ICA stated: “...the real issue is capping at all; the real issue is the number of claims coming in around the average claim size level, which according to the ACCC, is $23 000.”
So whether we are having a debate about a cap at $10 million or $20 million, it is the number of claims for $20 000 to $50 000 that will ultimately drive the price of PI insurance in Australia."

Insurers have indicated that other reforms are likely to have a significant impact on premiums. These include the introduction of proportionate liability which is part of the CLERP 9 Bill. Proportionate liability will address the concern that professionals are often unfairly targeted in litigation because they have deeper pockets than other potential defendants.

Labor strongly supports these measures which will ensure that professionals are only responsible for their contribution to the loss or damage sustained by the consumer.

My earlier comments plainly indicate that the Opposition does have serious concerns about the potential negative impact of the introduction of caps on professional liability.

Labor acknowledges however that State and Territory Governments have come to the conclusion that professional standards schemes involving caps are necessary to improve protection for consumers through the introduction of compulsory insurance and improved disciplinary measures for professionals.

These improvements in consumer protection are clearly desirable.

The Opposition has given careful consideration to this Bill.

In our view, the best way to limit the dangers inherent in capping professional liability is ensure that the regime is sufficiently flexible.

State and Territory Governments have also acknowledged the importance of this issue.

At the Meeting of Insurance Ministers in Hobart in February 2004 all Governments agreed “that any legislation or schemes being developed should be flexible enough to meet the concerns of large purchasers of professional services”.

Large consumers of professional services such as the banks and the property industry have argued that it should be possible to negotiate higher caps to reflect the nature of their business.

This option is known as contracting out.

Following, the Hobart meeting of Ministers, a working party of State officials was formed to examine whether the professional standards legislation should allow contracting out.

That working party reported earlier this month.

In its report, the working party rejected contracting out and instead favoured an approach which allows a firm to apply to their professional association seeking a higher cap.

The opposition is not satisfied that this approach will in practice deliver increased flexibility.

As a matter of principle, it is not clear why a professional association should have the right to veto a higher cap that is acceptable to both the professional and its customer.

Such a mechanism has the clear potential to operate anti-competitively.

In Labor’s view, firms should be able to compete in the market on the basis of their risk management practices.

The case against contracting out seems to rest on the contention that firms with substantial market power, such as the banks, would force professionals to contract out if they wanted to obtain their business.

Labor believes that this not what is likely to occur in practice.

During the Senate Committee Inquiry, the Australian Banker’s Association indicated that, if faced with caps that were too low, the likely response of banks would be to seek to find a professional firm that was not a member of a scheme or, alternatively, to go offshore to purchase professional services.

Professional groups arguing against contracting out seem to have missed the point that a prohibition on contracting out will not force large consumers to do business with professionals covered by a scheme.

It will only mean that members of schemes will not have the freedom to negotiate a higher cap in order to secure the business of these clients.

How is the outcome in the interests of Australian professionals?
In this case, Labor believes that the market can provide a solution to the problem of setting an appropriate cap. It is not every day that I have cause to cite the centre for independent studies in support of a position advocated by the Labor Party but on this occasion I think the CIS has made the correct call. In an article entitled “a simple case of overkill” in the Australian Financial Review on 25 May 2004, Mr Caspar Conder of the CIS argued the case for contracting out.

Mr Conder pointed out that “contracting out allows customers to choose prices and levels of liability in line with their risk profile.” The essence of Mr Conder’s argument is that if large consumers, such as banks, want a higher cap in relation to a particular service, they will have to pay higher professional fees. This is because the professional firm that they are contracting with will have to pay a higher insurance premium in order to obtain a level of cover above the cap set by the scheme.

Professionals who are unwilling to accept higher liability will incur lower insurance premiums, and will therefore be able to charge a lower price for their services. Consumers will therefore be able to choose between lower fees and lower liability, or higher fees and a higher cap on damages if things go wrong.

In other words, under the contracting out model, if a large consumer wanted a higher cap they would have to pay for it. This in no way undermines the operation of professional standards schemes for professionals who choose not to contract out.

An important advantage of allowing contracting out is that it permits firms to compete on the basis of their risk management practices. This was a key issue for the ACCC.

At the Senate Committee hearing, the Commission stated that if capping is considered desirable ‘firms should be permitted to compete on caps’.

Significantly, the working group of State Officials seems to have rejected the case for contracting out simply on the basis of contentions put by professional groups.

The report concedes that ‘the Committee has not obtained evidence that demonstrates that for some services, the larger customers have sufficient market power to impose unreasonable levels of insurance cover on professional firms, or that, with contracting out, professional indemnity insurance costs would be driven up for the majority of professional firms providing these services.’ The report therefore provides no firm foundation for rejecting the option of amending the Bill to ensure that professionals are permitted to contract out of professional standards schemes.

I will shortly move amendments that provide that a professional standards scheme should not be prescribed under the legislation unless it allows members to contract out on a case by case basis.

I urge the Senate to support these amendments in order to ensure that the legislation meets the needs of both professionals and consumers of professional services.

Senator RIDGEWAY (New South Wales) (12.04 p.m.)—I will make some remarks about the Treasury Legislation Amendment (Professional Standards) Bill 2003. I will not take up all the allotted time; I understand the need to deal with these things quickly. The aim of this bill is to introduce a scheme that is based on certainty for both professionals in determining their maximum level of liability exposure and consumers in knowing that a professional covered by a scheme will have sufficient resources to meet any potential claim within the prescribed maximum.

The background to this situation is a long one and one that has been long known in the so-called insurance crisis. With the problems currently faced by Australia’s insurance industry there is a range of professionals finding it difficult to secure insurance cover at a reasonable price. As a result, many are either leaving the profession, hedging their capital assets against potential damages payouts, or simply running bare with no insurance cover at all. This is a considerable risk to consum-
ers who may have a legitimate claim but have no chance of being able to recover damages.

Professional standards legislation is seen as a key element of the government’s response to the insurance crisis. The purpose of the legislation is to amend the Trade Practices Act, the Australian Securities and Investments Commission Act and the Corporations Act to essentially align these laws with state laws on professional standards. The relevant state laws limit the civil liability of professionals and others while still maintaining appropriate protection for consumers of professional services through such measures as compulsory insurance cover and complaints procedures.

As the Bills Digest states, in a practical sense the proposed amendments made by this bill are relatively straightforward and brief. Relevant parts of Commonwealth laws dealing with civil liability for misleading or deceptive conduct will be subject to professional standards legislation capping to align them with the proposed national scheme. The operative mechanism that is based on state PSL schemes to be used by the Commonwealth to cap liability will be prescribed by way of Commonwealth regulations.

The explanatory memorandum to the bill advises that civil liability under the Commonwealth laws is not limited generally. As noted above, the bill specifically focuses on the issues of contraventions by way of misleading and deceptive conduct. So the regulations will specify when specific limitations apply, and the regulations may, if necessary, modify the effect of the state PSL scheme to ensure that the interests of consumers are protected. The explanatory memorandum also goes on to say that no state scheme will be given a preference over another.

There are issues that the Australian Democrats want to put on the record. This bill is supported by the states, almost all of which have implemented professional standards legislation of their own. The bill is seen as an important measure to bring the Commonwealth into line with state legislation and prevent what is known as forum shopping. I want to turn briefly to the issue of contracting out, which has been a matter of discussion with the bill, given the amendments that have been circulated by the opposition. The opposition amendments would allow firms to voluntarily contract out of the liability cap in cases where their clients insist that a higher level of liability must be available. The example given is the case of banking institutions, whose large transactions are of such a size that if anything went wrong a capped liability of $50 million would be insufficient.

The idea is that professional services providers who want to supply services to these institutions should be allowed to contract out on a case by case basis and accept a higher insurance premium for those cases that might attract increased liability. The Australian Bankers Association have been a vocal supporter of this idea. They see the caps imposed by this legislation as being unacceptably low for the kinds of transactions they engage in. For the deals and projects at the very high end of the industry, they need to be confident that any economic loss as a result of professional negligence or misconduct can be recovered in full.

On the face of it I think it seems a reasonable proposition to put forward, and I can appreciate the thinking behind the idea. In fact I think it is somewhat incongruous that a measure designed to assist the big end of town is being proposed by the Labor Party as opposed to the government. However there are concerns that if this were to be allowed pressure would be exerted on all firms to opt out and the purpose of the capped liability would be lost. Furthermore, flexibility to opt out of the scheme already exists at state
level. For instance, in the Victorian model, professionals can apply to their professional association body for an exemption to the cap on a case by case basis. For this reason it has been submitted that specific contracting out provisions are not required in this context. What is even more surprising is the fact that the opposition’s proposal is against the express wishes of the state governments. One of the key aims behind this legislation is to bring the Commonwealth system into line with the state schemes, naturally of course to prevent forum shopping.

In the minority report to the Senate Economics Legislation Committee investigation into this bill the ALP senators said that it would be preferable to await the outcome of deliberations of the working group before the bill is debated in the parliament. The working group of state treasurers has reported and recommended against the idea of contracting out. The working group supports the adoption of the more flexible approach to caps such as that which currently exists in the Victorian legislation and which is also being proposed in forthcoming Queensland and South Australian legislation. So it seems to me that if the goal of the bill is to promote further harmonisation then it is counterproductive for the Commonwealth to introduce a scheme that offers different opportunities than those that are currently available at the state level or that will be available at some time in the future. The no contracting out clauses in state legislation were inserted specifically to ensure that clients could not exert pressure on service providers to accept higher liability limits. For these reasons the Australian Democrats will not be supporting the ALP amendments.

I want to turn briefly now to the issue of proportionate liability. The committee report on this bill also made several references to the fact that it may indeed be proportionate liability that has a more significant impact on insurance premiums than the capping of damages. This is an area of insurance reform that I have been particularly interested in. I do not see how it can be reasonable to hold one professional service provider liable for what could be the result of the contributory negligence of many. In the cases of huge construction or infrastructure projects, for example, where advice is given at a number of different levels, when things go wrong it is effectively impossible to sheet home the blame to a single individual. Proportionate liability will ensure that every person in the chain of advice and professional service provision has to be held responsible for their actions.

The government agrees that the introduction of proportionate liability at the Commonwealth level is another important prong of its response to the insurance crisis. In the explanatory memorandum to the bill the government has explained that support for proportionate liability for economic loss was on the grounds that, while it:

... limits the exposure of professionals to those matters for which they are personally responsible, it does not prevent other parties who have contributed to the wrongful act being liable for damages ...

4.127 Moving to proportionate liability for economic loss better reflects the responsibilities of professionals to their clients.

4.128 The main benefit, from an economic perspective, of implementing proportionate liability for economic loss is that since insurers are insuring only the risk of a particular professional, and not the risk of other professionals, insurers can be more confident in insuring risk.

We agree with this position and have urged the government to implement proportionate liability at the Commonwealth level. I was extremely pleased to note that this recommendation has been followed through with and that the government considers that a national model for proportionate liability when
implemented in all jurisdictions will contribute to an improvement in the professional indemnity insurance market across Australia, and so it will enact the Commonwealth part of this national model as part of the Corporate Law Economic Reform Program bills which are currently before the Senate.

In closing, I think I should say a few words about our general position on this issue. We see the response by the government, as part of the package of reforms dealing with public liability insurance in this country, to be disproportionate to a non-existent or theoretical problem. The Ipp review highlighted and the ACCC evidence showed that the Trade Practices Act has never been used to sidestep any tort law and has never had an impact on any insurance premium in this country. The federal government has been unable to secure any guarantees from the insurance industry that reforms of this type would indeed lead to reductions in insurance premiums, as you would have expected. In previous statements on the issue, we have said that, rather than implementing solutions that try to limit the number of claims, the central theme of all of the solutions has been about limiting the amount that can be claimed in the first instance. Consumer advocates, as well as the Australian Democrats, have challenged this approach and the Australian Democrats still await preventative solutions from the government that can concentrate on restoring some balance to the current reforms. Professional standards laws seek to minimise damages claims against professionals through improved risk management strategies requiring professionals to hold compulsory insurance cover, engage in professional education and adopt appropriate complaints and disciplinary mechanisms. In return, professionals complying with schemes will be able to access capped liability. It is important to note that this capped liability will only apply to claims for economic loss and not to claims for personal injury or death. Ultimately this policy approach will be of benefit to professionals and consumers alike. It is one of those happy situations where it is a win-win solution to what has been and to a large extent still is a very difficult problem.

The bill has been considered in great detail by the Senate Economics Legislation Committee. The committee concluded that, given that the amendments in the bill only apply in relation to professionals that participate in professional standards schemes and particular issues and, more importantly, professional misconduct and an increase in negligence litigation. We have been critical of the general approach but we cannot see any overwhelming reasons why this bill ought to be prevented from harmonising the Commonwealth system with that of the states, therefore the Democrats will be supporting this bill.
that participation in the schemes is intended to be voluntary, on balance the benefits expected to be obtained from the schemes outweigh the costs of limiting the rights of certain plaintiffs. It must be remembered that caps in professional standards schemes are set at such a level that the vast majority of consumer claims would be under the cap in any event and would not be affected. I note that the committee devoted considerable attention to the issue of professionals being able to contract out of the capped liability inherent in the professional standards schemes. The government is of the view that, provided professional standards schemes are sufficiently flexible and allow professionals to purchase very high levels of insurance cover, contracting out should not be an issue. There is no reason that the needs of all consumers, including very large consumers, cannot be accommodated within the scheme design process. As I said, there has been extensive consultation with the states and territories and with others on this issue, including that by the Senate Economics Legislation Committee. I feel that all views have been adequately ventilated. I reiterate that this bill represents a win for consumers, a win for professionals and a win for the community more broadly. I commend this bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator CONROY (Victoria) (12.19 p.m.)—by leave—I move the amendments circulated in my name:

(1) Schedule 1, item 3, page 4 (after line 20), after subsection (2), insert:

(2A) A scheme must not be prescribed by regulations unless the scheme permits members of the scheme to voluntarily accept caps higher than those contained in the scheme in each or all of the following situations:

(a) for particular kinds of work;
(b) for particular specified transactions or classes of transaction;
(c) for a particular client or clients;
(d) for work of a particular value;
(e) in any other case determined by the scheme member.

(2) Schedule 1, item 7, page 6 (after line 13), after subsection (2), insert

(2A) A scheme must not be prescribed by regulations unless the scheme permits members of the scheme to voluntarily accept caps higher than those contained in the scheme in each or all of the following situations:

(a) for particular kinds of work;
(b) for particular specified transactions or classes of transaction;
(c) for a particular client or clients;
(d) for work of a particular value;
(e) in any other case determined by the scheme member.

(3) Schedule 1, item 11, page 8 (after line 23), after subsection (2), insert:

(2A) A scheme must not be prescribed by regulations unless the scheme permits members of the scheme to voluntarily accept caps higher than those contained in the scheme in each or all of the following situations:

(a) for particular kinds of work;
(b) for particular specified transactions or classes of transaction;
(c) for a particular client or clients;
(d) for work of a particular value;
(e) in any other case determined by the scheme member.

As I have already indicated and have discussed with the government whip, I intend to have my brief contribution incorporated in Hansard. However, I would say to the De-
mocrats that in a week of spectacular hypocrisy in some of your speeches this is a highlight. I am sure that organisations that have looked to you for leadership on some of these issues will be staggered by this backflip—and I say that with all intent.

Senator Ridgeway interjecting—

Senator CONROY—You are up there now, Senator Ridgeway. You might have thought you had clean hands yesterday but after this effort you are up there now. Mr Temporary Chairman, I seek leave for my contribution to be incorporated in Hansard.

Leave granted.

The speech read as follows—

These amendments are straightforward and I can deal with them briefly.

As noted in that debate, this Bill establishes a regime to cap liability for misleading and deceptive conduct under the Trade Practices Act, the Australian Securities and Investment Commission Act and the Corporations Act.

Under the Bill, caps only apply to limit liability if a professional standards scheme is prescribed by regulations made under either of the acts I mentioned a moment ago.

The effect of the amendments proposed by Labor is that no professional standards scheme may be prescribed unless it permits its members to contract out of the caps set by the scheme.

The principal argument against these amendments that has been put by some professional groups is that they are inconsistent with State law.

This argument misses the point that the national framework for professional standards legislation is still being developed.

Only three states have enacted legislation and in those States legislative amendments will be required to fine tune the scheme in any event.

These amendments allow the Commonwealth Parliament to influence the design of the professional standards regime to ensure that the final national scheme has sufficient flexibility to mitigate the dangers and inequities that are involved in capping professional liability.

It is true that the working party of state officials rejected contracting out.

However as I noted in the second reading debate, they did so without any evidence that contracting out would allow professionals to be unfairly pressured or that contracting out would drive up insurance premiums for other professionals who remain within caps set by the scheme.

The working party of officials report is no basis on which to reject contracting out.

These amendments simply ensure that if a professional and a client can reach an agreement on higher cap they should be allowed to contract on that basis.

These amendments will allow the market to determine what level of caps are appropriate.

Labor believes that the amendments are in the interests of both consumers and professionals and I commend them to the Senate.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that the opposition amendments be agreed to.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.21 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

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

Consideration of House of Representatives Message

Consideration resumed from 22 June.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.21 p.m.)—I table a supplementary explanatory memorandum relating to the
government amendments to be moved to the Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 2004. The memorandum was circulated in the chamber on 24 June 2004. I move:

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

Senator CONROY (Victoria) (12.22 p.m.)—I indicate that the opposition will not be insisting on the amendments to the Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 2004. I seek leave to incorporate my comments in Hansard.

Leave granted.

The speech read as follows—
The Opposition will not insist on these amendments.

I understand that the Government will shortly move to introduce some alternative amendments to exclude litigation relating to smoking and tobacco products from the claims regime proposed by the Bill.

Labor is satisfied that the Government’s amendments, as circulated, address the issues identified in the Senate amendments 2 to 6.

I would just like to make some brief remarks about amendment.

This Bill is part of a series of measures aimed at reforming civil liability laws in response to the rise in public liability claims costs and insurance premiums over the last two years.

The Opposition has broadly supported this process.

This Bill amends the Trade Practices Act to remove the incentive for plaintiffs to try and avoid state tort laws by bringing an action under TPA provisions such as those relating to unconscionable conduct and defective products.

The Bill introduces a new part 6B which imposes caps, thresholds and limitations on actions for personal injury.

In broad terms, these restrictions are consistent with the approach adopted by the States and Territories in their tort law reforms.

Labor does not oppose the introduction of this new part.

Labor moved amendments to the Bill, however, to ensure that it also applies to actions brought under section 52 of the Act which prohibits companies engaging in misleading and deceptive conduct.

Labor’s amendment is an alternative to the Government’s proposal contained in the Trade Practices (Personal Injury and Death) No. 1 Bill.

In that Bill, the Government proposed to completely abolish consumers’ right to compensation where they suffer personal injury through a company’s misleading and deceptive conduct.

On a number of occasions the Senate has made clear to the Government that its proposal is not acceptable.

Given that actions for personal injury are extremely rare, the Government’s proposal is completely disproportionate to the size of the problem.

Amendment 1 would have ensured that proceedings based on section 52 would have been subject to the same caps, thresholds and limitation periods as other parts of the TPA that can form the basis of an action for personal injury.

The Opposition is disappointed that the Government has rejected the Senate’s amendment which effectively deals with the potential for forum shopping without unacceptably undermining consumers’ rights.

On 2 March 2004 the Minister told the Senate:

“Cases are now coming to light where a claim is too small to succeed at state level but can still be brought under the Trade Practices Act.

While this loophole remains open, claims costs will not come down and these reforms will remain incomplete.”

This is the loophole that the Minister identified. It is indisputable that our amendment would close it. Nevertheless, the Government has rejected it.

We have to wonder whether the Government really wants to resolve this matter.

Labor will not delay the passage of this Bill by insisting on amendment 1.
However, we do express disappointment at the Government’s failure to accept a workable solution to the issue of potential forum shopping.

Senator RIDGEWAY (New South Wales) (12.22 p.m.)—I rise to put the Democrat position on the Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 2004. I will not take a lot of time but I want to put our view on the record. I would like to briefly restate the Democrat position with respect to this bill. It was originally dealt with in the Senate by my colleague Senator Andrew Murray in my absence on the day it was debated. I have long taken an interest in this issue, however, and handled the Democrat response to the first Trade Practices Amendment (Personal Injuries and Death) Bill when it came before the Senate late last year.

In relation to that bill, which the Democrats did not support, we raised our serious concerns with the approach that is being taken with these bills in general. We see the response by the government, as I said in the previous debate, as part of the package of reforms dealing with the public liability insurance crisis in this country, to be disproportionate to a nonexistent or theoretical problem. Whilst the Ipp review highlighted and the ACCC evidence showed that the Trade Practices Act has never been used in the way that has been suggested to sidestep any of the tort law reform, there has also never been an impact on insurance premiums in this country. Again, the federal government has been unable to secure any guarantees from the insurance industry. With all the reforms that are occurring, particularly ones of this type, it would be sensible indeed to presume that it would lead to a reduction in insurance premiums. That simply has not been the case.

With respect to this bill in particular, Senator Murray did such a spectacular job of explaining our position in the second reading debate that I want to restate a few of his comments here. As Senator Murray said, the Democrats remain to be convinced that this legislation is even remotely needed. The whole campaign to address insurance provisions and damages provisions at law in both the state and the federal arena has often been predicated on insufficient evidence and balance. As my colleague explained:

We have seen and debated in the Senate countless examples of people who have never had a claim in decades of operating their business, charitable and sporting activities. We have seen those people’s premiums escalate enormously. There has been no quid pro quo. No state or federal government and no minister anywhere in Australia has secured a quid pro quo from the insurance industry. They introduce these reforms, these restraints on consumer and human rights, and in return the insurance industry should actually deliver lower cost premiums and broader provisions in their policies. In fact, the whole exercise has resulted in less access at law and much more profitability to the industry.

We do not believe that forum shopping has occurred to any extent. We do not believe that there has been sufficient justification for the large-scale limitations that have been placed on an individual’s ability to take action in the state law.

It should be clear from my statements that the Democrats will not support the bill at this final stage. We have made our concerns clear, and they remain with the House’s message. We originally supported the ALP’s amendments to this bill, aimed at aligning damages under the TPA with state and territory laws and ensuring that the provisions of the bill apply consistently across all sections of the Trade Practices Act that could relate to personal injury or death. I think these amendments would have made the bill better in that it would be more consistent, but it is still not good enough. The reasons for the House rejecting these amendments are, in my view, spurious and unreasonable. Implement-
ing a consistent approach that would restrict forum shopping is an improvement to the bill. As Senator Murray said in his speech in the second reading debate:

We think any amendment that prohibits or attempts to restrict forum shopping is a wise one. Our case and our argument is not that people should have multiple access in multiple jurisdictions; our case and our argument is that they should have access to the TPA jurisdiction. Therefore we can have no in principle objection to the Labor amendment since it does seek to achieve streamlined access to a single jurisdiction.

The original reasons for rejecting the second amendment are, quite simply, appalling. For the House of Representatives to have said that there is no principled reason why special arrangements should apply for tobacco related injuries is at best naive and at worst criminally irresponsible. However, I am pleased to note that a compromise has been reached concerning this amendment and that the government has proposed a redrafted version that will now be supported. As Senator Allison said, also at the second reading stage of this bill, this is very important. She said:

... I think it is fair to say that the Democrats are very much opposed to this bill being used to give the tobacco industry a way out. The tobacco industry does not, of course, hold public liability insurance. Unlike playing football or holding a street stall, smoking is a very dangerous, life-threatening and highly addictive activity. In the United States the tobacco industry agreed to pay the US states around $US246 billion over 25 years from 1998 as result of litigation.

... ... ...

The Democrats would like to see the industry sued in this country, too, for its misleading, deceptive and unconscionable behaviour, for lying to smokers about the harmful effects of its product—taken as directed, I might say—and for plying its product to children.

I was initially very disappointed to note that the original ALP amendment had not been accepted by the House. However, the fact that an agreement has been reached is very pleasing. We will definitely support the new version of this amendment. The problems with the bill, however, and the government’s approach to tort law reform generally still remain. Taken as a whole, we cannot support this bill, though I note that the bill will proceed from this stage with government and opposition support.

In closing, we will support the amendment to ensure that liability in actions against tobacco companies is uncapped so that plaintiffs can recover the full amount they are awarded against these companies. If this bill is going to go through then I think it is important to send a very loud and clear message to tobacco companies and to go through with this amendment, and we will support that.

Question agreed to.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.30 p.m.)—by leave—I move government amendments (1) to (4) on sheet PA265:

(1) Schedule 1, item 9, page 6 (after line 6), after the definition of quarter, insert:

smoking has the same meaning as in the Tobacco Advertising Prohibition Act 1992.

tobacco product has the same meaning as in the Tobacco Advertising Prohibition Act 1992.

(2) Schedule 1, item 9, page 6 (lines 7 to 12), omit section 87E, substitute:

87E Proceedings to which this Part applies

(1) This Part applies to proceedings taken under this Act:

(a) that relate to Part IVA, to Division 1A or 2A of Part V or to Part VA; and
(b) in which the plaintiff is seeking an award of personal injury damages; and

(c) that are not proceedings in respect of the death of or personal injury to a person resulting from smoking or other use of tobacco products.

(2) However, for the purposes of Divisions 2 and 7, paragraph (1)(c) does not apply.

(3) Schedule 1, item 9, page 6 (after line 20), after subsection 87F(1), insert:

(1A) However, paragraph (1)(b) does not apply in relation to a proceeding in respect of the death of or personal injury to a person resulting from smoking or other use of tobacco products.

(4) Schedule 1, item 9, page 6 (line 21) to page 7 (line 2), omit subsection 87F(2), substitute:

(2) This diagram shows when this Division prevents an award of personal injury damages.

Senator CONROY (Victoria) (12.30 p.m.)—I indicate that Labor will support the amendments and seek leave to incorporate my remarks in Hansard.

Leave granted.

The speech read as follows—Labor will support these amendments.

As I indicated earlier in the debate, Labor believes that they achieve the same objective as the amendments that we moved in relation to tobacco litigation when this Bill was last debated by the Senate in May.

These amendments ensure that the provisions of the Bill which impose caps on damages for personal injury and the ‘long stop’ period in relation
to the commencement of an action, do not apply to proceedings relating to smoking or other use of tobacco products.

In Labor’s view, tobacco litigation is a special case that merits such exclusion.

It was never the intention of the liability law reform process to protect the tobacco industry from litigation.

NSW, Victoria, Queensland, Western Australia and Tasmania have recognised this and specifically excluded tobacco litigation in their civil liability reforms.

The clear purpose of the liability reform process has been to address concerns about the effect of rising claims costs on public liability insurance premiums.

Labor does not believe that these concerns are relevant in context of litigation relating to personal injury caused by tobacco products.

I would also like to indicate to the Minister that Labor does not seek any further changes to the Trade Practices Act based on the precedent set by the exemption of tobacco cases from the proposed claims regime.

We are pleased to be able to support the amendments.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.30 p.m.)—I will briefly speak to the amendments and place on record the government’s rationale for them. I thank colleagues for their support for the amendments. The amendments resolve a drafting problem with the initial Senate amendments. They will allow people suffering tobacco related injuries to claim the full amount of damages against tobacco companies. Claims will be subject to a three-year limitation period from the date of discoverability of the injury. There will be no long-stop period. These amendments complement the strong stance the government has taken in relation to tobacco control. In the interests of passing this important legislation, and given the specific concerns relating to tobacco litigation, the government will be supporting this concept. I am pleased to be speaking in support of the government’s amendments.

As I said the last time this was debated in the Senate, smoking tobacco causes more sickness than just about any other drug in Australia. In 2001 an estimated 15,524 people died in Australia as a result of tobacco smoking. From 1997-98 hospitals treated over 140,000 smoking related cases. The government has, therefore, given very serious consideration to the amendments initially passed by the Senate, which exempted tobacco related illnesses from the damages regime this legislation proposes. There is an argument that this can be finely balanced. Initially the government was concerned that, without a clear basis in principle, such an exemption could set precedents for a whole range of similar carve-outs relating to other injurious products.

However, I have subsequently received from Senator Conroy on behalf of the ALP a written reassurance that Labor sees tobacco litigation as a special case and does not seek any further changes to the Trade Practices Act based on the precedent set by the tobacco amendments. We have also had representations from groups such as the Cancer Council of Australia. Based on these reassurances with regard to future carve-outs, the government has now decided to move these amendments to preserve the existing unlimited liability for personal injuries and death claims resulting from smoking or other use of tobacco products.

Question agreed to.

Resolution reported; report adopted.

EXTENSION OF CHARITABLE PURPOSE BILL 2004

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Extension of
Charitable Purpose Bill 2004 and informing the Senate that the House has disagreed to the amendment made by the Senate, and requesting the reconsideration of the bill in respect of the amendment to which the House has disagreed.

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

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.34 p.m.)—I move:

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

Senator CONROY (Victoria) (12.34 p.m.)—Labor are disappointed that the government and, as we understand it, the Democrats have decided that playgroups do not warrant charitable status. We have heard many, often conflicting, arguments from the government on this issue. Apparently charitable status would not really benefit playgroups, as they already receive a number of tax concessions and any benefit would only go to larger incorporated playgroups. At the same time it is apparently inappropriate for small or unincorporated playgroups, defined by the minister as a group of women having coffee, to receive charitable status. I think that is a very uncharitable definition. So, according to the government, giving small or unincorporated playgroups charitable status would be inappropriate and they would not benefit from such status anyway.

The real argument here is whether playgroups perform a charitable purpose that is for the public benefit. Labor believe that playgroups do. The government—and, apparently, the Democrats—do not. According to the government, because playgroups usually involve a parent being with the child they do not warrant charitable status. Exactly how this argument is consistent with other provisions in this bill which provide charitable status to self-help groups is unclear. It just continues the eternally inconsistent arguments put forward by this government against this amendment. It shows, once again, that the government lack a real commitment to playgroups. Labor will be campaigning on this issue during the upcoming election campaign, and when this parliament next meets and we are in government we will be moving amendments to provide charitable status to playgroups.

I can understand the Democrats' position. They do have a bit of self-interest in this issue. If you look at their party room meetings, you see that they are a bit of a playgroup. So they did not want to give themselves charitable status. It is very disappointing to see that the Democrats are not prepared to help out playgroups other than their own caucus.

Senator CHERRY (Queensland) (12.36 p.m.)—The Democrats will not be insisting on this amendment to the Extension of Charitable Purpose Bill 2004 because this bill as a whole provides a modest benefit to charities and we do not want it held up at this particular point in time. As the minister outlined when we last considered this bill, the actual question of what benefit flows to playgroups as a result of shifting from tax-exempt status as a nonprofit organisation to a charity is somewhat unclear but fairly minor. Ultimately it relates to GST fundraising concessions, particularly in respect of raffles, dinners and things like that. They are a fairly minor aspect, although it is something which we would prefer to see passed on.

I express the view that I believe a playgroup almost certainly is a charity and we probably do not need this definition. In doing so, I go back to the report of the charities definition inquiry. At page 206 it talked about the issue of private benefit versus public benefit, and one of the problems with child care as such was that it was providing a
private benefit to the parents by providing a child-care situation. The committee considered that there was a need to extend charities in that area because that private benefit also had a community benefit element. But the issue of playgroups is very much about the development of the child and the development of social and learning skills. I think that fits into a different category of the charitable definition altogether. The committee said:

In the Committee’s view, the provision of learning and development opportunities for children in a child care environment is clearly directed towards a long term public benefit, which is well acknowledged in the common law interpretation of the public benefit of education.

I would have thought that if a playgroup actually applied for charitable status from the government it would be provided purely on the basis that playgroups are providing a learning and development environment for children. That is probably the key issue here.

Child care and playgroups are in some respects different. Playgroups almost certainly at this stage are included by and large in the definition of charities, and I would certainly encourage the government to give favourable consideration to any applications they receive from playgroups in that regard and also any applications they receive from playgroups for gift deductible entity status, which I understand is an issue you will be addressing shortly.

From that point of view, the Democrats will not be insisting on the amendment. We think this legislation has to go through without too much difficulty. I would point out to Senator Conroy that, in terms of the benefit provided by this bill for the parents of children in playgroups, the benefits provided by getting GST exemptions on their fundraising activities are a lot less than the cost of paying extra for pharmaceutical benefits when they go to the doctor with a sick child with a runny nose or another disease and they have to pay an extra $4 to $5 a script at the chemist shop every afternoon. If the Labor Party are deeply concerned about the cost of children and the cost of raising children, then they should not have done the backflip we saw in this place last night. Certainly from the Democrats’ point of view at least we have some consistency in terms of saying that children are a matter which we need to be concerned about. I would note for the record that the Democrats lobbied the government very successfully last year to include children in the bulk-billing incentives under the MedicarePlus package for children up to the age of 16. It is worth noting that the extra $5 per visit bulk-billing incentive—not included in Labor Party policy—was something that the Democrats successfully persuaded Tony Abbot to include. So before we get any lectures from the Labor Party about increasing the costs of raising children I would remind them that anything that flows out of this decision today will be more than overwhelmed by what parents are going to face in increased drug costs when looking after sick children.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.40 p.m.)—The bill specifically extends the common law meaning of charity to include child-care services, and the concept of child-care services is drawn from the findings contained in the charities definition inquiry. The inquiry noted that the common law had long accepted the care and protection of helpless and vulnerable aged people as charitable but there was no judicial precedent relating to the charitable status of child care. The inquiry considered that it should be clarified that organisations looking after children should be treated as charities in the same way as organisations looking after the aged.

The government has fully responded to this recommendation in the current bill. Ac-
Accordingly, those playgroups which provide care, protection and support of children in the absence of the parents or guardians would be considered charitable. However, the common law has never considered looking after your own elderly relatives to be charitable and for the same reason caring for one’s own children has never been considered charitable either. Accordingly, playgroups that involve only the provision of facilities for parents and children to meet and socialise do not meet the long-established meaning of charitable purposes.

The business of mischaracterising what I have said in the debate appears to be contagious. Senator Conroy is now repeating what Senator Collins was suggesting: that in some pejorative way it has been attributed to me that I have said that playgroups are just a group of women having coffee. That is clearly not what I have said and not what is meant. I have distinguished a group of people meeting in an informal way as part of a playgroup from those who otherwise might be providing more formalised child-care services. It was by way of distinction and certainly not in any pejorative sense in which there was any reference to people looking after their children as just having coffee. I do resent being misrepresented. I said it earlier in this debate but it seems to have continued.

The other point I will make here is that Senator Collins—and Senator Conroy has not even tried—has tried to agitate during this debate about what playgroups need that they do not already have as tax-exempt, nonprofit organisations. The debate on this has been punching in midair, because those who have been agitating for playgroups to be included in the charitable definition are totally incapable of saying what it is that child-care groups need that they do not already have as tax-exempt, nonprofit organisations. I do repeat my previous comments in debate: that what they probably need in respect of GST concessions is deductible gift recipient status. In a small organisation that is much more important. I personally think—and it may be that it accords with the established principles when it is all considered—that playgroups provide a very critical public service that may well qualify them for deductible gift recipient status. I have the view that any socialisation of children who might be isolated or perhaps have other difficulties and disabilities or even just the education of children to relate better to adults and other children, or their preparation for preschool, seems to me precisely the kind of desirable outcome we would want. An umbrella organisation providing advice to other groups as to how to set up playgroup services, it seems to me, might be on all four squares with what would be appropriate for a deductible gift recipient organisation.

I place that on the record because I utterly refute that anyone has brought to the attention of the Senate any disadvantages that would flow to playgroups by not being included in the charitable definition. If there are any, let them be brought forward. In the meantime, the government is confident that with tax-exempt status as a nonprofit organisation they are adequately provided for in the tax system. I also state again publicly that my consideration in respect of their deductible gift recipient status is very well advanced, and from what I have seen and from what has been brought to my attention they may very well qualify for that.
The TEMPORARY CHAIRMAN (Senator Watson)—Through the chair, please.

Senator CONROY—The day I sit in this chamber to be lectured by John Cherry, the architect of the GST in this country, who has inflicted more pressure and pain on Australian families than any other Democrat senator in the history of his party—which will not be for much longer—

The TEMPORARY CHAIRMAN—Could we focus on the amendment?

Senator CONROY—The good news is that Senator Cherry gets to face the people at the next election—and are they looking forward to meeting him! They are going to get a chance to pass judgment on Senator Cherry about backflips. They are going to get their chance to pass judgment on backflips. When they get a chance to judge the Democrats’ position on the GST, what we will be doing is saying, ‘It wasn’t just the Democrats.’ Senator Cherry has not faced the voters yet. This will be his first visit to the voters. They are looking forward to his visit, because they remember the A Current Affair program. They remember Senator Cherry as he was then, a humble staffer, appearing on A Current Affair in the GST chat room. There he was! There will be photos.

The TEMPORARY CHAIRMAN—Order! Senator Conroy, I draw your attention to the question that is currently before the chair.

Senator CONROY—Thank you; I appreciate your drawing my attention to the question. What the public in Queensland will be drawing Senator Cherry’s attention to is the craven sell-out of the Democrat policies and principles that he was involved in through the GST. If you want to talk about who has inflicted pain, who has backflipped and who has created financial pressure for Australian families, Senator Cherry, the pictures of you in the A Current Affair GST chat room will be there for all to see. I am willing to bet that the Greens candidate in Queensland has them mounted already. The photos of you on the billboard will be captioned: ‘John Cherry, the man who gave you the GST.’ That will be when the Australian public gets to pass judgment on you. I am up for election too, Senator Cherry, just in case you were wondering; so they will get a chance to pass judgment on me too.

Senator CHERRY (Queensland) (12.47 p.m.)—I point out that Mr Beattie’s government in Queensland is up $500 million this year on the GST and all of that is going into schools, Senator Conroy—all of it is going to schools. So if you have a problem with the GST, take it up with Mr Beattie and Anna Bligh who are putting that money into schools—which is worth noting, since we are discussing children here.

Question agreed to.

Resolution reported; report adopted.

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.49 p.m.)—I move:

That the order of consideration of government business orders of the day for the remainder of today be as follows:

No. 10 Anti-terrorism Bill 2004, consideration in committee of the whole of message no. 620 from the House of Representatives.


No. 9 Sex Discrimination Amendment (Teaching Profession) Bill 2004.

No. 8 Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004.
Consideration resumed from 23 June.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.49 p.m.)—I move:

That the committee does not insist on its amendments nos 9 and 10 to which the House of Representatives has disagreed.

Senator BROWN (Tasmania) (12.49 p.m.)—I would like to hear the reasons for that, because the Greens are very much inclined to insist on those amendments.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.50 p.m.)—The relevant minister will no doubt relieve me shortly. Last week the Senate agreed to government amendments to the Anti-terrorism Bill 2004. In the course of that debate, two amendments moved by the senators opposite, with which the government did not agree, were passed. With the support of the opposition the bill, including government amendments, was passed by the House of Representatives earlier this week. The two opposition amendments were not agreed to. The bill before us today represents an appropriate balance between government policy objectives, the operational needs of our security intelligence agencies and appropriate safeguards, both new and existing.

For example, in relation to the amendments to the proceeds of crime legislation, confiscation is not automatic. The Director of Public Prosecutions can exercise his or her discretion about whether to make an application for a literary proceeds order. Secondly, and more importantly, the making of a literary proceeds order remains at the discretion of the courts. By virtue of section 154 of the act, a court must consider whether supplying a product is in the public interest and may decide not to make a literary proceeds order on this ground. Other factors which a court must consider before making an order include the social, cultural or educational value of the product or activity and how long ago the offence was committed. Importantly, this bill does not prevent an individual from telling their story. The bill in no way gags convicted criminals; rather, what it achieves is to limit the capacity for offenders to profit from their criminal activities. Of course the bill also strengthens Australia’s counter-terrorism laws in a number of other respects.

Firstly, it extends the fixed investigation period under part 1C of the Crimes Act for investigations into suspected terrorism offences. Secondly, the bill permits law enforcement agencies to reasonably suspend or delay questioning a person suspected of committing a terrorism offence in order to obtain information necessary to inform the continued questioning of that person. It is important to recall that these new powers are specifically subject to judicial supervision. Thirdly, the bill recognises that terrorist organisations may be involved in hostile activities in a foreign state in collaboration with the armed forces of that foreign state. This bill prohibits people from participating in such an activity. The bill also amends the Criminal Code to make it an offence for a person to be a member of an organisation found by the court to be a terrorist organisation on the basis of facts presented in the course of a trial, where that organisation is
not listed in regulations as a terrorist organisation.

A further amendment to section 102.5 of the Criminal Code will introduce a modified offence of providing training to, or receiving training from, a terrorist organisation. The bill also establishes a national solution on bail for terrorism offences rather than relying on a patchwork of bail laws to be updated by the states and territories. Finally, the bill provides for a minimum nonparole period that will apply to all persons convicted of and sentenced to imprisonment for terrorism offences. The community, as a result of the activities of terrorists, pays a large cost in terms of emotional wellbeing from a loss of peace of mind as well as in financial terms. These amendments are about making those convicted of terrorism offences spend more time in prison in recognition of that cost and they prevent terrorists from cashing in on their notoriety. They further ensure the protection of our community by clarifying and further refining the parameters of Australia’s terrorism laws.

Senator BROWN (Tasmania) (12.53 p.m.)—I understand that those reasons are not available; I think they ought to be. I do not know if the opposition has them.

Senator Boswell—They are available. They are in the Hansard.

Senator BROWN—I mean here before us. It would be much better if we had them in front of us so that we could debate them. I asked the minister first up, when she made reference to guidelines on educational, social and other values that might be taken into account by the DPP or someone else: where is that reference?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.54 p.m.)—The amendments I think Senator Brown is referring to deal with the very point we dealt with last time, and that was the question of the criteria that the court would consider in the case of an application for forfeiture. Senator Brown is asking about the public interest aspect, I understand, and I outlined that last time in the committee.

Senator Brown—The educational aspect.

Senator ELLISON—It is in the Proceeds of Crime Act, and I will get a copy of it.

Senator Brown—I rise on a point of order, Mr Temporary Chairman. I understand that the reasons are not available here. I wonder whether we can get the reasons from the government. Perhaps the committee should hold over until those reasons are available so that we can deal with them.

The TEMPORARY CHAIRMAN (Senator Watson)—In relation to your point of order, Senator Brown, the House of Representatives’ reasons are available.

Senator Brown—Not to me, they are not.

The TEMPORARY CHAIRMAN—We have them here; I will get an attendant to pass them on to you.

Senator ELLISON—I think I misunderstood Senator Brown’s question. He was after the reasons. I have a copy here and he has just been given them, so his query has been met. I thought he was asking about the criteria for forfeiture.

Senator BROWN (Tasmania) (12.56 p.m.)—Senator Coonan raised that matter in her contribution, and I was asking where that educational criterion was. I remember that in the debate on the bill in this place there was no reference made to such a guideline. Seeing as the government has raised it again, I want to know where that reference is.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.57 p.m.)—I would refer to section 154(a)(iii) of the Proceeds of Crime Act 2002. It states:

In deciding whether to make a *literary proceeds order, the court:
(a) must take into account:

(iii) the social, cultural or educational value of

Educational value is mentioned specifically.

Senator Brown—The DPP must?

Senator Ellison—This is for the court in making a decision in relation to forfeiture. The DPP, of course, makes a decision based on this and other matters because, obviously, the DPP would have to consider whether such an application would succeed, and that is something that the DPP canvasses in every action that the DPP takes. I cannot speak for the DPP as an independent body but certainly the Director of Public Prosecutions would look at the circumstances of the case and would have to weigh up whether or not the proceeds are the literary proceeds of crime. They would then have to address the criteria that the court might entertain, and it would certainly be at that stage that the Director of Public Prosecutions would have to have consideration for those criteria in section 154, and one of them would be the educational value. If the Director of Public Prosecutions came to the opinion that the application would not succeed, I suggest to the Senate that the application would not be made. I venture that somewhat boldly because I am passing opinion on what the DPP might do.

Senator Ludwig—You must not speak on behalf of him!

Senator Ellison—But I am not speaking on behalf of him—thank you, Senator Ludwig. I am just saying what he would be expected to take into account. Often the DPP gets criticised for not proceeding with matters as well as for proceeding with matters. But, certainly, when an application is considered, all of these aspects are considered.

Senator Brown (Tasmania) (12.59 p.m.)—I will not hold up the committee, but the Greens are going to insist very strongly on the amendments made here. When you get down to it, the amendments were made so that people who were involved in criminal activity would not gain from that. On the other hand, people who have been abused in a criminal fashion, as Australians and a good number of other people have been in Guantanamo Bay, should not be denied making public an account of their experiences. That is what has happened in Britain, in Denmark and in Afghanistan. But it will be prohibited in Australia because this government would be politically embarrassed if Mr Hicks and Mr Habib in particular have their day talking about their abuse at the hands of the US authorities under their illegal detention in Guantanamo Bay by President Bush.

This is a very political tract that cuts right across justice as we know it in this country, which must be defended. The second Senate amendment is to deal with the US military commissions, these kangaroo courts which suspend many of the rights that are basic to law in our country, which are trumped up by President Bush—and have Prime Minister John Howard’s support. These commissions suspend those rights so that a conviction can be gained under circumstances that no domestic court in the United States or in Australia would allow. The appeal provision is to the prosecution—that is, the military. After that, even if one were successful in establishing innocence under these prohibitive conditions, President Bush can personally intervene and override that and keep Australians or anybody else in jail. We then have this proposed law that says that people who are abused in this fashion cannot write about it or the proceeds will be grabbed by a process in Australia established by the Howard government. We cannot accept that and we will not.

Senator Ludwig (Queensland) (1.02 p.m.)—As indicated in the House by Robert McClelland, the shadow spokesperson on
homeland security, Labor will not insist on these amendments. These two Senate amendments were, in substance, picked up by, and had bipartisan recommendation of, the Senate Legal and Constitutional Legislation Committee. Both amendments concern the government’s proposed changes to the Proceeds of Crime Act. The first point that needs to be made is that this bill is not extending the proceeds of crime regime to terrorism for the first time. It is a fact that the Proceeds of Crime Act already applies to, and covers a substantial proportion of, the literary proceeds area that could be derived from terrorist activity.

Indeed, the grave and unique nature of terrorism is already recognised in the act in that it excludes the statute of limitations which would otherwise apply and provide six years for the offence. Of course, the residual category is what we have not dealt with and is what the government is dealing with now. The residual category of terrorists’ literary proceeds that would not be covered—and there are only the two points because the remainder would be covered—are, firstly, those proceeds derived overseas and transferred to Australia in some form and, secondly, those derived from overseas terrorist offences which predated the enactment of antiterrorism legislation in Australia in 2002. I will come to the latter point later, and particularly the issue of retrospectivity.

It is Labor’s view that, when you juxtapose the Proceeds of Crime Act and the proposed amendments in the antiterrorism bill and look at them, the view the committee took about those particular changes was a balanced one. The committee accepted the need for the general amendments to close the loophole. I do not think there was any doubt about that. They are two areas that were not dealt with for whatever reason the government might have had. This bill seeks to redress that and to close those two loopholes in respect of the literary proceeds area, which I mentioned earlier. Both the Liberal and Labor senators accepted the need, even though they concluded that the amendments do have a retrospective operation, to close that loophole. I understand that Senator Brown might disagree with that particular approach and might disagree with the literary proceeds area based on the Proceeds of Crime Act, which is based on the civil regime, which we have clearly accepted, as against a criminal offence being created. Nevertheless, I think it is helpful for us to put our position on the table a little more clearly because these amendments do attach punitive consequences for conduct which did not satisfy the dual criminality requirement at the time it was taken.

This is the essence of retrospectivity and it is both the effect and the intention of the amendments. I do not know why the government did not make it more plain at the time they wrote the explanatory memoranda—it would certainly have saved the argument we are having now about that particular point; perhaps I could call them ‘discredited explanatory memoranda’—because it became manifestly plain when the Senate Legal and Constitutional Legislation Committee examined the bill. One suspects that this was only to protect the government from a loss of face over this issue: they did not want to be seen to be introducing a retrospective law to deal with Mr Hicks. I think they could have said, ‘This is the case and we are going to deal with it.’ Nevertheless, Labor agrees with the bipartisan recommendation of the committee that the independent review mandated by section 327 of the Proceeds of Crime Act should examine the impact of the retrospective operation of these amendments and, in particular, whether they have implications beyond the area of literary proceeds from terrorism. There is an ability to review that in the not too distant future.
I was also on the Senate Legal and Constitutional Legislation Committee that looked into the Proceeds of Crime Act. I think it is fair to say that that legislation covers new ground in the literary proceeds area. Of course all new legislation, after it has been operating for a time, requires a good close look. This place is structured to be able to do that. However, the particular amendments that Liberal and Labor senators objected to were those that were directed squarely at two Australian citizens, Mr Hicks and Mr Habib. In other words, they were amendments that did not serve some general law enforcement need but that were plainly included to tip the scales in favour of the government in any proceedings it might bring against Mr Hicks or Mr Habib, to confiscate any proceeds they received from speaking or writing about their experiences.

We are talking about the proceeds that they receive only from speaking or writing; the legislation does not stop them from talking about it per se. If you read the speech of the Attorney-General in the House on this bill you will see that his contribution really underlined that that was the case. I think he was not far away from admitting it himself. Perhaps I could say that he virtually did admit it. I could be pulled up by the government on that but when you read the speech you get that impression.

In relation to item 24, the direct connection between the amendment and the cases of Mr Hicks and Mr Habib was betrayed by the statement in the explanatory memorandum. I think even the writers of the explanatory memorandum were trying to burst through and tell the truth about this matter. The explanatory memorandum says:

... this amendment is intended to vitiate a claim that a person’s notoriety stems from circumstances related to their commission of an offence, such as their place of incarceration, and not from the actual commission of the offence.

The reality is that there is nothing in the act that would currently enable such a claim to succeed in relation to section 153(1)(a) of the act. The act as currently expressed implies no limitation on the required connection between the commission of an offence and the notoriety being exploited. Indeed, the absence of any intended limitation on the court’s jurisdiction to make an order is clear from what the Australian Law Reform Commission said at paragraph 18.57 of its 1999 report, Confiscation that Counts: A review of the Proceeds of Crime Act 1987. That report was informative of the later Proceeds of Crime Act. That report said:

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

In other words, these proceedings are covered by the act but the court should be able to decline to confiscate them. Item 24 is both unnecessary and undesirable. Of course the same can be said of the proposed section 337A(3). Labor’s consistent position has been that the term ‘offence against a law of a foreign country’ appears often in Commonwealth legislation but it is deliberately left undefined, leaving it to the courts to identify and recognise foreign criminal laws. There is no case for creating an exception by specifically referring to offences tried by the US military commissions—offences which have been drawn up and promulgated by a single lawyer employed by the US Department of Defense.

The government has relied on—and I think it continues to, because I do not recall it doing a backflip on this—the International Transfer of Prisoners Amendment Act 2004.
During the debate in the committee and during the second reading debate I think it was plainly put to bed that there is no connection. There is not even a thin thread that connects it; nor a golden thread that might run through it. I think the government has tried to use an analogous argument where there is no analogy.

As the government well knows, Labor made clear that its support for that exception legislation was based on its humanitarian purpose—to enable Australian citizens detained without charge for more than two years to serve any future term of imprisonment closer to family and support networks. That would seem a sensible outcome for those people. No similar justification exists, or has been proposed by the government, with respect to proposed section 337A(3). It appears to be an entirely punitive measure directed at two specific Australians—Mr Hicks and Mr Habib.

One of the most effective weapons we have in the war against terrorism is the rule of law. It is one of the fundamental institutions that elevates us and our society above the activities and objectives of other organisations. Amendments such as item 24 and proposed section 337A(3), and the clear intent behind them, tend in part to detract from that. And I think the government has a heavy burden to ensure that they are not abused. They should not have been included in this bill, which otherwise confers important new powers on our police to investigate terrorism offences. The bill should not have been used as a vehicle to seek some kind of parliamentary approval of the government’s attitude towards the treatment of Australian citizens at Guantanamo Bay—that is clear.

In reaching our decision and in going through the arguments very carefully, we came to a position where there were safeguards remaining in the Proceeds of Crime Act. Those safeguards, as I said in the second reading debate and during the committee stage, remain relevant. They include a civil burden remaining on the prosecution to prove, on the basis of evidence, that the person committed a terrorist offence. In the cases of Mr Hicks and Mr Habib, the court is certainly not obliged to recognise any conviction by a Guantanamo Bay military commission. They should not be treated lightly, though, because of the rule of law and the ability of the court rather than the executive or the government to arbitrate and decide these matters. Indeed, you would have to say a person could mount an argument about the whole issue itself as put forward. It is one of those matters where there is no need to go into the argument itself.

Senator Brown went to the DPP and was taken to the Proceeds of Crimes Act. The Proceeds of Crimes Act is perhaps a different side of the same debate. On the side that I come from, there are matters that the court as final decision maker—not the government, not the executive—can take into account. There are a range of factors in determining whether to make an order. These are applied evenly and fairly by the judiciary, independent of government. The factors are, as we have said: the nature and purpose of the product or activity from which the proceeds were derived, whether supplying the product or carrying out the activity was in the public interest, and the social, cultural or educational value of the product or activity. The safeguards then are the processes that we rely on in every instance—the courts, the ability of the Australian Federal Police to act independently of government, the ability of the DPP to act independently of government and the guidelines that they work under. We have had the ability on many a time during estimates to question the DPP about their independence and the AFP’s independence from government.
In summary, Labor record our opposition to these two provisions and we restate our commitment to repealing them. However, as Labor support the other measures in the bill, in particular the new investigative powers for our police, we will be facilitating its passage. I think it was important to go through this difficult area carefully to ensure that we maintain—although these two amendments were not accepted—that there are safeguards within the act, but we think the government should be held up to the light where they have failed to address the issue in a proper way. *(Time expired)*

**Senator GREIG** *(Western Australia)* *(1.17 p.m.)*—The amendments which the House of Representatives have rejected relate to the Proceeds of Crime Act and, in particular, to those provisions which prevent a person from obtaining literary proceeds in relation to an indictable offence. The bill introduced by the government sought to clarify that an order could be made for the forfeiture of literary proceeds under this bill if a person had gained notoriety directly or indirectly from the commission of an indictable offence. The bill introduced by the government sought to clarify that an order could be made for the forfeiture of literary proceeds under this bill if a person had gained notoriety directly or indirectly from the commission of an indictable offence. The government explained that notoriety could be gained indirectly if, for example, a person had gained notoriety as the result of the place of his or her detention as opposed to the actual commission of an offence. Amendment *(9)* made by the Senate sought to remove this so that notoriety would have been derived directly from the commission of an offence. The House of Representatives has not accepted that.

The bill also expressly provided that an offence triable by a United States military commission was to be considered a foreign indictable offence. This meant that a person would not be able to derive literary proceeds from notoriety gained directly or indirectly from being charged with an offence triable by US military commission. Amendment *(10)* sought to remove this provision and, therefore, remove the legislative recognition of US military commissions. Again, the House of Representatives has not accepted that.

Clearly the government’s intention in including each of these provisions in the bill was to specifically ensure that neither Mr David Hicks nor Mr Mamdouh Habib could derive any literary proceeds from any publication detailing their detention at Guantanamo Bay. The provisions are very specific. Proposed section 337A(3) states that an offence against a law of a foreign country includes an offence triable by a military commission established pursuant to President Bush’s Military Order of 13 November 2001. In fact this provision is so specifically aimed at Mr Hicks and Mr Habib that Professor George Williams and Mr Michael Bolton have argued that the bill has some of the features of a bill of attainder. In evidence before the Senate’s Legal and Constitutional Legislation Committee, Professor Williams stated:

> It is just so specific in its targeting that it suggests itself as a law that ought not be passed because of the way it is directed at two individuals as opposed to dealing with the general problem.

The committee noted in its report that it had received many submissions criticising this provision on the basis that it would:

> ... impliedly endorse and legitimise US military commissions in Australian law.

The US military commissions to be established under President Bush’s order have been internationally and rightly criticised on the basis that they will lack procedural fairness and other safeguards and would therefore violate the right of detainees to a fair trial. Professor Williams described these commissions as ‘essentially an executive or non-judicial process which should not be recognised on the basis of the separation of powers’. All of this evidence led the commit-
tee, which had a government majority and was chaired by the government, to recommend that the express reference to US military commissions and the provision regarding indirect notoriety should be removed from the bill.

In making these amendments, the Senate was simply implementing the recommendations of that committee. However, the government majority in the House of Representatives has now gone against those recommendations and rejected them. What is more difficult to understand, however, is that Labor is now agreeing with that and will not be insisting upon them. Up until this week, the Labor Party had consistently expressed its strong opposition to the detention of Mr Hicks and Mr Habib at Guantanamo Bay and the proposed military commissions in which they will face trial.

On 10 July last year, the Labor spokesperson on homeland security, Mr McClelland, published an opinion piece in the Melbourne Age entitled ‘Hicks’ trial will not be justice as we know it’. In that piece Mr McClelland provided a comprehensive analysis of the myriad flaws associated with the military commission process. During that same week, Mr McClelland issued a press release arguing:

The Howard Government is devaluing our citizenship with its support for the trial of David Hicks by a US military commission. The limited protections announced by the US Government cannot disguise how alien the practices of military commissions are to Australians expectations of a fair trial under our own criminal justice system. The processes are chalk and cheese.

It is these practices that the opposition is recognising today. In Mr McClelland’s own words, Labor’s failures to insist on these amendments will devalue our citizenship. But in this week of significant backflips by Labor perhaps this is not surprising. What we are seeing today is just one more backflip after another.

We Democrats have always expressed the strongest condemnation of the regime at Guantanamo Bay and the proposed military commissions. Unlike Labor, we will maintain our strong opposition to that regime and will adhere to the recommendations of the Senate committee on these provisions. We Democrats insist on amendments (9) and (10) and we express our profound disappointment that Labor has chosen to abandon its earlier opposition to US military commissions. Sadly, Australian law will now expressly recognise and give legitimacy to those commissions despite the fact that they have been rightly condemned by many countries around the world. We Democrats insist on these amendments.

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

The committee divided. [1.28 p.m.]

(The Temporary Chairman—Senator J.E. McLucas)

Ayes…………. 44
Noes…………. 9
Majority…….. 35

AYES

Barnett, G. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Campbell, I.G.
Carr, K.J. Cook, P.F.S.
Coonan, H.L. Crossin, P.M.
Eggleston, A. * Elliston, C.M.
Evans, C.V. Faulkner, J.P.
Ferris, J.M. Fifield, M.P.
Forshaw, M.G. Heffernan, W.
Hogg, J.J. Humphries, G.
Johnston, D. Kemp, C.R.
Kirk, L. Lightfoot, P.R.
Ludwig, J.W. Macdonald, I.
Macdonald, J.A.L. Marshall, G.
Mason, B.J. McGauran, J.J.J.
Senator MARK BISHOP (Western Australia) (1.32 p.m.)—I rise to speak on the Customs Legislation Amendment (Airport, Port and Cargo Security) Bill 2004. The opposition supports this bill which, in general terms, seeks to increase the powers of Customs officers in connection with security and with respect to people, vessels, ports and manifests. The purpose of the bill is to amend the Customs Act 1901. It also amends certain provisions of the Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001, pending its operation.

Schedule 1 provides authority to Customs officers to detain and search persons in customs areas suspected of committing a serious Commonwealth offence. It provides authority to Customs officers to detain and search persons, subject to warrant or bail conditions, relating to a Commonwealth offence. As part of that process it requires the provision of identification and reasons for detention if requested. It also provides authority and guidance to Customs officers in the use of force in relation to detention. Further, it allows the Chief Executive Officer of the Australian Customs Service to give directions about detaining persons. This includes the movement of detained persons and the steps taken to ensure that a competent interpreter is available if necessary.

This schedule adds the ability to detain persons suspected of committing a Commonwealth offence to the detention powers already held by Customs officers pursuant to the Customs Act 1901. Given the changed security circumstances that Australia is now experiencing, capabilities such as these should rightly have been legislated some years ago. Until now, persons who have committed or are suspected of committing Commonwealth offences or of breaching their bail conditions had the ability to simply walk away from Customs officers and potentially, of course, out of the country. That is nonsensical; hence this amendment.

Through this bill Customs officers in customs places will not have to send for the police. That is not to say, though, that Customs officers take on the powers of the police; they certainly do not. This is about the power of detention and identification only. Then it becomes a police matter. Hence, schedule 2 provides authority to Customs officers to question persons found in restricted areas in relation to the person’s name, the person’s reason for being in the area and evidence of the person’s identity.

This example is symptomatic of a larger problem. Within Australia’s border control regime, there are a number of separate but overlapping jurisdictions. That they appear to work is fine, but this amendment really begs the question: why do we have any demarcations at all? One can only imagine how many other senseless demarcations there are be-
 tween agencies, which divide the security effort rather than unify it.

Schedule 3 deals with a different set of issues. It sets out the timing and reporting requirements for ships or aircraft due to depart Australia. This provision, it must be said, does fill a serious gap. Clearly, Customs believes that its powers and its access to information are limited. This is certainly the case in remote areas where there may well be only a token Customs presence. In some areas, of course, there may not even be a police presence and certainly not an Immigration presence. This bill is a further confession that there is currently a very limited or restricted ability to reconcile freight and passenger movements away from the main ports of entry.

The real question, therefore, is whether this bill goes far enough. How, for example, does Customs—or Immigration, for that matter—reconcile passengers and crew of a cruise ship stopping at a Queensland port between Brisbane and Townsville or Cairns? Obviously, to date Customs has had little means or ability at all. This bill may partly fill the gap, but it does beg a range of complementary questions. Schedule 3 also sets out the penalties for failure to report, the methodology, and electronic and other approved formats for report submission. By this the CEO of Customs will have the right to approve different statements or forms. In addition, schedule 3 provides Customs officers with the authority to ask questions of operators with regard to departing persons and specifies a penalty should the person fail to answer the questions.

We can all rest safe in our beds knowing that at least now Customs will have some forms to fill out. This is more of the same empty process of paper cathedrals substituting for real security. The government can say: ‘We’ve put these processes in place. We’ve done the right thing, and there’s an end to it.’ What we do not know is how that paper process will be managed over time. Who will check? What reconciliation manifests will there be? Who will be accountable if people and illegal goods so easily slip through the gaps?

Schedule 4 allows Customs officers to stop a conveyance within a Customs area and check to establish that there is appropriate documentation relating to the goods being conveyed in a Customs place. At present this authority only exists with goods about to leave a Customs place. It also sets out that it will be an offence not to stop a conveyance if requested to do so by a Customs officer. This is groundbreaking reform, I must say. One must ask how often this has been a problem and why the power has been so narrowly cast. More to the point, why had the problem not been addressed earlier? How many other holes are there in the law enforcement regime on the waterfront simply because the literal wording of the law is so narrow?

Schedule 5 allows the Chief Executive Officer of Customs, in deciding whether to appoint a port for the purposes of the Customs Act, to take into account whether the port is a security regulated port within the meaning of the Maritime Transport Security Act 2003. Also to be taken into account is whether the person designated as the port operator under the Maritime Transport Security Act 2003 has a maritime security plan. The intent here is to harmonise the process between Customs and transport agencies and effectively respond to the heightened security requirements of the International Ship and Port Facility Security Code, which will come into effect on 1 July this year.

This change is designed to fill another gap—and we can only imagine how many more will come to light—between the Customs regime at Australia’s ports and the new
maritime transport regime. It has never been clear who does what or how powers are to be shared between these bureaucracies. A proper view of security management would tell blind Freddy that a regime involving more than one authority and jurisdiction over port security is bound to be full of holes. The answer for Sir Humphrey is lots of coordination committees, lots of meetings, piles of paper and lots of reassurances that everything is covered. When will we ever learn?

Schedule 6 specifies the reporting requirements in relation to the impending arrival of cargo, passengers and crew, either by ship or by aircraft. This relates predominantly to the provisions of the Customs Act, which are pending the operation of the Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001. In short, this amendment is necessary simply because the ITM act, now over two years old, is still not operational. This is ad hoc legislation at its worst. It is simply a confession that all this time Customs has not had the powers required to get the information it needs. It is a confession that all this time there has been a hole in the security system because the ITM act still sits on the shelf—stillborn, so to speak. It is caused simply by the inability of Customs to implement its cargo management re-engineering project, as provided in the ITM act. So this is belt-and-braces legislation to fill a gap in the powers of Customs.

The bottom line is that the government has failed to appropriately cater for a changing—and changed—security environment at Australia’s air and sea borders. Furthermore, we have no idea when this act is intended to become operational. The CMR project is currently two years behind schedule and in excess of $100 million over budget. Indeed, many of the amendments put forward in this bill should be made to the ITM act. Overall, this bill has all the hallmarks of a bandaid measure. It is stopgap stuff. Moreover, it is typical of the government’s response to border security.

In that same context, I remind those listening that, in the face of all this posturing on border security, little is being done. For example, the government’s target for X-raying inbound loaded containers is only 80,000 per year. That is less than five per cent. The US equivalent is almost 12 per cent. Few, if any, empty containers are checked, and it was only a matter of chance last week that a repairer found one with a false floor full of drugs. X-raying would have found that in a trice. Full ship inspections continue to be the exception rather than the rule. I do not mean a rummage search just looking under pillows; I mean a full ship search. They barely happen. We have long known about stowaways and crew jumping ship, never to be seen again. Customs say that this is not their problem—another senseless demarcation.

As we also know, Customs is broke and has been cutting staff to pay for its new computer system. As I said, more than $100 million has now been overspent. Is it any wonder that there are no staff to inspect ships or their crew? Staff shortages at regional ports are an issue for the same reason. Indeed, one of the purposes of this bill is to give Customs officers the powers of others in regional areas because those security resources do not exist. In the same vein, rosters at airports continue to operate at minimum levels. This is why the Department of Finance and Administration went into Customs to review its entire budget. Until that is complete we cannot expect Customs to function in a manner which allows for the full carrying out of its legislated responsibilities. That is why we continue to be presented with these bandaid solutions.

No doubt in time there will be more as the gaps are identified and many of the long-
standing holes in our security administration are similarly identified. One can only have an impression that the government’s security efforts are properly characterised as a public relations stunt. Clearly, what this bill admits is that there are serious shortcomings in Customs’ powers, and they have not arisen overnight—they have been there a long time. Labor will fix this problem of gaps in powers and conflicting, non-complementary legislation. We will bring a national view to homeland security. That is why this bill, in the current times, is a confession.

In conclusion, this bill is simply part of this government’s lacklustre response to border security. These amendments are ad hoc. They simply plug some gaps, and there are plenty more yet to be filled. We support this bill, but under protest. This is not the approach we on this side would have taken. We think it preferable to bring unity and single purpose to this security jurisdiction. We would have officers who were not just multi-skilled but had multi-authority. There would be no demarcation issues between Customs, Transport and Immigration. Legislation like this would not be necessary.

Senator MURRAY (Western Australia)
(1.46 p.m.)—The Customs Legislation Amendment (Airport, Port and Cargo Security) Bill 2004 deals with a number of matters relating to the Customs Act. Schedule 1 inserts provisions extending the powers of Customs officers to arrest people who commit or are suspected of committing a serious Commonwealth offence. Schedule 2 allows Customs officers to question people in certain places. Schedule 4 allows them to stop vehicles, vessels, rolling stock or aircraft for the purposes of law enforcement. Schedule 3 extends obligations and requirements for operators of aircraft or vessels to report the details of passengers to Customs. Schedule 5 provides criteria which may be considered by the Chief Executive Officer of Customs when determining a port for the purposes of the Act. Schedule 6 extends reporting deadlines in relation to the international trade modernisation program. I want to record that I share some of the sentiments expressed by Senator Bishop concerning the international trade modernisation program. We have previously pronounced on this and expressed our views. It remains an area of concern due to its implementation.

