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SITTING DAYS—2004

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RADIO BROADCASTS

Broadcasts of proceedings of the Parliament can be heard on the following Parliamentary and News Network radio stations, in the areas identified.

- **CANBERRA** 1440 AM
- **SYDNEY** 630 AM
- **NEWCASTLE** 1458 AM
- **BRISBANE** 936 AM
- **MELBOURNE** 1026 AM
- **ADELAIDE** 972 AM
- **PERTH** 585 AM
- **HOBART** 729 AM
- **DARWIN** 102.5 FM
FORTIETH PARLIAMENT
FIRST SESSION—SEVENTH PERIOD

Governor-General

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

Senate Officeholders

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

Senate Party Leaders

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

Printed by authority of the Senate
## Members of the Senate

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(1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

(2) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. Warwick Raymond Parer, resigned.

(3) Chosen by the Parliament of South Australia to fill a casual vacancy vice John Woodley, resigned.

(4) Chosen by the Parliament of Queensland to fill a casual vacancy vice John Andrew Quirke, resigned.

(5) Appointed by the Governor of Tasmania to fill a casual vacancy vice Hon. Brian Francis Gibson AM, resigned.

(6) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. John Joseph Herron, resigned.

(7) Chosen by the Legislative Assembly of the Australian Capital Territory to fill a casual vacancy vice Hon. Margaret Reid, resigned.

**PARTY ABBREVIATIONS**

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

**Heads of Parliamentary Departments**

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

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<tr>
<td>Minister for Transport and Regional</td>
<td>The Hon. John Duncan Anderson MP</td>
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<tr>
<td>Services and Deputy Prime Minister</td>
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<tr>
<td>Treasurer</td>
<td>The Hon. Peter Howard Costello MP</td>
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<td>The Hon. Mark Anthony James Vaile MP</td>
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<td>Minister for Foreign Affairs</td>
<td>The Hon. Alexander John Gosse Downer MP</td>
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<td>Minister for Defence and Leader of</td>
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<td>The Hon. Anthony John Abbott MP</td>
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<td>The Hon. Philip Maxwell Ruddock MP</td>
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<td>The Hon. Dr David Alistair Kemp MP</td>
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<td>Minister for Communications,</td>
<td>The Hon. Daryl Robert Williams AM, QC, MP</td>
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<td>Senator the Hon. Amanda Eloise Vanstone</td>
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<td>and Minister Assisting the Prime</td>
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<td>The Hon. Kevin James Andrews MP</td>
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| Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service | }

(The above ministers constitute the cabinet)
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<td>Minister for Justice and Customs</td>
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<td>Senator the Hon. Charles Roderick Kemp</td>
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<td>The Hon. Joseph Benedict Hockey MP</td>
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<td>Minister for Science and Deputy Leader of the House</td>
<td>The Hon. Peter John McGauran MP</td>
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<td>Minister for Local Government, Territories and Roads and Manager of Government Business in the Senate</td>
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<td>The Hon. Lawrence James Anthony MP</td>
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<td>The Hon. Danna Sue Vale MP</td>
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<td>Minister for Revenue and Assistant Treasurer</td>
<td>Senator the Hon. Helen Lloyd Coonan</td>
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<td>Parliamentary Secretary to the Prime Minister</td>
<td>The Hon. Jacqueline Marie Kelly MP</td>
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<td>The Hon. Christine Ann Gallus MP</td>
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| Parliamentary Secretary for Agriculture and Resources | Peter Sid Sidebottom MP |
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 12.30 p.m., and read prayers.

COMMITTEES

Foreign Affairs, Defence and Trade References Committee

Meeting

Senator BUCKLAND (South Australia) (12.31 p.m.)—by leave—At the request of Senator Cook, I move:

That the order of the Senate of 12 February 2004 authorising the Foreign Affairs, Defence and Trade References Committee to hold a public meeting during the sitting of the Senate today be varied to provide that the committee be authorised to meet from 12.30 pm.

Question agreed to.

HEALTH LEGISLATION AMENDMENT (MEDICARE) BILL 2003

Second Reading

Debate resumed from 12 February, on motion by Senator Vanstone:

That this bill be now read a second time.

upon which Senator Nettle had moved by way of an amendment:

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

(a) condemns the Government’s attempt to undermine the principle of universality that underpins Medicare and for its policy of privatising health care in Australia, including the Private Health Insurance Rebate, which should be abolished and the funds directed to public health care; and

(b) calls on the Government to establish an independent inquiry into the rebate and the Lifetime Health Cover policy, as recommended by the Select Committee on Medicare”.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (12.32 p.m.)—I was speaking on the Health Legislation Amendment (Medicare) Bill 2003 prior to the Senate adjourning a week or two ago and outlining some of the Democrats’ views, not just on the legislation, but on the broader issue of Medicare and on the many different aspects to the public debate on what is undoubtedly a major issue of concern to the Australian public, if not the major issue of concern.

It is important that, amongst the various aspects of the debate, the different claims and counter claims and the wide range of statements and arguments, we do not get too distracted from the core of what this legislation is about. The legislation seeks to implement a new safety net aimed at providing assistance to people who have excessive out-of-pocket health care expenses. The Democrats’ position remains the same, as we publicly stated after the release of the latest Senate committee report and as we publicly stated a number of times last year. The core and central first recommendation of the report of the Senate Select Committee on Medicare was that the proposed safety nets contained in the bill should be rejected in their current form. The Democrats hold to that recommendation, and that remains our view.

The key issue which the committee went to is what sorts of changes from its current form would make the safety net in the legislation acceptable. The Democrats have been clear about what we believe is needed with regard to this legislation and to other issues in the Medicare arena. I wish to outline that again to ensure that it is clear. I would not want anyone to suggest that the Democrats are being opaque about this matter, because we have been up-front and public about our key concerns and about what we believe needs to be done. The core aspect—and one
of the major problems with the safety nets contained in this legislation—is the two separate thresholds. The Democrats have stated previously—and I repeat it today on behalf of the party—that we believe it is a non-negotiable necessity for there to be just one threshold in any safety net that is put in place.

It is our view that an essential component of any result that would make this legislation acceptable is that there be a single safety net, rather than the two separate safety nets that are currently in place in this legislation. Our view is that it would be acceptable as one component—not a sufficient, but a necessary, component—for there to be a single threshold which would enable people to qualify for this safety net. If that threshold were $500 for everybody, that would remove most of the core problems that were identified with the safety net as it is structured in the Senate committee report.

The Senate committee report—which was signed off on, not just by the Democrat senator, Senator Allison, but also by the Labor Party senators and by Senator Lees—highlighted the many problems with having the two separate thresholds. It showed that if you had a single threshold that applied equally to everybody you would maintain the universality that is so fundamental to Medicare, remove the potential for a whole new range of anomalies and ensure that the extra assistance that was provided to people was provided equally and was accessible equally by everybody. So a component of what the Democrats believe is needed is a single threshold to qualify for this new safety net of $500, at most, for everybody. That would certainly mean that a lot of people who are suffering high out-of-pocket health costs would receive assistance which they are not currently getting with those health costs.

The Democrats have also indicated quite publicly and clearly that there are other areas that we believe should be addressed to ensure that some of the broader problems to do with Medicare are worked on. It has to be emphasised that anything that is done through this legislation or in addition to this legislation in the area of Medicare, doctors' fees, health costs and availability of health services is not going to be a solution to everything. We are not going to solve all of the problems now through this piece of legislation. The core test for the Democrats is: are we going to solve some of these problems, are we going to put in place measures that will move things in a positive direction and are we going to provide help to people who need that help now?

Those are the simple, straightforward measures the Democrats will use in determining whether or not we will support this legislation at the end of the debate. Certainly we believe that there is sufficient scope for removing the problem areas in the safety net and providing some extra measures that are needed in the broader health area for the opportunity to still be a live one. The Democrats believe it would be irresponsible to ignore the opportunities to provide help and assistance to people in the community who need that help now simply because we are not going to solve all of the problems that need addressing. For that reason we will be supporting this legislation at the second reading, whenever that vote happens. We will then see what amendments are accepted or not by the chamber in the committee stage of the debate and we will make a final decision. Of course, come the third reading as to whether or not it is something we are willing to support.

As I outlined before, an essential, non-negotiable component for the Democrats is a single threshold for people to access the safety net, which would be no higher than
$500. That is necessary but not sufficient for us. We have also indicated other areas where action can be taken. If further action is taken in some of these areas it certainly brings it into the realm of possibility as something that it would be irresponsible of us not to support—that is, the provision of positive assistance to people who need it now and further measures to address some of the underlying problems with Medicare.

The Democrats have stated publicly, clearly and openly a number of times that we believe more needs to be done to provide extra incentives for bulk-billing. We have signalled publicly, clearly and openly that we believe extra incentives for bulk-billing, perhaps for those that meet a certain target of bulk-billing in their practice of, say, 75 per cent or 80 per cent, are needed. Those practices would then get extra incentive payments by way of encouragement for them to reach that level of bulk-billing. That is something we floated last year—it is no great secret—it is something we floated again this year and it is something we are still pursuing as it will provide further assistance with bulk-billing.

Bulk-billing has been a core part of this debate. Bulk-billing by GPs has been seen as central to the debate, and the Democrats believe it is central. The Democrats have already been successful, let me emphasise, at pushing this government to provide further incentives for bulk-billing—incentives that they were not willing to provide when they first brought forward their Medicare package back in May last year. There have been significant changes that the Democrats have already achieved to this government’s approach on Medicare. We have ensured that this government will not be able to pursue its desire to further expand the reach of private health insurance and private involvement in the publicly funded insurance system that is Medicare. We have also ensured that extra money has been provided for bulk-billing incentives. They have not been as wide as we would like, but the suggestion that you oppose extra money for bulk-billing incentives because it is not as much as you would like or it is not as wide as you would like is, frankly, irresponsible. It is crazy to oppose and try to prevent extra money going to bulk-billing incentives just because it is not as much as you would like. You get the extra money that is available and then try to build further on that. That is what the Democrats are doing. We have already had success and are continuing to try and look for further success in those areas.

The second component that we think still needs pursuing and are still pursuing is the scope for further incentives to be provided for GPs who bulk-bill, but we have to remember the core problem—it was identified quite clearly in the Senate committee report—that bulk-billing is a lot more than just GPs and that medical issues and medical expenses are a lot wider than GPs. Specialist costs are a key problem and a growing problem. There have been far greater increases in specialists’ costs in the last decade compared to the fees of GPs. That is not being addressed by this government and it is not being addressed, in large part, by the proposals that the Labor Party has put forward. That is why people are suffering increasing out-of-pocket health expenses and, frankly, we cannot ignore that fact. It would be nice to think that it would go away, but it is not going away. It is not going to go away in the short term and people need help now. That is why the prospect of providing extra help to people through a properly structured safety net is one that the Democrats are willing to explore. In summary, the components that the Democrats believe are important, as I stated, are a single threshold for the safety net at no more than $500 and extra incentives for bulk-billing for GPs.
The third area that we have raised regularly and repeatedly is the area of further assistance for allied health to take the pressure off GPs and doctors and to ensure that resources are applied in areas where there is need. Putting more assistance into allied health is not new for the Democrats. It is something that the Democrats have been supporting as a party for many years. We are also pursuing that area in the context of this legislation and the broader community debate. If we can get movement and extra assistance for allied health funding or extra assistance for bulk-billing incentives on top of the essential single threshold safety net for everybody then that would clearly be an unequivocal move forward from the situation that exists at the moment.

We are certainly trying to see whether that is achievable and we will continue to do that. We will wait and see what the outcome is before determining our final position on this legislation at the third reading of the bill. Our core judgment criteria will remain the same: will it help more Australians who need help now? Will it provide more assistance and measures that will address some of the underlying problems with Medicare?

The problems are big and wide and we are not going to be able to fix them all in one go, but we have already addressed and fixed a lot of them in the last nine months. If we can get some more now, that is good and we will keep going after that to see what further ones we can get. It will be an ongoing process and, in the context of this legislation, we are certainly trying to see if we can use this bill to move things further forward at this stage.

Senator HOGG (Queensland) (12.46 p.m.)—I rise specifically to look at the issue of the threshold that has been proposed under the Health Legislation Amendment (Medicare) Bill 2003. I understand that some people have an ideological approach and some a philosophical approach to this issue. I want to take a practical approach to the proposal that has been put forward by the government to have two thresholds, one of $500 and one of $1000, before relief is given to families under the Medicare legislation.

Undoubtedly, the thresholds that are being proposed are hurdles for many low-income families in Australia. The government claims that the safety net that is being proposed will assist some three per cent of families. Clearly, from the evidence that is before the committee that inquired into this legislation, there are a large number who will miss out. There are a number of people who are poor in our community who will be faced with paying the threshold.

To many people, the threshold might not seem an insurmountable hurdle. Five hundred dollars or $1000, in the case of some people, spread over a 12-month period might not seem to be a significant amount. But to those people who are genuinely poor in our community, it poses a major problem indeed. Most of those people live on a day-to-day basis. They do not have extra money, extra capital or even credit available to them such that they can access a doctor under the circumstances outlined here, pay the up-front fee and then claim the appropriate benefit back from Medicare. Many of these people live on a day-to-day basis. Some of them who are a little bit more fortunate are able to live from week-to-week but life is basically a struggle. They know that life is difficult and they know that to access one of the basic and fundamental benefits that society offers them is going to be difficult indeed.

I can speak with some experience here because my background is one of a family that was described as being poor and, of course, I know how my parents struggled on a day-by-day, week-by-week basis to live. Whilst they
have passed on, the experience that I felt as I grew up indelibly imprinted upon me the fact that the extra cash touted in this instance as being available to go to the doctor up-front is not the sort of money that is available to people who are intrinsically poor.

Taking my own GP as an example: to go to the local GP costs $45 up-front. Forty-five dollars might not seem a lot to many people, as I have said today, but it is a problem in itself for those people who live on a day-to-day basis. Whilst the government claims that the safety net proposal will pick up three per cent of families, there are a large number who will not be picked up by the proposal. Even if people are able to make it to the $500 threshold, thereafter they are still responsible for 20 per cent of the difference, as I understand it, from the fee charged to the Medicare rebate. So there is still an ongoing cost for people who are at the poorest end of our community.

Most of these people do not have access to EFTPOS facilities. They do not have credit card facilities. Even if they did, those facilities are of little or no use to them because it means that it is a deferred debt, and they must take from elsewhere to pay for that credit card debt further down the track. The result of the commitment of money to a very basic and essential thing such as health care is that it eats into their capability to have a reasonable lifestyle and meet the bare essentials that are required for themselves and their families.

So the threshold does not really assist all disadvantaged families. The government may well argue that it was never designed to assist all families. But, nonetheless, the safety net does not catch all those families who are in need, are poor or have a basic requirement to be able to access fundamental and basic health care facilities. Anyone who has ever had to queue up at the public hospital for basic health care has found no joy in that whatsoever. The only option that is facing many poor people seeking basic medical health care in this day and age is to turn away from their local GP and to front up at the public hospital system—and, as addressed in the report, this is putting pressure on the public health system.

It is interesting to note that the government put forward the concept that the threshold will be, firstly, easily reached and, secondly, achievable for those people in that low-income area. In my view, many of those people will not even be able to go down the threshold track because the threshold is too high and, in many cases, the up-front charges by the GPs would rule them out. So, because of the cost and the lack of bulk-billing facilities, people are being faced with the options of not seeking medical treatment or queuing at the public hospital and meeting all the traumas that are associated with the long waits that occur when the public hospital system is placed under great stress.

I thought it was worth while to look at a couple of comments that were made in the report on this issue of looking after the poor, because I think that the government—any government of any persuasion—needs to look after the poor and to put in place an option that will pick up those people in our community who are less fortunate. I come from the school of thought that says there should be a preferential option for the poor. The poor should be treated preferentially to ensure that, when it comes to fundamental basic facilities such as health, they are not denied the opportunity to have those needs attended to.

I will just quote briefly from the Senate report because I think it sums up very well some of the concerns. At paragraph 350, on page 46, it says:
Setting aside the issue of universality, does the creation of incentives to bulk bill concession card holders and children under 16 years represent an effective measure of need for bulk billing? Evidence to the inquiry has raised two principal objections to the scheme.

I just want to look at the first objection. At paragraph 351, the report goes on:

Firstly, a focus on concession card holders and children tends to exclude a group loosely categorised as the working poor. Those are the people that I am genuinely concerned about. Having come from that group I understand their situation, and it is no fun. There is identified in the report—whilst it might not be accepted by all in this chamber—a group, loosely categorised as the 'working poor', which slips through the safety net. The Senate report quotes the Country Women’s Association and their submission. I thought their words were most pertinent to the situation. They say:

They do not have Concession Cards, yet their incomes are too often just above that threshold for eligibility. The lowest paid workers in our economy, shop assistants, hospitality workers, casual employees are all left out of this equation.

My proud association with shop assistants, through my union at both state and federal level, is well known in this chamber. The Country Women’s Association, in their submission to the inquiry, mentioned not only shop assistants but also hospitality workers—another group who are traditionally lowly paid—and casual employees in a wide range of industries indeed who, by the nature of their insecure employment, are in a socially disadvantaged position. They were recognised in the submission of the Country Women’s Association as being disadvantaged. It goes on:

So too, and this is of particular concern to our members, are young persons, over 16, who are usually on low wages as they work their way through traineeships, for example, or are in casual employment, that does not bring in an adequate income but nonetheless in our “reformed” welfare systems classes them as “employed” and therefore ineligible for assistance. They are often away from home, struggling to pay rent and look after themselves and it is their health care that regularly is ignored as being too expensive.

This is a group of people who potentially fall through the safety net that the government say they are putting in place. The government say they are going to help people access this basic and fundamental health care that I believe is everyone’s entitlement.

My view—and I understand that others in this chamber, on the other side in particular, will not agree with my view—is that we have a responsibility as legislators to have not only an option for the poor but also a preferential option for the poor, and to look after those people in our society who are least able to defend themselves, protect themselves and help themselves. It is my view that in the instance of those people the threshold—any threshold—is not appropriate. There needs to be a zero threshold if those people are to have the true safety net that they desire. Those people of course are very much faceless out there in the community and not readily identified. But, nonetheless, they are people who are faced with fundamental, very basic health issues. Given the fact that they do not have access to ready credit, they definitely do not have access to discretionary cash for expenditure, even on important issues such as health. As I said, they eke out an existence on a day-to-day basis. They are not going to be picked up by the likes of the proposed threshold that the government are putting forward in this legislation.

One only needs to look at some of the national advertising campaigns that government agencies run in the health area. Those campaigns urge people in a number of quite severe medical areas to see their doctor im-
mediately. They tell the person who is the subject of the campaign, ‘Talk to your doctor,’ or ‘Ask your doctor,’ or ‘Discuss them with your doctor,’ or ‘Don’t make excuses, make an appointment,’ or ‘If in doubt get it checked out’. These are just a few sample quotes from a range of very good government initiatives drawing people’s attention to a wide range of medical and health conditions for which they should seek the urgent advice of their doctor. But if you are in the low-income group and you fall through the safety net then you do not have the capability and you do not have the capacity to go to the doctor and do what you are being urged to do by so many of these campaigns. For those people in our community who are genuinely poor, it really is quite a slap in the face to have the proposition of thresholds put up.

The other interesting thing that came out of the report was not only the fact, in my view, there are a number of working poor who will fall through the net but also that the proposal being put forward by the government is complicated. I think that is eloquently summed up in paragraph 2.70 on page 25 of the second report by the Senate Select Committee on Medicare. It says:

2.70 However, the flip side is that the system will be very difficult to explain to the public, especially where there is some confusion about the relationship between the rebate and the schedule fee. In addition, there will certainly be widespread confusion about which safety net threshold different out-of-pocket costs are contributing toward (in some cases, out-of-pocket costs count toward both thresholds) and difficulty with the concept that, depending on whether a patient is typically billed for much more than the schedule fee, different thresholds will be reached at different times.

So here we have people struggling at the margins. They are going to have difficulty even trying to make an up-front payment, let alone work out the complexities of which threshold will pertain to them.

I think this is quite unnecessary. There must be some simpler regime that can be put in place to ensure that those people who have the basic and fundamental need for health services—which I think is a fundamental right of us all in this modern day and age—get those services without any complexities and without any strings attached. Those services should come to them not served on a platter but in a form that is easily understood and easily digested so that they can use it to promote a reasonable, healthy lifestyle for their families. I think there needs to be a preferential option for the poor, which I do not think the government’s proposal puts forward in the legislation that we have before us today. I believe that the legislation as it currently stands needs to be defeated.

Senator STOTT DESPOJA (South Australia) (1.05 p.m.)—I also rise to speak on the Health Legislation Amendment (Medicare) Bill 2003, along with some of my other Democrat colleagues. We believe that the importance of health legislation cannot be underestimated, particularly in this context where we believe we are seeing an attempt by the government to erode what is one of the world’s best public health systems—or, at least, it has been. This particular legislation before us is of course one part of a larger package of reforms, the MedicarePlus package. That package was released in the midst of a community backlash, if you like, over the original package, the government’s A Fairer Medicare initiative. MedicarePlus has been touted as improving upon A Fairer Medicare and purports to better safeguard the health needs of Australians.

Yet the package that we are dealing with—and the legislation is one part of that—is, arguably, one of the most far-reaching reforms of Medicare that we have seen since its inception. This particular piece of legislation seeks to make Medicare a two-tiered system. In some ways it seeks, there-
fore, to undermine the very heart of Medi-
care: the universal provision of quality health
services. Most here are aware of the details
of this package, having sat through previous
debates, witnessed the Senate committee
processes and dealt with media reports on
this issue, but I think in this sitting period it
is worth re-examining and reiterating some
of the potential impacts of the legislation
before us. I am particularly keen to look at
the impact in my home state of South Austra-
lia.

We all know providing quality health care
to the community is expensive. We only need
to look at the skyward climb of private
health insurance premiums to see this con-
firmed. With expenditure of nearly $19 bil-
lion in the 2001-02 financial year, Medicare
accounts for the lion’s share of the federal
health budget. The community pay for Medi-
care through our taxes. The Medicare levy, at
1.5 per cent of taxable income, as well as
general taxation revenue, funds this national
program. In 2001-02, 20.4 million people
were enrolled in Medicare in Australia and
220.7 million Medicare services—an ex-
traordinary number—were processed by the
Health Insurance Commission. A publicly
funded, well-resourced and accessible Medi-
care system is critical to the health of our
country and its citizens. Money spent on
health, like that spent on education, is an
investment: it is an investment in the health
of the nation achieved through the collective
health of individuals.

I do not deny that Medicare needs some
reform. The Senate committee process which
examined the government’s proposed re-
forms heard that many doctors are feeling
squeezed between a rock and a hard place—
that is, by the dual imperatives of good and
accessible patient care and the desire for re-
numeration that is on a par with their com-
mitment, their qualifications and their expert-
tise. Many patients, particularly those on
lower or middle incomes, are increasingly
concerned about the expenses involved in
seeing the doctor. From a high of 79.7 per
cent in 1996-97, the percentage of GP atten-
dances bulk-billed in the December 2002
quarter was 68.8 per cent—a significant de-
cline. This decline, as people would know,
shows no sign of arrest. As I will discuss
later, there is significant concern that the
MedicarePlus package as it stands will has-
ten the decline of bulk-billing. So what is the
government proposing? In this place last
month we were told that this safety net was:

For people who have catastrophic incidents,
accidents, ongoing illness or who might have
children who need continuing treatment ... 

I applaud the sentiment in that; it is appro-
priate. There are many in the community
who have chronic illness or disabilities—for
example, psychiatric conditions—who face
significant out-of-pocket expenses for their
treatment. The burden of doctors’ fees is of-
ten compounded by the need for medication,
follow-up treatment et cetera. For some, the
decision to go to the doctor becomes quite a
balancing act.

Under this legislation, those with conces-
sion status or in receipt of family tax benefit
A will be able to access the safety net once
they have paid $500 in out-of-pocket doc-
tors’ expenses or specialist fees. For many in
the community, though, $500 is a lot of
money. For those Australians on lower in-
comes it is an immense amount of money.
For a pensioner living on under $12,000 a
year, $500 is the difference between having
electricity for the year and not. For many
families living below the poverty line—and
let us remember that an increasing number of
Australians are living below the poverty
line—the safety net may as well kick in at
$5,000 for all the good it will do them.

You might think that once you have
reached the safety net threshold any further
appointments with doctors or specialists in that year would be free, but it turns out that this safety net has holes. Reaching the threshold simply means that 80 per cent of your out-of-pocket medical expenses for the rest of the year will be covered. If this was not true, it would almost be funny that the terminology ‘safety net’ was being employed at all.

We have determined what the criteria for qualification will be. So how many people is this safety net going to assist? Again, the Senate was told last month that the safety net would help at least 200,000 people. This represents less than one per cent of the population currently enrolled in Medicare. One in 100 people is likely to benefit from these reforms. Some might say that is more of a long shot than a safety net. Trapeze artists use safety nets, and Medicare is not a circus—although sometimes it has been treated in that way. We should not be making Medicare or health policy aimed at those falling through the increasingly large gaps in the system. We should be seeking to strengthen Medicare so that all Australians, regardless of their status, can access primary health care.

In some ways, the safety net debate is a bit of a diversion—misdirection aimed at facilitating the erosion of Medicare. If you seek proof of the government’s questionable direction in relation to health policy, you need look no further than the private health insurance rebate. At a time when our public hospitals are in desperate need of relief, more than ever before—and, before anyone suggests that this is merely a responsibility of the federal government, I acknowledge the role of the states in this process as well—the government are providing billions of dollars in the form of rebates to make private health insurance more attractive. They are subsidising gym shoes and tennis rackets while public patients spend many hours waiting in emergency rooms or months on elective surgery waiting lists. Many in this chamber and in the community would be aware of the Democrat position in relation to the private health insurance rebate—that, at a minimum, we should be means testing it. In just one year the reward would be $1 billion, which could go back into revenue.

It is certainly a questionable policy direction and one that is not particularly economical as well. But, dismayed by the state of public hospitals and threatened with penalties for not joining, individuals and their families are effectively forced to take out private health cover. Here is the great con: they already pay for health cover. If this government cannot or will not adequately fund public education or public health with our tax dollars, perhaps it is time we all asked where our money is going. ‘Show us the money’—that is what we should be asking. If it is not the key responsibility of government to invest in education and health services, what is the responsibility of government? The irony is that the majority of Australians are quite happy to contribute taxes towards the costs of education and health. Polls show us that people are willing, if not eager, to properly fund public health and public education. They are happy to pay for their public health care via their taxes.

Many people in my home state of South Australia are all too aware of this crisis in primary health care from both a federal and a state perspective. They woke to the headline ‘High stress’ in this morning’s Advertiser. That story tells how areas in South Australia’s northern suburbs are facing a crisis in primary health care. Health Insurance Commission figures show that in some areas there are 1,481 patients to one GP. Individuals can wait days and weeks to see a doctor. Some doctors have been forced to close their books to new patients—and this in one of the fastest growing areas in the state.
Fundamentally, this legislation and the package of which it is an integral part will not necessarily address this decline in bulk-billing. As we know, bulk-billing is the centerpiece of Medicare. To fail to examine the reasons behind such a decline—and then not to commit additional resources to dealing with it—is to condemn Medicare to a slow death. A survey in August showed that 69 per cent of people would be happy to see an increase in their Medicare levy if it were the only way to ensure that bulk-billing could continue. Many who testified before the Senate inquiry expressed their concern that this package would help hasten—the decline in bulk-billing. By offering an additional $5 to doctors to bulk-bill only some concessional patients, this legislation could create a disincentive to bulk-billing those who are not eligible for this particular incentive. This is just another measure undermining the key principle of Medicare—the key principle of universality.

Mr Acting Deputy President, you have heard my concerns and those of other Democrats regarding this legislation and you have heard from others in the chamber. Through the Senate inquiry we have heard the concerns and the views of a number of organisations, community groups, doctors et cetera. Organisations such as St Vincent de Paul, ACOSS, the Australian Consumers Association and UnitingCare, just to name a few, have all outlined their belief that this package will ultimately be damaging and counterproductive. However, the voices of ordinary Australians are not often heard in this place. I conclude my remarks by reading from the many hundreds of emails, letters and faxes—and of course we have all had phone calls as well—that we have received over the last few months. Eileen from Melbourne says:

We fought hard for Universal Medicare. Our Country needs healthy citizens. Good health must be a right, not a privilege for an affluent minority.

Marion, also from Victoria, remarks:

We don’t want a ‘safety net’ for the poor, we want a universal health system for all Australians, equitably.

Stefania, a doctor in Sydney, notes:

Medicare is paid from taxation as a universal health scheme, to which each person contributes according to his/her means through direct and indirect taxation, and to which each person can look for help in times of need.

Peter from Queensland writes:

The universality of bulk billing is the cornerstone of Medicare. A ‘safety net’ in any form means the abandonment of this principle and a giant step towards the Government’s real objective to destroy Medicare. A system that needs a safety net is already a failure.

In Sydney, Sue comments:

Medicare means universal health care. That is why I am happy to pay a levy. I have private health insurance but regard the health insurance rebate as a stupid waste of tax payers’ money.

In my home state of South Australia, Anna, who is a single mother of three, writes to me: I already struggle to take my kids to the doctor. This Safety Net will not help me. I need Medicare to work for me all the time, not just when I am at financial breaking point.

There is one comment that sums up my thoughts, and I am sure the thoughts of many others, in relation to the safety net proposal. Dr Chatar Sethia, president of the Mount Druitt doctors association, pertinently notes:

A safety net is very much like the ambulance at the bottom of the cliff rather than the fence at the top.

Medicare has provided the framework for a world-class primary health care system in Australia for at least two decades now. A death by a thousand cuts worries me as much as great gaping changes and deleterious reforms. The fact that we are chipping away at
and eroding the health care system and that cornerstone principle of universality could be just as ignominious as a fatal body blow. I urge senators to think long and hard before deciding to support this legislation. It needs substantial amendment before it can even be considered.

**Senator WONG (South Australia) (1.21 p.m.)—**I also rise to speak against the Health Legislation Amendment (Medicare) Bill 2003, a bill my Labor colleagues and I condemn as being an attempt to apply a flawed political fix to a major public policy problem: the decline of universal health care in Australia. This is evidenced by the decline over every successive year of the Howard government in bulk-billing rates across this country. This so-called MedicarePlus package is the latest instalment in the Howard government’s undermining of Medicare. Previously we saw A Fairer Medicare, and I have heard it sarcastically suggested that this package should be called ‘An Even Fairer Medicare’. We in this place all know that the government has no commitment whatsoever to a fairer Medicare system; in fact it has no commitment to Medicare at all.

The principle of Medicare itself is already fair. What is unfair is the lack of resources directed to it under this government. What is unfair is the decline in bulk-billing rates and Australians unable to see bulk-billing doctors, unable to access health care on the basis of need. Medicare is being undermined at its core by this government. There is one thing that the Australian people should know about this Prime Minister’s attitude to Medicare. He made it amply clear in the 1980s when he described Medicare as a ‘rort’. It appears that the Prime Minister does not believe that every Australian has the right to a decent health care system. It appears that the Prime Minister believes that Australians should have to pay their way. We can only conclude that he believed then, even if he would not say it now, that Australians who support Medicare must therefore support rorting. We on this side of the chamber say that Medicare is a right not a rort.

Let us look at the Liberals’ record on health policy because it has been nothing if not consistent. There is a continued pattern by the Liberals of publicly supporting universal health care in the lead-up to an election and when the election is over returning to dismantling universal health care. We have to consider that pattern of behaviour when we look at this legislation. We can trace the Prime Minister’s attitude on this issue back to the 1970s and even further still. The Prime Minister, as the member for Bennelong, opposed the introduction of Medibank under the Whitlam government. He was part of the Fraser government which promised in 1975 to retain Medibank then dismantled it once elected. The Prime Minister was opposed in previous years to the introduction of Medicare under Prime Minister Hawke. The member for Bennelong described it as a rort but came to realise that he was Robinson Crusoe on that one and then changed his public position. He has indicated—I would argue feigned—support for Medicare at subsequent elections. Over the term of his government this Prime Minister has steadfastly presided over the collapse of Medicare in spite of what he might say about it. Although the Prime Minister indicates his support for Medicare he at the same time says that what existed before Medicare—and, in fact, what existed before Medibank—was a good system.

What was that system? Before Medibank, before Medicare, before a Labor government built a publicly funded health system, there was means testing for access to Australian public hospitals. There was a user-pays health care system. There was no bulk-billing. There was no universal health care.
There was no guarantee that as an Australian you got the care you needed rather than the care you could afford. This old model is the model that the Prime Minister has always preferred and we say that this is the model he is now implementing by stealth. He has had the good humour to call this MedicarePlus, but Australians are not laughing with him. Australians are deeply suspicious of Medicare being tampered with. They were suspicious of the equally ironically named A Fairer Medicare. They smelled a rat. Minister Patterson appeared as unconvinced about it as the rest of us, and Australians generally knew that this package would have undermined our health system.

So what have we seen subsequent to that? We saw that the Prime Minister must have sensed the disquiet about Medicare in the electorate. We have seen a bucket of money allocated to the new minister in order to get the Medicare crisis off the front page. Let us look at some of the specifics of the so-called MedicarePlus and how that bucket of money is going to be spent. All concession card holders and families in receipt of family tax benefit A will be eligible for an 80 per cent rebate of all out of hospital out-of-pocket expenses in excess of $500 in each calendar year. All other families and individuals will be eligible for an 80 per cent rebate of all out of hospital out-of-pocket expenses in excess of $1,000 in each year. So families and individuals are going to have to variously spend up to $500 or $1,000 in out-of-pocket expenses before they are eligible for the safety net. The numbers estimated by the health department in evidence to the committee were that some 200,000 people in any given year were likely to access the safety net. As was observed by Senator Stott Despoja speaking prior to me, that is around one per cent of the Australian population. If this is a safety net, it is a strange one. It seems to me to be more holes than net. To quote the Queensland Nurses Union:

The overall thrust of the package is towards a residual rather than universal model of health care.

The facts certainly bear that proposition out.

Indeed, the Senate inquiry report into the package demonstrates that this package is really about turning health care into welfare. As the report states:

The implicit message in Medicare Plus is that the role of Medicare in future should be that of a welfare system: not the universal insurer that should deliver equal benefits to Australians alike, based on health needs, not income levels, and the understanding that the richest have paid for the system through tax.

The evidence is that medical costs for Australians are rising. I am sure that most senators in this place would be aware of that from representations made to them by their constituents. Medical costs for Australians are rising to an unaffordable level for many. The lack of adherence to the schedule fee and the massive drop in bulk-billing rates under this government have eroded the effectiveness of the existing catch-all safety net. I would have thought that the solution to this problem is to fix it with the schedule fee. Labor has already made a number of commitments in this direction, including increasing rebates by $5 across the board.

The government’s solution, in part set out in this bill, brings relief only to a very small number of Australians who qualify. In fact, according to a study by Professor Deeble—who, as we should all know, is a very credible expert in this field—only about 1.5 per cent of Australians will really find themselves in a better position than their current position. The reality is that the current thresholds as proposed—$500 and $1,000—are too high for the overwhelming majority of Australians to benefit. That is the essence of a package that abandons universality and
creates winners and losers. That is the essence of this package.

We also say that the measure of need that determines access to the threshold is questionable. Simply including those who have concessional status or are in receipt of family tax benefit A leaves behind many working people on low incomes. It leaves behind individuals with chronic illnesses who struggle to meet health costs but do not qualify for concession cards. I would like to draw on an example of this type of potential discrimination in the package which is outlined in the Senate inquiry report. Those without dependent children are discriminated against because of the weighting of family tax benefit A towards those with dependent children. As the report states:

A couple with dependent children may enjoy a concessional safety net threshold, notwithstanding that their income is over $80,000 a year, whereas a single person without children would be subject to the $1,000 threshold on an income of less than one quarter that of their neighbours. As well as being in many particular instances unfair, this deepens the poverty trap for many more Australians.

Let us take another example: an individual working full time and earning $35,000 per year who has a chronic medical condition. They will enter the safety net only after spending $1,000 out of pocket, but a self-funded retiree of pension age earning up to $50,000 will qualify for the lower threshold of $500. Where is the fairness in that? As well as not being an accurate measure of need, the reliance on the family tax benefit does create a bureaucratic nightmare under this system. It will send tens of millions of dollars out of service delivery and into administration. The evidence to the committee indicates that $72 million of the $266 million allocated to the safety net will go into administration costs. And of course we can expect that this administrative monster will get it wrong time after time and we can expect that it will demand that people who may already be going through trauma associated with their health care deal with the stress of more government bureaucracy in order to receive their entitlement.

The linking of Medicare to the failing family tax benefit system is a concern. This is the tax system which has been the subject of apparently endless complaints. This is the tax system which has left a number of families in a debt trap that they did not expect. As we know, families receive fortnightly payments of the family tax benefit, or FTB, if they register with Centrelink and provide an estimate of future income. Because of the difficulty of predicting income, six out of 10 families are paid incorrectly, either too little or too much. About 1.2 million families received incorrect payments in the 2001-02 financial year. If Medicare payments are going to be made on the basis of this failed system, it leaves the door open for the Howard government to claw back Medicare payments if families are subsequently found ineligible for the family tax benefit. The Howard government have assured us this will not happen, but that assurance does not stack up with the zero tolerance policy that they have had on debts associated with the family tax benefit. Instead of fixing the family payment debt trap, the Howard government is exporting this flawed policy into our Medicare system. The reality is that many families who have already been burnt by the family payment debt trap choose not to register with Centrelink for the family tax benefit. Instead they wait until the end of the financial year to get the benefit paid with their tax return. What will happen to those families who are eligible for family tax benefit A but are not registered? How will they get their extra Medicare payments if their expenses are more than $500 a year?
This package creates administrative problems and problems as to fairness but it solves none of the problems that we are faced with. Yet another problem created by this package is the inflationary effect on prices which is the result of uncapped out-of-pocket benefits. There is a real concern that the uncapped safety net will cause prices to rise because of a perception that the government will pick up the tab for patients with high costs or need. This is referred to specifically in the Senate committee report, which again quotes Professor Deeble:

If doctors and patients both believe that nobody was going to be really hurt because the safety net was going to look after them, then there was no reason why the doctors should not just gradually edge fees up. That is the experience in the in-hospital area where gap insurance and rising fees have gone together.

To those who argue that this package will be improved by the lower thresholds, I simply point out that this could potentially exacerbate the inflationary effect of the uncapped safety net.

I would like to comment briefly on the proposal to pay a $5 incentive payment for every service delivered to concessional patients and children under 16 that is bulk-billed. Whilst everyone retains an entitlement to a basic rebate payment, this package creates incentives for doctors to offer different benefits to different people based on the government’s perception of relative need. The Howard government is clearly saying some patients deserve to be bulk-billed and some patients do not. It is, of course, those who are perceived as welfare recipients who the government wants to be bulk-billed. That is really all the proof you need that this government is turning health care into welfare. The cruel irony is that this package is not even needs based welfare, and many who need it most will miss out. Not only Labor had significant concerns over this package; the Senate inquiry confirmed the depth of concern in the community, including amongst experts. We say this government should listen to the concerns of those who do know something about access to affordable health care. I quote the St Vincent de Paul Society:

The legislation in its present form even with the proposed amendments, would not even be a band-aid solution to what is a grave national problem. The idea of a safety net is a cruel hoax on those who live in low-to-middle-income families.

I want to make a brief comment about the media report that Senator Stott Despoja referred to. The report that appeared in the Adelaide Advertiser today referred to particular areas in the northern part of Adelaide where the ratio of GPs to patients is one to over 1,400 people, where people are unable to access a bulk-billing doctor and where many doctors have closed their books to new patients, with consequent impact on the families and individuals who live there. This package does nothing for those people. This package does nothing to increase bulk-billing in the poorer areas of Adelaide, the faster growing areas of Adelaide, which are desperately in need of more general practitioners. I also want to refer to a quote by the Mt Druitt Medical Practitioners Association that has been referred to quite a number of times in this place as it really epitomises the problems of this package:

A safety net is very much like the ambulance at the bottom of the cliff rather than the fence at the top.

You have to go well into your income, you have to spend a lot of your own money on out-of-pocket expenses before the government will step in to assist you. Even the Howard government’s own senators who served on the Senate select committee urged the Howard government to examine an alternative proposal suggested by Professor Deeble, one of Medicare’s architects.
Above all, the Australian people want a different approach. They want bulk-billing restored and they want Medicare protected. Seventy-one per cent of Australians believe they are better off under bulk-billing and 69 per cent are even willing to support an increase in the Medicare levy if it is the only way to allow continued access to bulk-billing. That is a pretty remarkable statistic in that survey, with 69 per cent saying, ‘If this is the only way we can get bulk-billing, yes, we will cop a tax increase.’ There are very few areas of public policy where that can be said. But this deep public commitment, the commitment of the Australian public to the Medicare system, is ignored by the government, which presides over a situation where it is perceived that the Medicare Benefits Schedule is becoming irrelevant. The public insurance system rests on the MBS. Its purchasing power under this government is being eroded and Medicare is being undermined. This crisis can be solved if the government wants it solved. I urge my colleagues in this place, the Independent and Democrat senators in particular, to stand firm in the face of hysteria and insist that the government address the existing problems instead of creating new ones, as it does under this flawed package.

Senator WEBBER (Western Australia) (1.38 p.m.)—The Health Legislation Amendment (Medicare) Bill 2003 provides not only this parliament but also the Australian people with a very clear indication of the failings of the Howard government. This is a government that, from the time it assumed office, has been ideologically committed to dismantling Medicare. The government knew that the Australian people would never countenance an overt attack on Medicare, because Australians have embraced the universality of Medicare and enjoyed the ability to visit a doctor at a time of need rather than when they could afford it. For the Australian community, thanks to Medicare, health was no longer about economic choice. Health care was simply about making an appointment and seeing your local GP.

This government’s approach was to dismantle Medicare, yet they knew it had to be done behind the scenes. An outright attack on Medicare would consign them to electoral oblivion, and they knew it. The approach that they have adopted is one of neglect, denial and misdirection. For too long, under the stewardship of successive ministers of health, the Australian people have been misled—misled in that what we have heard time and time again was that the changes to private health insurance instituted by this government’s rebate system would build a better health care system.

We were told that this policy of so-called encouragement of Australians into private health insurance, through the provision of a rebate, would remove all the pressures on the public hospital system. The government’s flawed concept was that those who could pay would opt out of using public facilities and use private facilities and that somehow Medicare would be maintained. In attempting to do this, the government has pillaged the public purse to pay for a rebate that increases year after year. Indeed, it is about to increase again. Every time the health insurers increase their rates, the public purse suffers.

The Australian people were promised that private health insurance would actually become cheaper. Instead, the premiums continue to increase year after year. This is a deliberate strategy to build a two-tier health system that has at its very core a person’s capacity to pay. The decrease in bulk-billing rates can be attributed to one thing, and one thing alone—the continued refusal of this government to address the issue of the schedule fee. There is a simple dynamic at work in our health system: when our fellow
Australians are confronted with having to pay a Medicare levy, pay private health insurance and also make an out-of-pocket payment to their local doctor, they simply do not go to the doctor. Instead, they seek GP services in the accident and emergency wards at our public hospitals.

Australians signed up to and supported Medicare over the years because of a compact between the government and the people. It was a very simple compact: you paid your Medicare levy through the taxation system and you accessed your GP without any further payment. You cannot get a simpler system than that. You cannot get a fairer system than that. What this government has done over the last eight years is to pervert that compact with the Australian people. While the government is out publicly stating that there is no crisis in bulk-billing rates and withholding any increases in the schedule fees, it has privately been building its two-tier health system: if you are rich and able to pay then you get to go to your doctor without any restriction; there is no waiting time because the people who cannot pay are actually off attending a public hospital.

The legislation before us today is yet another exercise in government doublespeak. Now, we have before us a system that we are told introduces a safety net. The government is going to introduce an increase in the schedule fee for patients who are under 16, concession card holders and pensioners. It is a simple admission of failure, though, that the government hides behind the title of MedicarePlus. What that name means is that, after eight years of this government and its promises to preserve Medicare, the system is now failing. Rather than adopt a system-wide approach to solving the problem, we are now offered a quasi safety net. The plain facts are that Medicare was the safety net, a safety net for all Australians. All Australians contributed through the levy and all Australians could access the benefits. Now, all Australians can contribute through the levy but they can also stick their hands in their pockets to part with more money if they actually want to see a doctor. This is not MedicarePlus; this is the beginning of ‘Medicare Terminated’.

Finally, after all of his years of opposition to Medicare, the Prime Minister is getting close to his result—Medicare effectively dismantled and replaced by a two-tier system. If you are rich, you can get a rebate on your private health insurance—funded, of course, by the Australian taxpayer. If you cannot afford private health insurance but are under 16, hold a concession card or are a pensioner, you can have Medicare. If none of those apply, then go and sit in the waiting rooms of public hospitals. A family in the northern suburbs of Perth that I have dealt with recently is a single-income family with four children. The income earner is earning approximately $43,000 per annum. Thanks to the incredible increases in the private health insurance rates, they can no longer afford to take out private health insurance, but they cannot find a doctor in the northern suburbs of Perth who bulk-bills. They are not concession card holders. Whenever any one of those children is sick in an off-pay week they have to present themselves to the Joondalup Hospital in order to get the medical attention that child needs.

There is something fundamentally wrong with the deception perpetrated by this government on the Australian people over these last eight long years. It is time for the government to come clean with the Australian people and with the families in the northern suburbs of Perth. It is time for the government to admit that this latest exercise in political doublespeak is designed solely for the purpose of taking Medicare off the political agenda in an election year. It is clear that the new Minister for Health and Ageing, Mr Abbott, is not an ideas minister but rather Mr
Howard’s political fix-it minister. He comes out with this exercise in cynicism and pretends that it is all about decent health care. The only care in this package that I can find is associated with the increasingly desperate bids by the Howard government for re-election. This is not about providing Australian health consumers with a safety net; it is simply about providing a safety net for the Liberal Party and the National Party. After all their neglect and inaction, we have this pathetic attempt to remove Medicare as an issue in the forthcoming federal election.

After all, the government has form for this kind of behaviour—the ‘do anything, say anything, spend anything to get re-elected and to hell with the consequences’ approach to government. MedicarePlus will no doubt go the same way as all those other non-core promises we have learned about over the past eight years. The Australian electorate is not being taken in by this sham and it is my hope that the minor parties and the Independent senators in this place will not be taken in either. The Australian electorate now recognises the signs of one of this government’s frauds. People now know that all of the government’s promises about Medicare and cheaper private health insurance were part of the ‘say anything’ approach of the government. When the problems multiply, when decent, affordable health care starts to elude ordinary Australians, along comes another exercise in electoral cynicism, brought to you by the government.

The Australian Labor Party, on the other hand, announced last May a fully funded alternative to this government’s approach. There is nothing in this ‘Medicare Terminated’ package that is superior to that announced by Labor. Labor is the only party that can re-establish the Medicare compact with the Australian people. Only Labor is genuine in its commitment to Medicare in its entirety. Only Labor could have come up with Medicare in the first place, after all. Only Labor has developed a suitable package to restore the bulk-billing rate to over 80 per cent. Only Labor is prepared to work with the states, territories and health professions to solve the problems caused by this government.

The Australian people recognise that the Labor Party is the party that will fix the crisis in our health system. They have seen through the crony capitalists on the opposite side of the chamber and their approach to health—the crony capitalism that came up with a system that funnels extraordinary amounts of taxpayers’ money into a non-means tested rebate on private health insurance that is no longer accessible to all, a rebate for the wealthy that until recently allowed them to get subsidised golf clubs and meditation classes, for goodness sake, a rebate that directly takes billions of dollars each year and puts it into the coffers of the private health industry. Even this extraordinary public largesse is not enough, apparently. Apparently the trough is not big enough, so the funds keep increasing their premiums. Each increase in premiums results in yet another slug to consolidated revenue. All this while, particularly in my home state of Western Australia, public hospitals are denied adequate funding to deal with the increasing workloads placed on them by this approach.

This is not what the Australian people signed up for in their original Medicare compact. This is not what the Liberal Party and the National Party promised before their election in 1996. This cruel deception is now manifested in the so-called safety net. But there is nothing safe about it. There is plenty of net in it—a net that ensures that the Australian people are caught up again in a two-tier health system just like they were before 1972 and again between 1975 and 1983. The Australian people are trapped in a system that rewards wealth and not health, trapped
in a system that does not care for our community. It is a system that transfers money from taxpayers to the private health insurance industry, a system of this government’s making through neglect. Indeed, if you travel to the town of Geraldton, which is about a five-hour drive north of Perth, you will find that the Geraldton medical service has had to announce recently that it will discontinue bulk-billing for all patients, including concession card holders, because it can no longer afford to offer the services necessary and it is too busy being caught up with the additional red tape and bureaucracy imposed on it by this government.

The Australian people deserve a chance to vote on this MedicarePlus program. If the government’s approach on health care is right—and they are obviously sure that they are going to get away with this latest con job just one more time—they should go and sell it to the Australian people during an election campaign rather than try to trade the health care needs of all Australians with individual members of this chamber. If the government pretends that this policy is the answer, let us take it directly to the people. Let them have a say. It is clear to the Australian people that this government’s approach is not the answer for the delivery of certain, secure and universal health care. It is now just a case of waiting until the Australian people can deliver their verdict on this shameless, secretive dismantling of our treasured Medicare system.

Senator McLUCAS (Queensland) (1.53 p.m.)—Labor is opposing the Health Legislation Amendment (Medicare) Bill 2003 because, through the bill and through the so-called MedicarePlus package, the Howard government has sought to undermine the fundamental nature of Medicare with its ideologically insistence on inserting means testing and differential treatment into our health system. Medicare was designed to work as a universal health insurer that delivers health care benefits based on health need, not on one’s income. Medicare was designed as a universal and progressive insurance system that fairly takes account of Australians’ different financial circumstances. The bill before us today seeks to change those basic fundamentals of Medicare.

This government is seeking to destroy the fair, simple and universal Medicare that all of us in this chamber know that Australians understand and value. Labor and all Australians know that the Howard government, and the Prime Minister in particular, has always wanted to dismantle Medicare. We have heard those quotes in this chamber on many occasions. Independent and minor party senators who are considering doing a deal with the government over this bill need to ensure that the very first principle of Medicare—that is, its universality—is preserved. I urge them to focus on that.

It is interesting, though, to look at what the government has been doing during the time we have been considering this bill. If Minister Abbott and the Prime Minister are confident about the effectiveness of this legislation, why have they censored the release of bulk-billing figures that have been routinely provided by the Department of Health and Ageing to the Senate committee process? We saw stark evidence of this political interference when earlier this month Department of Health and Ageing officials were unable to provide the estimates committee with an adequate explanation for the ministerial and departmental decision to censor electorate data that would reveal the full and true extent of the health crisis facing Australia and its people.

If the government is so confident that this legislation—this package—contains the keys to Pandora’s box on health, why, after more than two years of releasing bulk-billing and
out-of-pocket cost information by electorate, does Minister Abbott want it stopped? Mr Abbott has said that this package would improve bulk-billing rates. If that is so—and there is no evidence that that is the case—then why would he shut down scrutiny of the bulk-billing rates? Mr Abbott has effectively locked Pandora’s box until at least next November—and I bet it is after the election—because there is nothing in this package, with its sham safety net, that will address the plummeting bulk-billing statistics, particularly in my home state of Queensland, and everybody knows it. One week ago the political editor of the Sunday Mail, Mr Darrell Giles, put it this way:

The latest data, to the end of 2003, show declines of up to 30 percentage points in Queensland—where the Coalition has 19 seats. The Health Department would have released three more sets of figures before the election, but the sensitive Government has put a stop to that.

The article states:

Five marginal Coalition seats in the Brisbane metropolitan area had seen falls of between 20 and 30 percentage points in the past three years.

Mr Abbott does not want electorate by electorate scrutiny of his bulk-billing rates. That is why he shut it down. If this legislation to implement the Howard government’s sham MedicarePlus safety net is actually going to achieve a turnaround in bulk-billing rates, as the government would have us believe, then why the secrecy? It seems that the government, which thinks nothing of spending $74 million over four years on the administrative arrangements as part of the MedicarePlus package, thinks it is dreadful that it is going to spend $100,000 keeping the community informed about what is occurring electorate by electorate with bulk-billing rates. We can apparently afford to spend $74 million out of a $264 million program on administration alone—not on health care but on administration—but we cannot spend $100,000 to provide the community with information about bulk-billing rates in their regions. Those bulk-billing rates, I have to say, are the most effective key performance indicators for reliably informing the community of the true state of bulk-billing and out-of-pocket costs. Let us be very clear: the reason the government has thrown a cloak of secrecy over the figures is simple—this package does not contain measures that will address the present health care crisis.

The bill is ideologically driven rather than being a serious attempt to support Medicare. Minister Abbott is trying hard to keep the community in the dark, as this government is trying to do about so many other things, like sugar, intelligence on Iraq, military justice and the true future cost of higher education. This minister is trying to keep our community in the dark about what the real electorate-by-electorate bulk-billing rates are. The community is not buying Minister Abbott’s MedicarePlus snake oil; now the minister is also acting to hide the truth from the community. Keeping information from electors is a sure sign of a government in trouble. Providing one’s citizens with access to quality health care is an elementary component of governance in any country. This government cannot step in, dismantle a fair system through neglect, replace it with an unfair, two-tiered system, and then attempt to hide the results of its actions before the election and expect people to be happy about it. Labor opposes the core of this bill—the so-called safety net proposal. The bill in fact proposes two safety nets—two very different qualifying thresholds.

Debate interrupted.

QUESTIONS WITHOUT NOTICE

Intelligence: Weapons of Mass Destruction

Senator FAULKNER (2.00 p.m.)—My question is directed to Senator Hill, the Minister for Defence. Does the government now
accept the view of the Defence Intelligence Organisation, as contained in evidence to the joint intelligence committee on 16 October 2003, where it was stated that weapons inspectors ‘have found no stockpiles of biological weapons or agents, no definitive evidence has emerged on the purpose of mobile trailers, and no evidence of production of chemical weapons since 1991 and no evidence that Iraq had undertaken significant post-1998 reconstruction of its nuclear program’. Minister, if the government does not agree with that statement, where does it disagree?

Senator HILL—The Iraqi Survey Group, which is the international body searching for weapons of mass destruction and endeavouring to answer many of the remaining unanswered questions, has not found stockpiles of weapons of mass destruction. I have said that in the chamber before and I am happy to say it again. As I understand it, there is still not a definitive explanation of the issue of the mobile trailers. There are still differences of view within the intelligence community around the world on that particular issue.

I am not sure what Senator Faulkner said about chemical weapons. The Iraqi Survey Group—as stated by Dr Kay when he returned to the United States—indicated that, although they had not found stockpiles of chemical weapons, they had found evidence of production programs. We are awaiting the second report of the Iraqi Survey Group. Hopefully that will not be too far away, and hopefully that might answer some of the still unanswered questions because obviously it is important that we get to the bottom of these issues.

Senator FAULKNER—Mr President, I ask a supplementary question. I note the minister’s intention to get to the bottom of these issues after the war in Iraq. I ask the minister: if the joint intelligence committee is correct in asserting that there were weaknesses in our strategic intelligence regarding Iraq, what steps will the government take to ensure that any future military interventions will not be conducted on the basis of flawed intelligence?

Senator HILL—Australia went into this conflict on the basis of Security Council resolutions that had determined that Saddam Hussein had not met his obligation to satisfy the international community that his weapons had been destroyed and his weapons programs discontinued. That was the basis of Australia’s involvement. It is true that there was a background of uncertainty to that as to the exact state of those weapons and the weapons programs at the time of the conflict. Unfortunately, intelligence will never be precise; it will never give an absolute answer. But the view of the intelligence agencies around the world was that a threat remained, and obviously their advice was the basis of Security Council resolutions. So perhaps Senator Faulkner will never be satisfied. But that is not surprising, because that is not the nature of intelligence. (Time expired)

Education: Funding

Senator TIERNEY (2.04 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone, representing the Minister for Education, Science and Training. Would the minister advise the Senate of the government’s commitment to support the parents of the 607,000 young people who attend Catholic schools? Is the government aware of other policies or statements in relation to school funding?

Senator VANSTONE—I thank Senator Tierney for his question. He has a longstanding interest in education and in schools funding, in particular. The Catholic school system has agreed to enter into the Australian government’s socio-economic status funding
That effectively means that 1,610 Catholic schools will be funded under the SES system, which delivers the most funds to schools with the neediest families and the least money to schools with the wealthiest. Over the 2005-08 period the Catholic school system will receive $12.5 billion from the Australian government—that is, $360 million more than it would have received under the current funding arrangements. It is easy to talk about the Catholic school system and 1,610 schools but, when you calculate it, that means that over 600,000 students will benefit. As Cardinal Pell has pointed out:

The bulk of government funding for Catholic schools comes from the federal government, although state governments also make a significant contribution. For government schools, the opposite is the case, with the bulk of funding coming from state governments.

