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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 Quirk, 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

Prime Minister
The Hon. John Winston Howard MP

Minister for Transport and Regional Services and Deputy Prime Minister
The Hon. John Duncan Anderson MP

Treasurer
The Hon. Peter Howard Costello MP

Minister for Trade
The Hon. Mark Anthony James Vaile MP

Minister for Foreign Affairs
The Hon. Alexander John Gosse Downer MP

Minister for Defence and Leader of the Government in the Senate
Senator the Hon. Robert Murray Hill

Minister for Finance and Administration and Deputy Leader of the Government in the Senate
Senator the Hon. Nicholas Hugh Minchin

Minister for Health and Ageing and Leader of the House
The Hon. Anthony John Abbott MP

Attorney-General
The Hon. Philip Maxwell Ruddock MP

Minister for the Environment and Heritage and Vice-President of the Executive Council
The Hon. Dr David Alistair Kemp MP

Minister for Communications, Information Technology and the Arts
The Hon. Daryl Robert Williams AM, QC, MP

Minister for Agriculture, Fisheries and Forestry
The Hon. Warren Errol Truss MP

Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation
Senator the Hon. Amanda Eloise Vanstone

Minister for Education, Science and Training
The Hon. Dr Brendan John Nelson MP

Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women
Senator the Hon. Kay Christine Lesley Patterson

Minister for Industry, Tourism and Resources
The Hon. Ian Elgin Macfarlane MP

Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service
The Hon. Kevin James Andrews MP

(The above ministers constitute the cabinet)
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<td>Minister for Fisheries, Forestry and Conservation</td>
<td>Senator the Hon. Ian Douglas Macdonald</td>
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<td>Minister for the Arts and Sport</td>
<td>Senator the Hon. Charles Roderick Kemp</td>
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<tr>
<td>Minister for Small Business and Tourism</td>
<td>The Hon. Joseph Benedict Hockey MP</td>
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<tr>
<td>Minister for Science and Deputy Leader of the House</td>
<td>The Hon. Peter John McGauran MP</td>
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<tr>
<td>Minister for Local Government, Territories and Roads and Manager of Government Business in the Senate</td>
<td>Senator the Hon. Ian Campbell</td>
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<tr>
<td>Minister for Children and Youth Affairs</td>
<td>The Hon. Lawrence James Anthony MP</td>
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<tr>
<td>Minister for Employment Services and Minister Assisting the Minister for Defence</td>
<td>The Hon. Malcolm Thomas Brough MP</td>
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<tr>
<td>Special Minister of State</td>
<td>Senator the Hon. Eric Abetz</td>
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<td>Minister for Veterans’ Affairs</td>
<td>The Hon. Danna Sue Vale MP</td>
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<tr>
<td>Minister for Revenue and Assistant Treasurer</td>
<td>Senator the Hon. Helen Lloyd Coonan</td>
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<tr>
<td>Minister for Ageing</td>
<td>The Hon. Julie Isabel Bishop MP</td>
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<tr>
<td>Minister for Citizenship and Multicultural Affairs and Minister Assisting the Prime Minister</td>
<td>The Hon. Gary Douglas Hardgrave MP</td>
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<tr>
<td>Parliamentary Secretary to the Prime Minister</td>
<td>The Hon. Jacqueline Marie Kelly MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Transport and Regional Services and Parliamentary Secretary to the Minister for Trade</td>
<td>The Hon. De-Anne Margaret Kelly</td>
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<td>The Hon. Ross Alexander Cameron MP</td>
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<td>Parliamentary Secretary to the Minister for Foreign Affairs</td>
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<td>The Hon. Dr Sharman Nancy Stone MP</td>
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<td>Leader of the Opposition in the Senate, Shadow Special Minister of</td>
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 12.30 p.m., and read prayers.

COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Meeting

Senator FERRIS (South Australia) (12.31 p.m.)—by leave—At the request of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I move:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate today, from 4 p.m., to take evidence for the committee’s inquiries into the administration of Biosecurity Australia concerning import risk analyses for pig meat and bananas.