For the most part, the Democrats do not have a problem with the bulk of this bill. In some parts the bill is administrative and in others it explicitly extends powers to Customs officers in order to enable them to conduct the work of the Customs service. The Democrats will, however, be amending the bill in the committee stage to address a number of concerns we have. As it currently stands, the bill does confer new powers on Customs officers to detain people suspected of committing serious Commonwealth crimes without, in our view, also providing adequate safeguards to ensure that people’s rights are sufficiently protected.

In recent months, the parliament has dealt with a number of very important pieces of legislation which have broadened the powers of law enforcement authorities to investigate, detain, question and prosecute citizens while at the same time watering down the rights of citizens to legal representation, communication with other people and privacy. The Democrats have had grave concerns with these pieces of legislation and this is another example about which we wish to express our concern. While the Democrats recognise the need for Customs officers to have the legal right to detain people who are suspected of serious crimes, who may have skipped bail or for whom an arrest warrant has been issued, we do not believe that people so detained should have diminished rights compared to those of other citizens in similar circumstances.
Under the legislation as it currently stands it is possible for Customs to detain suspects for unspecified periods of time without rights to communicate with other people. We cannot accept the argument that such provisions are necessary in order to protect national security—that a person who is suspected of a crime can be held at an airport for an unspecified period without reasonable communication with relatives while waiting for police to arrive. As Senator Bishop indicated, that is a particular concern when you are out in the country or in remote and regional areas. Although the legislation does provide that a detained person must be handed over to the police as soon as practicable, this could take much longer than one would expect. We accept that if a person is detained at a major airport it might not take too long.

However, there is the possibility that a person may be detained in a regional or remote place with few police available or that the police may have other urgent matters to attend to and decide that because Customs are legally able to detain the suspect they will not travel to take custody of the person immediately and will deal with a more urgent matter or with a matter that they consider is more urgent. The possibility therefore remains that the person may be detained for a considerable period of time. While the minister will argue that this legislation is intended to apply to people suspected of committing terrorist offences and that these measures are temporary until the person is delivered into police custody, it is important to remember the principle that suspects are innocent until proven guilty.

Furthermore, and very importantly, we must remember that these additional powers do not only apply to people suspected of terrorist offences but may also apply to people suspected of other serious offences. These other serious offences include such things as theft, tax evasion, bankruptcy and company violations, misuse of a computer or electronic communications, and fraud. There are other offences to which these powers apply. The list is broad, but for most of these crimes it can hardly be argued that national security would be compromised if a detained person who is a suspect was denied communication with a family member or other person. This is not to say that a person suspected of terrorist offences should be afforded fewer rights than anybody else but to illustrate the point that, while the government intends these types of laws to apply to terrorist suspects, people suspected of other crimes will get caught up in this security crackdown as well.

The Democrats will be seeking to redress some of these concerns which we have with the legislation as it is before us. We are concerned that the bill does not provide additional provisions for dealing with minors who may be detained under these provisions. We are concerned that, while there are provisions for dealing with minors once they are transferred into police custody, it is possible that minors will be held for some time at Customs, at an airport, port or, in theory, even a warehouse without the parent or a relative being notified.

Under provisions in the bill, it is highly likely that a person under the age of 18 may be detained on suspicion of a non-violent crime—for example, programming computer viruses—and subjected to a search without the presence of a parent or other adult able to represent the interests of the young person, and this search may take place in a public area as opposed to a private place. It is also possible that the young person could be held for several hours while the parents waiting to meet the young person at an airport at the other end await notification. We believe that this would be wrong. Therefore we are moving amendments which we hope will be able to address these concerns of ours to a significant extent.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.52 p.m.)—I thank senators for their contributions to the debate on the Customs Legislation Amendment (Airport, Port and Cargo Security) Bill 2004. The urgency of the measures contained in this bill was identified during the recent Mercury 04 counter-terrorism operation across Australia and as a result of the government’s recent maritime security review. Security is ever changing, and the measures we put in place have to meet emerging threats. It is not something that you remain stagnant on; it is something you have to respond to on a daily basis. The legislation which provides for the protection of Australia has to meet those emerging challenges. It is appropriate, therefore, that we respond to those areas that need to be addressed, and that is precisely what this bill does.

The Mercury 04 exercise gave rise to the fact that Customs did not have the necessary power to detain a suspected terrorist at the border following a terrorist attack. Previously, we amended this legislation to allow the Australian Protective Service, which has a counter-terrorism first response role, to have those same powers. It is appropriate that Customs have those as well. The maritime security review also highlighted the importance of early notification of the impending arrival of cargo so that any potential threats to national security can be identified before arrival. We have in place extensive measures in relation to the import and export of cargo. Recently I met with sectors of business in relation to our cargo management re-engineering program, and I am satisfied that we are progressing that to a point where we will see one of the greatest changes in the history of Customs effected in this country—that is, the streamlining of the export and import of cargo while maintaining the stringency of security that is needed.

The Customs Legislation Amendment (Airport, Port and Cargo Security) Bill 2004 improves Customs’ ability to deal with persons who have committed or are committing offences and are seeking to enter or depart Australia. It also improves Customs’ control of goods and of people in Customs areas. It broadens reporting requirements for certain vessels, aircraft, passengers and crew, and it strengthens the appointment of ports under the Customs Act. This bill includes a range of provisions designed to increase security at the border. The amendments contained in this bill will enable Customs officers to detain a person arriving in or departing Australia, where the Customs officer suspects on reasonable grounds they have committed or are committing a serious Commonwealth offence or an offence against a prescribed law of a state or territory.

A ‘serious Commonwealth offence’ is defined in section 15HB of the Crimes Act and involves offences which are punishable by more than three years imprisonment. There is also provision for the relevant state and territory offences. As well as that, the bill provides for a Customs officer to apprehend someone who is on a Commonwealth warrant or a prescribed warrant for a state or territory offence, as may be in existence for that person’s arrest. It also provides for the detention of a person who is on bail subject to a condition that they not leave Australia and that the bail relates to a Commonwealth offence or a prescribed state or territory offence.

These are reasonable and sensible amendments which give Customs the power they need to carry out their very important role in looking out for Australia. In each of these circumstances, there is a requirement for the Customs officer to notify and transfer a person detained under this amendment as soon as practicable to a police officer. The provisions of this division are entirely con-
sistent with the provisions of the Australian Protective Service Amendment Act 2003, which I mentioned earlier. The bill will also enable a Customs officer to question a person in a Customs controlled area about their purpose for being in the area and to check that the movement of goods in a Customs place is authorised. The bill will enable Customs to conduct all necessary checks prior to a ship or aircraft leaving Australia by requiring certain aircraft and vessel operators to provide information about departing passengers and crew at specified times prior to departure.

This bill will also allow the Chief Executive Officer of Customs to take into account port security plans prepared under the Maritime Transport Security Act in deciding whether or not to appoint a seaport for the purposes of the Customs Act. Further, this bill introduces all ports cargo reporting, whereby reporters will be required to provide advanced details of cargo before a vessel or aircraft reaches our shores. This will enable Customs to properly assess the risk of a cargo prior to its arrival in Australia rather than on a port-by-port basis, as is the current practice. The need for this provision was identified in the recent maritime security review conducted by the government. Finally, the bill provides for the timing requirements of impending arrival, cargo, crew and passenger reports for ships on their way to their first port in Australia to be prescribed by regulation. This bill recognises the importance of border security to Australia’s overall national security, and the proposed amendments will assist Customs in enhancing this security.

The Democrats have foreshadowed eight amendments in total. The government has indicated that it will be agreeing to five of those amendments. However, it will not be able to agree to the remaining three. There have been negotiations, as I understand it, between the opposition, the government and the Democrats on these amendments and I believe that the five amendments I just mentioned achieve a sensible balance between the provisions we need for security and the rights of the individual.

In closing, we have seen unprecedented measures in relation to Customs activity at the border in the protection of Australia. Since this government came to power, we have seen an increase in funding of Customs to the tune of just under 70 per cent in real terms. We have seen for the first time four permanent container examination facilities at the ports of Brisbane, Sydney, Melbourne and Fremantle, which account for over 90 per cent of the containers entering the sea ports of this country. That is world’s best practice. These facilities have increased by 20 times the number of containers that we can X-ray and, of course, we risk assess all containers coming into this country.

The opposition have said on previous occasions, and I note that others in the private sector have also said it, that it is certainly not reasonable to X-ray every container coming into this country—there are about 1.6 million containers—and that to do so would bring commerce in this country to a halt. What you have to do is conduct your activities on a risk assessment basis. However, we do examine 100 per cent of incoming mail through Australia Post and 70 per cent of air cargo. Over 95 per cent of passenger baggage is screened.

I bring to the Senate’s attention a very interesting factor in relation to this issue. The mass screening of passenger baggage at Australian airports—approximately 90 per cent of bags have a form of intervention such as X-ray, detector dog and/or baggage inspection—produces only five per cent of Customs drug detections. Ninety-five per cent of drug detections come from intelligence, risk analysis and intervention of only five per
cent of passengers. That means that risk assessment, intelligence led policing and security are the way of the modern world. We get more drug busts out of intelligence led border protection and risk assessment than we do out of blanket assessment.

The facts are there: 95 per cent of drug detections come from risk assessment and intelligence. Only five per cent come from mass screenings. It makes commonsense to base your targeting on intelligence received and to have good risk assessment strategies in place. We have the Australian Federal Police working hand in hand with the Australian Customs Service. I also acknowledge the great cooperation that we get from the state and territory police across Australia.

We protect Australia’s borders by working overseas with our personnel, by working at the border with our personnel and by working domestically with Commonwealth, state and territory police. We have seen the evidence of that not only in relation to the number and amount of drug seizures but also in relation to the seizures of other illicit imports. We also announced in the recent budget an increase in first port boarding of vessels. We will raise port boarding from 70 per cent to 80 per cent of ships that are visiting Australia for the first time. These are outstanding measures which this country has never seen before. We will continue to look out for Australia’s interests at the border and we will continue to expand not only the resources and the professionalism of our Customs Service but also the technology and the legislation as required—and that is precisely what we are doing with this bill today. I commend the bill to the Senate. It is clearly a bill which is in the national interest of this country.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (2.03 p.m.)—by leave—I move amendments (1) and (2) on sheet 4334:

(1) Schedule 1, item 1, page 7 (after line 26), at the end of section 219ZJB, add:

(5) Subject to subsection (7), if a person is detained under this section for a period of greater than 45 minutes, an officer who is detaining the person under this section must inform the person of the right of the person to have a family member or another person notified of the person’s detention.

(6) Where a person detained under this section wishes to have a family member or another person notified of the person’s detention, the officer must take all reasonable steps to notify the family member or another person.

(7) An officer who is detaining the person under this section may refuse to notify a family member or another person of the person’s detention if the officer believes on reasonable grounds that such notification should not be made in order to:

(a) safeguard the processes of law enforcement; or

(b) protect the life and safety of any person.

(2) Schedule 1, item 1, page 8 (after line 12), at the end of section 219ZJC, add:

(4) Subject to subsection (6), if a person is detained under this section for a period of greater than 45 minutes, an officer who is detaining the person under this section must inform the person of the right of the person to have a family member or another person notified of the person’s detention.

(5) Where a person detained under this section wishes to have a family member or another person notified of the person’s detention, the officer must
take all reasonable steps to notify the family member or another person.

(6) An officer who is detaining the person under this section may refuse to notify a family member or another person of the person’s detention if the officer believes on reasonable grounds that such notification should not be made in order to:

(a) safeguard the processes of law enforcement; or
(b) protect the life and safety of any person.

These amendments introduce the right of detained people to have a friend or relative contacted by a Customs officer if the time of detention is longer than 45 minutes. We felt that it would be unreasonable for a travelling passenger to be detained without the right to have a friend or family member notified. We felt that, if the person is detained in an airport, the detained person is likely to have failed to board their flight if detained for much longer than 45 minutes. We think it reasonable for this right of notification to be inserted.

This negotiated amendment is not quite as strong as we would like. We feel that this may result in an unnecessary delay of 45 minutes before a detained person’s friend or relative is contacted, but we are pleased that the government has agreed to accept it in its current form. There is the danger, of course, that in remote or regional airports there will not be another flight for a day or more—so this is an issue. Under paragraph (2)(c) a Customs officer reserves the right to deny a right to communicate if they believe that it is necessary to do so in order to safeguard the process of law enforcement or to protect the life and safety of any person. We accept that.

Senator MARK BISHOP (Western Australia) (2.05 p.m.)—Democrat amendments (1) and (2), which concern a detained person’s right to contact, provide that, where a person is detained by a Customs officer, the officer will communicate with another person on behalf of the detainee if the period of detention is to be longer than 45 minutes. With respect to communications with another person, Customs’ advice to the opposition is that in some circumstances—for example, where a person is suspected of a serious crime—that may not always be appropriate. This scenario is provided for in amendment (1), subparagraphs (7)(a) and (b), and in amendment (2), subparagraphs (6)(i) and (ii). However, we can also envisage circumstances where such a facility is quite reasonable. The obvious case in point would be circumstances of simple advice to family members concerning delay. The opposition have no problems with these amendments.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.07 p.m.)—For the record, the government agree to Democrat amendments (1) and (2). Although a person who is detained under these provisions is neither under arrest nor a protected suspect within the definition of the Crimes Act, the government will agree to a relative or friend being notified of the person’s detention if the period exceeds 45 minutes. Importantly, there are protections that will allow a Customs officer to prevent another person being notified if, on reasonable grounds, they believe that the notification should not occur to safeguard the process of law or law enforcement or to protect the life and safety of any person. This has been the subject of negotiation with the Democrats. We believe it achieves a balance. It is not as strong as the government would have liked, but I believe that this does achieve a workable balance and indicates that we are totally committed to security whilst also looking to the rights and freedoms of all Australians.

Question agreed to.
Senator MURRAY (Western Australia) (2.08 p.m.)—I thank the minister and the shadow minister for their support for those amendments. I move:

(3) Schedule 1, item 1, page 9 (line 12), omit, “may”, substitute, “must”.

Question agreed to.

Senator MURRAY (Western Australia) (2.09 p.m.)—by leave—I move:

(4) Schedule 1, item 1, page 9 (line 15), omit, “may” substitute, “must”.

(5) Schedule 1, item 1, page 10 (after line 32), at the end of Subdivision C, add:

219ZJJ Detention of Minors

(1) Subject to subsection (2), an officer who under this Division detains a person who is known or believed to be a minor must:

(a) inform the minor of the right for a parent or guardian or person described in paragraph (c) to be notified of the minor’s detention; and

(b) upon the request of the minor, take all reasonable steps to notify such person and inform them of:

(i) the fact that the minor has been detained; and

(ii) the place in which the minor is being held; and

(iii) the place to which the minor is to be transferred by police, if that place is known at the time of contacting the minor’s parent or guardian; and

(iv) the reason for the minor’s detention; and

(c) if a parent or guardian is not acceptable to the detained minor under this subsection, the detained minor may request that another person who is capable of representing the interests of the minor be notified.

(2) An officer who under this Division detains a person who is known or believed to be a minor may refuse to notify a parent or guardian or person described in paragraph (1)(c) of the person’s detention if the officer believes on reasonable grounds that such notification should not be made in order to:

(a) safeguard the processes of law enforcement; or

(b) protect the life and safety of any person.

(3) If at the time of notifying the parent or guardian, the officer is not aware of the place referred to in subparagraph (1)(b)(iii), the officer must:

(a) contact the parent or guardian or other person described in paragraph (1)(c) immediately after that place becomes known to the officer; and

(b) inform the parent or guardian of that place.

(4) An officer who under this Division detains a person who is known or believed to be a minor must, at the time of advising a police officer of the minor’s detention in accordance with subsection 219ZJB(2) or 219ZJC(2), advise the police officer of the fact that the detained person is a minor, or is believed to be a minor.

(5) For the purposes of this section, a minor is considered to be any person under the age of 18 years.

Mr Chairman, amendment (5) in particular is fairly extensive and indicates an amendment response to the remarks I made in the second reading debate. In there, I covered the dangers of persons under 18 years of age who, traditionally in law, we would describe as needing additional legal protection. We therefore seek the approval of the Senate for amendments (4) and (5) to proceed and to amend the act.
Senator MARK BISHOP (Western Australia) (2.10 p.m.)—I will put a couple of comments on the record, because the arrangement of sheet 4334 is a little different from the advice I received from my office. I say at the outset that amendment (3), which we have passed, and amendments (4) and (5) were agreed between the government, the opposition and the Democrats. Amendment (3) dealt with the detection of minors, and the opposition supported it.

Amendments (4) and (5) are headlined ‘Chief executive officer directions about detaining persons’, although when I look at the drafting of amendment (5) it refers to the detention of minors. However, in respect of amendments (4) and (5), ‘Chief executive officer directions about detaining persons’, my understanding is that the Democrats propose that the word ‘may’ be substituted for the word ‘must’. The opposition accepts that there may be some wisdom in requiring the chief executive officer of Customs to provide more detailed directions beyond the provisions of the bill—that is, the chief executive officer is being directed to draft regulations concerning the powers, responsibilities and conduct of officers as they go about their business of detaining persons. The opposition does support that direction being made mandatory.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.12 p.m.)—Mr Chairman, I think Senator Bishop and I have the same sheet, which is a different one from Senator Murray’s.

The CHAIRMAN—It is not the same song sheet as yours, Senator Murray.

Senator ELLISON—The result is the same, which is fantastic, and that is the main thing. We have no problem with the amendments. We support them.

Question agreed to.

Senator MURRAY (Western Australia) (2.12 p.m.)—I again thank the minister and the shadow minister for their support for what are sensible adjustments to the bill. I seek leave to move the final three amendments on sheet 4334 together.

Leave granted.

Senator MURRAY—I move:

(6) Schedule 3, item 1, page 14 (lines 15 and 16), omit subsection 106B(4) and the note.

(7) Schedule 3, item 1, page 15 (lines 7 and 8), omit subsection 106C(4) and the note.

(8) Schedule 3, item 1, page 15 (lines 29 and 30), omit subsection 106D(4) and the note.

These amendments remove strict liability from operators of vessels and aircraft who do not provide Customs with information about passengers, as required by the act. These amendments shift the onus of proof onto the government to prove that the operator knowingly neglected to provide Customs with this information. Both the minister and the shadow minister have been present in many debates we have had about strict liability, so I certainly do not need to explain it to either of them.

Senator MARK BISHOP (Western Australia) (2.13 p.m.)—Democrat amendments (6), (7) and (8) seek to remove a number of provisions imposing strict liability with regard to reports to be provided on the departure of ships and aircraft. The issue of strict liability in the Customs Act, indeed in its operation by its officers, has been a controversial one in recent years. I think it is fair to say that, in a number of criminal issues of late, it has become a more accepted standard. It is particularly the case where national security is involved and where the facts of omission or commission are fairly obvious.

The opposition has given this some thought. I recall a number of briefings I received from the department and a number of discussions at estimates hearings over the
last 18 months on the issue of the responsibilities of the senior officers on ships or aircraft seeking to enter or depart from Australian ports and the provisions of details of manifest, details of crew and details of passengers having to be provided to the land based operators. It strikes me that, in the current environment there should not be any excuse or circumstance whereby those details should not be provided by the responsible officers of the aircraft or ships both prior to entering the country and certainly on departure to airports and ports elsewhere. I put that proposition on the basis of the changed security environment.

It is clear that there are a range of security activities occurring in this country and in countries nearby. It is not unreasonable that the ship’s captain should provide that detail. It is most unreasonable that he choose not to, in my view, or have an excuse or reason for not doing so. It would be particularly bad if he failed to do so through omission or through neglect and some harmful act or activity occurred on our soil or on the soil of another country once this ship or aircraft had departed this country. Quite often there are useful discussions to be had in the case of civil liberties, and we have one of those over the last 24 hours in relation to detaining adults and juniors as they enter this country. But it seems to me, given the security precautions that have been established in more recent years by the current government—nearly all of which have been endorsed by the parliament after discussion in this place and the other place, with, from memory, none of those legislative changes being opposed to any great extent by the opposition or the minor parties—that it would be a retrograde step to allow any reason for ships’ captains not to provide details of manifest, crew and passengers well prior to arrival in or departure from this country. Under those circumstances, Labor is not persuaded in any way that the test of strict liability should be removed.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.17 p.m.)—The government do not support these amendments. I indicated earlier that we could go as far as five of Senator Murray’s eight amendments but not all of them. This deals with the issue of strict liability. I remind the Senate that strict liability is a mode of criminal responsibility defined by the absence of any requirement of fault coupled with the availability of the defence of any reasonable mistake of fact in addition to general defences. So it does not rule out the defences available under the Commonwealth Criminal Code. I also point out that strict liability does come within Commonwealth law enforcement policy in certain areas where you have regulation. In this particular case we are dealing with an area of regulation which is essential for the functions of Customs—that is, the bill provides that, between 48 hours and 72 hours before a ship or aircraft departs, the operator must advise Customs as to the people who are expected on board. It is not just an aspect that is peculiar to legislation relating to Customs; it can be found in many other pieces of legislation across the board. I appreciate the Democrats have a view in relation to strict liability generally. We as a government believe that it has an essential role to play, and like the opposition we will not be supporting these amendments for those reasons.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.
Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.20 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.20 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 8 (Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004).

Question agreed to.

(Quorum formed)

ELECTORAL AND REFERENDUM AMENDMENT (ENROLMENT INTEGRITY AND OTHER MEASURES) BILL 2004

Second Reading

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

That this bill be now read a second time.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (2.23 p.m.)—In proposing legislation to reform electoral laws, the government has adopted its previous practice of placing its uncontroversial electoral law measures in one bill and more controversial matters in a second bill. Labor supported the uncontroversial Electoral and Referendum Amendment (Access to Electoral Roll and Other Measures) Bill 2004. However, the bill we are debating now, the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004, is of a very different character. It is very controversial. It provides for the disenfranchising of many young Australians by closing the electoral roll as soon as an election is called; a bureaucratic and unmanageable electoral enrolment regime, which will confuse people and will not deter fraud; the hiding of many political donations by raising the disclosure threshold for political donations from $1,500 to $3,000; the complete removal of voting rights for prisoners; and a number of other measures which will make it harder for disadvantaged people to exercise their democratic right to vote.

Before I deal with these matters, it is worth noting that they have all been debated at least twice before by the parliament, in 1998 and 2001. None of these measures is supported by the Australian Electoral Commission nor are any of them supported by the Joint Standing Committee on Electoral Matters. In fact, most of the measures are unanimously opposed by the Joint Standing Committee on Electoral Matters. The opposition wonder why the government would bother proposing such measures as raising the threshold for disclosure of donations or closing the electoral roll when the election is called. On their face, both measures are patently undemocratic and serve no purpose other than to throw a few bones to a minuscule conservative or neoconservative cheer squad of the Special Minister of State, Senator Abetz. It has left the opposition wondering just how tired and completely lacking in creativity the minister and his office must be. Sadly, but not surprisingly, this bill and its companion, the access bill, represent the sum total of the government’s agenda on electoral law. The bills represent more of a clearing of the minister’s in-tray before the election than a coherent policy statement on electoral law reform.

There can be no doubt that closure of the roll as soon as an election is called would be to the detriment of the franchise. When Mal-
colm Fraser closed the roll without notice in 1983 it was estimated that over 150,000 people were disenfranchised or had to vote in the wrong electorate. The Fraser government’s action caused a public outcry and was widely condemned, and rightly so. Prior to 1983 the electoral roll closed when the writs were issued, but the election date was announced well before the writs were issued. This meant at least a week and sometimes—as occurred in 1958, 1961 and 1969—more than a month’s notice for the closure of the roll. The AEC’s submission to the review of the 1993 election by JSCEM contained a very useful table, listing the periods between the announcements of the elections and the closure of the roll from 1940 to 1993. I have provided a copy of this table to honourable senators in the chamber. I seek leave to table an extract from the relevant AEC submission.

Leave granted.

**Senator Faulkner**—I thank the Senate. The AEC states that the average period between the announcement of an election and the closure of the roll from 1940 to 1983 was 19.61 days. Perhaps someone should have told Minister Abetz that fact before his embarrassing appearance on Lateline on 14 June 2004 where he argued that before 1983 the roll closed without notice and that this had no effect on the franchise or the democratic process. As a direct result of the scandalous breach of convention by Malcolm Fraser, when he quickly closed the roll, the first report of the Joint Select Committee on Electoral Reform in September 1983 made the following unanimous recommendation:

The Committee considers that the closing of the rolls almost immediately an election is announced, as occurred in February 1983, is not in the best interests of Parliamentary democracy. The Committee believes that a statutory minimum period should be provided before the rolls are closed after an election is announced. The Committee therefore recommends that … at least 7 days before the issue of the writs and … the closing of the rolls.

Following that worthy recommendation the Commonwealth Electoral Act was amended in 1983 to provide the current, sensible situation where the rolls are left open for seven days after the writs are issued. Nevertheless, despite the history of this provision and the AEC’s assurances that all the usual checks are made to enrolment forms submitted in the seven-day period after the issue of the writs, the government has chosen to blunder on with its proposal to close the roll for new enrolments immediately an election is called.

Closing the rolls as soon as an election is called and not allowing any new enrolments will disenfranchise about 80,000 new enrollees at each election—mostly young Australians. If people wanting to transfer their enrolments have only three days in which to do it rather than seven days, it is estimated by the AEC that 200,000 voters would be affected. This would cause massive confusion on election day, long queues for declaration votes and significant delays in declaring results in many seats. The restriction on enrolments time recommended by the government would massively distort the electoral roll without any benefit to the security or integrity of the roll. Clearly, the Howard government think young Australians and people who rent do not vote Liberal so they want to stop them enrolling to vote. Labor will not support this massively undemocratic measure, which is simply a politically motivated attack on the franchise.

The proposed enrolment witnessing regime in this bill goes further than the recent unanimous recommendation by the Joint Standing Committee on Electoral Matters. The committee unanimously agreed to a regime where a person could enrol without a witness provided they gave their drivers licence details or another form of acceptable
identification. The committee’s recommendation explicitly stated:

... the Committee does not consider it necessary that the witness be within a specified class of people.

However, in direct conflict with the unanimous JSCEM recommendation, the explanatory memorandum for the bill states:

Where no identification documentation was available, only people in a prescribed class would be able to provide written references supporting an enrolment application.

Of course, any identification checking measures will require close cooperation with the states yet, surprisingly, to date there has been little consultation with states, and draft regulations have not been produced. Given the importance of the regulations, how could parliament responsibly pass the government’s proposal without draft regulations being circulated?

Along with the AEC and most of the states, the opposition have made it very clear that constructive measures to improve the integrity of the roll will be supported. However, we will not support changes that do nothing about fraud while potentially disenfranchising many people. It is quite perplexing that the government has not simply adopted the model unanimously proposed by the JSCEM. The government’s bloody-mindedness on this issue firmed our conviction to oppose this bill at the second reading stage. However, if the bill passes the second reading stage, we will be moving amendments to implement the joint standing committee’s unanimous recommendation. If the government wants to sell out Mr Georgiou and the other members of the government majority on that committee in a situation where there is a unanimous recommendation it is perhaps up to Senator Murray and me to see that they are not left high and dry and washed up on the beach.

The opposition do not support the government’s proposal to stop anyone in prison at the time of an election being able to vote. We are concerned that under the government’s proposed legislation, a person sentenced to, for example, two weeks in jail coinciding with an election could not vote. Yet another prisoner, sentenced to two years in jail but whose term of imprisonment did not coincide with an election, would be able to vote. The opposition are also concerned that denying all prisoners, irrespective of sentence, the right to vote would represent a breach of our obligations under the United Nations International Covenant on Civil and Political Rights as well as the United Nations Universal Declaration on Human Rights, which was re-signed by the Howard government in 1999. If this bill passes the second reading stage, the opposition will be moving an amendment to disqualify from voting only those prisoners serving a sentence which runs from the return of the writs for one election to the issue of the writs for the next election—that is, for the whole period of an electoral cycle.

At the behest of the Northern Territory Country Liberal Party the government has once again brought forward measures to restrict who can assist impaired voters. As the Electoral Act currently stands, a voter whose sight is impaired or who is incapacitated or illiterate would just take their voter friend in to help them vote. This process preserves the secrecy of the person’s vote and does not compromise the functioning of busy polling booths. Currently, the voter has all the say in who assists them. Appropriately, the voter is free to choose someone they trust, without limitations. However, the government proposes the presiding officer mark the ballot paper, with scrutineers who are not known to the voter watching. Under the government’s proposal, there will be three or four people in the voting booth rather than two. This pro-
posal will pollute the principle of the secret ballot and take rights away from the already disadvantaged in our society. It will be particularly intimidating for disadvantaged or illiterate voters, especially in remote parts of Australia. I assume that is the intended effect. The Country Liberal Party and the government, in the view of the opposition, stand condemned for this despicable approach.

The AEC’s recent submission to the Joint Standing Committee on Electoral Matters stated:

The changes to the Assisted Voting provisions would represent a significant weakening of the secrecy of the ballot for many of the disadvantaged members of the community ... The AEC is of the view that the current federal legislation relating to Assisted Voting is operating properly as the parliament intended and should be left unamended.

That is from the Australian Electoral Commission. The current assisted voting provisions, with the voter’s friend filling out the ballot paper, work well as they are and ensure the greatest possible participation in the democratic process. There is no reason to change them.

The other provision of the bill which I want to touch on is the proposal to raise the disclosure threshold for political donations from $1,500 to $3,000. Unlike the government, the opposition do not support hiding political donations. Our approach to this matter has always been different to that of the conservatives. We support transparency of political donations; they do not. They never have. Measures such as this one will mean approximately 40 per cent of the donors currently disclosed in returns by parties would be completely hidden. If the Liberal Party policy became law and the threshold was raised to $10,000 then at least 70 per cent of the donors currently disclosed in returns by parties would not be disclosed. That is not acceptable. This parliament should never agree to that sort of lack of transparency and attempt to cover up what is really happening in the funding of political parties and its impact on the political process.

The integrity of electoral enrolment can only be assured if all Australians can easily get onto the roll, if the roll is secure and if electoral fraud is deterred absolutely. These matters are equally important: enrolment must be fair and the electoral roll must be safe. Labor’s approach to electoral reform is guided by a desire to improve the franchise and to make political donations more transparent. Labor will not support measures to restrict or reduce the franchise of those groups whose disadvantage makes their right to vote so important. The electoral system must be fair and accountable. Changes to that system must build on those base principles, not corrode them.

We have recommendations from bodies such as the Australian Electoral Commission, and we have unanimous decisions of the Joint Standing Committee on Electoral Matters—the committee of this parliament that is charged with the responsibility of recommending to the House of Representatives and the Senate what changes to electoral laws should occur. Why do we have a situation where the government and the minister thumb their noses at the AEC and the Joint Standing Committee on Electoral Matters? What does it say for the clout of Mr Petro Georgiou and that government majority on the Joint Standing Committee on Electoral Matters when all that hard work goes into working out appropriate recommendations, sensible recommendations, fair recommendations, and Minister Abetz just walks away from them? It is embarrassing and humiliating for Mr Georgiou. I really do not know how he can hold up his head in public.

The fact of the matter is that the Labor Party will back in the AEC’s recommenda-
tions on these sensitive, important issues. The Labor Party will back in Mr Petro Georgiou and the unanimous report of the Joint Standing Committee on Electoral Matters. The Labor Party will oppose the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004 because we know it will corrode the franchise and make political parties less accountable. We will never accept that.

Senator MURRAY (Western Australia) (2.41 p.m.)—We are debating the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004 on what is possibly the last sitting day before an election. I say ‘possibly’ because it is not a certainty, but many of us feel it is. Because of that I want to make some opening remarks about process. I think that, in the next parliament, the next government has really got to change its approach to the way these electoral bills are dealt with. The idea of having important bills which affect an election process dealt with on what might be the last day of a sitting is just really bad form. Worse than that, throughout the period of the three-year electoral cycle, governments seem to bring forward electoral bills very slowly indeed—at least that has been my experience since 1996, and I appreciate there are members who have been in the chamber much longer. That leads to a real problem. It means that significant matters which the Joint Standing Committee on Electoral Matters raise or which individual senators wish to raise seldom have the opportunity to be aired and debated.

Electoral bills are always matters of passion, not least because we all have self-interest attached to them. I should add to Senator Faulkner’s remarks on the Joint Standing Committee on Electoral Matters. It works through material extremely carefully, based on very expert and detailed advice, often from the Australian Electoral Commission, and comes to a view. It comes to a view on behalf of the four political parties that happen to sit on that committee at this time—namely, the Liberal Party, the Labor Party, the National Party and the Democrats. It also comes to a view on behalf of not only all political parties—and there are nine of them in this parliament—and the Independents but also non-parliamentary parties and all the candidates that sit outside of the elected representatives. It has a very serious duty to discharge. It is a discourtesy to the process and to the importance of the topic that we get these bills seldom and that all the recommendations, especially unanimous recommendations, from the Joint Standing Committee on Electoral Matters are not properly expressed in legislation.

Turning to the bill, it is contentious because if it is passed it proposes to disenfranchise many Australians by closing the electoral roll as soon as an election is called. It removes the right to vote from all persons serving a full-time sentence of imprisonment. It seeks to raise the disclosure threshold for political donations from $1,500 to $3,000. It seeks to limit the ability for deserving voters to have assistance when voting. We have dealt with many of these issues before in the Senate and have defeated them before, and we will do the same again today.

I would firstly like to address the provision concerning the early close of the electoral roll. I am rather perplexed by the government producing this amendment. Currently the roll is left open for seven days after the writs are issued. The government proposes to close the roll immediately for new enrolments and to leave it open for only three days for transfers. Our estimate is that closing the rolls as soon as an election is called and not allowing any new enrolments would effectively disenfranchise about 80,000 new enrollees at each election, the majority of them being young Australians.
The last thing in many a young Australian’s mind is politics until it comes to the moment when they know they have to vote. My office has received concerned letters from numerous organisations, including the National Union of Students, who oppose this provision. I agree with them. The ramifications of this provision do not stop there. People wanting to transfer their enrolment will have only three days, rather than seven days, in which to do so. The Australian Electoral Commission has estimated that approximately 200,000 voters would be affected. The effect of such a restriction on enrolment, as proposed by the government, would serve to distort the electoral roll.

As many of you in the chamber are aware, the Auditor-General examined the issue of electoral enrolment and issued the Integrity of the electoral roll report, which was tabled in April 2002. It found that Australia’s electoral procedures had high integrity and that the AEC procedures to ensure roll security and prevent tampering with roll data were ‘robust and effective’. That report was subsequently reviewed by JSCEM, which did not find that we should have serious concerns about roll data or roll processes. Given the high levels of internal migration within the country, the thousands of young people coming of age, the people being granted citizenship and all the various mechanisms by which new people come onto the roll, it is hard to imagine that people would not be affected by this provision. We regard the right to vote as such an important citizenship right that we must be very careful of anything which might affect it. I stress that the Democrats will favourably consider changes to electoral roll closure when we have fixed terms. When you have fixed terms, that is perfectly reasonable—people know when the dates of elections are—and you can start to address that issue, but not now.

We will also not be supporting the unacceptable provisions in this bill which seek to remove the right to vote from all prisoners. Currently prisoners serving sentences of five years or more are prevented from voting in federal elections. The current provision removes the right to vote from about 11,000 people; the proposed provision would add about 7,000 to that figure, as we are advised. Because the Australian prison population is composed of a substantially disproportionate number of Indigenous prisoners, the removal of the right to vote has a disproportionate effect on that population. The voting entitlement of prisoners has always been controversial, and the Joint Standing Committee on Electoral Matters have a somewhat chequered history of dealing with this thorny issue. What they have never properly addressed is why this double penalty should come through the Commonwealth Electoral Act. If ever a government were to consider that there should be a penalty against voting, then that should be part of the Criminal Code. If a judge is going to decide that the nature of a crime is such that you deserve to have your right to vote taken away, then that should be part of the Criminal Code. It has no place in the Electoral Act because essentially it is a double penalty imposed without regard to the crime itself.

It is important to understand that, although prisoners are deprived of their liberty while in detention, they are not deprived of their citizenry of this nation, other than by the measures that are in the Electoral Act. As part of their citizenship, convicted persons in detention should be entitled to vote, although I must point out that the Democrats do agree that someone who has committed treason should lose the right to vote. I think that is a logical continuation of a principle. There is no logical connection between the commission of an offence and the right to vote. For example, a journalist who is imprisoned for
refusing on principle to provide a court with the name of a source might be denied the vote. To complicate this further, there is no uniformity amongst the states or between the states and the Commonwealth as to what constitutes an offence punishable by imprisonment. In Western Australia, for example, there is a scheme whereby fine defaulters lose their licence rather than go to prison, yet this has not been introduced uniformly in Australia. So why should an Australian citizen in Western Australia who defaults on a fine but is not jailed retain the right to vote, whilst an Australian citizen in another jurisdiction who is jailed for the same offence loses the right to vote? This would be inequitable and unacceptable.

Australia is a signatory to the International Covenant on Civil and Political Rights. Article 25, in combination with article 2, provides that every citizen shall have the right to vote at elections under universal suffrage without a distinction of any kind on the basis of race, sex or other status. The existing law discriminates against convicted persons in detention on the basis of their legal status, and it is discriminatory between types of prisoners. This clearly runs contrary to the letter and spirit of the covenant. A society should tread carefully in this area. All citizens of Australia are entitled to vote. It is the most fundamental tenet of our society and should not be undermined or restricted.

We now look at the issue in this bill of assisting impaired voters. Currently under the Electoral Act, voters who are sight impaired, incapacitated or illiterate can appoint a person to help them carry out their vote. In our opinion, this is a logical and humane solution in the exercise of an essential right, and it is one which the Australian Electoral Commission supports. A provision in this bill seeks to remove this right and to instead appoint the presiding officer to mark the ballot paper with the voter’s friend observing in some circumstances. We believe that this may seek to intimidate some voters who are of an ethnic background or an Indigenous background. Accordingly, the Democrats will not support this provision.

Another provision is the proposal to raise the disclosure threshold for political donations from $1,500 to $3,000. We do not support that. It helps to mask the transparency of political donations. We have a long history of activism for greater accountability, transparency and disclosure in political finances. Of far greater concern is the fact that with respect to donations made through clubs, trusts, foundations and from overseas you cannot identify who is behind those donations. It is an utter farce that that continues to be a permitted practice in our donations disclosure law. The Australian Electoral Commission anticipates that measures such as these proposed by the government would mean approximately 40 per cent of the donors currently disclosed in returns by parties would no longer be disclosed.

We believe that democracy is better served by keeping the cost of political party management and campaigns at reasonable and affordable levels. Although in any democracy some political parties and candidates will always have more money than others, money and the exercise of influence should not be inevitably connected. We therefore believe that we should set a limit on expenditure to apply a cap or a ceiling to start to restrain donations of real impact and size.

Ultimately, to minimise or limit the public perception of corruptibility associated with political donations, a good donations policy should forbid a political party from receiving inordinately large donations. The objectives of such a regime would be to prevent or at least discourage corrupt, illegal or improper conduct in electing representatives and the
formulation or execution of public policy and help to protect politicians from the undue influence of donors.

We do not support any measures in this bill which contribute to a further diminution of disclosure. Before I conclude my speech, I would like to briefly comment about matters that we have some concerns with. We had intended to move a series of amendments that address issues of funding and disclosure and issues of one vote, one value. We will, for the moment, leave those on the consideration list. At this stage, it is not my intention to move those, because of the time in the program and the stress that we are under, despite our having put a great deal of thought and effort into generating those amendments. However, I may seek to move one or two of them at a later date, depending on how the debate goes. With those remarks, I look forward to the committee stage.

I also seek leave to have incorporated into the record the remarks of Senator Natasha Stott Despoja on the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004.

Leave granted.

Senator STOTT DESPOJA (South Australia) (2.55 p.m.)—Senator Stott Despoja's incorporated speech read as follows—

The Democrats are strong proponents of electoral reform. We have long advocated significant electoral reform, including tightening of the rules in relation to political donations and their reporting, and the introduction of proportional representation in the House of Representatives.

We recognise the need for the electoral roll to be an accurate and secure register of Australian electors.

This Bill has many provisions, including measures to increase the threshold for disclosures of donations, including sex and date of birth on the certified list, preventing scrutineers from assisting disabled voters, making it an offence to intentionally vote on multiple occasions, removing voting rights from prisoners, and shortening the period before the close of the electoral roll.

Many of these measures are taken from the Electoral and Referendum Amendment Bill (No. 2) 1998, which was rejected in the Senate in 1999. These were largely bad proposals then, and are bad proposals now.

The Democrats have already outlined in detail our concerns with this Bill, and it is not my intention to go over these issues again. I would like to focus on a couple of aspects of the Bill that are of particular concern. These are the measures relating to the early closure of the electoral roll and the removal of voting rights for prisoners.

The proposal to alter the timing for the 'close of rolls' is one of the most troubling aspects of the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures Bill) 2004. As Senators will know, current procedure sees the electoral roll closed seven days after the electoral writs are issued. This critical seven day period gives existing electors the opportunity to alter their electoral details, and allows new electors, primarily young people, to enrol to vote.

As the figures tell us, an electoral event, an election, is the biggest catalyst for changes and additions to electoral enrolment. As the JSCEM noted, during the 2001 election, 373,732 voters enrolled or re enrolled. 83,027 of these were new voters. These 83 thousand people would have been prevented from enrolling had this Bill been in place in 2001. The nearly 300,000 who altered their electoral details during the seven days between the issuing of the writ and the close of the roll would, under this legislation, have had only three business days to change their enrolment.

This is precisely why, in the event that an election is called, we need to make it as easy as possible for people to be able to appropriately amend their electoral details. A seven day period is ample time to collect an electoral enrolment form from the post office, an AEC office, the office of your local Member or Senator or various other locations, fill it in and mail it back to the AEC. A three day period may leave many people scrambling to alter their enrolment in time. Some may decide not to
bother altering it, to vote in their old electorate, or perhaps, not vote at all. I do not believe we should be supporting measures which may inadvertently encourage people not to appropriately alter their enrolment. The integrity of the electoral roll must be paramount, and a shortened time for amendment of enrolment is likely to jeopardise this.

I am concerned about the thousands of new voters, primarily young people, who will be disenfranchised. In a healthy democracy, with universal franchise, we must do everything we can to ensure that all people who are entitled to vote are able to do so. By closing the electoral roll at 6pm on the day the writs are issued, thousands, potentially nearly a hundred thousand new voters, many of them young people, will be prevented from exercising their democratic right.

100,000 is not an insignificant number electorally. Across the country, 100,000 votes can be the difference between winning an election and losing it, as this Government well knows.

Is it any wonder that research shows that young people are cynical about politics and politicians? In my annual Youth Poll, young people rate politicians among the least trustworthy sources of information about politics.

The Government has demonstrated it is not only willing to make policy and law that is contrary to the interests of young people, but it wants to prevent them from having any say in who should represent them in this place. Perhaps the Prime Minister is afraid of a backlash. Many of the young people who will be eligible to vote in this year’s election will be among the first group to pay the higher HECS fees as a result of this Government’s Higher Education Support Act.

In light of this and the absence of any measures in last month’s Budget to assist young people, perhaps this Government has simply decided to try and minimise the youth vote by excluding new voters?

A far more reasonable and fair remedy to concerns about the ‘flood’ of new and amended enrolments in the week following the issuing of writs, is available; fixed term elections. With fixed term elections the goalposts are visible to all. Aside from helping us avoid the ridiculous amount of column space dedicated to potential election timing, having fixed terms would allow the development and dissemination of a timetable for enrolling, giving all plenty of notice of impending elections and critical dates.

Another matter of great concern to the Democrats is the provision in this Bill to deny those serving a prison term the right to vote. Currently, those serving a term of more than five years are prevented from voting while in prison. This legislation would see anyone in jail (at the time of the election) prevented from voting. This measure is aimed at deterring crime, and is premised on the notion that having one’s right to vote removed will act as a deterrent. Regardless of the validity of this belief, and personally, I do not believe that a person who is considering committing fraud or stealing a car is necessarily going to weigh up the pros and cons of the potential loss of their right to vote, this measure will disproportionately affect one of the most disadvantaged group in the community, Indigenous Australians.

Indigenous Australians are 16 times more likely to be imprisoned than non-Indigenous Australians. They are vastly overrepresented in the prison population, and are far more likely to be prosecuted and incarcerated for less serious crimes. This is a group of Australians for whom this Government has done no favours. It seems that the recent announcement of the disbanding of ATSIC was merely the precursor in preventing Indigenous Australians having their say.

How this Government can propose legislation which will seriously disadvantage a group of Australians who were, as little as 40 years ago, completely disenfranchised is unacceptable. Furthermore, I am concerned that measures such as this one may set a dangerous precedent in terms of the voting rights of prisoners. Many in this place will remember the horror stories that emerged from Florida during the 2001 Presidential election. Florida legislation sees convicted felons stripped of their right to vote. This situation is not unique to Florida, many US States have similar laws. However, what was unique in Florida, were measures implemented by Governor Jeb Bush which saw some people with the same name as convicted criminals denied the right to vote. Simply by virtue of sharing a name with a
convicted felon some people, primarily African American, were prevented from exercising their right to vote.
This is an extreme example of what can happen when we begin to separate out groups of people who we believe are fit to vote, and those we believe are not, or have forfeited that right. We ought to examine very closely any legislation which strips people of their right to vote on arbitrary grounds.
In conclusion, I believe this legislation is significantly flawed. While I have only touched on a couple of aspects of the Bill, there are many more, such as the increase in the threshold for the disclosure of donations, and in relation to the evidentiary requirements for enrolment which are of great concern to the Democrats. As I mentioned at the beginning of my remarks, the Democrats welcome electoral reform, but we will not support measures which are politically motivated and which arbitrarily disenfranchise groups in the community.

Senator BUCKLAND (South Australia) (2.55 p.m.)—On behalf of Senator Crossin, I seek leave to incorporate a speech in relation to the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004.
Leave granted.

Senator CROSSIN (Northern Territory) (2.55 p.m.)—Senator Crossin’s incorporated speech read as follows—
The Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004 would, if passed, severely disadvantage thousands of Australians, especially those in rural and remote areas such as in my own electorate.
This bill, far from following recommendations made by the JSC on Electoral Matters after the last election, goes hard against them.
This bill proposes to make regulations that will make it far harder for people to enrol or change enrolment details. It will make regulations requiring proof of identity or address for applicants for enrolment or changes. It will close the rolls for new electors at 6 p.m. on the day on which writs for an election are issued and 3 days after writs for enrolment amendments; enrolment will include sex and date of birth on the certified list as a further check on identity when voting.
This bill would disenfranchise 80,000 new enrollees and some 200,000 would be unable to change their details to new addresses in the time required.
This bill will further include a number of amendments such as who can assist voters and also restrict scrutineer activities in relation to assisted voting.
Clearly all these changes proposed will make it harder for rural and remote voters to enrol, change enrolment details or to get assistance in voting at the polling booths. This will affect the NT very much, and Indigenous people more than most.
Evidently these changes are aimed at disenfranchising as many Indigenous Australians as possible. Not satisfied with taking away their elected representative bodies to reduce their say in Aboriginal affairs, this government now intends to make it harder for them to get to vote too.
They are plainly on a path to attacking any one or any group which might speak out about their antisocial policies—remember too they still have a bill up to try to crush student unions to reduce their ability to speak out about fee rises.
This bill would also disadvantage young people enrolling for the first time. Michael Danby, writing in the Herald Sun of 27 May (Page 20) said that in 2001, some 83,000 first time voters enrolled in the existing seven day period. If this bill were passed, these people would simply miss out. How this bill can be seen or called anything to do with enrolment integrity is beyond me.
It would completely remove the voting rights of all prisoners serving any sentence of full time detention, however long or short.
It also proposes to raise the threshold for disclosure of political donations from $1500 to $3000—I can see no real reason for this save a lessening in transparency of disclosure of donations.
In raising the threshold it can only mean more donations to a party are hidden, and we can only assume that is absolutely what the government
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The AEC held this program in high regard, and it was a vital part of updating Indigenous enrolments. Without it there was a drop off in Indigenous enrolments. Now they try to make it even harder for Indigenous people to enrol and vote. No wonder the Social Justice Report finds this government lacking in real efforts at reconciliation. Why do they have to play cynical political games—why can’t they be honest and say they do not really care about the problems and barriers faced by our Indigenous people?

Of course, prisoners also lose the vote under this bill, and again a disproportionate number of prisoners are Indigenous.

But this bill goes beyond that in denying all prisoners a vote. As pointed out by Bob McMullan in the other place, such a denial is in breach of our obligations under the U.N. International Covenant on Civil and Political Rights as well as the U.N. Universal Declaration on Human Rights, resigned by this government in 1999. Again one could be cynical and say that this government signs such treaties with no intention of being bound by them.

This bill proposes changes to voter assistance regulations. At present if a voter has a problem—sight impairment or illiteracy for example, that voter has the say in who helps them. They can choose someone they know and trust to help them vote in secret, and this surely is how it should be for an important moment like voting.

Again though this bill proposes change that would go far from this ideal. This bill would give the person requiring assistance no say in who helps them. This bill would have the booth Presiding Officer mark the paper with scrutineers free to observe in some circumstances. It would remove the trust and secrecy. It would remove the ability to choose a helper who could cross language and cultural barriers.

There would be several people, probably unknown to the voter, in or close enough to the voter to see his vote, to remove all secrecy. The voters privacy is grossly intruded upon.

I notice the CLP representatives from the NT have kept pretty quiet on this so we can only assume they support these moves to make enrol-
ment and voting harder for a significant number of their constituents.

Neither the Opposition nor the AEC support such changes, and both believe the current system is totally acceptable. It is workable, it is fair, it is manageable.

This government tries all it can to enforce very secret ballots in other areas of our lives, when it suits them in the workplace for example, but NOT in casting a vote in an election—again one can only see this bill as a cynical political move with an ulterior motive.

In conclusion, the Opposition believe that the integrity of electoral enrolment can only be assured if all Australians can easily get their names on the rolls. We believe that the rolls must be secure and voting occur without fraud. However, the proposals in the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004 do nothing to ensure this. Indeed they will reduce the integrity of the rolls, reduce the franchise, especially for those already disadvantaged, cause confusion at the polling booths through a great increase in the demand for Declaration Votes, and this will increase the time needed to declare results.

There are a number of aspects of the Enrolment Integrity Bill which we believe reduces the franchise and makes political parties less accountable, and neither of these are acceptable.

Senator NETTLE (New South Wales) (2.55 p.m.)—The Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004 is another piece of legislation that attacks some of the more vulnerable members of our community. It does so by removing their right to vote. Young people, new migrants, Indigenous Australians, prisoners, people with disabilities and the homeless will all have their democratic voices muted or silenced by this legislation. Many of these people are disillusioned with politics and democracy in this country. Instead of encouraging them to participate in the democratic process, the government has brought in a piece of legislation that will make it harder for them to participate in decision making in this country.

The announcement of an election date is a significant trigger for people to update their enrolment details or ensure that they are enrolled. It is the commonsense reality of how people respond to elections—the requirement to get on the roll and to amend their details. People who have recently become citizens and obtained the right to vote, young people or people who have recently returned to Australia whose enrolment may have lapsed are prompted to update their details when an election is called. The proposal in this bill to close the electoral roll on the same day as the election is called will disenfranchise a significant number of people, as will the proposal to give just three days notice to people who want to change or update their enrolment details once an election is called. Young people in particular will be affected. There was an article in the Age on 19 April by Simon Castles which started out by saying:

There is only one thing surprising about the government’s plan to close the electoral roll as soon as the next election is called and thus prevent tens of thousands of Australians from voting. That is that someone in government actually remembered young people do vote in this country.

He also went on to describe young people as: ... the great unwashed of the electorate—ignored, rarely spoken about, and never, ever spoken to.

The Youth Action and Policy Association, the peak body for young people in my state of New South Wales, has highlighted and campaigned against the provisions in this bill that seek to impact on young people’s right to vote.

Currently 18- to 24-year-olds have the lowest enrolment rate of any age group eligible to vote. According to the Australian Electoral Commission, only 60 per cent of 18-year-olds are enrolled to vote. Of course, this
changes after an election is called. It makes
sense because young people who are voting
for the first time may not know their rights.
Perhaps they are focused on trying to get a
job, trying to find somewhere to live or try-
ing to get into university; it is hardly surpris-
ing that enrolling to vote is often done at the
final hour.

The provisions of the bill unfairly target
young people and will restrict their capacity
to express their political choice at not only
the coming election but subsequent elections.
In the first week of the 2001 election cam-
paign, 83,000 first-time voters enrolled in the
seven days after the election was called. Ap-
proximately 290,000 updated their enrolment
details, for example, by notifying a change of
address. The changes in this bill will disen-
franchise those 83,000 people, a high propor-
tion of which would be young people. A
large number of the 290,000 people would
also miss out if this bill were to proceed.

The government claims these changes are
needed because of the increased burden on
the Australian Electoral Commission close to
an election. There is no doubt the burden on
the AEC is great, but removing people’s right
to vote is hardly the way to address this
problem. If the AEC were adequately re-
sourced, these issues could be addressed in
that way. Perhaps if the government was not
cutting taxes while cutting services, there
would be additional funding for the AEC.
The reality is that this government fears
young people because they know that young
people disagree with their policies.

Rather than remove young people’s right
to vote, the Prime Minister and Senator
Abetz may wish to re-evaluate the policies
which are turning young people away from
the coalition—for example, cuts to public
education and students’ HECS debts, the
illegal invasion of Iraq and the backing of
the fossil fuel industry rather than the renew-
able energy sector, just to name a few. This is
why young people do not want to support the
colition, and it is why the coalition wants to
remove many young people’s right to vote.

Young people are not the only people tar-
geted in this bill. Many first-time voters en-
rolling to vote after an election has been
called are new migrants, people who have
just become citizens of Australia. In 2001-
02, 86,289 people became citizens of Aus-
tralia. If this bill had been in force at that time
then some of those people would have been
prevented from enrolling after an election
had been called. Other provisions in this bill,
such as the requirement for a voter’s details
to be tied to an address rather than an elec-
torate, will have a significant impact on the
ability of homeless people to vote. We al-
ready know that, according to the Joint
Standing Committee on Electoral Matters,
80,000 homeless people who may have been
eligible to vote in the 2001 election did not
do so because of current registration re-
quirements. The proposals in this bill will
make the situation worse. People with dis-
abilities and older Australians will be af-
fected by changes in this bill that prevent
scrutineers from assisting voters to cast their
ballot.

Perhaps the most draconian and appalling
proposals in this bill are the provisions that
seek to remove the right of prisoners to vote.
Currently prisoners serving sentences of five
years or more are prevented from voting in
federal elections. This is a law which the
Australian Greens oppose. This prevents ap-
proximately 11,000 citizens from voting in
elections. This bill would remove the right to
vote from a further 7,000 citizens currently
serving time for state or federal offences.

    Government senators interjecting—

    Senator NETTLE—Government mem-
bers in the chamber do not believe that pris-
oners should be able to vote. This is clearly
indicated from their contributions to this debate. That is not surprising, because this is not the first time that we have seen this proposal. In 1998 the government tried to remove the right of prisoners to vote. Due to a fantastic campaign led by prisoners’ rights advocacy organisations like Justice Action, opposition parties and many community campaigners, that proposal was defeated. I take this opportunity to pay tribute to those people who work in organisations such as Justice Action—people like Brett Collins, Kilty O’Gorman and Stacey Scheff, my former colleagues, who have been campaigning for many years to ensure that prisoners, regardless of their crime, are treated as citizens and have their rights respected both in prison and under electoral laws. We will continue to campaign in this way for many years into the future. The Greens are proud to stand up and support the rights of prisoners in this campaign and in many others.

The Greens argued then, and we say again today, that the right to vote is a fundamental right for all citizens. This proposal is fundamentally undemocratic. It is potentially even unconstitutional, given the implied right of all citizens to vote in our Constitution. It is certainly in breach of international law. Article 25 of the International Covenant on Civil and Political Rights, which Australia is a signatory to, states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors ...

This bill is a clear violation of human rights. This view has recently been recognised by the European Court of Human Rights, which on 30 March this year ruled on prisoners’ right to vote. The seven judges found that provisions such as those contained in this bill impose:

... a blanket restriction on all convicted prisoners. It applies automatically to all such prisoners, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence. As pointed out in the Canadian courts, the actual effect on an individual prisoner’s right to vote will depend, somewhat arbitrarily, on the period during which he happens to serve his sentence. A prisoner sentenced to a week’s imprisonment for a minor infraction may lose the right to vote if detained over election day whereas a prisoner serving several years for a more serious crime may, by chance, avoid missing an election.

The Canadian judgment referred to by the European Court of Human Rights was the 31 October 2002 judgment in Sauve v. the Attorney-General of Canada. In this case Chief Justice McLachlin commented:

Denying penitentiary inmates the right to vote is more likely to send messages that undermine respect for the law and democracy than messages that enhance those values.

The whole basis of respect for the rule of law rests on the participation of citizens through the democratic selection of their representatives making the law. How will prisoners subject to this feudal concept of ‘civil death’ have respect for the law if they are banned from participating in its formation? How does this bill reconcile with the importance of rehabilitation that is at the heart of any enlightened prison system? This has been recognised in the past by Justice Nagle, whose 1978 royal commission helped to transform the corrupt and repressive New South Wales prison system for the better. He said:

A citizen’s right to vote should depend only on his ability to make a rational choice. Loss of voting rights is an archaic leftover from the concepts of ‘attainder’ and ‘civilitier mortuus’ and has no
place within a penal system whose reform policies aim to encourage the prisoner’s identification with, rather than his alienation from, the community at large. All prisoners should be entitled to vote at State and Federal elections. Necessary facilities should be provided for them to exercise their franchise.

Does this government wish to head in the direction of the United States, where one-third of black men living in Florida were prevented from voting in the crucial poll that led to the appointment of George Bush as President?

Indigenous people will be particularly targeted by this bill. Need I remind senators of the shameless statistics whereby Indigenous persons are 16 times more likely to be in prison than non-Indigenous Australians, a reflection of the racism that still pervades our criminal justice system and the history of ongoing dispossession of Indigenous peoples in this country. This bill is another attack on the rights of Aboriginal and Torres Strait Islander people, a bill that is proposed at the same time as Indigenous Australians are being dispossessed of their right to self-determination and self-government through the scrapping of ATSIC. The scrapping of ATSIC was first proposed, need I remind the chamber, by the Labor Party and was acted on by the government. The government is intent on removing the right of Indigenous people to vote for their own representative to have a national voice and it is also intent on stealing the right to vote in federal elections from large numbers of Aboriginal and Torres Strait Islanders, who make up a disproportionate percentage of our prison population in this country. That is the discriminatory and racist policy of this government.

Unfortunately, it does not end there. Not content with removing the right to vote from disadvantaged members of our community, the government also wishes to avoid accountability through raising the required disclosure limit on political donations. The Greens have campaigned strongly against corporate donations that contribute to the ‘cash for policy’ approach of so many political parties. Greens campaigners have exposed the way developers and big business have sought to buy influence by donating to political parties. In this bill the government seeks to hide such influence from public view by raising the disclosure threshold to $3,000. Sure, it is not as much as the $10,000 that the Liberal Party proposed to the Joint Standing Committee on Electoral Matters but it is still a shameless exercise in preventing the public from following the money trail.

In a similar vein, another proposal contained in this bill would alleviate the requirement for publishers and broadcasters to lodge returns with the Australian Electoral Commission regarding political advertisements during an election period. Given the government’s propensity to use taxpayers’ funds for political advertising—the current media blitz on Medicare and the budget tax changes being just the latest examples—you would hardly think the government would see the need for this change. But yet again, despite the cash for comment controversy, the government seeks to remove another avenue for independent scrutiny of the political process by the media and the public.

In addition, the penalty provisions proposed in this bill are onerous and would disproportionately impact on low-income earners and other vulnerable members of our community. This bill is an undemocratic attack on the right to vote of Australian citizens. The Greens support electoral reform that gives power to voters, not electoral reform that takes it away. That is why we have been campaigning and advocating for proportional representation in the House of Representatives and electoral reform such as ensuring that 16-year-olds have the opportunity to vote. This bill does none of that. It is anti-
The National Party and the Greens will not be supporting it.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.10 p.m.)—I thank those who have contributed to this debate on what is very important legislation. There is nothing more important than the integrity of the electoral roll and the federal government unashamedly places an enormous emphasis and priority on ensuring the integrity of the electoral roll. There is no greater safeguard to the integrity of our democracy than the security of our electoral roll. Those countries around the world where democracy fails are those that do not have sufficient safeguards on the integrity of their electoral roll. Nobody can have confidence in the propriety of the elected government if they do not have confidence in the propriety and integrity of the electoral roll. So the bill unashamedly has measures directed to improving the integrity of the electoral roll and, most specifically, the long-awaited and much-needed issue of ensuring proper identity checks at the point of enrolment and the closing of the rolls when the writs are issued. We do have a ludicrous situation at the moment where hundreds of thousands of people get enrolled in the week between the calling of the election and the closing of the rolls. The Electoral Commission nakedly and openly admits that it has no possibility whatsoever of checking the integrity, accuracy or validity of those enrolments. This represents a very serious threat to the integrity of the electoral roll.

We also have provisions in here relating to prisoners. It is patently clear that the Australian electorate agrees with us that if you commit an offence that involves you being put in prison then surely you should be denied the right to vote. It is a slap in the face for the upstanding, law-abiding citizen to know that their vote is worth no more than that of someone who is in prison for committing an offence. The suggestion from the Greens that all prisoners, no matter what their offence—rape, murder, whatever—should have the same standing in relation to the election of the government as the most upstanding, law-abiding citizens in the community is an insult to those citizens. If you do what we call the ‘pub test’ or take any opinion poll on this matter, I can tell you that the Greens are so out of touch on this it is not funny. That the Greens are demanding that murderers and rapists be given the right to vote is extraordinary, and that is made more extraordinary by the fact that in this country, contrary to my best wishes, voting is compulsory. If you have prisoners not just having the right to vote but being compelled to vote, if they fail to vote they are actually committing another offence while they are in prison—a most extraordinary situation. I commend this very important bill to the Senate. We note that there are provisions in it that will not receive majority support. There are amendments being moved that the government will indicate appropriately that we may support in order to ensure that there is some reform, albeit not the level of reform that we would like to see to improve the integrity of the electoral system.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (3.14 p.m.)—Whilst we are waiting for Senator Faulkner, who will be leading the charge for the opposition, it might be best to discuss the way in which this will be managed. Because we do not have a running sheet and because the opposition amendments have only just been circulated, I think the very best way to deal with this is to take the opposition amendments first and then those Democrat amendments which remain. We are
going to have to be a bit quick on our feet, given the variety of amendments to this bill that are around. I suggest that the Labor sheets 4262, 4263 and 4272 be dealt with first, to be followed by my sheet 4233 revised. At that stage I will make a decision as to whether I put my circulated sheets 4229 and 4239 aside for another day or whether we can deal with parts of them now.

The TEMPORARY CHAIRMAN (Senator Brandis)—Senator Faulkner, does Senator Murray’s proposal suit you?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.16 p.m.)—I am happy with that. I have indicated to the Minister for Finance and Administration, Senator Minchin, that I expect this stage to be treated fundamentally as a technical committee stage—and I see my colleagues the minister and Senator Murray nodding to indicate that they are happy to do so. Although I am now going to move the first opposition amendment, I am not clear on its fate. This is the sunset clause provision in relation to the enrolment regime, which is one of the recommendations of the Joint Standing Committee on Electoral Matters. I move opposition amendment (1) on sheet 4262:

(1) Page 4 (after line 6), after clause 2, insert:

2A Sunset and review of provisions for evidentiary requirements for enrolment

(1) Schedule 1, items 9, 12, 16, 18A, 19 and 42 concerning the evidentiary requirements for enrolment shall cease to have effect on the third anniversary of the day on which this Act receives the Royal Assent.

(2) On the first business day after the second anniversary of the day on which this Act receives the Royal Assent, the Electoral Commission shall commence a review to assess the provisions of this Act concerning the evidentiary requirements for enrolment, particularly as they relate to the integrity of the electoral roll and the effect, if any, the provisions have had on enrolment and enrolment procedures. The Electoral Commission shall forward a copy of its report and any recommendations it makes simultaneously to the Minister and the Joint Standing Committee on Electoral Matters within six months after commencement of the review.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.18 p.m.)—I seek clarification from the Democrats of their position on this amendment.

Senator MURRAY (Western Australia) (3.18 p.m.)—One of the difficulties here—and I think we have to speak very straightforwardly and not politically at this juncture—is that we had thought that there were so many provisions to which we and the opposition objected that the bill was likely to be knocked over at the second reading stage. Yesterday we had an approach from the government to allow passage through the committee stage on the expectation that, if something reasonable came out of the bill, the government would consider that seriously.

With respect to the specific provision, we had directly taken the JSCEM recommendation and put it into an amendment. We take the view that, on a matter as important as the evidentiary requirement—and this repeats a view we have put in previous debates—we need to be sure that the two major parties are of a mind because the states and territories interact through the joint roll situation and because of the vital nature of the relationship between the Liberal Party and the Labor Party, in particular, with respect to their role in that at every level. This is not something the Democrats can claim; we have a strong federal presence, as you know.
Of course, Minister, we had arrived at an accommodation between the four political parties on the Joint Standing Committee on Electoral Matters for an agreed process; so we were going in that direction. Our mind would be to pass the opposition’s amendment, to let the two majors determine the outcome of it and to support that. We do not have a problem with the approach of the Joint Standing Committee on Electoral Matters. We do have a problem if there is disagreement between the majors on something so fundamental, because of the states and territories intersection, because of the joint roll basis and because of the very closeness of the election. It is not an issue on which we would be comfortable exercising a balance of power role.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (3.20 p.m.)—I have moved opposition amendment (1) on sheet 4262. I do not think I need to speak to it, given the way we are dealing with this committee stage. I will do so at a later stage if it is required. I have heard some suggestion that the minister might make some minor changes to paragraph (1) and a deletion from paragraph (2) of the amendment, but no doubt we will hear from him on those matters.

Senator Minchin (South Australia—Minister for Finance and Administration) (3.21 p.m.)—In relation to the technical approach to this sunset amendment, the advice from our officials is that it should not go on page 4 of the act; rather, it should go in part 2 on page 29 of the act, which I gather is the section of the act that deals with these sorts of technical matters. That is the advice from the experts writing the legislation. Also, the reference with respect to the operative date should be the third anniversary of the day on which the schedule items are proclaimed, so that would affect wording in subparagraphs (1) and (2), where they state ‘this Act receives the Royal Assent’. It is better to refer to the day on which the schedule items are proclaimed. I offer that as the advice of the technocrats who advise us on how best to give effect to what you seek to do.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (3.22 p.m.)—I am certainly happy with the suggestion that page 4, after line 6, be changed to page 29.

Senator Murray—We have no objection.

Senator Faulkner—So that is fine. In subparagraph (1), do I understand that you are proposing to delete the words ‘this Act receives the Royal Assent’ and replace them with the words ‘the schedule items are proclaimed’?

Senator Minchin (South Australia—Minister for Finance and Administration) (3.23 p.m.)—That is our suggestion to you.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (3.23 p.m.)—I think we can accept that. I was not quite sure what you were saying in relation to subparagraph (2).

Senator Minchin (South Australia—Minister for Finance and Administration) (3.23 p.m.)—I was saying it is the same amendment.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (3.23 p.m.)—So we would be deleting the words ‘this Act receives the Royal Assent’ in subparagraph (2) and replacing them with the words ‘the schedule items are proclaimed’. The opposition has no discomfort with that. So there are effectively three changes: the page and subparagraphs (1) and (2). The changes are in the wording, where the words ‘this Act receives the Royal Assent’ are replaced with the words ‘the schedule items are proclaimed’ in both subpara-
graphs. I seek leave to amend the amendment.

Leave granted.

**Senator Faulkner**—I amend the amendment to read as follows:

(1) Page 29 (before item 133), insert:

132A Sunset and review of provisions for evidentiary requirements for enrolment

(1) Schedule 1, items 9, 12, 16, 18A, 19 and 42 concerning the evidentiary requirements for enrolment shall cease to have effect on the third anniversary of the day on which the Schedule items are proclaimed.