Recognising the importance of parental choice in education means that we all need to work for the best possible government and non-government schools—all well resourced, especially in areas which are socially and economically disadvantaged. State governments principally fund state schools.

The announcement was welcomed by parents with children at Catholic schools, such as Bernadette Begg, whose son, Adrian, attends St Bridget’s Catholic Primary School in Marrickville, paying $1,500 a year in fees. Mrs Begg, who works part time, and her husband, Nur, who works a six-day week, were among several hundred local parishioners invited to the announcement yesterday. She said:

I think we’re entitled to get as much as state schools are getting, because we’re paying fees on top.

This is a real boost to Catholic schools, but they will not get as much as state schools. Sixty-eight per cent of students attend state government schools and receive 76 per cent of public funding. This fact is repeatedly misrepresented by the teachers unions, aided and abetted by the Australian Labor Party. Working out, of course, what the Leader of the Opposition thinks about school funding is challenging, to say the least. On the one hand Labor supports and on the other hand it opposes a combined funding pool. Paul Kelly said it was Mr Latham’s plan. Mr McMullan said that he backed that plan. Jenny Macklin said, ‘No, that is not the plan.’ If you look at the SES funding model, you will see that Jenny Macklin says that they are not scrapping it. The Canberra Times on Saturday, in its wrap-up entitled ‘Where the parties stand’, said that Labor would abolish the SES funding model. Ms Macklin welcomes the Catholics coming into the SES model, as does Mark Latham in his writings. You could be forgiven if you were confused as to what the Labor Party would do with schools funding.

What this government will do with schools funding is very clear: we will put billions of dollars into it and provide a massive increase for Catholic schools, which often have some of the most needy students. School funding is far too important to Australian families for the Labor Party to treat it in such a cavalier fashion. The Australian government, on the other hand, has demonstrated its commitment to the strength of both government and non-government schools, spending $25 billion over the last three years on schools funding.

### Intelligence: Weapons of Mass Destruction

**Senator CHRIS EVANS** (2.09 p.m.)—

My question is directed to Senator Hill in his capacity as Minister representing the Prime Minister. With regard to Iraq’s WMD capabilities, can the minister inform the Senate why ONA’s assessment changed so dramatically from 12 September to 13 September 2002? Isn’t it the case that the unclassified
version of 13 September was far more definitive in its allegations of Iraq’s WMD capability than the classified version published just one day before? Can the minister explain the divergence in emphasis and judgment between DIO and ONA in September 2002? What steps did the government take to reconcile such a divergence and to assess which was nearer to the truth?

Senator HILL—There are two different issues in the question: one is a suggestion that ONA altered its perception of the issues during relevant times and the other is the difference between DIO and ONA. I guess in some ways it is comforting that intelligence institutions might come to slightly different positions in relation to their assessment of the intelligence, and I think it is true to say that there was some difference of emphasis. That has not been hidden and that was put before the parliamentary committee. Why they came to slightly different positions, I do not know—it is a difficult question to ask me. It is the issue of the analysts, and the committee has had an opportunity to interrogate some of the leaders of those organisations.

On the question of whether ministers note these differences and ask questions, I think it is reasonable to assume that they do so, and the answer is probably that different officials reach slightly different conclusions on the same set of facts. But what I said in answer to Senator Faulkner and an interesting aspect of this matter is that, basically, all the principal intelligence organisations around the world were of the same opinion in matters of substance. They might have differed on matters of emphasis, and there is evidence here that even our own institutions may have differed on matters of emphasis, but on substance they were of one opinion. That is not only the American, British and Australian institutions but also, according to Dr Kay, the French and the German, where their political masters might have reached different conclusions.

In relation to ONA varying its opinion over time—again, an issue of emphasis—that is an issue for ONA. It might be on the basis of further information, but I do not know the answer to that. I am not qualified to answer for ONA. The committee has had its opportunity to address these specific issues. I must say that it is pleasing to note the committee’s finding—and Senator Evans could have put it in his question to me and mentioned the fact—that there was certainly no suggestion that the change resulted from any government pressure.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I thank the minister for his answer. We are prepared to do the Dorothy as well, if he wants. We are actually trying to get an answer to a key question, and that is: why did the unclassified version have such a different emphasis one day later? I would like the minister to try to answer that, because he did not answer it in his first attempt. I would also like him to inform the Senate why the final product of the unclassified assessment of 13 September 2002 was not cleared by the contributing agencies.

Senator HILL—I have tried to answer it in terms of differences in emphasis. What is being done here is trawling through a mass of material and searching for differences in emphasis. It does not strike me as surprising. You expect there to be differences in emphasis when documents are prepared by different individuals and by different teams and you expect also that that emphasis might change over time. What is important here is that the Labor Party has been suggesting that this change in emphasis occurred as a result of government pressure, but yet the parliamentary committee, including senior Labor representatives, decided that it did not. I think
that is important to note, and I thank Senator Evans for giving me the opportunity to say so.

Superannuation: Reform

Senator Barnett (2.14 p.m.)—My question is to the Minister for Revenue and Assistant Treasurer, Senator the Hon. Helen Coonan. Will the minister inform the Senate as to how the Howard government is providing more choice and flexibility for Australians to plan and save for their retirement? Is the minister aware of any alternative policies?

Senator Coonan—I thank Senator Barnett for his question and his interest in this issue. Last week the government announced a number of far-reaching new superannuation initiatives to improve both flexibility and choice in superannuation. The initiatives build on the Intergenerational Report, which looked across the generations and identified some of the challenges that lie ahead for our ageing society and for governments. The report identified the dwindling number of those in the workforce as compared to those in retirement, with one in every four Australians estimated to be aged 65 or over by 2042. It also threw into sharp relief the potential for a deficit of around five per cent of GDP or, in today’s dollars, $40 billion, which would be required by 2041-42 to meet the health, aged care and pension needs of ageing Australians and which would leave our future generations with a very hefty debt.

The Australian government leads the world in planning for the ageing of our population. Australia’s superannuation system is a central platform from which to address population ageing. The new superannuation initiatives do not affect a person’s ability to access their superannuation as a lump sum upon retirement nor do they affect the superannuation preservation age. Removing the work test for people under 65 means that, for the first time, every Australian aged under 65 can contribute to superannuation whether they are currently working or, indeed, whether they have ever worked. This is particularly important for women and those with broken work patterns who want to make a superannuation contribution. The government is also making it easier for people to continue to work part time and to take part of their superannuation to supplement their earnings. Older Australians with valuable skills and experience have much to contribute and may of course want to continue working but not full time.

Employers need to think more constructively about what older workers can offer. This new flexibility will allow greater options for work preferences. For people who are retiring, the government has provided greater choice to access a new type of complying pension that is market linked. This will increase pension options available to retirees and, of course, will introduce much welcome competition into the market. Indeed, there are a number of other measures that were announced in this package that make superannuation more adaptable to changing work arrangements and changing work patterns, that cut red tape and improve the integrity of the system.

These new superannuation initiatives have received support from the Australian Chamber of Commerce and Industry, the National Seniors Association and the Investment and Financial Services Association. The government, I must say, also welcome Mr Latham’s statement that the Labor Party will be supporting the legislation when it goes through parliament. This is indeed welcome, but it was confusing to hear Mr Crean say that there must be more. We are left wondering will Labor support these important reforms or won’t it?
But if Labor wants to do more it could go one step further and support this government’s important reforms to pharmaceutical benefits, disability support and labour market reforms that will increase productivity and ensure that decent services for all Australians are sustainable into the future. This government is committed to maintaining a prosperous economy and a cohesive society that does not leave the next generation with an enormous burden of debt. The new super package shows that this government is out in front, leading the way, determined to do the right things for the community, and to keep our system flexible and safe for future generations.

Intelligence: Weapons of Mass Destruction

Senator HOGG (2.19 p.m.)—My question is to Senator Hill representing the Minister for Foreign Affairs. Can the minister confirm that the CIA’s unclassified version of the national intelligence assessment published in October 2002 had most of its cautionary words deleted as compared with the classified version? Does he know why the following words, ‘Although we have little specific information on Iraq’s CW stockpile,’ were deleted from the unclassified version? Can the minister inform the Senate why the US Air Force’s view on UAVs was deleted? It said the US Air Force:

... does not agree that Iraq is developing UAVs primarily intended to be delivered platforms for chemical and biological warfare (CBW) agents.

Senator HILL—It is an extraordinary question, if I might say, to be asked for an explanation as to why there were differences between the classified and unclassified versions of CIA reports.

Senator Robert Ray—You’re being asked as the foreign minister.

Senator HILL—I think it would be a hard question to ask the foreign minister as well. I would have thought that questions relating to Australian agencies might be understandable but to ask that of us in relation to US agencies is really quite ridiculous. I regret I cannot tell you why there may be some differences between a classified and unclassified report of the CIA. Similarly, if there was a statement in one relating to the US Air Force’s views on UAVs and there was not in the other, I cannot help you with that either.

Senator HOGG—Mr President, I ask a supplementary question. Maybe the minister might be able to help me with this. Can the minister explain why the unclassified version deleted the reference to the US State Department’s Bureau of Intelligence and Research analysis which threw heavy doubt on whether Iraq was pursuing a nuclear weapons program? Is it not usual that the difference between classified and unclassified reports goes to the secrecy of matters and not the elimination of all qualifiers and cautionary notes?

Senator HILL—I do not think I can really answer that question either. If Senator Hogg is asking that we inquire of the Americans to see if they want to provide information in that regard then we could probably do that, but I cannot be expected to answer questions on differences in CIA reports. I suggest that he direct his question to a more appropriate person.

Health Insurance: Premiums

Senator ALLISON (2.22 p.m.)—My question is to the Minister representing the Minister for Health and Ageing. Is the minister aware that an average family buying private health insurance in 2000 has now had their premium increased by 23 per cent? Isn’t it the case that the price increase has almost wiped out their rebate of $600 in just three years? What assurances can you give that increases of eight per cent or more will not
be approved again next year and the year after that?

Senator IAN CAMPBELL—With regard to the assurance about the future of private medical cover rebates and private health insurance premiums, we can only give a commitment until the date of the next election, because a big question mark hangs over the future of health insurance premiums in Australia. Labor’s spokesman and their leader have basically ensured that there is no commitment to maintaining the 30 per cent rebate. The senator is asking me to give a guarantee. I can certainly guarantee that a coalition government—certainly between now and the next election, and, we would hope if we are re-elected, after that—will commit to maintaining the 30 per cent rebate without a means test. The benefit of that to an average family, as Senator Allison has clearly focused upon, is a significant saving in the cost of private health insurance.

Private health insurance premiums have risen. They rose under the previous government—they rose year after year under the previous Labor government—and they have risen under us. But what is absolutely certain under this government is that all families who take out private health insurance get the 30 per cent rebate, and that is a significant saving. I am told that in relation to the current increases in premiums the payouts made during the last year to members of health funds—and these funds are not-for-profit organisations—increased by eight per cent, whereas the incomes derived from premiums only increased by 7.4 per cent. So the funds were actually going backwards. I think all members of funds would like to know that, when the time comes to make a claim on those funds, the funds will be there to support those claims.

There are a number of reasons why the demands on funds have gone up. There has been a significant increase in the use of prostheses, for example—and I do not think Senator Allison would begrudge anyone a claim against their fund for those. There have been significant new costs related to new technology. There have also been significant increases in wages for professional staff, including nurses. I do not think Senator Allison or any senator would begrudge the hardworking nurses around Australia their increased wages. Nor would senators begrudge the fact that private medical insurance helps to fund the costs and wages of those hardworking people within the health system, and the wages of other health professionals. So there has been a cost increase to the funds. The premiums have not risen to an amount which would offset that. The government are committed to ensuring that we have a very sound, high-quality, competitive private health insurance system. That is why we backed it with a 30 per cent rebate.

That rebate has had the benefit of reducing costs for families so they can afford it. As you know, prior to this government’s coming to power, around 30 per cent of people had private health insurance. Our measures have increased that to 43 per cent of Australian families. I think about 8.6 million Australians now have private health insurance. That rebate has also taken pressure off the public hospital system. The number of people visiting private hospitals increased by 9.3 per cent in the last year it was measured, whereas public hospital increases were down around two per cent. So the policy has had some significant benefits. It is a coalition policy we are proud of but it would be at risk with the election of Labor, if that ever happens.

Senator ALLISON—Mr President, I ask a supplementary question. I thank the minister for his answer and point out that, despite his claim that prostheses and new technology, together with wages, have been repon-
sible for the increase in payments, this was mostly due to the 33 per cent increase in gap payments to doctors, according to the Private Health Insurance Administration Council. Can the minister advise whether increases of this magnitude—that is, 33 per cent—will also be given to public hospital funding agreements for doctors and specialists serving public patients and if not why not?

Senator IAN CAMPBELL—I did say that health professionals and the costs associated with them were a factor. I think all members of health funds would be pleased to know that the administrative expenses inside the funds have actually gone down from 13 per cent to 10 per cent, which is significantly lower than other insurance sectors. But one of the points that I should make is that much of the debate that is raging around health at the moment is about doctors’ remuneration and making sure that we attract the best quality people into medicine, both in general practice and also in the specialties. One of the reasons why costs are rising is that the cost of going into the specialties has increased—not only the cost of getting trained and getting out there but also the related issue of medical indemnity, which I know Senator Coonan and the health minister are addressing very diligently.

Foreign Affairs: Iraq

Senator FAULKNER (2.28 p.m.)—My question is directed to Senator Hill, the Minister representing the Prime Minister. Minister, when the government taunts the opposition as we have heard them do in question time today, saying that if it were left to the opposition Saddam Hussein would still be in power in Baghdad, isn’t that just code for a regime change argument to justify intervention? Didn’t the government explicitly rule out regime change as a reason for Australia participating in the Iraq conflict? Is the government now adopting regime change as its rationale to cover up for the fact that no weapons of mass destruction have been discovered by Dr Kay and his 1,400 inspectors? If regime change is now acceptable to the government, does the government advocate it occurring in Burma, North Korea and Zimbabwe as well?

Senator HILL—The reasons by which Australia entered this conflict are well known because they were debated in this place. The government made it clear that it was joining in a coalition to enforce Security Council resolutions. The role of the Security Council was to give confidence to the international community that Saddam Hussein, a person who had weapons of mass destruction and who had used them against his own people and against his neighbours, was complying with the international community’s requirements that he disarm, destroy his stockpiles and end his weapons programs. Despite 12 years of passing resolutions, the Security Council was unable to give the international community that confidence. Furthermore, to our disappointment, it was not prepared to enforce its own resolutions. On that basis Australia, as part of a coalition, sought to remove the threat.

In the end it became apparent that the threat would only be removed by the removal of Saddam Hussein himself, and his regime. There is no secret about that. But our purpose was to remove a threat associated with weapons of mass destruction rather than to remove the regime as such. I have spoken of incidental benefits and I was criticised for that. But there have been incidental benefits in the removal of Saddam Hussein in that the threat of Saddam to his own people has been removed. Somebody who was responsible for the deaths of several hundred thousand innocent Iraqis has been removed, and the Iraqi people have an opportunity for a better future. So the international community benefits in that threats against it are removed and
the Iraqi people benefit in that they are free to determine their own future without being ruled by the sort of horror regime that was the art piece of Saddam Hussein.

**Senator Faulkner**—Mr President, I ask a supplementary question. Can the minister confirm in the Senate that the government explicitly ruled out regime change as a reason for Australia participating in the Iraqi conflict? Can you indicate to the Senate that regime change was explicitly ruled out by the government?

**Senator Hill**—Senator Faulkner is misrepresenting the government’s position for his own reasons. There may have been an argument for the removal of Saddam Hussein apart and distinct from the weapons of mass destruction issue. As Senator Faulkner will know, there is quite a vigorous international debate about the removal of dictators for humanitarian reasons. We have heard the debate in relation to some places in Africa. But that was not the purpose of this government joining in the coalition. This government joined in the coalition to enforce Security Council resolutions that related to the removal of a threat of weapons of mass destruction.

**Trade: Banana Imports**

**Senator Cherry** (2.33 p.m.)—My question is to the Minister representing the Minister for Trade. In April 2002, the head of Filipino banana producer Lapanday, Mr Luis Lorenzo, told local media that Filipino milk producers had agreed to source suppliers other than Australia if Australia refused to allow in Filipino bananas. Mr Lorenzo, now agriculture secretary in the Arroyo government, was quoted as saying:

... Filipinos have found their trade patriotism in dairy imports ...

Given such action threatens a major export market, is that why Minister Truss, when he met with Secretary Lorenzo last September, expressed his readiness to negotiate the entry of Filipino agricultural exports into Australia? Can the minister outline what communications the trade portfolio had on the agriculture portfolio here to reverse Biosecurity Australia’s position on the import of Filipino bananas, despite no new peer reviewed scientific evidence to contradict the earlier verdict on moko disease?

**Senator Hill**—The position of the Australian government is a preference towards open markets because Australia, as a relatively small economy, will benefit if we have open markets to larger economies. There has got to be a quid pro quo for that. We have got to be prepared to open our markets, subject to reasonable exceptions. Our reasonable exceptions, which are accepted under the international trade regime, relate to our scientifically based quarantine exceptions. Australia wants to participate in an international trade world where we get full opportunity to trade with others. In that we recognise a responsibility to give others a fair go at trading with Australia, but at the same time we are entitled to ensure, and we will continue to ensure, that the quarantine protections that are in place within Australia and that are soundly based on good science are in fact maintained. That is the view of both Mr Truss and Mr Vail.
exceptional quarantine system and to reduce our level of protection to Australian farmers in pursuit of the free trade agenda the minister spoke about?

Senator HILL—I do not think the honourable senator listened to my answer. I said: to this government the quarantine protection, which is soundly based on good science, is absolutely critical. We are not going to risk Australia’s future by trading away that quarantine restraint. Therefore I can be confident that no pressure would have been put on Biosecurity Australia to any other objective.

Intelligence: Weapons of Mass Destruction

Senator ROBERT RAY (2.36 p.m.)—My question is directed to the Minister for Defence, Senator Hill. Does the government contest the accuracy of that part of Mr Mark Forbes’s article in the Melbourne Age of 21 February when he asked Mr Lewincamp about Iraq’s WMD capability:

“Was the magnitude of the threat enough to justify the invasion of Iraq?”

“No,” was his blunt reply.

Was Mr Lewincamp correct when he claimed that DIO reported that Colin Powell exaggerated in one or two of his statements and when he went on to say:

He went beyond the available evidence.

According to DIO, where did Mr Powell go beyond available evidence?

Senator HILL—There are differences between Mr Forbes and Mr Lewincamp; that is not in dispute. Mr Lewincamp gave evidence to the Senate estimates committee last year, when he made a number of statements which subsequently appeared in the Forbes article—so they were clearly picked up by Mr Forbes in the lecture he attended at the ANU in September last year. But Mr Forbes also claims that Mr Lewincamp said other things, which Mr Lewincamp denies. Therein lies a difference. As far as the government is concerned, the secretary of my department has been through the issue with Mr Lewincamp and is satisfied that he is giving to the government an honest assessment of what he said in September. The sorts of matters that Senator Ray has mentioned in his question, he denies and has said that he would not say.

Senator ROBERT RAY—Mr President, I ask a supplementary question. There is nothing on the public record of Mr Lewincamp denying the two matters I have raised with you, but he has denied other matters. So, firstly, will the minister go back and check whether Mr Lewincamp is willing to deny the two matters I have raised with him here at question time today? Secondly, if there is doubt as to Mr Forbes misquoting Mr Lewincamp, inaccurately reporting Mr Lewincamp or in fact breaking any ethical standards in his dealings with Mr Lewincamp, why has a decision been taken not to take Mr Forbes to the Press Council by way of complaint if such serious misquoting or inaccurate reporting has occurred?

Senator HILL—The sorts of things that Senator Ray is raising now, as distinct from what Mr Lewincamp put on the public record in the Senate estimates committee, are not the sorts of matters you would expect a senior intelligence officer to canvass. They do not express opinions on the views of other governments or what is influencing other governments. That does not relate to their intelligence assessment. So that is not the sort of thing that I would expect of Mr Lewincamp. I guess that, together with the fine record that he has as a senior public servant, led us to the conclusion that he should be supported. Mr Forbes believed he said something otherwise; that is Mr Forbes’s assessment. I am obviously not in a position to comment between the two because I was not present at the lecture. (Time expired)
**Trade: Free Trade Agreement**

Senator PAYNE (2.40 p.m.)—My question is to the Minister representing the Minister for Agriculture, Fisheries and Forestry, Senator Ian Macdonald. Will the minister outline to the Senate the benefits to Australia’s farmers and rural businesses of the free trade agreement with the United States of America? Will the minister please advise if he is aware of any alternative approaches to the free trade agreement?

Senator IAN MACDONALD—I thank Senator Payne for that question and acknowledge her interest in the free trade agreement. She, like most Australians, can understand what it is about—and, like most Australians, she supports the free trade agreement. Indeed I know Senator Payne’s family are in the sheep meat business, and they would obviously be delighted with the fact that most tariffs on the sheep meat trade will fall to zero immediately and the balance within the next four years. I suppose in answering Senator Payne I can only quote Australia’s chief negotiator on the free trade agreement, Stephen Deady, when he said that it is ‘overwhelmingly good for Australia’. It is a ‘good deal’, he said.

I am disappointed that sugar was not included but I am pleased that sugar industry leaders have, very responsibly, addressed the free trade issue by indicating that refusing to sign the free trade agreement would not have done one thing for the sugar farmers. They acknowledge that it has helped give substantial benefits to other rural producers. Those substantial other benefits—for Senator Payne’s benefit—include a once in a generation opportunity to link the Australian economy with one of the world’s most dynamic and robust economies. One of the benefits is that 66 per cent of agricultural tariffs will go to zero immediately and a further nine per cent after three years. The increase in the beef quota means an extra $60 million to Australia annually, and for dairy the additional access means an additional $55 million every year. In horticulture immediate tariff elimination occurs on oranges, mandarins, fresh strawberries, fresh tomatoes, fresh macadamia, cut flowers and olives, and there will be new tariff-free quotas on peanuts and avocados. This will be a great boost to those primary industries. All of this and yet the single-desk arrangements for rural industries are retained. The quarantine and IRA regimes are not in any way compromised. And so the list goes on.

I am asked if there are any alternatives. I have heard Mr Latham bleating about sugar being dudged. I assume that is why he formed the view that the Labor Party should oppose the free trade agreement. But are they opposing it? It seems that, whilst Mr Latham is equivocating, the trade spokesman, Senator Conroy, is having two bob each way. He is sort of saying, ‘Every other Australian can understand it, but I need to actually read the fine print before I can make up my mind.’

The ALP on this issue are like they are on any other issue. For example, I mentioned sugar. Mr Lindsay Tanner, when he was talking to Senator Mackay’s mates in the CPSU, started criticising the government’s help for the sugar industry in Australia. But then when Mr Latham goes up north to help Senator McLucas—and indeed she needs a lot of help up there—he decides that he is going to be supporting the sugar industry. So where are the Labor Party on free trade? Where are they on sugar? A senior frontbencher is against help for the sugar industry when talking to the unions. Mr Latham goes up there and talks to the sugar industry people and he is all in favour of it. It is called narrowcasting: you tell whoever you are talking to what they want to hear. That is the Labor Party approach. *(Time expired)*
Intelligence: Weapons of Mass Destruction

**Senator CHRIS EVANS** (2.45 p.m.)—My question is to Senator Hill, the Minister representing the Prime Minister. Is the minister aware that ONA head Mr Varghese, in an unprecedented interview with the Australian, said on the issue of stockpiles of WMD, ‘The jury is literally still out.’ Minister, what does ONA know that clearly Mr David Kay and 1,400 inspectors do not know? Further, can the minister assure the Senate that Mr Varghese’s claim that ONA’s assessment on stockpiles of WMD was actually more cautious than the assessments of the US and the UK was not just rewriting history? Given that Mr Varghese had access to the JIC report on WMD, is the minister concerned that Mr Varghese has been publicly commenting on matters that ministers say should await the tabling today of the report of the Parliamentary Joint Committee on ASIO, ASIS and DSD?

**Senator HILL**—That the jury is still out presumably relates to the fact that the Iraq Survey Group has not completed its work, something that I mentioned earlier in question time today and which honourable senators obviously know. We are waiting on its second report. We are not sure what will be its work program after that. What we do know is that, at the time of its first report, stockpiles of weapons of mass destruction had not been found. Even I have said that the longer the search goes on without finding those stockpiles the more unlikely it is that they will be found. That does not seem to be inconsistent in any way with what Mr Varghese said in the Australian. If he is simply cautioning that we should await completion of the work that has been undertaken by the international community to tell us the full story then that seems to be reasonable advice.

**Senator CHRIS EVANS**—Mr President, I ask a supplementary question. Minister, why did the government, via Senator Hill, seek to have Mr Varghese gagged from addressing WMD matters at the Senate estimates but consider it appropriate for him to privately brief one of the Prime Minister’s favourite sympathetic journalists, Mr Dennis Shanahan?

**Senator HILL**—If it was my approach to gag public servants then Mr Lewincamp would not have given fulsome advice to the Senate estimates committee in November last year.

Howard Government: Population Policy

**Senator HARRADINE** (2.48 p.m.)—My question is to Senator Coonan, Minister for Revenue and Assistant Treasurer. Isn’t it a fact that Australia’s population is ageing because of the continuing falling birthrate? Isn’t one way that the long-term problem of an ageing population can be addressed by working to produce an environment that is friendlier to parents? Has the minister’s attention been drawn to the recent statement by ACROSS that $1.3 billion is required to bridge the gap between the cost of raising a child under three years old and what is in fact given by the government? What is the government going to do to address these disincentives, help families raise children and thus improve the demographic balance?

**Senator COONAN**—I thank Senator Harradine for the question. One of the things the government has recognised is that, in addressing the needs of families and children, one of the things you need to do is look at the ageing of our population. That has been the basis of the demographics announcement that the Treasurer made last week. It is one way to address some of these pressures on our population and the ageing of our population. There is no doubt that the skills and experience of older workers and,
indeed, of parents and carers need to be very carefully looked after with incentives provided to ensure that they are able to get into the work force.

Additional assistance has been provided through the Job Network. Members have access to a training account to provide work related training for eligible mature age job seekers. The government also offers the Transition to Work program to assist parents, carers and mature age people to re-enter the work force after being out for two years or more. They do not need to be on income support to participate in that program.

The government has significant achievements in work and family. I refer specifically to more than $13 billion per annum in payments to families through the combination of the family tax benefit, the child-care benefit and other family payments. This is around $2 billion more each year than under the old system. The family tax benefit provides families with real choices about whether to have one parent at home caring full time or to have two parents in the work force. This is what this government regards as very important—that choices parents can make are actually meaningful.

The government’s workplace relations reforms have of course opened up flexibility for family friendly practices to be introduced at individual workplaces. That in itself is a significant matter that parents have to take into account if they are going to have children—how they are going to care for them. So the flexibility for family friendly practices to be introduced at individual workplaces is a significant initiative. Over 80 per cent of federal certified agreements now include at least one family friendly provision.

The government has improved access and affordability of child care including an additional 200,000 places since 1996 totalling now over half a million places, an additional $79.5 million in December 2003 for 10,000 more places in outside school hours and vacation care, 2,500 family day care places and 4,000 extra playgroup places. So there are significant measures there to assist parents who need or wish to participate in the work force to, at the same time, make adequate and proper provision for their children. That peace of mind is absolutely critical to mothers and fathers who worry about their children. The ABS data shows that, as at June 2002, for 38 per cent of all families using formal child care the net cost was less than $20 per week. That information is current as at 16 February this year. The $2.4 billion in tax cuts announced in the 2003-04 budget will benefit all taxpayers, particularly families. When you consider all these measures and the runs on the board and this government’s attention to demographics— (Time expired)

Senator HARRADINE—Mr President, I ask a supplementary question. I am really wanting to know the answer to the question: what came first, the chicken or the egg? Isn’t it a fact that the Australian population is ageing because of the continuing decline in the birth rate? Isn’t it a fact that there are wide-ranging disincentives which must be overcome? Isn’t it a fact that working families are facing a range of difficulties, including high effective marginal tax rates which penalise them for earning extra income and the problem of balancing increased working hours with family time? What is the government going to do about those disincentives and the disincentive that I mentioned requiring $1.3 billion to overcome the cost of raising young children?

Senator COONAN—I thank Senator Harradine for the supplementary question. I just detailed in something like four minutes a range of initiatives—in fact, an exhaustive list of initiatives—that this government has taken including family benefits and tax ini-
tiatives to incentivise families so that they can both work and have children.

Opposition senators interjecting—

Senator COONAN—It may have escaped those opposite that this government will encourage people to have children and regards it as very important to provide flexibility for families and for children and to provide a more flexible work force and a more flexible workplace. The government has looked at a range of initiatives from the ageing population right through to family friendly work issues and work initiatives. The government has basically got the architecture of work and family right and we will continue to look at where you can improve it.

(Time expired)

National Security

Senator FAULKNER (2.55 p.m.)—My question is directed to Senator Hill representing the Minister for Foreign Affairs and the Prime Minister. Given that the government has now informed us that a request was made for a copy of the ONA top-secret AUSTEO code-worded report authored by Andrew Wilkie just four days before extracts from that report were published in the Melbourne Herald Sun by Mr Andrew Bolt, can the minister now confirm who requested a copy of that report on 20 June 2003? Has the foreign minister sought assurances from his staff that there has been no disclosure of that report to an unauthorised recipient? Given that the foreign minister has in the past explicitly denied involvement in similar matters, why does he now try to hide behind the ‘neither confirm nor deny’ formula?

Senator HILL—As I understand it those matters are subject to an investigation by the Australian Federal Police and it is the view of the government that it is appropriate to allow the police to do their job. Interfering in the investigation by answering such questions or attempting to answer such questions would be highly inappropriate.

Senator FAULKNER—Mr President, I ask a supplementary question. If the minister believes that, perhaps he could indicate to the Senate, or assure the Senate, that the government strongly disapproves of the leaking of an ONA top-secret document where the intention of doing so is to discredit a trenchant critic of government policy. Minister, that is something you can provide an answer on to the Senate—could you please do so.

Senator HILL—If a classified document were leaked for that purpose I would strongly disapprove.

Australian Customs Service: Border Protection

Senator SCULLION (2.58 p.m.)—My question is to the Minister for Justice and Customs. Will the minister inform the Senate about the government’s commitment to protecting Australia’s borders from threats to the nation’s welfare? Is the minister aware of any alternative approaches to this very important policy area?

Senator ELLISON—I thank Senator Scullion for what is a very important question, one which all Australians take a great interest in. I acknowledge the work that Senator Scullion has done in the Northern Territory in taking a keen interest in the protection of Australia’s borders. Since coming to government it is no secret that this government has increased by 65 per cent the funding to Customs in the very important role it has to play in protecting Australia’s borders. We have focused on developing the bank of human capital that we have in the very professional staff that we have working in Customs, technology and other resources.

In the area of technology, Senator Hill and I recently travelled to the Torres Strait and signed the Indigenous land usage agreements
which now will enable our surface wave radar trial to go ahead in August this year. This delivers on an election promise that we would put such a trial in place, a $19 million initiative funded by Defence and Customs, demonstrating yet again the seamless operation between Defence, Coastwatch and Customs in looking after Australia’s borders. Senator Scullion mentioned other policies. You have to put this in stark contrast to the knee-jerk reaction by the Labor opposition in saying that we need a coastguard.

What we need is more of the same good work by Defence and Customs working together to protect Australia’s borders. We are seeing that repeatedly in the 24 hours a day, seven days a week surveillance that we have around the coast of Australia using Air Force, Navy, Customs and Coastwatch. We do not need another bureaucracy; this country cannot afford it. In fact, defence experts have said that a coastguard just does not make sense. Alexey Muraviev, a strategic affairs expert at Curtin University, said that and defence expert Lee Cordner has described the coastguard plan as too expensive and wasteful of resources. What we need to do is ensure that the agencies that we have are working together—and they are doing just that.

Across the board in Customs we have seen the canine bomb detector squad, the world’s best at detecting drugs. That is a breeding program that we put in place. We have seen the development of container X-ray facilities at our major ports of Sydney, Melbourne, Fremantle and Brisbane; the X-ray examination of incoming mail and air cargo—70 per cent of air cargo; and we have also seen closed circuit television at our ports—over 200 cameras in operation. This is the use of Australian Customs Service technology and its good staff and training. This is what we need to protect Australia’s borders, and what we need to do is ensure that we continue to support these agencies, such as Defence and Customs, in looking out for Australia’s border protection. We do not need a coastguard. Early in the 1980s Labor looked at this plan and rejected it. It was the member for Brand, Kim Beazley—I think he was the Minister for Defence then—who rejected this plan as being too expensive and too inefficient.

Senator Sherry—That was 20 years ago! A lot has changed in 20 years.

Senator ELLISON—Australia’s borders remain the same and the argument remains the same, and that is this: we can do the job with Defence and Customs just as well; we do not need another bureaucracy which will cannibalise the Royal Australian Navy and also dismantle Coastwatch.

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

QUESTIONS WITHOUT NOTICE: STANDING ORDERS

The PRESIDENT (3.02 p.m.)—During question time on 12 February 2004, Senator Brown asked me to consider questions which invite ministers to refer to the policies of other parties. Past presidential rulings make it clear that questions must relate to matters within the ministerial responsibilities of ministers and that questions which ask for comment on policies of other parties are not in order. I and past Presidents have ruled out of order questions which simply ask ministers to comment on the policies of other parties. However, the practice of asking a minister to state the government’s intentions about a matter, and then asking the minister whether he or she is aware of any alternative policies, has been tolerated. When properly asked and answered and used as originally intended, such questions are legitimate because they allow ministers to state why the government does not adopt alternative policies. These
kinds of questions, however, sometimes become a means of circumventing the rules to which I have referred and allowing ministers to attack other parties. I will carefully watch all such questions and answers in future and intervene if I think the practice is being abused for that purpose.

**QUESTIONS WITHOUT NOTICE:**

**TAKE NOTE OF ANSWERS**

**Intelligence: Weapons of Mass Destruction**

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.03 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Defence (Senator Hill) to questions without notice asked today relating to the existence in Iraq of weapons of mass destruction.

Senator Hill said yesterday very publicly that we did not need any further inquiry into this issue. Mr Downer, almost at the same time, repudiated him and said we do. But of course the government’s glib response on these sorts of issues, the glib response to the community concern over the lack of weapons of mass destruction, is: ‘We have failed to find weapons of mass destruction but don’t worry because it doesn’t matter: Saddam Hussein has gone.’ The government do not understand the basis of the very strong community concern. People are genuinely relieved that Saddam Hussein has gone, but they are also deeply worried and very angry that they were duped by their government on the motive for war.

The report by the Joint Committee on ASIO, ASIS and DSD that was tabled in the House of Representatives this morning uncovers deep flaws in intelligence gathering and analysis as well as in intelligence flows between Australia and our allies. These are flaws that must never be repeated. We must ensure that no future Australian government makes the same disastrous mistake that the Howard government have made on Iraq. Of course the Howard government have loudly proclaimed that they full support the new doctrine of the United States of America of pre-emptive military action. But to have a shred of credibility, a pre-emptive strike or pre-emptive action requires intelligence and intelligence analysis which is utterly reliable and accurate, something that the joint committee has found was certainly not the case in relation to the issue of weapons of mass destruction in Iraq. We are entitled to expect that the Australian government, in making a decision to go to war, have not selectively misused intelligence material, have not removed qualifiers or cautionary notes and have not acted in a way that jerry-rigs political support for a secret decision that was made months before—and that is exactly what Mr Howard and his government did. Mr Howard, in his television address to Australians on 20 March last year, said:

We are determined to join other countries to deprive Iraq of its weapons of mass destruction, its chemical and biological weapons, which even in minute quantities are capable of causing death and destruction on a mammoth scale.

That is what Mr Howard said then. In fact, on 13 March last year he told the National Press Club:

Well I would have to accept that if Iraq had genuinely disarmed, I couldn’t justify on its own a military invasion of Iraq to change the regime. I’ve never advocated that. Much in all as I despise the regime.

Before the war Mr Howard did not want regime change for the sake of it, but after the war he switched his justification for the war because no weapons had been found. That is the fact of the matter. In the run-up to the conflict, Hans Blix and his inspectors were all over Iraq, hunting for weapons and destroying Saddam’s stock of al-Samoud missiles. All that was going on. Mr Blix was given an ultimatum to get out of Iraq before his inspections were complete, before the
inspectors had a chance to find out if, in fact, Iraq did have chemical, biological or nuclear weapons. There was no question of reasonable time being given for the independent inspectors to find any WMDs in Iraq—no time, just a military strike. Now, we hear Senator Hill say, ‘Give the inspectors time now the invasion is over.’ It is very different now that the war is over. What hypocrisy from this government! It stands condemned for these matters, and Australians must never be treated that way again. *(Time expired)*

**Senator Hill** (South Australia—Minister for Defence) *(3.08 p.m.)*—Mr Deputy President, with great respect to Senator Faulkner, that brief contribution seemed to be all over the shop. On the evidence of enough time, the inspectors were given 12 years. This was the whole point—that, in the 12 years from 1991 to 2003, the Security Council was unable to satisfy the international community that the weapons program had been destroyed in accordance with the obligations that the Security Council imposed on Iraq, on Saddam Hussein, time and time again.

**Senator Faulkner**—They said, ‘Give Blix more time,’ and you know it.

**Senator Hill**—Senator Faulkner’s view is that 12 years is not enough. The Security Council is not satisfied in 12 years, but what do Senator Faulkner and the Australian Labor Party say? They say, ‘Give them more time.’ And it is true that the French government and the German government said the same thing.

**Senator Faulkner**—The Security Council said it.

**Senator Hill**—No, the Security Council did not say that. The issue is this: when is it time enough; when is the international community entitled to have the threat removed? Would Senator Faulkner say in another 10 years, ‘Give them more time?’ Perhaps the Australian Labor Party would; I do not know. But after 12 years of failing to satisfy the international community, a coalition of nations acted. And even right up until the end, what was Mr Blix saying? He was saying that he could not be satisfied that Saddam Hussein was cooperating in substance—that he was cooperating in form but not in substance. It is the same old story with Saddam Hussein, and this is the problem. His background is of somebody who has had programs of weapons of mass destruction, who has used chemical weapons against his own people and against his neighbour, who has invaded his neighbours, who has form as to intent and who has the weaponry to carry out his threats. He could have come clean after the 1991 war, as other countries have done, and genuinely abandoned that program, but he declined to do so.

With that background, it is interesting to look at the conclusions of the Iraq Survey Group in October. Certainly, Senator Faulkner emphasises what they were unable to find, but does he also tell the Senate of findings of material breaches of the UN sanctions, including evidence of dozens of continuing undeclared Iraqi WMD related research and development activities—including by the Iraqi intelligence services—many pursued separately, which provided the capacity for quick reconstitution when UN sanctions eased? No, of course he does not. Does he remind the Senate of the evidence of an extensive, targeted campaign to conceal, disperse or destroy evidence of these WMD related programs before, during and after Operation Iraqi Freedom? No, he does not. Does he remind the Senate of the finding of indications that Saddam was firmly committed to acquiring nuclear weapon capabilities? No, he does not. Does he remind the Senate of the finding of evidence that Iraq was committed to developing proscribed missile and other WMD capable delivery systems?
Again, Senator Faulkner does not. These were the findings that caused Dr Kay to say in Washington, after putting down that report, that the war was justified, that Saddam Hussein was a threat at the time of the conflict even though weapons of mass destruction had not been found and Dr Kay believed that they would not be found.

It may well be that the weapons were either disposed of or destroyed. We still do not know the full story in that regard, and it is important to find the full story in order to learn lessons for the future. But the basis of the action was legitimate not only in terms of the Security Council resolutions but also in terms of the findings in relation to Saddam Hussein’s weapons program as evidenced by the Iraq Survey Group and as reinforced by Dr Kay when he went back to Washington afterwards—the points that those who are opposed to the war continually refuse to acknowledge. This was not a pre-emptive action in terms of the doctrine of self-defence under the UN charter, as Senator Faulkner is now apparently suggesting. This was an action to enforce UN Security Council resolutions. *(Time expired)*

**Senator ROBERT RAY (Victoria) (3.14 p.m.)**—At question time today Senator Hill did not put on the record a denial of the two quotes that I put to him in a question. These two quotes, of course, postdate the estimates hearing and there is yet to be a public denial of Mr Forbes’s quoting of Mr Lewincamp. I want to see a public denial on the record of those two points. It is essential that we have it.

One curious aspect of the Mark Forbes revelations is why it took until Tuesday morning for the source to out himself. It must have been absolutely obvious on the Saturday morning that it was the DIO chief referred to in the article, yet we had a minister—that is, Senator Hill—on the Monday having no idea who the source of the article was. He as defence minister was entitled to have been informed at that time. Later that night we had the ONA chief, Mr Varghese, talking about bringing in the Federal Police—all unnecessary if there had been absolute transparency and a proper informing of the minister as to the events that had occurred.

What is at issue here is not revelations about security matters. It is much more to do with government policy making and relationships between security agencies and executive government. Mr Lewincamp asserted to the estimates committee:

*Overall, the article characterises these issues in ways in which I do not.*

*Given that there is no tape of the seminar or a written speech, who are we to believe? Mr Forbes, in his article on 21 February, places some direct quotes on the record, I note that there has been no denial of these quotes at this stage, and there was not at question time today. I also note that there has been no reference to the Press Council if these are misquotes or inaccuracies. I would like to see comment on the following two direct quotes from Mr Lewincamp in Mark Forbes’s article of Saturday, 21 February:*

"Asked if the intelligence was exaggerated and if Iraq presented a clear and present danger, Mr Lewincamp said "we were less forward leaning than US agencies".

"Surprised, I asked: “Was the magnitude of the threat enough to justify the invasion of Iraq?”

“No,” was his blunt reply.

“Do you mean before the war?”

“Yes,” said Mr Lewincamp. “Some ministers may wish they hadn’t concentrated so strongly on WMD,” he added.

I want to see that denied. That has yet to occur. Later, having alleged that DIO had identified deficiencies in US intelligence claims—
and Colin Powell’s address to the UN, Mr Lewincamp told the seminar:
... there was pressure brought to bear on us because we were different and standing out more.
I want to see that denied. That is a public official saying that pressure was brought to bear on an agency to change its views. I want to see that denied. Also, I might add, that statement is clearly at odds with evidence given to the joint intelligence committee inquiry into Iraq’s WMD capability. If Mr Lewincamp does have evidence of political pressure on intelligence agencies, he should produce it. I have seen none so far. If Mr Forbes is misquoting or misattributing, we should establish this. Australian intelligence agencies have a proud history of independence, at least post 1970. Anything that throws any doubt on that is to the detriment of the Australian intelligence community.

Minister Hill’s remarks that senior defence officials may have to forgo attending briefings and seminars in future is regrettable. It is better to change the conditions of their attendance—that is, no reporting whatsoever—than to bar them entirely. That would be a better course of action. If I had attended such a meeting on ‘Chatham House rules’ I would not have expected to be reported.

Australia has been traditionally weak in the defence intelligence area when it comes to academia, so depriving them of experts such as Mr Lewincamp would further weaken that. There have been very large improvements in this area over the last decade. The Defence Intelligence Organisation are greatly diminished by this affair. Having got their analysis of WMD more correct than overseas agencies, it is a pity that they will now be held up to ridicule because of Mr Lewincamp’s inadvertent behaviour. I am pleased the government are defending him but I have to tell him that within six or eight months they will let him go. There is no crossing this rather petty and vindictive government: they will find an excuse; they will get rid of him.

Senator FERGUSON (South Australia) (3.19 p.m.)—I listened with interest when Senator Faulkner suggested that this government had made disastrous mistakes in relation to Iraq. I am sure that there are millions of people currently in Iraq who would disagree totally with the proposition that disastrous mistakes were made. Although there were casualties amongst the civilian population, they are nothing compared with the attacks on the civilian population by Saddam Hussein over the number of years that he was in control of that country. In Iraq today, there are far more likely to be an enormous number of people who are grateful for the actions of the coalition of the willing in relation to what has transpired in Iraq, even under the difficult circumstances they find themselves in now with suicide bombings and all of the other things that are taking place while many countries from around the world are putting extra effort into the reconstruction of Iraq after years and years of neglect.

During question time today much was made of whether weapons of mass destruction existed in Iraq prior to the action that was taken by the coalition. At that time, practically everybody in the world believed that there were weapons of mass destruction in Iraq. There was scarcely a country in the world that did not believe that. Even those countries that were opposed to military action, like France, Germany and other countries throughout Europe, all agreed that there were weapons of mass destruction in Iraq. Whether it be through their own intelligence services or through a combination of the information they received from the various intelligence services around the world, everybody believed at that stage that there
were weapons of mass destruction in Iraq—and that includes the opposition.

Today we have heard quotes even from the shadow minister for foreign affairs, who said in March, ‘We have said from the beginning that Iraq possesses weapons of mass destruction.’ This is a statement that he made. ‘Let us have an honest debate about it,’ he said. ‘The key questions are what we do about it, and how, and whether it is consistent with international law.’ There was no doubt in the mind of the shadow foreign minister that Iraq did possess weapons of mass destruction—nor was there doubt in the minds of practically every government throughout the world. We have the situation now where in hindsight other things are being discovered, but the decision that was taken by this government was taken on the basis of the best information that was available to it at that time.

It is very easy to be wise in hindsight when you get additional information or conflicting information that occurs after the event, but governments have to make decisions at the time. They made those decisions based on the best information that was possibly available to them. One of the reasons for the military action that took place was that Iraq failed to comply with the United Nations sanctions. I heard Senator Faulkner interject that the war was not UN sanctioned. Nor were a lot of the other conflicts that have taken place in the last 50 years.

Senator Faulkner—That was not my interjection.

Senator FERGUSON—I wrote down your interjection, Senator Faulkner. You said, ‘This war was not UN sanctioned.’ I wrote it down as you were interjecting on Senator Hill when he was making his contribution. I have to say that many of the others were not either. I could instance Rwanda and some of the others where the United Nations did not sanction the military conflict that took place.

The other thing is that everybody in recent times has been very keen to quote Dr David Kay, the head of the Iraq Survey Group, yet he said that he had no doubt that Iraq was in clear violation of resolution 1441 and that his findings showed that Iraq was ‘a more dangerous place than we thought’ before the war. In other words, he now says that before the conflict took place it was a more dangerous place than they thought. He has also stated that since the war they have found dozens of WMD related program activities, active illicit missile activities and a coordinated deception program. What other evidence is required to convince those opposite that the action taken by this government to be part of the military action in Iraq was for the betterment of those people and that it got rid of one of the most evil dictators that this world has seen for a long time?

Senator CHRIS EVANS (Western Australia) (3.24 p.m.)—It is unfortunate that Senator Ferguson has chosen to follow the path of the rewriting of history that is now occurring. It is important that we get a very focused debate on what advice the Australian government received, what intelligence material was collected and what use was made of that intelligence advice.

The committee’s report is a useful addition to our knowledge but it obviously has its limitations. One of the things that most strikes me about the report, though, is its finding that the government was selective in using the intelligence that was available to it—that the Prime Minister and others, when seeking to justify the war on Iraq, chose not to rely purely on Australian material or the assessments provided by Australian agencies but, when it suited them, to selectively use other information which better suited their case. We learnt today that many of the Aus-
Australian agencies’ advices were more cautious and their analyses more measured than some of the stuff that was provided by the UK and US agencies, but clearly we had a situation where the government was keen to use any intelligence that suited it to argue the conclusions that it had already drawn.

Months and months before the decision was announced, the government had already decided to go to war in Iraq, and it sought to collect and use any information that helped justify that conclusion. Our intelligence was used selectively to justify the political conclusion already reached. The committee report tabled today gives us the evidence for that proposition. It fills out the picture as to why some of the intelligence that was provided by Australian agencies was not used when it did not suit or when overseas agencies’ information was used to beef up the argument that otherwise was not sustainable.

It is important that we refute the suggestion contained in the observations of a number of government ministers and other members of the government that somehow the reason we went to war is not important—that we won, Hussein is gone and therefore it is all okay. Of course, that is not right. It is not right because it is not fair to the 2,000 Australian service men and women who put their lives at risk, it is not fair to their families who suffered while they were in great danger and it is not fair to the 900 or so Australian service personnel who are still at risk and who are still serving their country in this region in the occupation of Iraq. It is important that we analyse whether the stated reason for war in Iraq was justified or whether it was a political fiction. It is not just a question of saying that the result was okay and therefore it does not matter.

Through good luck and good management Australia did not lose anyone in Iraq. It is a great relief to us all. It is partly due to the proficiency and professionalism of the ADF, but it is partly due to good luck. You cannot move 2,000 people overseas and bring them all home without a good dose of good luck as well as good management. It is a credit to the ADF, but we would be having a very different debate if Australia had lost lives in pursuing the action in Iraq. The reality is that it does matter why we committed troops, because committing troops to a conflict is the most important and risky decision a government can take. It is important that we fully analyse whether or not the reasons provided by the government were justified on the intelligence they received.

I will not wear the argument that is adopted now that somehow regime change is the rationale. This government will not even take action to stop Australia playing cricket against Zimbabwe despite the torture, murder and oppression of Zimbabweans. It seems to me that if Iraq had played cricket we would not have been nearly as keen on involvement there. We do not apply these regime change principles to a whole range of other regimes in the world that we find undesirable and that have terrible human rights records. The fact is that 2,000 Australians were sent to war and 900 of them are still at risk. We need to know whether or not that was justified on intelligence or whether it was done for political purposes. Today’s report raises many questions about the government’s rationale and highlights the fact that the government used the information selectively to support conclusions already taken and used the intelligence for their own political purposes. (Time expired)

Question agreed to.

Trade: Banana Imports

Senator CHERRY (Queensland) (3.29 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a
question without notice asked by Senator Cherry today relating to import risk assessments on Filipino bananas.

It concerns the Democrats greatly that the science based quarantine system in Australia could now be under threat because of political interference. It is a matter which we need to receive much stronger assurances on than those which were provided in the minister’s answer. Over the last couple of weeks, since a decision of Biosecurity Australia to issue a revised import risk assessment on the importation of Filipino bananas, I have been looking very closely at what happened in the Philippines in the lead-up to this decision. It certainly concerns me.

As I said in my question, the current Agriculture Secretary of the Philippines, Mr Luis Lorenzo, is also the chair of Lapanday Holdings, which is one of the largest banana producers in the Philippines. On 13 September the Manila Times pointed out that Mr Lorenzo said in a statement that his Australian counterpart, Warren Truss, at Cancun had ‘expressed readiness to negotiate the entry of Filipino agricultural exports into the Australian market’. The Times went on to say:

... This means that several follow-up meetings will be held to settle the contentious issues on quarantine and sanitary and phyto-sanitary requirements imposed by the Australian government on bananas, mangoes and pineapples from the Philippines. In particular, Lorenzo said the future meetings would revolve around the guidelines for insect risk analysis with the participation of private sector exportation of Philippine mangoes from provinces other than Guimares and the proposed decrowning of Philippine pineapples.

That followed just one month after the Prime Minister met with President Arroyo. The Philippines Daily Inquirer of 15 July quotes President Arroyo as saying at that meeting and the briefing afterwards:

I am grateful to Prime Minister John Howard for his very positive response to our proposal to further open up Australian markets for our products, especially the agricultural products coming from Mindanao.

Mr Howard is quoted as saying:

Our quarantine measures are based on science, but others view them differently. But if we can establish a mechanism to bring all these issues together, there will be a better outcome for everybody.

What does that mean? There is a forum established in July. In September there is a ‘readiness’ expressed by the agriculture minister. Then, four months later, there is a complete backflip by the agriculture department’s Biosecurity Australia in terms of the import risk assessments on Filipino bananas. Eighteen months ago the science was adamant. I quote from the draft IRA report:

Given this, the disease is considered present in most commercial plantations and at any point in time is very likely to be present on the particular plantation from which a tonne of fruit harvested for export would be sourced.

So essentially what the panel of scientists back in mid-2002 were saying was that we could not import bananas from the Philippines without a near certainty of importing moko disease into Australia. Let us remember that this is a $350 million industry which, only a few years ago, spent $20 million of industry and public funds to eradicate black sigatoka from Queensland plantations. We cannot afford the risk of another disease coming through when such things are preventable. Why has the science—why has this import assessment—changed? Why has the quarantine goalpost been moved from July 2002 to January 2004 in terms of what is acceptable risk for banana imports?

If it were just bananas, I suppose you could say that it is an isolated issue. But as those statements I read out from Secretary Lorenzo point out, pressure will continue on
pineapples and mangos. These are all industries in my home state of Queensland. It is clear that we will have not just the issue of bananas under threat but also the issue of pineapples and mangos under threat. This is in addition to last month’s agreement with the United States government to establish a technical working group, including trade representatives, on quarantine issues with the US. When you add all these issues together you see increasingly that politics is driving our quarantine decisions, rather than science.

When you read through the impact risk assessment report, as I have done, you see that the science is being put to one side and that the assumptions, rather than being conservative, as you would expect with a rigorous quarantine system, are being undermined by being as least ‘trade restrictive’—is the term they use—as humanly possible. I am concerned about where we are going in terms of defending our quarantine system. Certainly the Democrats will be very keen to seek Senate support to ensure that the whole issue of Biosecurity Australia’s current quarantine assessments is subject to a rigorous public inquiry.

Question agreed to.

PETITIONS

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

Australian Broadcasting Corporation: Funding

To the Honourable Members of the Senate in the Parliament Assembled.

The Petition of the undersigned draws attention to the recent Government funding cuts to the ABC resulting in the substantial reduction of the educational programming budget and the axing of the popular educational show “Behind the News”.

“Behind the News” has been providing valuable information to students since 1969 in a format they can understand and deal with in a non-threatening way and represents a cost effective and valuable teaching aid for teachers and students across Australia.

ABC is the only national network that has devoted significant resources to educational broadcasting. As well as the axing of “Behind the News”, a further $1 million has been cut from the ABCs educational programming budget, impacting considerably on available teaching resources.

Your petitioners ask the Senate in Parliament to call on the Federal Government to reverse the recent funding cuts to the ABC to ensure the educational programming budget is restored and allow for the immediate re-instatement of “Behind the News”.

by Senator Allison (from 33 citizens).
by Senator Sandy Macdonald (from 37 citizens).

Health: Indian Ocean Territories Health Services

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

The Petition of the undersigned shows:

The proposed closure of the Christmas Island Hospital between the hours of 10:00 pm and 7:00 am each day is opposed by the people of Christmas Island.

Your Petitioners request that the Senate should:

• Conduct an Inquiry into the operations of the Christmas Island Hospital with particular attention being given to:
  • Why the Department continues to pursue reduced hours of staffing when there was clear evidence presented during the consultation that showed a severe threat to life would immediately be caused by the proposed action.
  • Why the Department continues to pursue reduced hours of staffing when there is no evidence that there will be savings from this action.
  • Why the Department of Transport and Regional Services, Territories Branch continues to pursue the cause of closing the Christmas Island Hospital at night even though on Island consultation conducted by the Assistant Secretary of the Territories Branch with Christmas Island community groups during November
resulted in a universal rejection of the proposal for restricted hours of staffing.

- The management of human resources at the Christmas Island Hospital.
- Education, training and maintenance of currency of skills and knowledge of health service staff.
- Determining whether or not direct or indirect racial discrimination has occurred or is continuing.
- Issues of equity and access to Indian Ocean Territories Health Services.

by Senator Crossin (from 278 citizens).

**Immigration: Asylum Seekers**

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

Whereas the 1998 Synod of the Anglican Diocese of Melbourne carried without dissent the following Motion:

That this Synod regrets the Government’s adoption of procedures for certain people seeking political asylum in Australia which exclude them from all public income support while withholding permission to work, thereby creating a group of beggars dependent on the Churches and charities for food and the necessities of life;

and calls upon the Federal government to review such procedures immediately and remove all practices which are manifestly inhumane and in some cases in contravention of our national obligations as a signatory of the UN Covenant on Civil and Political Rights.

We, therefore, the individual, undersigned attendees at the Emerald Uniting Church, Emerald, Victoria, 3782; Donvale Presbyterian Church, Donvale Victoria; and, St Johns Anglican Church, Blackburn, Victoria 3130 petition the Senate in support of the abovementioned Motion.

And we, as in duty bound, will ever pray.

by Senator Kemp (from 17 citizens).

**Arts: ScreenSound Australia**

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

The Petition of the undersigned shows:

Overwhelming opposition to the abolishment and/or transfer of jobs and key functions of ScreenSound Australia to Sydney or Melbourne.

Demand that the ongoing attacks by the Howard Government on our National Cultural Institutions cease.

Your Petitioners ask/request that the Senate should:

Call on the Government to reject any recommendation that seeks to undermine ScreenSound Australia as a National Institution located in Canberra.

by Senator Lundy (from 1,420 citizens).