Question agreed to.

INTERNATIONAL WOMEN’S DAY

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.32 p.m.)—I move:

That the Senate recognises International Women’s Day on 8 March 2004 and notes:

(a) that the idea to hold an International Women’s Day first arose at the turn of the century;

(b) that International Women’s Day is celebrated worldwide as a day for reflecting upon the progress made by women in achieving equal status with men, calling for further change and celebrating the achievements of women in their many and diverse roles;

(c) the major role that rural women play in food and fibre production, food security and the development of worldwide rural economies, women making up approximately 32 per cent of Australia’s farm workforce;

(d) the contribution of outstanding rural women, as recognised in the Rural Industries Research and Development Corporation’s Rural Women’s Awards and that consistent with the values of International Women’s Day, the Australian Government actively supports these awards and will be celebrating the achievements of the award winners at a national reception for rural women in March 2004; and

(e) that the Australian Government continues to encourage the development of rural women through other initiatives such as the Industry Partnerships Corporate Governance for Rural Women Program, a program which equips and encourages women to participate in their industries at whatever level they choose and also includes participating in decision-making bodies and playing a key role in contributing to national government and industry agendas relevant to agriculture, fishing and forestry.

Question agreed to.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.32 p.m.)—by leave—I move the motion as amended:

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

Australian Sports Drug Agency Amendment Bill 2004
Customs Tariff Amendment (Paraquat Dichloride) Bill 2004
Great Barrier Reef Marine Park Amendment Bill 2004
The motion lists seven bills that the government wants to exempt from the cut-off date of these sittings. The cut-off was specifically created to make sure that senators can deal with legislation in a way which is reasonable and studied and which allows them time to have contact with people who might be interested in the legislation. But once again we have the government simply listing bills without having good reason to exempt them. I specifically refer to the International Transfer of Prisoners Amendment Bill 2004. It would be very helpful if the government specified what was going on in its international discussions with, in this case, the White House, what the timetable is and why this bill should be put through now. I read into that the implication that the military trial which is going to be held in the United States, and which may involve one or both of the Australians held in detention, is going to be truncated. It is going to be over in a trice and we are expected to have this piece of legislation through because it deals with matters consequent upon that trial. There is no argument about that in the reasons put forward by the government; it is just a specious argument that the government puts forward. It has been talking about the potential outcome for the Australian prisoners—who, remember, have been there for at least two years—and then it brings in a piece of legislation and says, ‘We want to exempt it from the cut-off point because it’s urgent.’

The Migration Amendment (Duration of Detention) Bill 2004 has been before the Senate on a previous occasion. The government’s argument for exempting this bill from the cut-off simply does not hold water. I can look at some of the other pieces of legislation and say the same thing. We are sliding towards the old situation where the government sees it as a right, by precedent, to bring pieces of legislation in here, dump them on the Senate and have them dealt with immediately. We go right back to former Senator Chamarette’s proposal for the cut-off legislation—having it accepted in the Senate by the now government—so that that could not happen. We have to be very careful that the intention of the Senate, in passing that legislation, is not abused. I think it is being abused here today, and I object to that.

Unless the opposition takes this up and insists that the government be timely with its legislation rather than just dumping it on the Senate, it will get caught out further down the line if the government insists on a piece of legislation on the basis of precedent when we should not be dealing with it without proper reference to the community. I just wanted to make that point. I see where the practice is going; it is going in the wrong direction. The government should treat the Senate with more respect, and the opposition should take a stronger stand against what the government is doing here.