(2) On the first business day after the second anniversary of the day on which the Schedule items are proclaimed, the Electoral Commission shall commence a review to assess the provisions of this Act concerning the evidentiary requirements for enrolment, particularly as they relate to the integrity of the electoral roll and the effect, if any, the provisions have had on enrolment and enrolment procedures. The Electoral Commission shall forward a copy of its report and any recommendations it makes simultaneously to the Minister and the Joint Standing Committee on Electoral Matters within six months after commencement of the review.

**The Temporary Chairman**—The question is that Senator Faulkner’s amendment, as amended, be agreed to.

Question agreed to.

**Senator Faulkner** (New South Wales—Leader of the Opposition in the Senate) (3.26 p.m.)—I do not think, in the spirit of the way we are trying to deal with this, I will make any comment, unless my colleagues require me to. I think we are clear about where we are going.

**Senator Murray** (Western Australia) (3.27 p.m.)—I am with Labor on this one.

**The Temporary Chairman**—The question is that schedule 1, items 9, 12 and 16, stand as printed.

Question negatived.

**Senator Faulkner** (New South Wales—Leader of the Opposition in the Senate) (3.28 p.m.)—I move opposition amendment (5) on sheet 4262:

(5) Schedule 1, page 9 (after line 2), after item 18, insert:

18A Before section 98

Insert:

98AA Regulations

(1) Where regulations are made to implement a requirement of this Part or Part VII in relation to identification for enrolment:

(a) the regulations must require the applicant for enrolment to provide documentary evidence of their name and address by providing their driver’s licence number;

provided that:

(b) where the applicant does not possess a driver’s licence, the application must be countersigned by two persons on the electoral roll who can confirm the applicant’s identity and current residential address. The countersignatories must have known the applicant for at least one month or have sighted identification showing the applicant’s name and address.

(2) Regulations must not be made in accordance with subsection (1) until after 1 July 2005.
Senator MURRAY (Western Australia) (3.28 p.m.)—With your forbearance, Mr Temporary Chairman, I would like to continue the technical approach, if we can describe it that way. If the committee cross-refers to Democrat amendment (6) on sheet 4233 revised, entitled ‘Evidentiary requirements for enrolment’, it will find that was taken directly out of a Joint Standing Committee on Electoral Matters recommendation and was devised accordingly. The greatest distinction that the opposition’s amendment has is the date 1 July 2005. There is a concern, as I understand it—and I would like to hear the opposition express it—that the implementation of the Joint Standing Committee on Electoral Matters recommendation would need some time for discussion with the states and territories. That is as I understand it, but I would like to hear their argument. The concern is that, if an election were called at the earliest date—let us choose 7 August as the example—and this were introduced, there would not be enough time to get matters together.

I have tried to remain true to what was a four-party agreement in the Joint Standing Committee on Electoral Matters. This is a new development and I need some guidance from the opposition. Once again, I remind you that we have a view that this is a sensitive area for all parliamentary participants, as well as participants in the political process outside. I would like to be assured that we would make the right decision here.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.30 p.m.)—My understanding is that we are debating the additional words ‘other document or documents accepted by the AEC in a particular case’. Would I be correct in assuming that, Senator Murray?

Senator MURRAY (Western Australia) (3.30 p.m.)—I refer you to item (5) on sheet 4262.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.30 p.m.)—I am referring to your amendment (6) on sheet 4233.

The TEMPORARY CHAIRMAN (Senator Brandis)—Senator Murray, the question before the chair is that opposition amendment (5) on sheet 4262 be agreed to. You have foreshadowed an alternative to that, which is Democrat amendment (6) on sheet 4233. The question before the chair is that the opposition amendment to which yours is an alternative be agreed to.

Senator MURRAY (Western Australia) (3.31 p.m.)—Mr Temporary Chairman, I appreciate that but we have deliberately adopted a style of approach here because of late circulation and arrival of the bill. I am not putting the wood on anybody because of that. The difficulty for me is that, if I say ‘aye’ to Senator Faulkner’s proposal, mine will fall away. But I am not sure why I should say ‘aye’ to Senator Faulkner’s proposal, because his does differ in the choice of the date and in some wording from the JSCEM recommendation, which I have tried to stay true and faithful to. As I understand the minister and the government, they are happy to stay faithful to the Joint Standing Committee on Electoral Matters recommendation now—it would have helped if they had done it before. I am caught by a need to make a decision, and this is an area we do not want to make a slip-up on, frankly.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.31 p.m.)—I confirm Senator Murray’s understanding that the government, while obviously preferring its original position, in the spirit of this committee prefers the Democrat amendment. The position is that, if
Senator Murray—I presume—continues to press his amendment, we will accept it.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (3.32 p.m.)—Senator Murray, if I can take you to 4233, there is not a major difference here. I accept that. I think the difficulty is the words in your amendment (6) on sheet 4233: ‘other document or documents accepted by the AEC in a particular case’. My problem is that I do not know what that means.

Senator Murray—That is what the JSCEM said.

Senator Faulkner—As you were a member of the JSCEM at the time, perhaps you can tell me.

Senator Murray (Western Australia) (3.33 p.m.)—The JSCEM said that there will be circumstances where you will need to accept alternative documents. That was my understanding of it. Perhaps I can assist in this way. It would seem to me that this bill will inevitably end up with amendments which the government will not like. In any case, there is going to have to be a message coming back that the Senate agrees or disagrees and so forth. So the bill is going to come back. Rather than trying to resolve it here, I would prefer that the majors had a discussion, moved the thing on, and resolved the outcome. I do not know if there are dangers attached to that. I would abide by the agreement between the two. My view is that we are quite close, and I am not equipped to resolve this, quite frankly. If that were a reasonable approach for you to take, Senator Faulkner, I could do it that way.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (3.34 p.m.)—I think the problem here is only a problem to this extent, Senator Murray: I believe the Labor amendments fully reflect the spirit of the JSCEM recommendations. I do not think any of these amendments fully reflect the precise wording, because they undergo an iteration from recommendation stage to drafting stage. I think that is the only element here we are really speaking on.

I genuinely believe that the opposition amendment is better and more tightly drafted than the Democrat amendment. I accept that both completely reflect the spirit of what the Joint Standing Committee on Electoral Matters was trying to do, but you would acknowledge that, having had recommendations proposed by the joint standing committee, the task is then placed before the parliament of trying to ensure that the drafting and the final legislation reflects that spirit. I say to you very genuinely that I do believe we have achieved that. There are two alternatives here. They are not very significantly different. I think in the circumstances of this stage of the electoral cycle we find ourselves at, the opposition one is superior; it is tighter and I think it is better. That is the point I would make. I think it reflects very much the spirit of the JSCEM, and I believe yours does too.

Senator Murray (Western Australia) (3.36 p.m.)—I think it is time we ended the agony and moved on. My view is that the government can amend in the lower House and that they should amend whatever amendment in consultation with the Labor Party. I say that again for the very same reason I previously put: the Democrats are very sensitive to the joint roll relationship and the numbers of different circumstances in which the two major parties always interact and the Democrats do not. I think the easiest way, if you are close enough, would be for the government to discuss with the opposition once this is through in a final form. I think the spirit of what Senator Faulkner is saying is that he is open to that discussion. My view is that it would be easiest for us to pass this one
and let you resolve it. If it is unacceptable to
the government, they will knock it off and
the status quo will apply. Provided Senator
Faulkner has an open approach to sorting out
the differences, I think that is a safer route
for us to take.

Senator MINCHIN (South Australia—
Minister for Finance and Administration)
(3.38 p.m.)—From the government’s point of
view our fallback position was quite openly
the position reached, as I understand it
unanimously, in the Joint Standing Commit-
tee on Electoral Matters. The Democrat pro-
sal does accurately reflect that position. It
is therefore our position that we will accept
the Democrat amendment on nothing other
than the principle—the rule—that the fall-
back is to accept the joint standing commit-
tee’s position. That is why we prefer the
Democrat amendment.

Senator MURRAY (Western Australia)
(3.38 p.m.)—My difficulty is that the Labor
Party, which is a member of the Joint Stand-
ing Committee on Electoral Matters, says
that the translation is not adequate. We
would be glad to involve ourselves in the
discussion. You will note that Senator Bar-
lett is in the chamber—I will probably be
tied up for some time on the next bill—but
we would be glad to involve ourselves in the
discussion. You both need to sort out the
wording, and I cannot do it here.

Senator Minchin—Are you withdrawing
your amendment?

Senator MURRAY—If I accept this one,
I will withdraw mine. That is what will hap-
pen.

The TEMPORARY CHAIRMAN
(Senator Brandis)—I propose to put opposi-
tion amendment (5), and you can do as you
have indicated, Senator Murray. The ques-
tion is that opposition amendment (5) be
agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—
Senator Murray, are you now withdrawing
your amendment (6) on sheet 4223?

Senator Murray—Yes.

Senator FAULKNER (New South
Wales—Leader of the Opposition in the Sen-
ate) (3.39 p.m.)—I move opposition amend-
ment (6) on sheet 4262:

(6) Schedule 1, item 19, page 9 (line 13), after
paragraph (d), insert:

; and (e) the requirement in paragraph (c)
does not apply once the
regulations in relation to
evidentiary requirements for
enrolment are in operation.

Question agreed to.

Senator FAULKNER (New South
Wales—Leader of the Opposition in the Sen-
ate) (3.39 p.m.)—The opposition opposes
schedule 1 in the following terms:

(7) Schedule 1, item 78, page 18 (line 24) to
page 19 (line 5),

TO BE OPPOSED.

(8) Schedule 1, item 116, page 25 (lines 15 to
29),

TO BE OPPOSED.

The TEMPORARY CHAIRMAN—The
question is that schedule 1, items 78 and 116,
stand as printed.

Question negatived.

Senator FAULKNER (New South
Wales—Leader of the Opposition in the Sen-
ate) (3.41 p.m.)—by leave—I move opposi-
tion amendments (1) and (2) on sheet 4263:

(1) Schedule 1, item 6, page 6 (lines 16 and 17),

omit the item, substitute:

6 Paragraph 93(8)(b)

Repeal the paragraph, substitute:

(b) is serving a sentence of imprisonment
which:

(i) commenced on or before the
return of the writs for an election
for the House of Representatives
or Senate; and

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(ii) continues at the issuing of writs for any succeeding election for the House of Representatives or Senate; or

(2) Schedule 1, item 7, page 6 (lines 18 to 24), omit the item, substitute:

7 After subsection 93(8)

Insert:

(8AA) For the purposes of paragraph (8)(b), a person is serving a sentence of imprisonment only if:

(a) the person is in detention on a full-time basis for an offence against a law of the Commonwealth or a State or Territory; and

(b) that detention is attributable to the sentence of imprisonment concerned.

Question agreed to.

Senator MURRAY (Western Australia) (3.43 p.m.)—by leave—I ask that we be recorded as voting no to both those.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.43 p.m.)—I indicate that the committee has now accepted opposition amendments (1) and (2) on the premise that the original government position is clearly not acceptable to a majority of the chamber. Therefore, we are happy to accept as a fallback the Labor Party amendments which, while not reaching the high standard that the government sought, are more acceptable than the alternative put by the minor parties. So we are happy to accept the opposition’s position on this matter as an improvement on the status quo. That is why we accept your amendments.

Senator MURRAY (Western Australia) (3.45 p.m.)—The question is that schedule 1, items 6 and 7, as amended, stand as printed.

Question agreed to.

Senator BROWN (Tasmania) (3.45 p.m.)—by leave—Mr Temporary Chairman, I ask that the Greens’ opposition to that question be recorded.

Senator MURRAY (Western Australia) (3.46 p.m.)—I think this amendment is well understood. I move Democrat amendment (2) on sheet 4233:

(2) Schedule 1, page 6 (after line 17), after item 6, insert:

6A Paragraph 93(8)(b)

Repeal the paragraph.

Question negatived.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.46 p.m.)—The opposition opposes items 18 and 26 in schedule 1 in the following terms:

(3) Schedule 1, item 18, page 9 (lines 1 and 2), TO BE OPPOSED.

(4) Schedule 1, item 26, page 9 (lines 29 and 30), TO BE OPPOSED.

The TEMPORARY CHAIRMAN—The question is that schedule 1, items 18 and 26, stand as printed.

Question negatived.

Senator MURRAY (Western Australia) (3.48 p.m.)—The Democrats oppose items 46, 71 and 95 in schedule 1 in the following terms:

(8) Schedule 1, item 46, page 13 (line 28 to 30), TO BE OPPOSED.

(9) Schedule 1, item 71, page 17 (lines 19 to 21), TO BE OPPOSED.

(13) Schedule 1, item 95, page 21 (lines 5 to 8), TO BE OPPOSED.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Sen-
ate) (3.49 p.m.)—I ask that the question be divided to put the question on (13) separately because I believe the opposition may have a different view.

The TEMPORARY CHAIRMAN—The question is that schedule 1, items 46 and 71, stand as printed.

Question agreed to.

The TEMPORARY CHAIRMAN—The question is that schedule 1, item 95, stand as printed.

Question agreed to.

The TEMPORARY CHAIRMAN—We will now deal with opposition proposals (1) to (9) on sheet 4272. Opposition proposals (2) and (3) on sheet 4272, I am advised, are the same as Democrat amendments (3) and (4) on sheet 4233.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.55 p.m.)—The opposition oppose schedule 1 in the following terms:

(1) Schedule 1, item 10, page 7 (lines 4 to 19), TO BE OPPOSED.

(2) Schedule 1, item 13, page 7 (lines 32 to 34), TO BE OPPOSED.

(3) Schedule 1, item 17, page 8 (lines 17 to 34), TO BE OPPOSED.

(4) Schedule 1, item 37, page 11 (lines 3 to 18), TO BE OPPOSED.

(5) Schedule 1, item 45, page 13 (lines 16 to 27), TO BE OPPOSED.

(6) Schedule 1, item 62, page 16 (lines 17 and 18), TO BE OPPOSED.

(7) Schedule 1, item 63, page 16 (lines 19 to 24), TO BE OPPOSED.

(8) Schedule 1, item 106, page 23 (lines 10 to 20), TO BE OPPOSED.

(9) Schedule 1, item 109, page 24 (lines 6 to 11), TO BE OPPOSED.

We are now dealing with early roll closure provisions. I have outlined the strong views that the opposition has to these provisions in my speech on the second reading, which I commend to everyone in the chamber.

Senator BROWN (Tasmania) (3.55 p.m.)—I want to lodge a protest about the whole procedure here.

The TEMPORARY CHAIRMAN (Senator Brandis)—Are you taking a point of order, Senator Brown?

Senator BROWN—No, I am speaking to the committee.

Senator Minchin—Mr Temporary Chairman, on a point of order. We are discussing detailed amendments and the process is working well. We are now discussing early closure of rolls. If Senator Brown has any other remarks he wishes to make there is another, appropriate occasion on which he can do so, but not at the committee stage when we are now discussing amendments relating to the early closure of rolls.

The TEMPORARY CHAIRMAN—Senator Brown, do you wish to speak to the minister’s point of order?

Senator BROWN—No, I just wish to continue my contribution.

The TEMPORARY CHAIRMAN—I uphold the point of order. Senator Brown, if you want to speak to the question before the chair, the question before the chair is that the words referred to in opposition amendments (1) through to (9) on sheet 4272 and Democrat amendments (3) and (4) on sheet 4233 stand as printed.

Senator BROWN—We are dealing here with important electoral legislation on the eve of an election. It is absolutely imperative that the Senate is clearly informed about the ramifications of all the amendments, as well as the legislation itself. No committee has looked at this legislation; there has been no public input into this legislation; there is clearly confusion amongst members of the committee, including the government, on
points as they arise; we have no running sheet; and there are handwritten complicated amendments being circulated in the chamber. I think the whole process is wrong and I object to it. I believe that the committee should take more time to consider this piece of legislation.

I did speak with Senator Faulkner about this some time ago, when I was moving to have this matter referred to a committee, but I understood that it would not get to the committee stage. Now we are at the committee stage I am going to determine, as far as the Greens are concerned, as each amendment comes up that it is clearly understood by the committee. When it comes to the closure of the rolls, this is an effort by the government to deny tens of thousands of Australians, including young Australians, their right to vote and on that basis alone this bill should be rejected by all senators.

Senator Chris Evans
—We’ve just fixed that.

Senator BROWN—Well, that remains to be seen. But, if the aim is to fix that one and leave the rest without having had a reference to a committee then the opposition is doing the wrong thing here. That is a very important point, and I ask for an explanation as to what the ramifications of these provisions are.

Senator Murray (Western Australia)
(3.59 p.m.)—I will assist, Mr Temporary Chairman. These amendments all grouped together will restore the status quo there will not be an early closure of rolls. That is the effect.

The TEMPORARY CHAIRMAN—The question is that the words referred to in opposition amendments (1) through to (9) on sheet 4272 and Democrat amendments (3) and (4) on sheet 4232—that is, items 10, 13, 17, 37, 45, 62, 63, 106 and 109—stand as printed.

Question negatived.

Senator Murray (Western Australia)
(4.01 p.m.)—by leave—The Democrats oppose items 79 to 84 and 86 and 87 in schedule 1 in the following terms:
R(10) Schedule 1, items 79 to 84, page 19 (lines 6 to 17), TO BE OPPOSED.
(12) Schedule 1, items 86 and 87, page 19 (lines 20 to 23), TO BE OPPOSED.

Very briefly, these will restore the status quo and do not accept the government’s intention to move from $1,500 to $3,000.

The TEMPORARY CHAIRMAN—The question is that items 79 to 84 and 86 and 87 stand as printed.

Question negatived.

Senator Murray (Western Australia)
(4.03 p.m.)—by leave—The Democrats oppose item 75 and 113 in schedule 1 in the following terms:
R(19) Schedule 1, item 75, page 18 (lines 6 and 7), TO BE OPPOSED.
R(19) Schedule 1, item 113, page 24 (lines 26 and 27), TO BE OPPOSED.

These two return the issue of assisted voting by scrutineers to the status quo.

The TEMPORARY CHAIRMAN—The question is that schedule 1, items 75 and 113 stand as printed.

Question negatived.

Senator Murray (Western Australia)
(4.03 p.m.)—by leave—I move:
(14) Schedule 1, item 92, page 20 (line 8), omit “Imprisonment for 12 months”, substitute: “30 penalty units or imprisonment for 6 months”.

(17) Schedule 1, item 93, page 20 (line 13), omit “60 penalty units or imprisonment for 12 months, or both”, substitute “A maximum of 60 penalty units or a maximum term of imprisonment for two years, or both”.

(18) Schedule 1, item 93, page 20 (line 17), at the end of subsection (1D), add “, except that
the maximum term of imprisonment shall be two years regardless of the number of offences”.

I will briefly indicate the motivation behind these. We felt that the way in which the punishments were set up was a little unbalanced. We have balanced them. We have not objected to a punishment. As you can see, we have retained imprisonment but we have reduced it from 12 months to six and we have given a fine option—so it is 30 penalty units or imprisonment.

The TEMPORARY CHAIRMAN—The question is that Australian Democrat amendments (14), (17) and (18) be agreed to.

Question negatived.

Senator MURRAY (Western Australia) (4.05 p.m.)—I move:

(15) Schedule 1, page 20 (after line 8), after item 92, insert:

92A At the end of section 337
Add:

Note: The Criminal Code Act 1995 contains defences for offences involving mistake or ignorance.

This amendment is plain on the face of it. It simply adds a note which we consider to be helpful in the reading of the provision.

Question agreed to.

Senator MURRAY (Western Australia) (4.05 p.m.)—I move:

(16) Schedule 1, page 19 (after line 17), after item 84, insert:

84A At the end of section 308
Add:

(4) For the purposes of this Division, an advertisement relating to an election includes the public notification, whether visual or audible or both, whether in the form of written or spoken words or other sounds and whether in a book, paper, magazine, poster, photograph, sketch, pamphlet, email or electronic communication program, film or slide or in any other form, which relates to the election, a candidate for the election, a political party or any policy associated with the election.

We did not raise this in the second reading debate so I need to speak to it. We are concerned that the provision concerning advertisements is too narrowly described so we have attempted to create a comprehensive definition which has not existed before. We think that is in the interests of improving the act. We have long felt that ‘advertisement’ is poorly described and administered as a feature of the act and that is why we have moved this amendment.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.06 p.m.)—In the context of even this committee stage debate, this is a little bit of a left-field amendment. I do not know whether you would accept that, Senator Murray, but that is my impression of it. What is the background to this particular definition? Would I be able to find it in any other act of parliament? In fact, you might just tell us where you got it from.

Senator MURRAY (Western Australia) (4.07 p.m.)—Firstly, I did circulate this on 16 June, so I have not sprung it on the committee.

Senator Faulkner—No, I didn’t suggest that.

Senator MURRAY—I know you didn’t suggest that. It is an attempt to deal with an issue which we have been concerned about. If you have a look at section 308 you will find it falls under division 5, ‘Disclosure of electoral expenditure’, which refers to advertisement. Section 310(4) says:

A broadcaster who is required to make a return under this section in respect of an advertisement ...
There are those kinds of references throughout. What we tried to do was say that advertisements come in many forms and that the act should reflect the variety which is available. As I understand it, where this has been addressed—I am not sure if it has been addressed in jurisprudence; it probably has—it has been too narrowly confined. If the committee are of the view that they have not had enough time to consider the matter and would like it deferred and thought about more, it is not one of those things I am going to hang onto grimly by my fingernails. If your preference is that you do not feel equipped to judge it, I will drop it.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (4.09 p.m.)—The government does not have a strong philosophical or policy position one way or the other, but it is, as I am advised, the view of the commission that this will not help in any way their administration of these arrangements. Perhaps it might benefit from further discussion involving the commission and the government. I would respectfully suggest it would be unwise to put in this amendment at this stage.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.09 p.m.)—I hear what the minister says and I know that he would accurately reflect the AEC’s view on this. I think on balance, though, because of the link here to the offence provisions, that this is possibly one best dealt with in the cold, hard light of day. Like the first view Senator Minchin reflected, I do not have a strong negative attitude towards it; I am not strongly opposed to it instinctively. But I think this might benefit from a closer look. There is always that link to the offence provisions which means that in a committee like this we need to take these matters very seriously. For me, the advice the minister gives to the committee in relation to the view of the AEC tips the balance for the opposition. From that point of view I indicate formally to the committee that the amendment will not be supported by the opposition.

Senator MURRAY (Western Australia) (4.10 p.m.)—I seek leave to withdraw amendment (16).

Leave granted.

The TEMPORARY CHAIRMAN (Senator Brandis)—We will now deal with Australian Democrat amendment (1), which is the amendment on sheet 4229.

Senator MURRAY (Western Australia) (4.11 p.m.)—Before I go there, I think at this stage of legislative pressure it would be unwise to deal with sheet 4239 tonight, so I will reserve it for another day. To start, I withdraw sheet 4239.

The TEMPORARY CHAIRMAN—You don’t need leave; you just don’t move the amendments.

Senator MURRAY—Before I proceed to sheet 4229, I just wanted to check whether the opposition is ready for me to move this or if you wish me to move it at another time. I know the government is opposed to it, but the opposition is of course very interested in this matter.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.12 p.m.)—I very much appreciate the spirit with which Senator Murray makes that contribution. I think Senator Murray knows—I would like to think the whole chamber knows—that the opposition’s view on the principle of one vote, one value is absolutely resolute. It is something that we share very much in common with the minor parties in the Senate. We appreciate the commitment Senator Murray has shown on this issue on behalf of the Australian Democrats. We share it. In fact we have led this struggle in Australian politics for literally in
excess of a century. The issue for us, the difficulty here, is that these provisions are complex, difficult and very major amendments to the Electoral Act. If we are to get into it in this committee stage debate it is going to take a great deal of time.

My instinct is that it is probably best done later. However, if anyone would interpret such a suggestion as a lack of commitment to the principle, I would probably set about the task of spending the next three hours doing it in detail. It is Hobson’s choice—that is the truth, Senator Murray. I hope it is understood in that spirit; I think you offer your comments in that spirit. I suspect I speak for all those who have taken an active involvement and role in this committee stage when I say that it is probably, given this stage of the sittings period and the electoral cycle, best done at the first available opportunity in the next parliament. That is my instinct, but I am as much guided by Senator Murray as others in this.

Senator MURRAY (Western Australia) (4.14 p.m.)—Whilst we are still addressing it—with your forbearance, Temporary Chairman Brandis—this is a vital issue. Unless there is full agreement with a party which has the numbers to deliver this outcome in both houses of parliament, it will just occasion debate without fulfilment. That is my view at this time. We know the government will reject it in the House of Representatives. I do want a full debate on it. I do feel very strongly about it. In the interests of time and in the interests of the proper management of business at this stage of the electoral cycle I will not move it. But I will ensure that I come back to it.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.15 p.m.)—by leave—I want to check one element of the committee stage that I am not entirely certain about, and I seek your or the clerk’s guidance. I want to ask where we find ourselves in relation to opposition amendments (1), (4), (7) and (8) on sheet 4260. This is the problem of not having a running sheet. I wonder where we find ourselves with those amendments.

The TEMPORARY CHAIRMAN—We have no sheet 4260.

Senator FAULKNER—that is what I was worried about. Why haven’t you got a sheet 4260?

Senator MURRAY (Western Australia) (4.16 p.m.)—Mr Temporary Chairman, if I may assist the chair, I suspect those dealt with the amendments which were eventually dealt with as Democrat amendments.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (4.16 p.m.)—The Labor amendments just referred to by Senator Faulkner were covered by Democrat amendments which the committee has accepted.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.17 p.m.)—What has happened here, Mr Temporary Chairman, is that the Democrat amendments have picked up amendments (2), (3), (5) and (6) on this sheet. I have no idea why sheet 4260 has not been circulated. That is lost on me. Let us circulate it.

The TEMPORARY CHAIRMAN—As I understand it, that is the last of the amendments to the bill, so the question is that the bill, as amended, be agreed to.
Senator FAULKNER—I can but I would prefer them to be quickly circulated for the assistance of senators.

The TEMPORARY CHAIRMAN—We will borrow the minister’s copy of the sheet and circulate that.

Senator BROWN (Tasmania) (4.18 p.m.)—I will fill the gap by asking if Senator Faulkner would be good enough to explain what the outcome of the restriction on prisoner voting was as a result of the various amendments that went up, so that the committee can be clear on that when we finally get the uncirculated ALP amendments.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.19 p.m.)—I have just been informed that there has been a glitch. One of the clerks has apologised, because the clerk had thought they were circulated a couple of hours ago. It is one of those things that happens, Senator Brown. I am happy to spend a couple of minutes on the important issue that Senator Brown has raised. I was a bit surprised by the outcome, Senator Brown, but, so that you are aware, the opposition have not supported the government’s proposal to stop anyone in prison at the time of an election being able to vote. The amendment that we moved has the effect of disqualifying from voting only those prisoners serving a sentence which runs from the return of the writs for one election to the issue of the writs for the next election—so for the whole period of an electoral cycle.

We are concerned that, under the proposal that was contained in this bill, we would have a situation where a person who would be sentenced to, for example, two weeks in jail that coincided with an election could not vote at all, yet another prisoner who might be sentenced to two years in jail but whose term of imprisonment did not coincide with an election would be able to vote. We have also consistently indicated for many years that the proposal to deny the right of any prisoner to vote, such as this proposal contained in the government’s bill, irrespective of length of sentence would represent a breach of our obligations under the United Nations International Covenant on Civil and Political Rights as well as those under the United Nations Universal Declaration of Human Rights, which was re-signed by the Howard government in 1999. You would be aware, Senator Brown, that parliament has previously accepted that certain classes of prisoners should not be able to vote. The opposition have not opposed that, which has been the view of the parliament previously. We do say that it is possible, as the parliament has attempted to do, to distinguish between major and minor crimes.

The underlying logic, if you like, of the opposition’s amendment is to disqualify from voting only those prisoners whose sentence meant they were in jail for the term of the parliament which immediately precedes the election they are disqualified for. Only those prisoners serving a sentence which runs from the return of the writs for the preceding election to the issue of the writs for the current election—that is, for the whole period of the electoral cycle—would be disqualified under the amendment that the opposition has proposed. I did not expect that the opposition’s amendment would be carried but it was, as you are probably now aware, Senator Brown. That is, in the short time available to us, fair and reasonable and certainly is an accurate summary of the situation. I cannot quite explain the voting behaviour of others in the chamber, I only know about the consistent position that the federal parliamentary Labor Party has taken on this issue since it was first raised by the Howard government a number of years ago. You will recall that I have previously moved an amendment, I think twice in this chamber, in the same terms and it has
not found favour previously. I, being a creature of habit, had expected that to be the case today but it was not.

Senator BROWN (Tasmania) (4.24 p.m.)—The Greens’ difficulty is that we believe if there is to be deprivation of the right to vote then that ought to be put into law as an option before the judge who is imposing a penalty. This abrogation of a liberty should not be a parliamentary instruction through the courts. What is more, I think the formula that is now being adopted is open to challenge because it is not fair and equal across the board. If there is a short period between elections, a prisoner who is in for a short period will be deprived of the right to vote in both. If there is a long period then that same prisoner would not be deprived of the right to vote. This penalty happens to vary according to when exactly you get incarcerated. Surely, such an unfair piece of legislation cannot stand. It also means that if you happen to commit a crime and be incarcerated at mid-term, the penalty is less than if you happen to commit a crime and get incarcerated just before an election where you will then be deprived if you are there when the next election occurs. I think that the amendment that has been made here is fraught. We would oppose it anyway.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.26 p.m.)—The opposition opposes schedule 1 in the following terms:

(4) Schedule 1, item 85, page 19 (lines 18 and 19), TO BE OPPOSED.

(7) Schedule 1, item 118, page 26 (lines 1 and 2), TO BE OPPOSED.

(8) Schedule 1, items 136 to 138, page 30 (lines 11 to 28), TO BE OPPOSED.

I will check with you, Temporary Chair, that amendments (2), (3), (5) and (6) have been dealt with, effectively via Democrat amendments.

The TEMPORARY CHAIRMAN (Senator Ferguson)—That is what I am advised.

Senator BROWN (Tasmania) (4.27 p.m.)—Could Senator Faulkner give a cameo outline of the meaning of these amendments?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.27 p.m.)—First of all, this stops the deletion from the Commonwealth Electoral Act of certain provisions and requirements effectively on publishers and broadcasters. We think that it is appropriate that they remain in the act. To my knowledge, they have not been subject for some years to consideration by the Joint Standing Committee on Electoral Matters. Senator Ray, who is an eminent member of that committee, has confirmed that. The other matter, of course, is amendment (1) on page 4260, which is of a different nature, and I have moved that separately.

Items 58 to 61 of this bill set up what appears on the face of it to be a reasonable reform of the system by which political parties are registered. As is often the case with these things, the devil is in the detail. These items insert a reasonable person test for the registration of party names and this means that a party will not be able to be registered or remain registered if its name suggests to a reasonable person a relationship with a registered party that does not in fact exist.

Given the political and legal problems, for example, the Liberal Party has had with another political party known as the Liberals for Forests, once we saw that the bill contained measures to reform this area of the act we thought it was worthy of closer scrutiny. I might say that we have not dealt with other provisions in this committee stage in the same level of detail because obviously most of them have been subject to at least some consideration at the Joint Standing Commit-
committee on Electoral Matters level. We do not think the attempt to ensure that this measure could not be used by the Liberal Party against parties such as Liberals for Forests, who registered after them, works. We have had private discussions with the government about this. Given that the government really has made no attempt to ensure that the measure is not retrospective, I have assumed—and Senator Minchin, no doubt, will tell us whether this is correct or not—that this is actually about targeting the party Liberals for Forests.

I think the government’s decision not to fix this has left us with the situation that we have to fix it ourselves. That is why amendment (1) will be moved. What this amendment will do, in a nutshell, is ensure that the measure is not retrospective and cannot be used oppressively against a party. I am using the example of Liberals for Forests, but there may well be another example that those on the other side of politics might care to use. Perhaps the most substantive of these amendments is that this bill cannot be used retrospectively or oppressively against any other registered party. I commend these amendments to the chamber.

Question negatived.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.32 p.m.)—I move opposition amendment (1) on sheet 4260:

(iii) the second party was registered after the commencement of this section; and

Senator BROWN (Tasmania) (4.32 p.m.)—Of course we will support this, but I would have far preferred this to have gone to public debate. There is a great deal of concern about established parties closing down the options of people who want to enter the political fray. We are all very protective about such things, and I know I have had representations about the potential permutations of the use of the word ‘green’—and we are going to see that for certain.

In the case of Liberals for Forests, yes, they have taken on a name which is very similar to Liberals ‘for the forests being turned into woodchips’ which is a long-standing party now headed by the Prime Minister, John Howard. I can see why the government is concerned about that, but it should not be. There are many Liberals who do not want the destruction of forests that we are seeing at the moment all over the country. Therefore, I think it is a pretty poor argument to say that, where there are communities within existing parties who depart on a major point of principle like the destruction of the environment, they ought not to be allowed to set up their party saying just who they are.

The objection we have here is that we are not getting community representation into this decision, which is a very important one, being made by this committee. It is extraordinarily important that we do not close down the time-honoured ability for parties to be named as they are and the ability of the Electoral Commission to adjudicate whether there will be confusion in the public’s mind. My experience is that the public is well able to determine the difference between, for example, Liberals and the Liberals for Forests—the Liberals against the forests and the Liberals for the forests, if you like. So I am very perturbed at the potential for this innocuous-looking little amendment to go through. If we had heard from the public then it would be fine, but we have not. Here we are, on potentially the last day of sittings before an election, putting through a critical change to the Commonwealth Electoral Act which will close down the rights of people outside the current party structure to set up
new parties and call them what they think is most appropriate.

I can tell you that I feel very protective about the name ‘Greens’, but I am here resisting the temptation to say that we should therefore ban anybody who comes up with a name that is similar to that. That is what is being done here, let us make no bones about it: we are moving to protect the established parties from having somebody set up who is Labor for this, Liberal for that, Greens for something else or Democrat for something else. Imagine not being able to have the word ‘Democrat’ in the name of a political party in a democracy. It is very retrograde that such an amendment should be entertained at all. I object to that. If there are other members of the Senate who would join in opposing this amendment altogether then I will certainly move to do so, because I think it is important to knock it out until we have heard from the public.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (4.36 p.m.)—The government share with the Labor Party an objection to any retrospective effect of a clause like this so we are more than happy to accept the opposition’s amendment to this proposal, as reflected in item (1) on sheet 4260. We also welcome the opposition’s acceptance of the substantive amendment, which is really just saying that the commission should not accept a registration where there is clearly an attempt to mislead and confuse voters into believing that one party is connected to, or shares the same policy disposition as, an already registered party. It is critically important, contrary to what Senator Brown says, that groups of people not be able to deliberately mislead and confuse voters into believing that one party is connected to, or shares the same policy disposition as, an already registered party. It is critically important, contrary to what Senator Brown says, that groups of people not be able to deliberately mislead and confuse voters into believing that one party is connected to, or shares the same policy disposition as, an already registered party. That is what is happening here. What a shame it is that if this legislation were to pass there would be a change to the penalty provisions for people coming before the courts whereby some would be, at the behest of parliament, deprived of their vote and others would not. Not only is it at the behest of parliament but it is under an Electoral Act that does not fix the time of elections, leaving it to prime ministers to call elections. If after this election there is another election in October—for example, because government is not settled—then anybody who has been in jail for three months will be deprived of their vote. That is not what this committee intended, if I was listening to the debate carefully, and I was.

What is more, there is a major change here: a restriction or prohibition on new political parties being established which have names similar to those of existing political parties. I know there are cogent reasons for that, but there are also very strong reasons...
against it. We ought to have had community input. I am afraid that this is once again, on the face of it, political interest within the parliament gaining an advantage over potential political interests that do not have a seat in the parliament. Electoral laws must not be allowed to go in that direction. That is not democratic.

The least we should have done was insist that this go to a public hearing before these measures are brought into law, particularly in the run-up to an election. My experience—and it is what is going to happen—is that once these provisions come in they will stay. So the Greens will not be supporting this legislation because it is done at the wrong time without public consultation but with very major consequences for the electorate. We will not be supporting it.

Question put:
That this bill be now read a third time.

The Senate divided. [4.46 p.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes............. 49
Noes............. 3
Majority......... 46

AYES

Allison, L.F.              Barnett, G.
Bartlett, A.J.J.          Bishop, T.M.
Boswell, R.L.D.           Brandis, G.H.
Buckland, G.              Calvert, P.H.
Campbell, G.              Campbell, I.G.
Carr, K.J.                Collins, J.M.A.
Conroy, S.M.              Cook, P.F.S.
Coonan, H.L.              Crossin, P.M.
Eggleston, A. *           Evans, C.V.
Faulkner, J.P.            Ferguson, A.B.
Ferris, J.M.              Fifield, M.P.
Forshaw, M.G.             Greig, B.
Hogg, J.J.                Humphries, G.
Johnston, D.              Kemp, C.R.
Kirk, L.                  Lightfoot, P.R.
Ludwig, J.W.              Lundy, K.A.
Marshall, G.              Mason, B.J.
McGauran, J.J.J.          McLucas, J.E.
Minchin, N.H.             Moore, C.
Murray, A.J.M.            Patterson, K.C.
Ray, R.F.                 Santoro, S.
Scullion, N.G.            Stephens, U.
Tchen, T.                 Troeth, J.M.
Watson, J.O.W.            Webber, R.
Wong, P.

NOES

Brown, B.J.               Murphy, S.M.
Nettle, K. *              * denotes teller

Question agreed to.

Bill read a third time.

SUPERANNUATION BUDGET MEASURES BILL 2004

Consideration of House of Representatives Message

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

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

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.51 p.m.)—I move:

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

I want to make a very brief statement in relation to this matter. The government has taken prompt action to correct an unintended consequence of an amendment to the Superannuation Budget Measures Bill 2004 that was debated in the Senate last night and moved by Independent Senator Murphy. The amendment intended to reduce the superannuation surcharge to 10 per cent in 2006-07 as opposed to the government’s proposal to
reduce the surcharge to 7.5 per cent in 2006-07. An error in the drafting of the amendment unintentionally removed the superannuation surcharge completely after 2006-07. The government, however, has not sought to take advantage of this error and has put in place steps to allow Senator Murphy to correct his amendment. I regret to say, however, that a political opportunity has been taken by Senator Sherry and Mr Crean this afternoon in relation to this issue, accusing the Treasurer, who had no involvement in the Senate last night, of being responsible. What an extraordinary claim!

Senator Sherry’s baseless criticisms are a bit rich, considering he did not bother to come back from Tasmania last night during the debate on the most significant incentives for Australians to contribute to superannuation since the superannuation guarantee was introduced. These incentives will have the effect of injecting approximately $2.1 billion into the superannuation funds of ordinary Australian workers who are doing the right thing in making voluntary contributions in order to save for their retirement. The Labor Party voted against allowing six million low- and middle-income earners in Australia to access the government’s co-contribution. Senator Sherry himself made some spectacular goofs this week. In the debate on the choice bill, he moved amendments that would have abolished superannuation entitlements for workers with 20 employees or less—that is, small business employees. Another amendment sought to cap fees and charges in a tax bill—a proposal that was unconstitutional—and a third was when he moved an amendment to change the start date for a measure relating to earnings based on ordinary time earnings. Senator Sherry’s first attempt at the amendment to achieve this would have had no effect on the application dates.

On the contrary, Senator Murphy’s error was picked up by my office and contact was made first thing this morning with opposition senators. I took the view that that was appropriate. I note that the error was not picked up by anyone else, and certainly Labor failed to notice it. It was Mr Crean’s office that subsequently called my office this morning after we alerted people to the error to offer whatever assistance might be needed to remedy the problem with the Senate amendment. As I stated earlier, the government have not sought to take advantage of this error; the Howard government are a responsible government. It was tempting, I must admit; we did think long and hard about whether to give Senator Murphy the opportunity to put his amendments again. Fiscally we can afford the sort of outcome that the amendment would have resulted in, and the government’s policy remains to reduce the surcharge to 7.5 per cent. The government identified the issue and we have moved to correct it. We could have done it several ways; however, a view was taken that it was appropriate that Senator Murphy should have an opportunity to move his amendment. We believe we have taken the appropriate steps to allow Senator Murphy to correct his amendment. The government will be supporting the new amendment.

Senator MURPHY (Tasmania) (4.55 p.m.)—Can I just say that it shows just how much of a dog’s breakfast the taxation arrangements are on superannuation that we proceeded that way. I proposed an amendment to stop the reduction of the surcharge from going below 10 per cent, and I provided the government with a proposal to do that. That was drafted, as we all do, by other people. If my instruction to the clerks was insufficient, then I will accept the blame for that. But, as I said, I did provide the amendment to the government at the very outset. It was something that was not picked up by anybody, and so be it. But it remains—
Senator Conroy—It was Freudian!

Senator MURPHY—Senator Conroy, it remains the same: I am still only prepared to accept a reduction in the surcharge to 10 per cent. I therefore move my amendment on sheet 4340:

At the end of the motion, add “but agrees to the following amendments in place of those amendments:

(1) Schedule 2, item 1, page 5 (line 12), omit ‘—10%; and’, substitute ‘and later financial years—10%.’.
(2) Schedule 2, item 1, page 5 (lines 13 and 14), omit paragraph (d) of the definition of maximum surcharge percentage.
(3) Schedule 2, item 2, page 5 (line 24), omit ‘—10%; and’, substitute ‘and later financial years—10%.’.
(4) Schedule 2, item 2, page 5 (lines 25 and 26), omit paragraph (d) of the definition of maximum surcharge percentage.
(5) Schedule 2, item 3, page 6 (line 5), omit ‘—10%; and’, substitute ‘and later financial years—10%.’.
(6) Schedule 2, item 3, page 6 (lines 6 and 7), omit paragraph (d) of the definition of maximum surcharge percentage.
(7) Schedule 2, item 4, page 7 (lines 10 to 15), omit paragraphs (d) and (e), substitute:

(d) 10% of the employer-financed component of any part of the benefits payable to the member that accrued after 30 June 2005.

(8) Schedule 2, item 5, page 7 (lines 22 to 27), omit paragraphs (d) and (e), substitute:

(d) 10% of the employer-financed component of any part of the benefits payable to the person that accrued after 30 June 2005.

(9) Schedule 2, item 6, page 8 (lines 4 to 9), omit paragraphs (d) and (e), substitute:

(d) 10% of the employer-financed component of any part of the benefits payable to the person that accrued after 30 June 2005.

(10) Schedule 2, item 7, page 8 (lines 17 to 22), omit paragraphs (d) and (e), substitute:

(d) 10% of the employer-financed component of any part of the benefits payable to the member that accrued after 30 June 2005.

(11) Schedule 2, item 8, page 8 (line 31) to page 9 (line 3), omit subparagraphs (iv) and (v), substitute:

(iv) 10% of the employer-financed component of any part of the benefits payable to the member that accrued after 30 June 2005.

(12) Schedule 2, item 9, page 9 (lines 10 to 17), omit subparagraphs (iv) and (v), substitute:

(iv) 10% of the employer-financed component of any part of the benefits that would have been payable to the member but for the payment split and that accrued after 30 June 2005.

(13) Schedule 2, item 10, page 9 (lines 25 to 34), omit subparagraphs (iv) and (v), substitute:

(iv) 10% of the employer-financed component of any part of the value of the age retirement benefits of the member when the fund ceased to be a constitutionally protected superannuation fund that accrued after 30 June 2005.

I hope these amendments are now properly constituted so that they will ensure that the surcharge is not reduced below 10 per cent. I think that is the correct thing to do. I thank the government for ensuring that what was intended at the outset is now going to be put in place.

Senator CONROY (Victoria) (4.59 p.m.)—It is a sorry state of affairs when Senator Coonan and Senator Murphy try to blame the opposition. As has been indicated, this was something like policy on the run. Senator Murphy mentioned it verbally earlier in the afternoon. The first time the amendments were shown was not long before they
were being debated, in among a whole range of other things. Senator Coonan, I think it is a little rich to be blaming the Labor Party for not picking this up.

To clarify for the chamber, surely the amendment was checked by the Treasurer’s office and Treasury before the government voted for it. I cannot believe that there was not some degree of reading of the amendment and that there was agreement from the Treasurer’s office. Senator Coonan, I am not for a moment suggesting that you were acting wildcat, on your own, and accepting amendments from the floor from Senator Murphy. I am sure we will be able to clarify that in fact the Treasurer participated in this debacle where $2.5 million of Commonwealth revenue was wiped out by accident.

Senator Coonan, I am sure that you will be able to confirm to us that you were not acting wildcat on this one, that you were not out on your own and that you did check with the Treasurer whether this amendment was okay. I am sure the conversation took place. I am sure this morning that, as the cold, hard light of day dawned on you—I can just imagine the phone call—

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator Conroy, are you talking about the cold, hard light of day dawning on me?

Senator CONROY—I am sure you noticed it this morning, Mr Temporary Chairman.

The TEMPORARY CHAIRMAN—Senator Conroy, to clear up any ambiguity you might address your remarks through the chair.

Senator CONROY—Mr Temporary Chairman, I am willing to bet that you tipped off Senator Coonan about this issue. I can just imagine the conversation that took place this morning when Senator Coonan phoned the Treasurer and said, ‘Peter’—and he would have said, ‘Yes, Helen’—‘Honey, I shrunk the surcharge; in fact, I wiped it out.’ I am sure the Treasurer would have said, ‘That’s not quite what I thought I had agreed to yesterday, but perhaps you could ask the Labor Party whether they could facilitate fixing this.’

As always, we are happy to fix up a mess that the government have made. Senator Murphy, you are quite correct: it is a dog’s breakfast. The government introduced this in 1996. From recollection, Senator Murphy, you voted against it. I think you were sitting next to me at the time; you were still a member of the Labor Party sitting on my side of the chamber. I know you have had a strong view on this since then, but I am sure you did not mean to abolish it.

We are only too happy to facilitate this bill being restored to its intent. But I indicate that we will not support reducing the surcharge. This is the one tax in this country that those who are well able to avoid taxes have consistently been unable to avoid. It is why there is such screaming about it. We do not believe that this is the appropriate change to be made. We believe that there are fairer and better ways to reduce the dog’s breakfast. We will be opposing these amendments, and we will be dividing on them. I look forward to Senator Coonan explaining how her chat went with Peter and, more importantly, confirming that she was not acting wildcat last night.

Question put:
That the amendment (Senator Murphy’s) be agreed to.

The committee divided. [5.07 p.m.]

The Temporary Chairman—Senator P.R. Lightfoot

Ayes…………… 30
Noes…………… 25
Majority……… 5
### AYES

Barnett, G.  
Brandis, G.H.  
Campbell, I.G.  
Coonan, H.L.  
Ellison, C.M.  
Ferris, J.M.  
Heffernan, W.  
Johnston, D.  
Lees, M.H.  
Macdonald, I.  
Mason, B.J.  
Minchin, N.H.  
Patterson, K.C.  
Scullion, N.G.  
Troeth, J.M.  
Boswell, R.L.D.  
Calvert, P.H.  
Chapman, H.G.P.  
Egglesdon, A.  
Ferguson, A.B.  
Fifield, M.P.  
Humphries, G.  
Kemp, C.R.  
Lightfoot, P.R.  
Macdonald, J.A.L.  
McGauran, J.J.J.  
Murphy, S.M.  
Santoro, S.  
Tchen, T.  
Watson, J.O.W.

### NOES

Allison, L.F.  
Bishop, T.M.  
Campbell, G.  
Conroy, S.M.  
Crossin, P.M.  
Faulkner, J.P.  
Greig, B.  
Ludwig, J.W.  
Marshall, G.  
Moore, C.  
Nettle, K.  
Stephens, U.  
Wong, P.  
Bartlett, A.J.J.  
Brown, B.J.  
Carr, K.J.  
Cook, P.F.S.  
Evans, C.V.  
Forshaw, M.G.  
Kirk, L.  
Lundy, K.A.  
McLucas, J.E.  
Murray, A.J.M.  
Ray, R.F.  
Webber, R.

### PAIRS

Abetz, E.  
Colbeck, R.  
Harradine, B.  
Harris, L.  
Hill, R.M.  
Knowles, S.C.  
Payne, M.A.  
Tierney, J.W.  
Vanstone, A.E.  
Mackay, S.M.  
O’Brien, K.W.K.  
Collins, J.M.A.  
Hutchins, S.P.  
Sherry, N.J.  
Hogg, J.J.  
Backland, G.  
Dennman, K.J.  
Bolkus, N.

* denotes teller

**Adoption of Report**

**Senator COONAN** (New South Wales—Minister for Revenue and Assistant Treasurer) (5.11 p.m.)—I move:

That the report from the committee be adopted.

**Senator CONROY** (Victoria) (5.11 p.m.)—I would like the minister to clarify whether she was acting wildcat yesterday and agreed to this amendment with no consultation with the Treasurer. We did invite you to come to your feet and tell us that you were operating as a wildcat. I think that is not the case, Minister, and you should not be so shy. We ask once again if you will take to your feet and outline whether or not you consulted the Treasurer’s office and whether the Treasurer and the Treasury signed off. You can stand up and clear it all up for us right now.

Question agreed to.

Report adopted.

**SEX DISCRIMINATION AMENDMENT (TEACHING PROFESSION) BILL 2004**

### Second Reading

Debate resumed from 23 June, on motion by **Senator Abetz**:

That this bill be now read a second time.

**Senator ALLISON** (Victoria) (5.13 p.m.)—I seek leave to incorporate in Hansard my speech in the second reading debate for the Sex Discrimination Amendment (Teaching Profession) Bill 2004.

Leave granted.

The speech read as follows—

The Democrats will of course not be supporting the Sex Discrimination Amendment (Teaching Profession Bill). There are a number of reasons for this.

Firstly, we think it’s a red herring. Of all the pressing problems for schools, the question of achieving gender balance in the teaching work-
force is not top of the list, not in schools, not in the community and not with us.

Secondly, there is absolutely no reason to believe that offering partial scholarships to male undergraduates will solve the problem. Can the Government demonstrate that the small amount of money being offered to young men, or middle aged ones for that matter, will suddenly attract them to teaching?

What research has been done to discover why few men apply for under or post graduate teaching courses. Why is it that they drop out of these courses at higher rates than their female counterparts? Are they leaving the profession in greater proportions than women and if so, why? The fact of the matter is that we don’t know the answers to these questions.

It is often said that men leave teaching because of the suspicion and the extra scrutiny they are subjected to because their gender is perceived to have a higher likelihood of abusing children. I find this difficult to believe but if it is the case then why not deal with the problem rather than trying to recruit more men who may well walk away for the same reason.

Thirdly, the gender imbalance itself does not appear to be a problem in schools. No doubt schools would like to have more equal numbers of men and women. It would also be good to have more male nurses, aged care workers and other professions currently dominated by women. Of course, women usually dominate only in a numerical sense as we know from the statistics on principals in schools. The glass ceiling is alive and well in every walk of life.

To quote Pru Goward:

If the government wants more male teachers, there are many programs that could encourage male teacher students without requiring amendment of the Sex Discrimination Act, or introducing a discriminatory scholarship scheme.

Successful programs that have worked to allow more women into traditionally male-dominated professions can all be adapted to encourage young men into teaching. For example, sending young male student teachers to [secondary] schools to encourage young men to consider the career, or supporting career counsellors to promote the benefits to men of a teaching career could be useful beginnings.

There are any number of alternative programs that are not discriminatory and which do not need a legislative amendment, such as paying teachers more. The simple fact is that young men are not attracted to teaching because they can earn better money elsewhere. As ‘women’s work’, it has never been renumerated properly.

A very interesting study was done recently by Professor Bob Lingard in the Queensland Schools Reform Longitudinal Study for Education Queensland which found that the teacher/student relationship was consistently important, regardless of gender.

In almost every case, it was the nature of the relationship with the teacher, the sort of teacher the person was, and the quality of the teaching that mattered, not whether they were male of female. Having a sound relationship with another responsible caring adult, other than their parents was extremely important, particularly for students in early adolescence.

His study showed that student learning was most likely to take place if teachers were intellectually demanding, if they established a sense of connection to the students as individuals and to their contexts, if they were supportive while still demanding a high level of achievement, recognised difference and if they established a warm emotional climate in the classroom.

This was the response to our own survey in 2001. I put out a survey for year 11 students, asking them to reflect on many aspects of their education. The results were fascinating, particularly with regard to teachers. Not one of the respondents said there should be more male teachers. In fact gender did not enter into the equation.

I asked what were the traits of a really good teacher. Some of the responses were:

- Honest, reliable and doesn’t put you down.
- Someone who you can trust with all information and someone you understand and can ask for help.
- Willing to help whenever there is a student in need.
• Listens to the student’s ideas, open minded, not overly judgemental of students, not up themselves, tries to understand the student’s way of thinking, teaches creatively, is interested in how the students progress.

• Someone who knows the topics well and offers more than just the standard course work.

• Good listener. Does not have a monotone, fall asleep voice.

• Enthusiastic about the job. Has fun with and interacts with the kids. Shares jokes and isn’t a stiff.

• One that doesn’t yell at me.

• Someone who a student can relate to and get along with without feeling embarrassed or nervous around.

• A really good teacher is one that listens, doesn’t yell but is still strict.

• Honest, organised, understanding, flexible, knowledgeable on subject taught, able to convey this knowledge easily, willing to spend time on students that need the extra attention and on those that are gifted, fair, patient.

• One that gets to know their kids on a personal level, and interacts with them. Always helps kids to revise. Doesn’t ramble on, stays on topic. Can control the class. Sometimes, has a good sense of humour but not everyone can have that.

So, let’s see a national effort put into supporting teachers instead of telling them they don’t report to parents adequately and are too politically correct and don’t teach values.

Instead we should help them to become the best teachers possible. That means fixing the teacher shortage problem, including better workforce planning so that we don’t have so many teachers forced to teach outside their field of training.

It also means serious in-service and post graduate professional development. It means identifying best practice in teaching and finding ways to share successful, innovative learning environments.

It means good working and teaching conditions for teachers—and the portable classrooms and cramped staff rooms that most teachers have to put up with, must be replaced with modern infrastructure conducive to learning.

It means fast broadband services and indoor sports and performing spaces that are still missing from many government schools.

And it means attracting quality candidates for teaching by making sure that teaching is a high status career with all that that implies—wages commensurate with the importance of the work and the level of education required. It means career paths and respect and that starts with the Prime Minister.

I shall move on behalf of the Australian Democrats a second reading amendment calling on the Senate to support the principle of removing religious exemptions from anti-discrimination legislation, particularly with regard to sexuality and gender, and for the introduction of Federal sexuality and gender identity discrimination legislation.

Section 38 of the SDA provides broad exemption to religious organisations that operate in accordance with the doctrines, tenets, beliefs or teachings of a particular religious creed, if that discrimination occurs in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.

This exemption applies to employment and dismissal of members of staff of educational institutions, contract workers involved in work at educational institutions, and whether or not education or training is provided to particular individuals.

Other Federal antidiscrimination legislation, as well as most State and Territory Acts contain such exemptions, not just in relation to education settings, but in all of the areas covered by each of the Acts.

The Australian Democrats do not regard the existence of exemptions of this breadth as appropriate. We see no reason why adherents to a particular religion or creed should be exempted from contributing to the effort of eliminating discrimination and developing tolerance. We would argue that those of a particular religious persuasion have as much responsibility, as any other member of the community to eliminate unfair and unjust
treatment of others. Indeed it could be argued that morally, they are called to put in special effort.

A recent Australia Institute report, Public Attitudes to Discrimination in Private Schools would indicate that much of the Australian community agrees.

The report highlights that exemptions for private schools enable them to engage in discriminatory practices that are prohibited in public schools. It means that students and staff of private schools have fewer rights than their counterparts in the public sector. It means there is a hierarchy of types of discrimination, some of which are outlawed, and others such as is the case with sexuality and gender discrimination, that continue to be sanctioned. Around 90 percent of respondents to the Australia Institute research believed it was not acceptable that private schools maintain the right to discriminate.

My colleague Senator Greig has been critical of the perceived hypocrisy displayed by the Catholic Church and others, as they have steadfastly insisted on their right to continue to discriminate in certain areas of public life.

He has argued that this double standard has been well highlighted in this current debate—the Catholic Church has sought additional leeway to discriminate, this time in favour of granting teaching scholarships to men, and yet it continues to steadfastly demand the right to discriminate against the employment of other men, simply because they are gay.

Traditionally, religious organisations have sought to defend exemptions in discrimination law in the area of sexuality and gender by appealing to community fears and ignorance that all too readily link homosexuality with paedophilia.

Senator Greig has argued that it is this association, in part, that contributes to men’s limited entry into the teaching—a feminised profession—for fear of being perceived as a risk to children.

It is to ensure protection from inexcusable homophobic and sexist discrimination in the name of religion, that the Democrats move this second reading amendment calling for a more responsible and balanced approach to these issues, and one that is already operating successfully in Tasmania.

Tasmanian anti-discrimination law contains no exemptions. Exemptions can only be determined upon application, on a case by case basis, by the Anti-discrimination Commission. The Act does contain exceptions, but these act more as guidelines, do not provide a blanket escape clause, and are open to challenge.

Exceptions relating to education in religious institutions only enable discrimination on the grounds of tenets, beliefs, teaching, principles or practices if those tenets etc are an inherent requirement of the job and the discrimination is necessary to enable the institution to be conducted in accordance with those tenets. There must be relevant cause. Within the context of this debate, it would not be acceptable for example to refuse to employ a gay male maths teacher on the basis of his sexuality, even though that sexuality in and of itself has no bearing on his capacity to teach maths or for the school to operate within it religious framework.

The Australian Democrats believe this is a much more balanced and responsible approach to discrimination law and call upon the Senate to support our amendment.

To again quote Pru Goward, the amendment if successful would mean that for the first time, government can “legislate for a quota, for affirmative action”. Speaking on ABC radio in March, Goward said providing male-only scholarships might not attract more men into teaching, but may mean that those boys who were already interested in doing teaching would now get scholarships to do it, where once they had not.

“Once you start talking about affirmative action and you legislate for it in Australia, then you would start to talk about affirmative action for women as professors, affirmative action for all sorts of areas where there is a shortage—still of women—including of course, in politics. You might have to offer extra pay to women to get them to do parliamentary work.

My view is that merit, fair go and equal opportunity is the best way to do it. It’s the fairest way to do it and it stops men resenting women. Australia’s always prided itself on the merit principle and on sticking to it, and you wouldn’t be surprised if a lot of other people felt this was not fair to them, to their daughters and to their interests
… why have we had to do this before we’ve explored some other options.

This bill should be voted down and I understand that’s likely but I want to take this opportunity to put forward reforms to the act that we think actually do need to be made with regard to teaching.

The Democrats have a second reading amendment, which has been circulated in the chamber. I move:

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

(a) notes the Australia Institute’s finding in its report, Public Attitudes to Discrimination in Private Schools, that different treatment of public and private schools under anti-discrimination laws, and distinction between types of discrimination, creates a hierarchy of rights;

(b) condemns the extension of exemptions in state-based anti-discrimination legislation to private schools on the grounds of sexuality and gender identity, and the alleged links between homosexuality and paedophilia often used to justify their existence; and

(c) calls upon the Federal Government to enact Federal anti-discrimination legislation prohibiting discrimination on the grounds of sexuality and gender identity, without religious exemption, as has occurred in Tasmania.”

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (5.14 p.m.)—The Sex Discrimination Amendment (Teaching Profession) Bill 2004 has been introduced by the government to address a need in education. It has been introduced to give educators the ability to provide financial incentives to encourage more males to train as teachers in schools. It is well documented that there is a crisis in boys’ education. That crisis is not because of teaching standards or quality. It is not because teachers are not performing well. It is simply because young boys need role models.

As the overwhelming majority of teachers in Australian schools are women, the curriculum has become feminised and the teaching style and behavioural standards have become those best suited to women. Young girls are thriving in this environment, but our young boys are not. All children need mentors; they need to see successful, intelligent and articulate adults. Boys need to know that it is okay to be smart, okay to read well and okay to be good at school. This bill is about finding a way to provide role models for boys of all ages, from kindergarten to high school.

In a June 2003 House of Representatives inquiry report entitled Boys: getting it right, the enormity of the problems confronting the education system was highlighted. Only 20.9 per cent of primary school teachers in Australia are men. In 2003, male teachers constituted 24 per cent of the 55,577 domestic students enrolled in initial teaching courses in Australia. Males were only 18.8 per cent of the students training to become primary school teachers. A mere 3.6 per cent of early childhood teacher trainees in Australia were men.

This bill is also an opportunity for the Labor opposition to put its money where its mouth is. Mark Latham has acknowledged the need for more male role models, but his team is going to vote against this positive measure. In a policy statement last month, Mr Latham said:

The evidence clearly shows that mentoring expands horizons, heightens expectations, and improves academic performance for the beneficiary.

In another policy statement, Mr Latham said:

Labor wants boys to have strong role models as they move into adulthood.

… … …

More than ever, they need contact with men who can be role models and mentors to help steer them in the right direction. That’s why Labor will es-
tablish a national action plan to get more male teachers into schools ...

He is full of ideas, but when it comes to developing measures he fails to carry those ideas through to fruition and fails to lead his team to support this bill for the benefit of all Australian children. Mark Latham may be trumpeting his arrival out the front of the battlefield, but his team have already retreated and run for cover behind the skirts of the left-wing union leaders, factional bosses and minority groups, to whom they are indebted.

In opposing this bill, the leader of the Australian Labor Party has once again shown the Australian public that he is full of hot air and does not have the ability to rally his members to back his beliefs. That is why we are constantly seeing backflip after backflip. The Australian public is right to question whether he can actually achieve anything but rhetoric, in opposition or in government. In all schools, teachers must act in loco parentis which, translated from Latin, means 'in the place of a parent'. This means that a balanced education system needs an equal balance of male and female teachers and it is not happening at the moment. Young boys are being let down by a system designed to assist them.

This bill, which allows for the Sex Discrimination Act to be amended to enable financial incentives based on gender, is one avenue available to the government to allow this issue to be addressed. What this bill is not is an opportunity to broaden society's definitions of men and women. This bill is about the education of our children, not the agenda of the Australian Democrats. The Democrats want us to believe that transsexuals and transgender individuals are a mainstream part of Australian society. Educators must have the best interests of their students in mind at all times. Exposing children as young as four and five to people who are unsure of their own sexuality and identity is not society’s idea of role modelling. It is not acceptable to the Nationals, it is not acceptable to the government and I am sure that it is not acceptable to the majority of parents whose children are being taught in Australian schools.

The Australian Democrats would have us believe that it is healthy to expose young children to the many complexities of the transsexual-transgender community. The Democrats believe that people who are coming to terms with their own sexuality are perfectly fine role models for primary school children. They believe that, because a kindergarten child may come to school dressed as a princess, it is perfectly normal for her male teacher to do the same. We do not think so. Schools are not the place for social experiments. Schools are places of learning, places of understanding and places where children need to feel secure and safe. It is not appropriate that young children are confronted with adult sexual issues. Adults who are having issues with their own sexuality or who are presenting a view that is not acceptable in mainstream society are not appropriate role models for young children or teenagers.

The government will not allow this positive initiative to be hijacked by the social Left agenda of the Australian Democrats. Australian society is not dominated by homosexuals, transsexuals, transgender people or people with intersex conditions. Contrary to the belief of a number of people in this chamber, Australia is a Christian society. Our main family unit contains a mother and a father. The majority of Australian children live in a nuclear family with a male and female parent as constant influences in their lives. Children learn most of what they know from their families. Their values and morals are transferred via their home environments. Australian students are fortunate that their
education, regardless of their circumstances, is then able to be extended through a world-class, secular, multicultural school system.

Our schools reflect our societies. They are places of learning. They are places where children can see and learn from intelligent adults, male and female, in a safe, non-threatening environment. This bill will provide the means to ensure our children have a balance of education, both male and female. It is not an excuse to open up our schools to everyone who feels discriminated against or who has a point to prove. This bill will provide a positive incentive for young men to consider the teaching profession. Our children need every good teacher they can get, and I strongly believe that this bill should not be amended to appease a minority in society at the expense of the quality of our children’s education and the wellbeing of our young Australians.

**Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.23 p.m.)—**The Sex Discrimination Amendment (Teaching Profession) Bill 2004 is very much in Australia’s national interest. I will summarise points that have been made by senators who have contributed to the debate and will then refer to the second reading amendment moved by Senator Allison on behalf of the Australian Democrats. The government is committed to high-quality education for all Australian children. The government believes that both male and female teachers play an important role in providing that high-quality education to Australian children. This bill is a sensible strategy to assist in bringing into balance the number of men and women in the profession in the interests of providing children with a balance of male and female role models in schools. The bill facilitates that by permitting scholarships for that purpose for persons of a particular gender in respect of participation in a teaching course. The government will lead by example and commit $1 million in funding to provide 500 teacher scholarships valued at $2,000 each for male first-year primary teacher education students in 2004-05 if this legislation is passed. This bill is just one of a number of the government’s strategies to support male teachers and to address the particular educational needs of boys in our schools.

A number of points have been raised. Firstly, Senator Kirk raised some constitutional issues. Senator Kirk suggested that the bill may lack constitutional power because it is contrary to the Convention on the Elimination of all Forms of Discrimination Against Women. The government is absolutely confident that the bill is within its constitutional powers. It took careful account of constitutional and international law considerations in framing these amendments. If exemptions give rise to constitutional problems, how does Senator Kirk explain the validity of the 11 pages of exemptions inserted when Labor was in government? The bill is absolutely sound in constitutional, legal and policy terms.

Senator Kirk also suggested that by inserting this new exemption the amendment would leave the special measures provision in section 7D of the act unaffected. The option to take special measures to achieve substantive equality between men and women will remain open in appropriate cases, as it is now. The provision in this bill is quite separate and is directed to the specific issues of scholarships to address the gender imbalance in teaching. Fundamentally, the provision is directed to achieving better educational outcomes for all Australian children.

Senator Greig argued that there was no discrimination against men seeking to enter the teaching profession and therefore amending the Sex Discrimination Act to address the issue was not appropriate. The basis of this bill is not that there is discrimination against
men in the teaching profession; rather, that there are serious barriers to men entering the teaching profession, which include the perception that the profession is not sufficiently valued. There is a serious shortage of males in teaching, especially primary teaching, and offering scholarships to males is a relevant and sensible policy response among other measures. We need to put the needs of Australia’s children first to encourage a better balance of males and females in the teaching profession and get more male teachers into schools.

I have had first-hand experience with this. A person I know is a deputy headmaster of a primary school, a male teacher in Perth, who is dedicated to his course, and he is the only male teacher in the primary school. In fact, when you consider single parents in that primary school, he is the only male role model for many of those children in that primary school. That sums up the situation that we are facing in Australia today.

Senator Crossin suggested that there is no evidence that this bill will encourage more men into teaching. The government thinks that it is extremely significant that a number of educational authorities are pursuing strategies to get more men into teaching and consider offering scholarships an important strategy. The New South Wales Catholic Education Office clearly thought that offering scholarships to males was a useful and relevant strategy. That is why it went to the Human Rights and Equal Opportunity Commission to seek an exemption. Similarly, in its submission to the Senate commission inquiry into this bill, the Association of Independent Schools of Victoria indicated that a number of its schools thought offering scholarships was a useful option to get more men into teaching. The Association of Independent Schools of South Australia also indicated that the amendment could assist in increasing the number of male teachers. The Western Australian government offers scholarships for areas of particular need, including male teachers, and this has been found useful. These are the educational authorities grappling every day with a shortage of men in teaching. The government is seeking to provide an option in relation to this issue, and it is a sensible and practical measure.