Petitions received.

**NOTICES**

**Presentation**

Senator Bolkus to move on the next day of sitting:

That the Legal and Constitutional References Committee be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 10 March 2004, from 4 pm, to take evidence for the committee’s inquiry into the capacity of current legal aid and access to justice arrangements to meet the community need for legal assistance.

Senator Bolkus to move on the next day of sitting:

That the time for the presentation of the report of the Legal and Constitutional References Committee on the capacity of current legal aid and access to justice arrangements to meet the community need for legal assistance be extended to 31 March 2004.

Senator Hutchins to move on the next day of sitting:

That the time for the presentation of the report of the Community Affairs References Committee on poverty and financial hardship be extended to 11 March 2004.

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

That the Senate—

(a) notes that:
(i) there are an estimated 300,000 children being used as soldiers in at least 20 countries around the world,

(ii) the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict prohibits:

(A) the compulsory recruitment of children under the age of 18 years into national armed forces, and

(B) any recruitment of children under the age of 18 years by non-state armed groups,

(iii) the United Nations (UN) Secretary-General’s Special Representative for Children and Armed Conflict:

(A) recently reported to the Security Council that the situation remains “grave and unacceptable” and the struggle to protect children from involvement in armed conflict “has reached a watershed moment”, and

(B) specifically called on the UN Commission on Human Rights to take action on this issue,

(iv) Australia will chair the sixtieth session of the Commission on Human Rights, which runs from 15 March to 23 April 2004, and

(v) the rights of children are being violated in Australia’s own immediate region, with the Special Representative highlighting Aceh as one of the areas where children have particularly suffered in the past year; and

(b) calls on the Australian Government to ensure that, during the sixtieth session of the Commission on Human Rights, consideration is given to utilising the special procedures mechanism as a means of addressing the continued violation of children’s rights in conflict situations and, in particular, the recruitment and use of child soldiers.

Senator Chapman to move on the next day of sitting:

That the Parliamentary Joint Committee on Corporations and Financial Services be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 3 March 2004, from 3.30 pm, to take evidence for the committee’s inquiry into Corporations Amendment Regulations.

Senator Brandis to move on the next day of sitting:


Senator Allison to move on the next day of sitting:

That the Senate—

(a) notes that:

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

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

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

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

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

(b) urges the Government to:

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

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

Senator Allison to move on the next day of sitting:

That the Senate—

(a) notes the comments by the Prime Minister (Mr Howard), reported in the Juvenile Diabetes Research Foundation (JDRF) publication of 20 August 2003, that ‘the Government [has] identified diabetes as one of the national health priority areas’; and

(b) calls on the Government to support the JDRF proposal to establish an islet transplant global centre of excellence and to provide research grants for islet transplantation.

Senator Sandy Macdonald to move on the next day of sitting:

That the time for the presentation of the report of the Foreign Affairs, Defence and Trade Legislation Committee on the provisions of the Military Rehabilitation and Compensation Bill 2003 and a related bill be extended to 22 March 2004.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) the fundamentally flawed socio-economic status (SES) funding system has delivered an extra $815 million in commonwealth funding to non-government schools,

(ii) the Catholic school system has received an increase in public subsidy of approximately 30 per cent since 2001,

(iii) the announced inclusion of the Catholic school system in the SES funding system will deliver a further $362 million in additional funding to this sector, and

(iv) the SES funding system is based on the erroneous assumption that private school enrolments reflect the average socio-economic status of the areas in which the students live; and

(b) calls on the Government to:

(i) recognise the need to prioritise funding for public schools, which deliver high quality education to all students regardless of wealth, religion, educational or behavioural needs,

(ii) scrap the flawed SES funding system, which delivers inequitable funding outcomes to the non-government school sector, and

(iii) end Commonwealth subsidies to the wealthiest private schools, that is, those previously listed as category 1, 2 and 3 schools.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) the United Nations (UN) is still involved in a decolonisation process in the former Spanish colony of Western Sahara,

(ii) over 165 000 refugees from Western Sahara continue to live in harsh conditions in the southwest of Algeria, dependent on humanitarian assistance which has been dwindling recently,

(iii) the human rights situation in the occupied areas of Western Sahara is alarming,

(iv) the UN Security Council passed Resolution 1495 (2003) on 31 July 2003, supporting the UN Secretary-General’s latest peace plan for self-determination of the Saharawi people, and

(v) the mandate of the UN mission for the organisation of a referendum on self-determination in Western Sahara (MINURSO) expires on 30 April 2004; and

(b) urges the Government to:
(i) extend all due assistance to the UN in its efforts to organise a referendum of self-determination in Western Sahara,
(ii) provide humanitarian assistance to the Saharawi refugees, who need food and medicine urgently, and
(iii) make representations to the Kingdom of Morocco asking it to cooperate with the UN and to put an end to human rights abuses in occupied Western Sahara.

Senator Cherry to move on the next day of sitting:
That the following matters be referred to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 30 June 2004:
(1) The draft import risk assessment for Filipino banana imports, and the processes and research underpinning the assessment.
(2) Whether the processes of Biosecurity Australia are sufficiently robust in maintaining a very low risk quarantine regime, with particular reference to recent import risk assessments and the Australian Government’s overriding trade policy objectives.

Senator Murray to move on Thursday, 4 March 2004:
That the Senate calls on the Government to appoint a member of the judiciary to review the findings of the Royal Commission of Inquiry into Leasing by the Commonwealth of Accommodation in Centenary House, conducted by the Hon. T.R. Morling, QC in 1994, in the light of later evidence, particularly with regard to movements and trends in commercial rates and leasing arrangements since 1994.

Senator Murray to move on the next day of sitting:
That the Senate—
(a) considers that, in light of the Government’s revised approach to Parliamentary superannuation arrangements, the Life Gold Pass retirement benefit should also be immediately reviewed;
(b) acknowledges that its decision not to accept the Australian Democrats amendment to the Members of Parliament (Life Gold Pass) Bill 2002 to ‘ensure that a member of Parliament, other than a Prime Minister, who first commences his or her term as a member of Parliament in the next Parliament will not be entitled to hold a Life Gold Pass’, was not in line with accepted community standards; and
(c) requests the Government to discontinue the Life Gold Pass retirement perk for retired politicians, with the exception of retired prime ministers.

Senator Payne to move on the next day of sitting:
That the time for the presentation of the report of the Legal and Constitutional Legislation Committee on the provisions of the Disability Discrimination Amendment Bill 2003 be extended to 7 April 2004.

Senator Brown and Senator Nettle to move on the next day of sitting:
That the following bill be introduced: A Bill for an Act to provide for the appointment of a Royal Commission to investigate the accuracy, independence and use of intelligence information that contributed to the decision to invade Iraq in 2003, and for related purposes. Invasion of Iraq Royal Commission (Restoring Public Trust in Government) Bill 2004 [No. 2].

Postponement
Items of business were postponed as follows:
Business of the Senate notice of motion no. 1 standing in the name of Senator Allison for today, relating to the disallowance of the Fuel Quality Information Standard (Ethanol) Determination 2003, postponed till 2 March 2004.
Business of the Senate notice of motion no. 2 standing in the name of Senator Nettle for today, relating to the reference of a matter to the Finance and Public Administration
References Committee, postponed till 4 March 2004.


General business notice of motion no. 753 standing in the name of Senator Murray for today, relating to the reference of matters to the Joint Standing Committee on Electoral Matters, postponed till 4 March 2004.

LEAVE OF ABSENCE

Senator FERRIS (Tasmania) (3.36 p.m.)—by leave—At the request of Senator Murphy, I move:

That leave of absence be granted to Senator Murphy for the period 1 to 4 March 2004 on account of ill health.

Question agreed to.

Senator MACKAY (Tasmania) (3.37 p.m.)—by leave—I move:

That leave of absence be granted to Senator Moore for the period 1 March to 11 March 2004, inclusive, on account of ill health.

Question agreed to.

MINISTERIAL STATEMENTS

National Security

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (3.37 p.m.)—I table a statement by the Attorney-General on national security and recent overseas developments, together with a document entitled **Australian Government National Security Measures since 11 September 2001**, and seek leave to incorporate the statement in Hansard.

Leave granted.

The statement read as follows—

The events of September 11 and the tragedy of the Bali Bombing transformed the way in which we see ourselves; they transformed our sense of purpose and they transformed the priorities of government.

We are engaged in a war against terror.

That is the Government’s starting point, and the consistent failure of the Labor Party to acknowledge that we are at war is explanation enough for its incoherent and patchy approach to Australia’s national security.

It is a war that has no regular armed forces or established rules of engagement; we stand against an enemy that does not distinguish between civilian and military targets; armed combatant and infant child.

But we are nevertheless at war.

Since I took on the role of Attorney-General in October last year and accepted the responsibility for Australia’s security arrangements I have made it my business to ensure that the Government is doing everything it possibly can to discharge its most important duty—that of protecting our country and our people; to ensure that our way of life, our values and our freedom to be safe in our own homes are protected—and in so doing, defend the right of all peoples to live in peace.

In discharging that duty, I have studied closely the measures we have taken, against those taken by other countries and recently visited my counterparts in the USA and Canada to share experiences.

In the US I met with Attorney-General John Ashcroft, head of the CIA Mr George Tenet and FBI chief Mr Robert Mueller and had a briefing and tour of the National Joint Terrorism Task Force Operations.

In these discussions it was plain that the US Security Advisers consider the continued terrorist threat from Al Qaida as credible. It is their view that the organisation wants to mount an attack that will be more devastating and take more innocent lives than the attack on September 11, and moreover, that it is capable of mounting such an attack.

I also met with Under Secretary for Arms Control and International Security, Mr John Bolton and spent several hours with the Secretary of the Department of Homeland Security Mr Thomas Ridge.
I had lengthy discussions with Mr Jim Haynes, the General Counsel and Defense Legal Services Director of the US Department of Defense and Mr Alberto Gonzales, Counsel to the President.

I also had an excellent briefing from the Commandant of the United States Coastguard and Rear Admiral Larry Hereth in Washington and had the honour of inspecting their East Coast operations base in Boston Harbour.

Whilst in Canada I had very productive meetings with Mr Robert Wright, National Security Adviser to the Prime Minister and The Hon Anne McLellan, Deputy Prime Minister and Minister responsible for Public Safety and Emergency Preparedness. I also met with the Hon Irwin Cotler, Justice Minister and Attorney General and the Deputy Director of the Canadian Security Intelligence Service.

These discussions confirmed my view that each country’s response to the terrorist threat must reflect its size, history and constitution and to build on the success of its existing structures and administrative arrangements. To blindly transplant structures from one jurisdiction to another, is not only lazy policy but bad policy.

This fact was regularly reinforced in my discussions with my counterparts in both the US and Canada.

For example, Commandant Collins stressed that the role of the US Coastguard was the product of America’s evolving response to border control and maritime safety over more than 200 years. Whilst it was a model that worked for them, he emphasised that it was not necessarily a useful model for other countries. The latter point is acknowledged by Canada who has rejected the Coastguard model as a basis for their border and coastal security strategy.

It is clear from these discussions that we face a common enemy. One who is adept at using our own laws against us; one who uses modern technology to evade capture whilst plotting the death of innocents; one who is truly globally mobile and benefits from sanctuary in unstable states and one who is not bound by accepted laws of morality.

I will quote the words of my counterpart in Canada, Attorney-General Irwin Cotler, who, prior to his election to the Canadian Parliament in 1999, was an international human rights lawyer and former counsel to Nelson Mandela, amongst others. He wrote the following in his defence of Canada’s counter-terrorism law:

“We are not dealing here with your ordinary or domestic criminal—but with the transnational super-terrorist; not with ordinary criminality but with Crimes Against Humanity. Not with your conventional threat of criminal violence, but with an existential threat to the whole human family”.

Attorney General Cotler talks about anti-terrorism law in terms of “human security”, arguing that the perceived dichotomy between national security and civil rights is a false one.

Mr Cotler also argues that the conventional criminal law/order process model is not only inadequate, but inappropriate. Dealing with terrorists and the terrorist threat requires pre-emption and deterrence, our approach must be preventative as well as punitive. This approach of course, flies in the face of a conventional law and order/prosecute and punish approach.

However, we are a democracy founded upon the rule of law and we must find ways to use our framework of law to end the terrorist scourge.

One of the important outcomes of the recent Ministerial Conference on Counter-Terrorism which Australia co-hosted with Indonesia recently and which I attended, was a commitment by Australia to agree to lead the Legal Frameworks Committee that will look at creating model agreements, such as extradition agreements to assist other countries in our region in the fight against terrorism. We have also agreed to assist several countries draft their own counter-terrorism legislation.

Australia also agreed to provide $38.3 million to establish the Indonesian Centre for Law Enforcement Cooperation in Jakarta and we signed a MOU with Indonesia’s financial intelligence unit in our continued efforts to combat money laundering and the financing of terrorism.

The Howard Government’s counter-terrorism strategy is a comprehensively effective three pronged approach:

(1) Better laws
Better Laws
The first line of defence in the war in terrorism is to make sure that we have the power to deal with terrorists and to catch them before they have a chance to commit a crime. The Howard Government, despite opposition, has introduced laws to make it a crime to commit a terrorist act; to undertake training for or prepare to commit a terrorist act; and to be a member of, or support, a terrorist organisation.

We have sought the widest power possible to deal with terrorists and asked the States to give us their law making power so that we can deal with terrorism on a national basis.

We have listed and we will continue to list terrorist organisations, so everyone knows that becoming involved with terrorism will have serious criminal consequences.

Sixteen organisations, including Al Qaida and Jemaah Islamiyah, the Hizballah External Security Organisation, the military wing of Hamas and the military wing of Lashkar-e-Tayyiba, have already been listed.

Other laws deal with suppressing terrorist financing, improving border security and outlawing the use of Australia Post to perpetrate hoaxes.

The Prime Minister convened a Leaders’ Summit in April 2002 to promote a cooperative national approach to terrorism and crime. One of the significant outcomes of that conference was the creation of the Australian Crime Commission in January 2003 with an enhanced mandate to deal with crime (including terrorism) on a cooperative basis between the Commonwealth and the States and Territories.

In December 2002, we introduced the National Security Hotline which also operates 24 hours a day, 7 days a week. The Hotline has received over 28,000 calls, letters and e-mail messages so far and, of those, around 15,000 have provided information about suspicious activity.

The Government has announced the establishment of the National Threat Assessment Centre to enhance our capacity to assess threat information and to forewarn of possible terrorist attacks both within Australia and against Australians or Australian interests overseas.

Stronger agencies
Secondly in order to fight terrorism we must make sure that our defence forces and intelligence agencies have all the tools and support they need to defeat the threat of terror.

The Government has increased ASIO’s powers to question and, if necessary, to detain while questioning people involved in, or who may have important information about, terrorist activity or a planned terrorist act.

ASIO also has increased operational capability including a 24 hour-a-day, seven day-a-week research monitoring unit and the Australian Federal Police has established new joint counter-terrorism strike teams with State and Territory police.

We have provided funding to enable the Australian Defence Force to establish a second tactical assault group which stands ready to respond to a terrorist incident on the east coast of Australia.

In addition, our troops have received increased resources for an Incident Response Regiment which would be called in if there was a chemical, biological, radiological or nuclear attack in Australia. It has resources such as decontamination units and other specialised equipment to deal with such a situation.

We have allocated additional resources to protect our borders and to improve container screening at our ports.

We have introduced air security officers on domestic flights within Australia and have now expanded the programme to include international flights as well. This is one of a number of measures—along with increased baggage and passenger screening, tighter security at airports and more stringent procedures for issuing aviation security identification cards for airport workers—which greatly improve aviation security.

In addition the Government is placing $16 million worth of emergency response equipment strategically around Australia for immediate use should that be necessary.

International cooperation
The Government recognises that the war on terrorism is not a battle which can be fought on one
front. As signatories to 11 of the 12 International Conventions and Protocols relating to Terrorism, Australia is actively encouraging other countries in our region to sign up.

For example we have worked with the Pacific Islands Forum Secretariat and South Pacific jurisdictions to develop a regional framework on counter-terrorism and model legislation.

The Australian Federal Police has established unprecedented cooperative working arrangements with its counterparts in our region, particularly in Indonesia.

Australia has also entered into nine MOUs about counter-terrorism cooperation with key partners in our region Indonesia, Malaysia, Thailand, the Philippines, Fiji, Cambodia, East Timor, India and Papua New Guinea.

The Australian Government has concluded 25 MOUs with countries in Europe, Africa, North and South America, the Asia-Pacific region and the Middle East that facilitate the exchange of financial intelligence to combat money laundering and the financing of terrorism.

And we have appointed an Ambassador for Counter-Terrorism to maintain regional impetus on counter-terrorism initiatives and to share our knowledge and experience with our regional partners.

**Conclusion**

The Howard Government has always sought to ensure that any piece of legislation, or measure taken, promotes, in Irwin Cotler’s words, “human security”.

I believe we have put in place domestic counter-terrorism laws and measures that support the efforts of the international community.

We have put in place laws that protect Australia’s national security and promote regional security.

And we have laws that respect the individual rights and liberties that are fundamental to our way of life.

The Howard Government has implemented over 100 measures and committed over $2 billion since September 2001 to defend our freedoms and slowly but surely limit the scope of activity undertaken by the enemies of freedom and justice.

There are simply too many for me to read into Hansard so I table a paper documenting the Government’s national security measures.

The unpredictable nature of terrorist activity requires us to continually evaluate and review all our measures and laws.

We will continue to ensure that our laws operate as both a sword and a shield—the means by which our war against terror is prosecuted but also the mechanism by which it is prevented.

To defeat our enemy we will need to wield both. This Government has shown that it can, and will, do so decisively, unapologetically and with clarity of purpose.

The Australian people deserve nothing less.

**Senator NETTLE** (New South Wales) (3.38 p.m.)—by leave—I move:

That the Senate take note of the statement.

The Australian Greens believe that terrorism is a significant problem that Australia and the world must face. We will always support sensible proposals that are needed to address specific security problems, such as screening at national and regional airports. But in facing this problem we must be realistic about what terrorism is and where it comes from.

We must look at the historical and current sources of conflict and grievances that are the root cause of the violence we call terrorism.

An approach that equates national security with military power and draconian attacks on civil rights not only is a threat to our democracy but also undermines any realistic solution to the problems of terrorist violence. The Attorney-General puts great store in his statement on the words of his Canadian counterpart, who claimed that the dichotomy between national security and civil rights is a false one. In his statement he goes on to argue that responding to terrorism within the bounds of the normal criminal law is not possible. He argues that dealing with terrorism requires pre-emption and deterrence.
The Australian Greens fundamentally disagree with this position. Real security can only come from ensuring that support for fundamental human rights is at the bedrock of all law within our democracy. It is this strongly held view which has led us to seek to amend and, in most cases, oppose the government’s terrorism legislation over the past two years. The Greens are unapologetic for our opposition to the creation of draconian police powers for ASIO and the banning of organisations by ministerial fiat. We have significant concerns about the processes that have been created for listing individuals and organisations and freezing their assets. This week the Greens will oppose attempts by the Howard government to further increase the government’s powers to list terrorist organisations and effectively ban them. We will do so by opposing the government’s Criminal Code Amendment (Terrorist Organisations) Bill 2003.

We are also adamantly opposed to the British proposal for secret trials, which the Attorney-General has said he is considering. Secret trials have no place in a democracy, and we will vigorously oppose this proposal which attacks fundamental civil rights. It is a reflection of how bad things have got that an Attorney-General, the chief law officer of this country, can state that he is considering such a proposal and be taken seriously. Unfortunately, that is the path that this government has taken our country down. It is a slippery slope we are on and the Greens urge others in this place to not join the government on this downward slide. We are in danger of having every incremental attack on civil rights large and small being supported by the opposition in the name of the war on terrorism—anything to avoid being accused of being soft on national security in the lead-up to the election. The Australian Greens say that this is not good enough. It is time that all parliamentarians questioned the dangerous logic of the government which equates security with the removal of civil rights and military action.

This government has not made Australia safer from terrorism. It has retreated from a genuine engagement with Asia and repudiated Australia’s past commitments to multilateralism. This government has slavishly followed the United States on every significant foreign policy issue of the day, whether it be a free trade agreement or research into a missile defence shield. This government believes that Australia’s national interest is somehow intrinsically linked and identical to Washington’s national interest and Washington’s view.

This government misled the Australian people about the threat of WMD in Iraq and joined the United States in a disastrous and illegal invasion and occupation of Iraq. We are now embroiled in an ongoing war—a war that has not only led to the deaths of tens of thousands of Iraqis and many Americans but also increased the danger to this country. The approximately 900 Australian troops continue to be in harms way as they attempt to maintain an occupation that few Iraqis want and many more are resisting in a variety of ways, including armed violence but also non-violent resistance. Australia is no more secure now that we are seen as one of the major backers of US foreign policy around the world—which is a major source of the grievances that fuel support for terrorism.

The reality is that much of the non-government terrorism in the world will never be diminished as long as we continue to back the United States policies in relation to the Middle East. Terrorism cannot be solved by building bigger walls, removing civil rights or launching pre-emptive strikes, whether in the West Bank, Iraq or indeed Australia. In fact, such policies will continue to create the grievances that fuel terrorism. Until there is a
serious attempt to bring peace with justice in the Middle East, non-state terrorism will continue.

Over the last two years we have heard a lot about the term ‘blow-back’, referring to the groups of people that, backed by the United States and Australia, fought the Soviet Union in Afghanistan and then turned their sights on Washington and New York. The Bush government, backed by our Prime Minister and this government, is in the process of creating future blow-back in Iraq. There was no connection between Al-Qaeda and Iraq before the invasion. But there is now and there is no doubt that countless others who have had their homes destroyed and members of their family killed are joining the ranks of people who would wish harm to not just the United States but also Australia.

Real security will not come from following the United States down a path to endless war. Real security will not come from failing to act on a myriad of other problems, such as climate change—and, like George Bush, not even supporting the minimal requirements of the Kyoto protocol. Real security will not come from spending millions on US fighter planes that are hardly off the drawing board while running down our education and health systems. Real security will not come from simplistic slogans of fighting the evils of terrorism while turning a blind eye to the terror of governments, many of them supplied by our allies around the world. Real security will only come from developing our democracy, a fair society and achieving global justice and sustainability for the future.

Question agreed to.

DOCUMENTS

Tabling

The DEPUTY PRESIDENT—Pursuant to standing orders 38 and 166, I present documents listed on today’s Order of Busi-

ness at item 11 which were presented to the Deputy President and a temporary chair of committees since the Senate last sat in February. In accordance with the terms of the standing orders, the publication of the documents was authorised.

The list read as follows—

(a) Committee reports

1. Employment, Workplace Relations and Education Legislation Committee—Additional information received by the committee relating to hearings (including supplementary hearings) on the budget estimates for 2003-2004 (4 volumes) (presented to the Deputy President on 18 February 2004)

2. Economics Legislation Committee—Superannuation Safety Amendment Bill 2003—Report, together with the Hansard record of proceedings and documents presented to the committee (presented to the Deputy President on 19 February 2004)

(b) Government documents


(c) Reports of the Auditor-General


Services for Government Clients—
Monitoring and Evaluation by
Government Agencies (presented to
Deputy President on 20 February 2004)

Support Process Audit—The Senate
Order for Departmental and Agency
Contracts (Financial year 2002-2003
Compliance) (presented to temporary
chair of committees, Senator Knowles,
on 26 February 2004)

(d) Statements of compliance
1. Statements of compliance with the
continuing order of the Senate of
20 June 2001, as amended on
27 September 2001 and 18 June,
26 June and 4 December 2003, relating
to lists of contracts are tabled by:
agencies within the Agriculture,
Fisheries and Forestry portfolio
Department of Defence
Environment and Heritage portfolio
(presented to the Deputy President on
18 February 2004)
agencies within the Prime Minister and
Cabinet portfolio (presented to the
President on 24 February 2004)
Department of Foreign Affairs,
Australian Centre for International
Agricultural Research, AusAID,
Australia Japan Foundation
Department of Family and Community
Services, Centrelink, Child Support
Agency, Social Security Appeals
Tribunal
Department of Industry, Tourism and
Resources, IP Australia, Geoscience
Australia
Department of Communications,
Information Technology and the Arts,
National Archives of Australia, National
Office for the Information Economy
agencies within the Employment and
Workplace relations portfolio
Department of Finance and
Administration, Australian Electoral
Commission, Commonwealth Grants
Commission, CSS Board, PSS Board,
ComSuper (presented to temporary chair
of committees, Senator Knowles, on
26 February 2004)
Department of Immigration and
Multicultural and Indigenous Affairs,
Migration Review Tribunal, Refugee
Review Tribunal, Aboriginal and Torres
Strait Islander Services (presented to the
President on 27 February 2004)

2. Statement of compliance with the
continuing order of the Senate of
30 May 1996, as amended on
3 December 1998, relating to indexed
lists of files is tabled by:
Agriculture, Fisheries and Forestry
portfolio (presented to the Deputy
President on 18 February 2004)

(e) Order for the production of documents
Health—Immunisation National Health
and Medical Research Council—Draft
Immunisation Handbook—Public
Submissions (pursuant to paragraph (b)
of the order of the Senate of 8 October
2003) (presented to the Deputy
President on 18 February 2004)

Ordered that the report of the Economics
Legislation Committee be printed.

Genetically Modified Crops

The DEPUTY PRESIDENT—I present
a response from the Minister for Agriculture,
Fisheries and Forestry, Mr Truss, to a resolu-
tion of the Senate of 4 December 2003 con-
cerning genetically modified crops.

Departmental and Agency Contracts

The DEPUTY PRESIDENT—I present
correspondence from the Australian National
Audit Office concerning an audit of the ta-
bling of departmental and agency contracts
for the period 1 January to 31 December
2003.
BUDGET
Portfolio Additional Estimates Statements
Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (3.47 p.m.)—I table corrigenda to the portfolio additional estimates statements 2003-04 for the Foreign Affairs and Trade portfolio and the Immigration and Multicultural and Indigenous Affairs portfolio. I advise senators that copies are available from the Senate Table Office.

PLASTIC BAG LEVY (ASSESSMENT AND COLLECTION) BILL 2002 [No. 2]
PLASTIC BAG (MINIMISATION OF USAGE) EDUCATION FUND BILL 2002 [No. 2]

Report of Environment, Communications, Information Technology and the Arts Legislation Committee
Corrigendum
Senator FERRIS (South Australia) (3.47 p.m.)—On behalf of the Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee, Senator Eggleston, I present a corrigendum to the report of the committee on the Plastic Bag Levy (Assessment and Collection) Bill 2002 [No. 2] and the Plastic Bag (Minimisation of Usage) Education Fund Bill 2002 [No. 2]

Ordered that the document be printed.

BUDGET
Consideration by Legislation Committees
Additional Information
Senator FERRIS (South Australia) (3.47 p.m.)—On behalf of the Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee, Senator Eggleston, I present additional information received by the committee relating to supplementary hearings on the budget estimates for 2003-04.

COMMITTEES
Free Trade Agreement Committee
Membership
The DEPUTY PRESIDENT—There being two nominations for the one position on the Select Committee on the Free Trade Agreement between Australia and the United States of America, in accordance with standing orders a ballot will be held. Before proceeding to a ballot, the bells will be rung for four minutes.

The bells having been rung—

The PRESIDENT—Order! The Senate will now proceed to ballot. Ballot papers will be distributed to honourable senators, who are requested to write upon the paper the name of the candidate for whom they wish to vote. The candidates are Senator Harris and Senator Nettle. I invite Senator Ferris and Senator Mackay to act as scrutineers.

A ballot having been taken—

The PRESIDENT—The result of the ballot is as follows: Senator Harris, 40 votes; and Senator Nettle, 29 votes. I declare Senator Harris elected as the member of the Select Committee on the Free Trade Agreement between Australia and the United States of America nominated by minority groups and Independent senators.

Membership
The PRESIDENT—I have received a letter from a party leader seeking variations to the membership of certain committees.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (4.08 p.m.)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

Economics References Committee—
Discharged—Senator Buckland
Appointed—
Senator Wong
Participating member: Senator Buckland

Finance and Public Administration References Committee—
Discharged—Senator Wong
Appointed—
Senator Ludwig
Participating member: Senator Wong

Foreign Affairs, Defence and Trade—
Joint Standing Committee—
Appointed—Senator Marshall
Discharged—Senator O’Brien

Legal and Constitutional References Committee—
Discharged—Senator Ludwig
Appointed—
Senator Buckland
Participating member: Senator Ludwig.

Question agreed to.

CORPORATIONS (FEES) AMENDMENT BILL (No. 2) 2003
CORPORATE LAW ECONOMIC REFORM PROGRAM (AUDIT REFORM AND CORPORATE DISCLOSURE) BILL 2003
AGRICULTURAL AND VETERINARY CHEMICALS (ADMINISTRATION) AMENDMENT BILL 2004
INDUSTRIAL CHEMICALS (NOTIFICATION AND ASSESSMENT) AMENDMENT (ROTTERDAM CONVENTION) BILL 2004
MILITARY REHABILITATION AND COMPENSATION (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2003
WORKPLACE RELATIONS AMENDMENT (BETTER BARGAINING) BILL 2003
WORKPLACE RELATIONS AMENDMENT (SIMPLIFYING AGREEMENT-MAKING) BILL 2004
WORKPLACE RELATIONS AMENDMENT (CHOICE IN AWARD COVERAGE) BILL 2004
INDUSTRY RESEARCH AND DEVELOPMENT AMENDMENT BILL 2003
POSTAL SERVICES LEGISLATION AMENDMENT BILL 2003
A NEW TAX SYSTEM (COMMONWEALTH-STATE FINANCIAL ARRANGEMENTS) AMENDMENT BILL 2003

First Reading
Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (4.09 p.m.)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.
Second Reading

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (4.10 p.m.)—I table revised explanatory memoranda relating to the Workplace Relations Amendment (Simplifying Agreement-making) Bill 2004 and the Workplace Relations Amendment (Choice in Award Coverage) Bill 2004 and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

CORPORATIONS (FEES) AMENDMENT BILL (No. 2) 2003

The Corporations (Fees) Amendment Bill (No. 2) 2003 (the Fees Bill) complements the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 (the CLERP Bill) which was introduced into the Parliament today.

Under the CLERP Bill, a Financial Reporting Panel is established to resolve disputes between ASIC and companies in relation to accounting treatments in company financial reports. The Fees Bill provides for a fee to be levied on companies that refer matters to the Panel.

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

Today the Government is introducing the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003. The bill is the ninth stage in the CLERP program and builds on previous reform measures in the areas of accounting standards, directors’ duties, fund-raising, takeovers and financial services reform.

The bill is designed to modernise business regulation and foster a healthy and vibrant economy. It progresses the principles of market freedom, investor protection and quality disclosure of relevant information to the market.

The bill contains significant measures covering financial reporting and corporate disclosure more generally. Its provisions will achieve better disclosure outcomes, enhance auditor independence and improve enforcement arrangements in the event of corporate misbehaviour.

The bill generally implements the reforms proposed in the CLERP 9 policy proposal paper (released in September 2002) and also reflects the outcome of consultations since that time.

In addition, the bill responds to the recommendations of the Ramsay Report (Independence of Australian Company Auditors) and takes account of relevant recommendations of the report of the Joint Committee of Public Accounts and Audit (Report 391 Review of Independent Auditing by Registered Company Auditors). The bill also incorporates recommendations from the HIH and Cole Royal Commissions.

A draft bill was released for public comment on 8 October 2003 with submissions closing on November 10. Over 50 submissions were received and these were considered in finalising the bill. The Business Regulatory Advisory Group, chaired by Mrs Catherine Walter, has considered the policy proposals and the provisions of the bill over a number of months. I would like to take this opportunity to thank members of BRAG for their participation in the process and the significant contribution they have made in developing this bill.

I also note that, consistent with the requirements in the Corporations Agreement 2002, State and Territory ministers have been consulted regarding these reforms through the Ministerial Council for Corporations and have approved the bill.

Audit Oversight and Auditor independence

An important part of these reforms is the establishment of a regulatory framework governing audit oversight and independence. Currently the regulation of the auditing profession is predominantly the responsibility of the professional accounting bodies. Legislative requirements are minimal and piecemeal. The bill therefore substantially builds on the current Corporations Act requirements and establishes a comprehensive framework governing the audit standard setting process and auditor independence.
FRC oversight

The role of the Financial Reporting Council (FRC) will be expanded to include oversight of the audit standard setting arrangements. The Auditing and Assurance Standards Board (AUASB) will be reconstituted with a Government appointed Chairman under the oversight of the FRC, similar to the Australian Accounting Standards Board. Auditing standards made by the AUASB will be given legislative backing.

The Government considers that the measure to give auditing standards the force of law will significantly enhance the rigour of the standards applying to the auditing profession and improve ASIC’s enforcement capabilities.

To facilitate the implementation of this policy, the bill provides for transitional arrangements whereby auditing standards which have been issued by or on behalf of Australia’s professional accounting bodies will be given immediate legal backing. Standards subject to the transitional arrangements are subject to a two-year ‘sunset’ clause, during which time the AUASB would be expected to revise the standards and re-issue them as disallowable instruments made under the Corporations Act.

The objective of the provision is to provide a seamless transfer from the existing regime, under which standards are enforced through the professional codes of the accounting bodies, and the new arrangements.

During the consultation period, industry noted that the existing body of professional standards are not sufficiently robust, and not in a form suitable, to be given force of law immediately as part of the transition to the new arrangements. Much of the profession’s concern appears to be driven by the fact that criminal penalties will attach to a breach of these standards. In this regard, I recognise the profession’s argument that some of the standards contain significant blocks of guidance which are not suitable for a two-year ‘sunset’ clause, during which time the AUASB would be expected to revise the standards and re-issue them as disallowable instruments made under the Corporations Act.

Auditor independence

In addition to the oversight arrangements, the bill contains a number of measures to promote auditor independence.

The bill introduces a general standard of independence and a requirement that auditors provide directors with an annual independence declaration.

The bill also prohibits a number of specific employment and financial relationships between auditors and their clients which are considered to compromise independence.

A waiting period of 2 years will apply to partners of an audit firm or directors of an audit company directly involved in an audit before they can take up a directorship or senior management position with an audit client.

Consistent with the recommendations of the HIH Royal Commission, the bill also includes a re-
striction on more than one audit partner joining an audit client as a director or taking a senior management position.

The bill requires auditor rotation after 5 consecutive years. In light of concerns surrounding the impact of this requirement on smaller audit firms and those operating in rural and regional areas ASIC will be able to extend the period after which rotation is required to up to 7 consecutive years.

The bill also requires listed companies to disclose in their annual directors’ report the fees paid to the auditor for each non-audit service, together with a description of the service. In addition, the annual directors’ report of each listed company must include a statement by directors that they are satisfied that the provision of non-audit services does not compromise the auditor’s independence. This also reflects the recommendations of the HIH Royal Commission.

The exposure draft of the bill reflected the HIH recommendations relating to the general standard of independence and cooling off periods applying before an auditor can move into a directorship or senior management position on the audit client. The bill has been amended since then to reinstate the original CLERP proposals in these areas. Following consultations on the exposure draft of the bill, a range of concerns were raised as to the practical implications of the HIH recommendations in these areas.

The Government supports the policy intent of these recommendations; that is, to ensure auditors are independent from their clients. However, it is also necessary to ensure that regulatory requirements are appropriate for the Australian market. In relation to these two matters, the bill will achieve the same functional outcomes as proposed by Justice Owen but will do so in a way that promotes certainty for auditors in discharging their obligations and will take into account the nature of the Australian market.

Continuous disclosure and infringements

One of the principles of Australian market regulation is that timely disclosure of relevant information is crucial to ensure that markets are well informed. The continuous disclosure regime is one way in which effect is given to this principle.

The bill will give ASIC greater flexibility to deal with contraventions of the continuous disclosure provisions of the Corporations Act by strengthening the enforcement mechanisms for continuous disclosure.

The maximum civil penalty that a court can impose on a body corporate will be increased from $200,000 to $1 million, but remain at $200,000 for an individual.

ASIC will be able to seek civil penalties against persons involved in a contravention of the continuous disclosure provisions.

ASIC will also be able to issue an infringement notice containing a financial penalty to a disclosing entity in relation to less serious contraventions. There are adequate safeguards to ensure that ASIC does not abuse this mechanism and the Government will review its operation two years after the provisions commence.

The first step in the process of issuing an infringement notice is that ASIC, after consulting the relevant market operator, gives the disclosing entity a written statement setting out the reasons for believing the entity has contravened the continuous disclosure provisions.

It must then give the disclosing entity an opportunity to appear at a private hearing before ASIC, give evidence and make submissions in relation to the alleged contravention.

It is only then that an infringement notice can be issued. The contents of the notice are specified, and the penalties are tied to the market capitalisation of the relevant disclosing entity.

ASIC may only publicise compliance with an infringement notice, and is limited in how it may do this. While compliance forestalls court action, if an entity fails to comply, ASIC cannot enforce the infringement notice. Instead, it must decide whether or not to initiate court action.

Should ASIC decide to initiate legal action, the fact that an infringement notice has previously been issued will have no bearing on the subsequent proceedings.

Remuneration disclosure

The bill also introduces a number of measures designed to enhance transparency and account-
ability in relation to decisions surrounding director and executive remuneration.

Details of directors’ and executives’ remuneration will need to be disclosed clearly in a marked section of the annual directors’ report—to be known as the remuneration report. Shareholders will be given an opportunity to comment on the content of the report and vote on a non-binding resolution to adopt the remuneration disclosures.

The vote is a mechanism for shareholders to directly and clearly communicate their views to the board of directors at a company general meeting. It will assist directors to more accurately assess the opinion of shareholders on remuneration than would otherwise be possible from discussion and comment at a general meeting alone.

The vote does not detract from the authority and responsibility of directors to determine executives’ remuneration and the vote is advisory only. This recognises that it is the proper function of directors to determine executives’ remuneration. It also recognises that directors are ultimately responsible to shareholders for decisions they make, including decisions on executive remuneration.

However, by requiring that shareholders have the opportunity to clearly express their views on a detailed remuneration report, this amendment will enhance transparency and will improve accountability between directors and shareholders.

Consistent with the current provisions of the Corporations Act, directors and senior managers will be required to disclose information on their remuneration. The disclosure requirements will be extended to apply to the corporate group and disclosure of the top 5 senior managers in the group will also be required.

The bill also amends the shareholder approval requirements in relation to directors’ termination payments. It is proposed that the existing exemptions from the requirement to seek shareholder approval in respect of damages for breach of contract and agreements entered into before a director agrees to hold office will no longer apply where the payments exceed a certain limit.

I consider these measures will substantially improve the information available to shareholders and enhance the accountability of directors.

Other measures
The reforms in the bill are wide ranging and also include:

- The establishment of a Financial Reporting Panel to resolve disputes between ASIC and companies in relation to accounting treatments in company financial reports.
- The reconstitution of the Companies Auditors and Liquidators Disciplinary Board to ensure that a majority of persons hearing matters are non-accountants.
- The bill also:
  - Introduces a specific licensing obligation for financial services licensees to have adequate arrangements for managing conflicts of interest; and
  - Implements proportionate liability in respect of economic loss or damage to property.

Overall, this bill will implement significant reforms in the area of financial reporting and corporate disclosure more generally and will bring our regulatory framework into line with world’s best practice.

AGRICULTURAL AND VETERINARY CHEMICALS (ADMINISTRATION) AMENDMENT BILL 2004

Inadequate management of chemicals, from production through to disposal, has the potential to lead to considerable human health and environmental problems. The level of concern is reflected in the significant attention given to chemical management issues both internationally and domestically.

During the 1990s, international concerns about trade in some hazardous chemicals led to the development of international agreements on chemical management to promote shared responsibility and cooperative efforts to protect human health and the environment. A key driver underpinning these international agreements is to provide assistance to developing countries and countries with economies in transition, whose assessment capabilities and regulatory regimes may not be as sophisticated as those of more industrialised nations, such as Australia.
The Australian Government is committed to supporting effective and balanced approaches to global cooperation on human health and the environment. This is most recently evident in the Howard Government’s announcement of its intention to ratify:

- the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; and

An important aspect of many international agreements is that they allow countries importing hazardous chemicals to more fully understand and manage the risks associated with their use. In particular, they may contain information sharing strategies and obligations relating to the control of certain chemicals of international concern.

The amendments contained in the Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2004 further enable Australia to fulfil its role in the international community as it relates to the management of pesticides under consideration by the international community because of particular human health and/or environmental concerns.

Specifically, the amendments provide powers for regulations to be made enabling the collection of prescribed information about prescribed chemicals, including:

- chemicals that are listed in prescribed international agreements to which Australia is a party;
- chemicals that are otherwise being considered (including for listing) under prescribed international agreements to which Australia is a party;
- chemicals identified in, or otherwise being considered under, other prescribed international agreements;
- chemicals that may be encompassed within prescribed international negotiations in which Australia is a participant.

In addition, the proposed amendments will broaden the scope of the regulation-making power to ensure that the ‘use or other dealings’ relating to specified chemicals can also be appropriately controlled. Without this amendment, there is a gap in the scope of the existing domestic powers to meet the obligations of the Rotterdam and Stockholm conventions.

Significantly, the regulations will only be able to seek information on, and/or control, those chemicals in a manner that falls within the scope of the prescribed international agreements.

The amendment and any regulations thereof will be implemented taking into account the need for consistency with Australia’s obligations under international agreements applying to chemicals in international trade.

To emphasise the significance of compliance with Australia’s obligations under international conventions and the potential for significant adverse impacts from failing to comply with national control mechanisms, the amendments also provide several offence and penalty provisions dealing with:

- Failure to provide information about import, export, manufacture, use or other dealings;
- Failure to supply information in a timely manner;
- Failure to keep and retain adequate records in certain circumstances;
- Provision of false and misleading information (which may attract a significant penalty of 300 penalty units because of the potential to result in serious adverse human health and environmental impacts in overseas jurisdictions).

The Howard Government is serious about protecting human health and the environment from inappropriate use of chemicals. These amendments further demonstrate Australia’s commitment to participate effectively in international agreements such as the Rotterdam and Stockholm conventions.
assessment of industrial chemicals to protect health, safety and the environment; and provides for registration of certain persons proposing to introduce industrial chemicals. The Act also provides for Australia to comply with obligations under international agreements.

The proposed changes would enable Australia to give full effect to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The amendments enhance the domestic information gathering powers of the Director of the National Industrial Chemicals Notification and Assessment Scheme for implementing the Convention, and facilitate information exchange between Australia and the other Parties to the Convention. The amendments also allow for the exchange of information on regulatory activities that provide for a national ban or restriction on the use of a chemical.

The changes in the Rotterdam Convention Bill complement the amendments to the Agricultural and Veterinary Chemicals (Administration) Act 1992 which will also give effect to Australia’s obligations under the Convention that relate to pesticides. The Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2004 is therefore being introduced at the same time as the Rotterdam Convention Bill to allow for cognate debate of both Bills by Parliament.

The objective of the Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous industrial chemicals and pesticides in order to protect human health and the environment from potential harm.

The Convention also contributes to environmentally sound use of these hazardous chemicals, by facilitating information exchange about their characteristics. It provides for a national decision-making process on the import of these chemicals, and disseminates those decisions to Parties. The Convention also provides for importing Parties to receive information on a chemical being exported from a country that has banned or severely restricted its use on human health and/or environmental grounds.

In recent decades, the movement of chemicals in world trade has occurred at a faster rate than the flow of information about their risks. Inadequate management of chemicals can lead to harmful consequences for human health and the environment, as well as having a negative impact on trade. Governments and other organisations have been working to develop worldwide systems to transmit information which will allow risks to be recognised and addressed before any negative consequences should occur. While Australia and many other developed countries have established appropriate procedures aimed at chemical safety within their borders, many developing countries lack the capacity to assess chemical risks in order to enforce regulations, resulting in significant risks to human health and the environment both within and beyond their borders.

The voluntary Prior Informed Consent Procedure (known as ‘PIC’) that commenced in 1989, was designed as an information exchange procedure to help countries make informed decisions on whether to receive future shipments of certain hazardous industrial chemicals and pesticides. The PIC Procedure provided a mechanism to communicate decisions on whether a country would import particular hazardous chemicals to other participating countries, which were then expected to abide by those decisions. Having participated in the voluntary PIC procedure since 1992, Australia has contributed actively and constructively to address problems of chemical management at the international level.

Although the original PIC Procedure was regarded as a successful model, it was still voluntary and not enforceable, so it was considered by the international community to lack sufficient force. It was agreed that mandatory controls would provide a better basis for greater certainty and commitment by participating countries towards achieving the aims of the PIC scheme. Accordingly, negotiations on an internationally legally binding instrument commenced, resulting in the Convention which was adopted and opened for signature at a Diplomatic Conference held in Rotterdam in September 1998.

To date, 73 countries have signed the Convention. As it was expected to be several years before the Convention entered into force, an interim PIC Procedure was adopted by Signatories to the Convention. This interim Procedure mirrors that
contained in the Convention itself and is administered by the United Nations Food and Agriculture Organization (FAO) and the United Nations Environment Programme (UNEP).

The Australian Government demonstrated its commitment by signing the Convention on 6 July 1999 and participating in the interim PIC Procedure. The interim PIC procedure will cease after the Convention enters into force on 24 February 2004. Fifty countries have now ratified the Convention.

Chemicals can be listed in the Convention if they meet the criteria of the Convention. This includes being banned or severely restricted in at least two countries in different PIC regions (or in one country for a severely hazardous pesticide formulation) because of the hazards they present to human health and/or the environment.

These chemicals incur exporting obligations. Currently five industrial chemicals, 21 pesticides and five severely hazardous pesticide formulations are listed in the Convention.

The Convention does not apply to narcotic drugs and psychotropic substances, radioactive materials, wastes, chemical weapons, pharmaceuticals (including human and veterinary drugs), chemicals used as food additives, food, or small quantities of chemicals which are imported for research, analysis or personal use.

Globally, the Convention will be especially helpful to developing countries, whose assessment capabilities and regulatory regimes may not be as sophisticated as those of more industrialised nations. By sharing information, the Convention endeavours to help countries importing those chemicals to understand more fully, and to manage, the risks associated with their use. In this way, ratification would provide an efficient and effective mechanism to assist countries, particularly developing countries in our region, including Pacific Island states, to adopt and maintain sound chemical management, consistent with Australian policy in the region.

In summary, the changes proposed in this Bill are necessary to give effect to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

The changes will allow the Director of NICNAS to collect the necessary information domestically about regulatory actions taken in relation to industrial chemicals and facilitate information exchange to other similar overseas regulatory authorities that are Parties to the Convention. The Director will also provide the information collected domestically to the Designated National Authority in Australia for industrial chemicals.

Under the Bill, the Designated National Authority has responsibility for liaison involving information exchange with the Convention Secretariat and regulatory authorities of other countries that are Parties to the Convention. The Designated National Authority in Australia for industrial chemicals is the Department of the Environment and Heritage.

Participation in the Convention will not affect Australia’s national capacity to use, restrict or otherwise regulate chemicals domestically, all decision-making will remain with Australian governments.

The Convention aims to facilitate information exchange between Parties on hazardous industrial chemicals and pesticides. For a chemical restricted or banned by a Party on human health or environmental concerns, the Convention requires that the Party notify the importing Party prior to the export. The Convention gives importing countries the power to make an informed decision on which chemicals they want to receive and exclude those chemicals they cannot manage safely.

Australia would benefit from ratification of the Convention because it would enhance Australia’s capacity to influence international efforts to address chemicals issues. Furthermore it would increase Australia’s access to information on hazardous chemicals. It would also provide an efficient and effective mechanism to assist countries, particularly developing countries in our region, to adopt and maintain sound chemical management that is consistent with Australian policy in the region.

Further, Australia’s ratification of the Convention would demonstrate Australia’s ongoing commitment to supporting effective and balanced approaches to global cooperation to improving the environment. It would also help promote and protect Australia’s health, environmental and
The Military Rehabilitation and Compensation Bill 2003 is the Government’s detailed response to the findings of the inquiry into the Black Hawk disaster and the recommendations of the Tanzer Review of Military Compensation for a new scheme that recognises the distinctive nature of military service.

This bill sets in place the most comprehensive changes in military compensation legislation in nearly two decades.

From the commencement date, planned for 1 July 2004, the new scheme will cover all injuries or conditions arising from service in the Australian Defence Force (ADF).

This bill has no impact on current veterans or war widows who are receiving benefits under the Veterans’ Entitlements Act 1986 (VEA). Current beneficiaries under the Safety Rehabilitation and Compensation Act 1988 (SRCA) will continue to receive their benefits under that Act.

An exposure draft of the bill was published in June this year. Subsequent consultation with the veteran and defence force communities has been important in developing the legislation.

Several changes resulted from the consultation process, among them:

- inclusion of a further choice of part lump sum and part periodic payments for permanent impairment;
- extension of the time allowed to choose between a lump sum and weekly payments from three to six months; and
- eligibility for the Special Rate Disability Pension safety net payment for those who are unable to work more than 10 hours per week—this encourages some part time work for eligible members.

Governance

The new scheme will be administered by an independent Military Rehabilitation and Compensation Commission, supported by the Department of Veterans’ Affairs.

Rehabilitation

Rehabilitation is emphasised and aimed at providing injured members with the support they need to make a full recovery and to return to work where possible. Assistance provided will be sensitive to an individual’s needs and circumstances. Protocols will be developed in consultation with Defence and ex-service organisations to document the manner in which rehabilitation is managed.

The bill also addresses the need for assistance in the transition to civilian life for ADF members being discharged on medical grounds.

Compensation

The bill adopts the VEA’s beneficial “beyond reasonable doubt” standard of proof for warlike and non-warlike service and the normal civil standard of “reasonable satisfaction” for peace-time service claims. It uses the Statements of Principles from the VEA in linking injury, disease or death with service.

There will be two types of compensation available to injured members—economic loss and non-economic loss.

Compensation for economic loss will be through incapacity payments. These payments will match, and in many cases, surpass payments under the VEA and the SRCA.

A safety net will provide a choice for eligible veterans between receiving taxable incapacity payments up to age 65, or a tax-free Special Rate Disability Pension payment for life.

Commonwealth-funded superannuation benefits will be taken into account when calculating incapacity payments, so a Commonwealth benefit is not paid twice, extending the practice that already applies under the SRCA to Commonwealth Public Servants and members of the Australian Defence Force.

Permanent impairment payments are non-economic loss compensation. For warlike and non-warlike service, these payments will match the VEA, while members who are severely injured will have their compensation enhanced.
In most cases, permanent impairment payments for injuries from peacetime service will be enhanced from those available under the SRCA. Members entitled to the maximum permanent impairment compensation will receive the same amount regardless of whether they were injured on warlike, non-warlike or peacetime service. In addition they will receive a lump sum payment for each dependent child.

Death
For eligible partners and dependants of members who die as a result of ADF service, the bill combines the best elements of existing entitlements. For widowed partners, benefits include:

- an additional aged-based amount of up to $41,200 for death connected to non-warlike or peacetime service, and up to $103,000 for death connected to warlike service; and
- a choice of a periodic payment equivalent to the VEA war widow’s pension, or its lump sum lifetime equivalent.

Dependent children may be eligible for a lump sum death benefit, initially set at $61,800 plus a weekly allowance.

These benefits are in addition to military superannuation benefits, free lifetime health care for widows through the Gold Card, and ancillary benefits including education allowances for dependent children.

Treatment
This bill blends the VEA and SRCA regimes for medical treatment. Where members have accepted conditions that do not require regular, ongoing treatment, payment will be made for reasonable costs of treatment required.

Where members require ongoing treatment, care will be provided using the VEA Gold and White Repatriation Health Cards.

Continuation of Veterans’ entitlements
A number of entitlements currently provided in the VEA will continue to be available, including the service pension for warlike service, income support supplement for widowed partners, funeral benefits and Gold Card at age 70 for veterans with warlike service.

Conclusion
The Military Rehabilitation and Compensation Bill and the associated Transitional and Consequential Provisions Bill are proof of this Government’s commitment to a military-specific rehabilitation and compensation scheme that will meet the needs of all Australian Defence Force members and their families in the event of injury, disease or death in the service of our nation.

MILITARY REHABILITATION AND COMPENSATION (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2003
Today I have also introduced the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003.
The Government is very conscious of the need to make things as easy as possible in the new scheme especially in the early transition period.
I am pleased to say that this bill provides for members who have service on both sides of the commencement date to make a deliberate choice to take advantage of the new Military Rehabilitation and Compensation Scheme benefits.
A member who suffers an injury or illness after that date will be able to combine prior impairments from the SRCA and the VEA with the new arrangements to get the best possible outcome.
Importantly, this bill will ensure that equivalent income taxation and income and assets testing rules apply to the new scheme in the same manner as applies under the VEA and the SRCA.
The Government has also recognised the need for all compensation entitlements to be administered by a single body whether they arise under the VEA, the SRCA or the new scheme.
This bill enables the new Military Rehabilitation and Compensation Commission to take responsibility for the operation of the SRCA as it relates to claims from Defence service, currently managed on behalf of Comcare and the Department of Defence by the Department of Veterans’ Affairs.
The Government has decided not to proceed with the proposal to offset future grants of the VEA Special Rate (the T&PI pension)—by the Commonwealth-funded component of superannuation. It would be unreasonable to treat differently two
veterans with the same service and the same incapacity.

WORKPLACE RELATIONS AMENDMENT (BETTER BARGAINING) BILL 2003

This Government is committed to continuing our programme of workplace relations reform, to enhance our living standards, our jobs, our productivity and our international competitiveness. The Government will continue to promote a more inclusive and cooperative workplace system where employers and employees talk to each other, making agreements on wages, conditions and work and family responsibilities subject to a safety net of minimum standards.

The overwhelming majority of Australian employees in the federal workplace relations system are now employed under enterprise or workplace agreements—whether individual or collective. Enterprise bargaining has benefited both employees and employers. Employees have gained better wages, more relevant conditions, more jobs and greater workplace participation. Businesses have gained higher productivity, increased competitiveness, and lower industrial dispute levels.

Employers and employees have embraced workplace bargaining. Since 1991, more than 53,000 collective agreements have been formalised under the federal system alone, with thousands more under state bargaining systems. In addition, more than 380,000 AWAs have been approved since early 1997. By the end of June 2003, over 1.6 million employees were covered by current federal registered collective wage agreements, including approximately 162,100 employees under collective agreements made directly between employers and employees. A further 176,400 or so employees were on AWAs as at June 2003.

This bill will ensure that the bargaining process continues to benefit workplaces by ensuring this process is as user friendly as possible.

Cooling-off periods

During protracted disputes, parties often lose sight of their original objectives. Cooling-off periods allow negotiating parties to step back from industrial conflict and refocus on reaching a solution which works for the business and employees in question.

The Australian Industrial Relations Commission currently cannot order a cooling-off period in the case of a protracted dispute. The Commission has used the provisions in section 170MW to order de facto cooling-off periods, to provide a circuit breaker in particularly difficult bargaining disputes, but it is not able to do this in all situations where a cooling-off period may benefit the parties. This needs to be rectified so that the Commission can do its job properly.

Proposed section 170MWB would allow the Commission to order a cooling-off period if it will assist the parties in resolving the issues between them. The duration of a cooling-off period is a matter for the Commission’s discretion.

The Commission will be able to extend the cooling-off period (once only) on the application of a negotiating party, after hearing the other negotiating parties.

If the Commission suspends the bargaining period or extends the initial suspension, the Commission will inform the negotiating parties that they may attend private mediation or ask the Commission to conciliate the dispute.

Suspensions by third parties

This bill also seeks to address the harm that some industrial action causes third parties. Industrial action by negotiating parties can impact upon, or aim to harm, third parties who are not directly involved in the dispute—for example the clients of health, community services and education systems and other businesses.

Currently, there is no scope for third parties to apply to the Commission for relief from threatened and ongoing significant harm they may be experiencing due to industrial action occurring during a bargaining period. The Commission can provide indirect relief to third parties using the provisions of section 170MW, which operate in limited circumstances, but only through the Commission’s initiative, or on application by the Minister or a negotiating party.

Proposed subsection 170MWC will give the Commission discretion to suspend a bargaining period for a specified period, on application by, or on behalf of, an organisation, a person or a body.
directly affected by the industrial action, other than a negotiating party, or the Minister.

Proposed subsection 170MWC(1) will require the Commission to consider a number of factors to determine whether a suspension is appropriate, including whether the action is threatening to cause significant harm to any person other than a negotiating party.

It may be relevant to the Commission’s consideration that the significant harm is presently occurring, but the provision only requires that the action is threatening to cause such harm.

The extension provisions are the same as those for cooling-off periods.

The purpose of the provisions is not to detract from the existing rights of employees to take industrial action. They simply provide the Commission with a remedy to address the impact of industrial action on the welfare of third parties who are not directly involved in a dispute.