I thank Senator Brown for his sage advice. The opposition does take a critical look at bills the government seeks to exempt from the cut-off. I think this government would recognise that we have taken issue with the exemption of bills from the cut-off before, because we have said—in relation to other bills, not these ones today—they did not pass the terms of the test that was set by former Senator Chamarette on how it was to work in practice.
In this instance, the bills have had the ability to go through our processes. Although only a short time frame was provided, we were able to meet that short time frame with our processes and come to a decision on what we intended to do with those bills. There was sufficient time, at least in this instance. I agree with Senator Brown—if this is the gist of his statement—that the government should not take it for granted that the seeking of an exemption from the bills cutoff will automatically be granted, because it will not. With each bill we have to consider whether the government has been put to the test and has demonstrated that it is a bill that is required to be brought in. We also test whether or not there has been sufficient time for the bill to be considered through our processes, allowing it to be dealt with in the current sittings. We also consider the type and the character of a bill to ensure that there is sufficient and adequate time for consultation. Of course, there are other procedures as to whether or not a bill should be referred to a committee. We have to consider all those sorts of issues.

So bearing all that in mind, it is timely to remind the government that they should not take these things as an automatic right. I also inform the government that we do not view this as an automatic right. We consider each bill separately and deal with it in that way. What we can also say is that more so than with any other manager of government business, the opposition have sought to take issue with some of the exemptions that have been sought in more recent times. As an opposition we are more proactive in ensuring that those bills that can be dealt with will be dealt with, and that those bills that should meet the criteria but do not meet the criteria are not dealt with until further consideration is given.

Question agreed to.
ety—caring for and teaching and educating the next generation of Australians. It is extremely important work, yet this government has failed to commit to adequately fund child care to enable child-care workers to be appropriately remunerated for their work. It is not good enough for Larry Anthony—

Senator Abetz—Mr Anthony to you.

Senator NETTLE—Mr Anthony, the Minister for Children and Youth Affairs, to say that child-care workers’ wages are an issue between employers and employees. The government has a responsibility to ensure that child care is adequately funded—and that includes decent wages for child-care workers. The Greens support adequate funding for child care, which includes decent wages for child-care workers. I have already signed on to the union’s charter of rights for quality child care.

Not only is this government not taking its responsibility to fund child-care workers properly but also in this bill before the Senate today it is seeking to restrict the right of child-care workers to effectively organise in their union and take action to ensure that they get proper wages and conditions. This bill is about putting out of action unions and union officials that campaign for the rights of working men and women in child-care centres—just as we saw this weekend with LHMU officials leading people in the community in a campaign about affordable wages for child-care workers. This is the crux of the issue: unions and union officials should be able to effectively organise to improve the working conditions of all employees. Unions should be able to organise and workers have a right to expect that their union officials will not be subject to a political witch-hunt under the guise of the provisions in this legislation.

Another example from my home state is the New South Wales rail system. It is in crisis, and we see a state Labor government that, instead of trying to fix the problem, is blaming workers. Maintenance workers, led by their union, will go on strike today. The Greens express our solidarity with them as they take legitimate industrial action in response to the state government’s actions which threaten to close regional maintenance centres in Goulburn and in Bathurst.

Senator McGauran—If only the Berlin Wall hadn’t come down, life would be fantastic.

Senator NETTLE—Railway unions are standing up for railway workers and for a better public transport system for commuters. Also this morning in New South Wales, TAFE teachers across the state held stop-work meetings to vote on industrial action to protest against student fee hikes.

Senator McGauran—If only Lenin had not murdered Trotsky.

Senator Brown—Mr Acting Deputy President, I rise on a point of order. The senator opposite is interjecting about Lenin and the Berlin Wall. He is a great supporter of the Beijing communist regime. I think it is unruly for him to be interjecting at all, and he should desist.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—There is no point of order, Senator Brown.

Senator Brown—On that point of order, Mr Acting Deputy President, I would ask that you look at it again. There is a point of order about it being disorderly to interject.

The ACTING DEPUTY PRESIDENT—It is disorderly to interject, but the chamber has allowed it for some decades—in fact, ever since this chamber came into being. Therefore, there is no point of order.

Senator NETTLE—This morning in New South Wales TAFE teachers held stop-work meetings to vote on industrial action to
protest against student fee hikes. This is in response to a New South Wales government decision which sees fees rising by as much as 220 per cent. TAFE teachers today voted to hold a 24-hour strike on Wednesday in defence of public education and against the appalling imposition of a 220 per cent fee increase for students at TAFEs in New South Wales. Last month, teachers in New South Wales refused to sign student enrolment forms in protest against the fee rises. The Greens support the actions of the teachers federation and we commend them for their courageous stand in defence of public education.