Senators Greig, Ludwig, Nettle and Mackay suggested that this bill will not address the major deterrents to men becoming teachers. For example, Senator Greig mentioned the risk of allegations of child abuse, paedophilia and homosexuality as deterrents to men entering the teaching profession. This bill underlines the government’s esteem for the teaching profession and, with other measures, its commitment to encouraging more men into the profession. The government has never suggested this bill is a complete solution to the shortage of men in teaching, but it is an important part of the solution. The bill complements other key government initiatives, such as the Boys Education Lighthouse Schools initiative and the review by the Ministerial Council for Education, Employment, Training and Youth Affairs of the gender equity framework and the national safe schools framework.

Senator Nettle said that the government’s proposal to offer $1 million in scholarships for males is a very small amount, a tiny proportion, of the education budget. I welcome the fact that Senator Nettle would like to see further scholarships available to men to encourage them into teaching. I trust that Senator Nettle will therefore support this bill, because without this bill there will be no scholarships at all specifically for men to encourage them into teaching. The government considers the offering of 500 scholarships to be a very strong step forward, but of course we need to pass these amendments so that those scholarships can be offered.
Senator Nettle said that Commonwealth funding to public schools as a share of the total Commonwealth schools funding has fallen from 40 per cent when this government was elected to 28 per cent. The government has not taken away funding from public schools. The change in funding ratios reflects enrolment changes in government and non-government sectors. If more students enrol in government schools, Australian government assistance to government schools will increase. It is as simple as that.

Senators Nettle and Kirk suggested that increasing salaries for teachers is a better way to encourage more men into teaching. The Australian government does not employ teachers and does not determine their remuneration. It is important, though, that salaries be increased to reward quality teaching. The Minister for Education, Science and Training was asked about teacher remuneration at a press conference on 11 March this year. He said:

... the most important thing that our society needs to do is raise the respect that we have for teaching as a profession and to support that with serious resources for their ongoing training and professional development.

He added:

I think by any standard most Australians would certainly agree that teachers deserve more pay, a higher level of pay, but I think equally they would expect that professionalism and quality is rewarded.

The Prime Minister himself said that he completely agrees that teaching should be ‘a more respected and more rewarded profession’. I lend my own support to that. I think that the teaching profession in Australia plays a very important role and we should not forget that. That was something that I stressed when I was minister for schools a few years ago.

Senator Ludwig suggested that the fact that HREOC granted the Catholic Education Office an exemption to allow it to offer scholarships meant this bill was unnecessary. The exemption from the Sex Discrimination Act granted to the Catholic Education Office in no way renders the government’s bill redundant. The bill is not directed to the specific case involving the Catholic Education Office but is framed generally to facilitate measures to address the shortage of males in teaching Australia-wide. The Catholic Education Office first sought an exemption from the Sex Discrimination Act on 30 August 2002. Of course, that was some 18 months ago. The government wants education authorities to have the option of responding to the pressing shortage of males in teaching without having to contend with long delays or a cumbersome process.

Even Labor agrees that this is important. It is agreed that we need to have a male role model in teaching. This bill will address that. In relation to the second reading amendment, the antidiscrimination laws of states and territories is a matter for those jurisdictions. The government condemns discrimination in all its forms. The government does not see the second reading amendment moved by the Democrats as necessary and it considers the existing antidiscrimination framework adequate and appropriate. For those reasons, I commend the bill to the Senate. The initiative that is enshrined in this bill will further education for all Australians.

Question put:

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

The Senate divided. [5.38 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes...........  7
Noes...........  43
Majority.......  36
AYES  
Allison, L.F. *    Bartlett, A.J.J.    Kemp, C.R.  
Brown, B.J.    Greig, B.    MacDonald, J.A.L.  
Lees, M.H.    Murray, A.J.M.    Patterson, K.C.  
Nettle, K.  

NOES  
Barnett, G.    Bishop, T.M.    Nettle, K.  
Boswell, R.L.D.    Brandis, G.H.    Nettee, A.  
Buckland, G.    Calvert, P.H.    O'Brien, K.W.K.  
Carr, K.J.    Chapman, H.G.P.    O'Brien, P.G.  
Collins, J.M.A.    Conroy, S.M.    O'Neill, J.  
Cook, P.F.S.    Coonan, H.L.    O'Neill, K.  
Ellison, C.M.    Evans, C.V.    O'Neill, L.  
Ferguson, A.B.    Fifield, M.P.    O'Neill, P.  
Forshaw, M.G.    Heffernan, W.    O'Neill, R.  
Hogg, J.J.    Humphries, G.    O'Neill, T.  
Johnston, D.    Kemp, C.R.    O'Neill, V.  
Lightfoot, P.R.    MacDonald, J.A.L.    O'Neill, V.  
Mason, B.J.    McGauran, J.J.J. *    O'Neill, V.  
Minchin, N.H.    Minchin, N.H.    O'Neill, V.  
Santoro, S.    Nettle, K.    O'Neill, V.  
Tchen, T.    Nettee, A.    O'Neill, V.  
Watson, J.O.W.  

* denotes teller  
Question negatived.  

Original question put:  
That this bill be now read a second time.  
The Senate divided.  [5.43 p.m.]  
(The President—Senator the Hon. Paul Calvert)  

<table>
<thead>
<tr>
<th>Ayes</th>
<th>27</th>
</tr>
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<tbody>
<tr>
<td>Noes</td>
<td>28</td>
</tr>
<tr>
<td>Majority</td>
<td>1</td>
</tr>
</tbody>
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AYES  
Barnett, G.    Boswell, R.L.D.    Abetz, E.  
Brandis, G.H.    Calvert, P.H.    Mackay, S.M.  
Coonan, H.L.    Eggleston, A.    Harris, L.  
Ellison, C.M.    Ferguson, A.B.    Hill, R.M.  
Ferris, J.M.    Fifield, M.P.    Knowles, S.C.  
Heffernan, W.    Humphries, G.    Payne, M.A.  
Johnston, D.    Humphries, G.    Tierney, J.W.  
Lightfoot, P.R.    Hurst, L.    Vanstone, A.E.  
Mason, B.J.    Hutchins, S.P.    Bolkus, N.  
Minchin, N.H.    Crossin, P.M.    Bolkus, N.  
Santoro, S.    Denman, K.J.    Bolkus, N.  
Tchen, T.    Denman, K.J.    Bolkus, N.  
Watson, J.O.W.    Denman, K.J.    Bolkus, N.  

* denotes teller  
Question negatived.  

MARRIAGE AMENDMENT BILL 2004  
First Reading  
Bill received from the House of Representatives.  

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.47 p.m.)—I move:  
That this bill may proceed without formalities and be now read a first time.  
Question put.  
The Senate divided.  [5.51 p.m.]  
(The President—Senator the Hon. Paul Calvert)
In Committee

Bill—by leave—as previously amended, taken as a whole.

Senator COOK (Western Australia) (5.55 p.m.)—If anyone is in any doubt about the political intent of the government with respect to the Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003, they need only look at the Notice Paper of the Senate and the manner in which this bill has bounced from one day to the next day to the next day. Today it has been put back and put back and put back. This is a clear indication that the government regards this as a bill it wants for electoral purposes and not for industrial relations purposes. That is the motif of this legislation. It is a bill designed for another purpose, but not for the purpose for which it is now going to be amended.

That raises the question about whether the bill before us is indeed appropriate, or whether there should be a new bill. I say that because the Workplace Relations Amendment (Codifying Contempt Offences) Bill is about contempt offences. The amendments that are being proposed to it are amendments dealing with penalties, coercive powers and the disqualification from office of people who might be convicted and provided with a suspended sentence. None of those three things, in the explicit sense of what they describe, are about the purposes of this legislation. There is a history to this legislation, and it is worth putting my remarks about the amendments that have been foreshadowed and the purposes of this legislation in some context, so that I can draw the distinction between what we are effectively being asked
to consider tonight and the fact that this is not what this bill was initially intended to do.

The government first introduced this legislation in June 2003 in the other place. It came before the Senate and was defeated on 3 March 2004. In the original bill the government sought to introduce a new offence in the act for contempt against the commission. That new contempt was a proposed power which would have come into effect by amending section 299 of the Workplace Relations Act. This sets out offences in relation to the Industrial Relations Commission, including the offence of contempt. The offence of contempt is currently contained in section 299(1)(e) and I will acquaint the chamber with the details of what the current situation is shortly. The bill also increased fines for these contempt and related offences, and those fines are a matter of some importance which I will come to shortly as well. They increased fines for some offences: for some imprisonment terms they were increased and for others they were removed.

When this bill came before the chamber, Labor opposed it on the basis that the existing section 299 provisions had never been used since they were last amended in 1993. We believed there was absolutely no demonstrated need to change those provisions. That was a substantial point that led to the defeat of the bill at that stage. The amendments—and I acknowledge the Democrat amendments, because I believe they were constructive when this bill was last before us—deleted the bulk of the bill, and we supported that. The amendments sought to retain and refine some of the provisions which create a new contempt offence in respect of giving false evidence to the commission. I will go to the argument about that, but for the moment I indicate that Labor opposed that provision. The Democrat amendments inserted new increases for penalties for breaches of awards and agreements. Labor opposed these penalties as totally irrelevant. The federal inspectors who enforce these provisions rarely prosecute for wages recovery, let alone seek penalties from a prosecution. There are fewer than three or four prosecutions a year. That, in itself, is a major issue of equity that needs to be addressed in some form. They were essentially the amendments that the Democrats sought.

The original Democrat amendments to the bill—the changes regarding the new offence about giving false evidence—were rejected by the government. There is now a proposal for whistleblower protection amendments, and a proposal from the government for a trebling of penalties. There are government amendments for offences under the Workplace Relations Act and the disqualification of union officials for offences where they are convicted and the sentence that follows their conviction is suspended. There is what I regard as the most serious of all of these amendments, and clearly the one that the government is most concerned to obtain passage for: amendments inserting coercive powers into the bill. That is by way of background regarding the history of this legislation and why we have arrived at this point.

When the original bill was before us in 2003, it was sent to the Senate Employment, Workplace Relations and Education Legislation Committee. The committee reported on 30 October 2003. The committee reported as a legislation committee—predictably, I guess, along party lines. The government majority favoured the bill, the opposition put in a report and the Democrats put in a report. The minority conclusion of the committee—it was the conclusion of a minority of the committee but it reflected a majority of votes in the chamber, I submit—is best summarised by what the Australian Democrats said in paragraph 1.21 of their report. They said: ... given that the Government provided evidence that no action under 299(1)(e) has ever occurred,
the Democrats must question how much real need there is for this amendment. That is indeed the key question that hangs over this provision: if it has not been used, why fiddle with it? Given all of that, the worthwhile question to ask is: what has changed since this bill was defeated? What has changed is that the building industry legislation has been the subject of a Senate inquiry and it appears that there is an understanding, at least in part, between the government and the Democrats on dealing with the amendments that are foreshadowed this evening, which related to penalties regarding, as I said, coercive powers and convictions. The codifying contempt bill is not about those things; these things are a grab bag of other issues. I think it is reasonable to say, at the beginning of this debate, that if they are to be put in that way, they ought to be put in a new bill.

I will say a bit more about these amendments when they come forward. The first thing to say about the government’s increase in penalties, which we find offensive, is that the amendment proposes to triple the penalties. There is precious little explanation as to why that is necessary. The fact that penalties are to be tripled is not something one does lightly. We have a number of questions on the formula in this regard. I have mentioned the coercive powers. I think they represent a fundamental attack on the human rights of workers in this industry. We will be opposing those amendments as well.

We will support the amendments relating to the disqualification from office of a person who is convicted and provided with a suspended sentence but we will do so after we have made a number of points about questions of justice in relation to this matter. There may be an effort to turn this debate into a highly political debate. I say to the chamber, before anyone moves down that road, if they do, that we are talking here about the field of industrial relations. Industrial relations is essentially about human relations transposed to the Australian workplace, and what is a fair share or a fair reward for work and what is a fair return for investment. These are not matters that can be settled by some arithmetical formula; these are matters that are settled by subjective judgment.

What an investor regards as a fair return on their investment is a decision an investor makes. What a company regards as a fair profit is a concern that a company arrives at. What a worker regards as a fair return for their labour is something that they arrive at. Industrial relations is often about trying to reconcile all of those competing points of view. It is also about human dignity in the workplace—the ability of people to work and get respect as workers and get appreciation for the work they do.

Tonight we are talking about amendments which load up penalties, load up coercive powers and increase more pains in the act. None of those things speak to how you manage human relations in the workplace. What they speak to is a belief that you can coerce people who hold honest opinions about what is right and appropriate by applying penalties to them. If they disobey, you apply more penalties and increase the level of fines. That is not a recipe for good industrial relations; that is a recipe for very bad industrial relations.

We will strongly argue that the basic rules to resolve these things are not rules of our choosing as an opposition; they are rules that have been imposed in industrial relations practice in Australia, and some of those rules frankly create a situation in which there will be continuing industrial unrest. The level of industrial unrest in this country has fallen, and that is something to be noted. In the building industry the level of industrial un-
rest is related to the nature of that industry. It is not related directly to any sort of fearmongering that the government refers to about the role of unions; it is related to the structure and nature of that industry in a large part. If there is to be a solution to finding a better practice for industrial relations in that industry then the structure of that industry has to be considered because the way it is structured creates the behavioural problem. Labor are of the view that this approach will only exacerbate difficulties and create problems where they indeed need not exist.

The direction of the government amendments as foreshadowed is highly ideological and, in the current climate, is meant to exacerbate opinion and create a basis for a union-bashing election campaign. That is not in the interests of industrial relations either. There are better solutions and those better solutions should be sought rather than go down this course. We may have a very long debate tonight, tomorrow and the next day—however long it takes—but the springboard of this debate is: you cannot suppress human dignity with penalties, pains and new sanctions. (Time expired)

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (6.10 p.m.)—by leave—I move government amendments (1) and (2) on sheet QU266:

(1) Clause 2, page 2 (at the end of the table), add:

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>The 28th day after the day on which this Act receives the Royal Assent.</td>
</tr>
<tr>
<td>4.</td>
<td>A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first</td>
</tr>
</tbody>
</table>

(2) Page 8 (after line 5), at the end of the bill, add:

Schedule 3—Increasing civil penalties

Workplace Relations Act 1996

1 Subsection 4(1)

Insert:

penalty unit has the same meaning as in the Crimes Act 1914.

2 Subsection 170NF(2)

Omit “$10,000”, substitute “300 penalty units”.

3 Subsection 170NF(2)

Omit “$2,000”, substitute “60 penalty units”.

4 Subsection 170VV(2)

Omit “$10,000”, substitute “300 penalty units”.

5 Subsection 170VV(2)

Omit “$2,000”, substitute “60 penalty units”.

6 Subparagraph 178(4)(a)(i)

Omit “$5,000”, substitute “150 penalty units”.

7 Subparagraph 178(4)(a)(i)

Omit “$1,000”, substitute “30 penalty units”.

8 Sub-subparagraph 178(4)(a)(iia)(A)

Omit “$10,000”, substitute “300 penalty units”.

9 Sub-subparagraph 178(4)(a)(iia)(A)

Omit “$2,000”, substitute “60 penalty units”.

10 Sub-subparagraph 178(4)(a)(iiia)(B)

Omit “$5,000”, substitute “150 penalty units”.

11 Sub-subparagraph 178(4)(a)(iiia)(B)

Omit “$1,000”, substitute “30 penalty units”.

CHAMBER
12 Subparagraph 178(4)(a)(iib)
Omit “$10,000”, substitute “300 penalty units”.

13 Subparagraph 178(4)(a)(iib)
Omit “$2,000”, substitute “60 penalty units”.

14 Subparagraph 178(4)(a)(ii)
Omit “$10,000”, substitute “300 penalty units”.

15 Subparagraph 178(4)(a)(ii)
Omit “$2,000”, substitute “60 penalty units”.

16 Paragraph 178(4)(b)
Omit “$10,000”, substitute “300 penalty units”.

17 Paragraph 178(4)(b)
Omit “$2,000”, substitute “60 penalty units”.

18 Subsection 178(4A)
Omit “$5,000”, substitute “150 penalty units”.

19 Subsection 178(4A)
Omit “$1,000”, substitute “30 penalty units”.

20 Paragraph 187AD(1)(a)
Omit “$10,000”, substitute “300 penalty units”.

21 Subsection 285F(3)
Omit “$10,000”, substitute “300 penalty units”.

22 Subsection 285F(3)
Omit “$2,000”, substitute “60 penalty units”.

23 Subparagraph 298U(a)(i)
Omit “$10,000”, substitute “300 penalty units”.

24 Subparagraph 298U(a)(ii)
Omit “$2,000”, substitute “60 penalty units”.

25 Application of amendments
The amendments made by this Schedule apply in relation to contraventions occurring after the commencement of the amendments.

Schedule 4—Compliance etc. powers
Workplace Relations Act 1996
1 After Part V
Insert:

PART VA—COMPLIANCE ETC. POWERS

88AA Secretary’s powers to obtain information etc.
Secretary may require information, documents etc.

(1) Subject to subsections (2) and (3), if the Secretary of the Department believes on reasonable grounds that a person (the relevant person):

(a) has information or documents relevant to a building industry investigation; or

(b) is capable of giving evidence that is relevant to a building industry investigation;

the Secretary may, by written notice given within 3 years of the commencement of this Part to the relevant person, require the relevant person:

(c) to give the information to the Secretary, or to an assistant, by the time, and in the manner and form, specified in the notice; or

(d) to produce the documents to the Secretary, or to an assistant, by the time, and in the manner, specified in the notice; or

(e) to attend before the Secretary, or an assistant, at the time and place specified in the notice, and answer questions relevant to the investigation.

(2) The time specified under paragraph (1)(c), (d) or (e) must be at least 14 days after the notice is given.

(3) The power given by subsection (1) must not be used for the purposes of an investigation that is trivial.
Legal representation

(4) A person attending before the Secretary of the Department, or before an assistant, as mentioned in paragraph (1)(e) may, if the person so chooses, be represented by a person who, under the Judiciary Act 1903, is entitled to practise as a barrister or solicitor, or both, in a federal court.

Oath or affirmation

(5) The Secretary of the Department, or an assistant, may require the information or answers to be verified by, or given on, oath or affirmation, and either orally or in writing. For that purpose, the Secretary, or an assistant, may administer the oath or affirmation.

(6) The oath or affirmation is an oath or affirmation that the information or answers are or will be true.

Offence

(7) A person commits an offence if:

(a) the person has been given a notice under subsection (1); and

(b) the person fails:

(i) to give the required information by the time, and in the manner and form, specified in the notice; or

(ii) to produce the required documents by the time, and in the manner, specified in the notice; or

(iii) to attend to answer questions at the time and place specified in the notice; or

(iv) to take an oath or make an affirmation, when required to do so under subsection (5); or

(v) to answer questions relevant to the investigation while attending as required by the notice.

Penalty: Imprisonment for 6 months.

Effect of secrecy provisions

(8) The operation of this section is not limited by any secrecy provision of any other law (whether enacted before or after the commencement of this section), except to the extent that the secrecy provision expressly excludes the operation of this section. For this purpose, secrecy provision means a provision that prohibits the communication or divulging of information.

Definitions

(9) In this section:

assistant means:

(a) the person occupying the position in the Department known as the director of the Building Industry Taskforce; or

(b) a building industry authorised officer; or

(c) a building industry inspector.

building industry authorised officer means an authorised officer exercising or performing powers or functions as part of, or for the purpose of assisting, the Building Industry Taskforce.

building industry inspector means an inspector exercising or performing powers or functions as part of, or for the purpose of assisting, the Building Industry Taskforce.

building industry investigation means an investigation in relation to which the following paragraphs are satisfied:

(a) the investigation is:

(i) by a building industry authorised officer for a purpose referred to in subsection 83BH(1) (which is about authorised officers ascertaining whether the terms of an AWA, or certain provisions of this Act, are being, or have been, complied with); or

(ii) by the Secretary or an assistant of the Department for a purpose referred to in subsection 83BH(2) (which is about the purpose of inquiring into the terms of an AWA, or certain provisions of this Act, being, or having been, complied with).
(ii) by a building industry inspector for a purpose referred to in subsection 86(1) (which is about inspectors ascertaining whether the terms of an award or certified agreement, or certain provisions of this Act, are being, or have been, complied with); and
(b) the subject matter of the investigation involves, or is related to, the building and construction industry.

Building Industry Taskforce means the Taskforce of that name established within the Department.

88AB Certain excuses not available in relation to section 88AA requirements

Excuses that are not available
(1) A person is not excused from giving information, producing a document, or answering a question, under section 88AA on the ground that to do so:
(a) would contravene any other law; or
(b) might tend to incriminate the person or otherwise expose the person to a penalty or other liability; or
(c) would be otherwise contrary to the public interest.

Use/derivative use indemnity
(2) However, neither:
(a) the information or answer given or the document produced; nor
(b) any information, document or thing obtained as a direct or indirect consequence of giving the information or answer or producing the document; is admissible in evidence against the person in proceedings, other than:
(c) proceedings for an offence against subsection 88AA(7); or
(d) proceedings for an offence against section 137.1 or 137.2 of the Criminal Code that relates to this Act; or
(e) proceedings for an offence against section 149.1 of the Criminal Code that relates to this Act.

88AC Protection from liability

A person who, in good faith:
(a) gives information; or
(b) produces a document; or
(c) answers a question; when requested or required to do so under section 88AA is not liable to:
(d) any proceedings for contravening any other law because of that conduct; or
(e) civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

88AD Retention and copying etc. of documents

Secretary or assistant may keep documents
(1) The Secretary of the Department, or an assistant, may take possession of a document produced under section 88AA and keep it for as long as is necessary for the purposes of the conduct of the investigation to which the document is relevant.

Certified copy to be supplied to person entitled to document
(2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy that is certified, by one of the following persons, to be a true copy:
(a) the Secretary of the Department;
(b) an assistant.

Certified copy to be treated as original
(3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
Right to inspect and copy the original

(4) Until a certified copy is supplied, the Secretary of the Department, or an assistant, must, at such times and places as the Secretary or assistant considers appropriate, permit the person otherwise entitled to possession of the document (or a person authorised by that person) to inspect and make copies of all or part of the document.

Definition

(5) In this section:

assistant has the same meaning as in section 88AA.

88AE Secretary or assistant may make and keep copies of documents

(1) The Secretary of the Department, or an assistant, may make and keep copies of all or part of any documents produced under section 88AA.

(2) In this section:

assistant has the same meaning as in section 88AA.

88AF Protection of confidentiality of information

(1) This section restricts what a person (the entrusted person) may do with protected information that the person has obtained in the course of official employment.

Note: Although this section applies only to information that a person obtained in the course of official employment, the obligations under this section continue to apply after the person ceases to be in official employment.

Recording or disclosing

(2) The entrusted person must not:

(a) make a record of protected information; or

(b) disclose protected information.

Penalty: Imprisonment for 12 months.

Permitted recording or disclosure by designated officials

(3) If the entrusted person is a designated official at the time of the recording or disclosure, then each of the following is an exception to the offence in subsection (2):

(a) the recording or disclosure is for the purposes of this Act;

(b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person’s official employment;

(c) in the case of a disclosure—the disclosure is to a person appointed or employed by:

(i) the Commonwealth, a State or Territory; or

(ii) an authority of the Commonwealth, a State or Territory;

for the purpose of assisting in relevant law enforcement;

(d) the recording or disclosure is in accordance with regulations made for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the Criminal Code.

Permitted recording or disclosure by other persons

(4) If the entrusted person is not a designated official at the time of the recording or disclosure, then each of the following is an exception to the offence in subsection (2):

(a) the recording or disclosure is for the purposes of this Act;

(b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person’s official
employment, being duties relating to relevant law enforcement;
(c) the recording or disclosure is in accordance with regulations made for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the Criminal Code.

Authorisation for purposes of Privacy Act

(5) A disclosure of personal information is taken to be authorised by law for the purposes of paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the Privacy Act 1988 if the information is protected information and the disclosure is made in accordance with subsection (3) or (4) of this section.

Definitions

(6) In this section:

designated official means any of the following:
(a) the Secretary of the Department;
(b) a Registrar;
(c) the person occupying the position in the Department known as the director of the Building Industry Taskforce;
(d) an inspector;
(e) an authorised officer;
(f) a person acting under a delegation under this Act from a person covered by any of the above paragraphs.

disclose means divulge or communicate.

industrial association means:
(a) an organisation; or
(b) any other association covered by any of the following subparagraphs:
(i) an association of employees and/or independent contractors, or an association of employers, that is registered or recognised as such an association (however described) under an industrial law; or
(ii) an association of employees and/or independent contractors a principal purpose of which is the protection and promotion of their interests in matters concerning their employment, or their interests as independent contractors, as the case requires; or
(iii) an association of employers a principal purpose of which is the protection and promotion of their interests in matters concerning employment and/or independent contractors; and includes a branch of an organisation, or of an association referred to in paragraph (b).

industrial law means this Act, the Registration and Accountability of Organisations Schedule or a law, however designated, of a State or Territory that regulates the relationships between employers and employees or provides for the prevention or settlement of disputes between employers and employees.

official employment means:
(a) appointment or employment by, or the performance of services for:
(i) the Commonwealth, a State or Territory; or
(ii) an authority of the Commonwealth, a State or Territory; or
(b) appointment as an inspector or an authorised officer.

protected information means information that:
(a) was disclosed or obtained under this Part; and
(b) was obtained by the entrusted person, or by any other person, in the course of official employment; and
(c) relates to a person other than the entrusted person.

_relevant law enforcement_ means enforcement of a law of the Commonwealth, or of a State or Territory, where the enforcement is in respect of conduct by, or in relation to, a person or body in the person’s or body’s capacity as any of the following:

(a) an employee;
(b) an employer;
(c) an independent contractor;
(d) the other party to a contract entered into by a person as an independent contractor;
(e) an industrial association;
(f) an officer, delegate or other representative of an industrial association;
(g) an employee of an industrial association.

**88AG Delegation by Secretary**

(1) The Secretary of the Department may, in writing, delegate all or any of his or her powers and functions under this Part to the person occupying the position in the Department known as the director of the Building Industry Taskforce.

(2) In exercising or performing powers or functions under a delegation, the delegate must comply with any directions of the Secretary of the Department.

**88AH Relationship with other provisions about authorised officers and inspectors**

(1) Subject to this section, nothing in this Part limits, or is limited by:

(a) Division 2 of Part IVA (which is about authorised officers); or
(b) Part V (which is about inspectors).

(2) In particular (but without otherwise limiting subsection (1)):

(a) an authorised officer or inspector is not subject to directions under subsection 83BG(2) or 84(5) when exercising or performing powers or functions under this Part; and

(b) despite subsection 84(4A), an inspector appointed under paragraph 84(2)(b) may exercise or perform powers or functions under this Part whether or not those powers or functions are specified in his or her instrument of appointment.

(3) However, the requirements of subsections 83BG(6) and 85(2) (relating to the carrying of identity cards) do apply to an authorised officer or inspector when exercising or performing functions or powers under this Part.

Page 8 (after line 5), at the end of the bill, add:

**Schedule 5—Disqualification from office of person serving suspended sentence**

**Part 1—Amendments**

**Workplace Relations Act 1996**

1 Paragraph 213(c) of Schedule 1B

Repeal the paragraph, substitute:

(c) is not convicted of a prescribed offence referred to in paragraph 212(d) unless the person was sentenced to a term of imprisonment for the offence and either:

(i) the person has served, or is serving, a term of imprisonment for the offence; or

(ii) the sentence is suspended for a period.
After section 213 of Schedule 1B

Insert:

213A Meaning of exclusion period and reduced exclusion period

(1) For the purposes of this Division, the exclusion period in relation to a person who has been convicted of a prescribed offence means a period of 5 years beginning on the latest of the following days:

(a) the day on which the person was convicted of the prescribed offence;

(b) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;

(c) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.

(2) For the purposes of this Division, a reduced exclusion period means a period specified by the Federal Court for the purposes of subparagraph 215(1)(a)(ii) under paragraph 216(2)(b) or 217(2)(b).

3 At the end of section 214 of Schedule 1B

Add:

(4) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory, or a court of another country, stating that the sentence of a person who was convicted of a specified offence has been suspended for a specified period is, for the purpose of an application made under section 215, 216 or 217, evidence that the sentence was suspended for that period.

4 Subparagraph 215(1)(a)(ii) of Schedule 1B

Repeal the subparagraph, substitute:

(ii) the person was refused leave to hold office in organisations but, under paragraph 216(2)(b) or 217(2)(b), the Federal Court specified a reduced exclusion period, and that period has elapsed; or

5 Paragraph 215(1)(b) of Schedule 1B

Repeal the paragraph, substitute:

(b) in any other case—the exclusion period has elapsed.

6 Subsection 216(1) of Schedule 1B

Repeal the subsection, substitute:

(1) A person who:

(a) wants to be a candidate for election, or to be appointed, to an office in an organisation; and

(b) within the immediately preceding 5 years:

(i) has been convicted of a prescribed offence; or

(ii) has been released from prison after serving a term of imprisonment in relation to a conviction for a prescribed offence; or

(iii) has completed a suspended sentence in relation to a conviction for a prescribed offence;

may, subject to subsection (4), apply to the Federal Court for leave to hold office in organisations.

7 Paragraph 216(2)(b) of Schedule 1B

Repeal the paragraph, substitute:

(b) refuse the person leave to hold office in organisations and specify, for the purposes of subsection 215(1), a period of less than 5 years beginning on the latest of the following days:

(i) the day on which the person was convicted of the prescribed offence;

(ii) if the person was sentenced to a term of imprisonment for the
offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;

(iii) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.

8 Paragraph 217(2)(b) of Schedule 1B
Repeal the paragraph, substitute:

(b) refuse the person leave to hold office in organisations and specify, for the purposes of subsection 215(1), a period of less than 5 years beginning on the latest of the following days:

(i) the day on which the person was convicted of the prescribed offence;

(ii) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;

(iii) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.

Part 2—Application, transitional and savings provisions

9 Application

The amendments made by Part 1 of this Schedule apply to persons convicted of a prescribed offence, whether the person is convicted before or after the commencement of that Part.

10 Transitional

(1) This item applies where:

(a) a person was convicted of a prescribed offence before the commencement of Part 1 of this Schedule; and

(b) the person was sentenced to a term of imprisonment for the offence; and

(c) the sentence was suspended for a period; and

(d) the person holds an office in an organisation when Part 1 of this Schedule commences.

(2) Despite subsection 215(2) of Schedule 1B to the Principal Act:

(a) the person does not cease to hold the office until the end of the period of 28 days after the commencement of Part 1 of this Schedule; and

(b) nothing done by the person before the commencement of that Part in fulfilment of that office is affected by the amendments made by that Part.

(3) Despite subsection 217(1) of Schedule 1B to the Principal Act, the person may, subject to subsection 217(4) of that Schedule, within 28 days after the commencement of Part 1 of this Schedule, apply to the Federal Court under section 217 of that Schedule for leave to hold office in organisations.

11 Savings—applications and orders under section 216 of Schedule 1B to the Principal Act

(1) If, before the commencement of Part 1 of this Schedule, a person makes an application to the Federal Court under section 216 of Schedule 1B to the Principal Act, that application is to be dealt with as if that Schedule had not been amended by Part 1 of this Schedule.

(2) If:

(a) the Federal Court makes an order under section 216 of Schedule 1B to the Principal Act before the commencement of Part 1 of this Schedule; or

(b) the Federal Court makes an order in reliance on subitem (1);
that order has effect after the commencement of Part 1 of this Schedule as if Schedule 1B to the Principal Act had not been amended by that Part.

12 Savings—applications and orders under section 217 of Schedule 1B to the Principal Act

(1) If, before the commencement of Part 1 of this Schedule, a person makes an application to the Federal Court under section 217 of Schedule 1B to the Principal Act, that application is to be dealt with as if Schedule 1B to the Principal Act had not been amended by that Part.

(2) If:

(a) the Federal Court makes an order under section 217 of Schedule 1B to the Principal Act before the commencement of Part 1 of this Schedule; or

(b) the Federal Court makes an order in reliance on subitem (1);

that order has effect after the commencement of Part 1 of this Schedule as if Schedule 1B to the Principal Act had not been amended by that Part.

13 Definition

In this Part:

Schedule 1B to the Principal Act

means Schedule 1B to the Workplace Relations Act 1996.

I would like to speak briefly to the amendments. They are not complicated. Senator Cook has sought to exaggerate them and explain that this is some sort of union-bashing exercise. It is far from it; it is an exercise to ensure that workers and citizens of Australia can go about their normal lives without fear of intimidation and coercion. It is to create protections which improve civil liberties. These amendments will—and Senator Cook, of course, will not be able to accept this for his own good reasons—improve the prospects of trade unionism in Australia. Many of the breaches and issues, and much of the behaviour these amendments and the bill seek to address are the very things that give the great majority of trade unionists, members of trade unions and the leadership of trade unions a bad name. That is why many members of the Labor Party who I know will quietly say behind your back, ‘Yes, get on and do this. Let’s ensure that we crack down on the worst abuses and offences that are created by a very small handful of trade unionists.’ That is the reality.

What gives trade unionism a bad name is the outrageous acts of very few. Most trade union leaders, trade unionists and rank and file members of trade unions are decent Australians who work very hard in their own employment, and those who work within trade unions work very hard to represent their members. The cause of trade unionism will be advanced if the law is robust, the regulations within workplace relations laws are complied with and those who seek to breach the law of the land have an appropriate penalty regime.

These amendments are not complex. They address primarily two or three key areas. Senator Cook is right: we do seek to redress anomalies and penalties. We do seek to increase penalties because many of the current penalty provisions and the actual quantum of the penalties have been in place since 1988. I remind honourable senators that 1988 was the year Her Majesty came here to open this very building—and I think Senator Cook would have been here then. It is a long time ago. It was the time of the Bicentenary. We remember the pictures of the tall ships sailing up Sydney Harbour. I think Senator Cook was here. That is when many of these penalties were last revised. Senator Cook has to make the argument—and I remind the chamber there has been significant inflation and significant changes to the industrial relations
regime since then—that we do not need any change in penalties, that industrial relations has not changed since 1988 and that everything should stay the same.

Even Labor put in place significant industrial relations reform post 1988, when Mr Keating was Prime Minister. Senator Cook will have to make an argument that these penalties should not be readdressed and revised after something like 16 years. It is important that these penalties are readdressed. These are not purely penalties that apply to trade unionists or workers; they are penalties that apply equally to breaches of the law by employers. You only need to look through the list of the civil penalties to see that penalties apply where an employer breaches awards, certified agreements or orders of the Industrial Relations Commission.

I do not think there would be any disagreement around the chamber that if an order of the Australian Industrial Relations Commission is breached there should be a penalty, and that it should be at a level that ensures that people, whether they are employers or employees, regard that there is a serious consequence for breaching an order of that court. Currently the penalty is $11,000 for a body corporate and $2,200 for an individual, and we are seeking to change that to $33,000 for a body corporate or $6,600 for an individual. If you look at the building contractors—we know their names; we do not need to name them—you will see that they are multimillion dollar businesses and sometimes multibillion dollar businesses. What sort of disincentive is it for a building and construction company to breach an order of the AIRC if the penalty is $11,000? That would be a rounding error for one morning’s concrete pour. It is nothing; it is a fly landing on a bit of scaffolding. The penalties have to be appropriate.

I have dealt with the penalty provisions. These amendments are necessary to ensure effective compliance with workplace relations laws in the building industry. That is all they are seeking to do, and they bring in sensible and sound disqualification provisions in relation to people continuing to hold office in a registered organisation if there have been breaches of the law or convictions for violent acts. This amendment basically says that if you have been convicted of a violent act then you should not hold office in a registered organisation. That is something that applies to employment across the spectrum and it is entirely appropriate that it applies to registered organisations—or trade unions, to be accurate. No trade unionist who cares about the future of trade unionism in Australia could honestly argue that they think it is a great idea that someone convicted of a violent act should serve in their union.

Some people might argue that this is retrospective because you might have been involved in a minor fray—you might have broken someone’s arm, or something like that and it was totally out of character; you have never done it before or since, and you have not done anything violent for the last three years—and that we should not stop someone who has broken someone’s arm from getting employment in a trade union. The amendment reflects that; it says that those people might have a fair argument. In general the parliament of the land says, ‘Let’s not allow people who have convictions for violent offences to serve in these organisations but if they have a case to put—if they have been in a fray and it is out of character—they can go to the Federal Court and seek an exemption.’

As I understand it, Dr Emerson came to the government recently in relation to the coercive powers provisions and said, ‘We will accept the fact that these coercive powers may be useful to the director of the build-
ing industry task force but he should go to the Federal Court to seek a bench warrant to exercise them. The Labor Party have said to us quite formally that they see the usefulness of having these coercive powers, from time to time. That is what Dr Emerson has said to us, quite formally.

Senator Jacinta Collins—No, you are verballing him.

Senator IAN CAMPBELL—I am just repeating what I have been told he said to us. He made us an offer to do a deal on this bill to say that if you ensure that you just have to go to the Federal Court—

Senator Jacinta Collins—No, go and check your facts.

Senator IAN CAMPBELL—I will check my facts. I do not want to refer to the coercive element; I just want to say that he has said that the Federal Court is a remedy. We are saying that the Federal Court is a remedy for someone who has been convicted of a violent offence. If the offence was minor—a fray—they can go to the Federal Court. If they need financial assistance—if they are impecunious or they find it too expensive—they can get financial assistance. So it is ultimately fair. I thought that I would make it quite clear what the Commonwealth was seeking to do here. It has been misrepresented by the first Labor speaker. I have moved the amendments. I table the explanatory memorandum which relates to the government amendments to be moved to this bill. This memorandum was circulated about three days ago in the chamber.

Senator COOK (Western Australia) (6.21 p.m.)—The minister has, by leave, moved amendments (1) and (2) at the same time. I wonder if the minister would agree to separate them? I ask that because we have indicated to the government that, subject to answers being given to questions that we want to put—and we do not think those answers are going to be complicated; they can easily be recorded in Hansard—we are minded to vote for one of these but we are not minded to vote for both of them. It would perhaps speed the passage of this legislation if they could be separated and we could deal with them separately.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—If you so request, Senator Cook, we can deal with them separately.

Senator MARSHALL (Victoria) (6.22 p.m.)—This bill had been dealt with by the Senate on a previous occasion and I did get a very brief opportunity quite late one night to make a few comments on it. It is disappointing that when it has come back to the Senate after hanging around for some months it is unrecognisable from its original form. It significantly changes the intention of the original bill and, in my view, it is being used simply as a Trojan Horse to get some elements of the workplace relations reform agenda of the government into the Senate debating process at this particular time in the election cycle.

The original bill, as we know, was about instituting contempt provisions in matters before the Australian Industrial Relations Commission. I want to talk a bit about that first, because that is the genesis of the original bill. Contrary to what seems to be the popular belief around the chamber, most issues dealt with by the Industrial Relations Commission are what are known as section 99 hearings. A section 99 hearing is when either party to a dispute notifies the commission that there is a dispute. When we are talking about a dispute in these terms it does not mean an industrial dispute where people may have withdrawn their labour or an employer may have locked out their workers. We are talking about the day-to-day issues that come up when people have a dispute.
with their employer about the terms and conditions of their employment or about the way those terms and conditions are being applied in the workplace. Either party, whether it be a union, an employer or an employer organisation, may make a section 99 application to the commission and the commission will hear the parties.

It is a very informal process at the Australian Industrial Relations Commission and it has developed that way quite deliberately, because what we are actually dealing with is real people. We are not dealing with a legal system where parties bring lawyers to run legal arguments before the Australian Industrial Relations Commission; we are dealing with a system and a commission that is given the objective and the power to resolve and conciliate industrial disputes. Again, we are talking about disagreements between people. These happen all the time, because people are not chattels and people engage in employment under terms and conditions that are negotiated and need to be flexible because of the nature of people themselves. These are not legally binding contracts, where you might get two lawyers to determine the exact nature of a clause and have it ruled upon by a judge. Circumstances of work are very different in reality.

At this point I want to put my own credentials before the committee. I have noticed in the nearly two years I have been in this place that there is a lot of talk about industrial relations, but very few people have actually experienced it from a working perspective. I want to let the committee know that I started work in Coles as a packer boy when I was very young and I was a member of the SDA, which was my first union.

Senator Hogg—I could tell you a lot about the SDA and I think I might be provoked into it.

The TEMPORARY CHAIRMAN—Perhaps we could reserve that for another time, Senator Hogg.

Senator MARSHALL—I will be very keen to hear about it. I then worked as a part-time school cleaner and I was a member of the Miscellaneous Workers Union. I did those things part-time and eventually left school and took up full-time employment as an apprentice electrical mechanic. I completed that apprenticeship and became a qualified A grade electrician, as it was then referred to in Victoria. I worked for many years as an electrician. Even though it was for one employer, I worked in the construction industry, I worked in the commercial industry, I worked in the domestic cottage industry and I worked in industrial maintenance and in what we might call commercial maintenance across a whole range of fields with lots of different people in lots of different circumstances.

It is important for people to understand that through that process of working in an organisation like that in lots of different situations you know and experience the real issues that people are confronted with on a day-to-day basis in terms of shiftwork and family requirements, such as when a family member gets sick and a carer is needed, when children have to be picked up from school or dropped off at school and the need to take holidays at different times, and also the demands employers may put on people who are driven by the nature of the work and when work might come forward. So, on a day-to-day basis, there can be a range of disputes which have to be negotiated. Nearly all disputes are negotiated between the person involved and their employer’s representative, and those disputes are resolved. Sometimes
the disputes affect more than one person and they become a little more difficult to resolve as there are a number of conflicting interests through that process, but most of those are also resolved. Then we have disputes between either an individual or a group of individuals and the employer which are unable to be resolved without some third-party assistance.

That brings us back to the section 99 application I was talking about. The commission hearing is not a formal situation. There would be the individuals involved in the dispute, with their union, and most union representatives, the union officials, would have been workers. I became an official for the Electrical Trades Union after being an electrician in many industries for many years. I am not a lawyer and I do not want to be a lawyer, but I want to be able to go somewhere, and the Industrial Relations Commission is a place where I would go if I wanted to get some assistance.

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

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.30 p.m.)—Senator Cook has made a constructive suggestion about dealing with amendment (1) of the two amendments that I have moved. We did move them together, but I understand that we can all agree on amendment (1) and have a vote on that. Then we are going to seek to pull out the provisions that relate to disqualification, which is schedule 5 and which I believe that, after some discussion and some questions, we can also agree to. I would suggest we vote on government amendment (1) now and then move to discussion about schedule 5, which we are happy to put as a separate vote.

The TEMPORARY CHAIRMAN (Senator Kirk)—The question is that government amendment (1) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that government amendment (2) be agreed to.

Senator COOK (Western Australia) (7.31 p.m.)—Can I suggest to the government that, if schedule 5 were dealt with on its own, that might speed the proceedings. Before I address schedule 5, I am mindful that my colleague Senator Marshall is part of the way through a substantive address and this has sort of overtaken him. Having said that, schedule 5 is headed ‘Disqualification from office of person serving suspended sentence’. The amendments to the act mean that a person convicted of a crime of violence against a person or property and who receives a suspended sentence is disqualified from being a union official for five years. The current provisions only apply to people who serve jail time. Such persons can apply to the Federal Court for leave to hold office despite those provisions. The provisions take effect 25 days from the commencement of the act in respect of current office holders. The change is that not only people who are sentenced to jail time but also those who are convicted and have their sentence suspended are caught by these provisions and are thereby disbarred from holding office in a union. There is a celebrated case which has obtained media attention that I will refer to, but before I do so I will outline the reasons why we are, in the end, going to support this. We want to put our qualifications on the record.

Labor strongly opposes violence in the workplace or in relation to industrial relations matters. That is not an exceptional thing to say; that is a sensible thing to say. The Labor Party has always abhorred violence, no matter in what shape or form it
comes, anywhere in society. Where there is argument between workers and employers in a workplace, it is important that the temperature of the disagreement be reduced so that there can be no suggestion whatever of anything verging on violence.

However, violence comes in many forms. If you look at the occupational health and safety record in this industry, there is a considerable amount of violence. One worker dies every week on average and there is a whole army of people who have been injured, maimed, lost limbs or whatever. That is violence of another sort in a workplace. It is passive violence; it is violence created by the absence of proper regulation or observation of existing regulation, and it is the major distinctive feature of this industry. The gaping hole in the government's position is that this is not a problem addressed in any way, shape or form, and the move by the government to disband the National Occupational Health and Safety Commission is emblematic of that. The lack of attention in the Cole royal commission to issues related to occupational health and safety are also emblematic of that. The findings of the Giles royal commission found that there were problems in this region as well. But it is physical violence, violence associated with assault or criminality, that is being proposed here. In that context we strongly support the amendment.

We are concerned, however, about a couple of things within the amendment. We are concerned about the retrospective effect of these provisions. This chamber has a long and honourable history of not engaging in retrospective legislation. I believe we should be more liberal about retrospective legislation when it comes to tax law, for example, because the only way to overcome tax avoidance is to reach back and capture the ill-gotten gains of people who break the spirit of the tax act. But despite my view—and I admit mine is a minority view even within my own party—this chamber has abhorred retrospective legislation because things that are done, given the state of the law at the time, are done reasonably and knowingly and to change that retrospectively removes rights of people.

In the case of Johnston, what seems to me to be the case is that he pleaded guilty, he was convicted and then the judge, in his particular case, considered the evidence, decided what the appropriate penalty was and applied it. The impact of this amendment would be—I do not know what his intentions were; I do not even know the bloke—that, if he were to offer himself for election, he would be disbarred because we are imposing a redefinition of this provision on top of what has already been decided. Legislatures should be very careful about doing anything like that in matters where sentences have been passed.

I address it as a principle; I do not address it with respect to individual. People will make decisions about the individual in their own right. This man is guilty of that crime and should have been dealt with. The only issue here is what the appropriate penalty is. I am sick and tired of seeing in my own state evangelising newspapers criticising the judiciary about the level of sentencing as if the reporters doing so knew all the facts and circumstances, sat on the bench and weighed things appropriate to the jurisprudence of particular cases in a manner professional enough to ensure the penalty fits the crime. I suspect there is an element of that here.

If we have respect for the separation of powers and the role of the judiciary in this country, we have to have respect for the members of the bench to make appropriate decisions based on the facts before them and for the parliament not to second-guess it. We are going to support this, but I do so reluc-
tantly because of that principle. I think it is an important principle. Undermining sentences after they are made, no matter how we might dislike individuals—and there is a lot to dislike in this case—requires extreme caution and extreme certainty. I am not entirely sure that can be said in this particular case.

These provisions would disqualify people from office if they have received a suspended sentence within the last five years and they will lose their position within 28 days as a result of this legislation. That is why the retrospective nature, reaching back, is a problem of concern. It is of concern, as I have said, because a judge or magistrate may have deliberately given a suspended sentence, mindful of the disqualification provisions of the Workplace Relations Act, to ensure that the person’s livelihood was not affected. This could be for a variety of reasons, including the severity of the offence and the person’s family commitments.

Labor, it has to be said, has raised these concerns with the government, but the government did not agree to amend these provisions. I think that shows a lack of sensitivity to the importance of the decisions of the judiciary. The government believes that these provisions, which allow such convicted persons to apply for leave to hold office from the Federal Court, would be able to alleviate such injustices. In the light of this, Labor’s support for these amendments is stronger than our concern about the retrospective aspect of them. With those remarks, I indicate our attitude to this. We will support it but with considerable reluctance, because of the fact that this involves retrospectivity and it involves delivering a judgment on top of a judgment which was delivered by the only person in the world able to deliver it properly—that is, the judge that heard the case, decided the facts and meted out the penalty to suit the crime.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.41 p.m.)—We have found a way to deal with this sensibly and, for the guidance of senators who have sheet QU266 in front of them, that is to make schedule 3 to commence at the beginning of what we know as amendment (2). That will become amendment (2A), so the new government amendment (2A) will include schedules 3 and 4. This takes you through to page 9 of QU266. Schedule 5 will then become new government amendment (2B). That literally splits the government amendment (2) into two parts, the first of which, amendment (2A), will include schedules 3 and 4. Schedule 5 will therefore become amendment (2B), which I now move:

(2B) Page 8 (after line 5), at the end of the bill, add:

Schedule 5—Disqualification from office of person serving suspended sentence
Part 1—Amendments

Workplace Relations Act 1996

1 Paragraph 213(c) of Schedule 1B
Repeal the paragraph, substitute:

(c) is not convicted of a prescribed offence referred to in paragraph 212(d) unless the person was sentenced to a term of imprisonment for the offence and either:

(i) the person has served, or is serving, a term of imprisonment for the offence; or

(ii) the sentence is suspended for a period.

2 After section 213 of Schedule 1B
Insert:

213A Meaning of exclusion period and reduced exclusion period

(1) For the purposes of this Division, the exclusion period in relation to a person who has been convicted of a prescribed offence means a period of 5 years.
beginning on the latest of the following days:

(a) the day on which the person was convicted of the prescribed offence;

(b) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;

(c) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.

(2) For the purposes of this Division, a reduced exclusion period means a period specified by the Federal Court for the purposes of subparagraph 215(1)(a)(ii) under paragraph 216(2)(b) or 217(2)(b).

3 At the end of section 214 of Schedule 1B Add:

(4) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory, or a court of another country, stating that the sentence of a person who was convicted of a specified offence has been suspended for a specified period is, for the purpose of an application made under section 215, 216 or 217, evidence that the sentence was suspended for that period.

4 Subparagraph 215(1)(a)(ii) of Schedule 1B
Repeal the subparagraph, substitute:

(ii) the person was refused leave to hold office in organisations but, under paragraph 216(2)(b) or 217(2)(b), the Federal Court specified a reduced exclusion period, and that period has elapsed; or

5 Paragraph 215(1)(b) of Schedule 1B
Repeal the paragraph, substitute:

(b) in any other case—the exclusion period has elapsed.

6 Subsection 216(1) of Schedule 1B
Repeal the subsection, substitute:

(1) A person who:

(a) wants to be a candidate for election, or to be appointed, to an office in an organisation; and

(b) within the immediately preceding 5 years:

(i) has been convicted of a prescribed offence; or

(ii) has been released from prison after serving a term of imprisonment in relation to a conviction for a prescribed offence; or

(iii) has completed a suspended sentence in relation to a conviction for a prescribed offence:

may, subject to subsection (4), apply to the Federal Court for leave to hold office in organisations.

7 Paragraph 216(2)(b) of Schedule 1B
Repeal the paragraph, substitute:

(b) refuse the person leave to hold office in organisations and specify, for the purposes of subsection 215(1), a period of less than 5 years beginning on the latest of the following days:

(i) the day on which the person was convicted of the prescribed offence;

(ii) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;

(iii) if the person serves a term of imprisonment for the offence—
the day on which the person is released from prison.

8 Paragraph 217(2)(b) of Schedule 1B
Repeal the paragraph, substitute:
(b) refuse the person leave to hold office in organisations and specify, for the purposes of subsection 215(1), a period of less than 5 years beginning on the latest of the following days:
(i) the day on which the person was convicted of the prescribed offence;
(ii) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;
(iii) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.

Part 2—Application, transitional and savings provisions

9 Application
The amendments made by Part 1 of this Schedule apply to persons convicted of a prescribed offence, whether the person is convicted before or after the commencement of that Part.

10 Transitional
(1) This item applies where:
(a) a person was convicted of a prescribed offence before the commencement of Part 1 of this Schedule; and
(b) the person was sentenced to a term of imprisonment for the offence; and
(c) the sentence was suspended for a period; and
(d) the person holds an office in an organisation when Part 1 of this Schedule commences.
(2) Despite subsection 215(2) of Schedule 1B to the Principal Act:
(a) the person does not cease to hold the office until the end of the period of 28 days after the commencement of Part 1 of this Schedule; and
(b) nothing done by the person before the commencement of that Part in fulfilment of that office is affected by the amendments made by that Part.
(3) Despite subsection 217(1) of Schedule 1B to the Principal Act, the person may, subject to subsection 217(4) of that Schedule, within 28 days after the commencement of Part 1 of this Schedule, apply to the Federal Court under section 217 of that Schedule for leave to hold office in organisations.

11 Savings—applications and orders under section 216 of Schedule 1B to the Principal Act
(1) If, before the commencement of Part 1 of this Schedule, a person makes an application to the Federal Court under section 216 of Schedule 1B to the Principal Act, that application is to be dealt with as if that Schedule had not been amended by Part 1 of this Schedule.
(2) If:
(a) the Federal Court makes an order under section 216 of Schedule 1B to the Principal Act before the commencement of Part 1 of this Schedule; or
(b) the Federal Court makes an order in reliance on subitem (1);
that order has effect after the commencement of Part 1 of this Schedule as if Schedule 1B to the Principal Act had not been amended by that Part.

12 Savings—applications and orders under section 217 of Schedule 1B to the Principal Act
(1) If, before the commencement of Part 1 of this Schedule, a person makes an application to the Federal Court under section 217 of Schedule 1B to the Principal Act, that application is to be dealt with as if Schedule 1B to the Principal Act had not been amended by that Part.

(2) If:
   (a) the Federal Court makes an order under section 217 of Schedule 1B to the Principal Act before the commencement of Part 1 of this Schedule; or
   (b) the Federal Court makes an order in reliance on subitem (1);

that order has effect after the commencement of Part 1 of this Schedule as if Schedule 1B to the Principal Act had not been amended by that Part.

13 Definition

In this Part:

Schedule 1B to the Principal Act means Schedule 1B to the Workplace Relations Act 1996.

Senator COOK (Western Australia) (7.42 p.m.)—I thank the Clerk and my advisers for helping us here—is to split off the disqualification provisions. The way that we have done that, so that the committee can handle it, is to call the first part of original amendment (2) amendment (2A). New amendment (2A) will include schedule 3, which are the provisions relating to increasing civil penalties, and schedule 4, which is the compliance powers provision, which we will come to debate shortly. Then schedule 5 will become new amendment (2B).

Senator WONG (South Australia) (7.44 p.m.)—I may have misunderstood the minister in his earlier remarks about what he was doing in identifying schedule 5 as (2B). Is the government proposing any change to the commencement date of that particular schedule?

Senator WONG—No.

Senator WONG—I want to put on the record some comments and to echo some of the concerns of Senator Cook regarding schedule 5. There is a tendency within the community across Australia to be intensely critical of judges for sentences they impose, and those of us who have practised as lawyers are often criticised for defending the courts on the basis that we do not understand what the community wants. It seems to me that the effect, and frankly the intent, of what is now amendment 2B proposed by the government is essentially to try to remedy what the government sees as a problem arising out of one case. It is not to the point to suggest that it only comes into operation upon the commencement date of this act. The fact is that the exclusion period definition in the schedule clearly means this amendment has a
retrospective effect. I share Senator Cook’s concerns with retrospective legislation as a matter of principle. I think there are a range of very good policy reasons why retrospective legislation ought to be avoided. The most obvious one is that persons ought to know, or be able to know, at the time they are doing something, what the consequences of that may be.

As a matter of public policy the legislature ought to have very good grounds indeed before it alters the penalties and legal consequences of citizens’ actions retrospectively. That is precisely what is sought to be done here. It does not appear to me, either in any of the second reading speeches or in any of the minister’s contributions tonight, that the government has put forward a reasonable case for asserting that there are such pressing factual circumstances to justify what is effectively retrospective legislation. I understand that in its negotiations with the cross-benchers and with the government the Labor Party did press that this retrospective effect be removed. I am disappointed that that has not proved successful. I echo again Senator Cook’s comments that this in no way suggests that we in the Labor Party would do anything other than abhor violence in the industrial context, as I think everyone abhors violence generally. But we are not talking about regulation of violence per se; we are talking about a retrospective penalty to be applied to a person. In my view, the government has failed to press cogent reasons why this retrospection should be permitted.

Senator GEORGE CAMPBELL (New South Wales) (7.48 p.m.)—While I essentially support the comments that were made by Senator Cook and by Senator Wong, I make the point that no-one on this side of the chamber, or in the trade union movement generally, supports the use of violence in the industrial relations environment or in any other environment. There ought to be the strongest penalties applicable and available to deal with characters who involve themselves in those activities. What concerns us with respect to this particular amendment is the issue of retrospection. The arbitration act is becoming famous for clauses that deal with individuals. We had the Gallagher amendment a few years ago, which was specifically targeted at one individual— Norm Gallagher—and about excluding that individual from holding office because he had been found guilty of a particular offence. It is very clear from the proposal in schedule 5 that this will become known as the ‘Johnston provision’ because it is specifically targeted at one individual who was the secretary of the Amalgamated Metal Workers Union for a time in Victoria, and it adopts a provision that I understand has been actively canvassed for and sought by AIG to deal with that individual. But, as I accept, you cannot put a provision that says, ‘This will apply to Mr Johnston.’ Therefore, the amendment has wider application than the individual it is intended for. Has the government made an assessment of how many individuals, if any, will be captured by this amendment? With respect to the principle of the amendment, are there any similar provisions in the Corporations Law, or in any other laws that deal with these types of offences, that apply to company directors?

Senator WONG (South Australia) (7.51 p.m.)—As the minister was on the phone for the entirety of that question I am not sure he can answer it.

Senator Ian Campbell interjecting—

Senator WONG—Perhaps if Senator George Campbell repeats the question, Minister, an answer could be provided.

Senator Ian Campbell—Was it in relation to retrospection?

Senator WONG—No. I will defer to Senator George Campbell.
Senator GEORGE CAMPBELL (New South Wales) (7.51 p.m.)—Do we have your undivided attention now, Minister?

Senator Ian Campbell—Sorry, I was on the phone.

Senator GEORGE CAMPBELL—The question I was asking was in respect of this amendment—which is obviously known as the Johnston amendment; it is drawn specifically to capture one individual. Have the government or the department carried out any analysis of the extent to which it may have wider application? Are there any others who will potentially be caught by this particular amendment—people who it is not intended for who might inadvertently get caught up in the process? Does this type of provision have application in Corporations Law with respect to company directors, for example, or in any other area of law? Are you aware of any circumstances where similar provisions might apply to individuals in terms of their disqualification from holding office?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.52 p.m.)—I apologise to Senator George Campbell for being distracted by the phone while he was asking what is a very important question. There are disqualification and qualification provisions in many acts of parliament. One of them applies to people who want to enter this job—being a senator or a member of the House of Representatives. If you have been convicted of a violent offence, regardless of whether you get a custodial sentence, you are not allowed to serve here; so the act that covers us is one example. I know from my experience in handling the Corporations Law that there are provisions that relate to the qualification of officers of corporations across the act. In fact, at one minute to midnight last night we put in place new laws in relation to the qualifications for company secretaries.

Common assault and criminal damage offences carry prison sentences of more than one year in almost every state and territory. As I have said, section 44 of our Constitution disqualifies people from serving in this parliament if they have been convicted of an offence punishable by one or more years in prison. The person is disqualified if the offence carries a maximum sentence of one or more years imprisonment regardless, as I said, of the actual sentence. In the ACT, common assault brings a two-year sentence; in New South Wales it is two years; in the Northern Territory it is a year; in Queensland it is three years; in South Australia it is two years; in Tasmania it is 21 years, which might reflect the history of Tasmania; in Victoria it is five years; and in Western Australia it is three years.

Senator GEORGE CAMPBELL (New South Wales) (7.54 p.m.)—I was not asking you whether or not there were provisions in those acts. I understand that there are. I was asking you specifically whether you are aware of any circumstances where provisions have been applied that have acted retrospectively.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.55 p.m.)—Provisions that are put into any act of parliament that impose a qualification will apply to anyone who is required to qualify. In relation to the retrospectivity argument, I said earlier in the night that there are provisions within this schedule that ensure that if a person finds themselves in this situation and the registrar disqualifies them, firstly, they can appeal through the appeal processes of that body and, secondly, if they are not satisfied with that appeal process they can go to the Federal Court. So the law does ensure that
anyone who believes that they have been harshly treated by this or that it affects them unfairly can appeal. If they do not get satisfaction from that process or they do not believe they have seen justice from that process they can go to the Federal Court.

As to this being a provision that would affect one person, it is certainly a provision that affects anybody who falls into the category of having been convicted of a violent offence. Anyone who has done that will be captured by it, not just one person. It is not a provision for one person; it is a provision that will apply to any person who has done that. I do not believe we have done any specific research as to whether this would affect one person, two people or 55 people. The provision is quite properly—as all senators who have contributed to the debate have noted—very much a statement from the Australian parliament that violence is not acceptable and that people who are convicted of a violent offence should have no place in these organisations. But, as I said earlier, it balances that with the fairness of saying that if the offence was something described as a small fray or if you can convince the appeal process or the Federal Court that it is unfair then you have the right to do so. So it does seek a balance, but the balance falls on the side of a community expectation that those who commit violent offences are people who should not serve in these organisations. Also, as Senator George Campbell has said, they should not serve in other organisations. They are not the sorts of people who should be directing companies or serving as officers in companies. That is what we are seeking to do here.

Senator WONG (South Australia) (7.57 p.m.)—Given the minister’s last comments, should I therefore presume that the government will be bringing forward amendments to the disqualification provisions of the Corporations Law to disqualify automatically persons who have been convicted of these offences? The current provisions of the Corporations Law for automatic disqualification—and there are other grounds, as the minister is probably aware, on which ASIC can disqualify and the person can dispute that—from holding a directorship of a company registered under the act really require conduct related to that function. If you have been convicted of insolvent trading you are automatically disqualified. If the government is serious about ensuring that persons who have been convicted of violent offences are disqualified—and I note that section 212(a) goes beyond violence to also refer to fraud or dishonesty, but I will leave that issue aside for the moment—but given the minister’s comments that these people ought not be running companies either, should we therefore assume that the Corporations Law is also going to be amended by the government to ensure that people convicted of offences that are currently set out in section 212 of schedule 1B of the Workplace Relations Act are also automatically disqualified under the provisions of the Corporations Law?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (7.59 p.m.)—We spent many hours this week debating the Corporations Law. Senator Wong is quite right in that there are provisions in this bill that relate to fraud and dishonesty and there are clearly provisions within the Corporations Law that ensure that, if directors create that sort of malfeasance, they will be dealt with by ASIC. As to violence in the Corporations Law, clearly that is something we should look at when we come again to the Corporations Law.

Senator HOGG (Queensland) (8.00 p.m.)—Can you clarify the retrospectivity that is being sought under this? As I understand it, it can apply to someone for the period where they are seeking office within the
immediately preceding five years. If they were convicted at the start of that five-year period and their sentence was for, say, two years, are you saying that they are still automatically excluded from being eligible for office? The other part of my question is: does that apply elsewhere?

**Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.00 p.m.)**—The answer is yes. That is correct. That circumstance would apply. But, again, a person who would be in that situation would have the appeal rights and the rights to go to the Federal Court that I have described elsewhere. I do not have advisors here who can advise me whether that applies in every other act of the Commonwealth. I have advisors here in relation to the Workplace Relations Act.

**Senator HOGG (Queensland) (8.01 p.m.)**—In that circumstance, if you say that the person can then take an appeal on that basis to the courts, does that mean that the court has the power to stay the conduct of the ballot whilst the matter is heard?

**Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.01 p.m.)**—The provision would disqualify the person from holding office. It does not go into balance if someone is holding office. It would disqualify them from holding that office.

**Senator HOGG (Queensland) (8.01 p.m.)**—If they are appealing the right to stand for the office—and I understand that that is what you said to us—a ballot is about to be conducted or is in the process of being conducted and they are seeking eligibility, does the court have the right to stay the conduct of that ballot whilst the appeal is being heard?

**Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.02 p.m.)**—That issue is not addressed in this bill.

**Senator WONG (South Australia) (8.02 p.m.)**—I am returning to the matter that we were discussing previously. Do I understand that the minister has made a commitment to look at bringing forward amendments to the Corporations Law that would prevent persons convicted of similar offences to those specified in section 212 of schedule 1B of the act from serving as directors?

**Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.02 p.m.)**—It would be inappropriate for people who are convicted of violent offences to serve as directors, but it would be entirely inappropriate for the Minister for Local Government, Territories and Roads and the minister who, on this occasion, is representing the Minister for Employment and Workplace Relations in this place to commit the Treasurer and the government to a course of action on a piece of legislation he has no responsibility for.

**Senator WONG (South Australia) (8.03 p.m.)**—Therefore, as I understand it, the government’s answer is to apply a lesser standard of behaviour to directors of companies employing people than you apply to elected officers of unions. That is essentially the position the government is putting—a lesser standard. With regard to the provision which allows an application to be made to the Federal Court, do I understand that the only power the court has under these amendments would be to specify a reduced exclusion period and not to waive the automatic disqualification?

**Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.04 p.m.)**—It is an entirely inaccurate to say that we require a lower standard for directors than we do for officials in trade unions.
Senator WONG (South Australia) (8.04 p.m.)—Perhaps the minister can explain why the disqualification provisions of the Corporations Law would not disqualify someone on the grounds that are set out in schedule 7.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.04 p.m.)—We are debating a workplace relations amendment bill, not the Corporations Law. That was last night.

Senator WONG (South Australia) (8.04 p.m.)—That is barely an answer and I am sure the minister knows it. It is not an answer. What the government is saying is: I do not want to talk about it. But the reality is that the government is proposing a higher standard for union officials—and that is what we are talking about—than it requires of directors. I go back to my question which the minister did not answer. Is it correct that the power of the Federal Court to grant relief in respect of the automatic disqualification is restricted to only reducing the exclusion period?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.05 p.m.)—It can do both. It can do that by leave.

Senator COOK (Western Australia) (8.07 p.m.)—I have been following this discussion with some interest, and it points to the reason why we have to exercise care. I do not in any way derogate from the commitment I made up front about where the opposition will go when this matter is put to the vote. But I take this opportunity to emphasise what we are doing so there is no doubt about it. Let us take the minister’s explanation to Senator Wong about unions and/or registered industrial organisations. He argues, and my reading of the amendments confirms, that this provision applies equally to unions and employer organisations that are registered under the act and to office holders who might aspire to office in either of those organisations.

The minister went on to say, ‘We don’t support violence.’ No-one here is arguing
about whether they support violence or not because the act in its current form prevents people who have engaged in violent acts, and have been given a jail term, from holding office. It prevents them. So this parliament has already exercised its opinion as to what should happen, and that is what the law is. All we are talking about is a particular case, where a judge chooses to inflict a sentence on a convicted person that he then suspends, for which we would extend this provision retrospectively. That is where Senator Wong’s concern about different treatment in one jurisdiction compared to other jurisdictions is relevant.

What underpins the rule of law in countries is a sense of fairness and proportion. Taking on board the minister’s comment that the provision applies equally to unions and employer organisations, there will be a tougher standard applied to anyone registered under the Workplace Relations Act than to those registered in other forms of public regulation. If you are a company you will have a lesser standard applied to you than if you are in industrial relations. If you are a not-for-profit organisation and if similar provisions apply—I am not sure that they do but, on the face of it, they ought to—there will be a lesser standard applied to you than that for industrial relations.

The government sometimes defends itself on the basis that it is not on a witch-hunt in industrial relations, that it has a view about industrial relations that it wants to pursue but it is not trying to politicise industrial relations. What these amendments bring out is, in fact, the application of a tougher standard in the industrial relations environment than anywhere else. I think the government is required to make an explanation as to why it wishes to treat this jurisdiction differently from all the other jurisdictions. If it does not wish to make that explanation, it raises—and I put this to the government seriously—a question of whether it is being even-handed across all jurisdictions. And that is an important issue.

Senator FORSHAW (New South Wales) (8.11 p.m.)—I have been listening intently to this debate. It is a very important issue. Senator Ian Campbell, the minister, seeks to dismiss the issue on the basis that we are debating amendments to the Workplace Relations Act; we are not debating a bill to amend the Corporations Act. The problem with that argument is that we are debating the consequences of engaging in violence, which potentially brings a criminal conviction and a custodial sentence. That is the nub of this issue: that is an offence that is committed separately, as it were, from the Workplace Relations Act or maybe even the Corporations Act. It is a different offence; it does not derive, if you like, from the provisions of either the Corporations Act or the Workplace Relations Act. The government seeks to change the provisions in the Workplace Relations Act so that the test will be lesser—that is, if you engage in that action and are convicted but your sentence is suspended, you will still be excluded from the opportunity to contest a ballot for office in a registered organisation. As Senator Wong, in particular, and Senator Cook have stated, there has to be consistency in the way the consequences of a criminal conviction for violence, bringing a jail sentence or a suspended sentence, are treated across legislation.