These amendments deliver on promises the Government made earlier this year to amend the Workplace Relations Act, as part of the higher education reform package.

**Industrial action taken in concert is unprotected**

Elements within the union movement have attempted to orchestrate a return to industry level bargaining, conducting their negotiations across a range of employers or an industry and ignoring the needs of individual enterprises and their employees.

Amending section 170MM will protect genuine bargaining and clarify that industrial action is unprotected action where it is taken in concert with employees of different employers.

**Protected action and involvement of non-protected parties**

Currently, protected industrial action can be taken by employees of different but related businesses. This right is inconsistent with genuine workplace bargaining.

Subsection 170ML will be amended so that two or more employers cannot be treated as a single employer for the purpose of identifying certain action as protected action.

**Industrial Action before expiry of agreement**

Protected industrial action should not be available during the life of the agreement. Parties should stick to their agreements and all agreements have dispute resolution provisions to deal with disagreements that occur during the life of the agreement.

The full court of the Federal Court concluded in the Emwest decision that protected industrial action may be taken where a certified agreement has not passed its nominal expiry date but the action is to pursue claims not covered by the agreement.

Subsections 170MN(1) and 170MN(4) will be amended to clarify that no industrial action can take place during the life of an agreement.

**Claims not related to employment relationship**

The Electrolux decision has also raised questions as to whether protected industrial action can be taken in relation to claims which do not pertain to the employment relationship. Again, this has lead to uncertainty for employers and employees in their bargaining processes. Protected industrial action is a mechanism for allowing parties negotiating certified agreements to take legally sanctioned industrial action to support their claims. If protected industrial action was allowed about any claim made by the parties, this would exceed the appropriate and sensible boundaries for the right to take such action.

Subsection 170ML will be amended to clarify that protected industrial action is only available to pursue claims which pertain to the employment relationship.

**Conclusion**

This bill recognises that the Government’s workplace reform has brought benefits to the Australian economy—more jobs, better wages, higher productivity, increased competitiveness and fewer strikes. This bill will clarify some emerging uncertainties.
Workplace Relations Act 1996 provides a wide range of bargaining options, recognising that different workplace arrangements will suit different employers and different employees.

This government will continue to strive for a simpler and more accessible workplace relations system which focuses on workers and their jobs rather than the needs of the system itself.

The government desires to simplify further the processes for making and approving collective and individually negotiated agreements so that employers and employees at each workplace can make these agreements with minimum technical requirements and cost.

This bill proposes amendments which are for the most part procedural and technical in nature but which will, nonetheless, significantly simplify making agreements in the federal system. The bill also enhances protections for employees who choose to make Australian Workplace Agreements (AWAs) with their employers.

Certified agreements

The proposed amendments to the procedures for making certified agreements are intended to:

- make agreement making at the workplace level easier and more widely accessible;
- reduce the delays, formality and cost involved in making a certified agreement;
- prevent unwarranted interference by third parties in agreement making; and
- remove barriers to the effective exercise of agreement making choices.

The amendments specify that the 14-day consideration period for a proposed certified agreement does not recommence if a new employee begins work during this period.

Where an agreement is made directly with employees and the proposed agreement is undergoing minor changes before the formal agreement process, the Australian Industrial Relations Commission will gain discretion to waive the requirement to recommence the consideration period with each variation to the proposed agreement, provided the Commission is satisfied that this would not be detrimental to the employees whose employment would be covered by the agreement.

Employers and employer organisations have expressed concerns that a union which has elected to be bound by an agreement made directly with employees may effectively prevent the variation, extension or termination of the agreement, even if the variation has majority employee support.

This bill allows organisations bound to a certified agreement made directly with employees the opportunity to make submissions regarding any proposed extension, variation or termination, but removes their right to veto such proposals.

There is no statutory requirement for the Commission to hold formal hearings for certification of agreements, but it has become standard practice. Unnecessary formal hearings cause disruption and additional cost. In most cases, an application for certification (or variation, extension or termination) of a certified agreement could be dealt with expeditiously and with minimal cost on the basis of written applications only. The legislation will explicitly allow the approval, variation, extension or termination of a certified agreement without a formal hearing. Hearings will only be required where the employer or an employee has requested one and the commission is satisfied that there are reasonable grounds for the request.

Extended Agreements

The Bill introduces the option of five-year certified agreements in appropriate circumstances. These agreements will be known as extended agreements. Allowing for extended agreements recognises that some businesses and projects are likely to benefit from a stable workplace relations environment created by agreements that last for more than three years, which is the current maximum term. These amendments mark a significant development in the federal workplace relations system that reflects the government’s confidence in the maturity of employers and employees to reach mutually beneficial bargaining outcomes at the workplace.

The new option of extended agreements of up to five years duration will be balanced by safeguards for employers and employees. Parties bound by an extended agreement will be able to ask the Commission to reassess the agreement after it has been in operation for three years to see if it still meets the no-disadvantage test. If the Commission finds the extended agreement no longer
meets the no-disadvantage test, the parties will have the option of varying the agreement so it does meet the no-disadvantage test. If not varied or terminated within three months from the Commission’s finding, the agreement will be deemed to have passed its nominal expiry date. Parties will be able to bargain for a replacement agreement under the Act.

**Australian workplace agreements**

There is no doubt that AWAs have found significant support among employers and employees. However, time consuming, costly, complex and formal procedures for making an AWA have reduced their accessibility. Some parties, particularly small and medium businesses without in-house human resource experts, are reluctant to use AWAs.

Existing filing and approval requirements will be consolidated into a one-step process. As is currently the case, the Employment Advocate will approve AWAs, with provision for referral to the Australian Industrial Relations Commission where there is doubt about whether an AWA passes the no-disadvantage test.

At present, AWAs cannot come into effect immediately the parties have reached agreement. This should be an option for parties who wish to implement their new arrangements immediately. The bill will enable AWAs to take effect from the day of signing, unless the parties specify a later date.

The bill will allow employees to sign AWAs at any time after receiving from the Employment Advocate an information statement and an explanation of the effect of the AWA. As an additional protection, an employee party to an AWA will be able to withdraw consent to the AWA within a cooling-off period, which will be five days from the date of signing for new employees and 14 days for existing employees.

An employer is required to satisfy the Employment Advocate that the employer did not act unfairly or unreasonably in failing to offer AWAs in the same terms to comparable employees. This obligation is incompatible with the concept of individual agreement making and will be removed by this bill.

The current scope of the Employment Advocate’s powers to reconsider or revoke AWA decisions is unclear. The bill will remove this uncertainty by giving the Employment Advocate an express power to revoke AWA decisions. This power will only be able to be exercised with prospective effect.

The Employment Advocate will also be empowered to recover a shortfall in entitlements on behalf of employees in circumstances where an AWA or related agreement is revoked or stops operating in certain circumstances.

These will be important enhancements to the protections for employees and reflect the government’s commitment to a balance between flexibility and protection for employees. I commend the bill to the Senate.

**WORKPLACE RELATIONS AMENDMENT (CHOICE IN AWARD COVERAGE) BILL 2004**

This bill will amend the Workplace Relations Act 1996 to ensure that the workplace relations system better meets the needs and circumstances of business, particularly small business. This bill demonstrates that the government is serious about reducing unjustified third party interference and workplace relations red tape for small business.

There is a compelling case for the passage of this bill. A vibrant and innovative small business sector is crucial to Australia’s economic growth and social welfare. The changes introduced in 1996 with the Workplace Relations Act significantly improved access for small business employers and employees to the workplace relations system. Many small businesses in the federal jurisdiction now have a greater choice of agreement types, including non-union agreements and individual agreements. However, further reform is required to maximise the opportunities for small business growth, and to drive unemployment down even further.

Many small businesses are not members of registered employer organisations and, consequently, are not represented in the Australian Industrial Relations Commission’s hearings and cases. They often do not have the resources or opportunity to influence commission proceedings and outcomes. The changes implemented by this bill are intended to make the commission and its processes more responsive to small business.
The bill contains amendments that will enhance the ability of small business to resist attempts to rope them into federal awards. A dispute with an employer with fewer than 20 employees will only be taken to exist, in a roping-in or log of claims process, where the union demonstrates that it has a member employed by the employer. The identity of individual union members, however, will be kept confidential.

Where an alleged dispute is notified, for any business, on the ground that the employer has not agreed to demands set out in a log of claims, the commission would be required not to make any finding of dispute, unless satisfied:

- the log of claims, when served, was accompanied by a notice containing prescribed information—the prescribed information is intended to explain the status of a log of claim and explain employers’ rights in relation to logs of claims;
- the alleged dispute was not notified until at least 28 days after service of the log;
- the party notifying the alleged dispute had given the employer at least 28 days notice of the time and place for hearing of the dispute notification; and
- the log of claims did not include any demand requiring conduct or provisions contrary to the freedom of association provisions of the act, or outside the scope of the employment relationship.

The bill will also require the commission to inquire into the views of identified small business employers affected by the making of an award, rather than only taking into account the views of employers who go to hearings.

In introducing this bill, the government is demonstrating its commitment to making the workplace relations system better meet the needs and circumstances of business, particularly small business. This is vital to maximise the opportunities for growth and innovation for the approximately 1,122,000 private sector, non-agricultural, small businesses in Australia. These businesses account for 96 per cent of all businesses—and are the engine room for jobs growth in our economy. It is clearly in the public interest to open the door to the new jobs that can be created by small business if we continue to ease the pressure that excessive industrial regulation presents for Australia’s hardworking small business men and women.

INDUSTRY RESEARCH AND DEVELOPMENT AMENDMENT BILL 2003

The Industry Research and Development Amendment Bill is a bill to amend the Industry Research and Development Act 1986.

The bill clarifies that the Department of Industry, Tourism and Resources controls, and is accountable for, program finances, not the Industry Research and Development Board.

The amendments remove an administrative anomaly and clarify and confirm the financial accountability arrangements for innovation, currently, and into the future.

The amendments remove the Board’s power to commit and approve the expenditure of Commonwealth funds under the Financial Management and Accountability Act 1997.

Under the Financial Management and Accountability Act, it is the Chief Executive officer of the Department of Industry Tourism and Resources who is ultimately responsible for the administered funds appropriated to the Department, not the IR&D Board.

In practice, the amendments will result in little difference to the existing operating procedures under the various innovation and research and development programs.

Currently, the Board delegates its financial functions to officers of the Department of Industry, Tourism and Resources but under the existing Act retains some responsibility for Commonwealth finances.

By removing the Board’s financial responsibilities, the bill enables the Board to focus on the assessment and prioritisation of applications—where its expertise lies—and not on managing funds.

This bill also clarifies that the Board provides advice on innovation programs, such as those related to commercialisation, in addition to providing advice on research and development programs.
As well as enabling the Board to concentrate on its core business, the amendments will help safeguard individual Board members from any personal liability stemming from their membership of the Board.

POSTAL SERVICES LEGISLATION AMENDMENT BILL 2003

The Postal Services Legislation Amendment Bill 2003 implements decisions of the Government, to address regulatory and consumer issues relating to the current postal regime, by amending the Australian Postal Corporation Act 1989, referred to as the Act, and several other Acts.

The bill is intended to provide greater consumer and social benefits by providing independent oversight of Australia Post’s service performance and operational activities and by legitimising a number of existing practices within the postal services market.

Specifically, the bill provides the Australian Communications Authority, the ACA, with responsibility for overseeing and reporting on the supply of postal services and extends the current responsibilities of the Australian Competition and Consumer Commission, the ACCC, in relation to Australia Post. The bill also introduces measures to legitimise the current business practices of document exchange and aggregation services.

There is currently limited oversight or regulation of Australia Post’s performance in the delivery of services: the Ombudsman can investigate complaints and report to Parliament; and the Auditor-General has a statutory obligation to monitor Australia Post’s compliance with prescribed standards. There is also limited competitive pressure to drive efficiencies and quality in the delivery of services because of Australia Post’s ongoing monopoly over the carriage of certain letters.

The proposed role of the ACA will be to provide independent oversight of Australia Post’s performance in the supply of postal services and to report on its findings. Through this process, it is intended that the ACA will identify any particular or systemic problems in the delivery of services and bring those to the attention of Australia Post and the public. The ACA is considered to be the most appropriate organisation to carry out these functions because of its current role in relation to overseeing the delivery of telecommunications services.

As part of its oversight responsibilities, it is also proposed that the responsibility of the Australian National Audit Office to monitor and report on Australia Post’s compliance with prescribed performance standards regulations be transferred to the ACA and that the ACA take over responsibility from Australia Post for calculating the cost of providing the statutory community service obligations. The ACA already has responsibility for calculating the cost of the telecommunications universal service obligation.

In relation to the prescribed performance standards, the bill also amends the Act to provide the Minister with a discretion to exempt Australia Post, in certain circumstances, from the requirements to prepare service improvement plans when it has failed to meet a minimum standard. These circumstances could, for example, be when the reason for the failure is due to factors outside of the control of Australia Post, such as a natural disaster, or if Australia Post has already taken action to address the failure.

The Act currently provides for regulations to enable the ACCC to inquire into disputes about the rate of reduction offered by Australia Post to its bulk mail customers. In view of Australia Post’s monopoly over the carriage of certain letters and its legislated power to determine the terms and conditions under which services are provided, in the absence of agreement between the customer and Australia Post, this provision is considered to be too narrow. The bill, therefore extends the regulation making powers to provide for the ACCC to inquire into disputes about any of the terms and conditions of a bulk mail service and not just the rate of discount offered.

The bill also contains measures to allow the ACCC to require Australia Post to keep records about the financial relationship between different parts of Australia Post’s business, and to publish reports. These amendments are intended to address concerns of some competing businesses, such as newsagents, that Australia Post is cross-subsiding its competitive services with revenue from its reserved, monopoly services. The amendments will ensure transparency in Australia
Post’s accounts and identify any areas of cross-subsidisation. The amendments will also facilitate the ACCC’s task of reviewing any proposed increases in the prices of Australia Post’s reserved services such as the standard postal rate.

The additional costs incurred by the ACCC and ACA, as a result of these new functions, will be recovered from Australia Post by means of a levy, the details of which are set out in the bill. The costs will be reviewed at the end of the first 12 months of operation of the ACCC and ACA functions.

The Act currently provides Australia Post with the exclusive right to carry letters within Australia subject to a number of exceptions set out in the Act. These exceptions include the carriage of letters for the purposes of lodging them with Australia Post under a bulk interconnection service and the carriage of letters in the course of a document exchange service. The bill contains amendments which will extend the current provisions in relation to these two exceptions and, thereby, legitimise the current practices of aggregation and document exchange businesses.

Aggregation and document exchange businesses provide valuable, alternative services to other businesses, particularly small businesses. Aggregation services aggregate and barcode the mail of small mail generators to enable them to qualify for the bulk mail discounts offered by Australia Post for volume based, barcoded, lodgements of mail. Document exchange services can provide time-critical deliveries of specialised documents on behalf of architects, doctors or lawyers, for example. The continued viability of these businesses is, therefore, of some considerable importance.

As the legislation currently applies, the carriage of letters from the small business to the aggregation service provider is still reserved to Australia Post. To facilitate the operation of these aggregation services, the bill contains provisions to amend the bulk mail exception in the Act to include the carriage of letters from the customer to the aggregator.

The document exchange provisions in the Act currently allow for the carriage of mail, in the course of a document exchange service, from one document exchange service centre to another, or within a document exchange service centre. However, the carriage of mail between the customer of the document exchange and the document exchange centre is still reserved to Australia Post. As this carriage is an integral and long standing part of the service provided by document exchanges, the bill contains provisions to remove this carriage from the reserved service and, thereby, legitimise current practices.

To ensure that the amendment has no unintended effect, the bill sets out certain conditions which must be met by the document exchange service and its members before the exception can apply. These include requirements that members must choose to be members, pay a fee for the service, be given a unique identifier by the document exchange service and the DX service provider must have provided a separate receptacle for each member to lodge and collect letters. Members who have their mail delivered or collected from them will also be required to be businesses or government or other service provider etc and not members of the general public and they will be entitled to send and receive documents through the document exchange service.

A NEW TAX SYSTEM (COMMONWEALTH-STATE FINANCIAL ARRANGEMENTS) AMENDMENT BILL 2003

This bill amends the A New Tax System (Commonwealth-State Financial Arrangements) Act 1999. The bill will facilitate the operation of the Act by implementing three measures, which have been agreed to by all of the States and Territories.

The bill will enable the Commissioner of Taxation to account for all GST refunds when determining the amount of GST revenue collected and to be provided to the States and Territories. In 2003-04, it is estimated that the States and Territories will receive $31.7 billion in GST revenue.

Currently, the Act does not allow the Commissioner to deduct all GST refunds when determining GST revenues. In particular, the Act excludes GST refunds under the Tourist Refund Scheme, and GST refunds to international organisations, diplomatic missions and visiting defence forces.

As a result, the Commissioner’s determination overstates GST, resulting in States and Territories
receiving more GST revenue than is actually collected.

The bill will fix this problem. It will ensure that the Commissioner is able to account for all GST refunds when determining GST revenues for 2003-04 and future years.

The bill will also introduce a mechanism to allow payments to a State or Territory to be adjusted, as it comes off Budget Balancing Assistance, to fully account for any over or underestimate of payments in a previous financial year.

The bill also makes minor changes to the statutory deadlines for a number of determinations required under the Act, in order to improve the timing of these determinations.

Full details of these measures are contained in the explanatory memorandum and I commend the bill.

Ordered that further consideration of the Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2004 and the Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Bill 2004 be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

Debate (on motion by Senator Mackay) adjourned on the remaining bills.

Ordered that the bills be listed on the Notice Paper as nine orders of the day, as follows:

(a) Corporations (Fees) Amendment Bill (No. 2) 2003 and Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003;
(b) Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2004 and Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Bill 2004;
(c) Military Rehabilitation and Compensation Bill 2003 and Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003;
(d) Workplace Relations Amendment (Better Bargaining) Bill 2003;
(e) Workplace Relations Amendment (Simplifying Agreement-making) Bill 2004;
(f) Workplace Relations Amendment (Choice in Award Coverage) Bill 2004;
(g) Industry Research and Development Amendment Bill 2003;
(h) Postal Services Legislation Amendment Bill 2003; and

COMMITTEES

National Capital and External Territories Committee
Membership

Message received from the House of Representatives notifying the Senate of the appointment of Dr Washer to the Joint Standing Committee on the National Capital and External Territories in place of Mr Johnson.

Legal and Constitutional References Committee
Report

Senator MACKAY (Tasmania) (4.11 p.m.)—On behalf of Senator Bolkus, I present an interim report of the Legal and Constitutional References Committee on the State Elections (One Vote, One Value) Bill 2001 [2002].

Legal and Constitutional References Committee
Extension of Time

Senator MACKAY (Tasmania) (4.11 p.m.)—by leave—At the request of Senator Bolkus, I move:

That the time for the presentation of the final report of the Legal and Constitutional References Committee on the State Elections (One Vote, One Value) Bill 2001 [2002] be extended to 3 March 2004.
Question agreed to.

**ASIO, ASIS and DSD Committee**

**Report**

**Senator SANDY MACDONALD** (New South Wales) (4.12 p.m.)—On behalf of the Parliamentary Joint Committee on ASIO, ASIS and DSD, I present the report of the committee entitled *Intelligence on Iraq’s weapons of mass destruction*, and I seek leave to allow debate on the report to continue for one hour.

Leave granted.

**Senator SANDY MACDONALD**—I move:

That the Senate take note of the report.

The terms of reference asked the committee to examine the nature, accuracy and independence of prewar intelligence on Iraq and the accuracy and completeness of the government’s presentation of that information to the parliament and the Australian people. In the course of our inquiry the committee held one public hearing and a number of private hearings with the intelligence agencies. The submissions from the intelligence agencies outlined, by way of extracts, the assessments that were made on Iraq. ONA assured the committee that these extracts were representative. Our report quotes the assessments at length so that readers can get a sense of what was being said to the government. Intelligence assessments are often specifically worded and cannot easily be summarised. That is why we treated them as we did.

On the question of independence of prewar intelligence, the committee recognises that most of the intelligence relating to Iraq came from overseas sources, particularly our major intelligence sharing partners, the United States and the UK. About 97 per cent came from those partners. The Australian agencies said that they saw all the intelligence, both raw and assessed intelligence, and were therefore able to make their own judgments. Clearly they and our partner agencies appear to work very closely together. It appears from the assessments received that the Australian agencies, particularly DIO, remained more cautious than their larger overseas counterparts.

Questioned as to whether the assessment agencies were independent of local political pressure, the Australian agencies denied any political pressure. I believe that there was no political pressure from the government and no creation of an outcome mindset. I believe that, in determining why some of their assessments will be confirmed to have been incorrect, the Australian intelligence community will be their own harshest critics. To reiterate: our agencies’ assessments, in comparison to those of not only the US, the UK and other European security agencies but also the United Nations itself, were more modest and, frequently, more on the money, as subsequent facts have shown.

I also reiterate that there was no partisan political pressure on our agencies. Why they and everybody else got it so wrong is for another day. That there was such overwhelming intelligence supporting Iraq’s weapons of mass destruction capability and then, when the war commenced, no evidence of deployment is hard for all of us to understand. A range of reasons is obvious: the terror of the Saddam Hussein regime; the damage inflicted during the 1991 war; the determination of Saddam Hussein to convince his people, his neighbours and his potential enemies of the weapons’ existence; and the corrupt nature of Saddam Hussein’s regime, with scientists on a money drip, reinforcing the belief amongst military commanders that somewhere, somehow somebody had some weapons of mass destruction—particularly the belief that at least war field chemical weapons were in existence. There is a lot of conjecture here, and I am sure that this fertile
ground for speculation will keep the world’s intelligence agencies and community self-assessing for a considerable time. I suspect it will keep book publishers busy for some time as well.

There are three particular aspects of the Iraq assessment experience which require some thought. Firstly, there is the importance of human intelligence. This continues to be vital despite the technological advances in the collection of intelligence. Human intelligence remains vital against asymmetrical threats and for rogue states like Iraq. Clearly, the Iraq experience shows that these sources are not always correct and may be motivated to give the sort of information to the foreign agencies that run them that will keep them in a job. Secondly, governments must operate on the best security advice available to them. There remains the problem highlighted by this inquiry of governments making important decisions on incorrect or incomplete information. This is an obvious problem. I am not quite sure how we can address it, but it requires continued vigilance into the future.

Thirdly—and this is very relevant to a parliamentary security oversight committee like ours—there is the absolute importance of the public’s faith and confidence in intelligence agencies which, regretfully perhaps, are essential agencies of government in the modern world. I consider the Australian intelligence community to be first rate, dedicated and intelligent. The senior officers are people we can really look up to, and I consider them a credit to our nation. However, taxpayers have to feel the same way and they will only do that if they believe that the decisions made by their intelligence services are correct.

On the accuracy and completeness of the government’s presentation, the committee found that the presentation by the Australian government was more moderate and more measured than that of our alliance partners. For example, the ‘45-minutes argument’ that had such a high profile, especially in the United Kingdom, was not used by our government. The committee took the view that there are obvious limits to the ways in which intelligence can and should be used. Intelligence is not an exact science and never provides a complete picture. The traditional view, acknowledged when ONA was established—that there has to be a protective barrier between the collection and assessment agencies and the political process—continues to be important. We made some implied recommendations with respect to the better resourcing of ONA.

Two witnesses who came before the committee generated much publicity. Mr Wilkie could best be described as a bit part ONA analyst on Iraq. I do not know and I do not care what his mind-set was, and he is entitled to his narrow view on the making of a case for military action. It is just that ONA, our premier assessment agency—his agency—disagreed with him. I do not consider that his actions, as an ADF and ONA officer, can be described as being in Australia’s best interests. Secondly, there is Mr Butler. There is a view that Mr Butler, as former head of UNSCOM, carries more direct responsibility than any other single person in setting the baseline of what was supposed to be Saddam Hussein’s continuing inventory of weapons of mass destruction. He has never resiled from his position about their existence, but his commentary in the United States took on an entirely different tone from that which he talked at home. To his friends on both sides of the Pacific he walked a very partisan line. Mr Butler appears to look for the main chance and his contribution to this debate in Australia should be seen in that light.
This has been a difficult inquiry. The committee walked a difficult path. We took a bipartisan approach to what was a highly political scenario. Participation in the committee process was first rate and I think the recommendations are first rate. We carry out very enjoyable and important work. I thank the committee secretariat, Margaret Swieringa and Charles Vagi, and acknowledge the cooperative nature of all my colleagues on the committee, both coalition and opposition. I commend the report to the Senate.

Senator ROBERT RAY (Victoria) (4.22 p.m.)—The inquiry into intelligence on Iraq’s weapons of mass destruction, undertaken by the parliamentary Joint Committee on ASIO, ASIS and DSD, had three major weaknesses. Firstly, we had no access to raw intelligence. That is because the statutory base of the committee prevented that—and so it should do—but in some ways it inhibited the extent to which the inquiry could proceed. Secondly, most of the hearings, by their very nature, had to be held in private and therefore public scrutiny of these matters was limited. The public hearings we did have were not particularly productive and, as mentioned by the previous speaker, even Mr Andrew Wilkie could say only limited things in public. Thirdly, we took no evidence whatsoever from ministers, which is in the nature of the way this parliament operates but it detracted from the report.

As to the inquiry’s key findings, we did not find any evidence of WMD in Iraq, yet the intelligence said there was. Neither did we find any evidence of weaponisation, which is an equally crucial factor. Again, our intelligence let us down. Thirdly, we have to acknowledge that Australia relied very heavily on raw intelligence from overseas. Iraq was not part of our normal beat for observation and intelligence gathering and, properly, we had to rely on overseas intelligence. The committee heard no evidence whatsoever that the Australian government at any stage pressurised the agencies to come up with a particular analysis—in other words, we could detect no political pressure upon agencies to give a certain analysis to suit the government’s needs. Finally, we have to say fairly frankly that the government spokesmen, in presenting the case for pre-emptive intervention in Iraq, failed to include the necessary qualifiers and caution reflected in some of the intelligence agency reports. That is in part the nature of politics—politicians tend to simplify things and put them more directly—but, if you are going to rely on your public justification of intelligence analysis, you should quote it fairly directly and not leave the qualifiers out.

I will make a few observations about this. There is a need for a further inquiry. We could not look at the step between raw intelligence and analysis or at whether the raw intelligence was properly verified. That is why we recommended that a retired intelligence officer do a thorough investigation of this, whether or not it is through a royal commission. There is nothing to stop a retired intelligence officer having royal commission powers. That is what was done years and years ago. They have not always been judicial appointments. As far as I am concerned, you could have two people—a judge and a retired official—but it is essential that someone with total knowledge of these areas do that analysis.

The crucial area of investigation has to be, firstly, whether the raw intelligence was verifiable and, secondly, how it got translated into an analysis that may have eventually misled a government. Such an inquiry would also need to answer why there was a great difference in emphasis between ONA, out of the Prime Minister’s department, and the Defence Intelligence Organisation. Having looked at all the samples of analysis of both organisations, it is hard to argue that DIO
were not more correct in this instance. Let us find out why they were more correct. It may help us into the future to know why they got it more correct than the CIA or MI5—or its sister organisation ONA.

If there are differences of opinion on these matters in overseas intelligence agencies, we need to know. We detected that there were differences properly reported back to Australia? Did our liaison officers in Washington and London do their jobs correctly and inform the government back here that the INR, out of the Department of State, differed with the CIA, which in turn differed with the Office of Special Plans? Those differences were there. Were they known back here? The final question that I would like to know the answer to is why Saddam interfered with the inspection processes when he actually had nothing to hide. We suspect that he was playing the old bluff game—that he did not have any weapons of mass destruction but he wanted all his neighbours to think he did have in order to bluff them: ‘Well, we’ll see you and raise you. Bye-bye, Saddam; that’s bad luck.’ Our intelligence agencies should try to detect that sort of a bluff into the future.

Let me get onto the role of ministers. Being in charge of intelligence agencies is, in my view, a sacred trust and there is very little public scrutiny of it. In the past, we have invested enormous trust and faith in those that we give these powers to. It is one of the few areas of government where you cannot have open scrutiny. There is a contradiction between intelligence material and open transparency and accountability. Therefore, those who supervise it, those who are in charge of it, must be very proactive in their organisations. You need ministers out there challenging assumptions and questioning the agencies, but what I detected then and especially now is a lack of intellectual rigour—we are not getting the necessary prosecution by ministers of the past intelligence. I am not going to call them guilty of doing the wrong thing in the past, but they need to get on top of this particular issue.

Subsequent to the end of the conflict in Iraq, what we have seen mostly has been a political reaction. The old spin is out. The government does not seem to really want to know where the agencies got it wrong. We see this subtle slide, from their having WMD to having programs about WMD to having the potential and the capability of maybe instituting programs. That slide is not satisfactory. In recent weeks, the main reason for intervening in Iraq—regime change—has been put up retrospectively. I do not mind regime change in Iraq, but the government specifically ruled it out prior to intervention. Now we are being taunted with: ‘Well, if it were up to you in the Labor Party, Saddam would still be in Baghdad.’ That is too clever by half, and it is being said to distract people away from the original reasons for going in, which were twofold—WMD and a very dubious claim about Iraq’s connection to terrorist groups. If our intelligence is wrong now and it is wrong in the future, how many people will die because of it? That is why this is a crucial issue. It is not that we are trying to rectify the past. We do not want a situation where governments act on flawed intelligence in the future at the cost of Australian lives. This is the big challenge any future inquiry will face.

When I sum up the role of ministers, my answer to the question, ‘Did ministers deliberately go out of their way to distort this issue?’ is no. Did they rely on the intelligence agencies’ analysis? My answer to that is yes. Did they apply enough critical analysis to that? My answer is no. Are they guilty of anything? In my view, the Prime Minister, Senator Hill and Mr Downer are guilty of culpable gullibility in these instances. They heard what they wanted to hear. That is not a
very good approach to these matters. You have got to go outside the square when it comes to intelligence matters. All the information coming to them backed up their pre-existing prejudices. We are all vulnerable to that—I concede that—but, in this case, it could have fatal consequences. This culpable gullibility on behalf of the government is being compounded because they will not address these issues now. Listen to Senator Hill at question time, dodging and sliding all over the place. He has not grasped the nettle. He needs to get out and say to his defence intelligence agencies across the board: why did you get it wrong? He needs to not try to apportion blame but just get to the bottom of it. The reason we have rubbers on the ends of pencils is that people make mistakes. Let us minimise the number of mistakes in the future.

If anyone has summarised these issues, it was General Abizaid, the US deputy commander in Iraq, now promoted in the US military. He was speaking to the Armed Services Committee on 25 June 2003. He said the following:

Intelligence was the most accurate that I’ve ever seen on the tactical level ... perplexingly incomplete on the strategic level with regard to weapons of mass destruction. But it is perplexing to me that we have not found weapons of mass destruction when the evidence was so persuasive that it would exist. I can offer no reasonable explanation.

Neither can I, but it is up to the government to offer a reasonable explanation. I do hope this government embraces an independent inquiry—one that will go to the bottom of this matter, in the very direction that the committee could not finally go because of the variety of statutory requirements that prevented it from doing so.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (4.32 p.m.)—This report into the intelligence on Iraq was a long time coming in many respects, given that a huge range of examinations and reports have been provided for the people of the UK and the US from a number of parliamentary and extraparliamentary inquiries—judicial, public, comprehensive, non-government controlled inquiries—that have occurred in the UK and the US. After all this time, the best that the Australian people have got is this report. I do not want to suggest that this is of no value at all—it is actually of some value, as far as it goes—but it has inherent limitations that are acknowledged by the committee itself. The chair, Mr Jull, said quite clearly in his foreword:

The limitations imposed by the statute under which the Committee operates are real ...

I think Senator Ray has just emphasised those. Following that, the committee’s conclusions, therefore, must be qualified. It is the best we have: a limited inquiry with qualified conclusions from a committee that is controlled by the government and only has representatives of the two major parties. The two major parties, as the two parties that have been in government in this country, both have a shared interest in keeping public scrutiny of the processes of government in areas like this to a minimum. I acknowledge what Senator Ray has said—that there are inherent limitations and internal contradictions between intelligence and open public scrutiny. But the fact that there are contradictions should not be used as an excuse to have unnecessary restrictions on public scrutiny, particularly after the fact and particularly on an issue as important as this.

In the limited time available, I want to go to the two core issues covered by what we are debating today—firstly, the actions of the government and, secondly, the issues relating to Australia’s intelligence community. A lot of the commentary to date, including commentary by Labor Party speakers both inside and outside the chamber, has focused on in-
... the Defence Intelligence Organisation always expressed doubts about any production of biological or chemical weapons beyond 1991.

Those doubts were there, were clear and were consistently expressed. The government, nonetheless, insisted on making and continued to make emphatic claims about the existence of Iraqi weapons of mass destruction. This is not just about the government picking the facts that suit its argument, although that is not that uncommon. We are talking here about sending Australian men and women to war, risking their lives. We are talking about Australia being involved in an act of aggression against another country. The Prime Minister himself said before we went to war, as is detailed in this report, that regime change was not enough to justify it and that we had to demonstrate that there was a real threat to Australia. He selectively picked intelligence that would reinforce that case. He clearly did not present the complete argument.

That is unacceptable not just with respect to misleading the Australian people but with respect to the fundamental issue of a nation deciding to engage in war. We have developed rules in relation to engaging in and initiating war on this planet that we share. They are imperfect rules, sure, but they are nonetheless rules that have been developed out of bitter and terrible experience. One of the few reasons justifying starting a war under international law is that of there being an immediate threat. This government portrayed to the Australian people the existence of a clear, without a doubt immediate threat to Australia. That was dishonest, as the evidence within this report—though not the conclusions—shows. The information was not complete and accurate in the way it was presented to the public. The reason we have those rules is that, if we decide to start ignoring them, breaking them, bending them, just pretending they are not there or after the fact...
making up new rationales—as this Prime Minister has done—we will end up in more wars. That is why the rules are there in the first place—to try and avoid getting into wars when there are alternatives. And the fact is that there clearly were alternatives.

One of the reasons why, as we moved towards the war, the intelligence was not as fulsome as it could have been was the withdrawal of the UN weapons inspections team. If they had simply been able to get on with the job that they were doing then we would have had far more information upon which to base a decision. They were not allowed to do so because the governments that wanted to wage war obviously did not want to get the information that the inspections team were going to provide. The fundamental question addressed in this report was: did the government present accurate and complete information to the Australian public and the parliament? No, they did not. It cannot be put any clearer than that.

On the broader issue of intelligence, it is important to take this opportunity to look again at our intelligence agencies. It is the view of the Democrats that perhaps more than ever before, when we are looking at the nature of the threats that now face us, intelligence is a critical component of Australia’s security. We need to ensure that it is as effective as possible. My feeling after my first reading of this report is that there are concerns about the adequacy of ONA and its willingness to simply accept intelligence from other countries without testing it—such as documents provided from the UK and the US from which the uncertainties and qualifications had already been removed—and its reliance on the surge of new and largely untested intelligence from the US. We must learn a lesson from this. We must put aside the different arguments and views people have about whether we should or should not have gone to war. Let us not let the argument we must continue to have get in the way of the need to learn lessons about the adequacy of our intelligence agencies. Hugh White from ASPI said this weekend:

... intelligence is like a fishing expedition ... you throw out a net, you can never be sure you’re going to pick up everything ... But the finer the mesh on your net the better off you are.

He certainly thinks that our net was not fine enough. The fisherperson involved in this, Mr Howard, was also throwing back all the fish he did not like the look of and selecting only the ones he did. That compounded the problem of misusing the intelligence we received. The Democrats believe this report is valuable but that it is not adequate, that it is not sufficient. We have said that all along. That is why we continue our calls for a broader judicial inquiry. The public still deserve the truth. They have a start here, but it is not enough.

Senator FERGUSON (South Australia) (4.42 p.m.)—In speaking to the report Intelligence on Iraq’s weapons of mass destruction, I would like to firstly thank the secretariat—Margaret Swieringa and Charles Vagi in particular—for their work and the effort they put in during this whole inquiry. The enormous volume of material they read, the searches they made on the Internet, the time they put into sifting through and preparing information for us as members of the committee and the preparing of the report afterwards bear Margaret Swieringa, in particular, tremendous credit. I have worked with her on a number of other committees and she is not only conscientious but also very adept at and capable of writing reports. I would also like to thank the committee for the spirit in which the inquiry was conducted, because it was a very difficult inquiry for a number of reasons that I will go into later.

I must respond to some of the comments made by Senator Bartlett, who was not a
He said the report was a long time in coming. I do not believe that it was. If he knew the volume of material that had to be searched and gone through in trying to draw our conclusions, he might have some idea of why it took not a long time but as long as it did. In fact, the report was prepared prior to Christmas but, because of our statutory obligations to pass the report to the agencies for them to check it to make sure that we were not going to harm any operative working overseas and that there was not any intelligence divulged that should not be, it could not be tabled until today. To say that it was a long time in coming is totally wrong.

He also talked about this committee being controlled by the government. True, the government did have four members on this committee to the opposition’s three. He went on to say that we had a history of unanimous reports. In fact, this is the first report from a committee of this type. It is the first time we have had an inquiry referred to us by the Senate, and we have never had one referred to us by the House. All of our other inquiries have been referred to us by ministers with respect to looking at bills et cetera. The report was unanimous, and it was unanimous not because the government controlled the committee but because we had a unanimous point of view after deliberating on all of the evidence that was presented to us both in public and in camera and after reading through all of the information. I dispute Senator Bartlett’s criticism that this was a committee controlled by the government. Good heavens, every day in the Senate we see matters referred to select committees and reference committees that are controlled by the opposition, and they do not always come up with unanimous reports. As a matter of fact, invariably they do not. In this case what we presented to the parliament today was the unanimous view of the committee and an accurate reflection of our determinations.

I also want to pay tribute to Senator Ray’s contribution just prior to Senator Bartlett’s speech. Senator Ray is a member of this committee and a senior member of the Senate. For the first seven minutes of his speech I do not think he said one thing that I could disagree with. I did not necessarily agree with his conclusions, when he referred to ministers and others, but I concur almost wholeheartedly with everything Senator Ray said in the first seven or eight minutes of his speech. What Senator Ray was trying to say was that in the future we have to make sure that, if there are deficiencies, we do it better. It does not matter who the government is in the future; we have to make sure that, when a decision such as that to be part of a military conflict in Iraq is made, it has to be made on the best information available and that information has to be assessed in the best way possible so that very accurate information can be passed on. The committee’s recommendation that there should be another independent inquiry conducted by a former senior intelligence official who would then report to the security council of cabinet is the way to go, because he would be able to get unlimited contributions and he would know what sort of things he was looking for.

I want to raise a couple of other issues. I have to say that this was not an easy inquiry. It was not an easy inquiry because, as has been said many times, intelligence is not an exact science. Human intelligence in particular is very inexact. The reason we have assessment agencies like the ONA and DIO is so that raw intelligence can be assessed for its veracity, for its likelihood of being accurate. We place that responsibility on our assessment agencies and I think they do an excellent job. They do not always get it right, I am quite sure, but it is my view that they do an excellent job.
The other difficulty in this inquiry was that we had one day of public hearings with a blaze of publicity and then four days of in-camera hearings. Unfortunately, any refuting of statements that were made in the public hearings—I must particularly mention Andrew Wilkie and Richard Butler, who made their statements public—could only be made in camera, so the public was never aware of what was said in response to those assertions made by Mr Wilkie and some of the public statements made by Mr Butler. That is unfortunate because the public got a very one-sided view of the actual situation. I do not want to put words into his mouth, but I think it was Senator Ray who asked Mr Wilkie at that public hearing whether he had any evidence to base his assertions on, and in fact he said no. So we had assertions made by a member of ONA—one only, amongst all the people employed by ONA—which got a blaze of publicity, and any responses that might have been made in camera were unfortunately not able to be included in our report.

The use of human intelligence is not always accurate and it is a fact that we rely on other countries. We rely on our allies and on other intelligence agencies. Australia simply could not have people from the intelligence services all around the world and in those other parts of the world where we become involved. We count on our near neighbours of course, but there are restrictions, so we rely very heavily on the intelligence we receive from our allies, particularly the United Kingdom and the United States.

I welcome this report because I think it is a valuable report in spite of those critics who, prior to us having any public hearings, suggested that it was going to be a secret inquiry and that there was not enough public information. Let me tell you that if it were a public inquiry we would not have got the information that we were able to get to base this report on. That was the important thing: we were able to get documents and information from the agencies. The government was very generous in making available to us the ONA and DIO, which are not part of our jurisdiction. The government obviously thought it was in the best interests of a full-scale inquiry that we had the opportunity to question the ONA and DIO, and I was pleased to hear the Prime Minister say in question time that he will accept the recommendations of this inquiry in relation to a further, independent inquiry to be done by a person of the kind recommended by the committee.

It is important to remember that this bipartisan report also unanimously states that there was no evidence of political pressure being applied to agencies. That is a view that was agreed and was arrived at by all members of the committee after questioning those people from the agencies who were providing advice to government. It also shows that the government’s presentation of the case for war was consistent. It was far more moderate than those of our allies—which was also a unanimous view—and it was measured, but it was consistent. The ministers in this government did not use some of the highly emotive language that was used by other countries to justify their taking part in the military action in Iraq.

This report confirms that the government was right to join the coalition forces in Iraq. Contrary to the views held by senators on the other side of the chamber, I think the report confirms that the government was right because, at the time it took that decision, practically every country in the world believed that there were weapons of mass destruction in Iraq. As I said before, the opposition believed that also. You can only work on the best available information that is provided to you, and this government acted on the advice at that time and was totally justified in joining the coalition in Iraq.
The report tabled today by the Parliamentary Joint Committee on ASIO, ASIS and DSD is one that this government did not want to have. It opposed the reference going to the committee. Now we have a situation where both the Bush administration and the Blair government have established independent inquiries with broad terms of reference and sweeping powers to examine intelligence material as it related to Iraq’s weapons of mass destruction capacity. In the case of the United Kingdom, this will be the fourth inquiry—albeit the other three had very specific purposes. Why the need for all these inquiries? The main argument for preemptive intervention in Iraq was that that country possessed weapons of mass destruction and had a capacity to deploy them as would present a clear and present danger to other countries. During the conflict no weapons of mass destruction were deployed. Post conflict, Dr David Kay and 1,400 inspectors searched Iraq from top to bottom and found no weapons of mass destruction. Furthermore, there was little evidence of weapons of mass destruction programs. More pertinently, there were few indications that weaponisation was occurring.

All these findings are in stark contrast to the intelligence analysis which was provided prior to the Iraqi conflict. Ask yourself: why did we get it so wrong? The first thing we can say is that there was never much evidence that connected Iraq to al-Qaeda and other such terrorist groups. The main concentration was always on WMD. Should we really worry about the fact that Saddam Hussein is gone? Another vicious, autocratic regime bites the dust. The real worry is that, if intelligence was flawed on this occasion, why won’t it be flawed in the future? We need to know why the intelligence was inaccurate. In a future conflict such flaws will cost lives. Senator Hill’s weasel words today about Dr Kay’s report were a major worry. He would do better to concentrate on Dr Kay’s February 2004 remarks rather than on his October 2003 report. Dr Kay was far more frank this year than last year.

It is incumbent on governments to provide answers. Quite rightly, we extend trust to government in security and intelligence matters. There is little public scrutiny; secrecy is paramount over accountability. And, disappointingly, the Prime Minister is quoted in today’s Australian as saying:

My position remains the same as it was a few months ago, and it will be the same in a few months’ time. That is, what we did was justified by the intelligence available to us …

That is, of course, a political response from the Prime Minister. What we require is a national government response that seeks to address why the intelligence got it so wrong. Instead of the Prime Minister, the Minister for Foreign Affairs and the Minister for Defence seeking out the truth, all we get from them is spin. Too often the government was guilty of selective cherry picking of product to suit a preordained course of action. Afterwards, of course, propositions changed: possession of actual WMD metamorphosed into WMD programs and then to a mere potentiality to produce WMD.

The joint intelligence committee’s report lists many areas where the Australian intelligence community analysis falls short. Let me give just three examples. Firstly, uranium from Africa—most of the claims were based on forged documents and were well and truly disproved before the conflict began. Secondly, aluminium tubes—severe doubts existed as to their purpose. Now almost certainly we know that they were not part of a centrifugal force project. Thirdly, mobile trailers—the claim was that they were for biological warfare development. It now ap-
pears that they were for hydrogen manufacture for weather balloons. And there are numerous other examples that litter the joint intelligence committee’s report.

The analysis in the appendices showing what was deleted from the national intelligence estimate is most illuminating. And in question time today Senator Hill said that the government was not responsible for what was in the NIE, but this did not stop the Prime Minister from extensively quoting from it prior to the Iraqi conflict. Doesn’t the government actually want to know that that document was severely abridged with all the qualifiers and caution expunged from it? Doesn’t it actually want to know that? Of course what was deleted was not secret; it was nearly all those elements that qualified assessments or threw doubt on conclusions.

Similarly, ONA’s public document of 13 September stands in stark contrast with its classified assessment of 12 September. No one was able to tell the joint intelligence committee why such differences existed. One question that needs to be answered is why the Defence Intelligence Organisation produced more cautious, more accurate and more balanced analysis than did the Office of National Assessments. A further question of course is why government ministers oversimplified intelligence material with which they were supplied. The Prime Minister seemed to be happier quoting from the national intelligence estimate and the British dossier than he was with some of Australia’s own agencies’ more balanced assessments. What we have seen over the past few weeks is the government change its position on why it supported intervention in Iraq. The absence of WMD in Iraq, the lack of any credible links between Saddam Hussein and terrorist organisations has seen the government now, retrospectively, argue that regime change was highly desirable. The question is: why didn’t it argue that at the time? Certainly the United States argued that at the time. Of course to be consistent the Prime Minister would then have to justify why there is no intervention to bring about regime change in North Korea, Burma, Zimbabwe and so on.

What we must now do is look to the future, not the past. Let us have a comprehensive inquiry into the extent and nature of the failure of our intelligence advice. This could be a royal commission or even a more specialised inquiry. Such an inquiry will only be of use if ministers are willing to implement constructive changes. We need ministers to actively supervise and to be fully engaged in national security matters, not just be out there deflecting, spinning and spoiling, as the Howard government ministers have done. For once national interest must prevail over political interest.

It was always going to be difficult for this committee to have a full inquiry, given the statutory limitations that are placed on the committee, but the committee has come up with a balanced and unanimous report. It is pleasing that there are only two instances in the report where ministers requested deletions on the grounds of national security. This report does not have all the answers but it does advance consideration of all these issues substantially. Let us hope a further independent inquiry can complete the job. That is what is needed now.

Senator BROWN (Tasmania) (5.01 p.m.)—The Greens agree that a further independent inquiry is required and that this Intelligence on Iraq’s weapons of mass destruction report enhances enormously the argument for that. We go beyond Labor in saying that not only must there be an independent inquiry but it must be a royal commission. Senator Faulkner has just said that it could be a royal commission; we believe it must be an independent judicial inquiry with the power to subpoena documents and peo-
ple and to delve into the secret realms which are essentially at the heart of the deception of the Australian people, such as the pronouncements coming from government in the run-up to the Iraq war.

Let us never forget that we are dealing here with the first time in Australian history that a government has argued for the Australian defence forces to be deployed overseas—in the invasion of another country—on the basis of false information and on the basis of a deception of the nation at large. We must never allow this to happen again. While the government and the Prime Minister in particular cleverly point the finger at agencies elsewhere or indeed domestically but say, ‘We will defend them to the hilt,’ the real problem here is with the Prime Minister and the government itself because they not only accepted and embellished information we now know to be wrong but failed to get the analysis and the confirmation and with probity to insist on corroboration of the information which led to our defence forces being sent into the peril of a war and indeed this nation being put in a situation which many analysts now believe makes us a greater target for terrorism than had we not been involved in this invasion of Iraq at the behest of the Bush government.

The third paragraph of the conclusion in the report is interesting. It states: The government’s emphatic claim about the existence of Iraqi WMD reflected the views of the Office of National Assessments after 13 September 2002. ONA said it was ‘highly likely’ that Iraq had WMD. However—and, importantly—the Australian agencies did not think the amounts of WMD to be large—they were described as ‘small stocks’—and the Defence Intelligence Organisation always expressed doubts about any production of biological or chemical weapons beyond 1991. The presentations by the government—

that is to the Australian people—seemed to suggest large arsenals and stockpiles, endorsing the idea that Iraq was producing more weapons and that the programs were larger and more active than before the Gulf War in 1991. In addition, there appears to be a gap on the matter of immediacy of threat. Assessments by Australian agencies about possible degradation of agents and restricted delivery capability cast doubt on the suggestion that the Iraq ‘arsenal’ represented a ‘grave and immediate’ and a ‘real and unacceptable’ threat.

Yet it was not just the government—it was the Prime Minister—who conversely went out ignoring those doubts, ignoring the ‘small stocks’ that one agency thought Saddam Hussein might have had, and ignoring the evidence by another agency that since 1991 nothing had been developed. Prime Minister Howard embellished and frightened the Australian people for the political purpose of joining the United States and the United Kingdom in this invasion of Iraq. There is in this report and also from earlier speakers the contention that Prime Minister Howard was more moderate than Mr Blair in his 45-minute fright and Mr Bush with his mushroom cloud scenario. I ask you: was he really or is this simply us asserting that we are not as bad as them, which has no foundation? According to this report at paragraph 5.12, Prime Minister Howard said:

[T]he illegal importation of proscribed goods into Iraq ha[s] increased dramatically in the past few years.

That is manifestly wrong. Mr Howard went on—and this is key because it was not just to parliament, it was not just in another interview, but was his set point address to the Australian nation to argue the case for sending our defence forces to war—to raise the greatest embellishment, the greatest fabrication, of the lot when he said:

We are determined to join other countries to deprive Iraq of its weapons of mass destruction, its
chemical and biological weapons, which even in minute quantities are capable of causing death and destruction on a mammoth scale.

He went on to say that ‘the strategy of containment has simply not worked and now poses an unacceptable risk in the post September 11 world and, while our concern about Saddam Hussein is not new, it is now more immediate’. The whole scenario was one of Saddam Hussein as a far greater danger than he had been before, although the whole weight of evidence coming from the intelligence agencies was ‘That is not true’.

This is a political problem more than an intelligence-gathering problem—we have been through this before—but what we have to do is move on to satisfy this nation that all is known about how it came to be that the Prime Minister misled the country so comprehensively of his own accord, not based on the information from the intelligence agencies but for his political purposes and at the expense of our defence forces. It is therefore incumbent upon us to move to, and to insist upon, an inquiry which does get to the heart of the matter. And that inquiry has to be able to look at all documents, including cabinet documents, to be able to make the assessment as to how the Prime Minister could deceive the nation in saying that he based his decision on the evidence coming to him from intelligence organisations, although it did not allow for that deceit.

That is why we must have a royal commission. A royal commission would have the judicial powers to look at the whole suite of evidence, to analyse it without uncovering, discovering or publicising secret material and to report faithfully back to the Australian nation from an independent—or as independent as we can get—point of view, aside from the politics and the skulduggery that sometimes attends the gathering of information on intelligence agencies. Let me put this point very strongly: we all agree in this place that we need intelligence agencies—our country depends upon them—but never before has there been such a manifest and appalling failure not of intelligence so much as of the use of intelligence for a political purpose to put this nation into war, where we should never have been.

The Greens will be moving legislation for the establishment of a royal commission. We seek the support of all parties for that royal commission. We have not been successful in our previous attempt but, in the wake of this inquiry, one thing is very clear: a recommendation of itself is too weak. We do not need one spy—an ex-spy—reporting on the current spy agencies. We do not need one intelligence agency fellow inquiring into intelligence agencies. That will not satisfy the people of this country. It will not satisfy history. It is time for a properly credentialed inquiry and it should report before the next election. If an election is called during its proceedings, it should have an independent report brought out within a fortnight of the issuing of the writs so that the Australian people have the best information available as we go to the polls this year. Never has a government so seriously deceived the Australian people on such an important matter as the Howard government has deceived the Australián people in arguing for Australia’s involvement in the Iraq war. Never must this happen again. It is essential that this parliament ensure, as best we can, that it does not happen again by adopting a royal commission.

Question agreed to.

Economics References Committee Report

Senator STEPHENS (New South Wales) (5.12 p.m.)—I present the report of the Economics References Committee on whether the Trade Practices Act 1974 adequately protects small business, together with the Han-
sard 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.

Small business is at the heart of Australia’s economy. Small businesses provide substantial employment for hundreds of thousands of Australians, they are dynamic and innovative and are built on individual initiative and sheer hard work. Yet small businesses are often faced with a trading environment that does not allow them to compete on an even basis with big business. Government has a role to play in protecting small business from unfair business conduct by ensuring larger players do not misuse their market power to the detriment of smaller firms. The primary tool for providing this protection is the Trade Practices Act—in particular, section 46, which prevents the misuse of market power by large firms, and section 51AC, which protects small business from unconscionable conduct by large corporations.

In this report, the Economics References Committee has examined whether the Trade Practices Act is providing small business with the protection intended by parliament when the legislation was passed. The results, unfortunately, are not encouraging. Neither section 46 nor section 51 are working as intended and, as a result, small business is often unprotected from conduct which, on the face of it, is anticompetitive and unfair. This report contains 17 recommendations for change. They are not radical or adventurous recommendations but sensible suggestions for legislative and administrative reform to ensure the parliament’s original intentions in passing and amending the Trade Practices Act are met.

While the government senators on the committee were not able to support all of the recommendations, a substantial number do have the unanimous support of the committee. In other cases the government senators appear to agree with the scope and nature of the problems identified by the committee but differ in the terms of their preferred response. Labor members on the committee welcome the support of the Australian Democrats for the majority report. Senator Murray made a substantial contribution to the majority report’s findings.

The committee received submissions from over 50 organisations representing big business, small business, consumers and government, and from a range of economic ventures, including bookstores, lottery agents, supermarkets and pharmacies. The committee held a total of six hearings in Canberra and Melbourne. As a result, the committee was well placed to arrive at pragmatic and sensible recommendations, informed by the views and needs of those businesses whom these parts of the act are intended to protect.

I now turn to the details. The committee found that section 46 is failing to protect small business from the misuse of market power by big business. The Boral case, decided in the High Court a year ago, resulted in substantial uncertainty over the threshold at which a big business is said to have ‘substantial market power’. The committee has recommended that this uncertainty be removed by introducing a series of four factors to guide the courts in establishing the presence of substantial market power.

Small business also told the committee that section 46 does not provide sufficient protection against predatory pricing. The committee has proposed that, for the first time, predatory pricing be defined and identi-
fied in the act as a target of section 46. The decision in the Rural Press case, delivered by the High Court just before Christmas, made the operation of section 46 even more uncertain by making it clear that a company was able to leverage its market power in one market to engage in anticompetitive conduct in a second market without breaching the act. The committee has recommended amending the act to ensure that small businesses are protected from this anticompetitive conduct.

In the Rural Press decision, the majority justices in the High Court also adopted a test, dubbed the ‘could’ test, which would allow large corporations to mount a defence against section 46 allegations on the basis that they could have engaged in the anticompetitive conduct anyway, regardless of whether they possessed market power. The committee has recommended additional guidance for the courts to ensure that this legal test is replaced by a wider interpretation of section 46 and is therefore more likely to effectively protect small businesses.

The committee observed that a number of section 46 cases fall down because corporations are using their financial and business power, as opposed to their market power, as the basis for anticompetitive conduct. In the committee’s view, these are not discrete sources of power, and we have recommended that financial power be regarded as a factor when the courts determine whether a corporation has substantial market power.

Section 51 of the act is designed to protect small businesses from unconscionable conduct undertaken by big businesses. At present, this section contains a threshold, which means that any transaction with a value higher than $3 million is undertaken without the protection of the section. In the committee’s view, this threshold is arbitrary and unnecessary and should be abolished.

The committee also heard that many small businesses are forced to agree to contracts that contain unilateral variation clauses, allowing the big business side of the contract to vary the contract’s terms without reference to the small business. While this may be necessary and reasonable under some circumstances, it also has the potential to be deeply unfair. The committee has recommended that the existence of such clauses should be one element in the court’s reasoning if it is called upon to judge whether the conduct of a big business is unconscionable.

In addition to examining sections 46 and 51AC, the committee looked at some broader Trade Practices Act issues affecting small business. The committee supported the Dawson report view that a collective bargaining notification scheme should be introduced. The Dawson report was handed to the government more than a year ago, and there is no sign of such a scheme yet. In our view, such a scheme ought to include the capacity of a collective to conduct a boycott; and the current $3 million threshold in relation to notifications should be abolished.

Finally, the committee considers that certain cases under section 46 and section 51AC which involve small business should not have to be argued in the Federal Court in the first instance. This is especially so where small businesses use section 83 of the act to piggyback their cases on litigation undertaken by the ACCC. Many small businesses which are victims of unfair trading conduct do not have the resources to confront their unfair competitors in court. By the time those cases are resolved, the small business operator may well have been forced out of business.