To return to this bill: the disqualification provisions in this bill are much more far-reaching than those in the Corporations Act for directors, as was pointed out by the ACTU in their submission to the Senate committee that looked at this piece of legislation. The ACTU concluded their evidence by highlighting the even greater inconsistency between the proposals in this bill and the disqualification provisions for federal parliamentarians.

The act already has adequate penalties for breaches of orders, so the provisions in this bill are aimed at heightening the pressure on unions. The increased threat of imprisonment for taking industrial action is particularly concerning. Are we returning to a situation like in 1969 when Clarie O’Shea, a tramways union official, went to jail in defence of his members’ interests, and workers responded with mass strikes? Is this the ‘industrial mayhem’ that the Prime Minister was talking about last weekend?

The International Labour Organisation’s position on this matter is quite clear. They say:

... no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organising or participating in a peaceful strike.

The Greens will not support laws that would send union members or officials to jail for defending workers’ interests and we hope that no other senator believes that this is appropriate.

The real politicised character of this bill is absolutely clear when we look at the proposed role of the minister. Item 8 would insert a new subsection 310(1) in schedule 1B of the act. This item would empower the minister or his delegate to make an application for an order for a penalty arising from a breach of a commission or court order. Currently this can only be done by an industrial registrar, a union or an employer. This would mean that even if only a minor breach of an order has occurred and even if the employer and the registrar do not wish to pursue the issue because the dispute has been resolved or the issue is too minor, the minister can step in and apply for a penalty and bring about the automatic disqualification of a union official. This is the crux of the government’s agenda of not ensuring the resolution of disputes through negotiation and bargaining, but rather the relentless pursuit of unions and union officials regardless of the consequence for the work, the workers and the members of the union.

The Greens are adamantly opposed to this bill. We do not accept that there is any legitimate purpose to the proposed changes. The bill is nothing but an attempt by the government to gain draconian powers with which it can pursue its ambition to destroy unions and any attempt by workers to collectively organise in defence of their own interests. We will never support attacks on freedom of association and the right to take industrial action. We will always be on the side of the working men and women of this country who have faced seven long years of attacks from this government. The Greens will not be supporting this bill.
Senator ABETZ (Tasmania—Special Minister of State) (12.48 p.m.)—The Australian people paid good money to see Jurassic Park when they could in fact come in here from time to time and listen to the Australian ‘Extremes’ and see dinosaurs at work. What we have just heard is another example of the Australian ‘Extremes’ no longer pursuing a Green agenda but showing their extreme left wing Trotskyite ideology. We have just heard from the senator opposite the suggestion that Bob Carr, the Labor Premier of New South Wales, Senator Collins, Senator Buckland and other Labor senators are in fact class traitors—they really do not look after the working class as they should. The extremism of the contribution is quite bizarre. In fact, it dates back to the old divisive policies of class warfare when there used to be a Berlin Wall and there—

Senator Buckland—Mr Acting Deputy President, I raise a point of order. I was just thinking in my mind that ‘class traitor’—

Senator ABETZ—Well, that is a start!

Senator Buckland—It is a lot more than you have being doing, Senator. I was thinking about ‘class traitor’. Is it parliamentary to call another senator a traitor of any type?

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—As I heard it, Senator Abetz did not call Senator Collins or Senator Buckland class traitors.

Senator Buckland—Certainly, Senator Collins and I—

The ACTING DEPUTY PRESIDENT—I am speaking in answer to the point of order. You may resume your seat, Senator Buckland. Senator Abetz did not call either Senator Collins or you, Senator Buckland, class traitors. He was referring to the speech that made you look as if you were or that assumed that you were. There is a difference.

Senator Brown—Mr Acting Deputy President, on the point of order, I do not see the difference. I ask that, if you insist on that ruling, it be referred to the President for an adjudication.

The ACTING DEPUTY PRESIDENT—Do you have any objection to that being referred, Senator Abetz?