In trying to somehow balance the ledger, the minister says that this legislation will also apply to registered employer organisations under the act—and that is correct. The point to remember is that registered employer organisations are made up of companies. The employers may not necessarily be incorporated, but many incorporated companies are members of those associations. The irony is that you create a situation where, for instance, if an employer, a company—let us
say it is not a member of an employer organisation or, if it is, the directors of that company are not office holders of the employer organisation—have a record, have been convicted and actually served a custodial sentence at some time in the past, they can sit down at the negotiating table with a trade union and conduct negotiations under the Workplace Relations Act.

Under your Workplace Relations Act, and under the policy and principles of the Liberal government, you encourage bargaining on site. You seek to discourage trade unions from being involved in negotiations. You encourage enterprise bargaining without trade unions. We all know that, and that is provided for under the Workplace Relations Act. So what you are actually creating is a situation of complete inequity. For instance, if you had a trade union coming along to negotiate with a company directly, under this provision an official of that trade union would not be eligible to hold that office if they had had a suspended sentence, but that provision would not apply to the employer on the other side of the negotiating table because they were not an office holder in the employer organisation.

The fact is that this is totally inequitable. We are on the historical record in terms of dealing with issues of violence when it has had ramifications in industrial relations, and we have made it abundantly clear that we do not tolerate it. But, equally, you cannot just ride roughshod over the rights of individuals under the law and do it in such a grossly inequitable manner.

Senator MURRAY (Western Australia) (8.17 p.m.)—The senator is right to be sensitive about these matters. I think the first thing to say is that the disqualification offence is not a new one; it already existed. What has happened is that it has been extended—from those serving a sentence to those serving a suspended sentence. In our view, that is correcting an oversight which we would have thought was intended originally. Perhaps it was not; I confess I cannot remember that far back, but we do think it closes a penalty loophole.

Then you have to move to the question of retrospectivity, and the Senate is rightly sensitive about retrospectivity. The chamber actually has to deal with retrospectivity far more often than we think; and of course it is not always initiated by the government. Today we were dealing with the Commonwealth Electoral Act. The Australian Democrats have the view that the right to vote is a right that should apply to everyone, including prisoners, unless they are guilty of treason. Currently, prisoners who are serving sentences of five years or more are prevented from voting in federal elections. That provision removes the right to vote from about 11,000 people. The government today moved to add a further 7,000 to that figure by making all prisoners unable to vote. That would have retrospective effect, and somebody who is put in prison today, and who might have a vote, would not have a vote under that provision. We opposed that, as did the Labor Party. I might say it would have a particularly distorted effect, because the Australian prison population is composed of a disproportionate number of Indigenous prisoners. The removal of the right to vote would have had a disproportionate effect on that population. But the Labor Party then retrospectively removed the right to vote from prisoners who are in jail for three years or more. Formerly it was five years or more. In other words, the Labor Party have today retrospectively removed the right to vote of thousands of prisoners. I am sure they took that view on reasoned grounds, and the government took their slightly harsher view on reasoned grounds,
but these are the kind of retrospective issues that we face every day, and the parliament makes judgments and comes to conclusions. As I said, today it was the turn of the Labor Party and the Liberal Party to retrospectively remove the vote from several thousand prisoners.

Our approach to this amendment is that because it is not introducing a new penalty it kind of squares the circle, as it were, with respect to an offence which already carried disqualification. In fact, it deals with an oversight. On balance, we think that, despite the sensitivities the opposition very rightly raise, it should be supported. The other point that was made was a good one, and that is that there are inequalities in the way in which different matters of law are dealt with through different acts. I think those inequalities need to be addressed, and a review of the various punishments in various acts is long overdue. None of us is competent to remember which ones apply all over the place. I am a member of the Scrutiny of Bills Committee, which, I am very proud to acknowledge, has Senator Marshall as the new chair. I think he will do a great job. He replaces a good chair and an outstanding chair before that. The good chair he replaces is Senator Crossin, and everyone will understand that I refer to Senator Cooney as an outstanding chair, because all of us are fond of him and know that he did exceptionally well in the scrutiny of bills—but I digress. That committee is right now trying to assess the rights of search and entry across a number of acts, because they are inconsistent. I think that the point about having to ensure consistency across all the acts is a good one, but that is not to the point of this particular amendment, so on balance the Democrats have decided to support it.

Senator MARSHALL (Victoria) (8.22 p.m.)—I think the minister made a point before about the way politicians are treated in this matter which goes, I understand, to section 44 of the Constitution. That means that a person who has been convicted and is under sentence or subject to be sentenced for any offence punishable under the law of the Commonwealth or of a state by imprisonment of one year or longer is incapable of being a senator or a member in the House of Representatives. What that says to me—given the different standards that are being applied to us and what we, through this change, are legislating to have apply to other people—is that if you were convicted of a criminal offence punishable by less than one year’s imprisonment you could be a senator but you could not be the state secretary of a union. I find that fairly inconsistent and not really the way in which we should be dealing with this matter. Laws should apply prospectively and not retrospectively. A person should never be made to suffer in law—criminal or civil—for an act which was not unlawful when they committed it. Retrospective legislation destroys the certainty of law. It is arbitrary and it is vindictive. Such laws undermine many characteristics of what we accept as the general rule of law.

I want to address a couple of remarks Senator Murray made. He talked about the fact that we have done it before. I concede that: yes, there have been retrospective laws. He used an example which was about making retrospective laws that apply to the eligibility of people voting, but this circumstance is very different, because what we are doing in this case is potentially terminating people’s employment. I do not know how many people this retrospectivity may apply to but, if we pass this law today, a person legitimately elected to office in a union or an employer organisation under the terms of the law that stood at the time could, effectively, have their livelihood terminated. I do not think we should be doing that as a parlia-
ment, without even knowing how many people this affects.

We could find out how many people it affects, because all elected officeholders have to be registered with the Industrial Registrar. They are known, because they actually stand for election. They are elected under the terms of the act. Yet it seems—and the minister indicated—that no study has been done to see who this would apply to. That is an irresponsible process for the government to engage in. It is incredibly difficult for us as a parliament to stand here today and pass a law that will terminate someone's employment. It may not terminate the employment of anyone. It may be that no-one falls into that category, but we ought to know whether or not anyone does, and we ought to know the full impact of what we are doing. It is a sad indictment of the processes of this place that these laws are put before us to vote upon without that research being conducted and without that information being known.

Senator COOK (Western Australia) (8.26 p.m.)—Through you, Mr Temporary Chairman, I have a couple of questions for Senator Murray and a question for the minister. I will start with my questions to Senator Murray. Does Senator Murray acknowledge that there is a different standard to be applied in the industrial relations jurisdiction to that applied in the corporate law jurisdiction? Does he agree that it is desirable to be even-handed between all jurisdictions—that is, in whatever capacity they are, people who commit the same sort of acts ought to be treated with the same type of response—equally? Does Senator Murray agree that this is unequal treatment? Do we understand that a judge sitting in judgment on someone who might be an officer of an organisation registered under the industrial relations legislation must now consult the industrial relations legislation, in order to see what additional penalties other than those the judge may apply will apply to a person found guilty?

Now I turn to my question to the minister. It is my understanding in the Johnston case that the DPP is appealing against the severity of the sentence, and that is fine, but has the government given any thought to the fact that, because an appeal is on foot and because we are now possibly—and I cannot speak with authority, because I am not familiar with all the details of the Johnston case—going to impose an additional penalty by changing the statutory requirement for an office holder, this may impact on the appeal that the DPP has undertaken?

Senator MURRAY (Western Australia) (8.28 p.m.)—Perhaps I will respond first. I could tell by the way Senator Cook phrased the question that he is well aware this is a government amendment and he is just looking for my opinion on their amendment as opposed to answering on my own. Sometimes in these debates we are distracted by something else which is going on. I might not have heard everything he has said, and he might not have heard everything I have said, so I will shortcut what I said earlier.

I think the Democrats have come to the same view as the Labor Party. We are aware of the same sensitivities and difficulties as Labor—I spoke about retrospectivity just now as one of those—and we are aware of how differently they can be dealt with by the same parties in the same day. I think I was very clear that I believe equality under the law should apply, but I am well aware that in relation to the previous government’s acts, the present government’s acts and state and territory acts there are all sorts of inconsistencies.

You might not have heard me say this, but I think there needs to be a thoroughgoing review of acts in all sorts of areas. The reason I raised the Scrutiny of Bills inquiry was
that it was one of those very circumstances in which we are examining an area of law where there are inconsistencies in application. If you want me to restate a principle, yes, I do agree there should be equality but, like the Labor Party, the Democrats have come to a view that this provision deserves to pass. One of the principal points I made to you—and I do not know whether that is what influenced the Labor Party in coming to its decision to support it—is that we recognise that this qualification was to an existing offence which applied to serving a sentence and did not apply to a suspended sentence. We came to the conclusion that that was an oversight and needed to be corrected. On those grounds, we thought it worth supporting. The question of how many people it would apply to or could apply to and all that sort of thing plainly is not within our knowledge. You would have to direct questions to the government as to the specifics in that area, but we agree with the Labor Party: we think on balance it does need to be passed.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.31 p.m.)—The question from Senator Cook was fundamentally seeking legal advice from me, which I am not competent to give.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—The question is that amendment (2B) be agreed to.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.31 p.m.)—I move government amendment (2A) on QU266 as amended:

(2A) Page 8 (after line 5), at the end of the bill, add:

Schedule 3—Increasing civil penalties

*Workplace Relations Act 1996*

1 Subsection 4(1)

Insert:

*penalty unit* has the same meaning as in the *Crimes Act 1914*.

2 Subsection 170NF(2)

Omit “$10,000”, substitute “300 penalty units”.

3 Subsection 170NF(2)

Omit “$2,000”, substitute “60 penalty units”.

4 Subsection 170VV(2)

Omit “$10,000”, substitute “300 penalty units”.

5 Subsection 170VV(2)

Omit “$2,000”, substitute “60 penalty units”.

6 Subparagraph 178(4)(a)(i)

Omit “$5,000”, substitute “150 penalty units”.

7 Subparagraph 178(4)(a)(i)

Omit “$1,000”, substitute “30 penalty units”.

8 Sub-subparagraph 178(4)(a)(iia)(A)

Omit “$10,000”, substitute “300 penalty units”.

9 Sub-subparagraph 178(4)(a)(iia)(A)

Omit “$2,000”, substitute “60 penalty units”.

10 Sub-subparagraph 178(4)(a)(iia)(B)

Omit “$5,000”, substitute “150 penalty units”.

11 Sub-subparagraph 178(4)(a)(iiia)(B)

Omit “$1,000”, substitute “30 penalty units”.

12 Subparagraph 178(4)(a)(ii)

Omit “$10,000”, substitute “300 penalty units”.

13 Subparagraph 178(4)(a)(ii)

Omit “$2,000”, substitute “60 penalty units”.

14 Subparagraph 178(4)(a)(ii)

Omit “$10,000”, substitute “300 penalty units”.
15 Subparagraph 178(4)(a)(ii)
Omit “$2,000”, substitute “60 penalty units”.

16 Paragraph 178(4)(b)
Omit “$10,000”, substitute “300 penalty units”.

17 Paragraph 178(4)(b)
Omit “$2,000”, substitute “60 penalty units”.

18 Subsection 178(4A)
Omit “$5,000”, substitute “150 penalty units”.

19 Subsection 178(4A)
Omit “$1,000”, substitute “30 penalty units”.

20 Paragraph 187AD(1)(a)
Omit “$10,000”, substitute “300 penalty units”.

21 Subsection 285F(3)
Omit “$10,000”, substitute “300 penalty units”.

22 Subsection 285F(3)
Omit “$2,000”, substitute “60 penalty units”.

23 Subparagraph 298U(a)(i)
Omit “$10,000”, substitute “300 penalty units”.

24 Subparagraph 298U(a)(ii)
Omit “$2,000”, substitute “60 penalty units”.

25 Application of amendments
The amendments made by this Schedule apply in relation to contraventions occurring after the commencement of the amendments.

Schedule 4—Compliance etc. powers
Workplace Relations Act 1996

1 After Part V
Insert:

PART VA—COMPLIANCE ETC. POWERS

88AA Secretary’s powers to obtain information etc.
Oath or affirmation

(5) The Secretary of the Department, or an assistant, may require the information or answers to be verified by, or given on, oath or affirmation, and either orally or in writing. For that purpose, the Secretary, or an assistant, may administer the oath or affirmation.

(6) The oath or affirmation is an oath or affirmation that the information or answers are or will be true.

Offence

(7) A person commits an offence if:

(a) the person has been given a notice under subsection (1); and

(b) the person fails:

(i) to give the required information by the time, and in the manner and form, specified in the notice; or

(ii) to produce the required documents by the time, and in the manner, specified in the notice; or

(iii) to attend to answer questions at the time and place specified in the notice; or

(iv) to take an oath or make an affirmation, when required to do so under subsection (5); or

(v) to answer questions relevant to the investigation while attending as required by the notice.

Penalty: Imprisonment for 6 months.

Effect of secrecy provisions

(8) The operation of this section is not limited by any secrecy provision of any other law (whether enacted before or after the commencement of this section), except to the extent that the secrecy provision expressly excludes the operation of this section. For this purpose, secrecy provision means a provision that prohibits the communication or divulging of information.

Definitions

(9) In this section:

assistant means:

(a) the person occupying the position in the Department known as the director of the Building Industry Taskforce; or

(b) a building industry authorised officer; or

(c) a building industry inspector.

building industry authorised officer means an authorised officer exercising or performing powers or functions as part of, or for the purpose of assisting, the Building Industry Taskforce.

building industry inspector means an inspector exercising or performing powers or functions as part of, or for the purpose of assisting, the Building Industry Taskforce.

building industry investigation means an investigation in relation to which the following paragraphs are satisfied:

(a) the investigation is:

(i) by a building industry authorised officer for a purpose referred to in subsection 83BH(1) (which is about authorised officers ascertaining whether the terms of an AWA, or certain provisions of this Act, are being, or have been, complied with); or

(ii) by a building industry inspector for a purpose referred to in subsection 86(1) (which is about inspectors ascertaining whether the terms of an award or certified agreement, or certain provisions of this Act, are being, or have been, complied with); and
(b) the subject matter of the investigation involves, or is related to, the building and construction industry.

**Building Industry Taskforce** means the Taskforce of that name established within the Department.

### 88AB Certain excuses not available in relation to section 88AA requirements

**Excuses that are not available**

(1) A person is not excused from giving information, producing a document, or answering a question, under section 88AA on the ground that to do so:

(a) would contravene any other law; or

(b) might tend to incriminate the person or otherwise expose the person to a penalty or other liability; or

(c) would be otherwise contrary to the public interest.

**Use/derivative use indemnity**

(2) However, neither:

(a) the information or answer given or the document produced; nor

(b) any information, document or thing obtained as a direct or indirect consequence of giving the information or answer or producing the document;

is admissible in evidence against the person in proceedings, other than:

(c) proceedings for an offence against subsection 88AA(7); or

(d) proceedings for an offence against section 137.1 or 137.2 of the Criminal Code that relates to this Act; or

(e) proceedings for an offence against section 149.1 of the Criminal Code that relates to this Act.

### 88AC Protection from liability

A person who, in good faith:

(a) gives information; or

(b) produces a document; or

(c) answers a question;

when requested or required to do so under section 88AA is not liable to:

(d) any proceedings for contravening any other law because of that conduct; or

(e) civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

### 88AD Retention and copying etc. of documents

**Secretary or assistant may keep documents**

(1) The Secretary of the Department, or an assistant, may take possession of a document produced under section 88AA and keep it for as long as is necessary for the purposes of the conduct of the investigation to which the document is relevant.

**Certified copy to be supplied to person entitled to document**

(2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy that is certified, by one of the following persons, to be a true copy:

(a) the Secretary of the Department;

(b) an assistant.

**Certified copy to be treated as original**

(3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

**Right to inspect and copy the original**

(4) Until a certified copy is supplied, the Secretary of the Department, or an assistant, must, at such times and places as the Secretary or assistant considers appropriate, permit the person otherwise entitled to possession of the document (or a person authorised by that person) to inspect and make copies of all or part of the document.

**Definition**

(5) In this section:
assistant has the same meaning as in section 88AA.

88AE Secretary or assistant may make and keep copies of documents

(1) The Secretary of the Department, or an assistant, may make and keep copies of all or part of any documents produced under section 88AA.

(2) In this section: assistant has the same meaning as in section 88AA.

88AF Protection of confidentiality of information

(1) This section restricts what a person (the entrusted person) may do with protected information that the person has obtained in the course of official employment.

Note: Although this section applies only to information that a person obtained in the course of official employment, the obligations under this section continue to apply after the person ceases to be in official employment.

Recording or disclosing

(2) The entrusted person must not:
   (a) make a record of protected information; or
   (b) disclose protected information.

Penalty: Imprisonment for 12 months.

Permitted recording or disclosure by designated officials

(3) If the entrusted person is a designated official at the time of the recording or disclosure, then each of the following is an exception to the offence in subsection (2):
   (a) the recording or disclosure is for the purposes of this Act;
   (b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person’s official employment;
   (c) in the case of a disclosure—the disclosure is to a person appointed or employed by:
      (i) the Commonwealth, a State or Territory; or
      (ii) an authority of the Commonwealth, a State or Territory;
      for the purpose of assisting in relevant law enforcement;
   (d) the recording or disclosure is in accordance with regulations made for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the Criminal Code.

Permitted recording or disclosure by other persons

(4) If the entrusted person is not a designated official at the time of the recording or disclosure, then each of the following is an exception to the offence in subsection (2):
   (a) the recording or disclosure is for the purposes of this Act;
   (b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person’s official employment, being duties relating to relevant law enforcement;
   (c) the recording or disclosure is in accordance with regulations made for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the Criminal Code.

Authorisation for purposes of Privacy Act

(5) A disclosure of personal information is taken to be authorised by law for the purposes of paragraph (1)(d) of
Information Privacy Principle 11 in section 14 of the Privacy Act 1988 if the information is protected information and the disclosure is made in accordance with subsection (3) or (4) of this section.

Definitions

(6) In this section:

designated official means any of the following:

(a) the Secretary of the Department;
(b) a Registrar;
(c) the person occupying the position in the Department known as the director of the Building Industry Taskforce;
(d) an inspector;
(e) an authorised officer;
(f) a person acting under a delegation under this Act from a person covered by any of the above paragraphs.

disclose means divulge or communicate.

industrial association means:

(a) an organisation; or
(b) any other association covered by any of the following subparagraphs:

(i) an association of employees and/or independent contractors, or an association of employers, that is registered or recognised as such an association (however described) under an industrial law; or
(ii) an association of employees and/or independent contractors a principal purpose of which is the protection and promotion of their interests in matters concerning their employment, or their interests as independent contractors, as the case requires; or
(iii) an association of employers a principal purpose of which is the protection and promotion of their interests in matters concerning employment and/or independent contractors; and includes a branch of an organisation, or of an association referred to in paragraph (b).

industrial law means this Act, the Registration and Accountability of Organisations Schedule or a law, however designated, of a State or Territory that regulates the relationships between employers and employees or provides for the prevention or settlement of disputes between employers and employees.

official employment means:

(a) appointment or employment by, or the performance of services for:

(i) the Commonwealth, a State or Territory; or
(ii) an authority of the Commonwealth, a State or Territory; or

(b) appointment as an inspector or an authorised officer.

protected information means information that:

(a) was disclosed or obtained under this Part; and
(b) was obtained by the entrusted person, or by any other person, in the course of official employment; and
(c) relates to a person other than the entrusted person.

relevant law enforcement means enforcement of a law of the Commonwealth, or of a State or Territory, where the enforcement is in respect of conduct by, or in relation to,
a person or body in the person’s or body’s capacity as any of the following:
(a) an employee;
(b) an employer;
(c) an independent contractor;
(d) the other party to a contract entered into by a person as an independent contractor;
(e) an industrial association;
(f) an officer, delegate or other representative of an industrial association;
(g) an employee of an industrial association.

88AG Delegation by Secretary
(1) The Secretary of the Department may, in writing, delegate all or any of his or her powers and functions under this Part to the person occupying the position in the Department known as the director of the Building Industry Taskforce.
(2) In exercising or performing powers or functions under a delegation, the delegate must comply with any directions of the Secretary of the Department.

88AH Relationship with other provisions about authorised officers and inspectors
(1) Subject to this section, nothing in this Part limits, or is limited by:
(a) Division 2 of Part IVA (which is about authorised officers); or
(b) Part V (which is about inspectors).
(2) In particular (but without otherwise limiting subsection (1)):
(a) an authorised officer or inspector is not subject to directions under subsection 83BG(2) or 84(5) when exercising or performing powers or functions under this Part; and
(b) despite subsection 84(4A), an inspector appointed under paragraph 84(2)(b) may exercise or perform powers or functions under this Part whether or not those powers or functions are specified in his or her instrument of appointment.

Senator GEORGE CAMPBELL (New South Wales) (8.32 p.m.)—This is the provision relating to the increase in penalties and to the coercive powers being granted to the Building Industry Taskforce. We took a position earlier on this week that these issues ought to be referred to the Senate Employment and Workplace Relations Legislation Committee to look at the consequences of the proposals contained in this provision as well as the proposed amendments to this bill. We did so because we had concerns about a number of aspects of the bill, one of them being the retrospectivity argument that we have just discussed. That would have given us an opportunity to examine the implications and ramifications to a range of individuals in more detail.

The second area that gives us considerable concern is the proposal to extend coercive powers to the Building Industry Taskforce. Essentially, the proposal was to take away civil liberties from some 700,000 people that apply to the rest of the community and to do so without any solid grounds. This issue was discussed in the building industry inquiry. We did not hear substantial argument put to us as to why it was imperative that those powers reside with either the ABCC or the industry task force, but substantial argument was put to us as to why it should not apply to
workers in this industry. In a moment, I will come to some of the arguments that were put to the committee by some of the legal people.

One of the issues of concern, apart from the civil liberties of the individual, is that a number of employer organisations in the industry gave evidence on the application of the definition of ‘building and construction industry’ and neither the department nor players in the industry could give a specific answer as to where the ‘fence’ of this industry is. It is not clear by any means who is captured and who is not captured by the definition of ‘building and construction industry’ that this government has attempted to apply to the industry. So substantially greater powers may well be granted to a body than we believe they should have.

The second issue of real concern is that we are giving coercive powers to an individual—to a public servant or his nominee—who is directly responsible to a minister of the government. We think that is a very dangerous set of circumstances to apply. There is a general view on this side of the chamber—I think it was a general view put to us in the building industry inquiry that people on the other side of the chamber may not agree with—that this government has a very strong prejudice against unions and their members operating in industry. It is reasonable to assume, if you believe that prejudice exists, that these powers will be used unjustly and unfairly to target a particular group of individuals operating within this industry and, as a consequence, people will be put at serious disadvantage.

I drew attention to the fact that what was being proposed to be done here is to apply a set of conditions to the civil liberties of building workers that would not even apply to the civil liberties of terrorists under the antiterrorism laws. I will come to that in a moment, but I just want to draw attention to some of the material that was put to us in the inquiry. We heard, for example, from the Victorian Council of Civil Liberties. Mr Maxwell, on behalf of that organisation, had this to say:

We have expressed a concern that if you have an in-house regulator of compliance with employment law, especially where there is power in the government to direct how that regulator goes about its function, you may end up with a regulator which in its enforcement role is not independent of government. If that happened, that would be contrary to the rule of law, because questions of compliance with provisions which carry offences should not be determined by anyone with a connection with government. It should be determined by an independent investigative prosecuting authority.

Mr Maxwell went on to say:

If there is any risk that the government could direct the Commissioner to prosecute a particular person or investigate a particular person, that would mean that you could not say it was an independent agency. It was a pretend independent agency, but was really an arm of the executive. That is not what the rule of law requires in relation to contraventions.

In those hearings we also heard from a number of representatives of legal firms. For example, Slater and Gordon believed that these kinds of substantial coercive powers invested in a body at the direction of the government would make such a body ‘part industrial police force, part standing royal commission and part prosecution authority’. They said:

The requirements on those forced to give up information under the bill in terms of producing documents in a certain manner and form are extremely onerous. The common law right against self-incrimination is one of the cornerstones of our democratic freedoms and should not be undermined without compelling justification.

They went on to say:

Some would argue that the abrogation of the privilege against self-incrimination under the bill
is balanced by the fact that such evidence cannot be used against a particular person in court proceedings. However, such a qualification is largely illusory. In fact that information can be used derivatively and is usually the starting point for finding further evidence that can be used against the person in court.

Those are obviously major concerns raised by individuals who are practising in the area of the law on a daily basis. I think they are of significant enough character for us to have had the opportunity to sit down and consider all the ramifications and implications flowing from the adoption of this provision to extend these powers to the industry task force.

I think it is constructive to compare the provisions that exist under ASIO’s special powers relating to terrorist offences with what will exist with the industry task force under these proposed amendments. Under section 88AA of the Workplace Relations Act the task force will have the power to give information, produce documents and attend and answer questions relevant to the investigation. The same power under section 34D(2) of the ASIO Act requires a person to appear for questioning, give information and produce records or things that are important in relation to a terrorism offence. So what the information has to relate to is quite clearly defined, and in that context it is a much narrower definition than that applied under the Workplace Relations Act.

In section 88AA(1), if the secretary of the department believes on reasonable grounds that a person has information or documents relevant to an investigation or is capable of giving evidence that is relevant to an investigation, the secretary may require the person to attend and answer questions relevant to the investigation. The same power under section 34D(2) of the ASIO Act requires a person to appear for questioning, give information and produce records or things that are important in relation to a terrorism offence. So what the information has to relate to is quite clearly defined, and in that context it is a much narrower definition than that applied under the Workplace Relations Act.

I turn to the final one in terms of limitations on questioning. Under section 88A(3) all that is said is that a person being questioned may be represented by a lawyer. Under sections 34A and 34HB of the ASIO Act, the questioning must occur in the presence of a retired or currently serving judge, who is defined in section 34A as the prescribed au-
authority. The retired or currently serving judge must inform the person of the range of their rights under the act and the extent of the warrant, and questioning cannot extend beyond prescribed time limits. That clearly demonstrates that we have more concern about the civil liberties of persons who are charged with terrorism or might be engaged in terrorist acts than we have about the civil liberties we are going to grant to 700,000-odd building workers. We are putting more onerous provisions on them than we are putting on potential terrorists. (Time expired)

**Senator COOK (Western Australia) (8.47 p.m.)**—I understand that currently before us are the government’s amendments other than the amendments that we have just dealt with and the amendments in government amendment (1). That is, on the sheet circulated it is all of government amendment (2) except the amendments that we have just dealt with, and that includes the issue of increase in penalties by tripling them and the so-called compliance matters. I have to say that what inhibits us tonight is that these two issues—increased penalties and the compliance matters—are substantial in their own right. No one can argue with that. They are matters of considerable weight. This chamber has not had the opportunity to conduct a second reading debate about those and lay out its concerns. As I said before dinner, they came to us as part of the shell of an old act that was lying around dealing with codifying contempt provisions. These are not about contempt; these are about other matters. The normal parliamentary procedure of allowing a second reading debate has not been accessible, and here we are on the last night of this session with an expectation in some quarters—a fairly widespread expectation—that we are heading for an election.

These are entirely the wrong circumstances in which to consider matters of such weight. It leaves the chamber open to the allegation that we are sneaking through legislation with wide-ranging ramifications without being able to properly weigh and consider that legislation and without senators being able, given the practical pressures that apply, to give the legislation the detailed consideration it needs. I make that point now because it is fundamental to the process under which we operate. If we vary the process then we are open to allegations that, equally, rights have been abrogated or that something underhanded and seriously demeaning of the rights of individuals may have occurred. This is a point I will come back to because I think this represents a new process in these matters, and these matters are quite important.

The issue of compliance is fundamentally opposed by the Labor Party. Senator George Campbell, as the deputy chairman of the legislation committee, has taken some time to argue that an appropriate procedure would have been to have looked at this legislation directly in the legislation committee. I support him in that. The fundamental thing that we are looking at here in terms of the compliance powers is a denial of the rights of Australians who happen to work in the building industry as opposed to anywhere else—an unequal treatment of Australians because of their occupation. What is the evidence to justify this, if it could ever conceivably be justified? It cannot be justified, and no serious evidence has been put forward in this chamber to do so.

The silence from the government in terms of a second reading speech on this point is simply deafening. It is a great omission that the government has visited here. In the context it has to be seen as an election stunt. This is a political act to victimise Australians because their occupation is in this industry. It is an act to deny them the rights to which all Australians are entitled. They are rights we defend everywhere and take up arms to defend: the rights to civil liberties and proper
treatment before the law. This is not a minor matter. I turn to what these amendments propose. They clothe the Secretary of the Department of Employment and Workplace Relations with the power to do a number of things that are unique in industrial law. We have never seen the like of this before. Before I enumerate those things, I first make the point that I speak of the secretary of the department.

Under this government, secretaries of government departments are hirelings. They are contracted for a period. They hold office at the pleasure of the minister. They are paid performance bonuses if they do the government’s bidding and do it well enough. There is a whole debate about the corruption of the Australian Public Service and the politicisation of the Australian Public Service because of this. The politicisation of the Australian Public Service is a serious matter. Without necessarily reflecting on the individual, he is hired on a contract to perform to the government’s wishes. That erodes the ability of secretaries of the department—or of any department—to give frank and fearless advice to their ministers as the Westminster system of government demands. I can tell you, as someone who has served as a minister for eight years, that if you do not get frank and fearless advice from your department then you can easily be misled. The department is a necessary check and balance in government. The politicisation of departments means that the government gets the advice it wants and uses the department as a shield in order to justify doing whatever political mischief it wants to do. It pretends there is a process there that conforms to the norms of Australian democracy—it does not.

No-one has explained to this chamber why in Australia a person being investigated for murder—a major criminal offence—has superior rights to a building worker. There is a major problem of drugs in Australia—there is the operation of criminal cartels, the subversion of various offices in Australian law enforcement institutions because of it and a huge amount of money involved, and it has a corrupting effect on society. Yet no-one has explained to this chamber why people accused of offences contravening our drug laws have protection of their rights—in my view, appropriately—which is superior to that given to building workers. Australians who happen to work in the building industry have an inferior set of rights. Senator George Campbell made this point extremely well: people being investigated by ASIO under the terrorist act in this country have greater rights than Australians who happen to work in the building industry.

These so-called coercive amendments in this bill, should it become an act, would give the Building Industry Task Force greater coercive powers to question ordinary building workers than ASIO has to question people who have information about possible terrorist attacks. This parliament spent a lot of time getting the terrorist laws in this country right. I think finally they came out at the right level. Yet we are spending no time now trying to get right the levels of liberties and entitlements for Australians who work in the building industry. It would be a travesty of process as well as a travesty of justice if we proceeded to deal with this legislation in these circumstances, on what is possibly the eve of an election, with a government with a history of union bashing and using industrial relations for political purposes. This is no way to make law that the people of this society can respect.

Later I will address the penalties, but now I will move to the powers. The secretary of this department, who is on a performance bonus adjudicated by the minister, will be able to provide the Building Industry Taskforce with these powers. The Building Industry Taskforce is an organisation within the
Department of Employment and Workplace Relations. Sadly, the Department of Employment and Workplace Relations is currently investigating Mr Nigel Hadgkiss, the head of the Building Industry Taskforce, for potentially breaking Public Service regulations and his own code of practice by covertly recording witnesses in an investigation.

I believe that if he is found guilty of that offence it ought to give rise to dismissal. I have looked at the circumstances of this allegation in some detail. I believe that, if he is guilty of sanctioning this action, he has committed an offence under the Western Australian listening devices act as well. This is the officer on which this parliament is being asked to impose coercive powers the like of which apply in no other jurisdiction.

My second point in looking at the chain of command is that not only do we have a politicised Public Service but also the head of this particular part of the Public Service, the operative officer for the purposes of this bill, is currently under investigation for exceeding his authority.

Senator McGauran—you’ve made him guilty already.

Senator COOK—I make no judgment about guilt. I say that this is a well-founded allegation sufficient to cause the department to investigate the officer. In terms of the chain of command, an important question is whether this is a competent person should there be any consideration whatsoever to taking down the civil liberties of this group of Australians. The other thing that has to be said about this officer and this task force is that they are not qualified in the field of industrial relations. They are police officers or former police officers.

We are introducing a private police force into the field of industrial relations, not to settle disputes but to take legal action against organisations and workers. That does not solve industrial relations problems; that does not address our constitutional imperative set out in the Australian Constitution that this parliament must make laws to prevent and settle industrial disputes that go beyond the borders of one state. It does not address that constitutional imperative imposed on us by the framers of the Australian Constitution; it goes directly against it because the people being employed here have no expertise in industrial relations and have no pretence to ‘prevent and settle’, to quote the Constitution. What they do have is a policing expertise in order to police people—not go to the merits of the action but go to a rigid interpretation of the black letter of the law and seek convictions. That is the poison that permeates this legislation and the approach of the government with this bill, in terms of the Cole royal commission and their whole approach to industrial relations in the field of the building industry. Tonight we will hear more about the Cole royal commission.

What then are the powers to be exercised by this chain of command? It is power to compel people to give information, to compel people to produce documents and to compel people to attend to answer questions if the secretary has reasonable grounds that a person has information or documents relevant to an investigation. I will go on further in a minute but let us just pause at this point.

If we take the highest level of evidentiary requirement in this country—criminal law—one of the foundation stones is that people have the right not to incriminate themselves. We may hear in this debate a lot of self-serving nonsense that these provisions do not require people to incriminate themselves. Of course they do. The Slater and Gordon excerpt read by my colleague Senator George Campbell establishes that beyond any doubt.

(Time expired)

Senator IAN CAMPBELL (Western Australia—Minister for Local Government,
Territories and Roads) (9.02 p.m.)—I thank Senator Carr for yielding the call.

Senator Carr—Yes, we’ve got plenty of time.

Senator IAN CAMPBELL—Yes, in fact I have just heard that an ABC reporter has been briefed by the opposition to say that we will be sitting at least until 9 o’clock tomorrow morning. Clearly, the Australian Labor Party have decided that they will have a lot to say on this, as is their right. They have made it clear to the Australian Broadcasting Corporation that they intend to sit for at least another 12 hours.

Senator Carr—It’s all being broadcast, so make it clear.

Senator IAN CAMPBELL—This is the ABC’s Parliamentary News Network and I am sure that we have a big listening audience. I send a cheerio to those people driving around on tractors in the south-west of Western Australia. I hope they enjoy the debate.

Senator George Campbell and Senator Peter Cook, people who have had distinguished careers in the trade union movement, have asserted, totally incorrectly, that these powers are similar to the powers that ASIO has in relation to terrorism offences. That assertion is absolutely, entirely wrong. The problem with making those assertions is that you do two things. Firstly, you mislead the Senate and the Australian people and demean your own argument. Secondly, you demean the importance of the powers within the terrorism legislation.

Senator George Campbell made a very important point. He said that the parliament considered very carefully over many weeks just how as a society we would deal with the need to track down potential terrorists and their organisations and deal with them, and how we would balance the very important civil liberties questions upon which the Liberal Party was founded with the very important powers that the policing authorities require to detain, to question, to sort through the evidence and arrive at evidence with a view to ensuring people who undertake what are defined as terrorism offences under the relevant act are brought to justice and, therefore, to protect the broader community.

To try to link this provision in the workplace relations bill with the provisions in the ASIO legislation diminishes the importance of the ASIO legislation and what it sets out to do—which is to try to save Australia and Australians from the acts of terrorists. That act has some very important powers. There is no parallel between the powers in that act and the powers in this legislation. The powers in this legislation are based on provisions in the acts that govern bodies such as the Australian Securities and Investments Commission, the Australian Prudential Regulation Authority and the ACCC. The ACCC power relates to a person appearing before the ACCC to answer questions. They are not excused from giving evidence or producing a document for the reasons of self-incrimination, and for good reasons. The ACCC powers apply to corporations involved in commerce. This parliament supports the right of the ACCC to gather information this way. It supports the power of the ACCC to bring before it businesses—oil companies are a good example; there was a recent high-profile investigation of an oil company, which needed those powers to get information—and to collect documents and require testimony. That is the similar power that is the foundation upon which—

Senator George Campbell—It’s worse.

Senator Wong—They are statutory bodies. This is a department. It’s not a statutory body.

Senator IAN CAMPBELL—It is interesting that when I speak I get interjected on by opposition senators and when they speak I
sit quietly and listen to their arguments, except when from time to time I am interrupted by phone calls. I have sat here quietly and listened carefully to the points put forward by the opposition, even though I know it is their intention to filibuster this legislation, to speak hour after hour after hour and to make this chamber sit for as long as it takes—they are the words that I have heard Labor senators use: ‘We’ll do whatever it takes to stop this chamber having a vote on this legislation.’ We understand that is their tactic.

Having heard them say that and having heard an ABC reporter advise my office that that is indeed the Australian Labor Party’s tactic, my job is to debate the bill and to respond to questions from the opposition. I have not had a question for the last 45 minutes—not one question. But I will sit here and do the courtesy to opposition senators of listening very carefully to their contributions and listening to their questions when they put them and do my very best, based on the best advice I have available here to me, to answer them honestly and frankly.

The powers that the Australian Taxation Office and ASIC have already apply to companies and individuals in the building industry, and that should be made known. People listening to this debate need to understand that the Labor Party assertion that these powers in some way are related to the powers that are given to ASIO to investigate terrorism offences is quite frankly a disgrace. The trouble is that the Labor Party senators know that what they are saying is misleading, emotive and totally wrong. Either they have got bad advice, they do not understand this legislation—or they seek not to understand it—or they are trying to build false arguments to appeal to their own constituency. We are trying to ensure that the law of the land is complied with.

I make one other point, as this cannot go without response. Senator Peter Cook tonight did something that was beneath him. There was a report—I think in the media today—of a listening device being found and removed from a building site. I presume from what Senator Cook said that it was in Western Australia. Here was a member of the Labor Party saying: ‘Let us allow fair processes. Let us allow proper investigations. Let us let the courts decide. Let us respect courts’ decisions.’ The very same person making that argument less than an hour ago came into the parliament of one of the greatest democracies on this planet and said that the director of the Building Industry Taskforce was responsible for placing a listening device, which is an offence under the law.

Think about it carefully. Senator Cook was in here for the last few minutes arguing about allowing the courts to work—‘Let us give people justice. Let us respect their civil rights. Let us be careful about these disqualification provisions. Let us be careful about coercive powers, collecting evidence, producing documents and giving statements.’ Has he heard a statement from the person he has been the judge and jury of tonight? Has he seen any evidence, apart from the assertions of his friends in the union who I understand discovered this listening device? Does he accept that the director of the Building Industry Taskforce, like every other person in this democracy of ours, should be presumed innocent until proven guilty? No. This very same senator who tonight said, ‘Let us have justice for trade unionists,’ also said, ‘No, this gentleman, who cannot be in here tonight to defend himself, is guilty of a criminal offence.’ Senator Cook even named the offence; he did not name the act because he did not know it.

I say to Senator Cook, who is outside now—he has left the chamber, perhaps in shame—if you believe that you should be the
judge and jury, why don’t you convene a media conference out the front of the building—as Senator Ray used to say, it is 10 yards to courage; he has already walked 10 yards, so he does not have to do that bit—and say what you said about the director of the Building Industry Taskforce, who you named in this place? He should repeat the allegation outside. It was a disgraceful thing to do, and it does not add to this debate.

I hope I have made the point that there is absolutely no correlation between the powers in the ASIO Act that relate to terrorism offences and the powers that we are seeking quite properly to give to the secretary of the department, who will delegate them to the director of the Building Industry Taskforce—who has powers defined under the law—and ensure that that delegate has the power to ensure that evidence is provided, that documents are produced and that statements are given, just as the Australian Taxation Office does and just as the Australian Securities and Investments Commission does when it is investigating potential malfeasance by company directors or by company officers. ASIC has the same powers and so does the ACCC. We are saying that the person in charge of regulating workplace relations should have similar powers.

There is absolutely no similarity between the sorts of offences we are talking about here and offences under the terrorism act, which of course are broadly defined as including actions that cause serious harm, cause damage to property or cause a person’s death with the intention of intimidating the government or the public. These offences are related to and include, for example, training connected with terrorist acts, possessing things connected with terrorist acts, and collecting and making documents likely to facilitate acts. These are criminal offences of the highest order. They are offences that involve possible life imprisonment. The use of a warrant is appropriate in this context and there is absolutely no valid comparison that can be made between those powers to investigate terrorism and the powers to investigate breaches of the Workplace Relations Act. Those who seek to assert that argument do themselves little justice and reduce their own credibility.

Senator CARR (Victoria) (9.14 p.m.)—The minister has invited questions, so I will ask him some. In terms of the proposals under the Workplace Relations Act, is it the case that section 88AA(1) specifies that the secretary of the department can give written notice to a relevant person who is required for questioning that the criteria, which the secretary himself has determined, have been satisfied and therefore he can force the processes of the act to commence? Is it not the case that under the present laws a warrant is actually sought when the minister is satisfied that there have been breaches that require the provision of information? Is there not a fundamental difference in the approach that is being taken? That is the point that Senator Campbell made.

I have been listening carefully to this. Senator Wong has made the point in terms of a lawyer’s response to these questions. I will put to you a view of my understanding of the situation having had to listen to hour upon hour of evidence presented to the Senate by officers of the Office of the Employment Advocate—actually it should be employers’ advocate—and Mr Hadgkiss. These are processes we have undertaken. The secretary of the Cole royal commission also provided evidence. The reason I refer to this, Senator Campbell, is that these are the circumstances that we currently find ourselves in—that is, it is a political circumstance; it is not a legal one. It is a political exercise that the government has embarked upon. It has sought from the time it came to office to target particular unions. It has sought to identify indi-
ividuals that it believed were not entitled to the same industrial rights as everyone else but were to be criminalised in their normal day-to-day activity. It has sought to spend millions upon millions of public dollars to satisfy an ideological obsession with under-mining organised labour in this country.

This is the issue at stake here. There is no matter of national security. There is no great issue in terms of the capacity of the industry to perform, because the building industry is a highly successful industry. It is one of the most prosperous industries in the country, but it is a rough industry, a tough industry, in which employers organise and bargain very effectively, as do unions. It happens to be an industry in which one worker every week is killed. It is an industry where there has to be a high level of effective protection for working people because governments have failed in that task. What do we find? This government on behalf of the employers seeks to crush one side in the industrial arrangements in this area.

Senator Campbell, are you aware of how these things are being done already under this government? I refer you not to any assertions of a Labor politician but to the actions in the Federal Court of Mr Hamberger, whom I understand the government this afternoon has appointed to the commission—it is quite clear the government’s political relationships have been established in that regard. I refer you, Senator Campbell, unless you have forgotten this, to the case of Hamberger v. CFMEU. I ask you another question: have you forgotten the case of Hamberger v. CFMEU and in particular the case which began in 1999 down at the Abigroup site in Hawthorn in Melbourne?

Senator Jacinta Collins—He’s not listening.

Senator CARR—No, he is not listening. He makes these assertions against the Labor Party and Labor senators but then chooses to turn his back on the whole process, because this is in truth a political exercise aimed at a few individuals. But I am sure the minister, when he is ready to discuss these matters, will be able to explain to us the circumstances whereby a government officer, with very close connections to the minister at the time and the secretary of the department at the time, engaged in circumstances where the Federal Court found that the use of secret tape recordings, illegally gathered, was inadmissible in a court of law. That is not an assertion by a Labor senator but an assertion in the Federal Court of Australia.

A particular shop steward, Mr Ian Williamson, was allegedly accused of breaching the freedom of association provisions. A number of so-called inspectors—women in this case—turned up at the Abigroup site. The officer concerned—the site manager, if I recall correctly—had a serious medical problem upon their arrival. My recollection of the situation was that he had a heart problem and actually collapsed on the floor of his office. What did the officers do? Do you think they sought medical attention? Was that their first priority? No. It was to get over the body to rifle through his desk and find incriminating evidence. Of course, we know the truth in this matter because the whole sordid episode was exposed before the Federal Court.

The Office of the Employment Advocate’s star witness was a painter by the name of Mr John Litton and his alleged employer was Mr Lee Carsons. They had visited the Office of the Employment Advocate in February 1999 and had spoken to the investigating officers. They were told that they should take these matters through the court processes, that a legal indemnity was to be granted by the Office of the Employment Advocate and that that legal indemnity was to provide the costs against any prosecutions against the CFMEU. The court case was awarded...
against the Office of the Employment Advocate and the money had to be paid to the CFMEU in Victoria. So we had the great fortune to actually see a cheque signed by the Commonwealth government going to the CFMEU as a direct result of the collusion of this government and its paid agents engaging in illegal activity, which the judge described as follows:

... Mr Williamson was set up by a highly artificially manufactured device arranged by two people who have a reckless indifference to probity and a propensity to give inconsistent and unacceptable evidence under oath.

Those were the circumstances where we saw the government use secret tape recordings—an illegal activity—to try to stitch up a union in Victoria. They were then obliged to pay that union costs when their court proceedings failed—because they did not just go through one set of proceedings; there were numerous appeals they took on in an attempt to fit up the union.

I can just see the circumstances if the CFMEU had engaged in such activities. I can just see the circumstances in this parliament if the union had behaved in this manner. But this government has no propriety when it comes to these legal niceties. Not only was this matter thrown out of the Federal Court but there was an attempt made to reintroduce it in the Cole royal commission. There was an attempt made to submit the illegally taped material through the proceedings of the Cole royal commission—evidence which, of course, the Federal Court had ruled to be improperly obtained. If the minister is so concerned as to suggest that we do not understand the difference in the way these circumstances were allowed to occur in an office directly controlled by the Commonwealth government and on the part of an officer who had written a highly dubious rationale for the Cole royal commission and who had been working hand in glove with this government in an attempt to undermine organised workers in the building industry.

Minister, there is clearly a difference here, so I ask you: why do you have so little understanding of the practices that occur in this industry? Minister, you say that civil liberties are well protected, so why is it that certain events occur, such as those we have seen within the terms of this government and those which within the last few years have been demonstrated in a court of law to be occurring—illegal actions in which the liar’s legal costs are paid by this government in a whole series of court proceedings? Why should we have any confidence in a proposition that comes before the parliament that a public servant be given powers to prosecute, harass and deny the civil liberties of Australians where there is clear evidence that the government has time and time again behaved in a totally prejudicial way?

It strikes me that that is a fundamental problem with the government’s case. It says that the Australian Taxation Office has the same powers. I say this: the Australian Taxation Office is not regarded as a political tool of the government. It is an institution that has genuine public support in this country. People may not like paying their taxes but that is not to say that an instrument of state—a standing royal commission, as proposed in these arrangements—can be allowed to direct the power of the state against an individual whom the government does not like. That is the sort of charge that is being made against Mr Putin in Russia at the moment. That sort of charge is not made in this country—for very good reason. The Australian Taxation Office has a reputation for genuine impartiality. It is subject to the rule of law. These provisions allow police state tactics to be made legal by giving continuing royal commission powers of coercion against indi-
individuals whom the government does not like. That is the long and the short of this.

I am quite happy to discuss with the minister at length what the Cole royal commission was really about. After the expenditure of $60 million on the royal commission, what great evidence of criminal behaviour has come forward? What action can we say justifies that spending? What do we find? We find a government that seeks to come back to its obsession like a mongrel dog to an old bone. Essentially the government seeks to return to the notion that this is an industry in which some people—namely, trade union officials—are criminals, whilst other persons who do not pay their taxes, who avoid their responsibilities in relation to phoenix companies and who are guilty of gross negligence when it comes to occupational health and safety are not prosecuted for those things. In fact the department’s record on the prosecution of employers is appalling. There are at best two or three examples a year.

We are asked to give unprecedented powers to an individual—a political agent of the government—to prosecute other individuals whom the government does not like. That is the long and the short of this proposition. I ask you: where is the great commitment to liberalism? How can the Democrats, who claim to be the upholders of political integrity in public life, sign up to such a proposition? It is an extraordinary notion that the government should be extended the oppressive powers of a police state to demand information about union meetings and the normal activities of trade unionists. This is a device to criminalise the ordinary behaviour of trade unionism, in the normal course of events, to protect the wages and conditions of workers. If it is not about that, why aren’t the police powers that currently exist being used? Are you saying this is a case of organised crime? What is the evidence for that? None of these things, of course, have been presented. This is a political witch-hunt made legitimate by the Democrats’ acquiescence, under political pressure, to an assertion by this government that it cannot afford to be seen to be soft on the labour movement in the run-up to an election.

Minister, I ask you a simple question: how did the circumstances arise in which the then Minister for Employment and Workplace Relations, Mr Abbott, indemnified Abigroup against legal proceedings from the CFMEU and the Commonwealth had to pay $96,000 in costs to Abigroup for the illegal tape-recording of proceedings? In that case the judge said there had been a highly artificial manufactured device arranged by two people who have ‘a reckless indifference to probity and a propensity to give inconsistent and unacceptable evidence under oath’. What can be said about a government that allows that to happen? What is to stop that happening on a daily basis under these powers?

Senator MURRAY (Western Australia)  
(9.29 p.m.)—In the absence of the minister, I will briefly deal with an assertion which was just made about the Democrats. The regulators—let us distinguish them from the police—have a very wide array of powers. It is proposed that this body will have a narrow power, namely that of information gathering. The Labor Party asks: where are the Democrats with respect to the principles and practice of applying such powers? The Labor Party already does apply such powers to trade unions. The Labor Party supports such powers being applied to trade unions. The Labor Party has introduced such powers to apply to trade unions. The Labor Party supports such powers being applied to trade unions. The Labor Party and, I might say, all parties have supported exactly those powers being applied to the Australian Competition and Consumer Commission, the tax commission, the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission.
In not one debate about any of those, in either the past or the present, have the Labor Party ever raised one jot or one iota of concern about these very same powers being applied to individuals, companies, unions, employer organisations and not-for-profit organisations throughout the building and construction industry. Surely they do not imagine that the Australian Competition and Consumer Commission actually has responsibility for every aspect of the economy except the building and construction industry. Surely they do not imagine that the tax commission has responsibility for every Australian in this country— whoops, except for workers, employers, subbies and participants in the building and construction industry. Surely they do not think the Australian Securities and Investments Commission has responsibility for all corporations, institutions and funds, including those which deal with superannuation and other measures which vitally affect the workers of this country, except for the building and construction industry. This is a party which constructs its argument according to the circumstance. That is perfectly legitimate in debate, but this is a very serious matter. What you are trying to assert is that the very powers which you, the Labor Party, in government and in opposition, support and give to the Australian Competition and Consumer Commission, the tax commission, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Victoria Police—which is about to happen—and the Victorian Ombudsman are okay, but not in this case.

You have to distinguish between the powers which you support and the way in which they are used. You ask why the Democrats take the view we do. First of all, we say these powers have a precedent. They long precede any increase in powers in any other area and they are extremely confined. This BIT will not have the power of detention. You people, I am afraid, talk too lightly of a police state. I know what a police state is like. I am the only senator in this place who knows what a police state is like and has experienced it directly. I know that some immigrants come from countries which are police states, but I have operated under them and it is a horrendous example. Do not ever compare Australian experiences with those of the police states that I have known. It is a hideous issue. That does not mean that your arguments do not lack force and do not need to be debated. I do not discount your argument here; I just say do not lightly use words like ‘police state’.

Let us return to the issue. I do not think the issue is the powers, because they have precedent. I think the issue that the Labor Party is concerned about is who has those powers. That is a serious matter. The Australian Democrats have been through a long process—nearly two years—in which we as a party and I as the portfolio spokesperson had to watch the whole drama of the Cole royal commission. Then we went through the Senate inquiry process. We came to the conclusion that the route proposed by the Cole royal commission and the government legislation that was consequent to that was so flawed that we could not support it. Our credentials are on the table. In matters of IR, everyone in this chamber knows we have the call, and it is a very hard call. I would much prefer it if the Labor Party and the Liberal Party had less opposed discourse on this issue than they do, but that is a fact. We know that and we are not going to change it.

The conclusion I and my party have come to is that there is an issue in the building and construction industry and that it is not adequately addressed by those who already have significant powers—namely, the police to do with criminal matters, ASIC to do with company matters, the ACCC where there are
competition matters and the tax office where there are massive tax matters. We have heard from the CFMEU and it is quoted in our own report. I will again compliment the chair of that committee, Senator George Campbell, for managing a difficult inquiry process well. Forty per cent is the level of tax avoidance in the building and construction industry. There are hot spots of real concern which have to be addressed. So what do we do as a political party which hears the evidence and directly hears the pleadings from subbies, companies and all sorts of people? How do we treat this?

We have said three fundamental things. The first is that, by and large, the law is to be applied with real effect. What do we mean by that? We mean that if the rule of law were observed it would work exceptionally well. I am talking about criminal law, corporations law, tax law and OH&S law. The problem we see is that these laws are not observed. So then you get to the question of enforcement. Enforcement has two or three parts to it. The first part to enforcement is whether there are proper penalties, and we will come to that later on. The penalties have been increased threefold in the proposals before us, and maybe that will help improve things.

The second issue is having people on the ground to enforce the law. If you do not have policemen on the streets you do not stop crime. There just is not the range of people in the building and construction industry to have real effect. There was discourse about tax in which tax inspectors appearing before the committee—and Senator Marshall and Senator George Campbell will remember this—said that they had all these people from the ATO, and I do not disbelieve them, working away at building and construction industry tax avoidance and fraudulent matters and all the things they deal with. A very senior unionist with a great deal of experience and a long-term presence in the industry said that he had never come across a tax inspector. It seems to us that the tax inspectors are not doing the job, ASIC is not doing the job, the ACCC is not doing the job—and, of course, neither are the police. These are no-go areas in a couple of places in this country. Let me not generalise: there are parts of this industry that work exceptionally well and where there is not a problem.

So what do we say? We cannot improve the regulatory side, the inspection side, which involves having the people available to improve compliance with the law and to improve enforcing the law. The one thing that did emerge is that it is extremely difficult to get information, but if information is able to be gathered then you are able to process major breaches of the act which have links with these bad outcomes that we know are present in the industry. Everyone knows this. The dispute is about the scale and the extent, not about whether it exists. If there is not an independent statutory body available—and there is not in workplace relations—you do not want the body that is available also having the powers to search and enter, to detain people, to prosecute people and so on. All the BIT are getting in addition in this legislation is the power to gather information.

I do not lightly dismiss the concerns that that power could be misused, and we have tried to address those concerns with our amendments. By all means criticise the amendments as not going far enough. That is fair enough, but we have recognised the concerns and tried to address them. This is probably the least we can do—not the Democrats but as a Senate—to address a real problem. We have to shore up and safeguard the concerns that have been expressed about the way in which such powers might be abused. I do not want to give a lengthy response but I should point out that the harshest penalties in the government’s provisions
are for inspectors on the BIT who breach their duty. They will go to jail. The provisions are in that legislation. They are applied in restricted circumstances and so on, but there are very harsh penalties for BIT inspectors who behave improperly. They are liable under the Public Service Act, they are liable under the Crimes Act and they are liable under this legislation.

I was asked why the Democrats are interested in supporting this. Everyone knows that we favour neither unions nor business. We have a long history of being even-handed in this matter. We are prepared to contemplate this legislation because we think the problems in the building and construction industry require something to be done. Remember, we are a party that turned down the second-class citizen legislation that was to come before us, that turned down the more stringent right of entry provisions the government were trying to put in, that turned down the secret ballot provisions they were trying to put in and that turned down the pattern bargaining restrictions they were trying to put in. We have not bought the government’s agenda and the Labor Party know that. They know the legislation that has been considered and that we have resisted it all the way through. I have colleagues on low polls who face a double dissolution election because I personally have persuaded and led them to reject bills that become double dissolution triggers. We do not do that because we are following people’s agendas; we do it because we think it is right. You put the question to me, Senator Carr—and you were quite right to do so—about our values and why we have come to these considerations. You might criticise us for being wrong or for not getting it right or for not doing enough, but we have tried to appraise this in as fair, effective and practical a manner as we can.

Senator WONG (South Australia) (9.44 p.m.)—Senator Murray raised a number of matters which I think deserve a response. I say at the outset that I have been here for only a couple of years and in that short time I have come to regard him as one of the more effective parliamentarians in this place. In a range of areas, certainly in the corporate law area, I would have to say that the true liberalism in this place has been characterised more by the Democrats than by the government. But there are a number of justifications that he raised for his party’s support for these amendments which I suggest to him are not well founded.

I start with his proposition that these powers are unremarkable because similar powers exist in relation to APRA, ASIC and the ACCC. There is a very simple answer to that, as Senator Murray knows, and he did allude to it in his speech: these are statutory bodies. These are bodies established by legislation and formally under the oversight of the parliament in that they are required generally to report to the parliament and are subject to review by the relevant parliamentary committees. There is a very good reason why they are statutory bodies and not public servants directly employed by the government.

In answering that, I go to the broader principle we have in a democracy around limiting the power of the state. I will not bore everyone in the chamber by giving a lecture on Montesquieu and the separation of powers, but we know that over many centuries humankind has sought to work out how power within a community is most appropriately spread. One of the overriding aims that the Australian community has had historically—as have most Western democracies—has been to ensure that power is appropriately distributed so that no one section of the community can oppress another. That is, at the heart of it, the fundamental nature of a democracy.
Since Federation we have always ensured in this country that there are appropriate fetters on state power. One of the primary means of containing state power is the separation of powers and ensuring that the judiciary, the executive and the legislature are separate. I would argue that, in recent times and under this government, there has been an emasculation of the legislature and that the executive has become more powerful, but that is a debate for another day.

Another very important limitation on state power has always been the separation of the prosecutorial function and limitations on the ability of the state to gather evidence, to prosecute persons and to punish them, including by imprisonment. There are a whole range of means by which our democracy ensures that that is the case. We have always sought, particularly in modern times, to separate out the prosecutorial function from that of government. There is a very simple reason for that: we all know what can happen if governments are able to get the police to investigate matters on their behalf. Governments of both political persuasions in this country—one might say with the exception of a certain government in Queensland for a period of time—have sought to ensure that the prosecutorial function is separate from the government.

My primary concern, and frankly my answer to Senator Murray’s justifications for supporting this legislation, is that it is unprecedented for a public servant to have these sorts of coercive powers without oversight by the courts. It is unprecedented. We are not talking here about the ACCC or the ATO, who are statutory office-bearers, who hold office under legislation and whose powers are set out in that act; we are talking about persons appointed by the government, employed by the government and, most importantly, subject to the government’s direction in a specific sense. It is not in a general sense; it is not a matter of saying to the tax office, ‘We’re going to give you more money; we want you to go out and increase compliance in small business.’ It is subject to the powers of the government to direct specifically. I say to the Democrats that that is unprecedented in this country.

If the Democrats were serious about ensuring that these powers were appropriately exercised and that there was an appropriate fetter on the power of a minister to direct a departmental secretary to investigate persons—or do more than investigate persons; to gather evidence for the purpose of proving an offence—I ask why the Democrats have not been prepared to support the opposition’s amendments requiring a warrant, because it is a very analogous situation, Senator Murray. Police, regulators, are required to obtain warrants for a great many aspects of their investigation. What you are saying is, ‘Yes, we will still require police to have a warrant to investigate their offences but we’re not going to require that of a public servant who works to the direction of the minister.’

I say to the Democrats: the examples of precedents that you articulate as justification for supporting this legislation are not precedents. It is not correct to say that just because the ACCC, ASIC and APRA have certain powers these public servants do. I respectfully suggest that that is a wrong-headed understanding of the nature of the institutions in question, and that is the key here.

Senator Murray says that all we are looking at is the power to investigate. A more accurate analysis and description of the powers granted to the departmental secretary or his or her delegate would be ‘the powers to compel the giving of evidence for the purpose of proving an offence’. That is what they are. They are not merely investigative powers; they are powers to compel the giv-
ing of evidence for the purpose of proving an offence. I wonder where else, in Commonwealth or state legislation, you would see such powers granted to a public servant.

I also remind the chamber that one of the avenues of law which exist in common law is action against a person who holds a statutory office for abuse of that office. There is a relevant common law tort—I cannot recall the precise name; I think it is ‘Abuse of public office’. Again, it is an example of where the common law has always sought to balance the need to have persons who have authority against the rights of individuals in the community and not to have that authority abused in respect of them. Where is that balance in this legislation? It is not there.

Senator Murray points to the provisions regarding the abuse of those powers—I presume he is referring to the victimisation provisions. I have briefly read those, and it seems to me that there are a fair few things that would need to be proven for those provisions to be made out. I do note his comment that the heaviest penalties are for abuse of the powers, not for failure to comply with an order. I am not sure that that is correct; I think the government’s proposal is for six months imprisonment for both offences. I understand that that will be amended, but that is the government’s intent. The difference is that there is no requirement to prove intention for a person who fails to comply with a request or an order from the departmental secretary, but you have to prove intention so as to establish the offence of victimisation. You have to prove that the inspector, the delegate, intended to do this. It is extraordinary; the government has actually also required proof that the person who is the subject of it was fearful that the threat would be carried out. That seems an extraordinary additional requirement to put in.

There is no proper fetter on the exercise of this power. In that sense, I say that it offends not only the principles of liberalism but some very important principles which exist within our legal system and within our system of government around balancing the power of the executive and of government to interfere in the lives of their citizens. So I say to the Democrats: if you are serious about ensuring the appropriate balance, support Senator Cook’s amendments on behalf of the opposition, which require a warrant to be issued. That would ensure that not just a public servant, at the direction of the minister, but a court will determine if the power is appropriately exercised and warranted in the circumstances. I can think of no analogous provision in any area of law that gives someone who is subject to direct political direction these sorts of coercive powers—and they are coercive powers; they are not only powers of investigation. By removing the privilege against self-incrimination, you are effectively giving somebody who is at the beck and call of the minister the power to require evidence so that an offence can be proven against them. Let us not diminish this by saying that they only have information-gathering powers. This is about collecting evidence of offences.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.56 p.m.)—I want to address some of the issues that were raised by Senator Carr and, more recently, Senator Wong. I will firstly address the political issue that was raised by Senator Carr in relation to the motivations of the government—and I think that issue has flowed through the comments of a number of senators—and then the reflection on Senator Murray, for the motivations of the members of the Australian Democrats. Senator Murray very eloquently answered the allegations about the political motivations of the Australian Democrats. In
fact, I think he gave all of us in this chamber a lesson in terms of his motivations when it comes to accusations of police-state like powers. I do not think anyone else in this parliament has lived in the circumstances in which Andrew Murray spent much of his life. He can probably give us all a bit of a lesson on freedom, democracy and liberalism.

The other point that needs to be made is that the government would have progressed reforms to the powers of the Building Industry Taskforce more quickly if it had had its way. We had a debate on the floor of this chamber about the reference of these provisions and measures. The Senate chose to refer the provisions of the legislation—some of which were replicated in the amendments tonight, either in part or in whole but certainly in their intent—to the relevant Senate committee, the Senate Employment, Workplace Relations and Education References Committee, for a period of about 34 weeks—the great bulk of one year.

As I understand it, the committee—and I was not a member of it, for good reason—analysed, took evidence on, cross-examined and argued over all the issues we are talking about tonight. We had a debate on the floor of this chamber about the reference of these provisions and measures. The Senate chose to refer the provisions of the legislation—some of which were replicated in the amendments tonight, either in part or in whole but certainly in their intent—to the relevant Senate committee, the Senate Employment, Workplace Relations and Education References Committee, for a period of about 34 weeks—the great bulk of one year.

As I understand it, the committee—and I was not a member of it, for good reason—analysed, took evidence on, cross-examined and argued over all the issues we are talking about tonight. In fact, one of the reasons we have Senate committees—both legislation and references committees, but particularly legislation committees—is so that committees can do that sort of work. In fact, a number of the questions that Senator Carr raised had been raised not only at this committee but certainly at estimates committees. I do not intend to recanvass issues. The issues we are talking about have been canvassed in that report. So for Senator Carr to make an assertion that somehow this bill has come on today through some clever political device of the government because an election is due sometime in the next six months is absurd nonsense.

The Labor speakers have to get up and fill 15 minutes at a time—that is, four speakers an hour. They have set themselves a target, according to Australian Broadcasting Corporation journalists, of at least 9 a.m. tomorrow. Some have said, ‘No, we’ll sit all day Saturday, all day Sunday and all day Monday.’ They have set themselves that target publicly, because I presume the journalist who rang my office has put some sort of story to air—if it is worth a story.

So they have to get up and speak for 15 minutes at a time. If you listen to them, you notice that some of them are struggling. Senator Wong was struggling in her last five minutes—she took long breaks, had a think about it and then continued. That is their job here tonight—it is not to bring up arguments or discussions. In his contribution, Senator Carr sought to ask me questions, and then he answered them. Then he sought to ask me questions he had already asked for hours on end in estimates committees. Then he canvassed more material that was canvassed in the 34-week inquiry into these provisions that the Senate has already done.

However, in amongst those last three contributions which have filled up time according to the tactics of the Australian Labor Party—they took up three-quarters of an hour with that tactic—there were a couple of important issues raised. Senator Wong and other Labor senators have really said, ‘Why do we need these powers?’ as if there is nothing wrong in the building industry in Australia, there are no matters of concern and everything is working well. Senator Carr actually raised the point that we need really powerful trade unions and this untrammelled activity on building sites—and that we should not fetter it by having a task force that has these additional powers to ensure that evidence, information and statements relating to breaches of the law can be required for good purpose—because of the safety record and
because the government has failed in legis-
lating and regulating the safety of building
sites.

Who regulates workplace safety on build-
ing sites around this country? The state gov-
ernments—Senator Kim Carr’s comrades in
the Victorian state government; Senator Peter
Cook’s comrades in the WA state govern-
ment; and their comrades in each of the La-
bor state governments. What did the federal
Australian government do? We suggested
that a good reform would be to have a fed-
eral safety authority. We said, ‘Let’s give the
Commonwealth the power to look after
safety.’ Senator Carr has actually said there is
a failure in governance here, but he says,
‘No, we will not give that power to the fed-
eral government.’

Another question asked, on the same is-
sue, was: why do we need these coercive
powers—these draconian powers, as the La-
bor senators are calling them? One of the
reasons is simply that, in this short period of
time—

Senator Forshaw—Now we’re getting to
the truth.

Senator IAN CAMPBELL—No, you
called them draconian powers.

Senator George Campbell interjecting—

Senator IAN CAMPBELL—You called
them draconian powers. A few senators have
now come into the chamber who have not
been engaged in the debate—they have been
out having dinner while I have sat here and
listened without making a single interjection.

Senator Carr interjecting—

Senator IAN CAMPBELL—You find in
the Hansard one single interjection, Senator
Carr. If Senator Carr finds one interjection
that I have made tonight in the Hansard, I
will buy him another glass of chardonnay.
He obviously wants another glass—I will
buy it for him; I will buy him the nicest
chardonnay produced in the Yarra Valley. We
now have a number of Labor Party senators
in the chamber who have not been engaged
in this debate, who have clearly been out to
dinner and who want to interject. I will not
interject; I will listen carefully to people who
want to make a constructive contribution to
this debate.

Labor senators want to call these powers
 draconian. They are quite happy for the tax
office to have these powers, for ASIC to
have these powers, for the Australian Pru-
dential Regulation Authority to have these
powers and for the ACCC to have these
powers to investigate businesses and require
statements to be made by taxpayers and peo-
ple in commerce. But when it comes to giv-
ing the regulator for workplace relations
these powers, they say, ‘No, hands off our
building unions.’ That is their argument here
tonight. We have to make the case for giving
those powers. One of the reasons for these
powers is that between 1 October 2002 and
31 December 2003 over one-third of all mat-
ters investigated by the task force were not
actioned due to the complainants’ unwilling-
ness to provide information and make state-
ments.