These cases seem tailor-made for the Federal Magistrates Court, whose growing jurisdiction already includes some aspects of the Trade Practices Act. The Magistrates Court’s
procedures, including the encouragement of mediation and other forms of alternative dispute resolution, may provide the opportunity for small business to really utilise these sections of the Trade Practices Act for their own protection.

The committee are grateful to the organisations and individuals who supplied submissions and who appeared before us as witnesses. In particular, we are grateful to the small business organisations who represented themselves very well, despite their inevitably smaller access to resources.

As I noted at the beginning of this tabling speech, the committee’s recommendations are pragmatic and sensible. The committee’s deliberations were characterised by an effort from committee members of all parties to seek sensible solutions which would work in the real world. I therefore look to the government to support these recommendations and to implement them as soon as possible. I commend the report to the Senate.

Senator BRANDIS (Queensland) (5.21 p.m.)—As the Deputy Chairman of the Economics References Committee, I want to add a few words to those of Senator Stephens. Every sophisticated economy has a set of antitrust laws, the purpose of which is to protect competition. If competition is protected, markets work best. Viewed in that perspective, antitrust laws are laws which are friendly to free enterprise. There is no inconsistency between the protection of competition and the operation of free markets. Free markets are damaged by anticompetitive practices; they are not damaged by laws which seek to prohibit anticompetitive practices.

The statutory regulation of competition has a long history. It can be traced back to the Sherman Antitrust Act in the United States in 1890, to articles 85 and 86 of the Treaty of Rome in 1957 in Europe and to part IV of the Trade Practices Act in Australia. The principal question before the Economics References Committee, although it was not the only question with which the committee was seized, was whether the key provision of part IV of the Trade Practices Act—that is, section 46, which prescribes the circumstances in which anticompetitive conduct by a dominant firm in a market ought to be prohibited—operates sufficiently well in its current form.

Government senators found themselves in agreement with eight of the 17 recommendations made in the majority report. We agreed in part with two of the recommendations and we disagreed with seven of the recommendations. But Senator Stephens is correct when she says that on the basic question posed in relation to section 46—that is, whether there is a case for it to be reformed in order to improve its operation—we are of the view that there is a demonstrated case for that to be done. In the government senators’ report at page 82, we set out the history of the operation of section 46, which in its various editions has been part of Australian law for 30 years, and we point out that in those 30 years there have only ever been 28 cases taken under section 46 of the Trade Practices Act that have gone all the way to a full hearing and determination. Of those 28 cases, 24 have failed, three have succeeded and one, the Safeway case, is pending ultimate determination if a special leave application now before the High Court is successful.

It cannot sensibly be said that section 46 in its current form has imposed any sort of limitation upon free enterprise. Given the policy objectives of the section, it seems to government senators that the section must be made more effective in the way in which it operates. I say the way in which the section operates because there has for many years been a debate in the Australian trade practices community and the commercial com-
munity at large about whether or not the reach of the section should be extended very significantly by enabling it to operate in circumstances where the effect, as opposed to the purpose, is anticompetitive. No members of this committee agreed with the proposition that what is commonly called the effects test should be built into the act.

That is a very important development for several reasons. First of all, it tells us that the debate about section 46 of the Trade Practices Act has, for all practical purposes, moved beyond the question of whether or not its range should be extended. As the government senators say in their report, the debate is not about the scope of section 46 any longer but about its efficacy substantially in its current form. It is important for another reason, and that is that it means that in relation to section 46 of the Trade Practices Act the report of this committee is—at least to the extent to which government senators are prepared to embrace its recommendations—consistent with and complementary to the Dawson report.

Government senators agree with the recommendations of the Dawson report in relation to section 46. They agree in particular with the key recommendation made by the Dawson inquiry—that is, that an effects test not be introduced into section 46. Once one starts from that proposition, the argument becomes an argument as to the efficacy, not the range or scope of the operation of the section. So government senators have agreed with a number of proposals which in our view would make the section more efficacious in its operation, particularly following the two decisions of the High Court to which Senator Stephens has referred—that is, the Boral case and the Rural Press case.

The Boral case is mentioned in passing in the Dawson report but, as any reading of the Dawson report will reveal, the question with which Sir Daryl Dawson was concerned was not the question which the Boral case presented—that is, the manner in which section 46 in its current form deals with predatory pricing. Government senators in their report suggest at paragraph 34 an amendment which, in their view, would enable section 46 to operate more efficaciously to deal with predatory pricing.

Among those cases that have gone to a final determination after a full trial, in the last 30 years there have only ever been four predatory pricing cases and not one of them has been successful. As government senators say, if the policy of the section is sound then the section should be effective to achieve that policy—hence, our recommendation.

We also concur with recommendation 5, which would close the loophole revealed by the High Court in the Rural Press case. The Rural Press case was a decision of the High Court late last year, nearly a year after the Dawson committee had reported, so the issues raised by the Rural Press case had nothing to do with the issues dealt with in the Dawson report. We welcome the fact that the report is consistent with and congruent with the recommendations in the Dawson report about section 46. We also welcome the fact that there have not been recommendations for a sweeping change to section 51AC. There are some recommendations in relation to that section with which government senators agree, but they are very much a question of improving the operation of the section at the margins rather than making fundamental changes to it.

In closing, I should acknowledge the contribution of other senators. I also want to make mention of Dr Sarah Bachelard, the secretary of the committee and Dr Anthony Marinac, the principal research officer of the committee, whose contributions to the drafting of the report and whose assistance in the
work of the committee have been outstanding.

Senator MURRAY (Western Australia) (5.31 p.m.)—As a member of the Senate Economics References Committee, I am proud to have contributed to the analysis and conclusions of the majority of the committee in its report into the effectiveness of the Trade Practices Act 1974 in protecting small business. At the outset I thank the very diligent and good humoured chair; the cerebral, lively and expert deputy chair; the very able secretariat for undertaking a thorough process; the witnesses for their valuable insights; and, of course, my other committee colleagues. The report will contribute meaningfully to policy thinking and trade practices matters. For the nearly eight years I have been in the Senate, I have been a strong advocate for strengthening the Trade Practices Act. Through speeches, bills, submissions, reports and general advocacy, I have pursued this goal, reflecting both a strong need for reform in the community and strong campaigns from the business sector, particularly small business. The report breaks new ground.

One major party, Labor, has accepted that the weakness of the Trade Practices Act contributes to anticompetitive behaviour to the detriment of consumers, business and the community. The other major party, the Liberals, appears to accept all that but only accepts eight or nine of the committee’s recommendations. Let me be clear: eight or nine unanimous recommendations are welcome, but the ones on which there was division between the major parties are crucial. The Liberal minority report is an odd one. It is well written but odd because of its internal contradiction. The principles and arguments set out in general analysis in the minority report put the case for significant reform, justifying support for most of the report. Yet their treatment of the committee’s recommendations, in my view, does not match up in many respects. It is almost as though the first and second parts were written from two different perspectives.

My advice to the government is simple: accept the 17 recommendations and get the legislation in quickly. The fewer of the 17 recommendations you accept, the more you contribute to a continuation of anticompetitive behaviour that does favour big business oligopolies. The fewer of the recommendations you accept, the more consumers, the economy and business will suffer because of poor trade practices regulation and enforcement. The fewer recommendations you accept, the more trouble you will court from small and medium business men and women at the election later in the year.

The report represents a major step forward in recognising that the government needs to legislate to protect small and medium business from anticompetitive conduct and to strengthen the Trade Practices Act in the interests of Australia. Collectively, these 17 recommendations will give the Trade Practices Act some real teeth, restore the TPA to the original parliamentary intention and will afford small businesses some enforceable protection from anticompetitive abuses of market power.

In examining the current TPA, the committee considered that it should aim to best protect consumers and competition by maintaining a range of competitors and not favouring the vested interest of particular business sectors or particular competitors. Let me be clear: the TPA, as adjudicated by the courts, is favouring big business over small and medium business. That is why big business seem to love the TPA just as it is. They prefer a weak TPA. They prefer a weaker and more compliant ACCC. So far, the coalition has supported them in their preferment. It is in that environment that the minority report
from the coalition must be viewed as a courageous step forward on behalf of those senators urging their own government to make a difference. When the coalition finally introduces a TPA change that the BCA oppose then, and only then, will I believe that the coalition is prepared to take on this powerful interest group.

The act should protect all business from anticompetitive conduct. The Democrats have never sought to protect competitors from competitive conduct. I am pleased that sound competition policy, based on Australian experience and using well-tested principles from overseas, has now been finally adopted in the report. The Democrats and the small business sector have been pointing to reforms like these for many years. This has been a long campaign. Strong advocates, such as COSBOA and NARGA, have never given up nor, I might say, has the BCA. ‘Don’t give up now’, is my message to those who want change. You do have support in the coalition and you can apply the necessary spine with their help to flabby government policy.

Despite arguing against some of the recommendations in their minority report, the Liberal senators state that government senators are persuaded that there is a clear case for legislative reform of section 46 of the TPA. They have noted—and I thank them for the analysis—the disproportionately high number of unsuccessful cases sought to be prosecuted under section 46. The Liberal government should recognise that small business wants a strengthened TPA, because it is the one act that does stand between it and the law of the jungle.

I do declare a bias, as I always have—that is, the Democrats have an instinctive bias for the smaller underdog in these matters. But we have always recognised the important social and economic role small business has to play in Australian society. We have always thought that small business has a value of itself. We do not shy away from saying that there are circumstances where they have needed special protection. Indeed, the government recognised that with their unconscionable conduct changes some years back. Saying this, predatory pricing is a big problem for small and medium businesses, both upstream and downstream. Academic and small business experts have long complained that section 46 of the Trade Practices Act, which prohibits predatory pricing, is weak. They were right. In the notable section 46 cases—for example, Melway, Boral and Rural Press—the High Court has told parliament that a key part of the competition law is ineffective. As section 46 now probably applies only to the conduct of monopolists and near monopolists, small and medium businesses have little protection against large and powerful corporations.

The recommendations will strengthen section 46 by defining what ‘a substantial degree of power in a market’ means and also clarifying the elements of ‘take advantage’. Additionally, courts will be able to consider the recoupment of losses in determining if there has been predatory pricing. This is one key to ensuring that consumers, particularly those in regional and vulnerable communities, are protected from larger corporations pricing to destroy small competitors and then ramping up prices as soon as the competition has been removed or, alternatively, holding a pricing regime which in itself acts as a barrier of entry to new competitors.

Another key recommendation of this report is to give the ACCC cease and desist orders against companies involved in anticompetitive behaviour based on the New Zealand law, which seems to work very effectively. Such a power would allow intervention on behalf of small firms which are being harmed by the behaviour of a large
competitor. Throughout the inquiry I made the point that it is vital for businesses on short-term contracts and leases that the cease and desist power is able to be used by the ACCC in their circumstances. Rather than wait years for a court to determine the legality of a firm's behaviour, a cease and desist power will allow early intervention before the competitor is driven out of business.

In many respects, Australia’s approach to the Trade Practices Act is similar to that of other OECD countries and it is affected or influenced by their experience, but in other ways it is not. Still missing from the TPA are a number of very successful elements that are successfully implemented in foreign jurisdictions, such as the United States antitrust or divestiture laws and the United Kingdom scale or complex monopoly mechanisms. The point of the United States antitrust laws, as interpreted by the United States courts, is to prevent anticompetitive behaviour. It is to prevent unreasonable and unfair methods from being employed by companies establishing a position of substantial market power or reinforcing a position of substantial market power. They have recognised that without antitrust laws you have worse effects in your economy. It would be the best mechanism to counter the form of market power arising from creeping acquisitions. The modest and carefully constructed approach of the report was a very pragmatic and moderate way of addressing that issue.

As I have said before, big business roar approval at the dynamism of the American market but fiercely condemn a major contributor to that dynamism—that is, the effects of antitrust laws. Antitrust laws should be the counterpoint of merger laws in this country and we need them in Australia. A stronger Trade Practices Act will be good for Australia. A practice should be deemed illegitimate if it restricts competition in a significant way or is likely to harm consumers through increased prices, reduced availability of goods or services, reduced availability of competitors, lowered quality or service, reduced diversity or stifled innovation. These committee recommendations will help ensure that the ACCC and the Trade Practices Act can put the economic bullies in their place. We urge senators to support the recommendations.

Debate (on motion by Senator Buckland) adjourned.

HEALTH LEGISLATION AMENDMENT (MEDICARE) BILL 2003
Second Reading

Debate resumed.

Senator McLUCAS (Queensland) (5.42 p.m.)—I made a contribution earlier and I wish to continue. The Health Legislation Amendment (Medicare) Bill 2003, which we are debating, proposes two safety nets—two very different qualifying thresholds that different Australians will have to meet. Labor believes that there should be no need for another safety net but the government, by giving the proposed safety net two thresholds, will create winners and losers in the system. Many Australians will simply fall through the gaps that this government is allowing to form in the safety nets. Labor will not support this offence to Medicare's central principle of universality. Furthermore, the arbitrary $500 and $1,000 thresholds are too high to effectively tackle the significant costs of accessing health care for most families. These thresholds will be reached by very few Australians each year. Ninety-eight per cent of families will not reach these safety net thresholds. The St Vincent de Paul Society has said:

The idea of a safety net is a cruel hoax on those who live in low- and middle-income families.

The Mount Druitt Medical Practitioners Association sum up the situation by saying:
A safety net is very much like the ambulance at the bottom of the cliff rather than the fence at the top.

The government’s proposal provides no measure of health need in order to deliver these safety nets. This is extremely evident when you look closely at who will be caught in the safety net and who will not. A family with one child earning $84,500 will be eligible for the $500 safety net. But a single person—potentially a single person with a chronic illness—earning under $20,000 has to spend over $1,000 in order to receive assistance. A family of three that is not eligible for the FTBA, whose child turns 16 and moves to Youth Allowance, on the day of the child’s birthday moves from a threshold of $500 to $1,500. People ask: where is the justice in that? In effect we would see two categories of people chosen to receive the lower threshold if this bill passes—namely concession card holders or recipients of family tax benefit A. Neither of these are health needs based criteria.

This situation would entrench discrimination against those Australians without dependent children, and low-income individuals, while providing potentially significant benefits to many higher income families. This means that low-income earning single Australians who are very ill and have high medical expenses will not get a cent of support until they have spent more than $1,000 in a year.

The Commonwealth Ombudsman recently undertook an inquiry into the operations of family tax benefit A, following an extraordinarily high number of complaints about its operation. The Ombudsman appeared before the second Medicare inquiry and raised two areas of significant concern. Firstly, family tax benefit A’s inherent reliance on income estimation by families has led many families into debt with the Australian Taxation Office. Given that, it simply is not good public policy to link our fair and simple Medicare to this complex and confusing tax benefit system. The government has unsuccessfully grappled for two or three years now with the problems associated with the administration of family tax benefit A, yet Minister Abbott intends to introduce these problems into Medicare. It will create the sort of clumsy, confusing, unfair nightmare that Medicare simply does not need.

Perhaps this is why the government senators who served on the Medicare committee equivocated over wholeheartedly supporting this bill, by suggesting that an alternative proposal be examined. The proposal was suggested by Professor John Deeble, one of the key architects of Medicare. Professor Deeble in his evidence made it clear that half of the Australians with out-of-pocket, out-of-hospital expenses are better off under the current arrangements. He told the committee that it was appalling to find a system which failed so disastrously over 30 years ago now being promoted as the answer to exactly the same problem. Medicare was designed to overcome the inequities in the previous health system. What John Howard is seeking to do here is again take us back to the fifties—take us back to the inequities that existed prior to the introduction of a universal health system in Medibank.

In fact, only 200,000 families and individuals will qualify for the two safety net thresholds. So Mr Howard and Mr Abbott are asking senators who have considered this legislation thoroughly through two inquiries to pass a bill that establishes safety nets that are of little or no use to most Australians. That is not to say that there is no need for support to be given to these 200,000 individuals and families. They do have high health costs; they are probably chronically ill. But to implement a scheme that will do nothing to reverse the trend of increasing specialist costs is irresponsible. If we let this
bill pass, all Australians will have to spend hundreds of dollars in out-of-pocket expenses before the government will contribute anything. Thanks to the systemic neglect over which this government has presided, there are already too many Australian families and individuals who face a financial crisis every time they visit the doctor. Many Australians, especially families, are simply not able to afford to spend $500 or $1,000 before this poorly designed safety net kicks in for them.

But many Australians are simply not able to pay the up-front fee to go to a GP and, as we know, are not attending in the numbers that they used to. It is not just about high health costs; it is about being able to go to the doctor. That is why getting bulk-billing rates back to the levels we saw during the Keating government years is so important. We need to base health policy on health need, not on affordability. Labor know that increased access to bulk-billing lies at the very heart of Medicare. Labor know that patients can afford to see the doctor every time they need to go if they are bulk-billed. We know that very few families will reach these proposed new safety net thresholds just by visiting the GP. Labor also know that other things that cause health-care costs to mount—medicines, special food and special equipment—are not included in the government’s safety net. Most families who reach the safety net will do so because of repeated visits to specialists and expensive diagnostic services.

Labor also knows that these safety net proposals will almost certainly have an inflationary effect on specialist fees. The payment of uncapped out-of-pocket benefits is simply poor public policy. Many witnesses and submitters to the select committee spoke of the potential inflationary effect of the safety net proposal. Their concerns were shared by the committee. The proposed safety net sends no signal to the medical profession—notably, the specialist medical profession—to contain their fees. In fact, the departmental representative appearing before the committee made it very clear. He said that the signal to specialists was ‘business as usual’. The system proposed includes the uncapping of out-of-pocket costs incurred by patients. That is, irrespective of the gap charged by specialists in particular, 80 per cent will be covered by the safety net. The government has shown no leadership in trying to contain these costs. Rather than send a message that is essentially, ‘Charge what you want, and we’ll pick up most of the bill,’ would it not have made more sense to begin to negotiate with specialist groups to honestly and openly come to an understanding about the real costs of practice and, as a result, sensible and appropriate remuneration levels?

Recommendation 3.3 of the committee’s second report urges the government to adopt as a formal policy objective the raising of the level of bulk-billing and adherence to the schedule fee by specialists. Our committee recommended that the government pursue this policy objective by means of negotiation with the relevant professional specialist groups and the development of agreements with those groups to improve the outcomes in line with these objectives. Where such agreements are impractical, the government should actively explore and adopt other options, some of which have been outlined by the committee.

There was near universal consensus among the individuals and organisations that made submissions to the Senate committee inquiring into this bill that the government’s safety net proposal should not be supported. Labor’s position on Medicare is clear. The committee’s recommendations are also very clear. On the safety net, we recommended that the proposal contained in this bill not be supported in its current form. We also did
not agree that the $5 bulk-billing incentive payment should be limited to concession card holders and children under 16. Rather, we said that the government should extend that rebate to all bulk-billed services.

Furthermore, the committee recommended that the government initiate the revision of the method for settling and indexing items on the Medicare Benefits Schedule to improve transparency of the process and the legitimacy of its outcomes. The committee recommended the creation of the Commonwealth dental health program—and I urge the government to consider this program—and the establishment of a national health reform council. Labor is clear: this bill must be opposed not only because it contains a range of measures that will irreversibly damage Medicare and the health of the community but also because of what it does not contain.

The committee has outlined a sensible program for tackling health reform. Minister Abbott, though, has chosen to simply ignore the work of the senators who reviewed this bill in concert with many health consumers and medical and health care groups, who put in submissions and appeared before the second inquiry. It is clear that this bill is not about true reform, repair or rebuilding of Medicare as Australia’s universal health care system. It is a regrettable second desperate attempt on the part of the government to come up with a political fix in health. An ideologically driven political fix is not what Labor has in mind, and I am sure it is not what my colleagues on the Senate Select Committee on Medicare had in mind. We must protect Australia’s health care system, and we must reject this flawed plan.

Senator HARRIS (Queensland) (5.53 p.m.)—I rise to speak on the Health Legislation Amendment (Medicare) Bill 2003. One Nation does not support a bill that creates division between the needy in our society and the more fortunate who do have full-time or part-time employment. The importance of the bill in providing medical consultation for people cannot be overlooked. This legislation has to be balanced to ensure that we are not embarking on the path of the ‘haves’ and the ‘have-nots’ in health care. It is also imperative that we take into consideration that, for a considerable time, doctors have been subsidising the health of Australians with their commitment to their ethical duty.

The debate on Medicare today goes even further than supporting doctors in their natural, ethical duty. The personal caring, the considerate nature and the humanity of our doctors is propping up our health care system. Doctors find it difficult to say no to people in need, and they know full well that by responding to this real need they are placing their practices in financial difficulties. At the outset, we must recognise that, because of our doctors’ humanity, they are putting the needs of their patients before their own hip pockets. This has to stop. As a society we must commit to bringing the Medicare repayment to doctors up to a level that in some way reflects a meaningful cost of providing that medical service. Doctors need at least an increase of $10 in their payments across the board. Provided that a doctor bulk-bills 70 per cent of their patients within a quarterly period—and at present there is no top-up—they should get between $23 and $27 currently, depending on the length of the consultation. Realistically this should be approximately $35, but One Nation does note that the budget implications of bringing the fee up to a nominal $35 minimum fee across the board annualised would cost in the vicinity of $1 billion. This is getting close to the $1.5 billion flagged by the AMA in 1999, well over three years ago, in the relative value study.

The AMA indicated that more than $1 billion needed to be spent on increasing the
Medicare remunerations for GPs and specialists. One Nation concurs with the Senate committee report, which concludes that the MedicarePlus package is a movement towards a residual rather than a universal health care system. This legislation introduced a safety net but, as the Medical Practitioners Association pointed out in the Senate hearings, the safety net is very much like the ambulance at the bottom of the cliff rather than the fence at the top.

One Nation are concerned about the trend towards a user-pays principle in health care, a policy that is being driven by the World Trade Organisation’s General Agreement on Trade in Services and bilateral trade agreements. In particular, we are concerned about the impact upon low-paid workers—those who are in part-time and casual positions. If we lose the universal nature of Medicare, the costs will prohibit families from seeking assistance from the medical profession. Working families will be paying for a health system about which, except in emergencies, they will have to think twice before using.

The work force measures in MedicarePlus include provision for additional doctors and nurses. A new Medicare item is mooted for practising nurses. There will be additional placements for training medical practitioners and an increase in the number of overseas-trained doctors. One Nation does have serious concerns with the latter measure. For a start, if we are recruiting doctors from overseas to meet our needs, we are depleting the supply of qualified GPs in those other countries. This is a crucial point, particularly in relation to the overseas-trained doctors who may come here from developing countries. One Nation agrees with the Senate committee’s conclusion on this matter:

... the increasing reliance on OTDs should represent both a moral and practical warning to policy makers. While Australia’s recruitment from overseas of a number of doctors roughly equivalent to those Australian doctors choosing to leave is acceptable, the country’s continuing status as a net importer of medical practitioners is morally questionable, and substandard from a policy perspective.

To address the shortfall of GPs, Australia should be dramatically increasing the intake of medical students into universities. We should be fast-tracking students through the system and providing them with HECS relief. This could be done by allowing graduate doctors to work overseas in lieu of Australian aid. The doctors who participate in this scheme would have their HECS fees waived as a reward for working overseas.

Under the HIC Online proposal, a patient has to pay the full doctor’s fee and then, while in the doctor’s surgery, apply online to have the rebate put back into their personal account. This seems an unnecessary bureaucratic run-around. It would be more sensible for the doctor to be paid the rebate directly, and then the patient would merely pay the doctor the balance. If we want to have a look at an equivalent, all we have to do is look at our PBS.

I want to comment on the HIC element of MedicarePlus and its relationship to key elements of the Hawke government’s Australia Card—that is, the identity card. There are some frightening similarities. The Health Insurance Commission’s very frank advice to the Hawke government in those days was:

It will be important to minimise any adverse public reaction to implementation of the system. One possibility would be to use a staged approach for implementation, whereby only less sensitive data are held in the system initially, with the facility to input additional data at a later stage when public acceptance may be forthcoming more readily.

The proposal that will be effected under this legislation bears an uncanny resemblance to the Australia Card scheme. To quote, ‘a central register containing data about each Medicare card holder will continue’, and I
believe the register will be enhanced and expanded under this proposal. Let me remind the chamber that there are, as of June 2003, 11.7 million Medicare cards. The number of persons enrolled in Medicare is 20.6 million, according to the HIC Annual Report 2002-03.

Under the Australia Card scheme, citizens would have been issued with ‘a unique identifying code’ by the HIC. Under the new system currently being effected by the HIC and greatly enhanced through this legislation, we would see the full roll-out of public key infrastructure, initially for doctors but easily expanded to encompass the entire population. The Australia Card was to be a multi-purpose identification card for each member of the population and would have been issued by the HIC. According to the HIC’s web site:

HIC Online represents the beginning of a new era in practice management—an era of convenience thanks to instant, online transactions.

HIC Online extends Medicare claiming options to allow bulk bill and private accounts to be lodged using the internet. HIC Online is integrated into the practice management system and builds a claim from information already stored—eliminating the need to re-key data.

This means streamlining practices, greatly reducing paperwork and ultimately saving time.

Soon also on offer will be the ability to lodge Department of Veterans’ Affairs medical claims, transmit Australian Childhood Immunisation Register information and much more.

Recalling that the Australia Card would have been much more than simply a medical and health record, I wonder what the HIC actually means by the phrase ‘much more’.

I also want to draw the Senate’s attention to a statement by Minister Abbott, who has called for the use of a smart card carrying an individual’s medical history to provide better patient care in hospitals within the next five years. The minister envisages that rolling out patient smart cards that allow medical professionals access to medical records and health information would reduce unnecessary testing and adverse treatment. A national health information network, HealthConnect, is at the trial stage and should integrate patient records from hospitals, doctors’ offices, nursing homes, medical laboratories and pharmacies. The database is to cost around $400 million to establish and $50 million per annum to operate.

I now want to share with the chamber some very important feedback on this bill I have received from the Queensland people, from doctors and from community groups and organisations. I have consulted widely on this legislation and believe it is important to include in the parliamentary record the views of the people of Queensland—that is, the people we as senators represent. I have surveyed over 2,000 Queensland GPs about MedicarePlus for the second time and note that all who responded to my survey did not want to bear the cost of the dedicated telephone line that would be required if patients wanted to apply in the GP’s surgery for the Medicare rebate. Yes, the government is going to provide subsidies for start-up costs but, as one doctor pointed out, why should doctors bear the ongoing cost burden of a dedicated line? I asked in my survey:

Under Medicare Plus, who should bear the cost of the dedicated telephone line that will be required if patients want to apply online for the Medicare Rebate at the doctors surgery?

The answer from one of the respondents reads:

Federal Government. After all, they are getting free use of my office staff, building & equipment.

Another one reads:

Not the GP. This is a HIC service and facilitates HIC efficiency so HIC should pay.

Those responses are just in relation to the dedicated line. Furthermore, many doctors
are alarmed at the continuing red tape nightmare that they have to battle. A comment from one doctor reads:

More red tape. Increasingly we are public servants. Bureaucracy is now onerous.

Another one says:

Thank-you Senator for the opportunity to respond. I believe all GPs (or most at least) wish appropriate fee for service without red tape. If the Relative Value Study was used as an indication of worth and rebates, most GPs would prefer to bulk bill. We cannot afford to run quality practices on current rebates. Incentive payments are difficult and ambiguous. If rebates cannot be increased, copayment makes life easier.

Another says:

Please look at disbanding the Divisions of General Practice. It employs a lot of public servants and has no outcome on patient care. Put the money back into the MBS.

Those are just a couple of the responses. Very clearly doctors are concerned about the fact that we need to do more than replace our retiring doctors. Our population is ageing, as the Treasurer keeps telling us, and we will need more doctors in coming years. We need to not just maintain the status quo with imported doctors; we need to train our own and we need to do that quickly. One of the shortest responses to the survey I received reads:

Too little too late. I am retiring, I’ve had enough.

Another very important consideration with respect to the legislation is indexation against inflation. One doctor commented:

It is a start. The Medicare rebate is inadequate—this is a short term stop gap measure to get them through to the next election looking good. This will not address long term bulk billing problems.

Another doctor said:

The $5 fee is still inadequate for sustainable General Practice. It has bought the Federal Government 2 years before the decline in Bulk Billing will start again or doctors empower themselves by charging an appropriate fee for their services.

On the proposed safety net, I want to give you an example from one of my constituents of their own personal costs. I apologise to the chamber, as I cannot locate it. I will skip over that. One Nation believes an overarching review of Medicare is needed for it to be effective, and this review should also encompass the current shortage of dentists, mental health workers and other care professionals. The provision of additional university places for a range of health care professionals should also be addressed in the overall Medicare debate. I want to leave you with another comment from one of the doctors:

- Political document
- “Band aid” health policy
- Policy on the run
- To be ignored

One Nation is not going to ignore it. One Nation will continue to work with the minister. (Time expired)

Senator LEES (South Australia) (6.14 p.m.)—I will start by very quickly looking at what Australians want from their health system and then addressing each of those things as far as the Health Legislation Amendment (Medicare) Bill 2003 is concerned. Firstly and obviously, Australians want a high quality health system. Secondly, they want affordability. They want a system that does not mean that when they need a service they have to look at what they can actually afford. Thirdly, they want a doctor to be available when they need one. To some extent now we see cost coming into that, with availability very much affected by what people can afford. One of the ways we can see that quite easily is by looking at the long waits in accident and emergency centres in our hospitals. People are prepared to sit there hour after hour because they can either not find a GP when they need one or they find that the cost of the GP is beyond what they and their family can afford. Fourthly, this is very much a work force issue. I will look at that later, par-
particularly as far as this package is concerned, which is concentrated on general practitioners but also very pleasingly includes nurses now. That is certainly very welcome—a big plus. Fifthly, Australians want a universal system. That is not something that we can shrug off.

We recently sent over 100,000 surveys out to South Australians, not only from areas in the capital city of Adelaide but also from more rural areas and some of the remote areas. Wherever I surveyed the answer came back, 'Yes, we want a universal system. We don’t just want to see those who have health care cards bulk-billed'—which was the specific question. From Clare and Burra to Bordertown and Tintinara in the south-east the majority of people believed that all Australians are entitled to be bulk-billed. Of those who responded: in Bordertown, 75 per cent agreed with that question; in Ceduna on the far west coast, 85 per cent agreed and so it goes on. Roughly 72 per cent of the 9,000 people who responded across regional South Australia believed that we should not just be seeing bulk-billing for one or two groups within the community but that it should be across the board.

As we now look at this new MedicarePlus package, which is certainly better than the old package, how does it compare with what Australians actually want? Firstly, I will look at high quality. I believe we do have an excellent health system. We have one of the best health systems in the world. But as you read through many of the comments that accompanied the surveys that came back, we see that we are developing a system of haves and have nots. Some people can access a service very readily but, for some Australians, quality is becoming an issue, particularly out in rural and remote areas and, unfortunately, for Indigenous Australians.

As we are dealing with this issue, we have to look at our health system as a whole. I refer here to recommendation 5.3 in the committee’s report, which recommends the establishment of a national health reform council. I think it is about time that we looked across both the Commonwealth and the state services, at the buck passing and cost shifting and at the enormous waste, particularly at the interface between the health system and the aged care system. While I am on the issue of quality, I believe that including additional opportunities for people to access allied health services will be a tremendous boost to the quality of Medicare.

The second criteria is affordability. This second package is certainly an improvement on the first one, but it is with us because bulk-billing is continuing to fall. In the time we have had the various packages before this chamber several more percentage points have dropped from the rate of bulk-billing across the country. In other words, for many Australians now the cost of visiting a GP is not only becoming high but is becoming high to the point where people really do have to think again about whether or not to visit a GP. Some people say that is fine, that they may not have needed it. They may not have, but research into people who are not filling scripts showed that at least 50 per cent really did need the service and delaying their access to general practitioners means that conditions worsen and not only are people chronically ill but the health system pays a much higher cost. I say to the minister: while the GPs are certainly taking up the $5 offer, it is not reducing the fall in bulk-billing. The $5 seems to be holding for some practices but a lot more has to be done if we are really going to make a difference to the amount of bulk-billing, and a move back towards a more universal system is certainly one of the issues that is on the table with the minister at the moment. Increasing that $5 is one of the
options, and we are looking at all sorts of costings on that, but if this package stays as it is now it is not worth the support of this chamber.

Under the affordability heading we also need to look at the safety net. As we read through the committee report we see that for some people it will be an advantage. But the question is what the impact will be on those people without a health care card—in other words, those people who just miss out on the $500 safety net and have to amass $1,000 in out-of-hospital costs before they get any additional support. What is the impact going to be, particularly on those low-income families and those low-income singles, as has been stressed by a number of previous speakers? Can we do better than the current safety net? Is there another way of doing it? Are there other criteria we can use? Remember, if these two safety nets pass we will then have five safety nets in the health system. Is there a better way of looking at the whole system and its safety nets and interlinking them in some way, or at least of putting in some triggers so that when one is reached there is some consideration in another area?

Timing and access is the third issue, and this is certainly linked to work force and affordability. As I said in my introductory remarks, people need a GP when they are ill; they cannot afford to wait three, four or five days. In some parts of South Australia such as Kangaroo Island, where I surveyed, a waiting time of 10 or 12 days to see a GP is not uncommon. We were getting down to figures like that on the Limestone Coast. I will look at the figures in today’s Advertiser in a moment that show how bad it is getting in Adelaide, not just in rural South Australia.

The fourth issue is work force criteria. The package is extremely welcome as far as the training for extra GPs is concerned. In South Australia all of the additional places will go to Flinders University. The issue of course is the actual opportunities to get the clinical experience that is needed. We do have to have greater cooperation with the states when it comes to training additional doctors—indeed, I suggest that we probably need even more doctors coming into the system than we are actually seeing. Also of importance in this package is the recognition for the first time of nurses in the medical benefits schedule. The two item numbers for them will not only give patients access to outstanding, very relevant services but will also relieve some of the pressure on GPs.

But here is where we really do have to look further afield. I now want to specifically deal with the allied health issues that we are currently debating and look at various ways of including larger amounts of allied health into our Medicare system. The MAHS program—the More Allied Health Services program—in rural and fairly remote areas across Australia has been very well received. It has been very positive, with excellent results for patients and has taken considerable pressure off doctors. The national data shows—and this is the breakdown for full-time equivalent positions funded under the MAHS program between July 2002 and June 2003; it goes right across all the divisions of general practice, and I praise those divisions that are involved in this and actively working in the MAHS project—that the overall result is the total of 171.5 full-time equivalents. We cannot say that is equivalent to 171.5 doctors, but we are looking at at least half of that number or maybe two-thirds of that number. In other words, it is not only the excellent services that are provided—and we read down the list: psychologists, dieticians, social workers, podiatrists, Aboriginal mental health workers as well as Aboriginal health workers, physios, speech pathologists, audiologists et cetera—and that patients are receiving the specific service that they need.
but also the fact that pressure is coming off GPs. People can be referred on and GPs can then see their other patients as they queue in the waiting room.

The key findings of the evaluation of the MAHS program are:

- Makes a significant contribution to health care in the communities in which MAHS services have been provided.
- MAHS has contributed well to better management of chronic illness in rural communities. The Program has helped in the management of diabetes, cardiovascular disease, mental health, and other conditions in rural communities.
- Program contributes towards integration across health professionals in the care of patients.

One of the ways of expanding allied health services is simply to expand the MAHS program: it should be brought into our cities, not just the more remote areas. As we can see from today’s figures in the Advertiser, the cities in my home state, including the City of Adelaide, are in just as much trouble as rural and remote areas. If we look at Adelaide’s western suburbs, there is now one GP for every 1,182 people; in the southern suburbs there is one GP for every 1,381 people; in the north-east there is one GP for every 1,416 people; and in Adelaide’s northern suburbs there is one GP for every 1,481 people. If we read through all the results for the rural areas, even in the Flinders Ranges and the far north coast region, the figures are not as bad as those—for the mid-north rural area, for Eyre Peninsula or for the Riverland. The only part of South Australia that has worse figures than those parts of Adelaide is the Limestone Coast down in the south-east around the Millicent and Mount Gambier area. That area has one GP for every 1,544 people.

If we are going to extend MAHS to other areas of need, then we will need to extend it everywhere. There are very few parts of Australia, and certainly my home state included, where doctors are not under enormous stress and where there are not substantial queues to see a GP. We can also put more money into MAHS, including in the areas where it is now active and available, so that a greater range of allied health professionals can be employed. For example, in any particular town it may already be possible to see a dietician under the MAHS program. Let us also look at psychologists, podiatrists, physiotherapists et cetera so that the limitations that are there at the moment are removed and a broader range of allied health professionals are available in any area. It has been extremely important in the more remote parts of South Australia that Aboriginal health workers are included in this program, and there again we can further expand the availability of access and the opportunities for Indigenous people to work with Aboriginal health workers.

That is one of three ways we can look at expanding allied health services. It has tremendous results and it substantially reduces the pressure on the medical work force. It is a much better model to pursue than the over-reliance on overseas trained doctors. I have a real problem with us poaching doctors from countries such as China—which is where the majority of our foreign doctors are coming from. While they are highly qualified, they are needed in their home countries. It is the same problem with us poaching doctors from other Asian countries and African countries. I have a major issue with a country as wealthy as Australia not being able to sort out its own medical work force problems. We at least need to have a balance—some of our doctors may wish to work in Africa for a while and some African doctors may wish to work here, particularly for research and training purposes. But to be actively poaching doctors from other countries who are already
desperately short of health services is not the way Australia should be going.

As far as I can see, there are three general sticking points in this legislation. Firstly, there is the whole issue of bulk-billing and the $5 rebate for children and for those with health care cards. That measure is already in place, but it has to be expanded. The opportunities are there, but this measure is doing very little for bulk-billing rates. If the government wants to go to the election with a reasonable policy and some reasonable results so that people can see something happening, then it needs to change its attitude to just bulk-billing cardholders and children under 16. Secondly, there is the whole issue of allied health. I do not have time to go into the other methods. Expanding the MAHS program is just one of the ways we can substantially improve health outcomes. This is not just about passing or not passing this legislation; this whole debate is about health outcomes—getting better outcomes for people and also reducing pressure on doctors. Thirdly, there is the issue of the new safety net. Can we improve that? Do we have to have five? Are there fairer ways of giving people access to support once they have paid for their health services out of their own pockets? Let us try and get this right. Let us build on the fundamentals that are in place. Let us also keep discussing this issue, because I do not think we have the option of doing nothing.

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.)—I thank all the senators who have spoken on the Health Legislation Amendment (Medicare) Bill 2003 over recent parliamentary sitting days and thank the members of the committee who put time into this legislation. It is very important legislation. Amongst some of the hard-nosed ideology that we have heard from some quarters, there have certainly been very constructive contributions to the debate. I note from chatter within the building and from media reports that the Democrat senators, Senator Lees and the other Independents are negotiating to try to get a constructive outcome for this legislation. It is clear that the MedicarePlus package can deliver significant benefits to many Australian families. It is already doing that, because the $5 rebate is already being paid to concession card holders and the under-16s.

From my own anecdotal experience of talking to GPs, I know that the package is delivering benefits not just to families but also to doctors. The practice nurse provisions are already delivering results. The extent to which the measures that do not rely on this legislation have been enacted by the government shows its bona fides in trying to deliver a better quality health service in Australia and improving on Medicare. The measures in the bill that do require passage through the parliament can also add to the support for families in need. I think the Minister for Health and Ageing himself has mentioned the number of people who have already qualified for the expanded safety net. Within only a few weeks of the policy start-up, it has been shown that thousands of Australian families could benefit to the extent of thousands of dollars a year from the initiatives that the government is seeking to implement.

I do not want to go over all of the policy. The issues have been well canvassed in the second reading debate and they are well canvassed in the second reading speech. But I would like to make one point to senators on the crossbenches. Labor, by contrast to the government, have had a dog in the manger approach to this health policy reform. If reform is anyone else’s idea, they think it is a
They have come up with no ideas themselves except some sort of bland ideological commitment to a stab in the dark figure on a total bulk-billing rate across the whole of Australia. Of course, this ignores the very important demographic issues that Senator Lees referred to in her excellent contribution to the debate. It ignores people’s income levels. It says that someone living in Point Piper, Peppermint Grove, Glenelg or any of the other leafy suburbs around our beautiful capital cities who are on high incomes should get exactly the same assistance from the Commonwealth that others get. It ignores a whole range of those important factors.

It was Neal Blewett himself who made it very clear when the Hawke Labor government introduced the policy that bulk-billing was designed to assist people on lower incomes. It was clearly designed to primarily assist people who needed that assistance. There is no way you can force doctors to provide bulk-billing to everybody. The universality of Medicare comes from the fact that bulk-billing is available to any patient and that GPs can choose and will for a long time into the foreseeable future continue to be able to do that. This policy maintains the universality of Medicare, but it adds to it by ensuring that those in most need get additional help.

What does it do for GPs? It gives them great incentives to increase bulk-billing, particularly for those in greater need, and very importantly it adds to the concept of Medicare by respecting the fact that over the years since it was introduced by the Hawke Labor government a lot has changed. You would expect it to in this period of man’s history. Since 1983 we have seen an enormous expansion in technology, in the availability of information based technologies and in a whole range of medical and biological technologies which have converged to create a revolution in treatments and diagnoses. That is a great thing for mankind. It is a wonderful thing for mankind. We are able to use modern technology, better diagnostic services and a whole range of clinical techniques that were not available back in 1983 to ensure that people have a better quality of life. That is what medicine has always been about, but it has been transformed.

In a way it is perplexing to see politicians more than 20 years after Medicare’s introduction saying that we should not tinker with it and that it cannot be improved. The world has changed enormously in that time. Technology has changed enormously. Treatments have changed enormously. Medicines have changed. Just to give you an example, there are more than double the number of medicines on the pharmaceutical benefits list now than there were even eight years ago. Remarkable drugs have been made available to Australians through the Pharmaceutical Benefits Scheme. Of course, the quid pro quo is that costs have increased and the system needs to reflect that.

If we are to maintain the things that Senator Lees has so passionately spoken about in her speech—that is, to ensure that people get the best quality medical service at an affordable price close to their homes—then you need to enact improvements. I think that great credit is due to the Minister for Health and Ageing, Mr Abbott, for showing that he is not going to copy Labor and be a dog in the manger on policy but he is prepared to put forward, on behalf of the Australian government, sensible reforms that do improve opportunities for average Australian households to get access to quality medical care at an affordable price. He has also shown that he is prepared to talk, that he is prepared to make concessions to make improvements—and he has already done that by showing his readiness to negotiate with Senator Lees, the other Independents and the Australian De-
mocrats—and that he is prepared to look at constructive ideas to improve the package to ensure this legislation goes through.

Senator Harris made the point tonight that some of the people who have responded to his surveys have indicated that they have reservations. I listened particularly carefully to Senator Harris’s discussion about the Health Insurance Commission service, HIC Online—or ‘Hic online’ as we are beginning to call it—and about tying up telephone lines by using this service and adding costs. I think Senator Harris, because he has taken a particular interest in this legislation, would know that the government has committed significant financial resources to assist practices to get online. I am sure, as someone who is online himself and who uses the Internet regularly, that there is a huge benefit in delivering services over the Internet, particularly for people in rural and remote areas.

As someone who was involved in the roll-out of communications and IT services between 1998 and 2001 and who was involved in running the investments from the Telstra 2 sale, I know that this government has done more than probably any other government anywhere on the globe to roll out good quality Internet services to people in rural and remote areas. One of the main reasons I was committed to doing that in working with former senator Richard Alston was to deliver those high-quality services to rural and remote areas. Senator Harris has raised a legitimate concern: if you have only got one line coming into a practice and you have got it tied up going to the Health Insurance Commission, it is going to make it darned tough for a patient to ring up and say, ‘My son has burnt his fingers,’ or, ‘He has grazed his knee. Can I come in and see you?’ That is a legitimate issue that we need to address. The government’s commitment is to get these online services out to as many practices as possible. That is something we have to and should address, so I welcome Senator Harris’s constructive contribution.

It is a great leap forward in the delivery of government services online that we have this HIC Online technology being rolled out. The Australian government is rightly proud of its record in delivering government services online. We lead the world in a whole range of these areas, and delivering Health Insurance Commission services through the Internet via doctors’ surgeries is a phenomenal, practical, sensible application of Internet technology to improve the lives of customers, in this case the patients.

I have noticed the Labor Party have been pooh-poohing this, taking cheap shots at it and wondering about software contracts and so forth. We are practical enough to know that you do not roll out an entire Internet based service delivery system across this wide brown land and not have some practical difficulties, but the positive and constructive way to overcome those is to say, ‘Let’s do it.’ The ideal is to ensure that customers can get their service through the Internet at a very low price, that they can make their claims and get them paid into their bank accounts quickly so they are not out of pocket and that we can get rid of the red tape at the doctor’s surgery so doctors are spending more time looking after the patients and less time filling in forms and doing paperwork.

One of the other policy commitments of the government is for doctors to have more time in the clinic getting to know the patient—understanding them and spending quality time with them—and to spend less time filling in forms. It is a virtual cycle and the Internet can play a positive role, so let us be positive about it. Senator Harris, I welcome your positive approach to this. That is—and I will conclude on this note—in stark contrast to those who have taken a dog-in-the-manger, ideological position on this
The bill which does offer significant improvements. The reality is that all the measures in this bill deliver more benefits to Australians in need. Some could argue that we should go further, and Senator Harris and Senator Lees do that. Labor offers no alternative, so it is a dog-in-the-manger approach.

We are saying: pass this legislation and do not stand in the way of Australians in need getting more help, getting a new safety net to meet their out-of-pocket expenses. It is a safety net that does not exist; it is a safety net that we designed because we think there is a real need. People in Australia are paying $12.4 billion in out-of-pocket expenses. To put it in stark relief, that is almost the same amount of money that all of the states and territories together put into health in their total budgets. The Commonwealth spends $30.8 billion a year, private insurance and other insurance contributes $8.5 billion a year, but patients out of their own back pockets—generally, I presume, after tax—are putting in $12.4 billion, nearly matching the amount the states and territories together put in. So it is an enormous expense falling on families, many of whom cannot afford it. Many families go into financial crisis when a traumatic illness affects them, be it cancer or any one of a number of other very traumatic ailments, when they can least afford it, when they are experiencing the highest levels of stress. We are saying, ‘Here is a new safety net.’ It is a great new policy. It is an additional benefit for Australians to receive, yet Labor and their supporters on the cross benches are saying, ‘You are not allowed to have it because it is not our policy and it is not our idea.’ It is classic dog in the manger.

I say to Senator Harris, Senator Lees, Senator Murphy, Senator Harradine and the Democrats: let us work together over the coming hours and the coming days to try to get this package in a form that can be passed, because it would be a great travesty if petty politics in an election year were to stand in the way of helping Australians who are in need. We can help them. We can work together over the next few parliamentary hours and days to help them. I feel that we can do something positive here. It would be so sad for those thousands of families who can receive help almost immediately to have petty dog-in-the-manger politics stopping us from reaching that agreement. I commend the bill to the Senate.

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

The Senate divided. [7.49 p.m.]
(The Acting Deputy President—Senator A.B. Ferguson)

Ayes……….. 8
Noes……….. 42
Majority…… 34

AYES
Allison, L.F. * Bartlett, A.J.J.
Brown, B.J. Cherry, J.C.
Greig, B. Murray, A.J.M.
Nettle, K. Stott Despoja, N.

NOES
Abetz, E. Barnett, G.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Campbell, G.
Campbell, I.G. Carr, K.J.
Collins, J.M.A. Cook, P.F.S.
Crossin, P.M. Denman, K.J.
Ellison, C.M. Evans, C.V.
Faulkner, J.P. Ferguson, A.B.
Forsyth, M.G. Harris, L.
Heffernan, W. Hill, R.M.
Hogg, J.J. Hutchins, S.P.
Kirk, L. Knowles, S.C.
Ludwig, J.W. Lundy, K.A.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J. * McCluskey, J.E.
O’Brien, K.W.K. Patterson, K.C.
Payne, M.A. Ray, R.F.
Santoro, S. Sherry, N.J.
Stephens, U. Tchen, T.
Question negatived.

Question put:

That this bill be now read a second time.

The Senate divided. [7.57 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes............ 36
Noes............. 23
Majority......... 13

AYES

Abetz, E.          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.    Cherry, J.C.
Colbeck, R.        Cooman, H.L.
Eggleston, A.      Ellison, C.M.
Ferguson, A.B.     Ferris, I.M.*
Greig, B.          Harris, L.
Heffernan, W.      Johnston, D.
Kemp, C.R.         Knowles, S.C.
Lees, M.H.         Lightfoot, P.R.
Macdonald, J.A.L.  Mason, B.J.
Murray, A.J.M.     Patterson, K.C.
Payne, M.A.        Santoro, S.
Scullion, N.G.     Stott Despoja, N.
Tchen, T.          Tierney, J.W.
Vanstone, A.E.     Watson, J.O.W.

NOES

Brown, B.J.        Buckland, G.
Campbell, G.       Carr, K.J.
Collins, J.M.A.    Conroy, S.M.
Cook, P.F.S.       Crossin, P.M.*
Denman, K.J.       Evans, C.V.
Faulkner, J.P.     Forshaw, M.G.
Hogg, J.J.         Hutchins, S.P.
Ludwig, J.W.       Lundy, K.A.
Marshall, G.       McLusky, J.E.
Nettle, K.         O’Brien, K.W.K.
Ray, R.F.          Sherry, N.J.
Wong, P.

PAIRS

Hill, R.M.         Kirk, L.

WORKPLACE RELATIONS AMENDMENT (TRANSMISSION OF BUSINESS) BILL 2002

Consideration of House of Representatives Message

Consideration resumed from 20 August 2003.

Senator ABETZ (Tasmania—Special Minister of State) (8.02 p.m.)—I move:

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

Senator JACINTA COLLINS (Victoria) (8.02 p.m.)—This message with respect to the Workplace Relations Amendment (Transmission of Business) Bill 2002 represents the third attempt by the government to progress these measures in different bills. The bill itself is another example of the biased Minister for Employment and Workplace Relations being interested in the rule of law only when it is convenient for employers. The message relates to certified agreements but not, alas, to Australian workplace agreements. It also represents the long history of this government’s rhetoric rather than reference to fact in dealing with a number of areas. For instance, when I glanced back at the report of the last Senate committee that looked at a previous version of this bill, there
was the rhetoric about employment. Essentially, the gist of the argument was that we need to enable employers to transmit or manipulate their business arrangements in order to opt out of employment agreements and that that would facilitate employment. Of course, there is as much merit to this argument as there is to the argument that loosening up unfair dismissal regulations would also produce employment, but I do not think we need to go into that long and sorry saga.

Senator Boswell—You should. It’s true.

Senator JACINTA COLLINS—I know Senator Boswell has convinced himself of that argument, but very few others in this chamber would join with him. The government’s bill gives employers the capacity to opt out of legally binding agreements if they are selling or buying a business or even if such a sale is merely likely. In contrast, Labor’s amendments strengthened the notion that a deal is a deal, that an agreement struck at a workplace still applies, even if business activities are sold. There is also a strange irony in the arguments presented on this bill—given the government’s usual broad rhetoric that the parties should be left to negotiate and that there should not be intervention by the commission—because on this occasion the government takes a contrary position in this matter and believes that the commission should now be able to intervene.

The current transmission of business provisions can be easily avoided by clever corporate restructuring. Our amendments look at whether the activities of employers and businesses have been transferred. Our amendments would not create a mandatory test. They would simply give the commission discretion to consider a broader range of factors in deciding whether a transmission has occurred—and that is the issue at stake here—rather than providing a more liberal regime which will allow employers to opt out of agreements when they become unfashionable or unsuitable, in their view. This is why Labor stand by their view that we should have a tighter test, a stronger test, that ensures transmission of business occurs with the appropriate employment conditions.

Another element of the amendments that the Senate passed on the last occasion relate to shipping amendments. They also specifically ensure that employment conditions are preserved if a ship is transferred offshore and brought back again. The government thinks this is all a bit of a joke. Senator Ian Campbell moved an amendment in the Senate to head these provisions: ‘MUA here to stay’, which you can see in the schedule of amendments to this bill. Unfortunately, Minister Abbott seemed to be confused about what the Senate did on that occasion. In his speech on the second reading in the House, he said that we had proudly entitled these provisions ‘MUA here to stay’. I remind the chamber on this occasion that it was Senator Ian Campbell who proposed that we should be talking about ‘MUA here to stay’.

Senator Abetz—I thought it was George!

Senator JACINTA COLLINS—Yes, Senator Abetz, it was the wrong Senator Campbell—it was Senator Ian Campbell, who got the shock of his life when he saw his glib remarks in the chamber were in fact represented in the messages. What the government is conveniently forgetting in this case is that its own involvement in avoiding transmission of business provisions in the maritime industry has been highlighted time and time again on the waterfront in the most prominent example, the Patrick dispute. Patrick, with the government firmly on its side, used loopholes in the transmission of business rules to employ an alternative work force with new conditions of employment. It is no wonder the government has put this bill before the parliament and proceeded with it.
time and time again. It thinks it is great if companies can use shady corporate restructurings to rob workers of their legal entitlements.

In another area specifically related to Victoria, we will stand by the amendments that we moved on a previous occasion because Labor do not support the amendments proceeding here and we do not support their broader extension into Victoria. Let me touch briefly on the Democrat amendments, which I am sure Senator Murray will come to in a moment. They go some way to limiting the impact of the government’s bill. They would slightly restrict the circumstances in which employers could get the commission to set aside a collective agreement. Their amendments limit appeal rights to those parties involved in the primary proceedings, limit the scope of outgoing employers to be exempted from agreements and limit the commission’s discretion to exempt employers from certified agreements. It adds a requirement for one of the following: firstly, the agreement of a majority of employees; secondly, a no disadvantage test, which looks at the actual terms and conditions of employees, not just the award conditions; or, thirdly, the employer having to show that a variation is required to deal with a short-term crisis.

Labor will insist on the amendments that passed the Senate on the previous occasion and will oppose this bill as amended by these further Democrat amendments because we are still concerned about the definition of ‘transmission of business’. We feel that the existing definition does not take account of many business transfers where employees could reasonably expect to retain their conditions of employment. Also, the bill does not take into account the unique and concerning circumstances in the maritime industry if the amendments moved on the previous occasion do not remain. Labor also do not believe that an employer who is trying to sell their business should be able to alter their conditions of employment to make their business more attractive for sale. We would not allow outgoing employers to have the same right to apply as incoming employers and, despite attempts by the Democrats to deal with this issue, we believe it still does not take into account the realities of the bargaining pressures that would apply at the time without additional protections.

The purpose of transmission of business provisions in industrial law is to ensure that conditions of employment are maintained on the sale or transfer of business. The government’s bill seeks to give employers the right to avoid these obligations with respect to certified agreements. In contrast, our amendments reinforce this key principle that a deal is a deal. In closing, I will highlight a point that was made in the Bills Digest produced by the library on this bill. It observed at least two occasions when this bill had been proceeded with by the government. Concluding comments in the Bills Digest on the Workplace Relations Amendment (Transmission of Business) Bill 2002 stated:

By affording rights to the outgoing employer to make an application to the AIRC about the extent to which a current CA will bind a future purchaser of the business, suspicions similar to those expressed by the Australian Rail Bus and Tram Industry Union are likely to be aroused that the outcome will do more to facilitate a business sale rather than successfully determining employment conditions.

This is the intent of these provisions in the first instance. The comments continued:

It has been noted that certified agreements or enterprise agreements have been associated with the idea of removing third parties from the process of making agreements. Awards by contrast have been seen to be the product of third party involvement, notably the involvement of the AIRC. Yet the Bill proposes to reinstate AIRC involvement to resolve an enterprise issue.
Labor argues that, if you are going to do that, do it properly, do it across the board or do not do it at all.

Senator MURRAY (Western Australia) (8.11 p.m.)—The Workplace Relations Amendment (Transmission of Business) Bill 2002 would amend the Workplace Relations Act 1996 to allow the Australian Industrial Relations Commission to order that a new employer is not bound by an existing certified agreement which specifies the terms of employment for the employees of the acquired business or that the new employer is to be bound to a certain extent and/or for a certain time. This is the case at present with awards but not with certified agreements or Australian workplace agreements. As participants in these debates know, certified agreements are characterised by being of a limited short term, namely three years, and are those instruments which generally have the shortest term of all, although AWAs can have short terms if so determined.

It is important to recognise that the circumstances in which these measures are to be addressed would often be relatively short and, at the worst, medium term. It should be noted that certified agreements were regarded as awards under the Industrial Relations Act 1988, thus setting a precedent for this legislation—that is, the transmission provisions applying to awards then also applied to certified agreements. I am afraid my memory is not good enough to tell me why that was changed at the time of the passage of the Workplace Relations Act 1996—whether it was a deliberate policy measure or an oversight. Whatever it was, it is no longer the case and the government seek to return it to the 1988 position.