Senator ABETZ—There are a few people in this place with glass jaws. I am more than happy to withdraw to get the debate going. Your summary, Mr Acting Deputy President, is absolutely right and the Hansard record will disclose that yet again Senator Brown is wrong. I am happy to withdraw to allow the debate to occur.

The ACTING DEPUTY PRESIDENT—Thank you.

Senator ABETZ—What was implied, Mr Acting Deputy President, by the Greens speech—

The ACTING DEPUTY PRESIDENT—We have dealt with the point of order, Senator Abetz. Were you going to continue?

Senator ABETZ—Yes. What was implied by the Australian Greens senator opposite was that Bob Carr and others were class traitors. That is the proposition that I was putting because it was suggested that the Labor Party—

Senator Brown—Mr Acting Deputy President, I raise a point of order. The standing orders are quite clear on this. One may not reflect on a member of another parliament in Australia, either. If that was a reference to Bob Carr, the Premier of New South Wales, it is out of order in this place.

The ACTING DEPUTY PRESIDENT—Senator Brown, I am undecided as to whether it was a reflection and I have therefore decided that there is no point of order.

Senator ABETZ—Thank you, Mr Acting Deputy President. It is amazing that, when
you point out the extremism of the Australian Greens on industrial and other legislation, they enter the debate with the greatest of glass jaws and make all sorts of frivolous interruptions to try to stop the flow of the debate. Anybody reading in the Hansard what Senator Nettle said—and, might I add, I think there would be many better reads around the place—would see an extremism permeating her speech which unfortunately reflects that extreme ideology. The reflections in her speech against the Labor Party, including against the New South Wales Premier and Labor senators opposite, would indicate that the Greens position themselves to the extreme left of the Australian Labor Party when it comes to matters of industrial relations.

People listening to this debate may be surprised that the principal purpose of this bill is to prevent orders of the AIRC being circumvented. The bill simply obliges officers and employees of registered organisations to refrain from taking action that would frustrate the operation of a court or AIRC order which applies to their organisation or to its officials, employees or members. Basically, put in colloquial terms, if you do not cop the umpire’s decision there must be a consequence. That is what we as a government believe very strongly. If you are going to have an orderly system of industrial relations in this country then you have to have an umpire, and the umpire may from time to time make a wrong decision or a decision that you do not like. It happens all the time in all other walks of life, including on the sports field, but at the end of the day you have to accept the umpire’s decision. There are very serious consequences on the cricket field if somebody seeks to dispute an umpire’s decision; they can lose their whole takings for one match. It is the same with AFL players. They can be disqualified from partaking in a game of football.

I ask senators opposite what is more important: accepting the umpire’s decision on a sports field or accepting the umpire’s decision in industrial relations matters? You know what would happen on the sports field if the sportsmen and sportswomen did not have to accept the umpire’s decision. There would be mayhem. Similarly, in the Australian industrial relations arena there would be absolute mayhem if the umpire’s decision did not have to be abided by. Let me say at the outset that we as a government hope that these provisions will never have to be used because everybody will accept the umpire’s decision. But if you do not cop the umpire’s decision then there has to be a consequence. Those opposite, with their left-wing ideology, are simply unwilling to accept that. They want to say, ‘We want the right to pick and choose on what occasions—’

Senator Brown—We’ll see what you say on the next bill.

Senator ABETZ—Heaven forbid! Senator Brown is interjecting. Get up on a point of order, Senator Brown, and say: ‘Interjections are disorderly. Please rule me out of order.’

Senator Brown—Mr Acting Deputy President, I raise a point of order. We will see whether the International Court of Justice, the umpire, gets accepted in the next piece of legislation.

The ACTING DEPUTY PRESIDENT—What is your point of order, Senator Brown?

Senator Brown—I was just taking the invitation of the minister opposite to raise one.

The ACTING DEPUTY PRESIDENT—You are being frivolous, Senator Brown. There is obviously no point of order.