You could just imagine the reaction if that
statistic were published on the front page of
a major metropolitan daily in relation to the
tax office, ASIC, APRA or the ACCC—you
would have Senator Sherry, Senator Ludwig
and Senator Conroy asking questions of
Senator Coonan, the Assistant Treasurer and
Minister for Revenue. They would ask, ‘Why
are you allowing a third of all tax offences, a
third of all Corporations Law offences or a
third of all ACCC breaches to go uninvesti-
gated through lack of evidence and the fact
that complainants are unwilling to provide
information and make statements?’ You
would demand, quite properly, that the gov-
ernment take action.
Here the government is taking action. A lot of trade unionists and a lot of Australian Labor Party members, rank and file members and even members of parliaments around the country, know very well that this is all about the activities of a small handful of unionists—many of them involved in the construction industry, and many of them involved in the construction industry in Western Australia.

Senator Forshaw interjecting—

Senator IAN CAMPBELL—Senator Forshaw is interjecting once again. He cannot help himself. When it comes to giving similar powers to the regulator for workplace relations, the Labor Party says no. One-third of all complaints investigated by the task force were not actioned due to complainants’ unwillingness to provide information and make statements. It is very important that those complainants do give that information if you want to have the law abided by. You have a choice to make: either you agree with the law and have it policed and enforced or you pass a law and do not enforce it. Quite clearly Labor do not want this law enforced.

We do, and that is why we are here tonight and why we want passage of this bill.

Senator COOK (Western Australia) (10.08 p.m.)—I rise now to deal with some of the questions raised by the minister. I do so with two prior qualifications. I had the privilege to serve this nation as Minister for Industrial Relations from 1990 to 1993. During that time, the issues of the building industry came to my attention and I dealt with them—and I will go into that in a minute. As well, I had the privilege of serving this nation for two years from early 1994 to 1996 as industry minister and considered the situation of the building industry from that perspective also. The first thing that should be said in this debate is that the building industry is not the same as the manufacturing industry or some service sector industries. It is an industry that works by companies employing virtually no labour and bidding for contracts. The company with the lowest tender price wins, and then they pick up the labour necessary to execute that contract. When the job is completed, that labour is dismissed and they then follow the job to the next company that picks them up.

So, in the building industry, there is not a culture—as might be true of the manufacturing industry—of a close relationship between the employer and the worker built around the common endeavour of improving the output of the company. Building workers follow the job—they follow the industry. As a consequence, this industry has a number of pooled responsibilities: for example, long service leave is paid into a common pool for the period a worker works for an individual employer so that after the period expires a worker can qualify for long service leave. If that did not apply they would never qualify for long service leave, for very few building jobs last for 15 years—I cannot bring to mind one of them, but there may have been one.

The same is true for sick leave, superannuation and a range of other things. The same is true for training. This industry does precious little training. An increasingly technological background means that more and more skills are required, and that those with the skills are able to command higher prices, which overheats the industry. Precious little training occurs. Because the company with the lowest tender wins the job, it often finds that its calculations are wrong and it cannot complete the contract within the pricing structure it has set. There is always pressure on companies to find other ways of reducing their costs, and that frequently blows out into cutting workers’ pay, avoiding conditions of employment for workers or cutting corners on safety.
Time lost in this industry on safety issues compared to time lost to industrial disputes is eight to one: that is, eight times for safety compared to one for industrial disputes. Any rational government would look at how you reduce the accident level in this industry. One of the reasons the accident level in this industry is high is that the lowest tender wins and the lowest tenderer is always trying to save money to meet its pricing structure. And that is one of the reasons why there is a higher level of industrial disputes too.

What does the task force we are talking about do? Does it prosecute employers for underpayment of wages? The New South Wales branch of the CFMEU said, in evidence to our inquiry, that they recovered $12 million worth of underpayments of wages in the last 2½ years, as I recall. Does the task force help recover that money? No, it does not. In the highly coloured prose used by some employers and government spokespeople in this sector, right of entry is trespass, which turns an industrial right into a criminal matter. You could also say that the underpayment of wages is robbery, but none of that language is used here. Does the task force police it? No, it does not. It refers it to the department and a handful of issues get taken up. How many prosecutions of employers who are serial offenders in underpayment were conducted by the department last year? Two or three—and this is an industry in which there are 740,000 people employed in Australia.

Unions get upset that this task force only deals with alleged infractions on their side and not the infractions by employers in underpayment—or, to use that highly coloured prose, the robbery—of workers. You can understand why there is considerable disquiet here. To lose wages, to be sacked just before Christmas so that you do not get holiday pay over Christmas or to not receive your holiday are things that actually destroy families and household budgets for building workers and their families. The damage inflicted upon the individual is much higher than the damage inflicted on companies. There is a massive disproportion.

I talked about the eight to one ratio on industrial accidents, and on average one worker dies a week around Australia from an industrial accident in the building industry. There is a huge level of expense. A typical example is someone falling off a single storey building and crushing their ankles and wrists and not being able to carry on their occupation. There is a whole history of that type of thing in this industry. The policing of those standards is not adequate, and nothing the minister opposite has said encourages me to think that whatever the Commonwealth government is proposing after the abolition of the Occupational Health and Safety Commission will do anything about it.

So what you get on a number of building sites is workers refusing to go onto the site until the job is made safe. We find that this sort of legislation means that they get prosecuted for refusing to work in an unsafe environment. It is not the employer being prosecuted for underpayment or the employer being prosecuted for making the working environment unsafe; it is the employee being prosecuted for refusing to work in that environment. There has to be a sense of proportion, and you cannot understand this industry and its particular behavioural characteristics without understanding that sort of background. As a former industrial relations minister and industry minister, there are two things that I can say I did to try and resolve this. No-one is pretending this industry is without problems. It is the structure and the way the industry is designed that creates the tensions and problems that blow out in industrial disputes and high accident levels, massive underpayment of wages, big
amounts of tax avoidance, lack of education and training—

Senator Ian Campbell—Which amendment are you talking about?

Senator COOK—I am talking about the coercive powers and I have referred several times to the disproportionate pressure they apply.

Senator Ian Campbell—Have you apologised to the director yet?

Senator COOK—I have nothing to apologise to the director about. It is relevant to the consideration of this bill that the director’s record is on the public record, because half the issue is what the legislation is about and the other half is the people and their qualifications to carry out and implement that legislation. The reason why I put the director’s record on the public record is to highlight the political nature of this legislation.

I mentioned underpayment, safety and the lack of training, and I should add that there is massive tax avoidance. The tax office gave evidence to us about assigning a high level of tax avoidance in this industry and trying to do something about policing it. Unless you look at these problems holistically and try and solve all of them, you will not reduce the level of industrial disputes. If you just add penalties, policing, a narrow application of the law and pressure on people in those circumstances, there will continue to be industrial disputes. We set up the Construction Industry Development Agency, which anyone that was ever associated with it tells me was making big strides in trying to get a common approach to solving the problems. If you divide this industry, you will exacerbate the problems; if you get a consensus about how to address those problems, you will start to solve them in a constructive way. That is the way to attack this industry, not through this sort of legislation.

The other thing I did as industrial relations minister—because there has been innuendo that maybe Labor are soft on the building industry—was deregister the Builders Labourers Federation as a union. I did it for reasons I set out at the time and I did it because of the antisocial behaviour of that organisation and its serial noncompliance with the federal Industrial Relations Act. I think it was a necessary thing to do, and nothing that has happened since has changed my mind. So I do not want to hear from the government that we are soft here. We have taken a hard and necessary stand when necessary. But this legislation is not necessary and it is going to create more disputation that it solves in the industry.

Senator Ian Campbell interjecting—

Senator COOK—Are you holding up your fingers for some reason, Minister? You are helping me, are you? By indicating with your hand raised aloft and your fingers pointed into the air, that is somehow assisting me? I trust that you would listen to what I am saying because I am trying to constructively address the context of the amendment.

Senator Ian Campbell—Mr Chairman, I do apologise for interjecting—

Senator Carr interjecting—

Senator Ian Campbell—that is two glasses of chardonnay I have to buy Senator Carr now—

The TEMPORARY CHAIRMAN (Senator Lightfoot)—You have a point of order, Senator Campbell?

Senator Ian Campbell—My point of order is on relevance. We have heard for most of the last 15 minutes a sort of a precursor to Senator Cook’s memoirs as a former industrial relations minister. What he needs to do, if he wants to be within standing orders, is address his remarks to the amendment before the chair.
The TEMPORARY CHAIRMAN—I am sure that Senator Cook, in the four minutes that remain to him, will do precisely what you have recommended, Minister.

Senator COOK—Thank you, Mr Chairman—of course I will, and I have been making my remarks relevant all the way through. It just seems that if the government do not like the relevance then they object to it, because they want to quieten the voice of criticism. Further, you cannot consider this legislation without considering the context in which it arises. This government launched on a $66 million royal commission, the Cole royal commission. That commission published its findings. Many of the findings were arrived at on hearsay, on unexamined evidence. The findings were not based on any process that would typify a court. A royal commission is not a court. There has been a pretence that it is. It is not; it is an extension of the executive, and its proceedings are up to it, by and large. Many of those that appeared before us have criticised the proceedings of this commission as being unfair to the agency being inquired into—in this case, the building unions.

The Cole royal commission was headed by Mr Justice Cole, a former lawyer specialising in property. One of the big contradictions in all of this debate is that, at the end of the Industrial Revolution, we at least established in law in Britain and then in Australia that there is a province of property law and a province of industrial relations law. Now we see property law values being imported into the province of industrial relations law and people conducting industrial relations issues being stigmatised as if they were offending under property law. This is an event about the right of industrial relations established at the time of the Australian Constitution. I remind the chamber once again that the constitutional imperative set down by the framers of the Australian Constitution is to prevent and settle industrial disputes that move beyond the borders of one state. This legislation, as I say, goes against that because it does not focus on solving industrial relations matters within an industrial relations law focus; it imports property law—and this is a matter that was settled back at the time of the Industrial Revolution—back into industrial relations law. That is one of the reasons why some of these powers, so-called, are reprehensible.

The next point is that there is a gradation of offence under the Cole royal commission. There is criminality, illegality and inappropriate behaviour. Let me deal with criminality. If matters that are conducted are criminal, they should be dealt with with the full force of the law. From that point of view, there is no argument with us. We would strengthen the arm of the law-makers to do that—to deal with these matters with the full force of the law. But you do not import criminal provisions into industrial legislation. What you do is make sure that the Criminal Code and the enforcement provisions of criminal law are strengthened. This amendment brings so-called criminal investigatory procedures into industrial law. And there I have misstated it, because the rights of a worker under these provisions are less than the rights of someone who is being investigated for criminal behaviour. These amendments mean that you cannot defend yourself on the grounds that you do not wish to incriminate yourself. We extend that to criminals but we do not extend it, in this amendment, to building workers. So there is that absolutely fundamental flaw here.

Lawlessness, which is the other category that is addressed by His Honour Mr Justice Cole, is about industrial relations disputes. This is a characterisation of industrial relations disputes as lawless behaviour as if it were criminal. The proper jurisdiction for dealing with industrial relations disputes is
the Industrial Relations Commission. (Time expired)

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (10.23 p.m.)—Congratulations to Senator Cook for filling out his 15 minutes. He is doing his job. There are, however, some issues that need to be addressed. Firstly—

A quorum having been called and the bells being rung—

Senator IAN CAMPBELL—I think it is important that all senators and anyone interested in this debate understand that one of the tactics when you are trying to unduly delay a debate is to call quorums as regularly as possible. You do not only speak for your full time and have serial speakers—

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator Campbell, what you actually have to say is irrelevant.

Senator IAN CAMPBELL—but also call quorums regularly. What you see now is the Australian Labor Party disrupting senators’ business—

The TEMPORARY CHAIRMAN—You may speak—I will not stop you from speaking—but what you have to say is quite irrelevant.

Senator IAN CAMPBELL—and calling quorums to slow down the debate, take up time and filibuster the debate, because the Labor Party wants to stop this bill coming to a vote. This what you see on display here tonight. (Quorum formed) Senator Cook has talked about the low paid and he has talked about the wages of workers. The reality that Senator Cook will not face is that this government has, through workplace reforms, sound economic management, low interest rates and a range of other measures, delivered much higher real pay for workers. Real wages growth under Labor, when Senator Cook was the industrial relations minister—and we have just had 15 minutes about what a wonderful minister he was—virtually flat-lined, and of course they are now heading seriously north. Workers are far better off under the coalition government. That must be galling to Senator Cook. He did try very hard as a minister. Of course, the deregistration of the BLF was one of the highlights of his career.

Senator Cook also raised the point about compliance of employers with awards and the payment of workers. He also raised the point that the government had not done enough—in fact, I think he probably said ‘anything’—to assist workers who were underpaid. I think it is very important that people who are listening to this debate understand that that is actually a long way from the truth. Back in 1996-97, shortly after Senator Cook was relieved of his duties as a minister, the federal government, through its claims enforcement actions, assisted 2,273 people to finalise claims where at least one breach was established. This rose in the first full year of the Howard government to 3,578 claims finalised. In 2002-03, 4,252 people who made claims were assisted by this government. In the latest period for which figures are available, up until March of this year, 3,601 people were assisted. Once again, Senator Cook and a Labor Party spokesman have had to diligently fill in their 15 minutes and call their comrades back in to seek to disrupt the Senate.

It is also worth noting that, not prepared to rest on its laurels, this government has embarked on a program announced on 25 March 2004 which is a targeted building industry compliance campaign, specifically to address the issues that Senator Cook has raised. If you go back to the Hansard—and those people who could actually stay awake during his contribution would remember this—he actually said that the Common-
wealth are doing nothing on this side of it, that we are only bashing the workers and bashing the unions, that we are doing nothing to ensure compliance by the building companies themselves. That is a total distortion of the truth. This senator has come into this place and said that we should look after people’s civil liberties, we should ensure that they have fairness before the law, we should ensure that these compliance powers are not unnecessarily or unfairly used against people and we should respect people’s innocence. This very same senator came in not less than an hour ago and declared the director of the Building Industry Taskforce guilty of a criminal offence. I have asked Senator Cook to walk outside and repeat what he said in the chamber—

Senator Cook—Mr Temporary Chairman, I raise a point of order. It is not true what the minister has just said, and anyone who reads the Hansard will see that I am right and he is wrong.

The TEMPORARY CHAIRMAN—That is not a point of order.

Senator IAN CAMPBELL—So not only did Senator Cook misrepresent the facts when he referred to the director of the Building Industry Taskforce but he misrepresented this government’s determination to ensure that building companies that break the law, building companies that do not play the game and abide by the law, are also targeted. The campaign announced by the workplace relations minister, Mr Andrews, on 25 March this year—you would think that even Senator Cook would remember that far back—aims to ensure that employers are aware of and meet their legal obligations and that employees receive their legal entitlements. It will initially focus on New South Wales, Victoria and Western Australia. The campaign will comprise newspaper advertising, direct mailing and workplace inspections. It is also anticipated that up to 45,000 building employers will be contacted by direct mail. The newspaper advertising aimed at employees could reach up to 470,000 building workers in these states and around 500 businesses will be subject to an initial round of workplace inspections. It is inspections of the building companies to ensure that they are complying and meeting their legal obligations and that employees receive their legal entitlements. The question of further activity will depend on the outcomes of this first campaign.

So, far from what Senator Cook has said is a lack of action against building companies in ensuring that they meet their legal requirements, you see this government demonstrating even-handedness between employees and employers, trade unions and employer organisations and employers.

Senator GEORGE CAMPBELL (New South Wales) (10.31 p.m.)—It is unfortunate that when Senator Ian Campbell gets involved in these discussions he seems to consistently take the point of view that the best way to deal with the substance of these arguments is to engage in ridicule of the individuals or to try and accuse people of not being serious about the issues that are in debate before this chamber. Let me tell you, Minister, that I was serious—

The TEMPORARY CHAIRMAN—Tell me rather than the minister.

Senator GEORGE CAMPBELL—Through you, Mr Temporary Chairman, can I tell the minister that I was serious about the inquiry into the building industry. I took it seriously and all my committee colleagues who turned up to it and listened to the evidence put before it took it seriously. I know that Senator Murray from the Democrats took it seriously, because he asked pretty penetrating questions to a range of the witnesses who appeared before the committee.
We did have a very unusual set of circumstances in this inquiry where we in fact had to in the report deal with the performance of coalition senators, who not only accused some of the individuals who appeared of intimidation but accused me, which does not particularly worry me, but, more importantly, accused the secretariat of trying to rig the witnesses in order that we would get a biased result. That is simply an outrageous position, for anybody in this chamber to accuse the secretariat of any of the committees of being biased about the way they go about their business. We all know that there could be nothing further from the truth. The reality was that coalition senators were uncomfortable with a lot of the evidence that was presented before the inquiry which repudiated in a very substantial way a lot of what we had read out of the Cole commission and I think clearly demonstrated that the bill that was under consideration was not an appropriate response to dealing with the problems in this industry. It has consequently been justified by the position taken by the majority of senators and by the senator from the Democrats in their report on the inquiry.

I want to come back to the issue of the amendment in respect of the compliance powers, because we also take that seriously. The point that Senator Cook made earlier this evening is valid, that it would have been much easier to deal with this bill if it had been done in the context of a normal bill with second readers, where the minister’s and the government’s policy objectives could have been put out and people would have been able to assess what it was the government was trying to achieve. But we do not have the luxury of that. They picked up an old bill that had already been in here and proceeded to make very substantial amendments to it that radically altered the approach that was being taken by that bill initially. We have not had an opportunity to sit down to think through the consequences of what is being proposed here and to give people who might be affected by the legislation the opportunity to present evidence to us about what they see as the consequences of such an approach being taken under these provisions. That is fairly abnormal. What is the rush? What is the rush to get this out on the last day of the sittings when we are jammed up with a whole range of other bills before the parliament? Why couldn’t this wait until August or September? Maybe the Prime Minister does want it for a 7 August election. That may well be the reason. But I would have thought that, given that Cole was a couple of years ago, given that the task force has been in place for 12 months, you could have at least given us another four to six weeks to conduct an inquiry to look at what the intent of this legislation is.

There have been amendments circulated by the opposition in relation to this issue of compliance powers for the task force. We have not totally rejected it. If Senator Ian Campbell were serious about getting a result out of this legislation, I would suggest he would be better using his time sitting down with the shadow minister for industrial relations from the opposition and Senator Murray and trying to work out an appropriate arrangement that will leave everyone comfortable with the outcome and ensure that workers’ positions will be protected in the process of this.

I cannot see any impact of this legislation other than that it will be used as an intimidation tool by the task force against ordinary workers in the construction industry. It will finish up being the dob-in-your-mate legislation. It will be used to intimidate people into dobbing in their mates. For serious criminal activity it will not be used at all. This will be used as an industrial relations weapon. You have only to read the terms of reference that
the secretary can enforce upon them. It is again about a focus on industrial relations.

Senator Murray and the Democrats have said to us that they are concerned about serious criminal activity in the industry. We all are. The CFMEU gave evidence at the inquiry that it also was concerned if that was occurring and that it was not about standing in the way of dealing with that issue. If that is what the target is then let us work out collectively a way in which to ensure that that is tackled. But let us not put laws in place under the pretence of doing that and have them used by the department, under the instruction of a government which is anti-union anyway, to intimidate workers into dobbing in their mates. When we read the legislation that is the only conclusion we can come to.

Quite unusually for a Senate committee, we did give an opportunity to the minister. We wrote to the minister and suggested that the minister come and appear before the committee. We wrote to the minister and suggested that the minister come along and explain the policy agenda behind the proposed building industry bill. We asked him to come along to tell the committee what the government’s objectives were in promoting these issues in the industry and to discuss it with us. We got rejected. He was not interested. We still do not know what the policy agenda is behind this legislation, but it does give us concern when this sort of bill is brought in here and we get a press release accompanying it from the minister, dated I think 24 June, which says:

Minister Andrews said these were the most significant industrial relations reforms in Australia since the introduction of the Workplace Relations Act 1996.

That is straight from the minister. Here is a bill that has been hanging around for 18 months dealing with one particular set of circumstances. We see it on Tuesday with a set of amendments to it that radically alter it.

The minister himself says it is the most significant legislation since 1996 and we are denied the right to sit down and seriously consider why that claim is made. We are told there is nothing to worry about and that we are getting overexcited.

We have enough experience around this place not to take this government at its word, because it has become well practised in using Orwellian language to explain itself on a whole range of issues. It never means what it says and it never says what it means. Senator Ian Campbell accused me of asserting that this legislation was the same as the antiterrorism laws. I did not assert that, Senator Campbell. What I asserted, what is true and what is demonstrated when you make the comparison between this and the antiterrorism laws is that people charged under those laws have more protection than workers who might be sought by the secretary to give evidence or information under this legislation.

Under the antiterrorism laws there is more security for persons against self-incrimination than there is for workers under this legislation. That is a major concern. Why can’t we have a set of circumstances where a third party with no interest in industrial relations issues can make a judgment as to whether or not the giving of evidence in these circumstances is warranted? It is done under the antiterrorism laws. There is a judge who makes the assessment; there is a judge who accompanies the individual who is being questioned, to ensure that they are not put under undue duress and that they are treated fairly. Why can’t a similar set of circumstances be adopted in respect of this legislation? Quite frankly, if the government could see its way to accommodating the opposition on that issue then we would have the potential to get agreement about what can be passed through this chamber and at the end of the day everyone would be able to feel satisfied with it.
The other point I want to take up about Senator Campbell’s contribution is that he kept referring—and this again is a concern—to the Building Industry Taskforce as being the regulator for industrial relations. Where did that come from, Senator Campbell? Perhaps you would explain to us how you have managed to turn this body from one focused on a particular industry into the national regulator for industrial relations. We think you might have been honest and truthful in that contribution, because our concern has been that that is what the government wants to do—that you want to turn the Building Industry Taskforce into not a regulator for industrial relations but your police force for industrial relations. It is not new.

Those who have been around long enough would know that in the seventies under Malcolm Fraser we got the Industrial Relations Bureau. There was an attempt then to establish an industrial relations police force to control the work force, and that was a spectacular failure after a couple of years because people would not respond to that sort of method of trying to deal with issues in the industrial relations arena. At the end of the day, anyone who is experienced in that field knows that you have to sit down with people, you have to engage in dialogue and you have to compromise, and people get on with doing what they want to do—earning a living or building buildings. That happens in all areas of industry, right across the spectrum. That is the way in which the system operates and always has operated.

So the opportunity is there, Senator Campbell: if you are serious about trying to deal with what you say are serious issues in the industry, then go and engage with our shadow minister for industrial relations and the Democrats and see if you can work out an agreed position. We have been quite happy to talk about it, but so far this week, as I understand it, we have had negligible response from your minister to any approaches that we have made.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (10.46 p.m.)—In relation to Senator George Campbell’s comments about the shadow minister and the minister holding constructive discussions, the reality is that they have in fact been holding discussions. You can call them constructive if you want to. For example, in relation to the Labor amendment—which I am sure I will be given in a moment—that seeks to make into a disallowable instrument the guidelines that relate to how the registrar would use these powers, there have been very constructive discussions. In fact, as I understand it, the shadow minister and the minister have been talking as we have been talking here today.

If Senator George Campbell wants to paint an image of a government that has not engaged on these issues—if he wants to paint an image of a government that seeks to be recalcitrant on these issues—he can do that. I do not know whether he knows that the shadow minister and the minister are engaging on these important issues of how the registrar would use these powers. He may well be out of the loop. The truth of the matter is that the minister and the shadow minister have sought to engage. For example, the shadow minister, Mr Emerson, has approached the minister in relation to ensuring that, where the registrar seeks to use the coercive powers, he would be required to seek a Federal Court order. There have been discussions around that and we have decided that that is not something that would be practical or workable, so we have rejected that. The Australian Labor Party’s spokesman, Mr Emerson, has come to us and said, ‘What about allowing the guidelines to be made a disallowable instrument?’ and we have said that that does not seem unreasonable. Based
on some understandings about what the guidelines will look like, that is something we are prepared to look at. They are discussing that issue at the moment.

So we do need to be fair and honest and we do need to represent the facts as best we can. It may well be that Senator George Campbell is not aware of those discussions—not everyone would be—but those discussions are in fact going on as we talk. That is not a government that is being recalcitrant or a dog in the manger or saying that we have got it all right. We have sought to put forward a package of legislation that delivers better outcomes for people working in the building industry, for people who rely on the building industry and, of course, for the national interest. It is an industry that has a terribly bad record of industrial disputation and working days lost. I think it is the worst industry in Australia for that—something like 38 or 39 per cent of all working days lost in Australia are in the building industry. We should not ignore that as a country or as a parliament; we should seek to bring about a better system.

That is what the government sought to do: it subjected its model to parliamentary scrutiny for the last 34—going on 35—weeks. Labor has spent a long time tonight saying that we are giving these powers to a delegate of the secretary of the department and we should not be giving them the powers because it should be an independent statutory authority. But what people need to understand is that the federal government sought to have an independent statutory authority in the Australian building and construction commission. Of course, Labor and, I understand, the Democrats—I was not close to this inquiry; I was not engaged in it—

Senator Forshaw—Out of the loop, were you?

Senator IAN CAMPBELL—I was in relation to this—absolutely. I was more busy designing loops around Geelong, loops around Deer Park and lots of other road loops; I was not in the industrial relations loop. So I will admit that I have not been close to it but, as I understand it, the concept of an ABCC—an Australian building and construction commission—would be rejected by a majority in the Senate. So we have sought to give quite constrained, quite specific powers to the delegate of the secretary. With our amendment to section 88AF, which is for the protection of confidentiality of information, where the provisions are designed to both protect confidentiality and enable information about unlawful behaviour to be shared only with relevant agencies, it is likely that the exercise of the new compliance powers will result in information, documents or evidence being received that indicate breaches of other laws—for example, taxation laws or criminal behaviour. It is appropriate that that information on potentially unlawful behaviour is provided to the bodies responsible for ensuring compliance with those laws.

It is important to note that persons in other bodies who receive the information are required to abide by the confidentiality provisions in section 88AF. It is also important to note that the same rules about information or evidence not being admissible in proceedings against the person who provided it apply to information provided to other agencies. Section 88AF would ensure appropriate confidentiality of information. A person who breaches these requirements—and this is a protection for people who give evidence—is subject to a possible—

Senator Carr—It’s just like the Abigroup, where you paid them $96,000 and a secret commission. That’s what you are claiming.
Senator IAN CAMPBELL—Mr Temporary Chairman Lightfoot, I am not sure whether Senator Carr is seeking the call or just going through some sort of verbal convulsion. What I am trying to say is that this is about persons who break the law and misuse this information. This is a protection that we are talking about. The Labor senators, in their contributions, are trying to say that there is some form of draconian power here and this will just ride roughshod over people’s rights. What I am trying to explain in a quiet and sensible way to the best of my capability is that this bill before the Senate, buttressed by the amendments that have been moved by Senator Murray, in fact provides significant protections to people who provide statements or give evidence under this provision.

As to people who breach the confidentiality requirements—and this is just one of the protections—if someone has given evidence and then a person misuses that or breaches the confidentiality provisions, that person is subject to a penalty of 12 months imprisonment. That is one of the things we do to protect the people Labor says we are not protecting. I think that, once again, we have exaggerations and misrepresentations being made but a refusal to deal with the real issues and a refusal, in fact, to seek to deal with quite a clear problem in Australia. We are seeking to deal with it in a sound and sensible way, but clearly the Labor Party does not want to.

Senator LUDWIG (Queensland) (10.54 p.m.)—I want to go back to where Senator Campbell took us to in explaining some of the parts of the legislation before us—that is, to the part VA, section 88AA amendment to the Workplace Relations Amendment (Codifying Contempt Offences) Bill 2004. Senator Campbell may like to listen to this because I am going to ask a series of questions. The first deals with the secretary’s power to obtain information. Perhaps to give it some context, what we are talking about is a provision which removes the privilege against self-incrimination. That is what it does. Let us make no bones about that. We can call it compliance powers or secretary’s power to obtain information, but what it does is take away the right to withheld from a court or tribunal exercising judicial function materials which would otherwise be admissible in evidence.

One of the significant things that a person has when faced with people seeking information from them is the right to be silent. It takes that away. You can dress it up the provision with as many protections as you may like to add—and some of those might go to use immunity, derivative use immunity or other penalties for breach of confidentiality of information and the like—but what the fundamental power does is remove the privilege against self-incrimination. That means an inspector may come up to you and say, ‘I would like you to answer all of these questions that I am going to put to you.’ You may have been given 14 days notice and you might then be required to come in. That notice does not say, ‘at a date or time that might be convenient to you.’ You might have to leave work to come in. All of those inconveniences are things the inspector has at hand to cause to someone. It is not an easy power. It is a power that has to be exercised very carefully and one that is very rarely, if at all, given in these circumstances to a secretary without more than what is here.

What I am concerned about is that the Democrats have signed up to it so readily. I have spent the last couple of years on the Senate Legal and Constitutional Legislation Committee. The Democrats, whenever they have been there, have argued for civil liberties. Civil liberties have been at the forefront of many of the arguments that they have been put forward. On the terrorism laws, the
laws that introduced the Australian Crime Commission, the extension of the anti-terrorism laws and the anti-terrorism bill and all of those provisions, whenever the Democrats turned up we heard a phrase about civil liberties. What they were talking about was not only civil liberties but also their impact upon the ordinary person in our society. They were arguing not so much for those who are privileged, those with rank and those who might be able to protect themselves but, rather, those who might be less fortunate than others and those who may not know their rights. That is what the Democrats were talking about. It appears that the Democrats, without more information, are signing up to a provision which will take away rights, inflict harm and otherwise cause disruption to those people who might not be able to afford what people on the government side might be able to afford in terms of legal representation. They might not be able to bring high-flying barristers to an inquiry by the secretary.

The privilege itself has received widespread judicial recognition. It has been described as a cardinal principle of our justice, a bulwark of liberty and fundamental to a civilised legal system. I think that, fairly, those phrases are ones that they have often used with regard to some of the bills that have been before the Senate Legal and Constitutional Legislation Committee. At the end of the day, that committee—Labor, Liberals, Democrats and Greens—balance that when we come to it. But, in this instance, the Democrats have not provided any balance. Let me go to some of the issues on which they have not provided any balance. Let us look at some of the fundamental principles. When you have this duty to disclose, what they have not been able to say today—and perhaps Senator Campbell might be able to shed some light on it—is whether the duty may come into conflict with other aspects of criminal procedure. Have we investigated that area to see whether it does or does not conflict?

I can take you to an example of where there may be a conflict. On the face of it, from the record, I do not see how it could be resolved. It certainly does not go very well with this provision. In one of the reviews of the United Kingdom legislation which dealt with this duty to disclose, it was noted that the duty to disclose conflicts with common law rules regarding the making of self-incriminating statements. The common law rule was that, once a person has made a self-incriminating statement, he may not be asked any further questions except by way of clarification. This obviously conflicts with an ongoing duty to provide information even if it relates to what any other person has done. That was from a review of the operations of the Prevention of Terrorism (Temporary Provisions) Act 1984. It seems to me that Senator Campbell does not want to deal with things like that. I ask him to provide clear assistance in that area.

Senator Carr—He’s not listening.

Senator LUDWIG—I do not think he is listening either. What worries me is that Senator Murray may not be listening either. The other area—and perhaps they can reflect upon the transcript in relation to this—is that the duty enables pressure to be brought on by the investigating people. The pressure might be subtle. It will not be brought on by those who are well educated—those who can bring barristers and legal defence to their aid. When you give notice and drag someone before you, the provision by the government says that they can provide their own legal counsel, but it does not say where they are going to get the money from to provide it, so in many instances these people might not have adequate protection. The provision in the Workplace Relations Act does not pro-
vide for adequate protection to ensure that they are represented by legal counsel, that their rights are protected and that they understand the duty—that they are informed about the duty. Nowhere does it say that the secretary should also inform the person about the duty. It does not say that anywhere.

It also does not say that the government must ensure that the community is largely aware of the existence of the duty and the offences if it is breached. It is not easily understood and generally made available to people that this is not only a requirement but that if you breach it, if you do not provide it, severe penalties will operate against you. If you cannot afford legal advice then you will face pressure, with people saying to you, ‘Unless you provide this information, unless you tell us what we want to know, you’re going to be put into jail.’ They will not be nice about it, they will not be cute about it; they will be direct, not subtle.

You also have a position where the offences may wrongly capture professionals—for example, journalists and their family members. Let us go to family members, because that is one of the issues on which Senator Ian Campbell might be able to provide information. If family members are caught by this legislation, does it exclude children? Does it exclude 13-year-olds? That is what Senator Murray is signing up to. I ask the minister to rule out 13-year-olds, 14-year-olds, 15-year-olds, 16-year-olds and 17-year-olds under this legislation, because that situation might arise. I will give you an example. Someone may have done something at a workplace—there might be videos and it might be known that he was wearing a red beanie and an orange shirt—but they cannot get him. They go to the people with whom they think he might be, and they ask the daughter or son: ‘Was your father wearing a red beanie and an orange sweater? Come on, tell us. If you don’t tell us you’re going to jail.’ They might want to get evidence to be able to demonstrate who he was and where he was: ‘Where was your father that night? What was he doing? Did he come home early? Did he come home late?’

Senator Carr—Was he at a meeting?

Senator LUDWIG—As Senator Carr suggests: ‘Was he at a meeting?’ I am not sure, Senator Murray, but I could ask the government whether that could actually occur. I would be happy if you could tell me whether it could occur. It does not seem to be ruled out by this legislation, which says that it applies to a ‘relevant person’. What is a ‘relevant person’? I ask the minister to also tell me what a relevant person is. I am unsure what a relevant person is. Is it a corporation? Is it a natural person? Is it a 16-year-old son or daughter? I have been in that position: I was a 13-year-old, 14-year-old, 15-year-old and 16-year-old son of a unionist. I would not have wanted someone turning up at my doorstep, knocking at the door and then asking me questions and saying, ‘If you don’t answer this you’re going to jail.’ It would be very difficult. I was perhaps not that small. But this is the problem that is created with this type of offence.

A problem is that the offences might not affect the behaviour of the people in the relationship at all. They might not actually have the desired effect. Another problem is that the offences have seldom been used, which suggests that they are not very useful in any event. These sorts of provisions, although they are out there, are in fact rarely used because of the problems that are associated with them. So you could hide behind the fact that you are putting in a redundant provision. I am not sure. I am not so sure that this government would not use them. I am not convinced that it would not use them.

Another problem is relevance. In this short drafting—Senator Ian Campbell, you
might be able to help me—where does it tell you how to tie it to what you are actually targeting? Where is the relevance? Where is it associated with the actual mischief that you are trying to eradicate? I am not so sure. Senator Murray might be able to point me to the relevance—in other words: what does it apply to? I am happy to be corrected. Although I have had a reasonable amount of time to read the provision, how it is tied back to be relevant to a specific area might be hidden somewhere, but I cannot find it. You would presuppose that we were talking about workplace relations in the building and construction industry, but it does not actually say that. It does not tie it down to that. I cannot find it, but Senator Ian Campbell might be able to provide that assistance to me. It is far broader than that; it is not a narrow provision at all. When you look at the definition of building industry investigation, you might say that the definition in some of the provisions gives you the narrowness that you seek. Under 88AA, section 9, it says:

(b) the subject matter of the investigation involves, or is related to, the building and construction industry.

One of the arguments I have often had is whether a coalmine is a building construction site or a coalmine construction. What are the two adits, the drift and the shaft—are they part of the industry, part of the coalmine, or are they part of the building and construction industry? The decisions in the AIRC are not clear, but I am sure Senator Campbell will be able to tell me.

Senator Ian Campbell—Two more minutes, comrade.

Senator LUDWIG—You will have 15 minutes to deal with some of the questions I have asked. What I would also like to know is whether draglines are part of the building and construction—

**Senator Ian Campbell interjecting—**
some serious points and asked some serious questions. It is clear to see that he is in fact quite serious about the issues and has given some thought to them, which is in contrast to some of the other contributions that have been made. Senator Ludwig made some points about the abrogation of privilege against self-incrimination. I think he raises an important issue. It is one that should concern parliaments. It is one where you have to make a very sound balance between rights and the importance of getting information where you are doing an investigation into breaches of the law. It is true under these provisions that a person cannot refuse to provide information or answer questions on the ground that they may incriminate themselves. That is absolutely true; that is not a unique provision in Commonwealth law. There are probably more than a dozen or so that I would like to quote later on in my intervention at this stage in the debate. It is important to note that the information or answers cannot be used in evidence against the person in relation to any possible unlawful behaviour that it reveals. It can only be used against the person in a prosecution relating to the matter in which the person responded to the notice to provide information for giving false or misleading information to a Commonwealth official or for obstruction of a Commonwealth official. This is called a use and derivative use immunity. In fact, I remember standing roughly where Senator Ludwig is tonight and arguing about the then Keating government’s, though it may have been the Hawke government’s, introduction of some derivative use immunity provisions then in the Corporations Law.

This approach—as you know, Mr Temporary Chairman Brandis—to abrogating the privilege against self-incrimination while providing protection through a use and derivative use immunity is not uncommon in the Commonwealth legislation. The guide to offences, civil penalties and enforcement powers that was issued by the Minister for Justice and Customs provides 70 such examples. The legislation that covers ASIC, APRA and the ACCC abrogates the privilege against self-incrimination while providing a lesser immunity. I think it is important to note that this is not the only government in history that has sought to use provisions that ensure that a person cannot refuse to provide information or answer questions on the ground that they may incriminate themselves.

It is interesting that, in the list provided to me by the Minister for Justice and Customs, the Aircraft Noise Levy Collection Act 1995, which was brought in under the Keating government, provides similar provisions. So does the Civil Aviation Act 1988, brought in by the Hawke government; the Dairy Produce Act 1986; the Health Insurance Act 1973, brought in by the Whitlam government; the Insurance Acquisitions and Takeovers Act 1991, brought in somewhere between the Hawke and Keating era; the Life Insurance Act 1995, brought in under Prime Minister Keating; the Prawn Export Promotion Act 1995, brought in by Prime Minister Keating’s government; and the Primary Industry Levies and Charges Collection Act 1991 brought in by the Hawke government. The Road Transport Reform (Dangerous Goods) Act 1995, which no doubt had the support of the Transport Workers Union, had a similar provision. The Sea Installations Act 1987 had similar provisions, as did the Seafarers’ Rehabilitation and Compensation Levy Act 1992. In fact, on a rough look at the list provided to me by the minister, you see that probably 70 per cent of the Commonwealth acts that have these provisions were introduced by Labor.

Senator Ludwig raised important issues about people who do receive these orders and how it is going to be explained to them
that they have the right to legal representation. That was a very fair question from Senator Ludwig. We have made it clear—and the opposition know this very well, because they have sought to enter negotiations with us about the guidelines—that there will be guidelines. We have also made it clear that the guidelines will be very similar to those that apply to the ACCC. I am happy to table—when I get the pages in order—a copy of the relevant guidelines which apply to the ACCC under the Trade Practices Act.

The Commonwealth government have indicated, in a spirit of cooperation and goodwill, that we are prepared to make these guidelines a disallowable instrument of this parliament. We have said to the Labor Party and to the Australian Democrats that we are happy to make these guidelines a disallowable instrument. So the guidelines will be able to be scrutinised by Senator Ludwig or any other senators who care about protecting people’s rights under these provisions. The ACCC guidelines, when referring to notices that are issued, say at page 11:

The notice will be issued with a covering letter briefly setting out the contravention or possible contravention to which the Commission, Chairperson or Deputy Chairperson believes the recipient could provide information, documents or evidence. The letter is to help people understand the formal language of the notice.

So it is saying, ‘Let’s put it in plain English; let’s ensure that the people can understand what is being said to them and understand the nature of the process.’ The guidelines go on to say:

The covering letter issued with a s. 155(1)(c) notice will explain that the hearing is about asking questions and obtaining information relevant to the Commission’s investigation. A legal adviser may be present if the addressee wishes, subject to such reasonable conditions as the Commission may wish to impose, such as a possible confidentiality undertaking by the legal adviser—

this of course would be in line with the confidentiality provisions which I spoke about previously in this debate—

The role of the legal adviser will also be specified.

The letter will offer to discuss the matter and nominate a Commission contact officer and telephone number for inquiries.

Attachments 1 and 2 reproduce pro forma examples of the covering letter and formal notices. Some letters and notices may vary from these pro formas depending on the circumstances.

That is an example of the detail of the guidelines upon which we want to base the guidelines under these powers. That is an example of the sorts of guidelines which can be made a disallowable instrument if the Labor Party wants to be cooperative in this debate and not just continue to run a mindless filibuster. We have made that offer. If the amendment is agreed to, all senators, regardless of what party they are in, will be able to scrutinise those guidelines. If they find that they are inadequate, they can reject them and ask the government to make better guidelines.

Senator Carr—What about children—locking up children?

Senator IAN CAMPBELL—Senator Carr reminds me—so gently and politely, as he always does—that there are two questions that I failed to answer. Firstly, we are checking on the provisions. We think the legal advice is that Senator Ludwig can rest assured in that regard. But we will assure him so that he can rest easy. Secondly, there was a question in relation to what is a ‘relevant person’. Persons are generally described in legislation and in common law. But, in relation to this, he asked whether a corporation would be regarded as a person. The answer is yes. I think under common law—that the chairman would know better than I—that is how a person is described. They can other-
wise be described as a ‘legal entity’, which can be a corporation or a person.

Senator Carr—Does that cover children?

Senator IAN CAMPBELL—I have actually said to the senator who persists in interjecting ‘Does it cover children?’ that I was seeking legal advice on that and I will seek to set his mind at rest—and Senator Ludwig’s—since he cares about that.

The final question was in relation to the definition of the building industry. The building industry is in fact defined in some detail. Senator Ludwig seems to think that the definition is not thorough enough. There is a quite comprehensive definition. Perhaps if Senator Carr or anyone else wants to speak for 15 minutes, I will come back with the definition of the building industry. In general terms, building is a well understood concept. I think most young children who watch Bob the Builder get the idea that it generally includes construction.

The task force is of course going to look at major construction. I do not expect it will be going around and looking at the construction of pergolas and those sorts of things, but it will be looking at major commercial construction. I think Senator Ludwig was asking legitimately whether that would include various sections of the coal mining industry. He used terminology which I do not understand, but could it include construction on a mine site? The answer is yes. Could it include construction on major projects in our oil and gas projects? Yes. Could it include major construction in the central areas of our cities? Yes. The definition we have is:

(building industry investigation) means an investigation in relation to which the following paragraphs are satisfied:

(a) the investigation is:
   (i) by a building industry authorised officer ... or
   (ii) by a building industry inspector ...

We do not define the building industry, because we think it is well understood by a sensible and reasonable person.

The TEMPORARY CHAIRMAN (Senator Brandis)—Minister, are you tabling the document?

Senator IAN CAMPBELL—I will put all the pages in the right order and then I will table it.

Senator LUNDY (Australian Capital Territory) (11.22 p.m.)—I would like to follow up on this issue of a definition of the building industry because it is entirely relevant to get some greater clarity, particularly with respect to the sort of prefabrication plants and shops with tradespeople that service the building industry. With technological changes over many years a greater proportion of the building industry per se has moved offsite and into industrial yards, prefabrication plants and so forth. So that is an important point. I also feel compelled to respond to a number of comments that have been made by Senator Ian Campbell and others about what it is like to work in the building industry, particularly in relation to occupational health and safety matters and the quite extraordinary statistics that have been outlined by the Construction, Forestry, Mining and Energy Union over many years and the extraordinary rates of death and injury that occur in that particular industry sector.

Let me first follow through with that question about the definition of the building industry. It is quite appropriate that the minister used the committee stage to further define the building industry. My own experience—from 20 years ago in a few months time—was as a 16-year-old working in the building industry for a number of years removing asbestos. Is that captured in this definition? It is certainly a part of the industry associated with demolition works and refurbishment that is incredibly dangerous but, arguably
under the very broad definition that Senator Ian Campbell just outlined, it would not be part of that definition. The definition is almost beside the point. I think the point that Senator Ludwig was trying to make was one of clarity. There is not a lot of clarity in this bill. It is an extremely vindictive bill that pursues an extraordinarily ideological campaign by the Howard government.

Going back to my experience, the point that occupational health and safety is being patently ignored by the Howard government, which has undermined occupational health and safety law throughout its term of government, tells me that every worker and every member of the union who has experience in the industry and who has put their hand up at a union meeting to say, ‘We’re not going to work, because it’s not safe and the law is not being complied with,’ is getting a slap in the face tonight. Every union organiser who has devoted their professional life to working on behalf of others is tonight getting yet another stab in the back from the Howard government.

I suppose one could ask what can you expect from an ultra-conservative, ideologically motivated government, but what we really have here is something far more sinister than that. This government has been prepared to spend tens of millions of taxpayers’ dollars on a campaign that not only pursues trade unions and the authority they have to collectively represent the workers of this country but which will actually start costing lives. The building industry does have one of the highest rates of death and injury. My own experience on the building site is that without unions those rates would be far higher.

Again, I refer to my own experience removing asbestos. It has been established for two generations that asbestos is a carcinogen, but my employer said on more than one occasion that asbestos was not nearly as dangerous as the unions were making out. If it were not for the union organisation around the occupational health and safety issues of asbestos in 1984, when I worked in the sector, people would have still been exposed to it despite the fact that there were laws saying this could not be done. So when we talk about the powers of unions and the rights of union organisers to protect their memberships and to work with them to uphold the occupational health and safety laws, we are talking about saving people’s lives on a daily basis.

We do not know what the statistics will be arising from that period, when a lot of asbestos was removed right around the country. But I know that, if it were not for the ability of the union to do their work and the workers to organise themselves, there would be a far higher rate of death and injury from that period. I am completely outraged by some of the very bland statements emanating from the government, because they just do not know what goes on in these workplaces. Every day there is pressure on workers to breach occupational health and safety provisions. There is pressure on workers to get on with the job in such a way that it compromises their occupational health and safety.

The legislation we are dealing with tonight is the next draconian step in trying to disempower workers and their representatives in doing their jobs. It is a particularly nasty and vindictive bill, as I said, and many of my colleagues have outlined the specific effects. I note with interest that Senator Ian Campbell has not yet responded to Senator Ludwig’s question about the effect on children of this bill. I, too, await with interest the answer to that question.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.29 p.m.)—I have given an undertaking to get an answer to that
important question. I note that Senator Lundy had experience in the industry when she was 16. It sounds like my own experience. I left school at roughly that age and went straight into the work force. I will get an answer to Senator Ludwig’s question. The officer who has gone to get that answer is still searching through his computer.

Senator Lundy asked whether prefabrication was covered. The answer is: yes; it is related to the building industry if they are prefabricating materials for building. Those of us who—for the lack of other things to be interested in—watch the building industry have seen prefabrication become a bigger and bigger part of building. I thought it would never catch on when I first saw prefabricated buildings going up but it is amazing how they can make them look architecturally attractive these days. Senator Lundy also asked whether asbestos removal—which she was involved in when she was 16, which cannot have been that long ago—was covered. The answer is: yes, it relates to the building industry and it would be covered.

Senator LUDWIG (Queensland) (11.30 p.m.)—One of the matters in this legislation is what it does not tell you. It does not tell you how some of these provisions will work, because there are not the mechanisms which the Democrats have held in other pieces of legislation. In other legislation—in some instances where there would perhaps be even more serious consequences, although I am not convinced that this will not have broad and serious consequences—the Democrats have insisted on review mechanisms and mechanisms to ensure the right to legal representation, including the right to legal aid for people who otherwise may not have rights. How the provisions would operate is usually explained. The Democrats usually insist on a whole raft of things, and what the Democrats have insisted on over the years has been instructive in helping me say, in this debate, what this legislation has missed.

We have here a duty to disclose. In Australia there are few examples of a mandatory duty to inform. Historically, the common law contained an offence of misprision, a felony which was committed when a person knew that an offence had been committed but failed reasonably to disclose this to the relevant authorities. But of course we have moved on a little bit from there; these offences were abolished and replaced with statutory offences. These offences relate to knowledge of past offences rather than mere suspicion of possible future offences.

This is a power to compel disclosure. Who is the secretary of that department? He is on an AWA, a common law contract or tenure to the executive of the government. There is no independence. I am sure Senator Murray is familiar with other areas, like ASIC and statutory authorities. Perhaps Senator Murray is drawing some of those analogies out of ASIC and some of those statutory authorities, but there is a difference. There is a huge difference. They are statutory authorities. They are not secretaries or CEOs of departments, whom Mr Howard can bring into Parliament House, down the corridor and into his room, whom he can have sit before him while he says, ‘This is what I would like you to concentrate on, look at and do.’ ASIC and other statutory authorities might have a statutory power but it is not an unfettered power. It is confined by relevance, by Corporations Law and by the area in which it operates. This is not so confined.

The way I have always explained workplace relations is that it is about people. In this piece of legislation you are compelling people to tell you whatever you want to know. I cannot see the confines in it; I cannot see where it has to be relevant. Where it might be relevant it talks about the building
and construction industry and ‘related to’. So the lines are fuzzy; they are not definite or finite. We could go through a series of questions where Senator Ian Campbell could tell me some things. He explained to Senator Lundy that the fabrication industry was within this. I am not sure whether he explained whether draglines at Curragh were within or outside the legislation.

Senator Ian Campbell—I did, when you were outside.

Senator Ludwig—I am sorry; are they in?

Senator Ian Campbell—If it is construction and building, yes.

Senator Ludwig—But that has not been determined yet.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.35 p.m.)—I said that construction on mining sites certainly would come within this. The minor problem here is that the Australian building and construction commission that the government envisaged—I repeat this because Senator Ludwig may have been outside at the time we were discussing this—was an independent statutory authority. So it is a trifle unfair for the Labor Party to say, ‘This would be all right if it was an independent statutory authority’—

Senator Ludwig interjecting—

Senator IAN CAMPBELL—He did not say that but he said that ASIC is an independent statutory authority so it is all right if it does this. I guess you can take as examples the legislation which regulates aircraft noise and civil aviation as well as the Dairy Produce Act, the Health Insurance Act—the Health Insurance Commission is part of the health department—the Life Insurance Act, the Seafarers Rehabilitation and Compensation Act and the Road Transport Act, which is administered by my own department, the Department of Transport and Regional Services. All of these acts include these provisions. The Commonwealth sought to establish an independent statutory authority and Labor, and a majority in the Senate, said—

Senator Ludwig interjecting—

Senator IAN CAMPBELL—You asked a question.

The TEMPORARY CHAIRMAN (Senator Brandis)—Senator Ludwig, the minister was responding to a question you put to him in your speech. Let him answer it in his own way.

Senator IAN CAMPBELL—I have 15 minutes to answer the question.

Senator Ludwig interjecting—

The TEMPORARY CHAIRMAN—The minister has the call.

Senator IAN CAMPBELL—Senator Ludwig asked a couple of questions. One of them related to how unfair these powers would be and he referred to how particularly unfair that might be on someone who is 11, 12, 13, 14 or 15. I think he went up to the age Senator Lundy was when she was working in the asbestos removal area—she was 16—and asked whether it would apply in that regard. Senator Lundy has asked me once again when we will get the answer on children. My officer is outside seeking that answer at the moment. It is a very important question, and I would like to get an exact and accurate answer but I will respond to that.

In terms of the mining industry, while Senator Ludwig was out of the chamber I referred to two things. He said that some things are not well enough defined. He asked a couple of things, and I responded when he was out of the chamber. I am happy to quickly respond because I do not want to unduly delay the committee. The guidelines, which the Labor Party are seeking to make a
disallowable instrument and about which we are negotiating at the moment, specifically do define—and Senator Ludwig was concerned about this a few minutes ago—how a person will be advised of their right to legal representation. It will be in the guidelines. I promised I would table them once we got all the pages together, and I now do so. I table the guidelines to the ACCC and I have made it quite clear that the federal government will seek to base the guidelines for this body on those. That will create definition. It will create even further protections over and above the protections we are putting in place and the protections that the Democrat amendments, which we will be agreeing to, add. So there are significant protections there.

In terms of the specific detail of the draglines that Senator Ludwig has referred to in relation to construction, I am informed that the original bill that the Commonwealth sought to move forward contained some detailed provisions and guidance in relation to exactly what construction was. The terms of the original bill specifically answered Senator Lundy’s question, but the Labor Party in their wisdom decided that was not the way to go. It was decided not to have an independent statutory commission. You said no to that, and now we are copping criticism because we do not have an independent statutory commission. We are told there is not enough definition of the building industry. Again, as I understand it, that was contained in the original architecture of our legislation.

Please ask questions but please do not either directly or by implication say that the Commonwealth has let down the side in relation to this matter. We have put forward the architecture of some legislation that would have addressed those concerns. We realise that we cannot get that through. We are pleased that we are able to bring forward an alternative approach that we hope will achieve similar ends in a way which protects the rights of those to whom the powers will be directed very assiduously, very carefully through legislation and guidelines that ensure that this particular provision—if we can get agreement in this chamber to make them disallowable instruments—can be scrutinised by the parliament. This will ensure that people have full protection when those provisions apply to them.

**Senator Ludwig (Queensland)** (11.40 p.m.)—This is the government’s bill. I do not know whether it is the Labor Party’s bill—in fact, I am sure it is not. We would have drafted it much more tightly and made it more specific and a lot fairer.

**Senator Ian Campbell**—Senator MacDonald is going to listen to your questions.

**Senator Ludwig**—Hopefully, he can answer them too. Ordinarily, a duty to provide information will arise in response to a summons or subpoena. The government knows that. The government tries to avoid it in this legislation. It knows that there is an inherent requirement for that approach to be adopted. It is adopted in a broad range of institutions that are common. I refer to what was originally the NCA, which then became the Australian Crime Commission. Their special powers, coercive powers, are used very sparingly and only upon a reference being given from the board. The board is drawn from various areas of speciality—the Australian Federal Police and so on—to ensure that these powers, which are special, are not abused. That is the scope.

The duty to provide information may also arise in response to a notice to produce information or documents. Questions arise as to whether they are in the possession of the person and the person is capable of bringing them forward. There is a range of issues in regard to which I think this piece of legislation is deficient. It should be looked at a lot more closely. It is one of those areas where
the government and the Democrats have, with very little heed to the implications, signed up to deal with it. One of the problems when we examine legislation such as this is that we can only look at it in the context of what else exists out there and whether there are analogies which provide us with a better way of dealing with this type of legislation or whether there are other pieces of legislation which can provide guidance to it. When we look at what is available, we find issues that are commonplace in other statutory organisations or bodies where there are more protections than are placed in this piece of legislation.

As I have said before, there is an issue of relevance that has to be attached where an investigatory body is confined by terms of reference. In theory, any coercive power will be subject to a requirement of relevance. That is the nub of the issue that should be explored here, and it is not, because there is nothing to confine it. There are no terms of reference to confine the use of the power. The subject matter, as I indicated earlier, is so broad that you could drive a dragline through it. The other issue is whether or not reasonable excuse exists. Under most relevant statutes witnesses must answer and produce documents unless they have a reasonable excuse. I was hopeful that the government would be able to point to the provisions which ensure that there are reasonable excuse provisions contained within this legislation.

This is clearly a matter based on physical or practical issues. It limits cases to some of those standards based on legal privileges and immunities that exist. As I have always said, when you look at this privilege against self-incrimination, one of the issues is how far it encroaches and whether public policy demands that this happen. I do not think the government has made that case. I do not think it has been able to point to the public demand for this piece of legislation to have this broad effect and this consequence. What the government has not been able to answer tonight is how broad it would be, whether it would have unintended consequences and how it would redress those unintended consequences.

The other issues that I might wait for Senator Campbell to return on deal more broadly with the evidence use and derivative use immunity. What we do not know is, in the use and the derivative use immunity that is provided here, what test is applied. We do not know whether they will be able to use that on the balance of probability or whether there is a more stringent test associated with it—that is, if they then invoke use or derivative use immunity, whether it is on the balance of probability that they should have that use immunity. The extent of that use or derivative use immunity is unclear from the bill that is before us. I am happy to be corrected. It is worth noting that at least it is contained within the bill. I would have been more surprised if those protections had been left out.

That type of derivative use immunity protects a witness from being prosecuted on the basis of any information, document or thing obtained as the direct or indirect consequence of the answers for the production of the primary evidence. The extension of that immunity is reflected in this legislation. It is at least encouraging to see that, in trying to address this issue in a public policy sense, the government has gone some distance, but it has failed, I think, to adequately address all the areas to ensure that it is making good legislation, good public policy and good outcomes.

Senator COOK (Western Australia) (11.47 p.m.)—by leave—I move opposition amendments (1), (2), (3), (5) and (6) in my name on sheet 4314:

CHAMBER
(1) Schedule 4, item 1, omit, subsection 88AA(1), substitute:

Secretary may require information, documents etc.

(1) If the Secretary of the Department believes on reasonable grounds that:

(a) a person (the relevant person) has information or documents relevant to an investigation or is capable of giving evidence that is relevant to an investigation; and

(b) either of the following circumstances applies:

(i) the information or documents will assist another law enforcement authority in relation to a criminal offence; or

(ii) the information or documents relate to offences under sections 299, 301, 302, 303, 305, 305A, 307, 308, 317, 338 or 339 of this Act, or sections 51, 72, 104, 105, 185, 190, 193, 194, 195, 199, 202, 337, 350 or 351 of Schedule 1B.

the Secretary or an assistant may, by written notice given within 3 years of the commencement of this Part to the relevant person, apply to a judge of the Federal Court for a warrant requiring the relevant person:

(c) to give the information to the Secretary, or to an assistant, by the time, and in the manner and form, specified in the warrant; or

(d) to produce the documents to the Secretary, or to an assistant, by the time, and in the manner, specified in the warrant; or

(e) to attend before the Secretary, or an assistant, at the time and place specified in the warrant, and answer questions relevant to the investigation.

(1A) A judge of the Federal Court may issue a warrant referred to in subsection (1) if the criteria in paragraphs (1) (a) and (b) are satisfied.

(2) Schedule 4, item 1, at the end of subsection 88AA(3), add: “on the proviso that this limitation is not intended to exclude any other limitation on the exercise of the power given by subsection (1) which might otherwise apply.”

(3) Schedule 4, item 1, omit paragraphs 88AA(7)(i) to (iii), substitute:

(i) to comply with a warrant issued under this section; or

(5) Schedule 4, item 1 after subsection 88AA(7), insert:

(7A) Information obtained from the use of a warrant issued under this section cannot be used as evidence in a prosecution for an offence under this Act, other than an offence referred to in subparagraph (1)(b)(ii).

(6) Schedule 4, item 1, omit section 88AB.

In moving these amendments, I draw the chamber’s attention to amendment (4), which I will not be moving. We will now support the Democrat amendment that covers that question.

I move these amendments with a heavy heart because I believe that the bill before us is so fundamentally flawed that it is close to unconscionable to accept it. However, I do think that if there is an opportunity to make some improvements—not matter how bad the legislation and irrespective of whether we will support it at the end—then that opportunity should be taken. Even with these Labor amendments, we are still extremely concerned about giving the Building Industry Taskforce new coercive powers to gather information. We do not believe a case has been made to justify this.

After a $60 million royal commission, we note the last report by Commissioner Cole, the secret report that contained evidence of
allegations of unlawful behaviour, sits on the shelves of the DPPs in this country gathering dust. It was supposed to be what justified the expenditure. Eighteen months on, have any prosecutions been taken? No, they have not. That was after spending $60 million of public money. We do not believe the case has been made. In participating in the Senate inquiry into the building and construction industry, I asked eminent and now retired members of the arbitration bench, who had covered the field of industrial relations for the building industry as their responsibility for many years, their views about criminality and criminality in several of the states. I also asked this of master builders organisations and employer organisations around the country. All of them dismissed the essential smear that has been made against the unions in this industry that they are somehow involved in criminal activities. There is no foundation for those allegations.

In the case of lawlessness, which is the other substantial allegation, what we are talking about here are issues of industrial relations characterised under property law or under criminal law rather than under industrial relations law. What we are doing is introducing a new province into industrial relations which should never be admitted and which was settled some time ago. In the middle of that, a task force has been imposed which has an entirely anti-union focus. Since it was established in September 2002, it has focused its activities on ordinary union activities rather than meeting with workers and addressing issues endemic to the industry such as occupational health and safety matters.

It has not, does not and, on evidence in estimates, claimed it will not take action against employers who default for underpayment of wages or deprive workers of employment conditions. It simply refers those on. This is a task force which is entirely anti-union and, since it is paid for by the Commonwealth, it is properly seen as state interference in the freedom of association that unions are entitled to expect. It is state-sponsored de-unionisation. We have no faith whatsoever in this task force. As I have said, it has shown no interest in safety, which is a major concern in this industry, or sorting out the other issues of the industry.

It has also not prosecuted any criminal behaviour despite the aspersion so often cast by the government about criminality in the building industry and, in light of this highly unbalanced and ideological track record, Labor do not believe the task force should receive additional powers. Nor do we believe that some of the members of the task force deserve the confidence of the government because, having made the necessary inquiries, I believe their activities and interpretations of their powers are highly questionable. Unfortunately, the option of defeating these coercive powers is not open to us in these proceedings. That is because the Australian Democrats and the government have agreed to provide such powers. We lack the numbers in this chamber to defeat this legislation. We recognise that, given the positions taken by the government and the Democrats, they have the numbers to impose it and there is therefore an inevitability about it. In making these amendments, we note that building workers, for example, will be denied the entitlements of people accused of a homicide, drug crime, armed robbery, rape or terrorist activity in this country. Building workers will have inferior rights to those accused of these types of offences, and this legislation will impose a sanction to require people to incriminate themselves in certain circumstances. The powers of this task force are not about enforcing the law; they are about gathering evidence.

It is also unfortunate that we have not been able to reach agreement with the De-
mocrats about what we regard as our very reasonable and required changes to the task force’s new coercive powers. Our amendments—the ones I have just moved—restrict the scope of these new powers to criminal offences and insert some semblance of fair process by requiring the approval of Federal Court judges before the coercive powers can be used. If there is criminality in this industry, we want it stamped out. We think the normal level of anti-crime enforcement in this country is the way to do it, not to impose actions against criminality in an industrial relations act. Criminality should be fought wherever it stands and not just have issues concentrated in this industry. If it is to be done, Federal Court judges should exercise an adjudication as to whether these coercive powers should be triggered or not. Not to do so is to create a special set of circumstances which means there is a further infringement of the liberties of the individuals concerned and only individuals in this industry.

Amendment (1) amends section 88AA to change the criteria that allow the task force to invoke its coercive powers. In this amendment, firstly I seek to limit the relevant investigations to those that might assist another agency with the investigation of criminal offences or offences under the Workplace Relations Act that are criminal in nature. Secondly, it adds a new requirement that a warrant from the Federal Court must be obtained to invoke these powers. I will now address the Senate on that element of my amendments. The definition of investigation in this bill extends to any breaches of the Workplace Relations Act. Without the amendment I have just moved, the task force would be able to use these coercive powers to investigate the ordinary industrial activities of unions such as meetings with members.

Our amendments limit the use of these coercive powers to investigations of criminal offences. Therefore, we keep these powers out of the industrial relations jurisdiction and maintain them for the criminal jurisdiction. The amendments limit the use of coercive powers to criminal offences or investigations about Workplace Relations Act breaches that might assist other law enforcement agencies with criminal investigations. If the government claim that these new powers are needed to address alleged criminal activity in the building industry, these amended powers will enable them to do so and they should support our amendments. Labor is committed to removing any criminality that may exist in any workplace, including in the building industry. Labor does not believe that the task force is the right body to investigate such matters; criminal matters should be the province of the police. However, Labor is even more concerned about giving the task force these coercive powers in respect of an almost unlimited range of industrial relations matters.

On the second point, the warrant from the Federal Court, Labor’s section 88AA allowed the task force to invoke its coercive powers after satisfying the secretary of the department that the relevant person had information relevant to an investigation by the task force. This leaves the discretion of the exercise of these coercive powers in the hands of a senior public servant who is employed at the whim of the minister and who receives annual performance bonuses based on the minister’s assessment of their performance. This proximity to the minister is far too close for comfort. It means that such decisions will be tainted by the political whim of this government and its ideological obsession with trying to de-unionise Australia. However, requiring the approval of a Federal Court judge does to some extent balance the amendment sought by the government. It means that a Federal Court judge can insert a truly independent element into
this process. Federal Court judges routinely deal with industrial relations and other matters. They are well placed to determine whether coercive powers are appropriate or necessary in any particular case. Requiring a warrant from the Federal Court also goes a long way to ensuring that building workers do not have lesser civil liberties than those being questioned, as I have said earlier, by ASIO on matters of terrorism. The involvement of the Federal Court is appropriate given the gravity and serious potential consequences of the use or potential abuse of these coercive powers.

This item means that the provision inserted by Democrat amendment (2) on sheet 4329 places a new limit on investigations of not being minor or petty. We have already said in relation to that amendment that it is meaningless and unhelpful, as this government and its Building Industry Taskforce have shown that they have no sense of what is minor or petty, so this provision will not constrain them in the least. However, the addition of the minor and petty limitation might be taken to exclude other limitations on the coercive powers which would otherwise apply as a result of common law or other legal principles. Labor’s amendment will prevent this possibility. As I have said, amendment (3) is a consequential amendment that arises from replacing the previous system of notices with the system of warrants from a Federal Court judge.

Amendment (4) is a penalty for noncompliance and adds a monetary penalty in addition to the penalty for imprisonment if a warrant is not complied with. The monetary penalty is 60 penalty units, or $6,600, in the case of noncompliance with a warrant. It is just commonsense to give the court the capacity to impose a monetary penalty instead of jail time if a judge thinks this is appropriate when considering all of the circumstances. Imprisonment has the potential to make a martyr of a person who defies a warrant. It may be that, in some cases, a high financial penalty would be more of a burden on an individual than a short term of imprisonment.

Amendment (5) limits the use of information obtained using coercive powers for the prosecution of criminal offences. Amendment (6) is concerned with section 88AB(1), which currently lists excuses that cannot be used to excuse a person from giving information, providing documents or answering a question. These invalid excuses are a contravention of another law that the information might tend to incriminate the person or expose the person to penalty or liability for the giving of information that is otherwise contrary to the public interest. I commend the amendments to the chamber.

Saturday, 26 June 2004

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (12.02 a.m.)—I do not intend to add anything more to the comments I have made. I addressed the issues in these amendments much earlier in the debate this evening. The government will be opposing the amendments.

Senator MURRAY (Western Australia) (12.02 a.m.)—In responding to the amendment, I want to remark that there are sometimes quite fierce words exchanged across this chamber but I also want to record the fact that I watched Senator Cook throughout the inquiry that we have had and I think his contribution has been a very determined and participatory one and therefore he has been speaking—whilst from his book—with great passion and great interest. I doubt anyone got the impression that this was by rote. It certainly was not, but I recognise the heart behind it, if I can say so. Having said that, we are in the stages of an agreement whereby, at this time, the curtains are about to be drawn. We feel that, despite some areas here where
both the intent and the content are of interest, we are not able to support these amendments at this time.

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

The committee divided. [12.08 a.m.]
(The Chairman—Senator J.J. Hogg)

Ayes…………… 23
Noes…………… 36
Majority……….. 13

AYES
Brown, B.J.                    Backland, G.
Campbell, G.                   Carr, K.J.
Collins, J.M.A.                Conroy, S.M.
Cook, P.F.S.                   Crossin, P.M. *
Evans, C.V.                    Faulkner, J.P.
Forshaw, M.G.                  Hogg, J.J.
Kirk, L.                      Lundy, K.A.
Marshall, G.                  McCullens, J.E.
Moore, C.                      Murphy, S.M.
Nettle, K.                     Ray, R.F.
Stephens, U.                  Webber, R.
Wong, P.