The reason they give for the introduction of this bill is that employers have expressed concern about the possibility of meeting the obligations of a variety of employment instruments following a business acquisition. One of the consequences of the new workplace relations regime with greater flexibility is a greater variety of employment instruments which can become confusing where you have transmissions of business resulting from a business acquisition. The Democrats appreciate the complexities that might arise from multiple agreements for the one work force, especially if workers in that work force are performing the same or substantially the same work.

As I outlined in my previous speech on the second reading before this bill went down to the other place, awards have general application. Award conditions easily transfer across businesses, so conditions for old and new workers are likely to remain the same or be very similar. Certified agreements and Australian workplace agreements have specific application. Unlike awards, they are instruments determined by the parties in the business—employees and the employer—and not the Australian Industrial Relations Commission. Consequently, conditions for old and new workers where a business is bought and the existing business exists are likely to be different.

Certified agreements continue until their nominal expiry dates, which means a certified agreement cannot be replaced by another certified agreement until the expiry date. Therefore, on transmission of business the new business retains the certified agreement until its expiry date. On the other hand, an acquiring business has to wait out only the unexpired portion of the certified agreement before negotiating a new one. Certified agreements can be terminated before this expiry date, but only under specific circumstances, including where employees and/or the relevant union have agreed to the instrument being terminated and the termination is then approved by the Industrial Relations Commission.
As I have said on a number of occasions, the Australian Democrats have a long tradition of supporting the Industrial Relations Commission having independent discretion to determine industrial relations matters on their merits. Discretion of course is never open-ended. It has long been our view that wherever possible such discretion is a better guarantor of fairness and flexibility. However, we recognise that discretion can lead to uncertainty in cost until such time as orders have been made. It seems self-evident that the IRC should have discretion in respect of transmission of employee conditions in business acquisitions, particularly when more than one certified agreement affects old, transferred and new employees in the business.

The IRC need to determine which agreement should prevail—provided, that is, that the IRC continue to recognise that the intention behind transmission of business provisions is in the interests of fairness to provide a protective mechanism for employees and not just a facilitating mechanism for employers. They must do this while taking into account a need to provide new or re-formed businesses with necessary operational flexibility. To this end, the Democrats have sought a way through this impasse, recognising that there is a genuine issue at concern here. We have successfully negotiated with the government several important amendments that reinforce the protection of employee rights and conditions, which we think the bill did not have formerly.

The Democrats were concerned that the bill’s provisions provided no assistance to the commission in determining the relevant circumstances or grounds for making or refusing an order. Where two awards collided following a transmission of business, the superior terms were applied. However, the bill did not include guidelines or no disadvantage test provisions for certified agreements. The no disadvantage test, in our belief, is an essential protective mechanism. Amendment (6) moved by the Democrats aimed to ensure that employees would not be disadvantaged in the transmission of business. The Democrats will be insisting on the intent of that amendment passed by the Senate but will move a slightly reworded version of that amendment to replace it.

The Democrats also initially moved an amendment that would have prevented the outgoing employer from making an application. Based on concerns raised during the Senate inquiry into this bill, we were concerned that there would be a potential for a seller to offer a prospective employer a package of lower cost operations through the elimination of current terms of employment. Based on further consultation, we will not be insisting on this amendment. The government have agreed to a new amendment that will require the IRC to examine the incoming employer’s employment regime before making an order. In combination with the Democrat amendment referred to earlier in my remarks, the commission should only make an order once they are satisfied it is a genuine transmission of business and that the employees will not be disadvantaged overall. In addition, the proposed provisions in the bill ensure that the order can only take effect in the event that transmission of business actually occurs.

The other area of concern that the Democrats share with the Labor Party—and, I understand, the Greens—was with respect to the definition of ‘transmission of business’. ‘Transmission of business’ has not been defined in the Workplace Relations Act and has instead been determined over time through jurisprudence by the courts. However, currently there is a dispute between the Federal Court and the High Court about how to define ‘transmission of business’. Some believe that the decision by the High Court in the PP
Consultants case, which utilises a character test—which is that the continuity of the business formerly performed by the transmitter should proceed—is too narrow and is not viable or sustainable. The literature and the academic advice suggest that the PP Consultants case has not provided a satisfactory response to defining ‘transmission of business’ and that there is a need for this to occur. I quote from a recent paper by Trent Sebbens, entitled ‘Transmission of business provisions in outsourcing and privatisation’, in the Australian Journal of Labour Law, volume 16, page 134:

It is argued that the decision of the High Court in PP Consultants is questionable on two bases. First, while providing a stricter test for transmission, the decision does not evidence a sustained examination of the policy objectives and the operation of the regime in the contemporary industrial and economic environment. Secondly, this lack of analysis is borne out in the different tests applied to the private and the public sector.

Sebbens further argues:

It may be said that the judges in the new area of cases have merely been declaring the plain meaning of the words in the act and they do not carry the burden of rectifying the unsatisfactory state of the law. If a more decisive clarification is to occur, the legislature must take responsibility.

Labor’s amendment, which does not completely enshrine the old substantial identification test—which is the similarity or continuity of activities or tasks—is considered by the government as too broad, as it takes a step back from the characterisation of business test. The Democrats undertook considerable efforts to try to identify a workable compromise definition because we shared a view that Labor had that we thought would advance the cause. But, for many reasons, including the time frame, we were unsuccessful. We were also very conscious that the High Court and the Federal Court needed to further work these matters through. While we believe that a definition of ‘transmission of business’ is needed, we cannot in good conscience hold up this bill, which will give the IRC power to vary, as they do with awards, a certified agreement on transmission of business—a feature of the bill which we have always supported. We have, however, secured an agreement with the government to undertake a review in mid-2005 of how the amendment to certified agreements is travelling and on the definition of ‘transmission of business’, following further court exposition of this issue. We have agreed on 2005 because we think that that will give enough time for this amendment to settle down and be experienced in real industrial life and, indeed, for the courts to wend their way through the various cases that will be involved. I conclude my remarks there and will speak to other amendments as necessary during the course of the discussion.

**The TEMPORARY CHAIRMAN**

*Senator Ferguson*—Senator Murray, do you wish to move your amendments to the motion?

*Senator MURRAY*—I move:

At the end of the motion, add “but agrees to the following amendments in place of those amendments:

1 Schedule 1, item 2, page 3 (lines 10 to 23), omit the item, substitute:

2 After paragraph 45(3)(aa) Insert:

(ab) in the case of an appeal under paragraph (1)(b) against an order that was made under subsection 170MBA(2)—by the organisation or person who applied for the order or any organisation or person who made submissions to the Commission on whether the order should be made;

(ac) in the case of an appeal under paragraph (1)(c) against a decision not to make an order under subsection 170MBA(2)—by the
organisation or person who applied for the order;

(2) Schedule 1, item 10, page 5 (after line 12), after subsection 170MBA(2), insert:

(2A) The Commission shall not make an order under subsection 170MBA(2) unless:

(a) the parties to the certified agreement and the incoming employer agree to the proposed order; or

(b) the Commission is satisfied that the majority of employees who are covered by the certified agreement and who would be affected by the proposed order agree to the proposed order; or

(c) the Commission is satisfied that either:

(i) the proposed order does not disadvantage employees in relation to their terms and conditions of employment; or

(ii) the proposed order is part of a reasonable strategy to deal with a short-term crisis in, and to assist in the revival of, the transmitted business.

In this subsection, a proposed order disadvantages an employee or employees in relation to their terms and conditions of employment, if, on balance, its approval would result in a reduction in the overall terms and conditions of employment of that employee or those employees.

(2B) In making an order the Commission must take into account:

(a) the proposed new terms and conditions that the employee would be subject to and the effect of any loss of conditions; and

(b) the length of time remaining on the certified agreement.

(3) Schedule 1, item 10, page 5, (after line 22) after subsection 170MBA (5) insert:

(5A) In determining an application made by an outgoing employer under subsection (5), the Commission must take into account the terms and conditions of employment that apply, or will apply, to employees of the incoming employer.

Senator NETTLE (New South Wales) (8.22 p.m.)—The Australian Greens oppose the Workplace Relations Amendment (Transmission of Business) Bill 2002. We do not believe that Australian workers should have to accept poorer conditions simply because they have a new boss. If the Senate accepts the bill tonight, it will ensure that workers’ entitlements are exposed to aggressive takeovers and unscrupulous business practices. It will mean that this government’s anti-worker and anti-union agenda will have had a win here this evening. The Democrat amendments still allow employers to strip entitlements from workers upon acquiring a business. Large corporations may use this legislation to undermine unionised work forces in parts of their operations. The use of shelf companies and phoenix companies is a well-known tactic employed to avoid responsibility to employees. The passing of this type of legislation widens the options for this kind of industrial cheating of Australian workers.

Workers’ entitlements are not optional extras but are fundamental elements of any business that should not be subject to alteration by new employers. The Greens did not support this bill when it came before the Senate previously, and we will not support it this time. Regardless of how the legislation is amended—and we recognise the attempts being made by Senator Murray to amend it—it is fundamentally wrong on that premise that workers should be subject to poorer conditions simply because they have had a change of boss.
The existing provisions relating to transmission of business in the Workplace Relations Act ensure that employers that buy a company are bound by existing certified agreements. This provision protects workers from new employers using a change in ownership to water down the wages or conditions of the workers. As others have mentioned, the Patrick’s dock dispute demonstrated how employers can use changes in ownership arrangements to avoid their obligations to their employees. Patrick’s conspiracy with the government to destroy the Maritime Union of Australia and to get rid of union employees was facilitated by unscrupulous parcelling off of sections of the business. The Greens supported the amendments that the Labor Party moved in the chamber, which the government senator labelled ‘the MUA here-to-stay amendments’, and will continue to insist on these amendments.

It is not good enough that, under the new Democrat amendments put forward today, if a majority of affected employees agree to a change it can go ahead if employees are not disadvantaged overall. What about a significant minority of workers who are opposed to a changing or watering down of conditions on the transfer of a business? Even worse, a business should not be able to argue that a certified agreement can be abrogated on the basis of a so-called short-term crisis in the business. The Greens can imagine employers queuing up to argue the case that their business is in a short-term crisis and therefore should be treated differently, as proposed in the Democrat amendments. This is why we think it is disappointing that a deal has been reached on this legislation. It is disappointing for Australian men and women in our workplaces.

It is disappointing to see that, in trying to amend this legislation, senators are trying to find the middle ground on this government’s industrial relations agenda. This government has an industrial relations agenda that is vehemently anti-worker and anti-union. The middle ground in this government’s industrial relations agenda is a mythical one. Senators in here either support the rights of working men and women to have access to conditions that stay the same upon the transmission of a business or they do not. The Greens support the working men and women of Australia. In opposing this bill, we will insist on the amendments of the Senate.

Senator ABETZ (Tasmania—Special Minister of State) (8.27 p.m.)—I thank honourable senators for their contributions to the debate on the Workplace Relations Amendment (Transmission of Business) Bill 2002. I will commence with a comment on the contribution from Senator Nettle, the representative of the ‘Australian Extremes’ as opposed to the Australian Greens. She was more rabid in her condemnation of this legislation than the Labor Party and Senator Collins, who at least has a history of representing workers and of being a trade union official. It is always quite bizarre when you hear the extreme of Australian politics, as represented by the Australian Greens, trying to out-champion the Australian Labor Party on some of these issues. I think it does confirm what is in the minds of many people—that the Australian Greens have more in common with the Trotskyite movement and other extreme left wing elements than with the genuine environmental movement in this country. Senator Nettle suggests that this is all about bosses lining up to try to change their businesses. If she had listened to what Senator Murray said and what the legislation actually has in store, she would be aware that the Australian Industrial Relations Commission would be the umpire of decisions. It is not just at the behest of an employer—‘This is how it is going to be, end of story’—the Australian Industrial Relations Commission will be involved.
I make that comment in relation to Senator Collins’ contribution as well. Suffice to say that Senator Collins and Senator Nettle objected vehemently to the tactics of Patrick’s, but I could not help but note the increased investment by Patrick’s in a terminal at Devonport in my home state of Tasmania—and guess who was there in the lights at the opening, saying what a fantastic thing this was? None other than the now Premier of Tasmania, Mr Paul Lennon. It is very interesting, isn’t it, that, when the changes are made to these things that have been opposed so vehemently by the Labor Party and then produce dividends for a state or for a work force, the first people to be there at the opening are, of course, the state Labor politicians saying what a wonderful reflection it is on their economic management and on the wonderful things that they are doing for the state? The fact that Patrick’s invested in this new container terminal at Devonport in Tasmania was as a result of this government having the courage to do something about the Maritime Union of Australia, which has been a blight on this nation for many, many decades.

I am pleased to agree with Senator Murray that the government appears to have reached agreement with the Australian Democrats. The government is prepared to agree to three substantive changes to the bill regarding the exercise of the new powers that this bill gives the Australian Industrial Relations Commission. First, the government will agree to the inclusion of a specific provision requiring the commission to consider whether any employees would be disadvantaged by the proposed transmission order. That is the first point—something that Senator Nettle, in all her rhetoric, was so anxious to avoid. There will be a disadvantage test applied. Second, the government has no difficulty including minor changes in the bill which make it absolutely plain that parties to a certified agreement may agree amongst themselves to vary the terms of such an agreement or negotiate a new one in the context of a transmission of business. The commission’s new powers are to assist the parties and are not designed to remove their rights to settle their own differences without resort to third parties.

Third, where an outgoing employer makes an application under these new provisions, the amended bill now provides that, amongst other things, the AIRC must specifically consider the employment conditions available to workers already engaged by the new employer. In the same vein, Democrat amendment (1) clarifies appeal rights conferred by the bill. The government does not see the need for either of these amendments, but it is prepared to take them onboard as they simply reinforce the government’s intended approach in the bill as drafted. These substantive amendments will help guarantee that all people who are affected or potentially affected by the transmission of certified agreements will have been treated fairly by the commission.

I will not deal with the Democrat amendments in detail. Hopefully that will not be necessary. I think we all know what we will be talking about but, if there is going to be a detailed discussion of them, I may join in. The government is delighted that an agreement has been reached which, at the end of the day, is not about diminution of employee rights nor making business transactions easier just for the sake of business transactions. What this government is about—and the most important condition of employment—is in fact having the opportunity of employment—something that Senator Nettle, in all her rhetoric, was so anxious to avoid. There will be a disadvantage test applied. Second, the government has no difficulty including minor changes in the bill which make it absolutely plain that parties to
both sides and will ensure that there can be effective business transmissions and, hopefully, the protection of Australian jobs—which, ultimately, is in the best interests of the men and women of Australia.

Question agreed to.

Original question, as amended, agreed to.

Resolution reported; report adopted.

AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (No. 2) 2003
In Committee
Consideration resumed from 11 February.

Senator O’BRIEN (Tasmania) (8.36 p.m.)—The opposition opposes schedule 1 in the following terms:

(1) Schedule 1, items 156 to 158, page 34 (lines 3 to 16), TO BE OPPOSED.

(4) Schedule 1, item 168, page 36 (line 17) to page 37 (line 17), TO BE OPPOSED.

(5) Schedule 1, items 171 to 178, page 37 (line 28) to page 39 (line 12), TO BE OPPOSED.

During the first part of the debate in the Committee of the Whole on 11 February, the committee supported Labor’s move to excise from the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2003 all provisions that relate to the privatisation of quarantine officers’ jobs. The committee took a strong stand in opposition to the government’s attempt to privatisate the foundation stone of our quarantine regime, the professionalism of Australia’s quarantine officers.

The incapacity of the agriculture minister, Mr Truss, to properly manage Australia’s quarantine regime is almost beyond dispute. One phrase—Cormo Express—sums up the wanton disregard that this minister has had for the integrity of Australia’s quarantine barrier. It is little surprise that a minister prepared to breach Australia’s quarantine protocols to resolve a political crisis of his own making has such low regard for Australian quarantine officers that he is prepared to privatise their jobs. This, do not forget, is the minister embroiled in controversies arising from his mishandling of the assessment of quarantine risk from imported apples, bananas and pork, controversies that have seen a raft of National Party colleagues join Labor in calling for an independent review of his decision making. In this regard the Senate rural and regional affairs and transport committee have stepped in to do the minister’s job—and not for the first time.

I have noted my lack of surprise at the minister’s low regard for the job done by Australia’s quarantine officers. I am even less surprised that he sought to privatise Australia’s quarantine regime by stealth, by submitting an omnibus bill to the parliament containing otherwise innocuous provisions. This attempt at privatisation of Australia’s quarantine regime is yet another example of the mean and tricky streak that runs through this government. Australia’s quarantine officers did not fall for this trick and, thankfully, neither has the committee. I welcome the committee’s support for Labor’s earlier amendment to omit provisions from the bill providing for the appointment of contract staff to perform quarantine functions while preserving provisions providing for the appointment of state officers or APS employees. I now seek the support of the committee in opposing provisions in the bill that solely concern the creation of a new category of quarantine officers—that is, a contract category with most of the powers of properly appointed officers but none of the integrity checks.

Labor oppose, firstly, items 156 to 158 in the bill. These provisions insert definitions that facilitate other amendments providing for the appointment of contract employees as quarantine officers. Labor strongly oppose the downgrading of Australia’s quarantine
function through the privatisation of these officers’ jobs. Furthermore, we urge the government to reconsider its approach to this issue. Our opposition in this regard is consistent with the position adopted by Labor and the Democrats, as members of the Rural and Regional Affairs and Transport Legislation Committee, with respect to the inquiry into the provisions of this bill undertaken in October 2002. Not one compelling reason for the support of the outsourcing provisions was advanced by the government during that inquiry. Not one compelling reason for its support was advanced between the conclusion of the inquiry and the Senate debate on the bill, and for those who missed Senator Troeth’s very thin defence of this government’s action during the second reading debate: do not go looking for any compelling reason there either. I often wonder when Liberal senators are going to grow tired of coming into this chamber and defending Mr Truss, but that is a debate for another day.

Secondly, Labor oppose item 168, the provision of which relates directly to the appointment of a contract pool person as a quarantine officer. We resolutely oppose such an appointment. It is unnecessary because the Commonwealth already possesses requisite flexibility of appointment to the position of quarantine officer. The Commonwealth can, if desired, appoint fixed term and fixed task staff to the position. The Commonwealth already engages contract staff to perform tasks under the direction of quarantine officers. Labor support other provisions of the bill providing for the appointment of state quarantine officers and APS employees. We believe that that provision ought to be equally opposed. Lastly, Labor oppose items 171 to 178, which are related matters, for reasons I have already advanced.

I suspect this will be a matter for this chamber to consider in the context of the earlier amendments already carried. I suspect that the electorates will grow tired of this agriculture minister, who has shown no regard for Australia’s quarantine regime and who is seeking for purposes which must be purely ideological to pursue the outsourcing of the functions of quarantine officers, who form one of the key barriers to the entry into this country—with the serious risks they pose—of disease and pests which could blight, damage and destroy some of Australia’s very important agricultural and horticultural industries. I commend opposing the schedule.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (8.43 p.m.)—I would simply like to reiterate the position that I put earlier, when Senator O’Brien moved the earlier opposition amendments. The minister and the government have every confidence in the Australian Quarantine and Inspection Service, and it is for this very reason—to enhance the service it can provide—that it needs to call on the most accessible and appropriate resources at any given time and in any given location to help protect Australia’s quarantine borders in situations short of emergency. I assure the Committee of the Whole that the amendments the government have made are not intended as a form of privatisation by stealth. They simply recognise the reality that the most flexible and accessible resources are not always found within the work force of the Commonwealth, the territories and the states, and it is for this reason that we seek to widen the pool of those who can be employed in this capacity with suitable checks.

The TEMPORARY CHAIRMAN (Senator Cherry)—The question is that schedule 1 stand as printed.

Question negatived.

Bill, as amended, agreed to.
Bill reported with amendments; report adopted.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (8.45 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

WORKPLACE RELATIONS AMENDMENT (IMPROVED REMEDIES FOR UNPROTECTED ACTION) BILL 2002

Second Reading

Debate resumed from 11 September 2003, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator JACINTA COLLINS (Victoria) (8.45 p.m.)—Anyone who has seen the Senate Notice Paper or the House of Representatives Notice Paper from last week will not be surprised that we are now on yet another workplace relations bill, the Workplace Relations Amendment (Improved Remedies for Unprotected Action) Bill 2002. It is not difficult to characterise it as another bill that chips away at the role of the Australian Industrial Relations Commission. This, as indeed did the previous message, falls into what I would characterise as a war of attrition. It is the third time that this matter has been presented to the Senate, and by appearances it seems that the government has had some limited success with the Australian Democrats this time around in being able to proceed with its agenda. From the Labor Party’s point of view this is yet another workplace relations bill for which there is no need and indeed no justification, as evidenced by the government’s approach to the bill—it was introduced into the House in June 2002 but the government only brought it on for debate in September last year. Apparently even the government does not think there is any great need or urgency for these particular changes.

As in many other cases in the past—although one hoped some of this may have changed with a change of minister, that does not seem to be the case—this bill implies that the commission is somehow not working properly and is not tough enough on unions and disputes, in this case particularly with respect to section 127 dealing with applications and orders. Section 127 applications are, in the vast majority of cases, brought by employers to try to end industrial action by unions. They can technically also be brought by unions to try to stop employer initiated industrial action, but I will get to that point in a moment. These applications are made to the commission. The commission is currently obliged to hear and decide them ‘as quickly as practicable’ under subsection 127(3). The commission considers a range of factors and decides whether to make an order or an interim order.

The bill before us today suggests that this current system is not working and needs to be changed but, on the facts of the matter, this is simply not correct. For example, the bill before us would amend the act to specify that section 127 matters should be heard and determined within 48 hours as far as practicable. That ‘as far as practicable’ element is a slight improvement, but again we will come to that point. The legislation already says this has to happen ‘as quickly as practicable’, so what is the point of adding the words ‘within 48 hours’? This was confirmed by the inquiry into the bill by the Senate Employment, Workplace Relations and Education Legislation Committee. Submissions from parties as diverse as the Department of Employment and Workplace Relations, the Australian Industry Group and the ACTU all noted that the commission was already deal-
ing with section 127 matters effectively. The ACTU said that over 85 per cent of section 127 matters are already listed within 4 days. The department said the ‘commission has generally been responsive and prompt in dealing with section 127 applications’. The Australian Industry Group said the ‘provisions of section 127 are quite effective’. If I recall correctly from the minority Labor report, some vague notion that there were four cases where they had some concerns ended up not being able to be demonstrated by the Australian Industry Group. No-one appearing before the Senate inquiry could come up with either statistical evidence or a huge list of case studies that would justify the need for these changes.

This bill is not just about the timing of section 127 matters. It also puts a greater emphasis on the making of interim orders if the commission has not had time to hear all the evidence and submissions required to make a final section 127 order within its allotted 48 hours. This ignores that fact that the Workplace Relations Act already gives the commission the power to make both final and interim orders. Yet again there is a bill before us today that is, in terms of presenting an established case, a waste of the Senate’s time. It is another fairly patronising shot at the Australian Industrial Relations Commission, based more on propaganda than on fact. As noted in the Senate inquiry, if the government were really concerned about the efficient processing of section 127 applications, they might try better to more effectively resource the commission. The Department of Employment and Workplace Relations told the inquiry that they were not aware of any non-legislative measures either tried or proposed to assist the commission in this way.

So what does this bill do? It reduces the Australian Industrial Relations Commission’s discretion. But of course this bill was actually designed by the government to achieve an outcome. That outcome is to say to the commission: ‘You are being watched. Make sure you hand out these 127 orders as quickly as possible and please remember that business interests are paramount.’ There is one key change of substance actually proposed by this bill: the addition of a new consideration about the effect of industrial action on industry. True to form, however, the bill contains no balancing considerations about the effect of a dispute on the livelihoods of families of working Australians. At least the very first version of this bill dealt with lockouts, but somewhere that has been lost along the way.

Currently, in listing and determining section 127 applications, the commission balances all the relevant circumstances in each case. This includes the effect of industrial action on both workers and employers, and the likelihood of resolving rather than inflaming a dispute. But, if this bill becomes law, this would no longer be the case. Consideration of the effect of a dispute on the employer would become paramount. This bill clearly seeks to shift commission outcomes—a few words here, a few words there, and a bit of discretion lost will have that effect. Yet again, the bill chips away at the commission’s discretion to make decisions. This bill, like so many of the government’s workplace relations bills, effectively says to the commission, ‘You’re not skewing the balance well enough. Here’s a way you can try harder.’ And then after another 58 of these insidious little bills—now presented as little slices rather than the major slabs we had in the first and second waves—with each little nip and tuck here and there, eventually the minister will have tailored the perfect industrial relations instrument: one that allows employers the discretion that they want without maintaining the rights of Australian workers. Labor will continue to oppose all of
these little attempts that will eventually add up to the detriment of our Australian industrial relations system.

But of all the things that I have said so far, none of them are the worst thing about this bill. The worst thing about this bill is that it proves yet again that this government simply does not care about actually resolving disputes. This government does not support mechanisms that could actually help resolve difficult issues. Industrial relations does not just happen for fun. The government seems to forget that workers do not get paid while they are either locked out or on strike, causing them great financial hardship. So an employee’s decision to take industrial action is not taken lightly. In situations like this, simply ordering employees back to work does not fix the problem. Workers taking strike action are out the front of the gate because they have reached a serious impasse in their negotiations and they feel that they have no choice but to down their tools.

This brings me to a matter that was considered last week during the inquiry relating to the construction industry reforms being proposed by this government. The Queensland Master Builders Association presented their submission to the Senate Employment, Workplace Relations and Education References Committee. In the context of discussion about that, my summary of the case—which was accepted by the Master Builders Association representatives—simply argued that the commission should be re-empowered to become involved in settling disputes. When I pointed out to the witnesses before us that that had actually been Labor Party policy since those powers were removed from the commission by this government in 1996, their attitude was very interesting. Here we had a group of building and construction industry employers saying, ‘We want that back.’ And when I said to them that this government again proposes a little slice to deal with just this one situation—an arrangement specific to the construction industry—they could see and they could accept that perhaps there was a case that those powers should be re-introduced across the board and that the government solution in just this one small case was unbalanced and potentially not to the benefit of the industrial relations system as a whole.

But, again, here we have another example. We have the government saying: ‘We will keep third parties out. We will limit the scope for the commission to intervene and assist in settling disputes, except where we can see that might work to the advantage of the employer. If it is in the construction industry where workers generally have a higher bargaining power on projects, then maybe we need the commission to intervene there. If it is in other areas, maybe we need specific ways of allowing third parties to intervene. But generally, no, we don’t think that should occur because in those cases it is not to the advantage of the workers or the industry as a whole.’ That is this government’s view.

If we go back to the sorts of cases where we do need the commission to intervene, what they need at this point in time—when on strike or when the commission might be considering a section 127 order—is not a big stick. They need help to resolve their issues. They need a commission with the power to say: ‘Okay, it’s time to sit around the table and sort this out and we, the commission, are here to help find an outcome. If you can’t agree on an outcome, we have the power to decide a fair outcome.’ That is what Labor would put in place or re-establish—a commission that could actually help to settle difficult disputes just as it was designed to do way back in 1904. Ninety-nine years ago our nation’s leaders knew that the law of the jungle was no way to run Australian industrial relations, but sadly the government simply does not care. It wants to pretend that diffi-
cult industrial disputes do not happen, that the commission does not need the power to resolve them and that special fixes are required in some unique circumstances.

And just like its other nasty collection of bills, this bill yet again reinforces the Howard government’s view that the only time the commission should intervene in industrial disputes is to give a lot of support to one side of the equation. This shameless partisan approach is front and centre in this bill and in bill after bill that is being returned to the Senate. It is no way to run an industrial relations system. It offers no solution to the real problems faced by employers, working Australians and modern workplaces. Labor will not accept this approach of death by a thousand cuts. We will oppose this bill and the appalling philosophy that underlines it.

We will also not be supporting the Democrat amendments proposed to this bill. While we appreciate that their amendments eliminate the vast bulk of problems in the bill by including a provision to state that the commission may make an interim order under section 127, Labor do not agree that this change is required. As the Labor senators reported in the inquiry on the bill, we believe that the commission already has adequate powers to make interim orders and see no need to encourage the commission to make more of them.

Senator MURRAY (Western Australia) (8.58 p.m.)—The Workplace Relations Amendment (Improved Remedies for Unprotected Action) Bill 2002 seeks to restrict access to industrial action and to increase access to penalties in respect of such unprotected action. I note that a version of this bill was introduced in item 7 of schedule 11 of the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999, which did not pass the Senate. Another version of this bill was introduced as item 5 of the Workplace Relations Amendment Bill 2000, which again did not pass the Senate.

As I said in my minority report to the more jobs, better pay bill, it is difficult for the government to advocate a much greater tightening up of the area of industrial disputes when Australia has recently had the lowest level of industrial disputation in 80 years. The number of worker days lost through industrial disputes continues to decline dramatically, going from 928,500 in 1996 to 526,300 in 1998, 469,100 in 2000 and 259,000 in 2002. I would have thought the Workplace Relations Act was making a very good contribution to industrial peace based on those figures. I understand that there may be an increase in days lost in 2003 due to industrial action during the months of September and October. I understand that most of the working days lost in September resulted from strike action by teachers in New South Wales, Victoria and Western Australia and that most of the working days lost in October resulted from industrial disputation involving employees of tertiary education institutions in all states and territories—I imagine in response to the government’s higher education bill, which the Democrats opposed in the Senate. If it was in response to that bill, it was not action taken with respect to wages, conditions, awards and so on, but it was certainly a response to attempted interference in the workplace relations arrangements of higher education institutions.

The latest ABS statistics show that in November 2003 78 per cent of industrial disputes lasted for two days or less. Section 127 deals with the orders to stop or prevent industrial action. As the Senate well knows, protected industrial action, including strikes and lockouts, is permitted in certain circumstances. Unprotected industrial action is not. But it is difficult for the government to make an argument for tightening section 127 provisions when they cannot provide us with
raw data on which to make an assessment—apart from the assessment I have already made, which is of a massive decline in the number of worker days lost since the introduction of the new act. The argument we have made to the government is that they should provide better data collection of industrial disputes so that we can differentiate between protected and unprotected action and so that we can determine whether there is a genuine problem and where that problem lies. I do not know whether the government are ignoring that reasonable demand for greater information or whether they are simply unable to find the means or the methods to work that out.

ABS data for November 2003 shows that 73 per cent of industrial disputes are resolved through either negotiation or resumption, with only 20 per cent requiring state or federal industrial relations intervention. According to Australian Industrial Relations Commission statistics, the number of applications for section 127 orders lodged with the AIRC has been between 400 and 450 per annum since 1997-98. As reported in their submission to the Senate inquiry into the bill, the ACTU used a search of the AIRC’s decision summaries, which are issued weekly, and their figures were that 33 orders were issued in 2000, 26 in 2001, 35 in 2002 and 25 as of September 2003—all well below 10 per cent of those applied for. To us that clearly indicates that the problem is not as large as the government indicates. Conversely, we do believe that the existing section 127 provides a strong deterrent to disruptive industrial action. If it did not, we would not expect to see the decline in days lost, which we believe that section of the act has contributed to.

The government has failed to make a case that the provisions are not working and that we need the reforms in this bill. In their submission to the Senate inquiry into this bill and at the hearing, the department stated:

... section 127 has generally proved to be an effective mechanism ... and ... the Government recognises that the majority of section 127 applications are handled reasonably expeditiously, but from time to time there are cases where delays occur.

The bill seeks to require the Industrial Relations Commission to hear applications for section 127 orders within 48 hours. However, section 127 of the act already requires the commission to hear and determine an application for an order as quickly as possible. The 2002-03 annual report of the Industrial Relations Commission shows that 85 per cent of applications are heard within four days of lodging and, of these, many are listed within two days. As noted in the Bills Digest to this bill, the commission has expressly acknowledged the balance that must be struck between procedural fairness and the timely operation of section 127 to stop industrial action.

In the Coal and Allied Operations case in 1997, the full bench of the federal commission held that the commission’s discretion under section 127 was a discretion at large. In making a decision for an application under section 127 by Southcorp Australia Pty Ltd to stop industrial action by the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, Commissioner Lewin indicated that the commission is not a rubber stamp bound to make orders on the application of parties. The commission is required by the act to exercise discretion as to whether an order should be made. In exercising this discretion, the commission should consider the substantial merits of the case, the conduct of the parties, whether conciliation has been exhausted and whether a section 127 order would assist the settlement of the dispute or exacerbate the dispute. The commissioner said:

... it is useful to note that it has long been held by the High Court of Australia that industrial action
is but an ancillary manifestation of an industrial dispute which is actually constituted of a disagreement between employers and employees over conditions of employment. An order to stop industrial action without more may or may not contribute to a settlement or part settlement of a dispute. Indeed an order to stop industrial action without more may only exacerbate the dispute or undermine possible settlement. The full bench has also emphasised that the requirement that the rules of natural justice be observed should be balanced with the requirement that the commission deal with applications for orders as quickly as possible. The reasons for the action will be particularly significant if the cause of the action is in dispute.

The Bills Digest remarked that in his paper Preventing or Stopping Industrial Action Victor De Felice notes:

... even where action is not protected under the WRA, the granting of relief in the form of a section 127 order or an injunction is not automatic. The Bills Digest continues:

There are circumstances in which actions that do not meet the criteria for protected action could nevertheless be considered legitimate.

Federal Court judge North J, in the 1998 case Australian Paper Ltd v Communications, Electrical, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, in making general observations about the court’s power to grant injunctions in the context of industrial disputes made several pertinent comments: first, that industrial disputes usually involve professional negotiators whose job it is to find solutions and that they should be left to do their jobs; secondly, that interim injunctions were often sought for tactical or strategic reasons and that the court should be careful about inadvertently promoting the interests of one side’s tactics or strategies over those of the other side.

Reinforcing the cautious approach of the commission in the Southcorp case and the Coal and Allied case has been the reluctance of some commissioners to make orders immediately, turning instead to alternative strategies such as deferral of issuing orders, making recommendations instead of orders or requiring commission chaired conferences to try to resolve the underlying dispute. All, I would suggest, fall within the dispute resolution mechanisms which have always been attractive to the Democrats and to many others involved in these sorts of matters.

The bill introduces a provision providing for the commission to make interim orders to stop industrial action. The government has argued that there currently is no express power for the commission to make interim section 127 orders. However, the commission has the authority to make interim orders under section 11(1)(b)(ii) of the Workplace Relations Act and has indeed used this section to make interim orders under section 127. The problem, as I understand it, is that the power of the commission to make interim section 127 orders was questioned in an appeal by the CFMEU in 2000 against a section 127 order. I also understand the CFMEU appeal was not successful.

Rather than just relying on the authority to make interim orders under section 11(1)(b)(ii) of the Workplace Relations Act, the government aims to introduce a provision outlining specified matters that the commission must take into consideration when determining whether to make an interim order. I note that earlier versions of the bill did not prescribe a list of factors and that this is a new addition. According to the Bills Digest, the factors outlined in this bill to be considered in the issuing of interim orders are extracted from case law to highlight potential problems with the operation of section 127 and that the inclusion of these factors is an attempt to guide the commission towards the intended outcome of achieving speedier orders. On the face of it, this seems fair. How-
ever, the Bills Digest went on to reveal that
the current case law also considers other
relevant factors in determining whether to
issue an order, such as:

- the substantial merits of the case, especially
  the purpose and intended effect of the industrial
  action
- the conduct of the parties
- whether conciliation has been exhausted, and
- whether a section 127 order would assist in the
  settlement of a dispute, or exacerbate it.

The Bills Digest notes that the commission
will consider each case on its merits, taking
into consideration all of the relevant factors
and that the proposed amendments do not
reflect this approach. As pointed out in the
Bills Digest, the proposed matters in this bill
will force the commission to weight some
factors higher than others.

... where a law prescribes matters to which the
decision-maker must have regard, the decision
maker is bound to give those matters weight as
fundamental elements in making the decision.

The proposed factors, in our view, favour the
employer. The bill would also require the
commission to consider the ‘undesirability of
the occurrence of industrial action that is not
protected action’.

Unprotected action which is in the form of
a protest, whether against government policy
or against someone discriminating against
workers through unilateral roster changes or
relocations, may be considered to be justifi-
able. If we take a recent case where a prison
chief who singled out a female staff for
‘cruel and unusual punishment’ sparked a
statewide prison officers’ strike, the Work-
Cover WA Conciliation and Review Direc-
torate found that the prison chief had em-
barked on ‘a trial of retribution, victimisation
and harassment towards an employee after
she rejected his advances and then lied about
fiddling a staff roster, contributing to the
2002 industrial action’. The report from
WorkCover argued that:

Had the roster not been altered and acted upon
it is obvious that no such industrial action would
have arisen that day and these proceedings may
well not have found their way to me.

The fact is that the unprotected industrial
action in those circumstances had an out-
come that was probably desirable, so in this
case strike action could be considered justi-
fied even if not protected.

The Federal Court has also recognised the
legitimacy of employee action. While it is
usually presumed that the loss suffered from
industrial action was all being suffered by
one side, Federal Court judge North J, in the
case I mentioned earlier, argued that to grant
an injunction ‘ignores the interest which em-
ployees have in furthering their industrial
claims by taking direct action’. By prevent-
ing financial loss to the employer, a decision
may result in causing the loss to employees
of the one weapon at their disposal, which is
direct action.

I was reminded by the ACTU submission
to the Senate inquiry into this bill that work-
ners do not take action lightly—and I quote
from their submission:

... particularly when it means they lose a substan-
tial portion of their income for the week or
month. The fact that workers take action and lose
pay is an indication of the seriousness with which
they see the issue, and this depth of feeling should
be recognised by addressing the issues on merits.

Industrial disputation is an essential part of
the bargaining and market process, and par-
ties to disputation must be given the oppor-
tunity to work matters through. I recognise—
because I do not live in a goldfish bowl—
that there are occasions and matters where
action is taken in a manner that is not justifi-
able. But my conclusion—as with the con-
struction issue that is presently before us—is
that the major problem is that the existing
law is not properly enforced, because by and
large the existing law seems to me to cover the bases that are required.

The Democrats in previous minority reports and speeches have consistently argued for increased conciliation and arbitration powers and discretion for the commission. The act already requires the commission to hear and determine an application for an order as quickly as practicable. The act also provides for the commission to make interim orders if they think it necessary, and they have done so in the past. The bill restricts its discretion, which the ACTU argue—and I agree in this case—is not in the interest of efficient dispute resolution.

Given the lack of evidence for a need to tighten up section 127 and the lack of data to distinguish between unprotected action and protected action, the Democrats cannot support the bill and, instead, will move a simple amendment that will reinforce what we believe already exists—and that is the commission’s ability to use interim orders. I note that the Labor Party have said that they will oppose that. I will suggest to the government that they should at least support that amendment of ours.

Senator SANTORO (Queensland) (9.15 p.m.)—I have again enjoyed listening to Senator Murray. Invariably I find his contributions to be very reasonable and very well argued. Later in my contribution, I would like to depart from my prepared text and go to some very specific cases in order to address some of the reasons the Workplace Relations Amendment (Improved Remedies for Unprotected Action) Bill 2002 has again been put forward by the government. I hope that, after listening to some of the statements that I have prepared, Senator Murray may come to see the sense of what the government is proposing.

It is said by the Labor Party and the union movement—respectfully, I would suggest, two halves of an apple that is well past its prime—that the Howard government’s workplace policies are draconian. It is also said by the Labor Party that the workplace laws are designed to batter the worker into submission, that they are unfair and are not wanted by the work force. Perhaps this is why only around 20 per cent of private sector workers—in a society which is freer than almost any other in providing choice to belong to a union—now actually belong to a union. Why is union membership that low? Perhaps this is why industrial disputes are at historic lows in this country. Perhaps this is why year after year the Australian people have benefited from new jobs, sustainable jobs, nationwide under the Howard government.

We can only surmise that the Labor Party and its union mates—the Siamese twins—have discovered some strangely inverted natural law. It must be a law that states that people who are better off than ever before, who are in good jobs tailored to their real needs within the commercial requirements of their employer, who see no need to join a union and who are evidently happy and productive with money in their pockets are in fact none of these things. We know that is the law of self-delusion. I would suggest that Labor are clearly delusional. They should snap out of it and wake up to the fact that it is now 2004, not 1904.

It is important in the context of this debate to examine the background to the government’s reasons for presenting this bill to the parliament. They are fairly simple, so they should be not too hard for those opposite to understand. I would certainly hope that, after further consideration, Senator Murray, the author of the Democrats’ amendments, would also be in a position to support the government. The bill proposes to amend the
Workplace Relations Act to strengthen section 127 of that act. This is the section under which orders may be made by the Australian Industrial Relations Commission to stop unprotected industrial action—that is, action that is illegal under the Workplace Relations Act—and to prevent industrial action from occurring.

The Workplace Relations Act 1996 provides limited immunity from legal sanctions for industrial action taken during negotiations for certified agreements or Australian workplace agreements, provided certain conditions are met. Such action, as we have heard here tonight, is termed protected action. It preserves the essential freedom of Australia’s industrial relations laws. Industrial action not related to genuine bargaining for agreements is considered to be against the spirit and the intent of the Workplace Relations Act and is not protected. In other words—and in my view and I believe in the view of most Australians, and properly so—there are sanctions that may be imposed against those who take industrial actions under those circumstances.

Section 127 of the Workplace Relations Act provides that the Australian Industrial Relations Commission may make orders to stop or prevent unprotected action. The AIRC is required to hear and determine section 127 applications as quickly as practicable. If an order is not complied with, an application can be made to the Federal Court for an injunction to secure the compliance. Although the AIRC is generally responsive, there have been examples of it not being able to resolve section 127 applications before industrial action has commenced or before industrial action has caused damages to workplaces and the broader community.

I will cite one or two examples from the many that have been provided to me. The facts from the hearing of the Toll North Pty Ltd and the TWU private transport industry dispute are that the company terminated an employee who punched his supervisor during an altercation. The company also demoted the supervisor for failing to immediately report the incident. Union members were unhappy at the perceived unequal treatment between the supervisor and the employee, and the employees went on strike. A certified agreement containing dispute resolution procedures was in place at the time. The employer applied for a section 127 order. At the request of the union, the Industrial Relations Commission held a conference to resolve the matter. This proved unsuccessful. The company was reluctant to discuss the issue while employees were on strike. After it became clear that the matter would not be resolved by conciliation—and conciliation was attempted—the commission advised the parties that it would exercise its discretion and issued return to work orders under section 127. The commission noted that the industrial action was not legitimate. It also noted that the matter should be resolved in accordance with the dispute settlement procedure in the certified agreement after the cessation of the industrial action.

This case demonstrates the legitimacy of industrial action during a current certified agreement rather than the use of the dispute resolution procedures in the agreement. The bill will ensure that the commission consistently gives proper emphasis to the existence of a current certified agreement when considering whether to make a section 127 order. This case also demonstrates the possible role for interim orders. The bill gives the commission the express power to make an interim return to work order so that the dispute can be resolved without the continuing pressure of illegitimate unprotected industrial action.

I will cite one more very clear example of this issue, and that is the case involving Han-
sen Yuncken Pty Ltd and the CEPU. Employees of an insolvent subcontractor in the building industry refused to commence work with the new employer until they had received their entitlements from their previous employer. The employer applied for a section 127 order. Hearings commenced five days later and ran over a three-day period. A section 127 order was made eight days after the application was lodged. In making the order the commission noted:

Whilst I fully understand the concern of the ... employees about their employee entitlements ... it is clear from the evidence that Hansen Yuncken has acted entirely in good faith in negotiating ... with the CEPU about meeting their obligations and has agreed to deposit an amount of money ... to meet what it considers to be the appropriate amount to fulfil those obligations ... The applicant has behaved in a very proper manner in seeking to ensure that it fulfils any obligations it has to the ... employees.

Even though there was a current certified agreement in place, unprotected industrial action in response to matters outside of the employer’s control prevented that employer from commencing work. The bill makes it clear that, in cases such as this, the commission has the option to make an interim order against the industrial action while it considers the matters raised over the course of lengthy hearings. The bill also emphasises that the commission should take into account the operation of the existing certified agreements binding on the employees.

If I took the remainder of the time to keep going through case after case, I think the very practical, sensible provisions of this bill would be even more obvious to all members in this place. It is to deal with circumstances such as the ones I have outlined that the provisions of the Workplace Relations Act need to be tightened up. Other limitations on the effectiveness of section 127 include doubts raised over the AIRC’s power to issue interim orders and that the Workplace Relations Act does not expressly emphasise the undesirability of unprotected action. In other words, the AIRC on occasions does not make a section 127 order when it would otherwise be appropriate to do so.

The bill we are now debating seeks to improve the effectiveness of these provisions of the Workplace Relations Act. The government is making reasonable proposals that advance the purpose of the legislation. It is less an augmentation of the powers conferred by the Workplace Relations Act than an explanation of those powers allied with the facility to employ them better. This very point addresses the main objection put forward by Senator Murray that it is really in the implementation and the enforcement. The legislation seeks to make the substantial provisions more able to be implemented.

The government believes that access to protected industrial action supports the focus of the Workplace Relations Act on workplace level agreement making. As I mentioned earlier, this entrenches—indeed, it enshrines—a fundamental and historic factor in Australian industrial relations. If the Labor Party is so intent on rediscovering history, it might do a lot worse than simply reflect on that. By discouraging unprotected industrial action, the bill ensures that the integrity of the agreement-making system is maintained. That is a good thing. It is a benefit to the worker, the boss, the economy and society as a whole. It may be too much to expect the Labor Party, rusted on as it is to the old union movement, to understand that. That it simply cannot is a real shame for the workers that it claims to represent and for the long-term job security of workers. It really is a shame, and I say that with genuine feeling.

The Democrats, the genuine third force in Australian politics and mainly through the efforts of Senator Murray, are often sensible
contributors to the industrial relations debate in this country and can often see what the Labor Party cannot see. Labor argues that this bill is based purely on ideological ideals, but it is the Labor Party, I would respectfully suggest, that is wedded to ideology in the industrial relations arena. Labor argues that the bill will restrict workers’ rights and further compromise the powers of the Australian Industrial Relations Commission. It simply will not, and Labor knows that to be the case. Labor also knows that what it will really do is further restrict the opportunity for unions to cause disruption and cost people money. Labor knows that this bill will make it possible for the AIRC to operate in this area of its responsibilities in the way that it should always be able to operate.

Let us look in more detail at what the bill will actually do rather than what the Labor Party wants people to believe it will do. The bill proposes to amend the Workplace Relations Act to strengthen section 127 of the act under which orders may be made by the AIRC to stop unprotected action or to prevent industrial action from occurring. It includes a requirement that the AIRC have regard to the undesirability of the occurrence of unprotected action when considering section 127 applications, particularly where it occurs during the term of an existing certified agreement. It proposes to allow applications for section 127 orders to be heard and determined in a timelier manner and to increase the effectiveness of these orders in stopping unprotected industrial action. It will ensure the integrity of the Workplace Relations Act by giving strengthened powers to the AIRC to prevent unauthorised and costly industrial action.

As a result of these amendments, the AIRC will be required to hear and determine applications for section 127 orders as far as practicable within 48 hours. Where an application cannot be heard and determined within 48 hours, the AIRC will have the discretion to issue an interim order to stop or prevent industrial action. The AIRC will also be able to make an interim order where industrial action has not commenced but is imminent and the AIRC is likely to be unable to determine the application before the industrial action begins. Finally, the bill provides factors to guide the AIRC in exercising its discretion as to whether to issue an interim section 127 order. These are all sensible provisions; they are not radical propositions. They do not extend the reach of the Workplace Relations Act beyond the limits that were intended for it and which the national parliament made law.

The Senate committee report on the bill was instructive for what it revealed about how Labor senators see the world. Labor criticises the bill because, according to Labor lore, it imposes a new set of biased criteria for the Australian Industrial Relations Commission in making interim orders. Labor criticises the bill because in its view the weight of evidence does not support the case for legislative change. Labor criticises the bill as unlikely to enhance a quick resolution of section 127 applications, because applications already have to be listed as quickly as practicable. Labor criticises the bill because the Australian Industrial Relations Commission already makes interim orders. Let us face it: Labor criticises the bill for its own reasons and those of its mates in the union movement. If it were genuinely interested in further improving how the Australian workplace is regulated, it would come up with a better argument than that sorry little set of excuses.

The Democrats have their own complaints about this proposed legislation. I listened very carefully to what Senator Murray had to say. The Democrats say they support the distinction between protected and unprotected action on the grounds that it is vital in law
and practice. I hope that, in the minds of the Democrats, maybe there is still some room to manoeuvre in terms of this bill. I hope that what the government says about this bill, not just in this place but in the other place, with a little bit more reflection proves to be persuasive. To assist them with this process, recognising that the Labor Party’s policies on industrial relations matters are a lost cause, I point out to the Democrats that the bill we are debating—and which Labor wants to kill—does not seek to change the discretionary nature of section 127 orders. It simply reinforces the legislative intent of the Workplace Relations Act by requiring the AIRC, when determining a section 127 application, to take into account whether the parties are already bound by a certified agreement and the undesirability of the occurrence of industrial action that is not protected under the act.

I do not think there is anyone in this place who would countenance a legislative arrangement that places any section of the community in a position of exemption from the rules of law. That is simply not what this government is proposing. The bill does not require the AIRC to grant interim orders; it simply empowers the commission to do so, which in fact addresses the very heart of Senator Murray’s argument against some of the provisions of this bill. I believe it is vital that industrial players respect the rule of law and that it is right for the government to ensure the effective operation of the workplace relations system, which is the reason why the bill is before this place again tonight and the reason why I have chosen to speak in support of it. (Quorum formed)

Senator BUCKLAND (South Australia) (9.34 p.m.)—I rise to speak on the Workplace Relations Amendment (Improved Remedies for Unprotected Action) Bill 2002. This is yet another demonstration of how the Howard government wants to attack the discretion of the Industrial Relations Commission and limit its ability to properly, with commonsense, resolve disputes in the workplace. The government has struggled for a long time to justify a need for this legislation. The fact is that there is no need. On first reading the proposed amendments are minor—such as changing section 127(3) to require the commission to hear and determine an application for a section 127 order as soon as practicable within 48 hours. It is important to remember the time frame that the government wants to insert into the legislation. It wants to insert the words ‘as soon as practicable’ rather than keep what exists now.

The government in its own devious way—a way that we are becoming accustomed to—is doing no more than attempting to put more weight into its return to work laws. But before that is done and before we go further with this bill, we need to carefully think through what the changes would do. In keeping with the Howard government’s agenda, it would heavily weigh the act in favour of the employers—not equally, but in a very one-sided manner. Rather than have a law that balances the competing concerns of urgency to resolve a dispute with natural justice, we would have a law that once again highlights the government’s practice of putting employers’ interests ahead of the concerns of Australian working people.

That is just one thing that is wrong with this bill. Again, it is a demonstration that the government is forever floundering with the question of industrial relations. It has no faith in its ability to deal with industrial relations. In its feeble attempts to tinker at the edges, the government once again shows how it is patronising the Industrial Relations Commission and undermining its ability to deal with disputes in an orderly and fair way. The bill, simply put, denies the commission the ability to provide natural justice unless that natural justice favours the employer. What really lacks in this bill is any cogent
reason to justify change. The government simply does not have reason to do it. It is certainly not pressure from industry. Quite frankly, the government has not produced any evidence from any quarter that shows there is sufficient concern to justify what this bill seeks to do. We really need to see examples where the act has failed to have effect in its current form. I continue to watch what goes on in the industrial relations arena and I cannot see where the commission, either at a federal level or in state jurisdictions, fails to do what the intent is—that is, provide industrial harmony in a fair and just way.

Before this bill is brought to this place we really need to see the evidence that shows we have a failed act, an act that is not competent in providing a stable industrial relations environment. How can it be said that the Industrial Relations Commission does not react within a practicable time frame? Of course the commission reacts when it is notified of a dispute or impending dispute. They always take into account what effect that dispute will have on the business of the employer. That is one of the first principles it looks at to be sure that the interests of the employer are considered. But it also looks at the interests of employees who may be in dispute with their employer. So what this bill is seeking to do is already being done. It is another one of the industrial relations bills that come before the Senate that are simply a waste of everybody’s time.

The system is working. It does not need repair. The minor amendments that need to be made are overlooked by the government. They always try to pin it back to an unstable industrial relations environment—that the unions are out of control and that workers disregard the needs of industry and other Australian people. That is not the case and there is no evidence at all to show that it is. What the commission does best of all is apply fairness and natural justice, and it does that on the evidence it has before it—not on hearsay or emotion but on the evidence of not just one side but both sides of the dispute. At all times, the employers’ needs, the industry’s needs and the employees’ needs are taken into account. The commission does not, as the government seeks to do, give bias to one side—that is, the employer side.

If you look at the 2001-02 Australian Industrial Relations Commission annual report you will see that 85 per cent of cases were heard within four days of an application being lodged. What is this government trying to do with the amendments? Is it trying to say, ‘Do something within 48 hours’? It is actually working quicker the way it is. It is getting results earlier than if we were to make changes. Yet this government wants to press on. The government wants to not only have another go at workers and their unions but limit and weaken the role of the Industrial Relations Commission. We have seen that before. Tonight I am on my feet again pointing out the government’s attempts to weaken the role of the umpire. The commission has to retain its independence.

We on this side will always oppose legislation that gives the government the ability to manipulate the tribunal so that it does not address both sides of the argument. We will always oppose legislation that is there to manipulate the Industrial Relations Commission and take away from it the discretion that it has now—the discretion to act with fairness and natural justice to both sides of the dispute. Despite what some on the government benches might think, many disputes that go before the commission are not of the worker’s making but indeed of the employer’s making—and here we are trying to prop up those employers who themselves are responsible for the disputes that they are confronted with!
Through this bill the government is hoping to stack the odds in favour of the employers, with no consideration whatsoever for workers who have a genuine grievance against their boss. Australia, despite the bleating of some on the government benches, has a good industrial relations environment—an environment largely reliant on the ability of the IRC to remain independent. But this bill, along with all the other Howard government workplace relations bills currently before the parliament, does nothing more than undermine, weaken and limit the role of the Industrial Relations Commission or just eat away at the conditions of Australian workers. Together these bills are a dusty, second-hand version of Peter Reith’s second-wave legislation. Industrial disputes, as everyone knows, need two parties, not one. They come out of grievances that are grown on the job by poor safety conditions, inadequate accommodations and practices that the employers will not invest in improving to make the industry more efficient—and workers want those improvements. This bill should be defeated, and Labor will remain strong in its position of opposition. It does not warrant and should not earn the respect of the parliament such as to be able to pass through this place. (Quorum formed)

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! It being 9.50 p.m., I propose the question:

That the Senate do now adjourn.

Taxation: Charitable Institutions

Senator MASON (Queensland) (9.50 p.m.)—We in Australia like being very charitable to our charities. We offer them many benefits, not least in the area of taxation. Charities are exempted from income tax, they can get refunds on imputation credits, they can reduce their fringe benefits tax and they can obtain various GST concessions. Last but not least, the gifts and donations they receive from the public are tax-deductible, which of course helps in fund-raising. But with these benefits come obligations. For instance, a charity has to refrain from political advocacy, unless such lobbying activity is merely incidental to the charitable purpose. Our approach is very much in line with countries such as the United States and Great Britain. Sadly, perhaps, some do not appreciate this sense of mutual obligation, and want to have all the benefits without the obligations. Increasingly, we are seeing many organisations which want to have all the tax benefits of charities but, at the same time, involve themselves in all sorts of uncharitable activities. Over the years we have seen a change in the way some charities operate. In the past they provided welfare for the needy and worked hands on to protect the environment; now they just lobby the government instead—or, if the government does not oblige them, they lobby to change the government to a more accommodating one.

There is nothing wrong with groups and organisations in the community engaging in the political process—lobbying and campaigning. The only question is why such groups and organisations should get the tax breaks to help them do so. If the aim is to effect political change, shouldn’t these charity workers actually join political parties, where the maximum tax deductible threshold is $150? Or, conversely, if lobbying should have tax benefits for charities, then why not for everyone else as well? If it is okay for koalas and the homeless, why isn’t it for sugar farmers?

The number of charities which are shifting from hands-on help to political advocacy is increasing across a whole range of fields, from social welfare to the environment. Sadly, that means less money is actually being spent on assisting the poor and disadvan-
taged or looking after our environment. The most recent example of such activity comes from my home state of Queensland. At the Queensland state election, on 7 February this year, in the marginal seat of Indooroopilly, Wilderness Society members and supporters handed out their how-to-vote cards. Their card, titled ‘Vote to end land clearing’, recommended that voters vote one for the Greens candidate and vote two for the sitting Labor member. In contrast, the official Greens party’s how-to-vote card only instructed voters to vote one for the Green candidate, leaving it up to the voters as to how to distribute preferences, if at all. This was consistent with the Greens’ decision not to give their second preference to the sitting member because of some of his policy stances with which the Green party disagreed.