Senator ABETZ—Isn’t it amazing: the person who always claims the highest ethical standards of parliamentary debate seeks to have Senator McGauran put on the record for
interjecting, yet within two or three minutes of that is engaging in interjections himself. That is the sort of duplicity the Australian Greens engage in day after day in this place.

Can I also deal with the comment just made by Senator Brown, that we will see what some International Court of Justice, as an umpire, might consider. I have a view that Australian laws ought to be made by the Australian parliament—determined by the Australian people at elections—and not by unelected officials in international fora around the world who are not answerable to anybody. As I indicated, if you want an orderly system of industrial relations in this country, you need an umpire and you need to be able to enforce that umpire’s decision. It is not good enough to simply say, ‘We want to cherry pick those orders of the commission that we agree with and completely disregard and treat with contempt those decisions with which we disagree.’ You have to cop all the decisions of the umpire or none at all. We say, whether or not you like the decision of the umpire, you have to accept the decision. It is a pretty simple proposition.

Those opposite, with their trade union background, find that a difficult proposition to swallow. The Australian Greens, who are even more extreme, with their extreme left-wing ideology, would find that complete anathema but I think the average Australian whom we as a government seek to represent—that is, we seek to represent not special interest groups or sectional interest groups but the large mass of the Australian people—would say that is a very fair proposition.

I repeat: no penalty can be imposed until those engaging in unlawful conduct have first been warned by either the AIRC or the Federal Court that what they are doing is unlawful. It is only after a stop order has been defied that penalties provided for under this bill have any relevance. In respect of contraventions of AIRC and Federal Court orders, the bill provides that the minister or his nominee may commence proceedings for recovery of a pecuniary penalty. No criminal sanctions are imposed. An official who is subsequently penalised by a court for breaking an order is also disqualified from holding office for a period of five years. Any such disqualification is subject to a right of appeal.

I am reminded that the bill is similar in effect to the scheme for disqualification in the Corporations Act, which provides for a person to be disqualified for managing a corporation in breach of certain civil penalty provisions which reflect on their fitness to hold office. It is in the company laws, as it ought to be. Nobody on the other side objects to it if it applies to Corporations Law, but somehow if it finds its way into industrial law and affects the people responsible for endorsing and funding those opposite, we need a different law to protect them. We as a government say: if it is good enough for Corporations Law, chances are it is also good enough for industrial or workplace relations laws. In some cases where the unlawful conduct of an official of a registered organisation damages that organisation, the bill provides that the organisation may recover the losses from the official.

Given some of the misleading contributions from those opposite, it is also necessary to emphasise what the bill does not do. First, the bill does not narrow the scope of industrial action that is protected by the Workplace Relations Act. It was therefore quite wrong for Senator Murray to suggest that the bill takes away existing rights to engage in industrial disputation or that it somehow shifts the balance between parties. It does nothing of the kind. Parties can still engage in protected action and no official, member or employee of an organisation is penalised under...
this bill for taking lawful industrial action. So the answer to Senator Murray’s rhetorical question on the matter is that the bill ought to have no impact whatever on the ability of union officials to perform their job adequately and represent employees, unless he believes that to do that you have to breach the orders of the Industrial Relations Commission.

Second, the bill does not affect the rights of ordinary members of registered organisations. Senator Nettle, in her bizarre contribution, said that the bill ‘seeks to create a civil penalty provision applying to members who breach an order or direction applying to them’. That is simply misleading. The only persons affected are office holders and employees of organisations. If anything, the bill is about protecting organisations and their members from the consequences of unlawful behaviour by those in positions of leadership and authority within those bodies.

Third, the bill does not discriminate against trade unions; it applies to all registered organisations and their officials. Senator Collins suggested that the bill was unbalanced because:

Although registered organisations can and do include employer organisations, employer organisations do not engage in industrial action.

That is rather like saying that a law which prohibits jaywalking is unfair on jaywalkers and discriminates in favour of people who do not jaywalk. The message for union officials and ex-union officials is simple: the law permits you and your organisations to take industrial action, subject to certain rules. Most unions and their members comply with those rules. It is not acceptable to say that it is alright to comply with those rules most of the time. The jaywalker does not have that defence and neither should unions or employer organisations that from time to time defy court or tribunal orders. Fourth, disqualification from office is not automatic. In those instances where an official contravenes an order, the court still retains the option of not imposing a pecuniary penalty. Where no such penalty is imposed there can be no disqualification.