NOES
Allison, L.F.                  Barnett, G.
Bartlett, A.J.I.               Boswell, R.L.D.
Brandis, G.H.                  Calvert, P.H.
Campbell, I.G.                 Chapman, H.G.P.
Colbeck, R.                    Coonan, H.L.
Eggleston, A.                 Ellison, C.M.
Ferguson, A.B.                 Ferris, J.M.
Fitfield, M.P.                 Greig, B.
Heffernan, W.                   Hill, R.M.
Humphries, G.                  Johnston, D.
Kemp, C.R.                     Knowles, S.C.
Lightfoot, P.R.                Macdonald, I.
Macdonald, J.A.L.              Mason, B.J.
McGuigan, J.J.J. *             Minchin, N.H.
Murray, A.I.M.                 Patterson, K.C.
Payne, M.A.                   Santoro, S.
Scullion, N.G.                  Tchen, T.
Troeth, J.M.                     Watson, J.O.W.

* denotes teller

Question negatived.

The TEMPORARY CHAIRMAN (Senator Chapman)—I call Senator Murray.

Senator MURRAY (Western Australia) (12.11 a.m.)—I am not sure why I am being given the call, Mr Temporary Chairman.

The TEMPORARY CHAIRMAN—According to the running sheet, we are due to deal with the Democrat amendments to government amendment (2A) on revised sheet 1.

Senator MURRAY—I will take guidance from the chair but, as I understand it, the first two government amendments on the running sheet have not yet been voted on, so I would have thought that was the order we would go in.

The TEMPORARY CHAIRMAN—If I can perhaps provide some assistance to you, Senator Murray, we have agreed to government amendment (1), and amendment (2) was split into two parts, (2A) and (2B). Amendment (2B) has been agreed to. We are now dealing with amendment (2A). We have just voted on the opposition amendments to (2A), and the amendments that are listed as coming from you are in fact amendments to (2A).

Senator MURRAY—Thank you, Mr Temporary Chairman. I will accept your guidance and proceed accordingly. So we are now looking at sheet 4329 revised?

The TEMPORARY CHAIRMAN—That is correct, Senator Murray.
Senator MURRAY—I therefore seek leave to move Democrat amendments on sheet 4329 revised together.

Leave granted.

Senator MURRAY—I move:

(1) Schedule 4, item 1, omit subsection 88AA(7), substitute:

Offence

(7) A person commits an offence if:

(a) the person has been given a notice under subsection (1); and

(b) the person fails:

(i) to give the required information by the time, and in the manner and form, specified in the notice; or

(ii) to produce the required documents by the time, and in the manner, specified in the notice; or

(iii) to attend to answer questions at the time and place specified in the notice; or

(iv) to take an oath or make an affirmation, when required to do so under subsection (5); or

(v) to answer questions relevant to the investigation while attending as required by the notice.

Penalty:

(c) for a first offence—30 penalty units; or

(d) for a second or subsequent offence—imprisonment for 6 months or a fine of 60 penalty units.

(2) Schedule 4, item 1, omit subsection 88AA(3), substitute:

(3) The power given by subsection (1) must not be used for the purposes of an investigation that is minor or petty.

(3) Schedule 4, item 1, after subsection 88AA(3), insert:

Exercise of powers or functions by assistants

(3A) An assistant cannot exercise or perform powers or functions as mentioned in paragraph (1)(c), (d) or (e) unless guidelines that have been made and tabled as required by section 88AGA are in force.

(3B) In exercising or performing powers or functions as mentioned in paragraph (1)(c), (d) or (e), an assistant must comply with the guidelines.

(4) Schedule 4, item 1, omit subsection 88AG, substitute:

88AG Delegation by Secretary

(1) The Secretary of the Department may, in writing, delegate all or any of his or her powers and functions under this Part to the person (the director) occupying the position in the Department known as the director of the Building Industry Taskforce.

(2) The director cannot exercise or perform powers or functions under a delegation unless guidelines that have been made and tabled as required by section 88AGA are in force.

(3) In exercising or performing powers or functions under a delegation, the director:

(a) must comply with the guidelines; and

(b) must comply with any directions of the Secretary of the Department.

(5) Schedule 4, item 1, after section 88AG, insert:

88AGA Guidelines for the exercise or performance of powers or functions

(1) The Secretary of the Department must, in writing, determine guidelines relating to:

(a) the exercise or performance of powers or functions by the director (within the meaning of
section 88AG) under a delegation; and
(b) the exercise or performance of powers or functions by an assistant (within the meaning of section 88AA) as mentioned in paragraphs 88AA(1)(c), (d) and (e).

(2) The Secretary of the Department must cause the guidelines to be tabled in each House of the Parliament.

(6) Schedule 4, item 1, after section 88AH, add:

88AI Annual review by Ombudsman of exercise of section 88AA power

(1) As soon as practicable after the end of each year to which section 88AA applies, the Ombudsman must conduct a review of the use of the power given by section 88AA in that year.

Note: Under the Ombudsman Act 1976, a person may complain to the Commonwealth Ombudsman about activities of the Building Industry Taskforce.

(2) For the purposes of conducting a review, the Secretary must provide the Ombudsman with such information and access to documents as the Ombudsman requires.

(3) The Ombudsman must cause a copy of each report to be tabled in each House of the Parliament.

(4) In this section:
Ombudsman means the Commonwealth Ombudsman.

year to which section 88AA applies means each period of 12 months that starts on the day on which this Part commences, or on an anniversary of that day, and that is wholly or partly within the period during which the power given by subsection 88AA(1) can be used.

I will speak briefly to these amendments. The amendments on government sheet QU266 in particular address the issue of an offence. If you recall, the earliest government amendment envisaged a prison sentence with no alternative. The Democrats have negotiated a graded set of penalties. If you look at amendment (1), the penalty under (c) for a first offence is 30 penalty units. For those not familiar with a penalty unit, it is $110, so that is $3,300. For a second or subsequent offence, it would be imprisonment for six months or a fine of 60 penalty units. Obviously a penalty unit fine is a maximum. It is not a mandated fine and it is not a summary fine either. You have to prove your case with it. That is the change we have introduced, and obviously that will be determined by the courts. Interestingly, earlier today we attempted the same thing with the electoral matters bill. We tried to omit imprisonment for 12 months and substitute 30 penalty units or imprisonment for six months. In that case we were defeated by the Labor Party and the government, who wanted the imprisonment only option. In this case I think we are going to get support, so we are very pleased with that. We think that is a more sensible gradation.

Amendment (2) addresses the issue of whether a matter is of substance. It is very difficult, when you are dealing with lawyers and draftspeople, to find wording which satisfies them that you have not set the threshold too high. We were concerned that the threshold was set too low. This is the considered result of our discussions. Amendment (3) makes sure that those who are defined as assistants in the legislation are properly constrained in the exercise of their powers by the availability of guidelines. Amendment (4) has the same restriction on the director of the Building Industry Taskforce. Amendment (5) has guidelines with respect to the exercise or performance of powers of functions determined.
Amendment (6) is particularly important in our view. It requires an annual review by the Ombudsman of the exercise of section 88AA power. I remind the chamber—probably some of the senators in the chamber are aware of it—that the Ombudsman already has this role with respect to the Australian Federal Police. The Ombudsman has an audit and oversight role. We think that is particularly important because the Ombudsman is, therefore, able to exercise oversight responsibility to observe the process. Of course, a person may complain to the Commonwealth Ombudsman about the activities of the Building Industry Taskforce if they so wish. Since the Ombudsman will be given direct responsibility in this area, that will be a protective mechanism. The audit process, review process or oversight process, if you like, will require an annual report.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (12.18 a.m.)—I want to make one point on Democrat amendment (6) which relates to a new section 88AI. The government accepts proposed section 88AI(2)—this was communicated to Senator Murray and the Democrats previously, but we want to get it on the record—on the basis that the requirements of the secretary under section 88AI(2) are in addition to, rather than a substitution for, the powers of the Ombudsman under the Ombudsman Act 1976. I understand Senator Murray understands that is the case.

Senator COOK (Western Australia) (12.19 a.m.)—I would not mind, even at this late hour, a clear explanation of what that amendment does in a material way. While the government is giving some thought to that, can I on behalf of the opposition say that, despite all of the remarks I made earlier about how terrible and reprehensible I regard this legislation, it is not a reason for us not to look at where some improvements can be made to it. We recognise the amendments on sheet 4329 revised moved by Senator Murray, on behalf of the Australian Democrats, make some changes that ought to be supported. As a consequence, we will be voting for these amendments. I also draw attention to amendment (2), which reads:

(3) The power given by subsection (1) must not be used for the purposes of an investigation that is minor or petty.

I want to say a word or two about that. The language that was here before, the government’s language, was trivial. We think the amendment setting out the reference to ‘minor or petty’ is an improvement. That is the language of the act and it is an appropriate amendment from that point of view and does improve the provision. I have just heard for the first time the government make that explanation to the Australian Democrats. I would appreciate it if the government could explain to the chamber what the significance of the explanation is.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (12.21 a.m.)—It is the first time I have heard it too, but I think I understand it. I will do my best to pass that on to Senator Cook. I am advised the government do not want the Ombudsman’s powers over everything else under the Ombudsman Act 1976 to be in any way constrained and for there to be no doubt about that. Clearly we are setting out, under 88AI(2), some specific requirements of the secretary in relation to this law. We do not want that in any way to be read as a codification or narrowing of the Ombudsman’s broad powers under the Ombudsman Act. We are making sure there is nothing in this that can limit the powers of the Ombudsman under the act.

Senator COOK (Western Australia) (12.22 a.m.)—On sheet 4329 revised, under
‘88AI Annual review by Ombudsman of exercise of section 88AA power’, it says:

(2) For the purposes of conducting a review, the Secretary must provide the Ombudsman with such information and access to documents as the Ombudsman requires.

Is that the section that the minister is identifying?

Senator Ian Campbell—Yes.

Senator COOK—I note from the nod and the word yes that he is. It reads to me as a requirement on the secretary rather than on the Ombudsman. We also would not want the Ombudsman’s powers to be regarded as constrained by this. From that perspective—if I am missing something about this—the explanation that the Ombudsman’s powers are not constrained but nonetheless the secretary must provide such information as the Ombudsman requires is acceptable.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (12.23 a.m.)—I will add to that because it should be clear and we are trying to be expansive and open in this. The secretary would under the rest of the provisions of the Ombudsman Act be required obviously to respond to other issues. In other words, we are not limiting what the secretary is required to respond to. If the Ombudsman asks him something, we are making sure that this does not limit it in any way.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that Senator Murray’s amendments on sheet 4329 revised be agreed to. I point out that Senator Murray, by leave, moved Democrat amendments (1) to (6). We have had circulated by Senator Bartlett an amendment to Democrat amendment (5). Are you aware of that, Senator Murray?

Senator MURRAY (Western Australia) (12.24 a.m.)—I was, but I was not alert. Perhaps we should put amendments (1), (2), (3), (4) and (6) and then amend amendment (5) and have that put separately.

The TEMPORARY CHAIRMAN—The question is that Democrat amendments (1), (2), (3), (4) and (6) on sheet 4329 revised be agreed to.

Question agreed to.

Senator MURRAY (Western Australia) (12.25 a.m.)—by leave—I amend Democrat amendment (5) on sheet 4329 revised with amendment (1) on sheet 4342:

(5) Schedule 4, item 1, after section 88AG, insert:

88AGA Guidelines for the exercise or performance of powers or functions

(1) The Secretary of the Department must, in writing, determine guidelines relating to:

(a) the exercise or performance of powers or functions by the director (within the meaning of section 88AG) under a delegation; and

(b) the exercise or performance of powers or functions by an assistant (within the meaning of section 88AA) as mentioned in paragraphs 88AA(1)(c), (d) and (e).

(2) The Secretary of the Department must cause the guidelines to be tabled in each House of the Parliament.

(3) Guidelines tabled in accordance with subsection (2) are disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

(4) Guidelines determined in accordance with subsection (1) do not take effect until after the expiration of the time within which the guidelines may be disallowed by either House of the Parliament.

CHAMBER
Senator COOK (Western Australia) (12.25 a.m.)—For the sake of clarity, the Democrat amendment on sheet 4342 includes:

(3) Guidelines tabled in accordance with subsection (2) are disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

I will not read paragraph (4). I appreciate that Senator Murray is acting in the place of Senator Bartlett here. Are there any assurances that the senator might wish to express to the chamber about the things that might be required in any disallowable instrument? I ask this question because I did not hear the minister clearly when these amendments were moved. I did hear him say something along the lines that the guidelines ought to contain a reference to ‘minor and petty’ and that the secretary of the department should be in a position to establish what the grounds for the application of the coercive powers would be as a provision of the disallowable instrument. I am not sure whether I have got that right—whether that is what the minister said or whether he was just referring to it. I see Senator Bartlett is now here. I do not want to ignore Senator Murray, but perhaps whoever is the right person could explain it, and I would appreciate hearing the views of the government on this point.

Senator MURRAY (Western Australia) (12.27 a.m.)—I will bring Senator Bartlett into the picture, because he needs to give the assurances requested by Senator Cook. I should make it clear to the chamber that these assurances are given on behalf of the Australian Democrats party room by the Leader of the Australian Democrats and therefore have that status in this chamber. I say to Senator Bartlett that what we have done is moved, but not yet voted on, his amendment (1) on sheet 4342 to my amendment (5) on sheet 4329 revised, which effectively introduces the device of a disallowable instrument. That is expressed in proposed subsections (3) and (4) of Senator Bartlett’s amendment. The remaining issue for him to address, before we can put this amendment to a vote, is to express the assurance that Senator Cook was seeking.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (12.29 a.m.)—As I understand it, in speaking to the amendment circulated in my name that has been moved, Senator Cook asked for some specific assurances about the nature of the guidelines. I have been discussing this with a range of other senators to try to reach an outcome that people believe is satisfactory or sufficient. Part of that is to clarify the situation from the Democrats’ perspective. I understand that there is also a desire to have the minister clarify a similar understanding. I will talk to him about that to make sure he is aware of it.

Quite simply—and some of this has been put on the record already in this debate—the amendment puts in place a very significant protection. To recap, the Democrats’ simple belief is that something needs to be done to address significant degrees of major lawlessness in some aspects of the building industry. Our view is that a large component of that is not, as a lot of the preceding public debate has been about, specifically to do with trade unions or union officials—although obviously a small number misbehave—but significantly to do with issues like phoenix companies, tax avoidance, tax evasion, people not paying appropriate rates, and workplace health and safety issues.

Our intent through all of this has been on the basis that we believe action of some degree needs to be taken. We have rejected out of hand the government’s approach but we have sought to find some form of action that will enable sufficient information to be provided to allow better enforcement of the ex-
isting law—not just the existing Workplace Relations Act but equally or more importantly the tax acts and a range of others that I imagine have been outlined by Senator Murray already. As part of that, we recognise that we are giving extra powers to enable information to be gathered. We have sought to build into those powers as many protections as possible to ensure that they are not misused. We have repeatedly stressed our concern that the powers not be used for minor matters. We believe they need to be used in significantly serious matters. That is the benchmark we think they should be aimed at. This amendment gives an extra and very major protection.

Under the amendments already passed or agreed on by this chamber, the powers do not come into effect until the guidelines are tabled. Under this amendment, the powers will not come into effect until the guidelines can no longer be disallowed by either house of parliament. That, as some senators would know, is 15 sitting days plus, potentially, an extra 15 sitting days if a notice to disallow is given on the final day—so 29 or 30 sitting days in total, which can be an extremely long period of time. During all of that time the powers will not come into effect.

I think it has already been stated on the record that the Democrats have received an assurance on this in writing and have confirmed in writing with the minister—and we have given a letter to the shadow minister affirming this as well—that the Democrats will be consulted in the drawing up of the guidelines and the final version, and that the guidelines will be modelled on the ACCC guidelines that apply to the exercise of powers under section 155 of the Trade Practices Act. I do not know if all in the Senate are aware of those guidelines, but they form a reasonably sizeable document which has now been tabled. They are significant, and the new guidelines will be modelled on them.

We have stated in this debate, through our other amendments, our strong intent to ensure that the powers are not used for minor or petty purposes or for the purposes of harassment. We have also indicated, and moved amendments to reflect, our view that the secretary should not be able to exercise their powers unless there are reasonable grounds under subsection 88AA(1). Despite the fact that we have given assurances that that is our strong intent and the government has given assurances that the powers would not be used for minor and petty purposes or for harassment, the Democrats commit to examine any proposed guidelines to ensure that they clearly spell out that they will not be used for minor or petty purposes—and I have added ‘for the purposes of harassment’—and that the secretary will not be able to exercise their powers unless there are reasonable grounds.

Obviously we will be looking at the guidelines to ensure that they do not contravene in any way those intents of the Democrats and that they reaffirm the intents that we have stated repeatedly on the record and reflected in our amendments. That is the commitment of the Democrats. This gives the Senate—and, in the context of the politics and the policy basis of this whole area, I think it is fair to say not just the Senate but the Democrats specifically—the power to disallow any guidelines that we do not support. During all that period of time the powers will not come into operation. That obviously puts a very strong onus on the government—beyond the commitments they give in the chamber or in writing—to ensure that our concerns are addressed, because we have the ultimate sanction of displeasure of being able to disallow the guidelines if we do not like them.
I do not think this amendment can be dismissed as a minor safeguard. I think it is an extremely significant safeguard. I acknowledge that it is one that has been discussed with, and considered by, the ALP. I hope that they acknowledge not just the legal effect of it but also the spirit and intent behind it. Despite all of the words I am sure have been said—I have not heard all of them tonight, because I have been talking to people outside the chamber—by the ALP about the Democrats, I hope they recognise that all of our actions in relation to this issue have been completely with the intent of ensuring better conditions for workers in the building industry, specifically, who are stuck in an area where they are under a lot of pressure because of the environment in which they work. A lot of that, in my view, is due to some crooks—the crooks being predominantly the people setting up phoenix companies and those sorts of things rather than those on whom the focus is often directed.

Whilst, obviously, others in this chamber have a different view about the adequacy of our approach, I certainly reaffirm the aim, intent and desire of our approach and what we are trying to achieve. I am firmly convinced that, whatever its dangers, it certainly has a better chance of achieving improvements in this area than doing nothing, and that is the concern we have. That is our response regarding the amendment. I think the amendment itself gives sufficient power, but I trust that those extra reassurances that I have put on the record—in addition to the letters I have provided to the shadow minister as well as to the minister—address the issues that the committee was wanting to hear about.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (12:38 a.m.)—I have been asked by Senator Cook and Senator Bartlett to concur with those reassurances.

As Senator Cook has asked, they do give an assurance in relation to the guidelines in two regards: firstly, that the guidelines will make it clear that the powers will not be used for minor or petty purposes or for the purposes of harassment, and that a secretary will not be able to exercise their powers unless there are reasonable grounds under section 88AA(1). Also, I did make it clear earlier in the debate that the guidelines will be similar to or modelled on ACCC guidelines. I did, in fact, table what I think is a complete set of the guidelines earlier this evening.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that Senator Murray’s amendment (5), as amended, be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that government amendment (2A), as amended, be agreed to.

The committee divided. [12:43 a.m.]

(The Chairman—Senator J.J. Hogg)

Ayes………….. 36
Noes………….. 23
Majority……… 13

AYES

Question agreed to.

Senator MURRAY (Western Australia) (12.46 a.m.)—by leave—I move amendments (1) and (2) on sheet 4266, as revised:

(1) Clause 2, page 2 (table item 2), omit the table item, substitute:
2. Schedule 1 The 28th day after the day on which this Act receives the Royal Assent

2A. Schedule 1A A single day to be fixed by Proclamation
However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period

2B. Schedule 2 The 28th day after the day on which this Act receives the Royal Assent

(2) Page 5 (after line 29), after Schedule 1, insert:

Schedule 1A—Whistleblowers

Workplace Relations Act 1996

1 Section 317 of Schedule 1B

After:

Part 4 provides for a Registrar to make inquiries as to compliance with financial accountability requirements and civil penalty provisions. The Registrar may also conduct investigations.

insert:

Part 4A provides protection for officers, employees and members of organisations who disclose information about contraventions of this Schedule or this Act.

2 After Part 4 of Chapter 11 of Schedule 1B

Insert:

PART 4A—PROTECTION FOR WHISTLEBLOWERS

Disclosures qualifying for protection under this Part

A disclosure of information by a person (the discloser) qualifies for protection under this Part if:

(a) the discloser is one of the following:

(i) an officer of an organisation, or
(ii) an employee of an organisation, or
(iii) a member of an organisation, and

(b) the disclosure is made to one of the following:

(i) a Registrar;
(ii) the Employment Advocate;
(iii) the person occupying the position in the Department known as the director of the Building Industry Taskforce;
(iv) an inspector;
(v) an authorised officer; and

c) the discloser informs the person to whom the disclosure is made of the discloser’s name before making the disclosure; and

d) the discloser has reasonable grounds to suspect that the information indicates that:

(i) the organisation, or a branch of the organisation, has, or may have, contravened a provision of this Schedule or this Act; or

(ii) an officer or employee of the organisation, or of a branch of the organisation, has, or may have, contravened a provision of this Schedule or this Act; and

e) the discloser makes the disclosure in good faith.

337B Disclosure that qualifies for protection not actionable etc.

(1) If a person makes a disclosure that qualifies for protection under this Part:

(a) the person is not subject to any civil or criminal liability for making the disclosure; and

(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.

Note: This subsection does not provide that the person is not subject to any civil or criminal liability for conduct of the person that is revealed by the disclosure.

(2) Without limiting subsection (1):

(a) the person has qualified privilege (see subsection (3)) in respect of the disclosure; and

(b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.

(3) For the purpose of paragraph (2)(a), qualified privilege, in respect of the disclosure, means that the person:

(a) has qualified privilege in proceedings for defamation; and

(b) is not, in the absence of malice on the person’s part, liable to an action for defamation at the suit of a person;

in respect of the disclosure.

(4) For the purpose of paragraph (3)(b), malice includes ill will to the person concerned or any other improper motive.

(5) This section does not limit or affect any right, privilege or immunity that a person has, apart from this section, as a defendant in proceedings, or an action, for defamation.

337C Victimisation prohibited

Actually causing detriment to another person

(1) A person (the first person) contravenes this subsection if:

(a) the first person engages in conduct; and

(b) the first person’s conduct causes any detriment to another person (the second person); and

(c) the first person intends that his or her conduct cause detriment to the second person; and

(d) the first person engages in his or her conduct because the second person or a third person made a disclosure that qualifies for protection under this Part.

Threatening to cause detriment to another person

(2) A person (the first person) contravenes this subsection if:

(a) the first person makes to another person (the second person) a threat to cause any detriment to the second person or to a third person; and
(b) the first person:
   (i) intends the second person to fear that the threat will be carried out; or
   (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
(c) the first person makes the threat because a person:
   (i) makes a disclosure that qualifies for protection under this Part; or
   (ii) may make a disclosure that would qualify for protection under this Part.

**Officers and employees involved in contravention**

(3) If an organisation, or a branch of an organisation, contravenes subsection (1) or (2), any officer or employee of the organisation, or a branch of the organisation, who is involved in that contravention contravenes this subsection.

**Threats**

(4) For the purpose of subsection (2), a threat may be:
   (a) express or implied; or
   (b) conditional or unconditional.

**Involvement in a contravention**

(5) For the purpose of subsection (3), a person is involved in a contravention if, and only if, the person:
   (a) has aided, abetted, counselled or procured the contravention; or
   (b) has induced, whether by threats or promises, the contravention; or
   (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
   (d) has conspired with others to effect the contravention.

**Offence for contravening subsection (1), (2) or (3)**

(6) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Maximum penalty: 25 penalty units or imprisonment for 6 months, or both.

(7) In a prosecution for an offence that relates to a contravention of subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

**337D Right to compensation**

If:
   (a) a person (the person in contravention) contravenes subsection 337C(1), (2) or (3); and
   (b) a person (the victim) suffers damage because of the contravention;

the person in contravention is liable to compensate the victim for the damage.

**Senator COOK (Western Australia) (12.48 a.m.)**—These Australian Democrat amendments dealing with whistleblowers come as no surprise. I had the privilege of sitting with Senator Murray on the committee that examined the so-called building industry improvement bills, and one of the things that he was concerned about all the way through was to insert into the legislation a whistleblower provision. We of course support such provisions in principle. We have no objection to them being inserted here. Given the classes that they apply to, we do not think that there is going to be much whistleblowing, because we do not believe the problems that the government has continually slurred this industry about exist. We do not believe that the recipe being put down tonight will solve the problem for the industry; it will in fact worsen it. However, given our views, there is no reason why there ought not be a whistleblower provision in this legislation, and we will vote for this tonight.
Senator MURRAY (Western Australia) (12.50 a.m.)—I should have explained very briefly for the record that we have simply lifted out the whistleblower provisions which are now in Corporations Law from the CLERP 9 package. They are almost exactly the same. The difficulty we had, and one of the reasons I was concerned, as Senator Cook would remember, was that CLERP 9 will apply to corporations in the building industry. That seemed odd to me, so I sought to extend it. Unfortunately, the advice that I have is that constitutionally I cannot extend it to unincorporated associations, partnerships or individuals running a business. I can only go as far as registered organisations. So I recognise the constraint. However, one of the things that did attract me is that, as I am well aware and contrary to the beliefs of many people, some businesspeople are members of the building unions—namely, subcontractors in the CEPU, the CFMEU and so on. That is the explanation for it.

Question agreed to.

Senator MURRAY (Western Australia) (12.52 a.m.)—by leave—I move Democrat amendments (5), (7), (10) and (11) on sheet 4292:

(5) Schedule 1, item 5, page 4 (line 29), after “false”, insert “sworn or affirmed”.

(7) Schedule 1, item 5, page 5 (after line 6), at the end of subsection (3), add:

Note: Section 10.2 of the Criminal Code Act 1995 states that a person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence under duress.

(10) Schedule 1, item 6, page 5 (line 23), omit all words from and including “of that subsection” to the end of subitem (1).

(11) Schedule 1, item 6, page 5 (line 27), omit all words from and including “of that subsection” to the end of subitem (2).

The chamber may be surprised to find that those are the only amendments, but I remind the chamber that this is a recommitted bill, and the other numbered amendments have already been passed and are part of the recommitted bill. These are the remaining amendments to be put.

Senator COOK (Western Australia) (12.52 a.m.)—I know it is late and I do want to expedite proceedings, but I also have an obligation to put our position on the record and establish clearly what is before the chair. I understand that Senator Murray is now moving the group of amendments relating to so-called misleading evidence.

Senator MURRAY (Western Australia) (12.53 a.m.)—Senator Cook is quite right. I should not have been so brief in moving them. These amendments do indeed relate to the issue of evidence and the intention is to make it sworn evidence as opposed to unsworn evidence, which was in the original bill. There are application amendments also attached to this sheet, but that is the principal amendment.

Senator COOK (Western Australia) (12.53 a.m.)—As I understand this amendment, it relates to misleading evidence provided from the witness box which would be evidence under oath or affirmation, and it amends the bill with respect to the more widely cast provision that the government had proposed that would involve misleading evidence by an advocate at the bar table. Because it limits the alleged mislead to what a witness might say under oath or affirmation, we are disposed towards this amendment. However, a number of questions do arise.

Senator Murray, if a witness—having sworn an oath or affirmation to tell the truth, the whole truth and nothing but the truth—provides evidence which is misleading from the witness box, my understanding is that that is an offence. The person guilty of such an offence can be prosecuted and the courts are quite severe—and rightly so, in my opin-
ion—in punishing people guilty of such an offence. However, I do not understand—and I respectfully require an explanation of this—what the difference is between that offence and misleading. In this amendment are we in fact saying that the offence of perjury is now qualified by a new offence, which is perhaps of a lesser standard but might be characterised as misleading? If we are, I would be interested in hearing a justification for so doing.

Senator MURRAY (Western Australia) (12.56 a.m.)—I will turn to the government to respond to the substance of your question, because it is their original amendment which I am amending, and I think they need to address that. It is some time since I dealt with this, but let me recap from memory. The nature of evidence adduced in these circumstances is often discursive—I think that might be the word. People appear in these circumstances and put a position. Of course, that is not the kind of presentation which you would normally expect in a situation where something is sworn. When something is sworn, as the lawyers amongst the senators would know, it has to be properly presented, tested and laid out. The way in which evidence is put at present in these circumstances, as I understand it, is that unsworn evidence is often of a submission type and of a presentation type. By ‘submission type’ I do not mean a submission by a lawyer; I mean a submission by a person who is an expert but not a lawyer. So there is a precise difference between sworn and unsworn evidence in terms of restricting the nature of it. I think that is as far as I should go in saying to you that my amendments seek to tighten up the government’s intention. I think it is for the government to answer your substantive question.

Senator COOK (Western Australia) (12.58 a.m.)—I would be grateful if the government would answer the substantive question, because we are dealing with matters here, as Senator Murray has rightly said, which are discursive from the witness box. However, witnesses are under oath or affirmation to tell the truth, the whole truth and nothing but the truth, and whatever they say is cross-examinable. I was an industrial advocate in another life, and I spent a number of years doing that. The sort of evidence we are talking about in an arbitration proceeding or in a proceeding dealing with a dispute is often evidence about subjective opinion—the witness expressing their opinion. It may well be that people disagree with that opinion, and frequently they do, but that witness is then cross-examinable by opposing advocates in order to ascertain the validity of that opinion, to characterise that opinion differently or to undermine that opinion. The arbitrator will make a decision based on what he thinks is the most plausible outcome. Even so, that does not mean to say that that witness is not expressing an honest opinion, even if others regard it as misleading.

That is an argument, of course, as to why this provision should not be there at all. It is a disgraceful provision. It makes arbitration a more difficult art. It means people have to be fettered in the giving of their opinions lest it be characterised as misleading, and then be subject and exposed to all sorts of penalties. I recognise that Senator Murray is proposing to limit that to the witness box and not have it cast as broadly as the government would like—to embrace advocates who are advocating a case about values, not about facts. The case about values will be laden with facts but, in the end, what has to be decided is what is fair—not ‘Who committed that crime?’ but ‘What is a fair outcome?’ I have great difficulty with this clause but, since this is an improvement and it would be worse without it, we will vote for it.

Question agreed to.
Bill, as amended, agreed to.
Bill reported with amendments; report adopted.

Third Reading

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (1.02 a.m.)—I move:

That this bill be now read a third time.

Senator COOK (Western Australia) (1.02 a.m.)—I wish to speak to the third reading of the Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003. This has been a very difficult debate tonight. It has occurred at the end of a very long session, in which clearly you could argue from a reasonable perspective that the Senate has been quite exhausted by the extensive, long and arduous deliberations it has been required to make. Then, at the very fag end of this—the end of a very long session of parliament on the eve of the winter recess, in which the gallery is alive with speculation about the election—this legislation comes forward.

This is evil legislation—and I say that as a considered comment. This legislation undermines the civil liberties of a group of Australians who happen to work in the building industry and belong to a union. I remember the McCarthyist trials in the United States—‘Are you now or have you ever been?’ was the question. The question this legislation invites is: ‘Are you now or have you ever been a member of the CFMEU or some other union?’ This legislation is a major step down a slippery slope to deny the civil liberties of a group of Australians. On the waterfront they did it with guard dogs and balaclavas. Tonight we are proposing to do it with legislation to require people to be investigated and to incriminate themselves, if necessary, to the task force that has been set up to turn workers into criminals—a state funded organisation, not a law enforcement agency but a group of public servants, to turn workers into criminals. That by definition in a dictionary is what fascism consists of. I say that not pejoratively but to describe the true meaning of that evil. That is the step we are taking tonight, and there should be no misunderstanding about what we are doing.

One of the greatest expressions of human liberty is the phrase that began when the framers of the American Declaration of Independence said:

... all men are created equal, that they are endowed by their Creator with certain unalienable Rights ...

That declaration—one of the finest aspirations of human rights in the world—did not contain the caveat ‘except for building workers’. Nor does the Universal Declaration of Human Rights contain such a caveat and nor does any other declaration that espouses principles of civil liberties and freedom. That is because those principles are universal: they apply to people irrespective of their colour, creed, religion or occupation.

Tonight we make an exception in this chamber and we apply it to a group of building workers. What is the evidence? What is the justification for deviating so grievously from a fundamental norm? What is the justification for the deviation of a political party that I have held considerable admiration for when it has made strong representations on these very principles of human rights and civil liberties—the Australian Democrats? Why have they diverted? Is it that they think in this industry a little bit of fascism goes a long way? All I can say is: if you divert from the principles, you do not uphold the principles; you subvert them. You cannot amend that a little; those principles are universal and they do not have exception.

The evidence has allegedly been gathered by a $6 million royal commission. A royal commission is not a judicial proceeding. It is
not a court. A royal commission is an extension of the executive. It is an executive inquiry. It is an inquisitorial operation. The rights of people in this royal commission were subverted. There was no right of cross-examination. The findings of this royal commission, alleged to be evidence, are not evidence as a court would have it, but evidence adduced from a partial and partisan inquiry, funded with a team of investigators intent on subverting the facts. That royal commission reported its final document secretly, setting out the bases of allegations against people accused of criminality and illegality, almost 18 months ago. We expected that, if there was any credence to the allegations being made, it would have given rise to prosecutions.

Almost 18 months later, have there been any prosecutions under this document? There have not—none, zero. That is not because the allegations have not been investigated. It is not because there has not been time. When does the statute of limitations run out? Accusations hang over the heads of these people, and they are never taken to court to face their accusers, justify their positions and have a court decide the outcome. When does that happen? It has not happened here. On the web site of the royal commission are the names of individuals and allegations about illegal conduct.

We had before the Senate Employment, Workplace Relations and Education References Committee a building worker who said in evidence to our inquiry that as a young apprentice he got a job on the Westgate Bridge building project in Melbourne and, shortly after he started, the span of the bridge collapsed and 37 of his fellow workers were killed, in one of the biggest industrial accidents in this country. He went on to recount his life, from apprentice to tradesman and worker in this industry. He took exception to the fact that on the web site of the royal commission his name appears alongside allegations of illegality. He, as a dinky-di, decent Australian, has not had the opportunity to face his accusers in a court because no-one has taken a case against him. No-one will remove the allegation from the web site. In this electronic age, there is a cloud of alleged guilt over this decent person. They are the facts of the situation. That is the basis upon which we proceed.

There is an additional basis. Mr Nigel Hadgkiss, director of the Building Industry Taskforce, delivered to this parliament a report, 12 months on, alleging what his investigations have proven. That report says that there are 740,000 workers in this industry. He reported a number of complaints that had been received. He reported that a far fewer number had been investigated. He reported that, of the investigations, very few indeed had been referred for prosecution. Of those that had been prosecuted, I think only one or two cases have been proven—740,000 workers and one or two cases to the court. I ask the Senate to consider this: take a group of 740,000 Australians, and if you can only find one crook in that bunch I will go he. This is in an industry which is alleged to be endemic with criminality and lawlessness.

Let us set aside this charge of criminality. Respected members of the Australian community, commissioners of the Industrial Relations Commission tasked with the obligation of overseeing this industry, say to our inquiry that there is no criminality. Officers of the Master Builders Association in various states and other places say that there is no criminality. The use of the word ‘criminality’ applies a stigma to people and makes it appear as if there is an unlawful act being conducted. We in the Labor Party say: ‘If there is criminality, stamp it out. Use the police, invoke the Criminal Code, provide people with the rights that criminals have, and deal with them that way.’
The next allegation that the commission makes is about lawlessness. This is where I have the biggest problem of all. I am offended by the use of the term ‘criminality’, but the term ‘lawlessness’ offends me most of all. In this country, industrial disputes must be prevented and settled under the Constitution if they go beyond the borders of one state. Historically, we have done that by arbitration, by calling the parties to a dispute in to a commission, by hearing their stories, weighing the relative merits of their arguments and trying to determine what is fair. That is how we have resolved it. Now, if workers break the strict letter of the law in the pursuit of a reasonable objective, they can be regarded as lawless and they can be pursued by this fascist police force now being built into our act. They can be compelled to incriminate themselves and they can be prosecuted. Decent men and women standing up for a reasonable entitlement and saying what is fair for them are turned into ‘lawless’ individuals, and we use this police force to attack them. The only way you can solve industrial disputes is by sifting through the merits of the case and, if the parties cannot agree as we would like them always to agree, trying to arbitrate a fair outcome that both of them can wear.

But let us give this some real-life grunt. If you are working on a building site—one of the most dangerous occupations in this country, with one of the highest levels of accidents per thousand employees and where the cost to this industry is eight times the cost of lost through industrial disputes—and you refuse to walk on to a job because it is unsafe and does not comply with the safety rules, you are directed to do so and you refuse, that is lawless behaviour. You are required to put your life at risk; if you do not, that is lawless behaviour. If you do not, you can be investigated and forced to incriminate yourself. If you do not, that is lawless behaviour, and there are sanctions as a consequence.

One of the defences of the government is to say, ‘Well, the ACCC has these powers’ or ‘ASIC has these powers.’ The ACCC and ASIC are statutory authorities. They have acts. The officers of those agencies are required to conform with the requirements of their act. If they do not, they can be taken to court and prosecuted. This is a department under a government that has introduced contracts for departmental heads and performance bonuses if they do not do the political will of the government. If you do not do that, you do not get your bonus at the end of the year, and you can get sacked as well. They can terminate your contract. There is a classic difference between a statutory authority or agency, like the ACCC or ASIC, and a department and the line of authority. A minister, where there are contracts, can require behaviour and withhold a bonus, if it has not been paid, or dismiss a departmental head.

One of the biggest problems we have is that this is a country that runs on a version of the Westminster system of democracy. It requires a fearless and independent public service. One of the hallmarks of this government is to politicise the public service and turn public service officers into hirelings and political animals on behalf of the government. That is an offence, in my view, against how the public service should operate. It is also a trap, I might say, for ministers because ministers do need frank and fearless advice—not simpering, friendly advice to make the minister feel confident that their objective can be achieved irrespective of the unforeseen consequences. In this new move to a politicised public service where you have got politicised departmental heads and politicised officers, who says this legislation on a task force is not political, who says it is not another version of the waterfront and who says it is not another way in which this gov-
ernment uses the force of the state to subvert the organisation of trade unions?

I am, have been and will remain a member of a trade union and I am proud to be so. It is not an offence in Australia for that to occur—yet—and I hope it never is. I think the role of trade unions in lifting the living standards of ordinary working men and women in this country is something that we should celebrate. Working men and women are entitled to dignity and self-respect and I do not think working men and women, decent Australians, should be categorised as criminals. I do not believe that employers in this country think they should be either. I do believe that some employers in this industry try to scrape the last quid out of the bottom of a barrel in the structure of an industry that means that if you win a contract you do it on the lowest bid and you have to find how you can cut the corners to make the sums add up to get a profit. In the structure of this industry, though, there are employers who underpay workers, deny them their entitlements, sack them before Christmas so they do not get public holidays, dupe them on their compensation, do not cover them properly and expose them to danger and risk without properly training them either. I do not think those employers should be tolerated. Where in this legislation is there anything that deals with that problem? It is a real problem but this legislation does not face it, does not deal with it.

This legislation focuses on workers. It is one-sided and there is no balance, no equity and no fairness. One union gave evidence to the committee that in the last 2½ years they had recovered over $10 million for underpaid workers. We have a union exercising right of entry to a building site being prosecuted for trespass. If that is the standard to be applied to a union exercising those rights that it is entitled to exercise under every international convention governing labour standards—that they are stigmatised as trespassers—then it is only fair to say that those employers who underpay workers or who expose workers to damage or danger leading to injury are either thieves and robbers or people guilty of assault and, in the event of death, murder. If you apply to employers the standards being used to stigmatise workers, that is a fair and equal balance. I do not apply that standard. I regard those employers as underpayers and I do not regard those employers responsible for lax occupational health and safety as murderers, but I do expect that those employers will not regard members of unions either as trespassers or as crooks simply because they stand up for themselves and argue a right and entitlement.

This is a dark day for the civil liberties of Australians. It may be that unions are unpopular and it may be that workers in the building industry do not present a very comely face on television and it may be that they march and protest and assert their rights and it may be that that offends middle-class Australians sitting in living rooms in marginal seats whom the Liberal Party wishes to appeal to. It may be that those things are true. But all those things are their right and entitlement in a free society to do. It is also, in a free society, the right and entitlement of people to get up and criticise them. If you disagree with them do so, but do not take away their right.

That leads me to my final point. It is a point that I made earlier and a point that I now bring with considerable sadness and considerable loss of faith to the attention of the chamber. I have admired the Australian Democrats in their defence of civil liberties and human rights. I think sometimes they take courageous stands. It has been said in this debate that the Democrats have pursued a balance and that they have on many occasions resisted legislation in the field of industrial relations that would have been onerous
and pernicious. They have, and they are enti-
titled to be respected for so doing. But it does not end on that basis. There is no rule here that says a little bit of illiberalism—subjugation of rights and undermining of principles—is needed to balance the defence of them. These principles stand, and if you subvert them you are a subverter of those principles. This is not a stretch to say that when liberty is attacked then the principles of liberty have to be defended. You cannot concede a little bit. I remember the lessons of the Nuremberg trials after the Second World War, where people tried to defend their actions by saying, ’We thought that if we made a concession the problem would go away.’ You cannot make a concession on those matters. You have to stand up and defend them, and you have to defend them for people you like and people you do not like if that is the case. You cannot visit in industrial relations a police force to solve problems; you will worsen them. (Time expired)

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (1.22 a.m.)—I realise it is late but I think it is necessary to put the Democrats’ position to correct for the record some of what has just been said. I agree with large components of Senator Cook’s contribution, particularly in relation to people’s rights and freedoms, the importance of unions, the need to ensure that unions are able to play their role and the need to defend that role. But I will not cop the idea that the only people who care about workers are the Labor Party. I will not cop the idea that the Labor Party particularly are the defender of civil liberties.

Frankly, I think part of the problem that some in the Labor Party have is demonstrated by Senator Cook’s contribution. I have no doubt that it was heartfelt and that he believed it all, but I think it was overstated and some of it was clearly inaccurate and reflects some of the culture and attitude of aspects of the union experience that is clouding their judgment. I do not blame them for that; indeed I accept and affirm the concerns of many in the union movement and the Labor Party about the motives of the Liberal government. The government clearly have an antagonistic approach towards the union movement. You have only to look at the wide range of legislation that they have attempted to put forward just in the life of this parliament alone to show that. The rhetoric, not so much of the current minister but certainly of the former minister, also gives a clear idea of the intent and ideology of the government. I am not a fool; I can see that, but I can also see other things that need to be acknowledged.

I know that Senator Cook feels strongly about this issue, but I nonetheless take offence at the suggestion that the Democrats do not care about workers. We are concerned about the issues he addressed, in particular that working in the building industry is a dangerous occupation. We are also concerned about some of the facts that have come forth in relation to the widespread tax avoidance in the industry and the large number of operations of phoenix companies. It is the workers who get ripped off through those sorts of operations. The unsafe environment is because of that culture of intimidation and a lack of ability to enforce the law. It has been the Democrats’ agenda to address those concerns. I do not mind people putting forward arguments that, in their view, we may have made misjudgments in dealing with this legislation in the best way, but I do take offence at the suggestion that we do not care. The core aim of what we are trying to achieve in this legislation is to ensure that there is some extra protection for workers in an industry that, in Senator Cook’s own words, has significant problems for its workers.
The reason that the law is not being enforced is inadequate powers to get information. I acknowledge that there are a whole lot of other reasons for that. That intimidation occurs and that some of the shonks, crooks and dodgy operators generate reactions from unions working in such a tough environment is because there is not sufficient enforcement of the law. The Democrats are particularly focused on that. Yes, we have a strong and proud record on civil liberties—and I retain that pride—but, hand in hand with that is our strong and proud record of upholding the rule of law. That is part of what we are about.

I just have to ask every person who has spoken tonight—and I am sure they are genuine—about the importance of civil liberties for these workers: why are you suddenly concerned for the workers in this industry? What about the civil liberties of all Australians? Those same people passed bill after bill. The ASIO legislation enables any Australian to be taken into secret custody for up to a week and to be interrogated. They have no right to silence. They have to prove that they do not have information or face five years in prison. They can be denied access to an interpreter. They can be interrogated in the absence of a lawyer. They do not even have to be suspected of a crime; they need only have information ASIO thinks might be useful and that the person should provide. If you want to talk about civil liberties, try to justify passing that sort of legislation, which applies to every single Australian. If you want to go back and repeal that legislation, we will stand beside you; but, until you do, do not talk to us about civil liberties. I could go on and on.

One other small but nonetheless noteworthy benefit is that this evening we have ensured that the Surveillance Devices Bill has not come on for debate—another bill that, if it had, would have been passed by the Labor Party even though it creates a situation in which private corporations will lawfully be able to covertly spy on the daily activities of Australians. The Labor Party were going to pass that. We have prevented that at least for tonight. So do not talk to us about civil liberties. We acknowledge there are risks with this legislation. Giving anyone—any government, any department or any authority—powers has risks. That is why we put in place protections. We have attempted to do that. I acknowledge the efforts of not just the Labor Party but also the government to work to address the concerns about protections. If you tried to work together a bit more often you might overcome some of this mutual suspicion you have of each other and you might not have so many problems in some of these areas.

The fact is that significant protections have been put in place. The powers which people have expressed concerns about will not come into force until and unless the Senate decides not to disallow guidelines that are yet to be developed, let alone tabled. There are very significant protections in place. Senator Cook made a range of overstatements and inaccuracies. I will not address all of them. I simply want to make the broader point that the Democrats’ main agenda is to ensure that people who are part of the building industry—and that includes workers who are subcontractors—have a safer environment where the rule of law is upheld. Unless the rule of law is upheld, all your talk of civil liberties is just nice sounding words. It is hard to think that it is anything other than nice sounding words, given your record on the ASIO legislation, on the antiterrorism legislation that you passed just today, on the criminal code amendment terrorism organisations legislation and on the security legislation terrorism bill—you passed all that legislation which contains massive removals of civil liberties for every single Australian. Please do not suddenly accuse us of not be-
ing concerned about these issues. Important issues need to be addressed in this area. We have put these issues forward and not, as has been suggested, out of the blue, suddenly at the last second at the end of a long session. I remind all parties in the Senate that the Democrats have repeatedly attempted to have more sitting hours to enable us to deal with the huge number of bills before us.

We have put these forward at the end of a long inquiry, which I know Senator Cook was part of—as was Senator Murray from the Democrats—that examined these issues at length, including the issues of enforcement and what the real situation is for workers and others in the building industry. Our clear view from that inquiry is that the government has vastly overstated the problems. We are on the record as being critical of the Cole royal commission, its lack of balance and many of its flaws. That does not negate the fact that there are problems that should be addressed. That is what we are attempting to do. We acknowledge and reaffirm the concerns about the government’s potential agenda and use of these powers—that is why we have sought to have so many protections put in place, and we will continue to pursue that.

I hope that all sides can at least recognise the situation and the record of the Democrats on workplace relations issues. We are regularly in the middle of this level of passion, shall we say, which is derived from many years of bitter experiences from people, I suspect going back generations. In that sense it is perhaps not surprising, but that still does not help to address the issues. It is a situation where we have to try and step aside from that and look at the total picture and decide whether or not there is a way forward. I think the record is quite clear that the Democrats have prevented the passage of a large number of totally unnecessary and draconian measures by this government. That is what we did at the end of this inquiry: we rejected out of hand the legislation flowing from the Cole royal commission.

Senators would know that is not common for us in industrial relations; we usually attempt to get some components and examine them. We put forward other measures based on the evidence that came out of that inquiry to try and address them. I do not suggest that they are going to address every problem, but it is clear now that the intent and the aim is to try and get a better opportunity for the enforcement of the rule of law and to be able to access the information to do so. That is our aim, and we will obviously seek to ensure that is successful. We do not just roll in, pass bills, forget about them and go and do something else; we follow through, and I think our record shows that. Nonetheless, I reaffirm our commitment to do that. The protections that have been put in place as the result of Democrat amendments tonight will enable us to do that effectively.

The important fact is that this provides the opportunity to move forward. It should be emphasised that these are interim powers and they will wind up in three years. Obviously if they are misused there is no prospect of them being renewed. In the interim there is an opportunity to put in place a full national regulator to ensure proper protection. That protection does include workers, quite frankly. That is a key role. But unless you can get the rule of law for everybody then workers, bosses, subcontractors and people somewhere in the middle all have the risk of missing out. Frankly, I think something needs to be done, so do the Democrats, and that is what we have attempted to do.

Senator MURRAY (Western Australia) (1.33 a.m.)—I apologise to the chamber: I missed the earlier moment, and I am sure you all understand why. I was supposed to
have moved a revised motion, which I seek leave to move now.

Senator Murphy—To withdraw all the other amendments?

Senator MURRAY—That is right.

Leave granted.

Senator MURRAY—I move:

At the end of the motion, add “and that proposed Schedule 1B as contained in amendment (2) moved by Senator Murray on sheet [4266], be referred to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by 30 November 2004”.

Senator COOK (Western Australia) (1.34 a.m.)—Having given Senator Murray leave to move this motion, I rise to speak very briefly to it. I support the motion, and the Labor Party will be voting for it. But it is important to put on the record what this motion refers, and that is a provision proposed by the government to enable legislation to reach into a registered industrial organisation—obviously, a union—and require a method of appointing delegates where that registered industrial organisation may have affiliated to a political party. There is only one political party in Australia that unions are affiliated to, and that is the Australian Labor Party. That amendment would have enabled a government of a different political character—and fortunately it is not supported—to decide how its political opponent and the unions affiliated to it regulated their affairs. If that is not a travesty of democracy I have never seen one. To reach in and try and manage the affairs of your opponent is, I think, just unbelievable and I am glad that it is going off to a committee. I support the motion.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (1.36 a.m.)—I will not delay the Senate. I thank the honourable senators who contributed to the debate. Senator Bartlett is quite correct in saying that these are very heated debates. There is no doubt from Senator Cook’s contribution tonight about the true passion in his belief in this cause. He has dedicated his life to trade unionism and his views of protecting workers’ rights. There are many on this side of the chamber who would respect his passion and his life’s work in the trade union movement and in serving the people of Western Australia in this chamber. However, he should also respect the fact that there are a lot of people on this side of the chamber who joined a political party and came to this place because they believed in freedom of association. They believe equally strongly in ensuring that people should be able to choose to join or not to join a union and to feel that if they choose not join a union they will not be intimidated when they go into a workplace.

From my own experience in the property industry in the city of Perth and in other capitals around the country, I would say that going onto a building site is not a thing that you can do in Australia now, or could do then, without feeling a sort of intimidation—and it probably is not the fault of the trade unions entirely. Senator Cook may be able to go onto building sites and not feel that intimidation. However, I think part of the truth of what Senator Bartlett told us tonight is that when you have an industry like the building industry in Australia—and it is not unique to Australia—where the law is often breached, it breeds corruption not only amongst the organised work force, but also amongst the building companies and members of the industry itself.

In joining with the government to help pass this historic legislation, the Australian Democrats have very honourably said that we have to call an end to that. Australian citizens should be able to go into a place of work and not feel intimidated. Australian workers should be able to make their own
decision from the point of view of their own conscience as to whether they join a union. My own strongly held view—and it is something I said back in May 1990 when I made my first speech in this place—is that trade unionism in Australia has played and will continue to play an important part in protecting workers’ rights, particularly the rights of the low paid and those who are not able to represent themselves in negotiations with employers. This government has worked towards that under consecutive workplace relations ministers, including Peter Reith—who was demonised by the Left in the Labor Party—Tony Abbott and Kevin Andrews.

In Kevin Andrews I think we have an extraordinarily successful, very thoughtful Minister for Employment and Workplace Relations, who gets on with the job and is committed to the cause of liberalism and freedom of association. It is very important that Australians can go into any workplace in this country and feel that freedom and not be intimidated. To go back to the point I made earlier, I think it is very important to recognise that trade unionism itself will benefit when people feel that trade unions are free and that they are fair and that they do not intimidate people. I am sure that for most trade unions that is, in fact, the reality and that most trade unionists actually do not feel any of these things, even though membership of trade unions has been significantly deteriorating over the past 10 to 15 years. That might change once you can address some of these problems.

There are people in the trade union movement who support what the government is doing tonight. I have had members of trade unions, members of the Australian Labor Party and Australian Labor Party members of parliament encourage us to go down the path we have made. It is a historic night tonight. It could not have been possible without the efforts of Senator Murray and Senator Bartlett, the work of Kevin Andrews and the people in his department, and many others, no doubt. I particularly thank those people in the department who have helped me and advised me tonight, and I genuinely thank all contributors to the debate.

Question agreed to.
Question put:
That the motion (Senator Ian Campbell’s), as amended, be agreed to.

The Senate divided. [1.45 a.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes............. 36
Noes............. 23
Majority........ 13

AYES

Allison, L.F. Barnett, G.
Bartlett, A.J.J. Boswell, R.L.D.
Brandis, G.H. Calvert, P.H.
Campbell, I.G. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Ferris, J.M.
Fifield, M.P. Greig, B.
Heffernan, W. Hill, R.M.
Humphries, G. Johnston, D.
Kemp, C.R. Knowles, S.C.
Lightfoot, P.R. Macdonald, I.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.J. * Minchin, N.H.
Murray, A.J.M. Patterson, K.C.
Payne, M.A. Santoro, S.
Scullion, N.G. Tchen, T.
Troeth, J.M. Watson, J.O.W.

NOES

Bishop, T.M. Brown, B.J.
Buckland, G. Campbell, G.
Carr, K.J. Collins, J.M.A.
Conroy, S.M. Cook, P.F.S.
Crossin, P.M. * Evans, C.V.
Faulkner, J.P. Forshaw, M.G.
Kirk, L. Ludwig, J.W.
Lundy, K.A. Marshall, G.
McLucas, J.E. Murphy, S.M.
Nettle, K. Ray, R.F.  Stephens, U. Webber, R.  
Wong, P.  

PAIRS  
Abetz, E. Mackay, S.M.  
Cherry, J.C. Hutchins, S.P.  
Harris, L. Hogg, J.J.  
Lees, M.H. Moore, C.  
Ridgeway, A.D. Bolkus, N.  
Stott Despoja, N. Denman, K.J.  
Tierney, J.W. O’Brien, K.W.K.  

* denotes teller  

Question agreed to.  

Bill read a third time.  

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES  
Messages received from the House of Representatives agreeing to the amendments made by the Senate to the following bills:  
Veterans’ Entitlements (Clarke Review) Bill 2004  
Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004  
National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No.2]  
Customs Legislation Amendment (Airport, Port and Cargo Security) Bill 2004  
Message received from the House of Representatives agreeing to the further amendments made by the Senate to the following bill:  
Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003  
Messages received from the House of Representatives agreeing to the amendments made by the Senate in place of the amendments to which the House had disagreed to the following bills:  
Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 2004  
Superannuation Budget Measures Bill 2004  

GEOSCIENCE AUSTRALIA  
Return to Order  
Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (1.48 a.m.)—by leave—This statement is made on behalf of the Minister for Industry, Tourism and Resources and it is in response to a motion moved by Senator Allison at the request of Senator Cherry, as agreed by the Senate on 23 June 2004, relating to the production of documents regarding synthetic aperture work commissioned by Geoscience Australia. I wish to inform the Senate that, due to the short notice provided, it is not possible to provide the requested documents. At this stage, it is anticipated that the documents will be provided by 3 August 2004.  

GENE TECHNOLOGY  
Return to Order  
Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (1.49 a.m.)—by leave—This statement is made on behalf of the Minister for Health and Ageing. The order arises from a motion moved at the request of Senator Cherry by Senator Allison, as agreed by the Senate on 23 June 2004. It relates to submissions from committees, or individuals in their capacity as members of those committees, formed under the Gene Technology Act 2000 in relation to the applications for the commercial release of GE canola. I seek leave to incorporate in Hansard a document detailing the recommendations made by the Gene Technology Advisory Committee and the Gene Technology Community Consultative Committee. No submissions were received from individuals in their capacity as members of the committee formed under the act.  
Leave granted.  
The document read as follows—
**Extract from of Gene Technology Technical Advisory Committee (GTTAC) Communiqué 5 (22 August 2002)**

**2.3 Advice on Canola**

GTTAC considered two applications for the proposed release of GM canola in Australia.

**General Release of Roundup Ready® Canola (Brassica napus) in Australia (DIR 020)**

The OGTR has received an application from Monsanto Australia Ltd (Monsanto) for a licence for the intentional release of GM Canola that has been modified to tolerate glyphosate, the active ingredient in the herbicide Roundup®.

Monsanto proposes the commercial cultivation of Roundup Ready® canola in all the current and future canola growing regions of Australia, which potentially includes New South Wales, Victoria, South Australia, Western Australia, Queensland, Tasmania and the Australian Capital Territory. The Tasmanian State Government currently has a moratorium on the planting of GM plants in that State through the Plant Quarantine Act 1997 (TAS). Accordingly, in addition to a licence issued under the Gene Technology Act 2000 (CWLTH) and corresponding State laws, any release of Roundup Ready® canola in Tasmania would also require approval from the Tasmanian State Government. The use of genetically modified crops in Tasmania is currently restricted to approved research trials and no approval would be considered for any commercial planting.

Monsanto proposes a phased introduction of Roundup Ready® canola which enables the use of glyphosate for weed control with a limited release of approximately 5000 hectares in the first year (2003) in the canola growing regions of south eastern Australia. Monsanto expects a steady increase in the area sown to Roundup Ready® canola over a number of years across the canola growing regions of Australia, with the rate of increase being determined by market acceptance and seed and variety availability. Monsanto proposes to continue to work closely with the grains industry to manage the introduction of Roundup Ready® canola. Glyphosate is not currently registered for use on canola by the NRA.

The canola plants and their by-products, would be used in the same manner as conventional canola, including for human food and animal feed. After harvest of the Roundup Ready® canola, the grain will enter the general commerce supply chain in Australia for domestic and export markets. Canola is grown commercially primarily for its seeds which yield about 40% oil and a high protein animal feed. Canola oil, which does not contain genetic material, is used in the manufacture of a variety of food products. Canola meal, which does not contain genetic material, is used in the manufacture of a variety of food products. Canola meal is primarily used as a feed for livestock, but it is also used in poultry and fish feed, pet foods and fertilisers.

Monsanto proposes a systematic and strategic approach to risk management and product stewardship through the implementation of its Roundup Ready Canola Technology Stewardship Strategy, which includes a Roundup Ready Canola Crop Management Plan. These will be consistent with the Guidelines for Industry Stewardship Programs and Crop Management Plans proposed by the Plant Industries Committee of the Primary Industries Standing Committee (under the Primary Industries Ministerial Council) and the Guidelines for Supply Chain Management of GM Canola being developed by the Gene Technology Grains Committee.

**GTTAC advises the Regulator that:**

(a) The following risks or potential risks, especially given the commercial scale of the release, should be assessed in relation to the Roundup Ready canola application from Monsanto:

- toxicity or allergenicity of Roundup Ready canola;
- weediness or increased potential for weediness, including the persistence of canola in non-agricultural habitats and the factors determining such persistence;
- potential for the introduced genes to be transferred to into other organisms by cross pollination; and
- any other potential hazards, including whether commercial release is likely to result in changes to agricultural practices that may have an environmental impact.
(b) The potential for glyphosate tolerant canola to occur along roadsides does not present a significant risk to the environment.

(c) In addition, the applicant should be requested to provide further information on glucosinolate production and to provide a crop management plan.

(d) The inclusion of data on the chromosomal location of the transgenes in the molecular characterisation of the GMO would be useful if available. However, it is not absolutely required for the assessment.

(e) The applicant should be required to provide a detailed herbicide resistance management plan and any recommendations made regarding supply chain management.

Commercial Release of InVigor® Hybrid Canola (Brassica napus) for use in the Australian Cropping System (DIR 021)

The OGTR has received an application from Aventis CropScience Pty Ltd (Aventis) for a licence for the intentional release of a GMO into the environment. The aim of the proposed release is to allow the commercial use of InVigor® canola lines T45, Topas 19/2, MS1, MS8, RF1, RF2 and RF3 in Australian agriculture and continuing product research and development programs based on these lines.

Aventis only proposes to commercialise InVigor® hybrid canola derived from MS8 and RF3 lines for use by Australian farmers. Canola derived from T45, Topas 19/2, MS1, RF1 and RF2 lines has been approved for food and environmental release in a number of other countries and Aventis is also seeking approval for these lines to achieve consistency with existing overseas regulatory approvals.

InVigor® canola plants have been genetically modified to introduce a hybrid breeding system based on male sterile (MS) and fertility restorer (RF) lines, and to be tolerant to the herbicide glufosinate ammonium, the active ingredient in the herbicides Liberty® and Basta®. Lines T45 and Topas 19/2 have been genetically modified to introduce glufosinate ammonium tolerance, but do not contain the hybrid breeding system. Aventis have indicated that the use of InVigor® canola will also provide the option of using herbicides which have glufosinate ammonium as their active ingredient, in conjunction with other measures, for the control of weeds in the crop. Liberty® is not currently registered by the NRA for use on canola. Basta® is registered by the NRA for use in horticulture.

The canola lines Topas 19/2, MS1, RF1 and RF2 also contain the nptII gene from the bacterium Escherichia coli which confers resistance to some aminoglycosides including the antibiotics neomycin, kanamycin and gentamicin. The antibiotic resistance trait was used as a selectable marker in the initial laboratory stages to select canola plants that were genetically modified.

Aventis proposes the commercial cultivation of InVigor® canola potentially over all the current and future canola growing regions of Australia, which includes New South Wales, Victoria, South Australia, Western Australia, Queensland, Tasmania and the Australian Capital Territory. However, as noted for DIR 020, release in Tasmania would also require the approval of the Tasmanian Government which has imposed a moratorium on the cultivation of GM food crops under its Plant Quarantine Act.

Aventis proposes a phased introduction of InVigor® canola with a limited release in the first year (2003), including seed increase and demonstration sites. Aventis expects that the scale of the release will expand slowly and that the scale of the expansion will depend on market acceptance, seed and variety availability. Aventis proposes to work closely with the canola industry to manage the introduction of InVigor® canola.

Aventis proposes to implement a stewardship program for the management of InVigor® canola. The stewardship program, including the Crop Management Plan for InVigor® canola, will be consistent with the Guidelines for Supply Chain Management of GM Canola being developed by the Gene Technology Grains Committee.

GTAC advises the Regulator:

(a) The following risks or potential risks, especially given the commercial scale of the release, should be assessed in relation to the InVigor® canola application from Aventis:

- toxicity or allergenicity of InVigor® canola;

CHAMBER
- weediness or increased potential for weediness, including the persistence of canola in non-agricultural habitats and the factors determining such persistence; 
- potential for the introduced genes to be transferred to other organisms by cross pollination; 
- any other potential hazards, including whether commercial release is likely to result in changes to agricultural practices that may have an environmental impact; and
- any hazards associated with the nptII gene.

(b) The RARMP should include a provision that glufosinate-ammonium tolerant canola should not be grown in vineyards. Glufosinate-ammonium is used to control weeds in vineyards.

(c) Inclusion of data on the chromosomal location of the transgenes in the molecular characterisation of the GMO, would be useful if available. However, this is not absolutely required for the assessment.

(d) In addition, the applicant should be requested to provide a detailed crop management plan, including a resistance management plan and any provisions made regarding supply chain management.

Extract from Gene Technology Technical Advisory Committee (GTTAC) Communique 8(8-9 April 2003)

Advice on Canola

GTTAC considered the RARMP prepared in response to the following application concerning the release of transgenic canola in Australia.

Commercial release of InVigor® canola (Brassica napus) for use in the Australian cropping system (DIR 021/2002)

The OGTR has received an application from Bayer CropScience Pty Ltd (Bayer) for the commercial release of GM canola into the environment.

Bayer are seeking regulatory approval for seven similar GM ‘lines’ of canola which have all been trialled previously in Australia under limited and controlled conditions. Although Bayer only intends to commercialise two lines in Australia, the applicant is seeking approval for all seven GM canola lines to achieve consistency with existing overseas regulatory approvals.

Oil derived from all seven canola lines has been approved for use in human food in Australia by Food Standards Australia New Zealand. The GM canola from the proposed release would be used as oil in human food, or in animal feed, in the same way as conventional (non-GM) canola.

The hybrid canola seed, which Bayer seeks to commercialise in Australia as InVigor® canola, is produced with a novel hybrid generation system based on two genetically modified ‘parent’ lines of canola: a male sterile (MS) line that contains a male sterility gene (barnase), and a fertility restorer (RF) line containing a fertility restorer gene (barstar). The progeny are expected to have enhanced agronomic performance, otherwise known as ‘hybrid vigour’.

All seven GM canola lines include a gene that confers tolerance to the herbicide glufosinate ammonium. The herbicide tolerance serves as a dominant marker for the introduced traits during breeding and hybrid seed production. It may also be used for the control of weeds in the canola crop, although glufosinate ammonium is not currently registered for use in broad-acre cropping in Australia. Bayer is seeking registration of glufosinate ammonium for use on InVigor® canola under the trade name Liberty® through the APVMA.

Four of the GM canola lines contain a gene that provides a ‘marker’ for antibiotic resistance in plants. This gene is used to identify and select modified plants during the development stage.

In accordance with section 184 of the Act, Bayer has sought approval to enable detailed technical information on precise gene constructs and molecular characterisation data to be declared ‘Confidential Commercial Information’. However, this information was made available to GTTAC and other prescribed expert authorities that were consulted on the preparation of the RARMP.

GTTAC discussed the RARMP for this application and advised the Regulator as follows:

The Committee agrees with the assessment made by the OGTR on risk of toxicity, allergenicity, weediness and gene transfer. There is no risk to
human health and safety above those presented by conventional canola, and that while the probability of gene transfer to other canola plants was high, the overall rate of outcrossing would be very low and the impact of this would be negligible; and

The Committee agrees with the proposed licence conditions, however advised that consideration should be given to:

- clarifying licence condition Part 2, Section 2.2.2 which requires the applicant to report adverse impacts to human health and safety and the environment; and

- the means of collecting data on the area planted to each GMO, as required by licence condition Part 2, Section 2.2.3 as it would be preferable to collect this information independently rather than via the applicant.

Extract from Gene Technology Technical Advisory Committee (GTTAC) Communique 11(19-20 November and 18 December 2003)

Advice on Canola

GTTAC considered the RARMPs prepared in response to the following applications concerning the release of GM canola in Australia:

General release of Roundup Ready (Brassica napus) in Australia (DIR 020/2002)

The OGTR received an application from Monsanto Australia Ltd (Monsanto) for a licence for the intentional release of GM Canola that has been modified to tolerate glyphosate, the active ingredient in the herbicide Roundup®. The use of Roundup Ready® canola will allow the application of glyphosate for the control of weeds which emerge following crop planting. A parallel application for registration for the use of Roundup® on Roundup Ready® canola was made to the Australian Pest and Veterinary Medicines Authority (APVMA). The APVMA is responsible for the registration of agricultural chemicals for use in Australia.

Monsanto proposes the commercial cultivation of Roundup Ready® canola in all current and future canola growing regions of Australia, which potentially includes NSW, Vic, Qld, South Australia (SA), Western Australia, Tasmania and the Australian Capital Territory. Release of Roundup Ready® canola requires State or Territory government approval where various moratoria regarding GM crops have been imposed.

The canola plants and their by-products, would be used in the same manner as conventional canola, including for human food and animal feed. The use of oil derived from Roundup Ready® canola was approved by Food Standards Australia New Zealand in November 2000.

GTTAC discussed the RARMP and supporting information at length and agreed that this GMO is as safe to human health and safety and the environment as conventional canola. However, during the comprehensive discussion members raised concerns relating to the practical use of Roundup Ready® canola and Roundup® herbicide. These concerns included the potential impact the introduction and management of Roundup Ready® canola may have on herbicide usage and the development of herbicide resistance. The Committee discussed the use of non-glyphosate herbicides on GM volunteers in non GM canola crops, and management of roadside volunteers resulting from seed spillage. The Committee recognised that these concerns were being considered by the APVMA as the responsible regulatory authority.