The situation is reminiscent of the 1995 Queensland state election, where the Australian Conservation Foundation, the Wilderness Society and the Rainforest Preservation Society teamed up with the Queensland union movement to hand out alternative green how-to-vote cards to circumvent the fact that the Greens had decided not to preference the then Goss Labor government after a community backlash following its controversial South-East Tollway plan. The Wilderness Society did not breach electoral law, but has it abused its tax privileged status? The Wilderness Society is not a charity per se; it is what is called a registered environmental organisation. It possesses a tax deductible status in exchange for satisfying certain conditions contained in Department of Environment guidelines. One such requirement is that the organisation’s principal purpose must be:

... the protection and enhancement of the natural environment ... or ... the provision of information or education, or the carrying on of research, about the natural environment ...

Did the Wilderness Society breach the guidelines by engaging in such blatant political activity? This is an important question that needs to be answered, particularly since what happened in Indooroopilly early last month is far from an isolated incident. The Wilderness Society has been actively involved in other elections around Australia for quite some time. I can only quote the boast from the society’s own web site, referring to the 1998 Queensland state election campaign where the Wilderness Society ran an extensive campaign in eight marginal seats. The web site says:

The effect of the [The Wilderness Society] campaign was to hold up Green and Democrat votes in key seats, ensure that Green and Democrat voters’ preferences flowed more strongly to the ALP and away from Conservative candidates, and ensure preference exhaustion by Green and Democrat voters was reduced on the 1995 result. These effects were demonstrated in analysis showing that the Wilderness Society campaign helped to boost the Green and Democrat preference flow to Labor in our target seats by at least two per cent.

The boast continues:

Another effect was to move Liberal voters concerned with the environment directly or through preferences to Labor. This was one factor that impacted on the Liberals in Brisbane.

Does this sound like using the tax deductibility status for ‘the protection and enhancement of the natural environment’? It is a good question for Dr Kemp, the Minister for Environment and Heritage, who administers the guidelines, to investigate. I have recently asked the minister to investigate this matter further.

Speaking about charities generally, the government has been generous in funding the Australian Taxation Office to enable it to perform its many functions, including oversight and enforcement of laws and regulations. Tonight I call on the ATO to perform a
comprehensive audit of the groups currently registered as charities in order to ascertain whether such bodies still comply with the current law—that is, whether their dominant purpose is still charitable and, as such, is still deserving of taxation assistance—and also to determine whether the tax-deductible donations that charities have received are spent in accordance with the strict requirements set down by the ATO. I am not aware of any such audit occurring in the past once a charitable status has been granted by the ATO. This makes an audit of these bodies both absolutely essential and long overdue.

The involvement of charitable organisations in politics throws up a whole range of other interesting issues aside from the question of tax concessions. Are some charities in reality merely associated entities of political parties? Should the public disclosure requirements be more stringent than they currently are? That is why I welcome the recent debate surrounding the Charities Bill 2003, which aims to clarify some of the aspects of the law of charities. The bill is a step in the right direction and long overdue because, for quite some time, the law and politics have failed to keep up with developments in the real world. While for many of us, charities still evoke the image of Salvation Army soup kitchens, some charities and non-government organisations have in many cases become multimillion dollar operations, often multinational in scope and sophisticated in their operations.

One thing is for certain: the taxpayers of Australia are owed some answers regarding the activities of organisations such as the Wilderness Society. But also, just as importantly, we owe it to other charities and groups enjoying tax deductible status, who quietly go about their work of helping others without involving themselves in the rough and tumble of politics, to ensure that charities, which as a general rule do so much good in our society, are not tarnished in the public’s eye by the misdeeds of a few political wolves in charity sheep’s clothing.

Strickland de la Hunty, Ms Shirley

Senator MURRAY (Western Australia) (10.00 p.m.)—I wish to pay tribute to a truly remarkable Australian, a woman who contributed so much to this country in a wide variety of fields. I am indebted to Jack Evans for some of the research for this speech. Shirley Strickland de la Hunty was mainly recognised nationally and internationally in just one of these fields—sport—but, in Western Australia, she was recognised for achievements in many more fields. I must confess to being surprised by the media coverage of Shirley’s death last month. It was substantial, as she deserved, but large sections of her life were left out. Shirley’s achievements were truly Olympian, but she was also a renaissance woman with not just an array of extraordinary talents but the application to realise them. Learned, cultured and an activist, she was far more than an outstanding athlete. Her big themes in life included learning and teaching, human rights and social justice, community activism, politics, strong environmentalism, and family and friends as well as athletics and sport. She worked hard at, and achieved much in, all these fields.

Shirley Strickland de la Hunty was born in Western Australia and raised on a farm in the wheat belt. Bright and ambitious, Shirley won a place as a boarder at high school with a state scholarship. Living away from home at the CWA hostel, she became a top-ranking student, a prefect and a star on the school sports fields. Her athletic prowess at Northam High School made her a popular member of the athletics and hockey teams but, at that stage, sport did not dominate her life, and Shirley had set her mind on going to university. She had drive and determination...
and gained high marks in her chosen subjects. She graduated with results that enabled her to choose her own path at university.

With a pioneering spirit, inherited perhaps from her father, Shirley was determined to break down the barriers that kept women from entry to many male-dominated careers—and she did. With her science degree in hand, she went on to study in the embryonic field of nuclear physics for her honours degree, which she passed with flying colours. Then the passion for sport—athletics and hockey—took hold again and she trained seriously, so seriously that she was chosen to represent Australia in four successive Olympic teams. Altogether, she won seven Olympic medals, more than any other Australian athlete—three gold, one silver and three bronze.

In 1948 in London she won bronze medals in the 100 metres and the 80 metres hurdles and a silver medal in the 4 x 100 metres relay event. In 1952 in Helsinki she won the bronze medal in the 100 metres and gold in the 80 metres hurdles. In 1956 in Melbourne she was made the athletics team’s captain. She went on to again win gold in the 80 metres hurdles and to become the first woman to successfully defend an Olympic title. She also won gold in the 4 x 100 metres relay. She was given the honour of being a torchbearer and television commentator for the 2000 Sydney Olympics. Her dedication to training was matched by her input to sports coaching and administration in her own sports and in sport generally. While she was very proud of her achievements in athletics, she made a crunch decision three years ago to sell all her Olympic medals and gave the proceeds—some $400,000—to her children and to her beloved environmental causes. At the same time as she was devoting time to training, she went on to lecture in maths at Perth Technical College and then at the Claremont College of Advanced Education, now renamed Edith Cowan University. Shirley was later awarded an honorary fellowship by the university in 1991 and subsequently was made an honorary Doctor of Philosophy in 2001. But there were other overwhelming concerns pulling her into public life.

As an ardent environmentalist, Shirley invested much of her time working to protect and save our environment—our rivers, our seabeds, our farm lands, our native forests and many other heritage areas and buildings. She was a leader in the environmental movement in Western Australia and often found herself leading the conservationists against the conservatives. Conservatives of the right and left, strongly supported by big business interests and many rural industry groups and unions, fought vigorously to retain their rights to log old-growth forests, convert Western Australia’s unique trees into woodchips and continue farming in marginal areas, which only turned them into salt pans. Shirley battled with them at every level. Her energies and time also encompassed the protection of the Western Australian river systems, including our beautiful Swan River which, at one stage—until the environmentalists’ campaign to save it—was dying from neglect. Thanks to the conservation and environment groups to which Shirley dedicated herself, these river systems and their surrounds are now being protected, although there is still much to be done.

Coming from an endangered farming area, Shirley recognised the colossal damage to Australia’s rural areas from the encroaching saltbeds, and she worked with others to persuade governments and farming bodies to remedy the causes of this devastation. Her belief in the importance of preserving Australia’s heritage put her in close touch with Indigenous peoples and made her even more conscious of their loss of rights to land, culture, language and the societal rights which
non-Indigenous Australians take for granted in health, education, employment, housing and so on. She believed very strongly in the need for all Australians to embrace the concept of reconciliation between the Indigenous and the non-Indigenous people in this land of ours.

I think it was Shirley’s recognition of the lack of social justice from which so many Australians suffer that made her decide to go into politics—federal, state and local—to remedy this. She and her husband Laurie were involved in the formation of the Australian Democrats in 1977 and worked together to build the new party, serving as state president and holding other offices over two decades. She contested many federal and state elections, and her name appeared on many Democrat tickets. Because of family and other commitments, Shirley decided that distant Canberra was not for her—although I know she would have made a terrific contribution in this place—so she allowed her name to be listed as the No. 2 candidate to support Australian Democrats on Senate tickets for five elections. In one of these, she helped former Senator Jack Evans to win a Senate seat, and she did the same for me in 1996. She was kind and good to me, and I valued her support and advice.

She decided that there was a level of politics in which she could become directly involved from her home—that is, local government—and she worked assiduously to break into this. She won a seat as a councillor for the City of Melville and stirred the pot to the discomfort of some but gained the admiration of many of the ratepayers she represented. I remember her telling me how hard the developers fought to knock her out of that situation when she questioned both their motives and their methods.

Her family life was considerable in its depth and richness. Shirley and her husband, Laurie, successfully raised four children: Phillip, Barbara, Matthew and David. When Laurie died suddenly, Shirley was left with the responsibility of raising the children. The family were fortunate to have a close extended family to help. In particular, Shirley’s mother, Violet Strickland, lived with them and they cared for each other for over 30 years until Violet passed away at the grand age of 101. There were 13 adored grandchil-
dren, and they brought great joy into all their lives as they thrived on the loving environment of their Applecross home in Perth, which was always open to the many friends and colleagues of all the family and to the many causes the people brought to her door.

This rich blend of family, civic, sports and community life made for the very full life of this person who had much to give and who used her many talents contributing to the advancement of her country, which she represented with distinction in so many fields. I pay tribute to the memory of this remarkable woman who gave so generously of herself, her time, her knowledge, her resources and her spirit. She was a very proud Western Australian, and a very proud Australian, of whom this nation is justifiably proud.

Australian Broadcasting Corporation: Senate Estimates Committees

Senator SANTORO (Queensland) (10.08 p.m.)—I want to speak in the adjournment debate tonight about some matters relating to the ABC in the context of the Senate additional estimates hearings of last month. At the outset, let me say that I appreciate the courteous and professional way in which the ABC personnel who appear at estimates approach the task of answering oral questions. It is never easy to front such a committee, and I think we in this chamber all recognise that and applaud the professionalism of those who are called to account for the expenditure of public funds. But, that said, it is also true
that in some instances answers to questions tend to be smoke and mirror events. I have to say that the ABC in that part of the exercise is still a worry.

At the November supplementary estimates, I placed a number of questions on notice. They were eventually answered. The ABC appears to favour the last-minute answer as the best option for inquisitorial senators. But some of them were answered in ways that either prompted further questions or conveyed the impression that these questions really should not need to be asked by anyone convinced that the ABC is perfection personified—the inference to be drawn being that this should be everyone. Others were answered in an otherwise less than informative way.

There is another aspect of the estimates hearings just completed that I want to make some comments about before getting to the detail of other issues, and that is the cost to the ABC of answering questions on notice. This was raised during the hearings by Senator Mackay in the context of the cost to the ABC of answering my questions on notice. Senator Mackay was perhaps being provocative, but I acknowledge that it was a fair question. It was fairer still if the costs attaching to work the ABC must do to answer my questions are added to the costs it must meet to answer questions on notice from the ALP, which following her intervention at the hearing will now be the case. At the November estimates I placed 51 questions on notice. The total questions on notice placed at the Environment, Communications, Information Technology and the Arts Legislation Committee hearings came to—and I might be one or two out either way—296. At last month’s additional estimates hearing I placed 24 questions on notice with the ABC and nine with the SBS. I think a few of them were multiple questions, so there might be a few more than that—but not many more. I state that for the record.

I understand it is viewed as a little unusual for a government senator to place questions on notice at an estimates hearing, but I do not necessarily believe it should be unusual as it is a Senate committee examining public expenditure and the performance of publicly funded agencies. I believe that Senator Mackay’s suggestion to the ABC that it quantify its costs in relation to my questions on notice strikes at the very heart of the estimates process. The ABC is bound to answer questions. That is why it is required to appear before the estimates committee. It is part and parcel of the scrutiny that the parliament is required to apply. It really is not a topic that should be the subject of partisan, point-scoring exercises.

There is another point, and it is this: a greater degree of openness from the ABC would obviate the necessity to ask so many questions publicly. It seems to me that in some regards the ABC views the approach of any outsider—parliamentarian or otherwise—with questions as a challenge. On the basis of some of the answers from the ABC I have received in response to questions or in reply to correspondence, I would have to say that its management is very well versed in the smokescreen business. If there is a way not to answer an awkward question then someone within that organisation will find it. It is this game of hide-and-seek that has led me to consider using freedom of information legislation to get clearer answers on things I believe it is important to put out into the public arena, and that is something I flagged at the estimates hearing. That also comes at a cost. There is a cost to the seeker of the information and a cost to the provider of that information, and under user pays rules that is effectively the full cost to the provider of the retrieved information. If the ABC in this instance were to adopt a more open policy of
disclosure then such a workload of furnishing FOI sourced documents would not be forced upon it.

On the matter of ABC funding, the corporation now has a copy of a paper I obtained that puts forward an argument that its real funding has increased rather than decreased under the Howard government. The ABC has undertaken to provide an analysis of this assessment, and I look forward to receiving that information from the ABC well prior to the budget estimates in May. On the question of funding, I received today a letter from the president of Friends of the ABC in Western Australia. It was a reply to a letter I had written after receiving one from him in which he seemed to confuse Australian parliamentary democracy with the late and profoundly unlauded Joseph Goebbels. In this response the president of the Friends of the ABC in Western Australia further addressed the issue of funding of the corporation and noted, and the two senators opposite might like to note it too, that Labor has in fact been more stingy—and that is his word, not mine—than the coalition. The issue for the Friends of the ABC, as with the corporation, is that they would like a lot more money from the taxpayer directed to the corporation. I say here tonight, as I have said to them before, that it is simply a matter of priorities.

I believe the issue of funding is central to the question that concerns most of the Australians for whom the ABC is an active issue—that is, how the ABC spends the money. There are many unresolved issues of bias and lack of balance in the ABC’s news and current affairs coverage of world events and some here at home, to which I shall return in a moment. On the question of what the ABC does with the money which the taxpayer provides, I thought I would share with the Senate a few of the thoughts of author and regional resident Michael McGirr which were posted on the On Line Opinion website on Friday. They are illuminating. I certainly recommend that the ABC hierarchy takes careful note of what he writes. Mr McGirr is full of praise for the ABC, and rightly so, but he says this, and it is directly relevant to the issue of funding and what the ABC does with the money the taxpayer provides:

There is a lot of malarkey about advertising on the ABC. We are told there is none. This is a myth. In fact there is plenty. It is just that it’s all for the ABC, or at least for something connected to the ABC. The self-promotion of the ABC has reached saturation levels. It used to be a challenge to get to the toilet between programmes in the evening on ABC TV. It’s now possible to have a bath. I have come reluctantly to the view that if there has to be so much advertising on the ABC, it may as well get paid for it.

That is one issue with the ABC. The ongoing issue I have with the corporation is its practice of skewing news so that it becomes views. I have submitted previously in this place and at estimates, and I will continue to submit, that the two must be separate. Since the last budget estimates I have pursued this argument with the ABC and I am not about to give up, because I believe that they are still doing it.

At additional estimates last month I raised the matter of the ABC forbidding its broadcasters to refer to Islamic Jihad and Hamas as terrorist organisations on the grounds that the United Nations had not declared them to be so. This policy is simply nonsense. Islamic Jihad and Hamas are organisations from within which adherents who are terrorists frequently appear and simply kill people. I asked the ABC at the hearing on February 16 why under such circumstances it was possible in ABC land—which sometimes seems to share a border with la-la land—for these organisations not to be terrorist organisations. Apparently, according to the ABC they are merely ‘resistance groups’. I did not get an answer at estimates and I am still waiting.
for the answer to that question and to many others. I say again to the ABC, with the utmost respect to that august and very Australian organisation, for which I have a great degree of affection, respect and support, that I will continue to ask the questions until we start getting some fair dinkum answers. It is not a matter of being anti-ABC, as we are often accused of being on this side; it is simply a matter of recognising that what Australians expect from the ABC—apart from the many good things they get—is an unbiased and totally balanced news and current affairs service.

Women: Government Policies

Senator LUNDY (Australian Capital Territory) (10.18 p.m.)—It has become clear that the Howard government continues to be intent on winding back women’s rights in Australia, wiping away the gains made under the Hawke and Keating governments. This was reinforced in the 2003 budget, in which work and family measures were absent. I said at the time that that budget would ensure that women and families would be worse off in terms of the effects on jobs, health, education, assistance programs, maternity provisions and women’s rights representation. Since then we have seen a number of reports which all reflect badly on the current state of women’s rights in Australia and the difficult circumstances which working women face today. Many Australian women are still living in poverty, women are currently overrepresented in the category of low-paid workers and women head up 98 per cent of sole parent families.

Last week the Australian reported that mothers who return to work for up to 20 hours a week to boost the household income routinely lose more than 80c in every dollar they earn. The findings, which were prepared by the National Centre for Social and Economic Modelling, NATSEM, revealed that a family with three children in which the mother works 13 hours a week on the minimum wage and pays for child care during these hours will actually lose $1.08 for every $1 earned. Also last week the Australian Council of Social Service, ACOSS, called on the Howard government to extend its parenting payment to all families earning up to $70,000, to introduce a 14-week maternity payment for all new mothers and to boost the child-care benefit. ACOSS estimates that there is a gap of $138 to $165 a week, depending on income, in family income between the actual cost of caring for one child under three years of age and the financial aid provided by the government via the family tax benefit B, the baby bonus and the child-care benefit. ACOSS called for the Howard government to scrap the baby bonus and replace it with a universal maternity scheme.

It is clear the Howard government has for far too long neglected the needs of Australian families that are struggling, and that struggle is resulting in less and less choice for women. Women and families had hoped for action on, or a commitment to, maternity leave but were left sadly disappointed in last year’s budget. In stark contrast, Labor has committed to a 14-week maternity leave scheme and to boosting child care availability and affordability, once again proving that Labor is in touch with the community, understands the problems of women in Australia in 2004 and has a very strong focus on improving their situation. Mr Howard was pretending as late as March to still be in favour of a paid maternity scheme. I do not believe that the Howard government has any intention of implementing a paid maternity leave scheme despite its rhetoric. The Sex Discrimination Commissioner has pointed out that the absence of a national scheme means that Australian women will continue to return to work early and leave their children earlier than they would otherwise pre-
fer. This is hardly in step with how a so-called family focus nation such as ours should be.

Meanwhile, women in all other OECD countries, except the United States, are able to remain at home for at least those first few precious months. In Australia, for low-income families the scrapping or delaying of a scheme means that new mothers have to return to work when the baby is perhaps only a few weeks old. That is far from being family friendly. The Sex Discrimination Commissioner also says that it is the responsibility of government to provide a maternity leave scheme comparable to those in other OECD countries and urges this government to commit to a national scheme of paid maternity leave as soon as possible. The fact is that in last year’s budget the government made no forward or future commitment to even phasing in such a scheme and this demonstrates its ongoing neglect towards women and families. So Australia’s unjustifiable and embarrassing reservation to the maternity leave provisions of the Convention on the Elimination of All Forms of Discrimination Against Women—or CEDAW—remains. And remember, too, that maternity leave is only the first chapter in the story for families.

The Howard government’s track record on child care has been described as a trail of destruction. In its first four years, the Howard government stripped $850 million from the child-care budget. This is something that the Howard government continually smirks over now as it realises the great demand that is out there and how that demand has out-paced continually what this government has been prepared to offer. As a result, thousands of children from low- and middle-income families were denied what then became unaffordable care in many situations and unavailable care as many centres in needier areas closed. Nothing has been done by this government to promote and invest in accessible quality child care from a standards and availability perspective.

Under this government, child-care professionals have effectively become an endangered species. Try asking these two questions. Ask someone who is trying to find a child-care place for a baby how difficult it is. And while you are there, ask a child-care professional how much he or she gets paid. I can tell you the answers: it is still extremely difficult in most areas to get a baby place and it is appalling the low salaries that we pay our child-care professionals. Child-care professionals provide an extraordinary service. Unfortunately it is still undervalued by the community generally, and I would like to pay tribute to the child-care professionals and their union. They continually campaign very effectively to help the community at large understand the role that they play, the quality of service that they provide and how those services are growing in demand. Child-care centres struggle now to find the professionals they need to keep their centres viable and the quality high. It is a very important area of public policy that we address this directly.

Now we are heading towards the period leading up to the 2004 budget and all of these challenges still remain. It is an election year, and of course it is Labor’s challenge to get its settings right. I am extremely proud to say that Mr Latham has started to lay out what Labor’s priorities will be in this area. Many young women whom I have met and spoken to over the years have been telling me for quite some time—certainly for as long as I have been in politics, and that goes back to 1996—that they do not believe that they can work and have children. They do not believe that they can do both. I have this wonderful memory of being a young, ambitious union official many years ago and making a very conscious and deliberate decision in the late eighties and early nineties that I
was going to do both—I was going to have a career and have a family. I felt able to do that under the policies of the Labor government at the time. Child care was being promoted, support for families through the child-care rebate and so forth had been introduced. It felt possible and it felt that things could only get better. What a shock it was for me that less than a decade later the attitude of young women in comparable positions to me in my early 20s was that they no longer believed they had that option. They no longer thought that it was possible to do both and they would have to make a choice between a career and family, or do what so many Australian women do now—that is, defer having children on the basis of establishing their career.

It is not fair and it is not right that families, particularly women, are so constrained in their life choices. It is absolutely the responsibility of government to ensure that those choices remain flexible so people can have that level of self-determination in their lives. That is real equality. That is what we talk about when we talk about freedom of choice, not the twisted choice that the Howard government likes to present to the Australian public, but real choice. It is about empowerment and it is about women in particular being able to have a career and have a family.

**Senate adjourned at 10.28 p.m.**

**DOCUMENTS**

**Tabling**

The following documents were tabled by the Clerk:

- Civil Aviation Act—Civil Aviation Safety Regulations—
  Airworthiness Directives—Part—
- 107, dated 5 and 6 February 2004.
- Statutory Rules 2004 No. 4.
- Currency Act—Currency (Royal Australian Mint) Determination 2003 (No. 8).
- Disability Standards Act—Disability Standards for Accessible Public Transport Amendment 2004 (No. 1).
- Excise Act—Regulations—Statutory Rules 2004 No. 27.
- Financial Sector (Collection of Data) Act—Variation of reporting standard SRS 010.
- Fisheries Management Act—Australian Fisheries Management Authority Temporary Order No. 4 of 2003.
- Goods and Services Tax Ruling—
GSTR 2002/2 (Addendum).

GSTR 2004/1.

Great Barrier Reef Marine Park Act—

Regulations—Statutory Rules 2004 No. 15.

Health Insurance Act—


Health Insurance (Billing Agents—

Conditions of Approval) Determination

(No. 1) 2004.

Lands Acquisition Act—Regulations—

Statutory Rules 2004 No. 20.

Medical Indemnity Act—Regulations—


Medical Indemnity (IBNR Indemnity) Contribution Act—Regulations—Statutory

Rules 2004 No. 9.

Migration Act—

Instrument of Approval of—


Fall-back Reporting System (International Passenger Aircraft—


Fall-back Reporting System (International Passenger Cruise Ship—


Primary Reporting System (International Passenger Aircraft—


Primary Reporting System (International Passenger Aircraft—


Primary Reporting System (International Passenger Cruise Ship—


Primary Reporting System (International Passenger Cruise Ship—


Regulations—Statutory Rules 2004

No. 21.


Occupational Health and Safety (Commonwealth Employment) Act—


Ozone Protection and Synthetic Greenhouse Gas Management Act—

Regulations—Statutory Rules 2004 No. 16.

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act—


Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act—

Regulations—Statutory Rules 2004 No. 18.

Patents Act—Regulations—Statutory

Rules 2004 No. 23.

Primary Industries (Customs) Charges Act—Regulations—Statutory Rules 2004

No. 1.

Primary Industries Levies and Charges Collection Act—Regulations—Statutory

Rules 2004 No. 2.

Product Ruling—

Addendums—PR 2003/27, PR 2003/31 and PR 2003/44.


Retirement Savings Accounts Act—

Regulations—Statutory Rules 2004 No. 11.

Safety, Rehabilitation and Compensation Act—Notice of Declaration—Notice

No. 23 of 2003.


Social Security (International Agreements) Act—Regulations—Statutory Rules 2004

No. 19.

Superannuation (Government Co-

contribution for Low Income Earners) Act—Regulations—Statutory Rules 2004

No. 13.

Sydney Airport Curfew Act—Dispensations granted under section 20—Dispensations Nos 11/03 (Addendum) and 2/04 [5].

Taxation Determination TD 2004/2.

Taxation Ruling TR 2002/D13 (Draft).


Workplace Relations Act—
Regulations—Statutory Rules 2004 No. 3.

**PROCLAMATIONS**

Proclamations by His Excellency the Governor-General were tabled, notifying that he had proclaimed the following provisions of Acts to come into operation on the dates specified:


QUESTIONS ON NOTICE

The following answers to questions were circulated:

Attorney-General’s Department: Contracts

(Question No. 1019)

Senator Lundy asked the Minister representing the Attorney-General, upon notice, on 10 December 2002:

(1) Can the following information in the form of a spreadsheet be provided, in both hard copy and electronically, for each contract entered into by agencies within the department which has not been fully performed or was entered into during the 2001-02 financial year, and that is wholly, or in part, information and communications technology-related with a consideration of $20,000 or more: (a) a unique identifier for the contract, for example contract number; (b) the contractor name and Australian Business Number or Australian Company Number; (c) the domicile of the parent company; (d) the subject matter of the contract, including whether the contract is substantially for hardware, software, services or a mixture, with estimated percentages; (e) the starting date of the contract; (f) the term of the contract, expressed as an ending date; (f) the amount of the consideration in Australian dollars; and (g) the amount applicable to the current budget year in Australian dollars; and (h) whether or not there is an industry development requirement and, if so, details of the industry development requirement (in scope and out of scope).

(2) With reference to any contracts that meet the above criteria, can a full list of sub-contracts valued at over $5,000 be provided, including: (a) a unique identifier for the contract, for example contract number; (b) the contractor name and Australian Business Number or Australian Company Number; (c) the domicile of the parent company; (d) the subject matter of the contract, including whether the contract is substantially for hardware, software, services or a mixture, with estimated percentages; (e) the starting date of the contract; (f) the term of the contract, expressed as an ending date; (f) the amount of the consideration in Australian dollars; and (g) the amount applicable to the current budget year in Australian dollars; and (h) whether or not there is an industry development requirement and, if so, details of the industry development requirement (in scope and out of scope).

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator’s question:

Details on relevant contracts have been provided by the Attorney-General’s Department and agencies within the portfolio and are set out in the attached spreadsheets:
## QUESTIONS ON NOTICE

<table>
<thead>
<tr>
<th>Contract Reference</th>
<th>Contractor Name</th>
<th>Contractor ABN</th>
<th>Contractor Domicile</th>
<th>Subject of Contract</th>
<th>Hardware %</th>
<th>Software %</th>
<th>Services %</th>
<th>Start Date</th>
<th>End Date</th>
<th>Contract Value</th>
<th>Payments</th>
<th>Industry Development Requirement</th>
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<td>Key People Personnel</td>
<td>65 009 128 741</td>
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<td>Data entry and archival services for Records &amp; Knowledge Management</td>
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### QUESTIONS ON NOTICE

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<th>Software %</th>
<th>Services %</th>
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<th>End Date</th>
<th>Contract Value</th>
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## QUESTIONS ON NOTICE

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*This table includes Australian Bureau of Criminal Intelligence (ABCI) contracts.
The ABCI was superseded by the Australian Crime Commission on 1 January 2003

# The Motorola ‘contract’ is comprised of a number of smaller contracts across each of the agency’s offices.
## QUESTIONS ON NOTICE

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## QUESTIONS ON NOTICE

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Notes

1 Industry Development

1.1 Partnerships for Development

The Contractor will retain its status as an Endorsed Supplier and a participant in the Australian Federal Government’s Partnership for Development (PfD) Program. The Contractor’s Partnership for Development program initiatives concentrate on achieving two prerequisites in parallel:

a. First, local companies must be given the opportunity to build a critical mass of business revenue to sustain research and development (R&D) expenditures which will generate competitive products and services.

b. Second, those companies which show early promise in developing such competitive products and services need access channels to enable them to compete in global markets without having to set up expensive local infrastructure across diverse global market places.

The Contractor will use these initiatives as the basis for its industry development initiatives for the CISA.

1.2 Specific Industry Development Activity

The Contractor, as prime, will be fully responsible and accountable for providing ACS with the required IT Services. The Contractor itself will directly deliver some IT Services to ACS. For the purposes of the CISA, it has also formed exclusive relationships with two local companies - Select Computer Technologies and JNA Network Services – who have been allocated specific

a. a panel of suppliers for other services comprising members who will be invited to bid for the supply and delivery of particular IT products and services under the Agreement.

b. a panel of suppliers for other services comprising members who will be invited to bid for the supply and delivery of particular IT products and services under the Agreement.

1.3 Sub Contracts

The Australian Customs Service does not maintain a register of sub-contractors and therefore the information is not readily available. This information may be able to be provided but would require Customs to approach each contractor shown on the list. Given the complexity and time required, this has not been undertaken at this time.
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QUESTIONS ON NOTICE
### QUESTIONS ON NOTICE

**Contract Reference** | **Contractor Name** | **Contractor ABN** | **Contractor Domicile** | **Subject of Contract** | **Hardware %** | **Software %** | **Services %** | **Start Date** | **End Date** | **Contract Value** | **Payments 1 July 2002 to 10 Dec 2002** | **Industry Development Requirement**
--- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | ---
2002/1245 | Mastech P/L | 20080574616 | USA | Applications Development | 100 | 8/04/02 | 30/04/03 | $115,400 | $49,264 | N/A
201/3371 | MAVMAW P/L | 16097370780 | Aust | Manage CrimTrac telecommunication installation projects | 100 | 28/08/01 | 30/06/03 | $180,000 | $60,744 | N/A
1999/2507 | Nicole Thompson Consulting | 50087732732 | Aust | Software Acceptance | 100 | 2/01/01 | 30/06/03 | $217,300 | $35,273 | N/A
99/0436 | Opal Hicomms P/L | 45085462353 | Aust | Voice Services | 100 | 4/01/02 | 31/12/02 | $511,300 | $39,152 | N/A
98/9063 | OT Talka P/L | 17084776074 | Aust | Voice Services | 100 | 15/12/98 | 31/12/04 | $455,500 | $51,194 | N/A
2000/5267 | Paxus Aust P/L - EXPIRED | 35004696816 | Aust | Provision of Services | 100 | 6/11/00 | 4/08/02 | $218,400 | $45,617 | N/A
2001/2319 | Paxus Aust P/L - EXPIRED | 35004696816 | Aust | Business Analysis PROMIS | 100 | 3/03/01 | 31/07/02 | $206,400 | $27,273 | N/A
1999/2296 | Paxus Aust P/L | 35004696816 | Aust | Applications Development | 100 | 6/08/01 | 1/06/03 | $257,900 | $51,546 | N/A
2002/1244 | Paxus Aust P/L | 35004696816 | Aust | Applications Development | 100 | 25/03/02 | 31/03/03 | $103,118 | $52,957 | N/A
2002/805 | Paxus Aust P/L | 35004696816 | Aust | VB Programmer | 100 | 25/03/02 | 31/03/03 | $156,700 | $61,245 | N/A
2001/2321 | Paxus Aust P/L | 35004696816 | Aust | Support Oracle, Promis & Oasis | 100 | 28/05/01 | 28/05/03 | $374,300 | N/A
2001/1103 | Paxus Australia - EXPIRED | 35004696816 | Aust | TRAC System | 100 | 29/01/01 | 31/03/02 | $45,240 | $0 | N/A
99/3352 | Paxus People P/L | 35004696816 | Aust | Host Services | 100 | 10/01/01 | 30/06/03 | $589,800 | $79,124 | N/A
2001/1865 | Pegasus IT Consulting | 97086726598 | Aust | Visual Basic & | 100 | 13/03/01 | 30/11/02 | $217,976 | $64,772 | N/A

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*Senate* | *20447*
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Monday, 1 March 2004
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QUESTIONS ON NOTICE
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**Notes:**

Whilst the AFP requires that contractors may sub-contract part of their services, prior written approval must first be obtained from the AFP. No information is held about sub-contractors in the AFP’s contract register, nor is the AFP a party to the subcontract and therefore has no formal role in administering or managing the subcontract. Notwithstanding this the AFP has not been able to identify any subcontracts in relation to the contracts listed above.

**ALRC**

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## QUESTIONS ON NOTICE

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## QUESTIONS ON NOTICE

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QUESTIONS ON NOTICE
### Federal Court

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**QUESTIONS ON NOTICE**

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<td>Maintenance and support services for Groupwise, Zenworks Netware software.</td>
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<td>GITC Contract dated 9 Aug 01</td>
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<td>65 003 371 239</td>
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<td>Specialist IT services in support of detailed specification and planning for the Court's new Standard Operating Environment - SOE Stage 1.</td>
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<td>TS/Contract/ 0437</td>
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<td>23 080 372 998</td>
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<td>Hosting services comprising management and maintenance of a secure Internet Gateway “Firewall” environment and secure webmail access.</td>
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### QUESTIONS ON NOTICE

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<td>Maintenance services for File Servers, Switches, Routers and Tape Back-Up Units. Remote management of Routers, Switches and Servers.</td>
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<td>Synercon Management Consulting</td>
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<td>Wizard Information Services Pty Ltd</td>
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### QUESTIONS ON NOTICE

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Notes
2. Contract Value is for 2002-2003 for contracts not fully performed at 10/12/02
3. Payment for Microsoft licensing is provided for by a payment to Attorney-General’s Department
4. Some contract dates are approximate.
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**OFLC**

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<td>Contract dated 30 October 2001</td>
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<td>95</td>
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**QUESTIONS ON NOTICE**
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<td>IBM Global Services Australia Ltd</td>
<td>IBM Global Services Australia Ltd</td>
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<td>Acquisition and Installation of Firewall</td>
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<td>0</td>
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<td>20 002 053 545</td>
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<td>Acquisition and Installation of Servers and Win2K Migration</td>
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**HIH Royal Commission**

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<tr>
<td>E.Law Australia Pty Ltd</td>
<td>E.Law Australia Pty Ltd</td>
<td>83 086 223 823</td>
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<td>Information Technology and communications technology support services</td>
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### BCI Royal Commission

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<th>Software %</th>
<th>Services %</th>
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<th>End Date</th>
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<th>Payments 1 July 2002 to 10 Dec 2002</th>
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<td>IT &amp; Communications Support for the Royal Commission</td>
<td>30</td>
<td>5</td>
<td>65</td>
<td>Sep-01</td>
<td>Mar-03</td>
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<td>IBM Global Services Australia LTD</td>
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<td>Provide infrastructure and IT support (Additional Services within existing DOFA contract)</td>
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<td>77</td>
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<td>$317,097.00</td>
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**Notes**

Information on sub-contracts entered into by the BCI Royal Commission is not available.

### Office of Parliamentary Counsel

<table>
<thead>
<tr>
<th>Contract Reference</th>
<th>Contractor Name</th>
<th>Contractor ABN</th>
<th>Contractor Domicile</th>
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**NOTE:** Contract was completed during the 2001-02 financial year and the payment was made during the 2001-02 financial year.
### HREOC

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<thead>
<tr>
<th>Contract Reference</th>
<th>Contractor Name</th>
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Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 19 March 2003:

With reference to the Minister’s statement, dated 31 October 2001, concerning support for the bio-fuels industry:

(1) Did the statement announce a $50 million capital subsidy for new or expanded bio-fuel capacity.

(2) Did the Minister consult with any bio-fuel producers, or bio-fuel industry organisations, prior to his announcement; if so, which producers or organisations did he consult.

(3) When was the capital subsidy introduced.

(4) What department is administering this subsidy.

(5) Under which program is the subsidy funded.

(6) What rules apply to subsidies under the scheme.

(7) Can a copy of an application form and the scheme rules be provided; if not, why not.

(8) What subsidy expenditure was budgeted for in the following financial years: (a) 2001-02; and (b) 2002-03.

(9) How much has been expended on the subsidy, by year, in each of the following financial years: (a) 2001-02; and (b) 2002-03 to date.

(10) How much is budgeted, by year, in the period 2003-04 to 2006-07.

(11) What was the basis of the Minister’s assertion that the subsidy would generate ‘at least five new ethanol distilleries’ and ‘around 2 300 construction jobs and 1 100 permanent jobs, mostly in rural areas’.

(12) (a) What companies have received the capital subsidy; and (b) what subsidy amount has each company received.

(13) How many new ethanol distilleries have been constructed.

(14) Where have these distilleries been constructed.

(15) Which existing distilleries have been expanded.

(16) How many of the promised 2 300 construction jobs have been generated.

(17) How many of the promised 1 100 permanent jobs have been generated.

(18) What percentage of these permanent jobs has been generated in rural areas.

(19) When did construction of each new distillery, or distillery expansion, commence.

(20) How many construction jobs have been created in respect to each distillery construction project.

(21) When did construction of each new distillery, or expanded distillery, conclude.

(22) How many permanent jobs, full-time and part-time, have been created in respect to each new or expanded distillery project.

(23) How much additional ethanol has each new or expanded ethanol distillery produced.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) Yes.

(2) The Minister is in regular contact with industries that fall within his portfolio responsibilities. A roundtable to discuss barriers to the development of an ethanol industry was held on 28 May 2001.
Discussion included some of the issues covered by the 31 October 2001 announcement. Attendees at the discussion are listed at Attachment A (copies available from Senate Table Office).

(3) The Government announced on 25 July 2003 that it would provide $37 million for biofuels capital subsidies. Applications were called for on 25 October 2003 and closed on 16 January 2004.

(4) The Department of Industry, Tourism and Resources.

(5) The Biofuels Capital Grants Program.

(6) The rules are part of the Guidelines which are at Attachment B.

(7) The information which applicants are required to provide in their applications and information on the scheme rules are included in the Guidelines at Attachment B (copies available from Senate Table Office).

(8) None.

(9) Nothing.


(11) The basis for using 5 distilleries was that there would be $50 million available, with a maximum grant of $10 million, thus allowing a minimum of 5 plants to be developed. The employment figures were taken from ‘The Economic Impact of the Sarina Ethanol Plant – an Indicator of Potential Ethanol Production Linked to the Sugar Industry’, Report to the Australian Biofuels Association by the Centre for Agricultural and Regional Economics (CARE), August 2001, and multiplied for 5 plants to give the final employment figures.

(12) See 3.

(13) See 3.

(14) See 3.

(15) See 3.

(16) See 3.

(17) See 3.

(18) See 3.

(19) See 3.

(20) See 3.

(21) See 3.

(22) See 3.

(23) See 3.

Social Welfare: Carer Allowance

(Question No. 1640)

Senator Brown asked the Minister for Family and Community Services, upon notice, on 18 July 2003:

With reference to the Carer’s Allowance:

(1) What adjustment did the Commonwealth make to the Carer’s Allowance in the 2003-04 Budget.

(2) What assessment was made of the impact of the goods and services tax in eroding the real value of the Carer’s Allowance.

(3) What assessment has the Commonwealth conducted of the financial cost savings to government of the provision of unpaid community care.
(4) What assessment did the Commonwealth conduct with regard to the adequacy of the Carer’s Allowance.

Senator Patterson—The answer to the honourable senator’s question is as follows:

(1) No adjustment was made to Carer Allowance in the 2003-04 Budget. Carer Allowance is adjusted annually on 1 January to reflect movements in the Consumer Price Index. On 1 January 2003 Carer Allowance was increased from $85.30 per fortnight to $87.70 per fortnight.

(2) Carer Allowance was increased from $76.40 to $79.50 with effect from 1 July 2000. This was an up-front 4 per cent increase to compensate for the impact of the Goods and Services Tax.

(3) No assessment has been undertaken by the Family and Community Services portfolio.

(4) Carer Allowance is free of income and assets tests. It is not treated as income for the purpose of taxation and can be paid in addition to a social security income support payment. Carer Allowance increased in value by 16 per cent from 1 July 1999 to 1 January 2003. Carer Allowance is not meant to be a payment to meet all the costs associated with caring.

Immigration: Detainees
(Question No. 1687)

Senator Brown asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 1 August 2003:

(1) What is the policy of Australasian Correctional Management (ACM) regarding the care of children who are left unattended when their parent is, or parents are, placed in isolation units for lengthy periods.

(2) Are any ACM staff trained professional child care workers.

(3) Can the Minister clarify why one detainee was locked into an isolation cell that had to be drilled open, as shown on the ABC Four Corners program during May 2003.

(4) Why have all the Woomera DC 2000 and most of the Villawood DC 2001 medical files of the detainee Mohammad Hassan Sabbagh, who suffered a mental breakdown and has been held in detention since December 1999, disappeared.

(5) (a) What is the ratio of staff to detainees in all centres; and (b) is this ratio uniform.

(6) What does the Minister propose to do with the long-term detainees who cannot be returned to their country of birth, for example, stateless Kuwaitis.

(7) Given that the Government has been unable to deport detainee Hassan Sabbagh, who has been held for more than three and a half years, to Iraq, why can he not be released into the care of willing community support groups, such as the Jesuit Refugee Services or the Uniting Church, rather than burdening the taxpayer unnecessarily.

Senator Vanstone—The answer to the honourable senator’s question is as follows:

(1) There may be instances where a person is placed under observation in a separate management unit on a temporary basis due to management and behavioural issues or concerns about the safety of the detainee or others in the centre. Other circumstances in which an accompanying parent may be detained away from his or her child include hospitalisation of the parent or where the parent has requested such respite and this is in the best interests of the child.

Where one accompanying parent is separated from their child and another accompanying parent remains with the child, additional support services are provided by staff to the remaining parent.

If both parents are not available to care for their child, for short periods, a care plan is developed for the child to maintain the health and welfare of the child. Staff involved in meeting regularly to develop and review the plan include psychologists, counsellors, general and psychiatric nurses and
detention officers. If the child attends school, this would normally continue during such periods. Also, another detainee may take on a parental role by agreement, such as another parent who is a friend of the detainee. On occasions, professional carers have been specifically engaged to provide 24-hour care in these circumstances.

Where a single parent or both parents remain unable to care for their child or children for lengthy periods, the Department of Immigration and Multicultural and Indigenous Affairs and Australasian Correctional Management Pty Ltd (ACM) will meet with, and engage the services of, the relevant State or Territory child welfare agency. These meetings are designed to maintain the ongoing wellbeing of the child or children. Discussions include exploring possible alternative placement arrangements for the child or children.

(2) Yes.

(3) At no time were any detainees accommodated in any unit where a power tool was required to release the door. It is recalled by some officers involved at the time that some empty rooms had their doors drilled shut for security reasons, such as to avoid detainees vandalising them. However, this was only done when they were empty. My Department is not aware of any occasions when detainees were contained in their accommodation in this manner and ACM has refuted this allegation.

(4) Mr Sabbagh’s medical file is complete and intact and contains all documented information since he first arrived in Australia and was placed in detention.

(5) (a) The Detention Agreements that govern the provision of immigration detention services in Australia consist of a General Agreement, the Occupational Licence Agreement and the Detention Services Contract as well as a number of supplementary agreements that cover centres not commissioned at the time of the signing of the original agreements. The Detention Agreements between the Commonwealth and Australasian Correctional Services Pty Ltd (ACS) do not stipulate staffing ratios. Clause 3.6 of the Detention Services Contract states:

“The Contractor shall ensure the staffing of the Detention Facilities is at all times adequate to deliver the Detention Services in accordance with the requirements of the Immigration Detention Standards and the General Agreement.”

As the contract is an outputs based contract the Department does not keep records of the inputs of the Services Provider. The Contractor’s performance is measured against the outputs stipulated in the Immigration Detention Standards and the General Agreement.

(b) As noted above the Detention Agreements between the Commonwealth and ACS are outputs based. The Department does not keep records of the staff ratios or other inputs of the Services Provider.

(6) Where detainees have exhausted all avenues to remain in Australia and are required to be removed under the Migration Act 1958, my Department will assess each person according to their individual circumstances. There is no requirement that an unlawful non-citizen be returned to their country of birth.

In the case of persons formerly resident in Kuwait for whom readmission may be denied the Department will assess each case according to the relevant circumstances and seek to establish viable removal options. These options are generally identified and achieved more quickly with the cooperation of the unlawful non-citizen.

Former residents of Kuwait have been able to secure entry to third countries and the Department has provided appropriate assistance in this regard. In 2002-03, the Department removed two Kuwaiti Bedoons. In the previous year, seven departed Australia. This is a small caseload and these figures are a significant portion of them.
It is possible that some or all of the Kuwaiti Bedoons in detention may, due to their ancestry, be eligible to return to Iraq.

(7) My Department takes the medical health of detainees extremely seriously. The medical condition of all detainees is taken into consideration prior to any decision relating to the most appropriate place of detention. A detainee with a serious medical complaint that cannot be adequately cared for in a detention centre can be moved to an alternative place of detention, where this is appropriate.

Due to privacy concerns I cannot comment on the specifics of individual cases. However I can advise that detainees in such circumstances receive ongoing care by the Villawood Immigration Detention Centre’s mental health team, consisting of a doctor, a nurse, counsellors, a psychiatrist and a psychologist. Additionally such detainees have full access to major medical services in the Sydney area.

The Department contracts its services provider, ACM, to provide all detainees with appropriate levels of care including the provision of medical care in detention facilities. Where ACM advises that it is unable to appropriately care for a detainee within the detention facility the Department responds accordingly.

Aboriginal Tent Embassy
(Question Nos 1769 and 1770)

Senator Brown asked the Minister for Local Government, Territories and Roads, upon notice, on 12 August 2003:

(1) (a) How many cameras watch over the Aboriginal Tent Embassy and surrounding area; and (b) how long have these cameras been in place.

(2) (a) Were any persons identified as responsible for the fire bombing of the Aboriginal Tent Embassy on 14 June 2003; and (b) did the camera footage show people in the vicinity who may have been responsible.

(3) Can the original unedited video of 14 June 2003 (24 hours) be available for viewing by Senator Brown’s office.

Senator Ian Campbell—The answer to the honourable senator’s question is as follows:

(1) (a) No Old Parliament House (OPH) cameras monitor the Aboriginal Tent Embassy and surrounding area. Any appearance on OPH security systems in close proximity to the Old Parliament House building is incidental. The NCA does not have any security cameras in the area in question.

(b) The closed circuit television (CCTV) system at OPH has been in operation since 1998

(2) The OPH security system recordings for the period prior to the fire’s occurrence do not show any persons in the vicinity of the Tent Embassy site, to the extent that this area is covered by the system.

(3) No. Matters pertaining to the details of OPH’s building security systems are considered inappropriate for public release, or examination other than in the course of Police investigations. Any access to security system data (including the video footage requested) by outside parties may prejudice the effectiveness of the building’s security system.

Immigration: Detainees
(Question No. 1806)

Senator Brown asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 20 August 2003:

In regard to the Port Hedland Detention Centre:
(1) Given that a large proportion of inmates has attempted suicide at least once, do guards carry knives at all times to cut down detainees who attempt to hang themselves.

(2) How many attempted suicides have there been in Refugee/Asylum seeker detention centres in the past 2 years.

(3) How does this figure compare to the Australian average per head of population.

**Senator Vanstone**—The answer to the honourable senator’s question is as follows:

(1) It is not correct to say that a large proportion of detainees has attempted suicide. Shift Supervisors on day shifts carry a cut-down knife and all staff on night shifts carry a cut-down knife.

(2) Incidents of attempted or actual self-harm are recorded according to the nature of the harm involved, rather than whether or not they may be directed towards suicide. The following table provides the number of incidents of attempted or actual self-harm:

<table>
<thead>
<tr>
<th>Location</th>
<th>2001-02</th>
<th>2002-03</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of Incidents</td>
<td>Detainee Days</td>
</tr>
<tr>
<td>Baxter IDF</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Christmas Island IRPC</td>
<td>3</td>
<td>46,231</td>
</tr>
<tr>
<td>Cocos Keeling IRPC</td>
<td>4</td>
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<tr>
<td>Curtin IRPC</td>
<td>108</td>
<td>200,289</td>
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<tr>
<td>Manlybong IDC</td>
<td>6</td>
<td>26,157</td>
</tr>
<tr>
<td>Perth IDC</td>
<td>19</td>
<td>10,776</td>
</tr>
<tr>
<td>Port Hedland IRPC</td>
<td>19</td>
<td>134,042</td>
</tr>
<tr>
<td>Villawood IDC</td>
<td>15</td>
<td>142,855</td>
</tr>
<tr>
<td>Woomera IRPC</td>
<td>252</td>
<td>288,244</td>
</tr>
<tr>
<td>Total</td>
<td>426</td>
<td>863,755</td>
</tr>
</tbody>
</table>

(3) This information is not held within the Department of Immigration and Multicultural and Indigenous Affairs.

**Health and Ageing: Dementia**

*(Question No. 1941)*

**Senator Brown** asked the Minister representing the Minister for Health and Ageing, upon notice, on 10 September 2003:

(1) How has the Government responded to Alzheimer’s Australia’s call for dementia to be made a national health priority.

(2) What are the age and demographic trends for dementia in Australia.

(3) What financial, respite or other government assistance is available to people caring for dementia sufferers at home.

**Senator Ian Campbell**—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

(1) The decision to approve a disease or condition as a National Health Priority is based on advice from the National Health Priority Action Council. This Council is chaired by the Chief Medical Officer and includes representatives from Australian and State and Territory Governments, the community and the National Aboriginal Community-Controlled Health Organisation.
The issue of dementia as a National Health Priority was considered at the Australian Health Ministers’ Conference on 28 November 2003. Ministers recognised the importance of dementia as a significant health issue and asked the Australian Health Ministers’ Advisory Council to progress the issue and report back in July 2004.

(2) Currently, around 170,000 Australians are estimated to be living with dementia and dementia-like conditions.

Projected estimates, with the rise in Australia’s aged population, could increase to around 265,000 in 2020.

(3) The Australian Government provides over $2.3 billion annually to programs that support people with dementia and their carers, including residential care, home and community care, community aged care packages, targeted dementia services, pharmaceuticals and research in dementia and Alzheimer’s Disease.

The Australian Government has also donated $250,000 to the recently launched Hazel Hawke Alzheimer’s Research and Care Fund.

Fisheries: Illegal Operators
(Question No. 1973)

Senator O’Brien asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 10 September 2003:

(1) For each of the following financial years; 2000-01, 2001-02, and 2002-03: (a) how many suspected illegal fishing vessels in the Heard and McDonald Island (HIMI) region have been reported to Australian authorities; and (b) in each case: (i) what was the source of the report, and (ii) on what date was the report received.

(2) For each of the following financial years; 2000-01, 2002-02, and 2002-03: (a) how many suspected illegal fishing vessels in the HIMI region were reported to Australian authorities but not subsequently intercepted; and (b) in each case where a suspected illegal fishing vessel was identified but not intercepted, why was it not intercepted.

Senator Ian Macdonald—The answer to the honourable senator’s question is as follows:

(1) (a) No suspected illegal fishing vessels were reported in 2000-01 or 2001-02. In 2002-03 two vessels were reported by industry – the Strela and an unidentified vessel.

(b) (i) Australian industry reports; (ii) The Strela and the unidentified vessel were both reported on 27 June 2003.

(2) (a) No suspected illegal vessels were reported to Australian authorities in 2000-01 or 2001-02. Two vessels were reported that were not intercepted in 2002-03 by Australian authorities (the Strela and an unidentified vessel).

(b) The Government made an assessment in each case based on available patrol vessels and information about the vessel’s likely movements. The reports both indicated the vessels were outside the HIMI exclusive economic zone (EEZ) but inside Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) waters. Australia does not have the authority to patrol the high seas. However, diplomatic representations to Russia regarding the Strela were made. As the other reported vessel was not identified no representations were able to be made.

Fisheries: Aerial Surveillance
(Question No. 1987)

Senator O’Brien asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 10 September 2003:
With reference to the Minister’s meeting with the French Minister for Overseas Territories in Paris on 3 June 2003:

(1) Did the Minister discuss aerial surveillance of the French Kerguelen Island and Australia’s adjacent Heard and McDonald Islands as a means to combat illegal fishing during the meeting.

(2) Was agreement reached on aerial surveillance; if so, what are the details of the agreement; if not, what future negotiations are planned and when does the Minister expect agreement will be reached.

_Senator Ian Macdonald_—The answer to the honourable senator’s question is as follows:

(1) Yes.

(2) No, discussions are ongoing and it is expected they will continue indefinitely as implementation of the recently signed Treaty Between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime Areas Adjacent to the French Southern and Antarctic Territories (TAAF), Heard and the McDonald Islands proceeds and surveillance techniques evolve in response to illegal, unreported and unregulated fishing activity.

**Trade: Live Animal Exports**

(Question No. 2001)

_Senator O’Brien_ asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 10 September 2003:

With reference to allegations of misreporting of live export mortality numbers aboard a journey of the _Al-Khaleej_ in 2001, aired on _60 Minutes_ on 27 July 2003:

(1) (a) When did the Minister, his office and his department first become aware of allegations of misreporting of mortality numbers relating to this shipment; and (b) in each case, what was the source of this information.

(2) (a) When did the Minister, his office and his department first become aware that Livecorp has instigated an independent investigation of the allegations; and (b) in each case, what was the source of the information.

(3) (a) When did the Livecorp investigation commence and what are its terms of reference; and (b) what was the source of this information.

(4) If applicable: (a) when did the Livecorp investigation conclude; (b) when did the Minister receive the report; (c) what is the outcome of the investigation; (d) can a copy of the investigation report be provided; and (e) what consequential action has Livecorp and/or the Minister taken.

(5) When did the Minister direct the Australian Quarantine Inspection Service (AQIS) Compliance Unit to undertake an inquiry into the allegations concerning the _Al-Khaleej_.

(6) (a) What terms of reference did the Minister establish for the inquiry; and (b) when were these terms of reference established.

(7) When did the inquiry commence.

(8) If applicable: (a) when did the inquiry conclude; (b) what findings and recommendations did it make; and (c) what consequential action has the Minister taken.

(9) If the inquiry has concluded, can a copy of the report be provided; if not, why not.

(10) If the inquiry has not concluded, when does the Minister expect it will conclude and will a copy of the inquiry report be made available; if not, why not.

(11) In respect to the journey of the _Al-Khaleej_ subject to inquiry: (a) can the following information be provided: (i) date of departure, (ii) export licence holder, (iii) loading port/s, (iii) destination port/s, (iv) voyage length, (v) number and type of animals exported, (vi) reported mortality number, (vii) reported mortality rate, and (viii) reported explanation for mortality; (b) what is the source of this
information; and (c) when was the mortality data reported to the Australian Maritime Safety
Authority (AMSA) and/or AQIS.

(12) What mortality number and rate was initially reported to: (a) Saudi authorities; (b) the export
licence holder; and (c) Livecorp, and, in each case, when were these reports made and when did the
department become aware of the report figures.

(13) What, if any, revised mortality data was reported to: (a) Saudi authorities; (b) the export licence
holder and (c) Livecorp and in each case, when were these reports made and on what date did the
department become aware of the report figures.

(14) What was the actual mortality number and rate aboard the Al-Khaleej; and, if different from the
reported mortality data, what is the explanation for the difference.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has pro-
vided the following answer to the honourable senator’s question:

(1) (a) & (b) Livecorp, the industry based company responsible for administration of the industry’s
quality assurance program for export of livestock to Saudi Arabia, the Saudi Live Export
Preparation Program (SLEPP), advised the Department and the Minister’s Office on 27 June 2003
that the 60 Minutes program was preparing a report on allegations of misreporting of live export
mortality numbers in a consignment prepared under SLEPP.

(2) (a) & (b) Livecorp advised the Department on 2 July 2003 that it was initiating an investigation of
the allegations.

(3) (a) & (b) This information should be requested from Livecorp.

(4) (a) This information should be requested from Livecorp.

(b) Livecorp emailed a draft copy of its report to the Department on 24 July 2003. The
Department forwarded the report to the Minister’s Office on 25 July 2003.

(c) This information should be requested from Livecorp.

(d) This information should be requested from Livecorp.

(e) Information on actions taken by Livecorp should be requested from Livecorp. On 25 July
2003 the Minister requested the Department undertake an investigation into potential breaches of
the legislation.

(5) On 25 July 2003 the Minister requested the Department undertake an investigation into potential
breaches of the legislation.

(6) (a) This investigation was undertaken by AQIS’s Compliance and Investigation Program to
investigate the allegation of inaccurate mortality reporting made by Dr Tony Hill under the
Australian Meat and Live-stock Industry (Live Sheep and Goat Exports to Saudi Arabia) Order
2002.