Fifth, it is not correct to say, as Senator Nettle did, that there is no attempt to relate the magnitude of the penalty to the magnitude of the breach of the act. She says this based on the incorrect premise that the sanctions imposed by the bill will apply to minor administrative breaches of the act. Perhaps the honourable senator should read clause 227, which would require the Federal Court to have regard to the nature and circumstances of the contravention and the nature of the person’s involvement in the contravention when considering an application to negate or reduce the disqualification period.

Sixth, the bill does not relate to minor administrative breaches of the act. Senator Nettle said that the bill would allow for disqualification from holding office for breach of provisions relating to the keeping of records, auditing and reporting to members. Again, she has misunderstood the effect of the bill. It only relates to breaches of orders or directions of the Federal Court or the commission and not to the breach of other civil penalty provisions. The government finds erroneous comments of this sort all the more disappointing, given that these proposals have been around for some time and that there was a Senate inquiry into the bill. The Department of Employment and Workplace Relations provided a detailed briefing to the inquiry and departmental officials appeared before the inquiry and were available to answer technical questions on the bill. Some senators now demanding more information or demonstrating a limited understanding of the bill did not even manage to attend the committee hearings on the bill.
Some senators have questioned the need for this legislation, asserting that either there are not many breaches of court or commission orders or else that any breaches are trivial and should be ignored. The government is pleased that the overall level of industrial disputation is at an all time low, but that is not an argument for turning a blind eye to industrial action which is not permitted by law. The government is concerned that there is a fairly steady stream of cases where court and commission orders to stop industrial action are being defied. Departmental estimates suggest about 15 per cent of such orders are being disobeyed. Thankfully, noncompliance with orders is not rampant, but that is not to say that it is not a serious issue.

Letting even isolated instances of deliberately unlawful conduct go unpunished is an invitation to more widespread noncompliance in the future. Although some contraventions arguably involve minor disruptions to business, many do not. For example, during the dispute at the Patricia Baleen gas plant in 2002, return to work orders were defied for weeks as part of a campaign by a number of unions which lasted for almost three months. Such noncompliance erodes confidence in the commission, the courts and the system as a whole and is unfair on those who play by the rules. Yet, bizarrely, Senator Collins in her contribution suggested that this legislation somehow undermines the role of the commission. I simply remind Senator Collins that it was in fact a past Labor government that sacked every single member of the Australian Industrial Relations Commission and then reappointed the commission the next day or very shortly thereafter, leaving one person off it. That is the way that the Australian Labor Party, if ever they were allowed back into power, would deal with the Australian Industrial Relations Commission, which they now claim to be supporting. The way they treated the Industrial Relations Commission then was shameful and they have never apologised for doing it. Therefore, we can assume that, should they be so minded and if they were re-elected, they would do the same again in the future.

Senator Murray has suggested that the government has not presented sufficient evidence to demonstrate that a real and significant problem exists. Senator Collins referred to a list of 22 potential breaches, previously identified by the department. In December 2002 Minister Abbott issued a media release citing 22 instances where orders appear to have been breached between 1999 and 2002. Senator Collins says that these were only potential breaches. Nothing hangs on this point, though, as ‘potential’ here only means that some of the matters were not pursued to absolute finality in the courts.

Senator Collins makes no reference to the further six matters identified by the department in the material tendered to the Senate hearing into the bill on 22 October. The department has subsequently identified a further clutch of matters which raise the count of potential contraventions to above 30. More could probably be found if required, but those already identified ought to be enough to persuade any responsible government that there exists a real problem requiring attention. In answer to Senator Murray, I note that neither he nor other Democrat senators attended the Senate hearing when departmental officers were available to answer questions on the bill. It might help if Senator Murray were to say what evidence would persuade him and his colleagues that this matter requires attention.