The Committee resolved to write to the APVMA outlining their concerns regarding the potential for development of herbicide resistance as a result of inappropriate herbicide use following the introduction of Roundup Ready® canola.

GTTAC advised the Regulator that:

- The Committee agrees with the risk assessment made by the OGTR, including the conclusions of the RARMP;

- The section on Toxicity and Allergenicity should clearly indicate that there is no difference between the GM and non-GM plants, except for the expressed genes;

- The RARMP should adequately explain why the main areas of concern identified by GTTAC (potential development of herbicide resistance) do not fall under the Gene Technology Act; and

- The Committee agrees with the proposed licence conditions.
The RARMP should include information on current industry standards for the proximity of seed crops to commercial crops.

Extract from Community Consultative Committee (GTCCC) Communiqué 4 (20 February 2003)

The GTCCC meeting agenda on 20 February 2003 was a full agenda incorporating a report tabled by the Regulator on the activities of the OGTR since the Committee last met in November 2002 and a detailed report on the status of two applications received by the OGTR for the commercial release of GM canola. The Committee received progress reports from the current working groups established in July 2002 to provide specific advice to the Regulator. These working groups will continue out-of-session and are due to report again at the next meeting in 2003.

The Committee determined that it wished to provide advice to the Regulator on a number of topics arising from both the meeting and the discussions of the previous day:

Commercial GM Canola Applications

Following considerable discussion of this item, it was moved by Dr Rosemary Robins and seconded by Professor Frank Vanclay that the Regulator be advised, in relation to these applications, that:

‘The GTCCC expresses concern that a state of community unreadiness exists concerning the risks to the environment of the commercial release of GM canola, so significant that the applications should be declined at this time.’

Seven members voted in favour of this resolution and two against.

The GTCCC having previously resolved that the extent and nature of any dissent from the majority opinion in a meeting be included in the meeting communiqué, Mr Donald Coles and Mr Bruce Lloyd requested that their dissenting votes be formally recorded. Mr Coles, in dissenting, outlined the following reasons for his dissent:

- the perception that there is a state of community unreadiness is not borne out by the response to date from the GTGC in releasing their consultation draft on canola industry stewardship protocols;
- the Plant Industries Committee of the Primary Industries Standing Committee also released consultation guidelines in 2002 for industry stewardship programs and crop management plans;
- the GTCCC was not technically qualified to review the risks to the environment posed by or as a result of the commercial release of GM canola;
- it is not the role of the GTCCC to deny a potentially valuable tool for reducing herbicide resistant weeds to the Australian farming community; and
- it is not the role of the OGTR, as specified in the Act, to dictate supply chain matters.

Mr Lloyd, in dissenting, outlined the following reasons for his dissent:

- the GTCCC was not technically qualified to review the risks to the environment posed by or as a result of the commercial release of GM canola; and
- the matter should be referred by the Regulator to the Gene Technology Technical Advisory Committee for consideration of any risks.

The Regulator will take into account the Committee’s advice as part of the applications assessment process. The assessment process includes extensive public consultation, which is yet to commence, on the risk assessment and risk management plans that are prepared in respect of each application.

Canola Industry Stewardship Protocols

Following consideration on the GTGC presentation on the draft Canola Industry Stewardship Protocols the Committee resolved to thank the GTGC representatives for their time in coming to Mount Gambier and for their preparedness to answer wide-ranging questions on the day.

The GTCCC will also write to the GTGC requesting that they further develop the coexistence protocol framework to enable the GTCCC to make a more informed judgement about the state of readiness for the commercial release of GM canola in Australia.
AUSTRALIAN DEFENCE INDUSTRIES: FORMER SITE

Return to Order

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (1.50 a.m.)—by leave—I make this statement at the request of Senator Nick Minchin, the Minister for Finance and Administration. This order arises from a motion moved by Senator Kerry Nettle, as agreed by the Senate on 16 June 2004. It relates to the production of all documentation relating to the sale of Comland Ltd to Lend Lease Corporation Ltd that relates to the former Australian Defence Industries site at St Marys in New South Wales.

I wish to inform the Senate that, although all reasonable efforts have been made to comply with the order in the required time frame, it has not been possible to meet the order as a result of the volume of the documents being examined, the complexity of the issues to be assessed and the resources required to respond to the order. Senator Minchin advises me that he should be able to provide a final response to the order no later than 30 June 2004.

COMMITTEES

Community Affairs Legislation Committee

Extension of Time

Senator KNOWLES (Western Australia) (1.51 a.m.)—by leave—I move:

That the time for the presentation of the report of the committee on the provisions of the Commonwealth Electoral Amendment (Preventing Smoking Related Deaths) Bill 2004 and related matters be extended to 30 September 2004.

Question agreed to.

LEAVE OF ABSENCE

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (1.51 a.m.)—I move:

That leave of absence be granted to every member of the Senate from the termination of the sitting this day to the day on which the Senate next meets.

Question agreed to.

ADJOURNMENT

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (1.52 a.m.)—I move:

That the Senate do now adjourn.

Phillip C. Jessup International Law Moot Court Competition

Senator BRANDIS (Queensland) (1.52 a.m.)—The Phillip C. Jessup International Law Moot Court Competition is the most prestigious competition of its kind in the world. It is an international legal advocacy competition named in honour of a distinguished former American judge of the International Court of Justice. It was originally established by the Harvard Law School in 1959 and it has been conducted annually ever since. The competition has become so highly esteemed that this year students from no fewer than 529 law schools, from 85 nations, participated. Several Australian law schools were among them.

The competition is not limited to English-speaking nations, although the largest number of participants has usually come from law schools in the United States. In the Jessup moot competition, law students test their skill in the presentation of oral and written legal argument on a complex problem of international law. Prizes are awarded for both oral advocacy and written advocacy. So great has the prestige of the competition become, and so coveted the honour of placing well, that the best law students in the world spend
months of their time, often including all or most of their vacations, in practice and preparation. The Jessup moot competition is to law students what a world title meet is to elite sportsmen.

I am delighted to be able to tell the Senate that this year the prize for written advocacy, the Richard R. Baxter Award, was won by the team from the University of Queensland Law School, a particularly fine law school which I am proud to claim as my own alma mater. In defeating candidates from 528 other law schools to win the world championship, the University of Queensland law students this year achieved a standard of intellectual excellence superior to that of any of the most famous law schools in the world, including great law schools such as Oxford, Cambridge, Harvard and Yale, to name but a few.

The winning team comprised Caitlin Goss, Michael Hogan, Marion Isobel, Annaliese Jackson and Tamerlan van Alphen. I might mention that Caitlin Goss is the daughter of the distinguished former premier of Queensland Wayne Goss. The award was presented by one of Australia’s most respected judges, Justice Michael Kirby of the High Court, at a ceremony in Brisbane yesterday.

In acknowledging and congratulating the successful team from the University of Queensland Law School, a team which established themselves as champions over all of the greatest law schools in the world, acknowledgment should also be made of those who helped to train the students and helped them to practise—that is, members of the Brisbane legal profession, including Justice Margaret White, Dr Desmond Derrington, the Hon. Bill Pincus, Mr Robert Bain, Dr Michael White and many other judges, barristers and solicitors.

**Senator Mason**—And you too, George.
failures such as Enron, WorldCom, HIH and One.Tel had:

"...renewed interest in the adequacy of company information to the market, the veracity of company accounts as well as the excessive remuneration and rewards—with little or no correlation to company performance—afforded to directors and executives."

Then followed a paean to corporate campaigning. This is ironic given the lack of transparency involved in the administration of Industry Funds Services, or IFS, itself.

IFS operates numerous financial services companies and says it manages over $20 billion in superannuation assets on behalf of the 2.8 million members of IFS’ shareholders. Other reports suggest it manages combined assets of over $30 billion.

Despite controlling such vast amounts of money on behalf of so many workers, nowhere does IFS Pty Ltd’s management fees, nor the cuts taken by other parts of its group, appear to be detailed for ordinary members.

IFS’ reports to Industry Superannuation Funds are a mixture of self-promoting puff and amorphous financial information. Its actual income is impossible to ascertain.

Of particular concern is the amount of income derived by Industry Funds Services Staff Equity Trust, or IFS-SET Pty Ltd, which has been one of IFS’ key shareholders.

IFS currently has 600 shares. Most are owned by large industry super funds, such as HESTA, C-BUS, CARE Super, Savings Australia and the Australian Retirement Fund.

However, 12.5% of IFS has been owned by IFS-SET Pty Ltd. IFS-SET has been in turn owned by just three people—Garry Weaven, Mavis Robertson and Graeme Grant and is the trustee for the IFS-SET which I have been told is a Superannuation Fund of which the major beneficiaries would be likely to include these three people.

Garry Weaven is well known as a former ACTU Assistant Secretary who has risen to dizzy heights with IFS.

Mavis Robertson is less well known. She was CEO of C-BUS until 1997.

A former communist party official, she “fell into” superannuation in the mid eighties when doing publicity for the ACTU.

Graeme Grant has been associated with a number of ACTU financial enterprises.

One may well ask, if this is a superannuation fund, how the 12.5%—and a greater percentage in earlier years—interest in IFS Pty Ltd held by the Staff Equity Trust fits the requirement that a superannuation fund have no more than 5 per cent of its assets in a beneficiary’s employer’s company?

It is not known what income IFS-SET Pty Ltd has derived from its interest in IFS.

It could quite easily run into many millions of dollars.

It is implausible that all IFS’ profits have gone to the members of the superannuation funds that use IFS.

Yet this was the theme of a major television advertising campaign, launched by IFS and featuring former Reserve Bank Governor, Bernie Fraser, that went to air in the latter part of last year.

Recently, Bernie Fraser, castigated bank executives’ “scandalous” salary packages.

In the February 2004 IFS Report, Garry Weaven, IFS Executive Chair says “no elaborate justifications of outrageous executive and director remuneration packages.”

Maybe. Maybe not.

It might comfort members of industry superannuation funds if they knew what income IFS-SET has derived from its extensive involvement in the administration of their superannuation savings.

They might then be able to determine whether or not the benefits to Mr Weaven and the very limited number of other beneficiaries of IFS-SET have been excessive.

These issues were raised in a paper by Mr Peter Johnston, Chief Executive Officer of the Association of Independently Owned Financial Planners, who said “most industry funds do not fully disclose the true cost of administration to their members and the market’s dominant player, Industry Funds Services Pty Ltd (IFS), has relationships we find difficult to understand.”
Recent Chant West research has confirmed his claims.

He then stated:

“Many choose to only disclose $1 or $1.50 per week as ‘the only fee’ which we do not believe to be the case. A close look at the annual report and balance sheet of many high profile funds will reveal that the cost is substantially more, as high as 5%.

Let us hope that in fully complying with the spirit as well as the letter of the Howard Government’s new FSR Act, industry funds will fully disclose to members the cost of the services provided by Industry Funds Services Pty Ltd.

Peter Johnston’s paper seems to have prompted Garry Weaven and the Staff Equity Trust to capitulate rapidly to distribute its interest in IFS elsewhere. According to the Financial Review of 30 January 2004:

“The deal, likely to be announced soon, may quieten some of the controversy which has swirled around IFS and its chairman, including recent criticism by ... Adelaide-based ... Association of Independently Owned Financial Planners.

Will IFS’ imminent transition from a superannuation fund administration business to a banking model provide a pretext for restructuring Mr Weaven and others’ interests in this lucrative business?

It is not the first time this has happened.

As I indicated earlier, IFS-SET has recently owned 12.5% of IFS. Between 1998 and 2001 it owned 15% and before this, 20%.

It thus has already had two sell-downs of capital from which its three principal beneficiaries presumably benefited. On these previous occasions, though, it is not known what consideration was received, and this is likely to be the case again.

Undoubtedly there is a lack of transparency at the moment.

Despite the “deal” to which Barrie Dunstan made reference in that AFR article and despite detailed investigations, I have been unable to find out what, if anything, has happened regarding IFS-SET Pty Ltd’s shareholding in IFS Pty Ltd or to the accumulated assets in the superannuation fund.

Certainly, IFS-SET Pty Ltd no longer appears as a shareholder in IFS Pty Ltd in the chart at the back of IFS’ February 2004 Report.

Why has there been no public announcement as to exactly what has happened?

There are plenty of rumours around—one version in circulation is that the accumulated assets in Staff Equity Trust have been rolled over to other superannuation funds and that some of these assets have been allocated to other current or former employees of SES Pty Ltd who, according to this version of events, for years were promised but have been denied equitable membership of the Staff Equity Trust.

I have been told also that this recent allocation has occurred only because of considerable pressure and potential for political embarrassment being applied to Mr Weaven.

However, I am told further that the lion’s share of the assets, amounting to many millions of dollars, has gone to the accounts of the three principal beneficiaries.

The question is: have a few people profited enormously from not-for-profit superannuation funds?

One thing is certain—a complete lack of transparency means that no-one knows the answer—and how much this has cost industry fund members.

It will also be interesting to see whether or not Mr Weaven and others re-emerge in the new Members Equity Bank with “scandalous” salary packages.

Transparency is one important issue in this saga. Conflict of interest is another.

As a shareholder of IFS-SET Pty Ltd and beneficiary of the Staff Equity Trust, Mavis Robertson obviously had an interest in C+BUS continuing to use Industry Funds Services Pty Ltd, while a Director of C+BUS.

Graeme Grant was recently appointed incoming fund secretary of C+BUS, yet he is still a director of IFS, which raises similar issues.

Such issues of corporate governance and transparency need to be addressed. Fund members need to be sure that their savings are invested on the basis of best return and administration.
I understand that some of the above issues have been referred to APRA. They need to be examined fully, as does IFS’ metamorphosis from superannuation administrator to bank.

Lately ASIC has been of the opinion that the practice of industry superannuation funds directing members’ enquiries straight through to IFS—which picks up the calls without identifying that it is an entirely separate funds administration company—breaches the “holding out” provisions of the Corporations Act.

In other words, ASIC believes that IFS is “holding out” to be the super fund itself, rather than an administration company. This is how perceived conflicts can arise.

The sooner ordinary workers get transparency of administration of their industry superannuation funds the better informed and better off they will be and more able to apply effectively the choice of fund provisions which, despite the best attempts of the Labor Party, has at long last been delivered to them by the Howard Government.

Trade: Free Trade Agreement

Senator FERRIS (South Australia) (1.56 a.m.)—I seek leave to incorporate Senator Santoro’s adjournment speech.

Leave granted.

Senator SANTORO (Queensland) (1.56 a.m.)—Senator Santoro’s incorporated speech read as follows—

The Free Trade Agreement with the United States is a tremendous fillip for Australia today—and a magnificent benefit for our nation in the future.

No debate about the detail of the agreement—about, for example, what might have had to be left out of the agreement because of political reality at this time—can logically take place except within the context of understanding the ultimately beneficial nature of the agreement.

I know there are some on the Labor side—and others even further beyond the reaches of realism—who assert that tying our economy into the world’s biggest, greatest and most powerful economy is against the national interest. Most Australians will think, as I do, that any view that Australia’s true national interests are at risk of damage from association with America or its huge economy ignore reality and edges over the border of irrationality.

Let me say that some critics of the Free Trade Agreement speak with conviction and sincerity, but I believe they do so from a narrow and essentially self-interested perspective. There is nothing essentially wrong with that—it is everyone’s right to look out for themselves—but the FTA is big picture territory.

Any agreement can get bogged down in the detail and suffer the death of a thousand cuts from changes here and changes there, to suit some purpose that is very minor, perhaps even inconsequential, when the business is looked at from a broad perspective.

That is not to say that Australian negotiators—in this or any other agreement—should not pursue the national interest at all times and everywhere. It is to say that in something like the free trade agreement with the United States, the overall package is by far the bigger prize.

That’s hard, and I think everyone knows that, particularly Queenslanders who live in the state that is the home of Australia’s sugar industry. We all know that sugar was, at the final hour, excluded from the FTA. We all know why that happened: it happened because without that exclusion, there would have been no FTA.

But with sugar, the situation is that nothing has changed. Our quota access to the American market remains unchanged at 87,402 tonnes a year. The single desk export arrangements remain.

The structural problems of the sugar industry, which have nothing to do with the FTA, have been addressed by the provision of a restructuring and rescue package for growers. They will be addressed in part, by further development of an ethanol industry, and perhaps by a switch to alternative crops.

They will be addressed, finally, by the capacity of the Australian community to recognise that change is constant and that the game is to ensure that change is beneficial—that we make the best of change, grasp the opportunities of change.
That's what we are doing, as a nation, in relation to the FTA. We are grasping the opportunities presented by a fundamental change in the world environment. In that sense, it doesn't really matter whether the direct economic benefit is this many billions a year or that many billions a year. In time, the benefit will constitute a quantum leap in Australia's financial worth and our country's security—economic and otherwise.

The Labor Party certainly knows that—or at least, the rational elements within it do. It would be to the nation's benefit if the party's leader, Mark Latham, demonstrated his attachment to rationality and got aboard the bus too.

Labor has taken a hypocritical attitude to the agreement. It will support it because that's what the public wants, but in the meantime it seems to have decided to have its cake and eat it to. This may be fuelled by the anti-Americanism that appears to be latent in at least parts of the Labor Party—now including the Peter Garrett, and visible in spades in Mr Latham himself. The man who wrote about civilising capital apparently needs to civilise himself.

It is certainly long past time that he did, in relation to the FTA. He wants to civilise capital: But capital civilises—it puts real money in people's pockets and makes social improvement possible.

On the Free Trade Agreement, Labor now says it has all been too rushed. It suggests that the rush is all about our next federal election and that other one, in the United States in November. But has't been a rushed process at all.

The two sides to the agreement have been talking for years—at least 12 years in substantive forms, under successive and politically opposed governments—about reaching the sort of accord that is now before the legislatures of both countries. The report of the Joint Standing Committee on Treaties into the proposed free trade agreement, tabled this week, demonstrates the real time line very clearly. It is there is black and white:

- The proposed FTA was announced on 14 November 2002. That is when negotiations formally began.
- Negotiations between the trade representatives of Australia and the United States took place in five rounds between March 2003 and February 2004 in Canberra, Honolulu and Washington DC.
- The proposed agreement—the outcome of the detailed negotiations—was agreed at Washington on 8 February 2004 and signed at Washington on 18 May 2004.
- The Australia-United States Free Trade Agreement—AUSFTA—was tabled in the Australian Parliament on 8 March 2004.

There were some difficult areas of negotiation—and as we know, one area, sugar, where it simply was not possible to effect agreement—and the outcome, like every political negotiation, is less than perfect.

Yet if we conducted negotiations for international agreements—or any other matter of communal and therefore disparate interest—on a basis that without perfection there could be no concord, we should never successfully negotiate anything.

There were significant areas of dispute that emerged during the negotiations, not only between the parties—Australia and the United States—but also among and sometimes between interested parties here at home. There was the matter of the price of prescription medicines. That was resolved.

There were concerns raised about a number of things by the states and territories—and in our federation, it is essential to reach the greatest degree of concord possible between the tiers of government in Australia.

As a Senator for Queensland, I see the concept of formal intergovernmental relations within our country as an essential ingredient of federal equity and as an aid, not a hindrance, to national progress.

As a legislator, I see great value in the process of consultation that our system provides for. The fact that the Joint Standing Committee on Treaties received more than 215 submissions and held 11 days of hearings in seven cities, in pursuit of its inquiry into the proposed FTA, testifies to the level of engagement Australians have with their government.

This is an appropriate point to place on record my appreciation for the effort and hard work put into
the process by the chair of the committee, Dr Andrew Southcott mp. His constituents in the South Australian seat of Boothby have every reason to be think highly of their local member.

Similarly—although he is a dissenter from the full terms of the final report—Mr Kim Wilkie, the member for Swan, deserves much credit for his work as deputy chair.

It was a committee with much good spirit and human and which appreciated the magnitude of the task.

Committee secretary Gillian Gould, Julia Thoener who was acting secretary for six weeks, inquiry secretary Julia Morris, research officers Geoff Binns and Patricia Tyson, Carolyn Littlefair and Jennifer Cochran who provided research assistance, and administrative officers Frances Wilson, Heidi Luschtinetz and Kristine Sidley did sterling work in what was a complex area.

They worked incredibly long hours in a very professional and productive way.

As the committee concludes, we have a good model for closer economic relations in the bilateral agreement with New Zealand that has been in force since 1983.

CER is a great example of how, over time, bilateral agreements can evolve into deeper integration and increased trade between the parties.

While dynamic benefits can be hard to quantify—a point the JSCOT committee made in its report—it is reasonable to expect long-term dynamic effects on the economy. Ahead of a quantifiable outcome, the argument will always be whether that dynamic effect will be a positive one.

It is interesting in that context that of the three studies made of the proposed agreement thus far, only the one conducted on behalf of a union—the Australian Manufacturing Workers Union—postulates a negative return.

I am not saying that the study conducted by the Melbourne-based National Institute of Economic and Industry Research, under its director Dr Peter Brain, was in any way flawed.

But as Tim Colebatch, economics editor of the Melbourne Age wrote on Tuesday this week, they took an unusual tack: they looked at opportunity cost—on the basis that the cost of doing something is the loss of the benefit of doing something else instead.

This is of course a more subjective than ever area of qualitative economics, and an interesting exposition of how if you’re clever enough, you can make figures add up to anything. That study, incidentally, asserts that we should be $47 billion worse off over 20 years than if we had done something else instead. The AMWU might think we should return to protected industry, but of course the world has moved on.

It is far more sensible, in my view, to grasp the opportunity presented by the FTA now, work hard on maximising its benefits, and review progress—with the prospect of negotiating treaty improvements—within a reasonable period of time.

The committee recommends that binding treaty action be taken with respect to AUSFTA—recommendation 23 of the report.

This needs to be seen in the context of the remarks I made earlier to the effect that what we are signing up to is opportunity not only immediately but, at greater levels of benefit, for the future.

In the case of goods, it is—as has been noted in material provided to the committee—reasonably easy to determine, since it is defined in the scheduled tariff reductions and changes to tariff rate quota arrangements in each country.

In the case of services and investment the extent of market opening is more difficult to establish, because the bilateral arrangements are based on a negative list basis—everything not explicitly excluded is included.

But unless one takes an excessively negative view—that Australian products cannot compete, for example, or that Australian intellectual property is somehow devalued against its American counterpart, or that whatever happens, we’re down the tube—the benefits of linking into the world’s greatest and most dynamic economy are crystal clear.

It is an opportunity we must take. We must make it our own. And we must make it even better as it goes along.
Foreign Affairs: Burma

Senator FERRIS (South Australia) (1.56 a.m.)—I seek leave to incorporate Senator Ridgeway’s adjournment speech.

Leave granted.

Senator RIDGEWAY (New South Wales) (1.56 a.m.)—Senator Ridgeway’s incorporated speech read as follows—

Introduction

I rise to night to speak on the situation in Burma. Saturday, the 19th June marked the 59th birthday of Daw Aung San Suu Kyi, leader of the National League for Democracy and Burma’s democratic opposition. It was the eighth birthday since 1989 that Suu Kyi has spent under detention by the Burmese military government. It is also a clear indication that no progress towards a democratic future for Burma has occurred.

Aung San Suu Kyi, a Nobel Peace Laureate, has worked tirelessly in the hope of ensuring the establishment of a democratically-governed Burma. She and countless others have suffered numerous human rights violations in their efforts.

It is therefore important to take this opportunity to look into the present situation in Burma and assess what Australia, as part of the international community, can do to assist Suu Kyi and the Burmese democratic movement.

The situation in Burma

The issue of Burma has fallen from the public eye, but this is not in any way because the situation has improved—in the eyes of many people the situation has steadily worsened.

This is because in addition to the human rights abuses and the lack of a political voice that has persisted in the country, Burma is now also economically devastated as the military government—the State Peace and Development Council—the SPDC—continues to prioritise the allocation of funds to weaponry and to the coercion of its people, rather than focus on the basic provision of food, housing and infrastructure for its people.

This year’s national convention in May 2004, took no serious steps towards the “road map to democracy” proposed by the military government.

Instead, the convention was called to begin writing a new constitution which the military hope will secure their rule and influence in Burma for many years to come.

The UN special rapporteur, Paolo Sergio Pinheiro described the convention as a “meaningless and undemocratic exercise”.

This year, extra judicial killings, rapes, use of forced labour and child conscription continue to be carried out by security forces of the SPDC. In particular, ethnic minorities are subject to forced relocation.

Since 1996, it is estimated that 2,500 villages have been destroyed or relocated by force. This equates to 600,000 displaced people.

Further, Amnesty International estimate that there are about 1,350 political prisoners of conscience in Burma.

These facts are a disturbing reminder of the real consequences of the Burmese military government continuing to hold power in the nation.

As I mentioned earlier, Aung San Suu Kyi remains under house arrest following the attacks by the Burmese military on pro-democracy supporters and members of the NLD on 30 May 2003.

After this attack, all NLD offices (over 100) that had only recently been re-opened were again shut down. This has effectively closed the avenues for pro-democracy supporters to maintain any voice in Burma. Understanding this, we, as part of the international community must act as that voice.

Australia needs to show stronger resolve and commitment to the goal of democracy and the provision of human rights in Burma.

Refugees

There have been 30,000 new refugees arrive at the nine Thai-Burma border camps since 2002. Unauthorized departures from Burma are punishable by a two-year prison sentence and heavy fines. At one time, possession of a UNHCR refugee document or being identified by UNHCR as a “person of concern” was an immediate ticket out of a deportation proceeding.
Now, despite UNHCR protests, possessing a refugee document at best moves the refugee into “informal deportation.”

Returnees often are met by armed militia factions, or local officials seeking “volunteers” for forced labour or military service, or by those seeking to extort money from refugees desperately trying to return to Thailand.

Recently, the pace of informal deportations has quickened as Thailand increased pressure on the Burmese, in part through targeting them as the major part of the 1-2 million “illegal workers” drawn to the growing Thai economy.

Children at risk in Burma

The UN Committee on the Rights of the Child commented on the report from Myanmar (Burma) at its 36th session meeting earlier this month.

While the committee noted that the SPDC has ratified the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination against Women, they expressed concerned that it has not yet ratified most of the other main human rights instruments.

There are also a large number of children being trafficked for their exploitation to neighbouring countries, notably Thailand.

The Committee recommended that the SPDC extend the protection from sexual exploitation and trafficking in all relevant legislation to all boys and girls below the age of 18 years; and strengthen its efforts to combat sexual exploitation.

Australia’s position and our call for more action

Given that international concern, the question is: what can Australia do in order to contribute to a better future for Burma and its people?

What Aung San Suu Kyi and the NLD have asked for is a united, clear and unambiguous message from the international community that the actions of the Burmese regime will not be tolerated. In this request, Australia has not played its part.

Although the Australian government has made statements in opposition to the detention of Aung San Suu Kyi, we remain one of the few countries to maintain full diplomatic relations with the junta—thereby compromising multilateral efforts to affect overdue change in Burma.

As the EU refused last week to attend upcoming Asia-EU meetings because of opposition to the Burmese junta’s attendance, and as the United States Congress once again voted by an overwhelming majority to renew sanctions in support of Suu Kyi and the democratic movement, Australia has taken no action.

It is important for the Australian government to consult with members of the NLD and Suu Kyi herself so that they can advise us as to how we can best serve the cause of democracy in Burma.

The Australian policy of constructive engagement with Burma has been criticized by Aung San Suu Kyi and pro-democracy supporters in Burma.

In fact, last week the Senate passed a resolution calling on the Australian Government to reconsider its diplomatic relations with Burma until Aung San Suu Kyi’s release is ensured.

The resolution also called for the release Aung San Suu Kyi and her deputy Tin Oo, who remain under house arrest, and the re-opening of all offices of the NLD and allow those offices full access to communication with people both inside and outside of Burma.

Parliamentary Friends of Burma

It is evident that there is a great need for more action on Australia’s part, if it hopes to better assist multilateral efforts to work towards a return to democracy in Burma.

As such, I look forward to meeting with the many members of the Parliamentary Friends of Burma, group of which I am co-chair, in order to work out effective methods for assisting Suu Kyi and her supporters in Burma towards their goal of restoring democracy to Burma.

It has been too long: the situation in Burma is grave and the future is grim.

We cannot let this agenda of restoring democracy in Burma fade. As time passes and Aung San Suu Kyi and her party members age, we must ensure
that effective action is taken sooner rather than later.

- ICCPR & ICESCR audit—Indigenous children and refugees CRC/C/15/Add.237 4 June 2004

Non-Government Organisations

Senator FERRIS (South Australia) (1.56 a.m.)—I seek leave to incorporate Senator Mason’s adjournment speech.

Leave granted.

Senator MASON (Queensland) (1.56 a.m.)—Senator Mason’s incorporated speech read as follows—

A few months ago I spoke in this Chamber about the accountability of charities and other community groups which receive tax concessions. My remarks then were prompted by the growing phenomenon of charitable organisations involving themselves in political lobbying or indeed in election campaigning. Mr President, charity still begins at home, but increasingly it ends up here, in politics.

Charities which enjoy tax concessions, of course, are not allowed to engage in political activity or advocacy unless such activity is merely incidental to their charitable purpose. Unfortunately, this area of law and public policy continues to invite some uncertainty; it is very difficult to know at which point a charity crosses the line—in other words, when politicking, as opposed to charity work as commonly understood, actually becomes the main purpose of a charity.

Because of this uncertainty I believe there is much scope for unscrupulous “political wolves in charity sheep’s clothing” to abuse the generous benefits that all of us, as taxpayers, grant charities.

Tax concessions for charities are, of course, but one aspect of the whole complex relationship between the government, community organisations and Australian voters. Today’s debate in the Senate concerning the Extension of Charitable Purpose Bill 2004 illustrates just how important it is to certain groups to broaden the common law definition of charity so that organisations that previously fell outside the common law definition, such as certain child care and self-help bodies and closed or religious orders, now qualify for income tax and fringe benefits exemptions and certain GST concessions.

In recent times we have witnessed the growth of Non-Government Organisations commonly known as NGOs. Thousands, tens of thousands of groups in Australia alone now organise individuals to achieve common purposes that range from the very lofty ones like eliminating poverty or saving the environment, all the way to more mundane and down-to-earth local concerns.

Their civic involvement is to be welcome. After all, government can’t—and shouldn’t try to—solve all our problems.

Even if they don’t lobby and campaign, however, NGOs are increasingly entering into relationships with governments. Thus, in a round-about way NGOs are becoming privileged players in the political process, granted access to decision-makers, which is not available to ordinary members of the public.

This is achieved through a process of consultation, where government departments and authorities seek the opinion and obtain the advice of groups which claim to channel public opinion and represent the public interest on a particular issue.

The Department of Immigration and Multicultural and Indigenous Affairs alone, for example, consulted with 4,800 community groups, individuals and government and non-government agencies during the year 2001-02.

In such a way NGOs can obtain not just the material benefit of government contracts and grants but also the immaterial, but nonetheless very important, benefit of voicing their views directly to policy-makers and influencing public policy outcomes.

As the involvement and influence of NGOs increases so does the need for greater transparency and accountability. There is nothing wrong with NGOs being consulted by government or otherwise assisting the policy development process. However, voters are entitled to know which NGOs are consulted, how representative these NGOs are, and just as importantly, what benefits NGOs obtain from dealing with government.

It is surely not too much to expect that groups that so often agitate for more transparency and ac-
countability, both in government and in the private sector, should also be open to similar scrutiny by the people whose interests they claim to represent—that is, the public.

So, I am encouraged by recent developments. Last week, Senator the Hon Kay Patterson, Minister for Family and Community Services, released the report titled “The Protocol: Managing Relations with Non-Government Organisations.” The report was prepared by Dr Gary Johns and John Roskam of the Institute for Public Affairs, and it looks at various ways the Government can make its relationship with NGOs more transparent.

At present, Johns and Roskam note, “where Department/NGO relationships do exist, there is little transparency about those relationships.” The public for example, has no way of knowing on what basis the government assesses the bona fides and the representative nature of NGOs it consults. Similarly, the nature of the relationship is rarely disclosed—what exactly is the government getting out of it, and what are the NGO’s receiving in return—their fees, access, and input?

This may all sound like technical nit-picking, but in reality it’s very important, more important than many would initially suspect. As Johns and Roskam write:

“The NGO phenomenon, if taken too far, constitutes a challenge to representative systems and traditional political accountability. The collection of all possible NGOs, for example, does not constitute public opinion. NGOs represent only some public opinion. To some extent, politics is a contest between organised and unorganised public opinion, between particular interests and the public interest. More recently, many NGOs purport to represent universal interests, which they argue, represent the public interest, for example, human rights and the environment. NGOs give voice to the public, which in liberal democracies in an age of extraordinary ease of public communication is not a difficult task. The hard task is to decide what is in the public interest. When laws are to be framed and public funds allocated, only elected officials should make such judgements. Moreover, officials need to make these decisions in a way that does not expand the universe of government by buying off of all interests with taxpayer largesse.”

To the cynics it may sound like a rear-guard defence by politicians who resent intrusions by outsiders into their very own familiar patch. But bear this in mind: politicians are responsible for their decisions, and the electorate periodically passes judgement over them. The NGOs are accountable to no one and answer to no one. Voters are surely entitled to expect that groups that claim to speak on their behalf and collectively represent their interests do have sufficient standing and are sufficiently representative.

Johns and Roskam recommend that in order to try to remedy that democratic deficit, voters need to be better informed about relationships between NGOs and government. To that end, government should in each case publicly disclose all relevant information about the relationship, as well as about the NGO with which there is a relationship.

Part of the solution lies in an official government website which would enable anyone to access and search the information about the standing of any NGO, the sources of government funding (if any), and details of the relationship.

Transparency is a good step forward. It helps us make better judgements about the groups that claim special access to the government. But, coming full circle to where I started tonight, it also helps us to better assess the value of the contribution that all of us as taxpayers make to so many NGOs and other community groups.

As Dr Johns wrote recently in “The Age”: “The best way to resolve [the] problem of the evolution of charity work, is to let the donor decide. This needs transparency. A well-informed donor market can make up its own mind if it wants to contribute to a charity, which for example, may spend a large proportion of its funds on lobbying. The donor may also want to know whether the charity’s goals are achieved, and how efficient is the charity.”

Australia has been a very successful liberal democracy, in so many respects the envy of many other nations that have not enjoyed the same levels of prosperity, stability and good government as our country has. This places an even heavier onus on us to ensure that the relationship between
the government, NGOs and the people remains one of trust and transparency.

**Trade: Free Trade Agreement**

Senator FERRIS (South Australia) (1.56 a.m.)—I seek leave to incorporate Senator Ludwig’s adjournment speech.

Leave granted.

Senator LUDWIG (Queensland) (1.56 a.m.)—Senator Ludwig’s incorporated speech read as follows—

The Queensland Sugar Industry has for more than a century been one of the key industries for the Queensland economy.

Sugar is an important industry for Queensland, producing 95% of Australia’s raw sugar, with the balance being produced in northern New South Wales (4%) and in the Ord River district of Western Australia (1%).

The sugar industry is a cornerstone of Queensland regional communities, which provides employment and livelihoods for many Queensland families.

I think people in these communities have the right to ask the question—does their Government care about the survival of their communities?

The answer to that would be a Howard Government care.

In 1996 as Federal Minister for Primary Industries Mr Anderson said and I quote:

“The sugar industry is regarded as highly competitive and efficient by world standards, but continued improvements will be needed in key areas fit is to maintain its position in the world sugar markets.”

The then Minister also announced the formation of a Sugar Task Force to negotiate future sugar industry arrangements.

The task force included Queensland MP Warren Entsch, and NSW MP Larry Anthony.

One of the specific terms of reference of the task force was to achieve an equitable distribution of the US quota.

In the same year at a conference for the working sugar industry taskforce, The Deputy Prime Minister reaffirmed his commitment to “ensure the Australian sugar industry continues to develop as an internationally competitive, export oriented industry, providing profitability for industry participants.”

This support for the sugar industry failed to take root. In fact the Government has failed in every task to reaffirm its commitment to the sugar industry.

Let’s take for example an extraordinary report in the Courier Mail this week.

The report was based on a leaked internal memorandum from within the office of Agriculture Minister Warren Truss. It details the lengths to which the Howard government is prepared to go to silence its critics particularly those in the sugar industry.

It appears that the Government was prepared to delay payments to hard pressed sugar producers in Queensland in order to force farmers to toe the Howard Government’s line.

Mr Truss is accused of blackballing the President of Canegrowers, Mr Alf Cristaudo, from membership of the key industry committee overseeing reform of the industry.

According to the leaked memo—both the Prime Minister’s Office and the Agriculture Minister’s Office are unwilling to have Mr Cristaudo on the committee because he is “hard to handle”.

Since 1996 the Howard government has displayed only a token interest in the sugar industry, its governing bodies and its supporting communities. This report highlights the Government’s attempts to stifle debate and trample opposition on any contentious issue.

The token interest was highlighted when the Government dropped sugar off the negotiating table for its own narrow political purpose at the free trade agreement negotiations.

Now we all know the Federal seats of Wide Bay, Herbert, Hinkler, Dawson and Leichhardt are prime sugar growing areas and prime coalition held seats in Queensland. The outcry from sugar producers in these areas was loud and clear—their Government sold them down the river without a paddle.

The members in these areas must have been feeling pretty riled because the government’s swift
solution to this outcry was to throw money at them without forethought or foresight.

On the 29th April this year, the Prime Minister John Howard and his Deputy John Anderson both went to Queensland to reveal the Government’s latest industry plan—the fourth of its kind.

The Prime Minister’s announcement of a 444 million dollar package for the sugar industry is nothing short of a joke. He said and I quote ‘it will offer hope.’ He further said ‘it is a realistic plan.’ He said, ‘It is generous in its scope, but the generosity is based on long-term realism and the proposition that reform and change is not only necessary, but unavoidable.

The package is worth $444-million.

Most in the public believe this payment was not only fair but perhaps a bit excessive.

Then the finer points of the fourth sugar package came to light and believe me it is not pretty.

The key point of the sugar rescue package is aimed at helping struggling farmers leave the industry. That’s right, the Government whose commitment to sugar farmers was so strong in 1996, 1997, 1998 and 2000 has gone out the window in 2004.

Rather than fight for and protect the interests of sugar growing communities, the Howard Government walked away from sugar in the free trade deal.

Because of a lack of backbone and serious negotiating the Government is adding insult to injury by saying bad luck close up shop and for the honour of losing your livelihood we will give you a cash grant of $100,000 tax free.

This offer and I will not call it a generous one—is like many other government patch ups—conditional—and it’s the fine print with this government that is the killer.

If sugar cane growers sell up by the end of this financial year, and if their assets are $425,000 or less, they will receive a one hundred thousand dollar golden handshake.

After years and in some cases generations of Australians working and even losing their lives in this industry the government believes they can pay off hard working, honest Australians because they feared riling the US on Trade issues.

Mind you it will be a smaller grant if they sell up after this year.

Now this one hundred thousand dollar handshake is for sugar cane growers, not their employees, not for the communities which rely on this industry for growth and income. The Government failed to negotiate with the unions the AWU, the metals union and others about the issues that they would face. It did it seems talk to the bosses though.

So what happens to them? What offer was put on the table for those people whose livelihoods are directly connected to the sugar cane industry? Nothing.

One could ask—what has the national party done to ensure people in these sugar growing areas are receiving fair representation in the Federal Parliament.

In fact—what has the government done to support a viable alternative to the exportation of sugar? Today it was announced that Dalby—a community west of Toowoomba has missed out on Federal funding for their proposed ethanol plant. The bio refinery director Mr Chris Harrison was told by the Federal Industry Minister Ian McFarlane that they can reapply at a later date. Perhaps after the election would be a more appropriate time?

The member for Maranoa said, “The member said and I quote: We in this place all know that if you have one single market your opportunities are limited. But if you have more than one market the opportunities for a better price and greater competition in that market can reap rewards” (speech 16/06/04)

In this instance the member was talking about the live export industry but wouldn’t he agree this statement is the basis for all primary industries within Australia?

Does the Government believe in biodiversity for the sugar industry or are they so used to reaping the rewards of one off payments for industries they have no solutions or original ideas to assist them?

Let’s have a look at what our other members have done in this area.
There was little in this budget for farmers, and they know it. They know that the Howard Government could care less.

Quite frankly sugar industries and their communities are unimpressed with this government’s budget.

The size of that sugar package highlights the failure of the Howard government to properly assist the industry through great structural changes and other pressures in 1998, 2000 and 2002.

I must say that the administration of the general portfolio is certainly not the minister’s strong suit.

When you get down to these individual packages, people in the sugar industry have a legitimate concern—this is the fourth sugar package since 1998 that has been delivered to the sugar industry. As far as the sugar industry is concerned, they have gone through difficult periods recently and nobody would begrudge the industry the moneys that the government has allocated.

Given the past failures of the government in this industry, as far as the sugar industry is concerned the failures of the past have been compounded by the present—the government’s failure to win any concessions at all on sugar in the free trade agreement with the United States.

You cannot gain a concession for sugar if you take the industry off the negotiating table.

That is simply what has happened in this so-called free trade agreement.

There was a lot of Government rhetoric about how important sugar was as part of the deal. Back in November we had Warren Truss in a media statement trumpeting that “Exports of Australian beef, dairy and sugar products to the US are currently restricted by quotas and tariffs. Any increase in the size of those quotas, or preferably their removal, would deliver benefits worth billions of dollars to producers over time”.

Minister Truss then went on to say “I am pleased that there is now support for an FTA from key agricultural sectors also in the US.”

Clearly this was a wrong call from the Minister.

At the first sign of heat in those negotiations the government caved in.

The government dropped the industry, which is one of Australia’s most significant regional and rural industries, off the negotiating table completely.

There was a reason that sugar was dropped off the table so unceremoniously by the government; we are really talking about presidential elections later on in the year.

I wonder about a government that cannot negotiate in Australia’s national interest.

It has to do deals on agriculture and sugar in the American President’s interest. The Australian on the 19th February 2004 reprinted an article from the Wall Street Journal which stated the George Bush held firm over the exclusion of sugar because “this is an election year and that sugar has clout in Florida and Louisiana and other states that George. W. Bush needs to be re-elected this fall”.

I think that is an important point to make in the context of the budget consideration and the amount of moneys that have been allocated. I say quite soundly to the Senate: I do not think I have seen a more spineless negotiation than this one.

We had all the rhetoric from ministers and members of The Nationals about the tough deal they were going to do on sugar.

This Government abandoned a large section of the community. In fact I think it would be fair to say they abandoned communities surrounding these areas in general.

Under the present Government—the Americans knew Australia would roll over on the hard issues and it seems that sugar was one of the biggest.

**Senate adjourned at 1.57 a.m.**

**DOCUMENTS**

**Tabling**

The following documents were tabled by the Clerk:

Australian Communications Authority Act—Telecommunications (Freephone and Local Rate Numbers Auctions—Registration Charge) Determination 2004.

Civil Aviation Act—Civil Aviation Regulations—
Instruments Nos CASA 148/04, CASA 218/04, CASA 301/04, CASA 302/04, CASA 357/04 and CASA 358/04.
Medical Indemnity Act—
Medical Indemnity Subsidy Amendment Scheme 2004.
National Health Act—Private Patients’ Hospital Charter.

Tabling

The following government documents were tabled:

Department of Defence—Schedule of special purpose flights for the period July to December 2003
Department of Finance and Administration—Parliamentarians’ travel paid by the Department of Finance and Administration for the period July to December 2003
Department of Finance and Administration—Former parliamentarians’ travel paid by the Department of Finance and Administration for the period July to December 2003
Department of the Prime Minister and Cabinet—Expenditure on travel by former Governors-General paid by the Department of the Prime Minister and Cabinet for the period 1 July to 31 December 2003
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Transport and Regional Services: Legal Services
(Question No. 2780)

Senator Ludwig asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 31 March 2004:

(1) In the past 12 months has the department or its agencies used, retained or paid for legal or other services from Phillips Fox Lawyers or any of their subsidiaries; if so: (a) can details of each instance be provided; and (b) as a general overview, what was the nature of the work undertaken.

(2) Has the Minister attended any forums presented by Phillips Fox; if so, can details be provided.

(3) Has the department sponsored any Phillip Fox forums or presentations in the past 12 months; if so, can details of the forums or presentations be provided.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1)—

Department of Transport and Regional Services

Phillips Fox is a member of the Department’s external legal panel and as a panel member provides legal services on a wide variety of legal issues. The legal services provided include, but are not restricted to, interpretation advice, advice on commercial contracts, advice on commercial and administrative law and the conduct of litigation.

Airservices Australia

Has not used Phillips Fox in the last 12 Months.

Albury-Wodonga Development Corporation (AWDC)

Phillips Fox were appointed through instructions from Booker International to act on Bookers’ behalf in relation to a claim made by the Corporation under the Corporation’s professional indemnity insurance policy with Bookers.

The Australian Maritime College (AMC)

Has not used Phillips Fox in the last 12 Months.

Australian Maritime Safety Authority

The Australian Maritime Safety Authority (AMSA) obtained legal advice from Phillips Fox on four separate matters:

- Ongoing advice on drafting and interpretation of long-term contracts with providers of search and rescue assets (mainly aircraft and helicopter operators);
- In October to December 2003, legal advice during negotiation of an office lease in Brisbane;
- In July 2003, legal advice on statutory responsibilities in relation to a proposed tender for aids to navigation work; and
- In July 2003, legal advice on workplace reform developments and implications for public sector agency employment arrangements.

Australian Rail Track Corporation (ARTC)

Has not used Phillips Fox in the last 12 Months.

QUESTIONS ON NOTICE
Civil Aviation Safety Authority (CASA)
Phillips Fox is a member of CASA’s external legal panel. As a panel member, Phillips Fox provides legal services to CASA on a wide variety of legal issues relevant to the Authority. The legal services include legal interpretation advice, advice on commercial contracts and advice on employment issues. In addition, CASA has arranged for a short-term secondment of a Phillips Fox lawyer to CASA while a CASA lawyer is off-line on other duties.

International Air Services Commission (ASC)
Has not used Phillips Fox in the last 12 Months.

Maritime Industry Finance Company Limited (MIFCO)
Has not used Phillips Fox in the last 12 Months.

National Capital Authority (NCA)
Has not used Phillips Fox in the last 12 Months.

Stevedoring Industry Finance Committee (SIFC)
Has not used Phillips Fox in the last 12 Months.

(2) In the last 12 months the Minister has not attended any forums presented by Phillips Fox.

(3) In the last 12 months the Department has not sponsored any Phillips Fox forums or presentations.

Environment: Moreton Bay

Senator Lees asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 30 March 2004:

(1) Can the Minister confirm that the department has engaged Dr MA (Rien) Habermehl of the Bureau of Rural Sciences to review the conflicting hydrological reports for the sand mine proposed by CSR Ltd/Readymix Ltd/Rinker Group at Donnybrook in Queensland adjacent to Pumicestone Passage and the Moreton Bay Ramsar Wetland (EPBC Referral No. 2001/329).

(2) Can the Minister confirm that Dr Habermehl does not have special expertise in coastal hydrology and that his previous published research is generally limited to isotope studies concerning groundwater in the Great Artesian Basin.

(3) Is the Minister concerned that the Department has engaged a person who lacks special expertise in coastal hydrology to review the complex hydrological impacts of the sand mine.

(4) Given the potential for the irreversible, long-term and widespread impact of the proposed sand mine on the hydrology and water quality of the Moreton Bay Ramsar Wetland, will the Minister undertake to request that his department engages a national or international expert on coastal hydrology, such as Associate Professor Ian Acworth of the University of New South Wales, to review the potential hydrological impacts of the proposed sand mine, before making his decision under section 133 of the Environment Protection and Biodiversity Conservation Act 1999 in relation to the sand mine.

(5) Is the Minister aware that the bio-availability of iron (Fe3+) in the marine environment has been linked to outbreaks of Lyngbya majuscula (Oscillatoriaceae) blooms.

(6) Is the Minister aware that recent outbreaks of Lyngbya majuscula have caused severe economic, social and environmental damage in the Pumicestone Passage and Moreton Bay Ramsar Wetland.

(7) Given the potential for the proposed sand mine to increase iron availability in Pumicestone Passage and the Moreton Bay Ramsar Wetland, will the Minister request that the department engage an expert on the role of water chemistry in Lyngbya majuscula outbreaks, such as Professor David
Waite of the University of New South Wales, to review the potential impacts of the proposed mine, before making his decision under section 133 of the Act.

Senator Ian Macdonald—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) Yes.
(2) Dr Habermehl is a pre-eminent hydrogeologist with 38 years’ experience and specialist knowledge of the hydrogeology and environmental geology of sedimentary deposits. He has worked on coastal aquifers in Australia and the Netherlands.
(3) No. The impacts of the proposal have been, and are being, reviewed by a range of experts, including two eminent scientists engaged by the Department, one of whom is Dr Habermehl.
(4) The Department in finalising its assessment and advice on approval of the proposal will rely on a number of sources of expert advice. The Department is also liaising with the Queensland Environment Protection Agency to ensure these and other impacts are taken into account before a final decision is made.
(5) Yes, although phosphorus and humic substances are also important and the complex mechanisms controlling Lyngbya blooms are not yet fully understood.
(6) I am aware that from the mid 1990s onwards there has been a reported increase in the frequency, severity and extent of algal blooms in northern Deception Bay and the eastern banks of Moreton Bay with associated reports of localised economic and human health impacts.
(7) See (4) above.

Agriculture: Genetically Modified Crops (Question No. 2815)

Senator Brown asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 2 April 2004:
Is the Government aware that an economic study, ‘Economic Impacts on New Zealand of GM Crops’ by Professor Caroline Saunders and Drs William Kaye-Blake and Selim Cagatay of Lincoln University, New Zealand, concluded that, given the likely consumer resistance to genetically-engineered products, there was no likely benefit to New Zealand from using genetically-modified crops.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:
The Government is aware of the study by Professor Caroline Saunders, Drs William Kaye-Blake and Selim Cagatay and the broad range of possible conclusions they derived from the variety of economic modelling scenarios considered.

Agriculture: Genetically Modified Organisms (Question No. 2817)

Senator Brown asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 2 April 2004:
Is the Government aware that from October 2003 one of New Zealand’s biggest insurers, Vero Insurance, has refused to cover policy holders for personal injury or damage to property directly or indirectly caused by genetic modification.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:
The Government is aware that Vero Insurance has made the decision to exclude claims for damage arising from Genetically Modified Organisms (GMOs) from Farm Liability Policies. The Government is also aware that Vero Insurance stated that they ‘will continually monitor developments and review our position as more information comes to hand’.

**Environment: Toxic Waste**

(Question No. 2866)

Senator Allison asked the Minister representing the Minister for Science, upon notice, on 30 April 2004:

1. Is it the Government’s intention that low level radioactive waste material that is produced in oil drilling operations (known as naturally occurring radioactive material) be stored at the proposed low level radioactive waste repository in South Australia; if not, why not.

2. What technical requirements are imposed by the Commonwealth on state-government run low level radioactive or other toxic waste repositories such as that at Dutson Downs in Gippsland, Victoria.

3. Was the Minister for the Environment and Heritage (Dr Kemp) referring to Dutson Downs in his reported comments on 23 April, that he would invoke Federal legislation if the Victorian Government’s toxic dump endangered the environment.

Senator Vanstone—The Minister for Science has provided the following answer to the honourable senator’s question:

1. No. Waste products from oil drilling in Gippsland contain naturally occurring radioactive materials at very low levels that are not hazardous to human health or the environment. It is entirely appropriate for this waste to be managed in accordance with its chemical hazards at a properly constructed and regulated intractable waste management facility, rather than at the national radioactive waste repository.

2. If a waste management facility has, will have, or is likely to have a significant impact on a matter of national environmental significance as defined in the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act), construction and operation of the facility may need approval from the Minister for the Environment and Heritage. The Minister may impose conditions on the operation of the facility as the Minister sees necessary, within the limits of power imposed by the EPBC Act. Otherwise, regulation of the state and territory government run waste management facilities is the responsibility of the relevant state or territory government. No actions associated with the Dutson Downs waste management facility since the introduction of the EPBC Act have been assessed as having an impact on a matter of national environmental significance. As such regulation of the facility is a matter for the Victorian Government.

3. No.

**Gambling**

(Question No. 2902)

Senator Allison asked the Minister for Family and Community Services, upon notice, on 11 May 2004:

1. What data is available about the number of gambling addicts who commit suicide each year.

2. If no data is available, will the Ministerial Council on Gambling allocate funds from its research budget for the collection of data about this subject; if not, why not.

Senator Patterson—The answer to the honourable senator’s question is as follows:
(1) The Productivity Commission estimated there were between 35 and 60 suicides in 1997 where gambling was a factor, with estimates of over 2,000 people attempting suicide each year. The Productivity Commission also found that 9 per cent of problem gamblers report they have seriously thought about suicide because of their gambling. The figure is as high as 60 per cent for those who seek help for their gambling from counselling agencies. About 1 in 10 problem gamblers who seek counselling assistance report an attempted suicide (Productivity Commission, 1999, Inquiry Report into Australia’s Gambling Industries).

(2) Work will soon be undertaken (through the National Gambling Research Program) on the Effects of problem gambling on families.

Family and Community Services: Suspected Leaks

(Question No. 2918)

Senator Jacinta Collins asked the Minister for Family and Community Services, upon notice, on 13 May 2004:

In respect of the Minister’s department and each agency of the department, for each of the following years: 1997, 1998, 1999, 2000, 2001, 2002 and 2003, and for the year 2004 to date:

(1) How many investigations into suspected leaks of information were conducted within the department.

(2) What was the amount and cost of staff time committed to investigating suspected leaks (if precise figures are not available, please provide estimates).

(3) What was the cost of legal fees incurred in relation to the investigation of suspected leaks.

(4) Were there any costs other than those described in the answers to parts (2) and (3) in relation to the investigation of suspected leaks; if so, what was the total (if precise figures are not available, please provide estimates).

Senator Patterson—The answer to the honourable senator’s question is as follows:

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(2) The staff time and other costs associated with leak investigations are not separately recorded and I am not prepared to authorise the work or expense that would be required to identify or estimate them. Even if such estimates were undertaken, it would not be possible to assess their accuracy.

(3) Legal costs of $6100 were associated with the matter in 2002.

(4) No.

Defence: Abrams Tanks

(Question No. 2929)

Senator Chris Evans asked the Minister for Defence, upon notice, on 17 May 2004:

With reference to Project Land 907, under which M1A1 Abrams tanks will be acquired under the United States of America (US) Foreign Military Sales Program:

(1) (a) Who made the decision to buy the M1A1 Abrams tanks through the US Foreign Military Sales Program; and (b) when was this decision taken.

(2) For what reasons was the M1A1 Abrams tank preferred over: (a) the Leopard 2 tank; and (b) the Challenger tank.

(3) What would be the cost of acquiring: (a) 59 Leopard 2 tanks; and (b) 59 Challenger 2 tanks.
(4) Did the Commonwealth give the manufacturers of the Leopard 2 tanks and the Challenger 2 tanks an opportunity to match the deal offered in relation to the purchase of the M1A1 Abrams tanks; if not, why not.

(5) When did each of the three tanks that were considered for purchase by the department first enter service.

(6) When did the current Leopard 1 tanks first enter service.

(7) In the process of evaluating tanks, were new Leopard 2 and Challenger 2 tanks considered or were they 'reconditioned', like the M1A1 Abrams tanks that are being acquired.

(8) What modifications are being made to the M1A1 Abrams tanks as part of the AIM upgrade program.

(9) (a) When will these modifications be completed; and (b) what will happen if these modifications are not completed on time.

(10) How will Australia’s 59 tanks be selected from the many thousands of tanks that the US is upgrading as part of the AIM upgrade program.

(11) (a) Will a full service history be available for each of the tanks acquired by Australia; if not, why not; and (b) will this service history be made publicly available, for example, through the department’s website, at the time the tanks are actually acquired; if not, why not.

(12) Which Defence platforms currently owned by Australia will be able to transport the M1A1 Abrams tanks.

(13) Are any of Australia’s amphibious transport ships, as currently configured, capable of transporting the M1A1 Abrams tanks.

(14) Are any of Australia’s heavy landing craft, as currently configured, capable of transporting the tanks.

(15) Will any of Australia’s current Defence platforms be modified in any way to make them capable of transporting the tanks; if so: (a) what will these modifications cost; and (b) is the cost of the modifications included in the $550 million package announced by the Government; if not, why not.

(16) Were the difficulties in transporting tanks considered in making the decision to acquire these tanks; if not, why not.

(17) Are future transport arrangements for the tanks included in the deal to acquire the tanks, for example, will arrangements be put in place under which Australia will lease US-owned aircraft and/or ships to transport Australia’s tanks.

(18) If US aircraft and/or ships are not available, how will Australia transport the M1A1 Abrams tanks overseas.

(19) Has the contract for the tank acquisition been signed; if not, when is it expected that this will occur.

(20) What is the exact cost of this acquisition.

(21) Is the price fixed, or could it change by the time the tanks are delivered.

(22) (a) What is the date of delivery; and (b) will this date be included in the contract.

(23) Will there be any penalty provisions or liquidated damages clauses in the contract; if not, why not.

(24) What is the nature of the penalty provisions and/or liquidated damages clauses that are to be included in the contract.

Senator Hill—The answer to the honourable senator’s question is as follows:

(2) (a) and (b) In project terms, the M1A1 through the United States (US) Foreign Military Sales Program represents the best capability and the best value for money at the lowest overall project risk. The M1A1 was assessed as superior to the Leopard 2 and Challenger tanks in the areas of acquisition cost, acquisition risk, survivability, network-centric warfare potential, technological maturity, availability for delivery and commonality with a large world fleet.

(3) To provide an equivalent tank and support systems package to the M1A1:
   (a) 59 Leopard 2 tanks:
       • Baseline Werterhaltungprogram (WE) configuration without 2nd Generation gunner’s Forward Looking Infra-Red (2Gen FLIR) or network centric warfare (NCW) potential assessed as similar to M1 acquisition costs but with much higher commercial risk;
       • WE configuration with an appropriate NCW package, 2Gen FLIR sights and mine protection (required for Leopard 2 due to presence of ammo in crew compartment) package assessed as being substantially more expensive than the M1 Foreign Military Sale cost with high delivery schedule and commercial risk.
   (b) Unknown. Defence was advised that only 30 Challenger 2 tanks were available for purchase. The cost of building 29 additional Challenger 2 tanks was assessed as being greater than the M1 costs as it would require restarting the Challenger 2 tank production line for a one-off, unique production run.

(4) All potential suppliers were given a fair and equal opportunity to provide their best offer during overseas fact-finding visits and Australian consultations from August 2003 to January 2004. Suppliers were not and would not be given the chance to match competing offers because each offer is commercial-in-confidence between the Commonwealth and the offerer.


(6) 1977.

(7) Neither the Leopard 2 nor the Challenger 2 are currently in production.

(8) The following modifications are being made as part of the AIM upgrade program and are in addition to the complete overhaul of the hull, turret and running gear:
   • battlefield override for mechanical fuel and transmission bypass;
   • latest generation forward-looking infrared system;
   • pulse jet air system;
   • external auxiliary power unit installed;
   • eye-safe laser range finder;
   • revised hull network box;
   • upgraded tank commander’s panel;
   • digital electronics control unit;
   • driver’s hatch interlock;
   • vehicle intercom system (digital);
   • improved engine; and
   • revised turret network box.

(9) (a) The modifications will be completed while the tanks are being rebuilt at the US Army Lima Tank Plant with the tank due for delivery to Australia in early 2007. (b) The tanks are part of a
current production schedule which continues to deliver in accordance with its timeline. There is low risk to the modifications schedule.

(10) Defence is currently participating in the selection of tanks by working with the US Army to review data on each tank’s suitability for the AIM program. This will be followed by Defence working with the US Army to review tank vehicle logs, gunnery data forms and AIM program inspection reports within the US, which will be supported by on-site visits to the refurbishment and re-assembly facilities.

(11) (a) Yes. (b) No. Defence does not publish the service history of tanks.

(12) The following platforms can carry the M1A1 Abrams tank:
- HMAS Tobruk;
- HMAS Kanimbla;
- HMAS Manoora;
- Balikpapan-class Heavy Landing Craft; and
- Army lighterage equipment.

(13) Yes.

(14) Yes.

(15) The Landing Platforms Amphibious HMAS Kanimbla and HMAS Manoora, and the Heavy Landing Ship HMAS Tobruk can all transport the M1A1. However, the Landing Platforms Amphibious are being modified to allow the transfer of heavier loads to landing craft at sea. The modification is necessary for the transfer of several types of military vehicle, including the current Leopard tank and the future M1A1.

(a) The cost to modify the Landing Platforms Amphibious is approximately $1.3m.

(b) No, as it is a pre-existing requirement that is already funded. Work on HMAS Manoora is taking place now while HMAS Kanimbla will be modified in October/November 2004.

(16) Yes.

(17) No.

(18) Defence has the ability to transport M1A1 tanks overseas using current assets. If these are not sufficient, commercial shipping or aircraft may be used.

(19) No. Defence expects to sign a Letter of Offer and Acceptance with the US Government for the supply of the tanks and support equipment around late June to early July 2004.

(20) The Government has approved the acquisition at a cost of $528.523m at 2004-05 Budget constant dollars.

(21) The acquisition cost is capped at the price in (20) above.

(22) (a) The date of delivery is still being negotiated but is expected to be from about two years after signature of the Letter of Offer and Acceptance with the US Government. (b) Yes.

(23) US law precludes the inclusion of penalty provisions and liquidated damages in Foreign Military Sales agreements. Defence will seek appropriate penalty provisions and liquidated damages in any contracts for elements purchased directly from commercial suppliers.

(24) See (23) above.
**Sports Aboriginal Corporation of Tasmania**

(Question No. 2936)

**Senator O’Brien** asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 19 May 2004:

With reference to the Sports Aboriginal Corporation of Tasmania:

(1) What action, if any, did the Minister, the department and/or any agencies take to facilitate the liquidation of the corporation.

(2) If applicable: (a) what agency or agencies took this action; (b) what was the basis of this action; (c) when was this action initiated; (d) when was this action completed; and (e) what was the cost of this action.

(3) How many employees did the corporation have at the time of liquidation.

(4) How many employees were owed employee entitlements at the time of liquidation.

(5) What employee entitlements were owed at the time of liquidation.

(6) How many former employees are owed entitlements?

(7) What employee entitlements remain outstanding?

(8) What action has the Minister, the department and/or any agencies taken to assist employees to obtain their entitlements?

**Senator Vanstone**—Aboriginal and Torres Strait Islander Services (ATSIS) has provided the following information in response to the honourable senator’s question:

(1) The Sports Aboriginal Corporation of Tasmania (SACT) was in breach of terms and conditions relating to a number of grants it received from the Aboriginal and Torres Strait Islander Commission (ATSIC). As a result, ATSIC served notices of demand pursuant to section 20 of the Aboriginal and Torres Strait Islander Commission Act 1989. Those notices demanded repayment of $727,764 in ATSIC grant funds. SACT failed to make payment under the notices. ATSIC was successful in its petition for the winding up and liquidation of SACT.

(2) (a) ATSIC applied to have SACT wound up.

(b) The grounds for this action were SACT’s failure to satisfy demands issued under section 20 of the ATSIC Act.

(c) ATSIC’s application to have SACT wind up was initiated on 24 March 2000 when it filed an application in the Federal Court of Australia in Hobart seeking that SACT be wound up. That application was served on SACT at its registered office on 5 April 2000.

(d) The liquidation of SACT has not been completed.

(e) The costs which ATSIC has incurred in respect of the liquidation of SACT are $44,687.33.

(3) At the time of the appointment of the liquidator, SACT had no employees.

(4) At the time of the appointment of the liquidator, six former employees of SACT were claiming a variety of employee entitlements.

(5) The claims for employee entitlements which were submitted to the liquidator for consideration related to wages, superannuation, annual leave and long service leave.

(6) Currently there are no former SACT employees who are entitled to claim priority in the winding up of SACT. If accepted by the liquidator, their claims will rank as unsecured or ordinary claims and therefore stand behind other claims which will have priority.
(8) The liquidator has already paid $47,738 to former SACT employees in entitlements. There is a further $12,553 in unpaid claims by former employees which do not attract priority in the winding up. Those will be dealt with by the liquidator along with other unsecured or ordinary claims.

(9) ATSIC as the petitioning creditor has representation on the Committee of Inspection which the liquidator has convened to oversee the winding up.

**Health: Aluminium Dust**

(Question No. 2940)

Senator Brown asked the Minister representing the Minister for Health and Ageing, upon notice, on 24 May 2004:

With reference to the answer to question on notice no. 2496 (Senate Hansard, 1 March 2004, p. 20505):

(1) Given that oxidised aluminium dust and some of its compounds are electrostatic, hydrophilic, and accumulate on articles of reverse polarity, how can exposure standards representing airborne concentrations give protection from accumulated masses of hydrophilic dust.

(2) Given that exposure standards listed in the MSDS (Material Safety Data Sheet) report on oxidised aluminium are based on mortality risk not morbidity risk, yet in the same report chronic health effects (danger of cumulative effect) note that toxic metal exposure can take years to manifest: Why are the long-term effects of aluminium dust ignored by governments and regulatory bodies.

(3) Given that Alcoa workers in the aluminium production industries in Western Australia and Victoria report cancer rates 30-50 percent above the Australian average, how can the Minister state that no adverse health effects have been recorded.

Senator Ian Campbell—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

(1) and (2) Workplace substances are regulated by occupational health and safety authorities in each State and Territory. The National Occupational Health and Safety Commission (NOHSC), within the Employment and Workplace Relations portfolio, coordinates national efforts to improve worker health and safety in Australia. NOHSC prepares national material, i.e., Standards and Codes of Practice that are adopted into occupational health and safety regulations by States and Territories. The National Occupational Health and Safety Commission has provided the following response:

“The National Model Regulations for the Control of Workplace Hazardous Substances, declared by NOHSC, require that exposure of employees to hazardous substances is either prevented, or where this is not practicable, adequately controlled so as to minimize the risks to health. National Exposure Standards (NES) represent airborne concentrations of chemicals that, according to current knowledge, should neither impair the health of nor cause undue discomfort to nearly all workers. Additionally, exposure standards are believed to guard against narcosis or irritation that could precipitate industrial accidents.

Aluminium oxide is highly insoluble in water and in general, aluminium compounds are poorly absorbed through the lungs, gastrointestinal tract and the skin. The main route of exposure to aluminium dusts is via inhalation. There are specific National Exposure Standards for the more hazardous forms of aluminium in workplace atmospheres. High concentrations of dust in the workplace could cause deposition in the ears, eyes and upper respiratory tract and result in injury to the skin or mucous membranes. Therefore, where no specific exposure standard has been assigned the general workplace exposure standard for dust is set at 10 mg/m3 inspirable dust, that is, particles that can enter the human respiratory tract.

National Exposure Standards represent airborne concentrations of chemicals that do not impair health nor cause undue discomfort to most workers, that is, they specify an airborne concentration that protects against all health effects not only the risk of mortality. Exposure standards are set at
levels sufficient to protect the health of workers from acute or short-term as well as long-term or cumulative effects. National Exposure Standards are reviewed periodically so that they are based on current knowledge, international best practice and confer appropriate levels of protection to Australian workers.

Collectively, specific exposure standards for aluminium compounds and those for dust are established to protect workers from the adverse health effects arising from the atmospheric exposures to those dusts.”

(3) Preliminary results from an ongoing research project conducted by Monash University and the University of Western Australia, the HealthWise study of cancer rates in the Kwinana aluminium refinery in WA, were released in August 2003. A further report is expected later this year. In addition, the Department of Health in WA has prepared a report on a list of cancer cases identified by the Alumina Widows and Workers Group (AWAWA). Preliminary results from these studies are conflicting and the work is ongoing. Upon release of definitive findings from these studies, the NOHSC Office has advised it will assess any conclusions related to occupational health and safety policy for the enhanced protection of Australian workers.