(b) 25 July 2003.


(8) (a) The AQIS investigation concluded 9 September 2003.

(b) The investigation concluded that no offences appeared to have been committed against any
provision of Australian legislation. The report recommended legislation be amended to provide for
enhanced sanctions for breaches of SLEPP under the Australian Meat and Live-stock Industry
(Live Sheep and Goat exports to Saudi Arabia) Order 2002.

(c) The report into the allegations of inaccurate mortality reporting made by Dr Tony Hill under
the Australian Meat and Live-stock Industry (Live Sheep and Goat Exports to Saudi Arabia) Order

QUESTIONS ON NOTICE
2002 was referred for consideration to the Livestock Export Review, announced by the Minister on 10 October 2003.

(9) The content of the report identifies individuals and entities and public release of the report would impinge upon their right to privacy.

(10) Not applicable.

(11) (a) (i) 17 August 2001. (ii) International Livestock Exports Pty Ltd. (iii) Loading port was Fremantle, Australia. Destination port was Dammam, Saudi Arabia. (iv) 14 days. (v) 36,534 sheep. (vi) 606 mortalities were reported for the period of time from departure to completion of unloading at Dammam, Saudi Arabia. (vii) 1.66% (viii) Salmonellosis and poor ventilation.

(b) For (i) – (vii) Australian Maritime Safety Authority (AMSA) and for (viii) Report of the veterinarian on board the ship.

(c) AQIS is unable to provide the date AMSA, the agency responsible for collecting data on export mortalities in livestock export consignments, received this information. Livecorp provided AQIS with the Al Khaleej voyage report on 1 July 2003.

(12) (a) Dr Tony Hill advised the AQIS investigator that on 5 September 2001 105 or 0.3% mortalities were advised to the Saudi authorities as the total mortalities from time of departure to time of arrival at Dammam, Saudi Arabia.

(b) This information should be requested from the export licence holder.

(c) This information should be requested from Livecorp. The Department was provided by Livecorp with the figures in (a) and (b) on 24 July 2003 and (c) Livecorp faxed a copy of the original shipboard veterinary report on 1 July 2003.

(13) (a) AQIS is unaware of any revised mortality data reports made to the Saudi authorities.

(b) This information should be requested from the export licence holder.

(c) This information should be requested from Livecorp.

(14) The voyage mortality number and rate, as required to be reported under the Navigations Act 1912, was reported as 606 and 1.66% respectively.

Romania: Mining

(Question No. 2148)

Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 19 September 2003:

With reference to the answer to paragraph (2)(b) of question on notice no. 720 (Senate Hansard, 5 February 2003, p. 8647) relating to meetings organised by Austrade on behalf of Esmeralda Exploration, which is involved in the Aurul SA joint venture in Romania:

(1) On how many occasions did Austrade assist with arranging meetings with Romanian government officials.

(2) When were each of these meetings.

(3) Who were each of these meetings with.

(4) What was the purpose of each of these meetings.

Senator Hill—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:

(1) Five occasions.

(2) May/June 1993

Oct/Nov 1993
July/Aug 1994
December 1994
September 1995

(3) May/June 1993 - Deputy Director General of the Treasury Department of The National Bank of Romania - Mr Ozarchievici
Oct/Nov 1993 - Adviser to the Minister for Finance, Mr Petrisor Constantinescu
July/Aug 1994 - National Bank, Mr Mugur Isarescu.
September 1995 - Secretary General of the Government of Romania – Mr Viorel Hrebenciuc.

(4) In accordance with section 94 (3) of the Australian Trade Commission Act, please find details pertaining to the Question under Notice, which, in accordance with section 94 (6) of the Act should be treated as confidential
May/June 1993 – To discuss Romanian legislation relating to the trading of precious metals.
Oct/Nov 1993 - To discuss Ministry requirements for a joint venture arrangements with a foreign partner.
July/Aug 1994 – An Austrade officer did not attend this meeting but it is understood the meeting was to seek advice on Romanian legislation relating to precious metals and to discuss purchase of gold bullion.
December 1994 - An Austrade officer did not attend this meeting but it is understood the meeting was to discuss the process for signing (by the ministries involved) the Draft text of the Government Resolution to allow the Romanian State Mining company to enter into a joint venture arrangement.
September 1995 – To seek a status report on an approval of the Government Resolution.

Romania: Mining
(Question No. 2149)

Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 19 September 2003:

With reference to the answer to question on notice no. 720 (Senate Hansard, 5 February 2003, p. 8647) relating to meetings organised by Austrade on behalf of Esmeralda Exploration, which is involved in the Aurul SA joint venture in Romania:

(1) When did Austrade first become aware of what was referred to in the Hungarian media as the ‘Kiraly affair’.

(2) What is the Austrade understanding of what caused the controversy over the charging of Kiraly.

(3) Did Austrade or other embassy officials in Romania or Hungary make representations to Romanian or Hungarian Government officials in relation to the ‘Kiraly affair’.

Senator Hill—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:

(1) Austrade first became aware of this case of alleged industrial espionage through the general media around May/June 1995.

(2) It is Austrade’s understanding that Corneliu Vadim Tudor, leader of the Great Romanian Party, allegedly caused controversy in an interview/or an article written by himself. It was alleged that Mr Kiraly (Romanian geologist working with the national institute) had removed Top Secret geological maps from the National Geological Institute and he was accused of selling these maps to
a number of foreign mining companies. Two of the newspapers of the time speculated that some of these maps were given to Esmeralda.

(3) No.

**Attorney-General’s: Legal Services**  
(Question No. 2204)

**Senator Ludwig** asked the Minister representing the Attorney-General, upon notice, on 9 October 2003:

(1) (a) How often and when does the Office of Legal Services Coordination (OLSC) liaise with agencies in respect of monitoring and co-ordinating the delivery of legal services to the Commonwealth; and (b) what promotional activity does the OLSC undertake in respect of making departments aware of Legal Services Directions (LSDs).

(2) Does the department use the panel system for outsourcing legal work; if so, (a) who is on the panel; and (b) how long have they been on the panel.

(3) Does the department retain external legal services providers to develop legislative or policy proposals; if so: (a) which providers; and (b) which proposals.

(4) (a) Which external legal services providers undertook commercial drafting work on behalf of the department in each of the past 4 years; and (b) how much did these services cost.

(5) In relation to the OLSC: (a) how many staff are employed; and (b) can a breakdown be provided of full-time and part-time staff and their level of seniority.

(6) In relation to the work of the OLSC: (a) how many complaints were received, and how many investigations of the branch were conducted in the past 12 months; and (b) what were the results of those investigations.

(7) Can a copy be provided of the contract or contracts which the department uses for outsourcing legal services, in respect of the top five firms by cost.

(8) In relation to legal service providers retained by the department, how are these providers made aware of the requirements of the LSDs.

(9) Does the OLSC promote the use of alternative dispute resolution; if so, how; if not, why not.

(10) In relation to the work of the OLSC, can details be provided about: (a) the number of training seminars provided for agencies, in respect of its work over the past 4 years; and (b) the nature and duration of the seminars.

(11) When was the report prepared by Ms Sue Tongue provided to the Minister’s office.

**Senator Ellison**—The Attorney-General has provided the following answer to the honourable senator’s question:

(1) (a) OLSC liaises with agencies on a continuing basis, seeking information and providing guidance and assistance in response to agency questions, and as issues arise.

(b) OLSC responds to invitations from agencies and firms to participate in training seminars and information sessions. OLSC also maintains a website that makes available material such as the Compliance Strategy, Model Contract Clauses and the LSDs themselves, as well as other policies and guidelines. Recently, OLSC has begun circulating an information bulletin. See also the answer to Question (10) below.

(2) The Department does not use the panel system for outsourcing legal work.

(3) The Department used AGS on work associated with the broad issues of critical infrastructure protection and the protection of national information infrastructure. This included the establishment of the Trusted Information Sharing Network for Critical Infrastructure Protection, and the
establishment of the AusCERT National Information Technology Security Alert and Reporting Scheme.

The Department frequently uses AGS for other assistance with the development of legislative and policy proposals; however, a more detailed answer to this question would require a major reallocation of departmental resources.

In January 2003, the Department engaged Sparke Helmore (Canberra) to conduct an independent probity audit on the Department’s tendering process for part of the digital agenda review.

On 1 April 2003, the Department contracted Phillips Fox to conduct research and analysis (including economic analysis) and report on the impact of the amendments made by the Copyright Amendment (Digital Agenda) Act 2000, and related reforms. The focus of this work is not the provision of legal services, but rather economic and technological analysis of the reforms. The report that Phillips Fox will provide will contribute to the policy development process.

(4) (a) The Department is not aware of any legislative drafting work having been conducted by external legal service providers on behalf of the department over the past four years. Both AGS and external legal service providers would have provided extensive assistance on the drafting of contracts and other related commercial drafting work. However it is not practical to ascertain details of such assistance without a major reallocation of departmental resources.

(b) It is not practical to ascertain details of such assistance without a major reallocation of departmental resources.

(5) (a) Thirteen FTE staff are involved in OLSC work. The range of this work can be seen at OLSC’s website, at http://www.ag.gov.au/www.legalservicesHome.nsf.

(b) A table setting out OLSC staffing is attached (Attachment A).

(6) From 9 October 2002 to 9 October 2003, OLSC received six complaints relating to alleged non-compliance by the Commonwealth and its agencies of the obligation to act as a model litigant. The investigations have been finalised and no instances of non-compliance were identified.

In the same period, OLSC received seven complaints alleging non-compliance with the LSDs, other than model litigant breaches. All complaints have been investigated, but two of the investigations have not yet been finalised. In relation to completed investigations, OLSC determined that in all five cases, the LSDs had not been complied with, relating respectively to: undertaking tied work other than in accordance with paragraph 2 of the Directions; engagement of counsel in excess of an approved rate (Appendix D of the Directions) (two cases); objecting to the jurisdiction of a State Court other than in accordance with paragraph 4.6 of the Directions; and obtaining legal advice on legislation being administered by another department, other than in accordance with paragraph 10 of the Directions. Each complaint still being investigated relates to possible breaches of paragraph 2 (tied work).

(7) The Department has a Memorandum of Understanding (MOU) with AGS in relation to the provision of legal services. The current MOU covers the 2003-2004 financial year. The MOU contains some commercially confidential and sensitive information, and the Department and AGS are of the view that it would be inappropriate to provide for full publication of the MOU for this reason. The Department and AGS are willing to provide specific information which is not commercially confidential, as is done in relation to Question 8.

(8) The MOU draws the attention of AGS to the LSDs. The Department regularly engages with AGS about implementation of various aspects of the LSDs. AGS has advised the Department that it has significant systems and processes in place to ensure compliance with the LSDs.
(9) OLSC has a role in encouraging the use of alternative dispute resolution in the context of its role in relation to compliance with the LSDs generally. These require the Australian Government and its agencies to try to avoid litigation (for example, through using alternative dispute resolution) wherever possible. OLSC is currently undertaking a review of the LSDs. The review will consider whether there is any need to make more explicit the requirement that agencies should actively consider alternative dispute resolution as an option.

(10) Attachment B details seminars at which OLSC has spoken since 1999. In addition to those listed in the Attachment, numerous seminars were delivered during 2000-2001. However, detailed records of these were not retained.

(11) The report prepared by Ms Sue Tongue was provided to the former Attorney-General’s office on 9 July 2003.

ATTACHMENT B (OLSC SEMINARS)

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<th>Hosted By/Audience</th>
</tr>
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<td>15 April 1999</td>
<td>New market for legal services</td>
<td>Deacons Graham &amp; James/DGJ lawyers.</td>
</tr>
<tr>
<td>22 April 1999</td>
<td>The management of disputes involving the Commonwealth/Model Litigant</td>
<td>ALRC, ACCC and Ombudsman/Departmental and private sector lawyers.</td>
</tr>
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<td>18 May 1999</td>
<td>Implications of Judiciary Act 1999 and Legal Services Directions</td>
<td>Sparke Helmore/SH lawyers and government clients</td>
</tr>
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<td>2 June 1999</td>
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<td>Defence</td>
</tr>
<tr>
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<td>Barker Gosling</td>
</tr>
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<td>9 June 1999</td>
<td>New market for legal services</td>
<td>Dunhill Madden Butler/DMB lawyers and government clients.</td>
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<td>17 June 1999</td>
<td>Implications of Judiciary Act 1999 and Legal Services Directions</td>
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<td>18 June 1999</td>
<td>Role of OLSC and Judiciary Act Amendments</td>
<td>ACCC Heads of Commonwealth agency legal branches</td>
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<td>BLEC</td>
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<td>Commonwealth Litigation</td>
<td>Blake Dawson Waldron/AGS Centrelink Administrative Law Managers</td>
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<td>LSDs</td>
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<td>9 September 1999</td>
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<td>ACT Law Society/CLE Seminar</td>
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<td>22 September 1999</td>
<td>Legal Services Directions</td>
<td>PSMPC/Comnet ie senior representatives of Department’s corporate service areas.</td>
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<td>Legal Services Directions</td>
<td>AGS Sydney</td>
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<td>September 1999</td>
<td>Commonwealth Legal Services Market</td>
<td>ANU Legal Workshop</td>
</tr>
</tbody>
</table>
ATTACHMENT A

First Assistant Secretary: 0.5 FTE
Assistant Secretary: 1 FTE
Principal Legal Officers: 2.9 FTE
Executive Level 2: 1 FTE
Senior Legal Officers: 3 FTE
Executive Level 1: 2 FTE
Executive Assistants: 2.6 FTE

Agriculture, Fisheries and Forestry: Paper and Paper Products
(Question Nos 2254 and 2261)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry and the Minister for Fisheries, Forestry and Conservation, upon notice, on 14 October 2003:

For each of the financial years 2001-02 and 2002-03 can the following details be provided in relation to paper and paper products:

(1) How much has been spent by the department on these products.

QUESTIONS ON NOTICE
(2) From which countries of origin has the department sourced these products.
(3) From which companies has the department sourced these products.
(4) What was the percentage of the total of paper and paper products in value (in AUD) sourced by the department by country.
(5) What was the percentage of the total of paper and paper products in value (in AUD) sourced by the department by company.
(6) What steps has the department taken to ensure that paper and paper products sourced by the department from other countries comply with the ISO 14001 environmental management system standard.

Senator Ian Macdonald—The answer to the honourable senator’s question is as follows:

(1) 2001/02 - $325,937.
    2002/03 - $406,718.
(2) 2001/02 - Australia, Finland, Indonesia, Japan, United Kingdom.
    2002/03 - Australia, Finland, Indonesia, United Kingdom.
(3) 2001/02 –
    BHB Printing Pty Ltd; Boise Cascade; BUNZL Limited; Canberra Envelopes; Commonwealth Paper; Complete Office Supplies; Corporate Express; DANKA Australia Pty Ltd; Edwards Dunlop; Fuji Xerox; Highland Press; Industrial Stationers; Kimberley-Clark Australia; Kwik Copy; Moore Business Systems; National 1 Office Supply Solutions Pty Ltd; On Time Copy Centre; Paperhouse, Q Stores; RAM Paper and Office Supplies (SA) Pty Ltd; Scottish Pacific; SOS Specialty Office Supplies; Spicers Paper; Viking Office Products Pty Ltd.
    2002/03 –
    Aussie Print; AZTEC Office National; BHB Printing Pty Ltd; Boise Cascade; BUNZL Limited; Canberra Envelopes; Canon Australia; Corporate Express; DANKA Australia Pty Ltd; Edwards Dunlop; Fuji Xerox; GE Capital Finance; Highland Press; Kimberley-Clark Australia; Kwik Copy; Moore Business Systems; National 1 Office Supply Solutions Pty Ltd; On Time Copy Centre; RAM Paper and Office Supplies (SA) Pty Ltd; Scottish Pacific; Spicers Paper; Summit Invitation Shop; Ted’s Camera Stores; Viking Office Products Pty Ltd.
(4) 2001/02 –
    Australia - $255,502
    Indonesia - $33,246
    Finland - $19,197
    Japan - $14,309
    United Kingdom – $3,683
    2002/03 –
    Australia - $386,952
    Indonesia - $12,933
Finland - $4,352
United Kingdom - $2,481

(5) 2001/02 –
BHB Printing Pty Ltd - $3,684
Boise Cascade - $391
BUNZL Limited - $5,117
Canberra Envelopes - $17,308
Commonwealth Paper - $41,035
Complete Office Supplies - $65
Corporate Express - $39,960
DANKA Australia Pty Ltd - $20,698
Edwards Dunlop - $6,649
Fuji Xerox - $45,566
Highland Press - $1,630
Industrial Stationers - $456
Kimberley-Clark Australia - $63,167
Kwik Copy - $3,389
Moore Business Systems - $23,566
National 1 Office Supply Solutions Pty Ltd - $12,222
On Time Copy Centre - $424
Paperhouse - $1,108
Q Stores - $228
RAM Paper and Office Supplies (SA) Pty Ltd - $31,681
Scottish Pacific - $619
SOS Specialty Office Supplies - $1,988
Spicers Paper - $4,856
Viking Office Products Pty Ltd - $130

2002/03 –
Aussie Print - $813
AZTEC Office National - $203
BHB Printing Pty Ltd - $2,481
Boise Cascade - $3,986
BUNZL Limited - $4,149
Canberra Envelopes - $16,797
Canon Australia - $1,627
Corporate Express - $101,273
DANKA Australia Pty Ltd - $14,642
Edwards Dunlop - $20,864
Fuji Xerox - $42,705
(6) In October 2002 the Department of Agriculture, Fisheries and Forestry introduced a policy to use Australian made paper for its printing requirements which complies with the ISO Standard.

**Senator Bartlett** asked the Minister representing the Minister for Foreign Affairs, upon notice, on 28 October 2003:

(1) Can the Minister confirm that Australian Consular Officer Mr Brian Brook has been served a subpoena to appear as a witness against Mr Kirk Pinner, an Australian citizen who is currently being held in custody on a criminal charge in the United States of America (US).

(2) With reference to a letter, dated 4 September 2003, from the Australian Consulate-General in San Francisco to Mr Pinner, which states in part ‘we had been seeking to have Consular Officer Brian Brook exempted from subpoena, however the US Department of State has confirmed that this is not possible’: (a) what steps were taken by the Australian Consulate-General to have Mr Brook exempted from the subpoena; and (b) was any written request sent to the US Department of State, or any other US authority, to this effect.

(3) In seeking to have Mr Brook exempted from the subpoena, did the Australian Consulate-General raise with US Department of State or any other US authority, the obligations of the US under the Vienna Convention on Consular Relations;

(4) (a) If the issue of the obligations of the US under the Vienna Convention was raised, what was the response; and (b) does Australia accept that response.

(5) Did Australia at any time waive its rights under the Vienna Convention in respect of the testimony of Mr Brook; if so: (a) was this communicated to the US authorities in writing; (b) what were the reasons for the waiver on this occasion, given that the liberty of an Australian citizen who has not been convicted of any crime was at stake; and (c) why was such a waiver not communicated to Mr Pinner in the letter from the Consulate-General, dated 4 September 2003.

(6) If Australia did not waive its rights under the Vienna Convention, does it accept the claim by the US Department of State that it is nevertheless ‘not possible’ to exempt Mr Brook from the subpoena; if so, as the letter from the Consulate-General implies, on what basis does the Australian Government believe that the subpoena over-rides the obligations of the US under the Vienna Convention.
(7) Is there any formal or other arrangement between Australia and the US that takes precedence over the mutual obligations of each country under the Vienna Convention.

(8) If Mr Brook has not been issued a subpoena in relation to the criminal proceedings against Mr Pinner, will he be providing evidence for the prosecution despite the absence of any subpoena; if so, will this be of his own free will or on the instructions of the department.

(9) (a) Has the Australian Government provided any information, written or otherwise, to the US authorities in relation to Mr Pinner leaving the jurisdiction of the US while a criminal charge is pending against him; and (b) has the prosecution been provided with any information originating from the Australian Consulate in Los Angeles; if so, what reasons justified the provision of such information to US authorities, when there was no obligation to do so on account of the Vienna Convention.

(10) Can a list of the documents provided by the Australian Government to US authorities in relation to Mr Pinner, as well as any information that may have been conveyed verbally by Australian Government officials to US authorities, be provided.

(11) Does the Government have any concerns regarding the ability of Australian consulate staff to represent the interests of Australian citizens in the US if such staff can be obliged to testify against Australian citizens pursuant to subpoenas issued by US courts.

**Senator Hill**—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) to (8) The Vienna Convention on Consular Relations provides that consular employees who are permanently resident in the receiving State can be called to provide evidence in the courts of the receiving State. However, following correspondence between Australian and US authorities a subpoena has not been served on Mr Brian Brook.

(9) to (10) Questions relating to Mr Pinner’s extradition to the US should be addressed to the Minister for Justice and Customs.

(11) No.

**Attorney-General’s Department: Alternative Dispute Resolution**

(Question No. 2339)

**Senator Ludwig** asked the Minister representing the Attorney-General, upon notice, on 3 November 2003:

With reference to the recommendations of the Australian Law Reform Commission report ‘Managing Justice’, in which the Government stated, ‘We support ADR techniques – we are reviewing the use of ADR as part of the Government’s overall commitment to act as a model litigant’: (a) who is undertaking the review; (b) has the review commenced; if not, when will it commence; (c) what are the terms of reference for the review; and (d) when will a report of this review be released.

**Senator Ellison**—The Attorney-General has provided the following answer to the honourable senator’s question:

(a) The full statement from former Attorney-General Williams was as follows: ‘We support the use of ADR techniques by federal courts and tribunals. And we are reviewing options to strengthen the use of ADR as part of the Government’s overall commitment to act as a model litigant and avoid litigation wherever possible.’

The Office of Legal Services Coordination is currently reviewing the Legal Services Directions (the Directions). Appendix B of the Directions (Directions on the Commonwealth’s Obligations to Act as a Model Litigant) obliges departments and agencies of the Commonwealth to endeavour to ‘avoid litigation, wherever possible’. In practice, this means that Commonwealth departments and
agencies must endeavour to use ADR where it may avoid litigation. As part of this review, an
Issues Paper has been produced which it is envisaged will soon be released for public comment.
Appendix B of the Directions, including the obligation to take measures to avoid litigation, will be
examined as part of this process.

(b) The review referred to in (a) has commenced, and it is envisaged that an Issues Paper will soon be
released.

(c) The review does not have formal terms of reference.

(d) It is envisaged that the Issues Paper will be released for public comment shortly.

Attorney-General’s Department: Alternative Dispute Resolution
(Question No. 2347)

Senator Ludwig asked the Minister representing the Attorney-General, upon notice, on
3 November 2003:

(1) Does the Department use Alternative Dispute Resolution (ADR) in an effort to avoid litigation; if
not, why not; if so, are there specific guidelines for the Department to follow when using ADR.

(2) If the Department is not using ADR provisions, what process is used in cases that require
resolution.

(3) Has the Department been advised of any development of guidelines for the use of ADR.

(4) Does any of the legislation for which the Department has responsibility contain ADR procedures; if
so, (a) can each relevant provision be identified (eg. by statute name and section number); and (b)
are guidelines provided for the use of ADR provisions in these instances; if so, can a copy of the
guidelines be provided.

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator’s question:

(1) In accordance with the Directions on the Commonwealth’s Obligation to Act as a Model Litigant,
the Department uses Alternative Dispute Resolution (ADR) in an effort to avoid litigation
whenever it is appropriate to do so. For example, the scheme established under the Native Title Act
1993 is structured to ensure virtually all native title claims are subject to mediation procedures.
There are no guidelines.

(2) The approach adopted by the Department depends upon the nature of the dispute. For example,
disputes arising from extradition decisions and decisions regarding keeping people in prison are not
considered suitable for ADR and are resolved by litigation. Civil claims for compensation may be
settled by direct negotiation.

(3) See answer to question 1.

(4) Yes. The provisions are identified in Attachment A.

Attachment A
Legislation for which the department has responsibility which contains ADR procedures:
Administrative Appeals Tribunal Act 1975
• section 34 (conferences) and 34A (mediation)
• Guidelines available are as follows:
Family Law Act 1975

- Part 2 – Counselling organisations and mediation organisations
- Part 3 – Primary dispute resolution – Division 1 – Object and outline:
  Section 14 – Object of Part – The object of Part 3 is to encourage people to use primary dispute resolution mechanisms such as counselling, mediation, arbitration or other means of conciliation or reconciliation to resolve matters provided the mechanisms are appropriate in the circumstances and proper procedures are followed; and to ensure that people have access to counselling.
- Part 3 – Primary dispute resolution – Division 3 – Obligations to consider advising people about primary dispute resolution methods:
  Section 14F – Duty of courts – A court must consider whether or not to advise the parties to proceedings about the primary dispute resolution methods available
  Section 14G – Duty of legal practitioners – A legal practitioner must consider whether or not to advise a person considering instituting proceedings or parties to proceedings about the primary dispute resolution methods available
- Part 3 – Primary dispute resolution – Division 4 – Counselling:
  Section 15A – Request for assistance of a family and child counsellor – Federal Magistrates Court - a person who is a party to a marriage or a party to proceedings under the Family Law Act in the Federal Magistrates Court may ask a designated officer of the FMC for the assistance of a family or child counsellor
  Section 16A – Courts to direct or advise people to attend counselling
  Section 16B – Courts may advise people to attend counselling if it may improve their relationship etc
- Part 3 – Primary dispute resolution – Division 5 – Mediation and arbitration:
  Section 19A – Request for mediation – request made through a Family Court - Individuals can make a request through the Family Court for the help of a mediator in settling a dispute
  Section 19 AAA – Request for mediation – Federal Magistrates Court
  Section 19A – Request for mediation – where made direct to a family and child mediator – Individuals may request a family and child mediator to mediate a dispute
  Section 19B – Family Court may refer matters for mediation – the Family Court may with the consent of the parties to proceedings make an order referring matters in dispute in the proceedings for mediation by a court mediator
  Section 19BAA – Federal Magistrates Court may refer matters for mediation – The FMC may with the consent of the parties to proceedings make an order referring matters in dispute in the proceedings for mediation by a family and child mediator
  Section 19BA – Court to advise people to attend mediation – a court must advise the parties to seek the help of a family and child mediator if the court considers it may help the parties to a dispute to resolve that dispute
  Section 16D – Court may refer proceedings to arbitration – the court may make an order referring proceedings to an arbitrator for arbitration in accordance with the applicable Rules of Court
  Section 19E – Private arbitration – a court may on application by a party to the private arbitration of a dispute make such orders as the court thinks appropriate to facilitate the effective conduct of the arbitration
Section 19J – Advice about mediation and arbitration – the appropriate officer of the Family Court must on request by a party to a marriage or to proceedings advise the party about the mediation or arbitration facilities available in the court and the mediation services provided by approved mediation organisations

Family Law Regulations 1984

• Part 5 – Primary dispute resolution:
  Division 1 – Family and child counsellors
  Division 2 – Family and child mediators
  Division 2A – Arbitration
  Family Law Rules 1984

• Order 25A – Mediation

• Order 9 – Conduct of proceedings other than for principal relief – Division 2 – Directions hearing – Rule 2 – Scope of directions hearing

• Order 13 – Oral applications in pending proceedings – Rule 2 – Orders without written application
  Federal Court of Australia Act 1976

• Section 53A – Mediation and arbitration – subject to the Rules of Court, the Court may by order refer proceedings to a mediator or an arbitrator for mediation or arbitration in accordance with the Rules of Court

• Section 53AA – Power of arbitrator to refer question of law to the Court

• Section 59 – Rules of Court and regulations
  Federal Court of Australia Regulations 1978

• Regulation 2 – Filing fees etc
  Federal Court Rules

• Order 10 – Directions hearing - Rule 1(2)(a)(xx) – the court may make orders with respect to the use of assisted dispute resolution (including mediation) to assist in the conduct and resolution of all or part of the proceeding

• Order 72 – Mediation and Arbitration
  Federal Magistrates Act 1999

• Part 4 – Primary dispute resolution – Division 1 – General:
  Section 21 – Primary dispute resolution processes – includes counselling, mediation, arbitration, neutral evaluation, case appraisal and conciliation
  Section 22 – Federal Magistrates Court to consider whether to advise people to use primary dispute resolution processes
  Section 23 – Federal Magistrates Court to advise people to use primary dispute resolution processes
  Section 24 – Duty of legal practitioners to consider whether to advise people to use primary dispute resolution processes
  Section 25 – Duty of officers of the Federal Magistrates Court to advise people about primary dispute resolution processes
Section 26 Conciliation – The FMC may by order refer proceedings for conciliation in accordance with the Rules of Court

Section 27 – Referral of question of law – primary dispute resolution process (other than arbitration)

Section 28 – Rules of Court about primary dispute resolution processes

Section 29 – Regulations about primary dispute resolution processes

Section 30 – Rules of Court about costs of primary dispute resolution processes

Section 31 – Rules of Court about primary dispute resolution processes under the Family Law Act 1975

Section 32 – Consent orders

• Part 4 – Primary dispute resolution – Division 2 – Proceedings other than family law or child support proceedings

Section 34 Mediation – The FMC may by order refer proceedings to a mediator for mediation in accordance with the Rules of Court

Section 35 Arbitration – The FMC may by order refer proceedings to an arbitrator for arbitration in accordance with the Rules of Court

Section 36 – Power of arbitrator to refer question of law to the Federal Magistrates Court

Section 37 – Review of arbitration award on question of law etc

Section 38 – Arbitration awards

Federal Magistrates Regulations 2000

• Schedule 1 – Fees

Federal Magistrates Court Rules 2001

Chapter 2 – Family law and child support proceedings – Part 23 – Primary dispute resolution

Chapter 3 – Proceedings other than family law or child support – Part 27 – Primary dispute resolution

Information about mediation in the Federal Court of Australia is available on their internet site: http://www.fedcourt.gov.au/community_info/mediation/med_index.html


Information about primary dispute resolution in the Federal Magistrates Court is available on their internet site: http://www.fms.gov.au/

Human Rights and Equal Opportunity Commission Act 1986

The functions of the Human Rights and Equal Opportunity Commission (the Commission) include that it inquire into, and attempt to conciliate, complaints of unlawful discrimination (paragraph 11(1)(aa) of the Human Rights and Equal Opportunity Commission Act 1986 (the Act)), deal with complaints lodged under Part IIC of the Act (paragraph 11(1)(ab)) and inquire into any act or practice that may be inconsistent with or contrary to any human right and, where the Commission considers it appropriate, attempt by conciliation, to effect a settlement of the matters that gave rise to the inquiry (paragraph 11(1)(f) of the Act.). A further function of the Commission relating to equal opportunity in employment is to inquire into any act or practice, including any systemic practice, which may constitute discrimination and, where the Commission considers it appropriate to do so—endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry (Part II, Division 4 of the Act).
Part II, Division 3 of the Act provides for procedures for dealing with complaints of acts or practices contrary to any human rights.

Part IIB, Division 1 of the Act provides for the process of conciliation by the President of complaints of unlawful discrimination, including procedures for compulsory conferences (section 46PK).


Marriage Regulations 1963, regulation 37V provides for possible conciliation of complaints about marriage celebrants registered by the Commonwealth. There are no guidelines.

Native Title Act 1993, sections 86A-93; 107-9 and 136A-136H. There are no specific guidelines provided.

Privacy Act 1988, sections 27(1)(a), 27(1)(ab) and 28(1)(b) provide for the Privacy Commissioner, where he considers it appropriate to do so, to endeavour to settle by conciliation the matter that gave rise to the investigation. There are no guidelines at present.

**Attorney-General’s Department: Alternative Dispute Resolution**

(Question No. 2358)

**Senator Ludwig** asked the Minister representing the Attorney-General, upon notice, on 3 November 2003:

(1) In light of the Report of a Review of the Impact of the Judiciary Amendment Act 1999, what steps have been taken by the Office of Legal Services Coordination to draw government departments and agencies (sic) to the desirability of using Alternative Dispute Resolution (ADR) in appropriate cases.

(2) What steps have been taken to ensure that each government agency establishes a dispute avoidance, management and resolution plan.

(3) In line with recommendations 69-69 (sic) of the Australian Law Reform Commission report ‘Managing Justice’, has a ‘best practice’ blueprint been developed; if not, why not; if so (a) how was it developed; (b) who developed the guidelines, and (c) when are the guidelines applicable across government departments and agencies?

(4) Which department is the lead agency on the development of an ADR ‘best practice’ blueprint.

(5) Had the department commenced work on the blueprint; if so, when did it commence work.

(6) Had the department completed a ‘best practice’ blueprint for the use of ADR; if so, can a copy be provided; if not (a) why not; (b) what drafts, if any, has the department developed on ADR procedures and guidelines; and (c) can these drafts be provided.

**Senator Ellison**—The Attorney-General has provided the following answer to the honourable senator’s question:

(1) The Office of Legal Services Coordination administers the Legal Services Directions (the Directions) which have been in place since 1999. Appendix B of the Directions (Directions on the Commonwealth’s Obligation to act as a Model Litigant) obliges Departments and Agencies of the Commonwealth to endeavour to ‘avoid litigation, wherever possible’. In practice this means that resort must be had to ADR where it may avoid litigation. The Attorney-General’s Department is currently reviewing the Directions. It is proposed that an Issues Paper outlining possible changes to the Directions will be released for public comment shortly. Appendix B of the Directions will be examined as part of this process.
The Office of Legal Services Coordination provides outreach training to educate stakeholder departments and agencies about the function of the Legal Services Directions. As part of this training, there is a focus on the effect of Appendix B of the Directions, which in practice encourages departments and agencies to consider the use of ADR.

(2) Consistent with the obligations on chief executives of Commonwealth agencies under the Financial Management and Accountability Act 1997, the extent to which an agency has formal processes for dealing with disputes is primarily a matter for each agency chief executive. The Attorney-General’s Department is not responsible for ensuring that each government agency establishes a dispute avoidance, management and resolution plan.

(3) The Government’s response to the Recommendations of Australian Law Reform Commission Report, Managing Justice: A review of the federal civil justice system (ALRC 89) may be found at: http://www.alrc.gov.au/inquiries/title.alrc89/response.htm. As part of its response at the time, the Government stated with respect to recommendation 68 (on producing a best practice blueprint applicable to dispute avoidance, management and resolution) that it accepted the thrust of the recommendation, noting the proposal raised issues of administration across government that went beyond legal matters within the Attorney-General’s portfolio responsibilities. The Government also noted in this context that, consistent with the obligations on chief executives of Commonwealth agencies under the Financial Management and Accountability Act 1997, the extent to which an agency has formal processes for dealing with disputes is primarily a matter for each agency chief executive.

(4) The question of which department or agency may coordinate the development of a best practice blueprint applicable to dispute avoidance, management and resolution for all federal departments and agencies will be a matter for further Government consideration.

(5) No. See the answers to question 2 and question 3, above.

(6) No. See the answers to question 2 and question 3, above.

**Nauru: Father Frank Brennan**

(Question No. 2366)

Senator Brown asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 7 November 2003:

With reference to the answer to question on notice no. 1820 (Senate Hansard, 11 September 2003, p.15078): Have there been any direct or indirect exchanges of information about Father Frank Brennan between the Australian Government and the Government of Nauru.

Senator Vanstone—The answer to the honourable senator’s question is as follows:

I am not aware that there have been any direct or indirect exchanges between the governments of Nauru and Australia about Father Frank Brennan. I can, however, say that I have received advice from the Department of Foreign Affairs and Trade stating that the Australian Government did not seek to influence the Government of Nauru in relation to its consideration of Father Brennan’s visa application, nor has the Government sought to influence decisions on applications by other Australian citizens for visas to enter Nauru.

**Immigration: Detainees**

(Question No. 2370)

Senator Kirk asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 7 November 2003:
(1) In respect of minors who ‘self-harm’ while in detention centres, can a breakdown be provided of:
(a) age; (b) country of origin; (c) sex; (d) nature of self harm; and (e) whether or not the minor resides with other family members.

(2) What definition of ‘self-harm’ is used to collect these statistics.

(3) What actions have been taken by the department to ensure the physical and mental health of: (a) minors who have ‘self-harmed’; and (b) minors deemed at risk of ‘self-harm’.

Senator Vanstone—The answer to the honourable senator’s question is as follows:

(1) The biographical data of individual detainees who have committed an act of self-harm is not available and its compilation through manual collation would require a large diversion of departmental resources.

The table below provides the number of incidents of attempted or actual self-harm by minors over the last three years. Data prior to this time is not readily available and its compilation through manual collation would require a large diversion of departmental resources. Additionally, the manner in which self-harm is reported can mean that, where a group of detainees has threatened to commit, or has actually committed an act of self-harm, such as voluntary starvation, the one report about the incident may cover a number of individuals.

<table>
<thead>
<tr>
<th></th>
<th>2001 (1-Mar-01 to 31-Dec-01)</th>
<th>2002 (1-Jan-02 to 31-Dec-02)</th>
<th>2003 (1-Jan-03 to 7-Nov-03)</th>
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<tr>
<td>Attempted</td>
<td>1</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Actual</td>
<td>20</td>
<td>58</td>
<td>10</td>
</tr>
<tr>
<td>TOTAL</td>
<td>21</td>
<td>64</td>
<td>12</td>
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Any discrepancies between this table and any previous statistics of this nature are due to purification work that has been performed on the database the figures are derived from.

(2) The term self-harm covers all aspects of any threatened or actual act of causing harm to oneself, for example, cutting of body parts and voluntary starvation.

(3) Unfortunately, detainees do self-harm, sometimes seriously, and in some instances such behaviour is exhibited by minors.

The Department is concerned about self-harming behaviour and the Detention Services Provider (DSP) is required to actively respond to all self-harming behaviour by treating the detainee and attempting to prevent further self-harm incidents.

**Strategies used to prevent self-harm include:**

- removing opportunities for self-harm;
- ensuring that detainees, especially parents, understand that there is no link between self-harm and the grant of a visa and that to encourage this belief could place detainees at further risk of harm;
- preventing, where possible, children witnessing self-harm incidents and instances where children might learn about self-harming behaviours;
- requiring routine active case-management for all children to ensure that their safety and welfare is assured and that duty of care obligations are met and providing assessment and care management for detainees;
- requiring that health, education and recreational services are responsive to detainees’ needs and that detainees are meaningfully occupied while in immigration detention; and
- holding weekly teleconferences between all departmental Immigration Detention Facility managers and Central Office staff to identify issues before they escalate.
Responses to self-harm incidents include the following:

- Detainees are treated for any injuries immediately. If required, specialist mental health treatment can be accessed by referral to external health service providers.

- After treatment, the detainee is subsequently referred to the high risk assessment team (HRAT) for ongoing monitoring and follow-up. The HRAT, comprised of medical, counselling and psychology staff is required to assess the detainee’s level of risk and to develop a treatment plan addressing accommodation, observation and follow-up health requirements. Complex cases, particularly those involving repeated self-harm incidents are managed intensively within the HRAT system and may also be reviewed by DSP head office health service managers.

- Where there are concerns for the well-being of particular children, the department may, on the advice of the local child welfare authority transfer the children to alternative detention locations, such as foster care arrangements.

The Immigration Detention Standards require that every incident of actual, alleged, or threatened self-harm is recorded and reported to the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) by the DSP. In addition, actual, alleged or threatened self-harm by children is routinely reported by DIMIA and the DSP to state or territory child welfare authorities.

**Foreign Affairs: Maritime Zones**

(Question No. 2476)

Senator Nettle asked the Minister representing the Minister for Foreign Affairs, upon notice, on 22 December 2003:


(2) Does the Government consider this is a fair course of action given that this withdrawal has effectively prevented East Timor seeking independent resolution under international law of the disputed maritime boundary between Australia and East Timor.

Senator Hill—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) Australia’s maritime zones abut the maritime zones of Indonesia, New Zealand, Papua New Guinea, the Solomon Islands, France (New Caledonia, Kerguelen Island and Antarctica), East Timor and Norway. In the Government’s view, maritime boundaries are best settled by negotiation and not by reference to an international court or tribunal.

(2) The exclusion of disputes concerning maritime boundaries from Australia’s acceptance of the jurisdiction of the International Court of Justice and the International Tribunal for the Law of the Sea is consistent with the Government’s position regarding the settlement of maritime boundaries with other countries.

**Roads: Funding**

(Question No. 2477)

Senator Nettle asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 22 December 2003:

With reference to the AusLink Green Paper and funding for this policy:

(1) Can the Minister outline the funding mechanism and funding priorities for 2003-04 and 2004-05 for AusLink.

(2) Does the funding regime include specific funding for infrastructure for timber plantation transport.
(3) Does the funding regime include specific funding for transport projects, such as the construction of regional infrastructure to provide intermodal and road rail system links.

(4) Does the funding regime include allocation for transport projects in specific regional areas, such as the south west of Western Australia or the Illawarra; if so, what allocation is each region to receive and what priorities exist for funding within these regions.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) National road funding priorities for 2003/04 were announced in the 2003 Budget and are being implemented under existing arrangements. AusLink will commence in 2004/05. The Government announced on 22 January 2004 that extra funding would be available to extend the Roads to Recovery programme for another four years to 2008/09 and provide additional funding for priority projects to improve the national land transport network in outermetropolitan, rural and remote areas. Total funding for the first AusLink five-year National Land Transport Plan will be announced in the 2004/05 Budget context. The AusLink White Paper will outline the new AusLink planning and funding framework and will also be released around that time.

(2) No. The strategic component of the extended Roads to Recovery programme is targeted at local land transport projects of strategic regional importance, particularly those that support emerging and expanding industries. This could include timber plantation transport links.

(3) The extension of the Roads to Recovery programme will provide funding to all councils for local road improvements, including links to railways and intermodal facilities. The strategic component is broader and can be applied to local land transport projects. These could include improving local and regional intermodal connections. As outlined in the Green Paper, it is proposed that AusLink will fund national priorities on an integrated National Land Transport Network, consisting of road and rail links and including links to major ports, airports and other intermodal facilities. The National Land Transport Plan will identify the National Land Transport Network and national funding priorities on that network. It will be released as part of the White Paper.

(4) As the Government announced in January this year, the extension of the Roads to Recovery programme will distribute funds for local land transport infrastructure directly to local councils. Two-thirds of this funding will be allocated by formula, as at present, to all councils. The other third will be available to councils to undertake local land transport infrastructure projects of strategic regional importance.

Environment: Coal Gasification

(1) Is the Australian Government or any of its agencies working on underground coal gasification (UCG).

(2) What funding has the Government provided for UCG; if so, to whom and when.

(3) What are the implications of UCG for global warming.

Senator Minchin—The Minister for Industry, Tourism and Resources has provided the following answer to the honourable senator’s question:

(1) CSIRO Exploration and Mining (CEM), has a UCG research program which has been underway for four years. Also, CSIRO’s Energy Transformed Flagship Program is involved in work on UCG which is focused on assessing the possible environmental impacts of UCG technology.
(2) No funding has been provided through the Department of Environment and Heritage for UCG. AusIndustry, in the Department of Industry, Tourism and Resources, provided $920,400 in June 1999 to Link Energy for the ‘Development of underground coal gasification technology’. The project was completed at the end of 2000. CSIRO has allocated appropriation funding of approximately $1.2 million to CEM for UCG research over the last four years.

(3) The CSIRO has indicated there may be potential for reduced greenhouse emissions from underground coal gasification.

**Environment: FutureGen**

(Question Nos 2487 to 2489)

*Senator Brown* asked the Minister representing the Minister for Industry, Tourism and Resources, upon notice, on 23 December 2003:

(1) (a) Has the Australian Government or any of its agencies provided any funding or in-kind support to FutureGen or to any other United States carbon sequestration research or demonstration projects; if so, how much has been committed; and (b) does the Government have any intention to provide funding or support in the future.

(2) Has the Australian Government held discussions with the US Government in the past 12 months in relation to carbon sequestration; if so, when, who was involved and what was discussed.

(3) What projects are under consideration through the US-Australia Climate Action Partnership.

*Senator Minchin*—The Minister for Industry, Tourism and Resources has provided the following answer to the honourable senator’s question:

(1) (a-b) Answers regarding possible funding or in-kind support for FutureGen have been provided in previous responses to Senator Brown for Questions 1257 – 1261 tabled on 13 May 2003 and Question 1793 tabled on 16 September 2003.

(2) The Minister for Science, the Honourable Peter McGauran, represented the Australian Government at the Carbon Sequestration Leadership Forum in Washington from 23-25 June 2003. The Forum includes a range of countries and is a framework for cooperation in research and development of carbon dioxide sequestration technologies. Discussions focussed on the establishment of the Forum. A follow-up meeting of officials and industry and research representatives was held in Rome from 19-23 January 2004.

(3) The US-Australia Climate Action Partnership enhances cooperation between the two countries and provides opportunities for industry and research agencies in each country to undertake joint projects.

**Environment: Carbon Sequestration**

(Question Nos 2490 to 2492)

*Senator Brown* asked the Minister representing the Minister for Industry, Tourism and Resources, upon notice, on 23 December 2003:

With reference to the reported commitment of $200 million to carbon sequestration research and development (*7.30 Report*, 8 December 2003):

(1) Has the Government or any of its agencies been approached to, or given consideration to, funding a demonstration coal gasification or carbon sequestration project, or anything similar; if so, can details be provided.

(2) Has the Government or any of its agencies been approached to commit, or given consideration to committing, additional funding to the Cooperative Research Centre for Greenhouse Gas Technologies; if so, can details be provided.
Senator Minchin—The Minister for Industry, Tourism and Resources has provided the following answer to the honourable senator’s question:

1) The Minister for Industry, Tourism and Resources said that the Government was currently considering how much money it would put into the concept of geologically sequestering carbon dioxide. The Minister said that he was not prepared to speculate on a figure. The figure of $200 million was mentioned by the Reporter for the 7.30 Report.

The Cooperative Research Centres (CRC) Program administered by the Department of Education, Science and Training provides funding to the CRC for Greenhouse Gas Technologies (CO2CRC) which undertakes research activities related to carbon sequestration. The research program for the CO2CRC includes a demonstration project for carbon storage. The CO2CRC was established on 1 July 2003 and will receive Australian Government funding of $21.8 million over seven years through the program. CSIRO and Geoscience Australia are core participants in this CRC. The Australian Greenhouse Office is a supporting participant.

The Australian Greenhouse Office has received a funding application for a carbon dioxide sequestration project under the Greenhouse Gas Abatement Program. The current funding round has not been finalised and it is not possible to release details of any of the funding applications.

2) The Australian Greenhouse Office has been asked by the Co-operative Research Centre for Greenhouse Technologies to consider supporting a small scale project that would inject and monitor a total of some ten thousand tonnes of carbon dioxide in geological structures. However, funding is not available in AGO programs for this type of project.

The Australian Greenhouse Office provided $54,000 in 2003-4 to support the Cooperative Research Centre for Greenhouse Technologies to host a lead author meeting of the Intergovernmental Panel on Climate Change Special Report on Carbon Dioxide Capture and Storage. The meeting was held in Australia from 15-18 December 2003.

Funding of $12,722 was also provided to support the Chief Executive of the Cooperative Research Centre to participate in the Carbon Sequestration Leadership Forum in Rome in January 2004 as a technical expert with the Australian Delegation. Funding amounts are exclusive of GST.

Health: Aluminium Dust

(Question No. 2496)

Senator Brown asked the Minister representing the Minister for Health and Ageing, upon notice, on 9 January 2004:

With reference to health problems associated with aluminium dust:

1) Is the government aware of any industrial health problems caused by exposure to oxidised aluminium dust particles of less than 1 micron in size.

2) What is the maximum level of such air-borne alumina dust to which workers in industry may safely be exposed.

3) As this dust is attracted to moisture; (a) what human health concerns are there associated with this dust when it comes into contact with the moist tissues and organs of the human body; (b) and is the risk heightened for sensitive tissues such as sweat glands, eyes, oesophagus, nerve, aural, lungs and digestive tissues.

4) How dangerous is such dust in relation to the risk of protein malformation.

5) What are the dangers of the cumulative effects of alumina dust.

Senator Ian Campbell—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:
Workplace substances are regulated by workplace health and safety authorities in each State or Territory. The National Occupational Health and Safety Commission (NOHSC) co-ordinates national efforts to improve workplace health safety. The National Model Regulations for the Control of Workplace Hazardous Substances declared by NOHSC are adopted in the States and Territories in their own legislation.

Under the National Model Regulations, Exposure Standards are specified to assist in ensuring that workers are adequately protected from substances that may impair health or cause undue annoyance. Exposure standards represent airborne concentrations of individual chemical substances that, according to current knowledge, should neither impair the health of nor cause undue discomfort to nearly all workers. Additionally, the exposure standards are believed to guard against narcosis or irritation that could precipitate industrial accidents. Dust particles of less than 1 micron in size are “inspirable”, that is they can enter the human respiratory tract, as well as “respirable”, that is they are very fine particles that can reach the lower bronchioles and alveolar regions of the lung.

The current National Exposure Standard for alumina and aluminium oxide is 10 mg/m3 for inspirable dust containing no asbestos and less than 1% crystalline silica. No adverse health effects have been reported from workplaces where exposure control measures are in place and the NOHSC exposure standard for aluminium oxide is maintained.

The health effects of aluminium were reviewed extensively by the World Health Organisation, International Programme on Chemical Safety and The American Conference of Governmental Industrial Hygienists. Aluminium is the most abundant metal and occurs naturally as compounds in soil, water and air. 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 dust is via inhalation. To date, short-term exposure to aluminium oxide dust is not associated with health concerns. There is no data to conclude that sweat glands, eyes, oesophagus, ears or digestive tissues are sensitive tissues with respect to aluminium dust. However, the lungs and the nervous system appear to be susceptible to long-term inhalation exposure to aluminium dust. Fibrosis of the lung is the most commonly reported severe health effect from long-term occupational exposure, however, this is frequently reported in occupational settings where long-term concomitant exposure to other chemical dusts such as silica and airborne lubricant mists also occurred. It is likely that lung fibrosis is due to the general presence of excessive dusts ie “dust overload” and cannot be attributed to aluminium oxide particles alone.

Human studies undertaken to determine the neurotoxic potential of inhaled aluminium dust have identified subclinical effects such as fatigue and alternations in memory, reaction time and eye-hand coordination following long-term occupational exposure. A link between oral ingestion of high levels of aluminium and certain human neurological diseases such as Alzheimer’s disease is suggested from some, but not all studies. In general, it is difficult to draw definitive conclusions from occupational inhalational exposure studies due to the poor characterisation of the actual aluminium exposure. However, the exposure standard of 10 mg/m3 is considered protective for workers.

Extensive reviews of the health effects of aluminium compounds in animals and humans currently do not establish a link between aluminium dusts and developmental or reproductive effects or cancer. Limited human studies of long-term occupational exposure report incidences of lung and bladder cancer from occupational exposure to aluminium. However, these reports also note concomitant exposure to other known chemical carcinogens in the workplace and so a direct link between aluminium dust and cancer cannot be made. Overall, the risk of protein malformation associated with exposure to aluminium oxide dust cannot be established.
The exposure standard for alumina of 10 mg/m3 has been set to protect the health of workers from acute or short-term as well as long-term or cumulative effects.

Trade: Free Trade Agreement
(Question No. 2504)

Senator Brown asked the Minister representing the Prime Minister, upon notice, on 13 January 2004:

Has the Chief Scientist provided any advice to the Prime Minister, his department or its agencies about the proposed Australia-United States free trade agreement; if so: (a) when; (b) what was that advice; and (c) can a copy of the advice be provided.

Senator Hill—The Prime Minister has provided the following answer to the honourable senator’s question:

No. The Australia-United States Free Trade Agreement was the subject of a paper prepared by an independent working group of the Prime Minister’s Science, Engineering and Innovation Council. The Chief Scientist was not responsible for this paper. The paper was discussed at a meeting of the Council on 28 November 2003. The Council was chaired by the Prime Minister and attended by the Chief Scientist, as Executive Officer.

Environment: Rainforest Reservation Targets
(Question No. 2508)

Senator Brown asked the Minister representing the Minister for the Environment and Heritage, upon notice, on the 13th January 2004:

(1) What proportion of the pre-European extent of Australian temperate rainforest on basalt soils is protected intact in secure reserves.

(2) How will the minimum 15 per cent reservation target for this vegetation type be reached.

Senator Ian Macdonald—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) Detailed information on the distribution of forest communities on various substrates and their reservation levels, including comparison with pre-European extent, is gathered and updated by the relevant jurisdictions. The information being sought would be available from the relevant State agencies in which temperate rainforest occurs—New South Wales, Victoria and Tasmania.

(2) The Australian Government is committed to the development of a comprehensive, adequate and representative (CAR) system of protected areas across the country, in partnership with State and Territory Governments who are the main land managers for protected areas. A CAR reserve system is being achieved through policy processes such as the Regional Forest Agreement process and the National Reserve System program. Regional Forest Agreements, implemented by the relevant jurisdictions, establish reservation targets, using agreed criteria, for each forest community to ensure adequate areas of each are included in reserves.

Regional Forest Agreements in New South Wales and Victoria where temperate rainforest occurs have identified 100% protection levels for rainforest on public land through a range of protection mechanisms including formal conservation reserves, forest reserves, and forestry codes of practice. The Regional Forest Agreements for Tasmania, currently being reviewed, also identifies a range of protection mechanisms to meet reservation targets for temperate rainforest communities. Funds are also provided through the Tasmanian Private Forest Reserve Program to assist with protection of certain forest communities where they occur on private land.

QUESTIONS ON NOTICE
The Government, and all State and Territory Governments, through the Natural Resource Management Ministerial Council, has recently endorsed the release for public comment of the Directions Statement for the National Reserve System which sets targets for the reservation of all ecosystems across the nation. Purchase of vegetation communities on private land where they are underrepresented in the reserve system may be supported through funding under the Natural Heritage Trust’s National Reserve System program to help meet these targets.

Foreign Affairs: West Papua
(Question No. 2512)

Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 19 January 2004:

(1) What has the Australian Government done about the widely-reported move to West Papua of the murderer, Eurico Guterres.

(2) What is Guterres’ current whereabouts and what is he doing.

Senator Hill—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) The Australian Government has been concerned about media reports of the establishment of militia groups, including one connected with Eurico Guterres, in Papua. The Government has raised its concerns with the Indonesian Government and has urged Indonesia to ensure that all politically-motivated groups in Papua, including any group linked with Eurico Guterres, act in a manner consistent with Indonesian law.

(2) The Government is aware of media reports about Eurico Guterres having been in Papua. The Government cannot confirm Guterres’ current whereabouts nor what he is doing.

Foreign Affairs: West Papua
(Question No. 2514)

Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 19 January 2004:

With reference to the considered reply to question on notice no. 1227 (Senate Hansard, 10 September 2003, p. 14905):

(1) What information has the Government obtained or recorded about the shooting of Elsye Rumbiak Bonai.

(2) When and how did the Government come by this information and why did it not respond to it.

(3) Will the Government seek more information about this incident; if not, why not; if so, can a copy of the information be provided.

Senator Hill—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1), (2), (3) The Government is aware of the shooting incident involving Elsye Rumbiak Bonai at the Indonesia-PNG border on 28 December 2002. Details were reported by the media at the time of the incident. The Indonesian police are investigating and we would expect the full force of the law to be applied to those responsible for these crimes if they can be identified. The Australian Government continues to take every opportunity to urge the Indonesian Government to uphold human rights, in Papua and other parts of Indonesia.
**Defence: Depleted Uranium**  
(Question No. 2516)

**Senator Allison** asked the Minister for Defence, upon notice, on 27 January 2004:

1. Will the Government guarantee that United States (US) military hardware containing depleted uranium (DU) will not be stored in Australia.

2. Given that the US military commonly use depleted uranium in both ammunition and shielding, would not a US military base in Australia create a radiation hazard and a potential military target, as well as contradicting the Australian policy of not using DU weaponry and hardware.

**Senator Hill**—The answer to the honourable senator’s question is as follows:

1. Depleted uranium (DU) has a wide range of military and civil applications, including counterbalances in aircraft and radiation shielding in health care. There is no permanent storage of United States military hardware in Australia, but during training exercises, hardware that could include DU, for example field hospital equipment, may be stored temporarily. On the basis of recent reviews of all the available health evidence, Defence Health Services has concluded that there is no health risk to personnel from DU in stored equipment.

2. As the Prime Minister and I have advised, we have not received a request from the United States for a permanent military base in Australia. It is not an option under consideration.

**Defence: Vehicles**  
(Question No. 2517)

**Senator Nettle** asked the Minister for Defence, upon notice, on 27 January 2004:

Are the Australian Defence Forces in possession of any vehicles, including decommissioned vehicles, made with or contaminated by depleted uranium; if so: (a) are any of these vehicles located in defence training areas for target practice; (b) where are the defence training areas located; and (c) is Bindoon live firing range in Western Australia one of those sites.

**Senator Hill**—The answer to the honourable senator’s question is as follows:

Defence has undertaken a review of vehicles, including decommissioned vehicles, and has not been able to ascertain any instances of vehicles made with or contaminated by depleted uranium.