I could make some other comments on the nonsense that was put before us during the second reading debate, but I think I have dealt with most of the issues. If need be, we can deal with the other issues in the detail during the committee stages. I thank honour-
able senators for their contribution to this debate. I will simply summarise the purpose of this bill. We hope that everybody will comply with orders of the AIRC or Federal Court and that the bill’s provisions will never need to be used. The simple principle is: if you do not cop the umpire’s decision, there must be consequences. We believe that; it is unfortunate that those opposite do not.

The Acting Deputy President (Senator Lightfoot)—The question is that the bill be read a second time.

A division having being called and the bells being rung—

Senator Jacinta Collins—I seek leave to call the division off.

Leave granted.

The Acting Deputy President—I will put the question again. The question is that the bill be read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (1.12 p.m.)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [1.16 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes............. 32

Noes............. 36

Majority........ 4

Ayes


Noes


* denotes teller

Question negatived.

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

BUSINESS

Rearrangement

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.19 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day relating to the International Transfer of Prisoners Amendment Bill 2004.

Question agreed to.
INTERNATIONAL TRANSFER OF PRISONERS AMENDMENT BILL 2004
Second Reading

Debate resumed from 4 March, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (1.20 p.m.)—I rise to speak on the International Transfer of Prisoners Amendment Bill 2004. The bill seeks to amend the International Transfer of Prisoners Act 1997 in two general ways, but its immediate purpose is to facilitate the return of Australian citizens David Hicks and Mamdouh Habib to Australia to serve any term of imprisonment, if they are convicted by a US military commission. The bill itself is sensible and grounded in compassion and that is why we have agreed to it being put to the Senate today. If an election is called next week or the detainees are tried and charged quickly, there is no mechanism by which they can be brought back to Australia to serve their sentence and that is our primary objective in supporting the bill.

The circumstances creating the need for the bill are scandalous and one of the most outrageous indictments of Western society in recent history. The International Transfer of Prisoners Act sets up a regime for the transfer of convicted prisoners to their home country to serve out any sentence. It is based on an international convention, allowing a country to transfer a prisoner following a conviction by a court or tribunal. This bill is necessary in order to ensure that a conviction by a military commission against a person held in Guantanamo Bay can still activate the beneficial provisions of this regime.

The need for this bill comes about because a military commission is not a court or a tribunal and because Guantanamo Bay does not fit easily within the definition of a foreign country. The fact that we need this bill highlights the legal no-man’s-land for prisoners at Guantanamo Bay, and it highlights the shameful fact that they will not be tried through any ordinary court process. Despite Labor’s uneasiness about the circumstances in which this bill has become necessary, we intend to support it because of its humanitarian impact. None could argue that, if either Mr Habib or Mr Hicks are convicted, they should stay in Cuba to serve out any sentence. Because of Labor’s commitment to support this beneficial legislation, and our longstanding objection to the proposed process to try these persons, we intend to move a second reading amendment, which has been circulated. The amendment asks that all words after ‘that’ be omitted with a view to substituting the words in the amendment, while not declining to give the bill a second reading. I move ALP second reading amendment:

At the end of the motion add:

‘but the Senate condemns the Government for:

(a) acquiescing in the use of US military commissions to try Australian citizens; and

(b) failing to explore all options for the two Australians currently being detained by US authorities in Guantanamo Bay, to be tried in Australia’.

Before dealing critically with the scandalous situation of Mr Hicks and Mr Habib, I will deal briefly with the transfer regime involved in the act and the proposed changes to it. Currently, as I have mentioned, the act allows for the transfer of convicted prisoners to Australia from a foreign country that is a party to a multilateral convention, which includes the United States, with which Australia has a bilateral agreement for the transfer of prisoners, and which includes countries such as Thailand.

This bill will amend the current definition of ‘countries’ to acknowledge regions whose status might not be that of a ‘country’. The
amendment covers the situation in Guantanamo Bay, where the land is part of the sovereign territory of Cuba but is a region under the jurisdiction of the United States, pursuant to a lease. Proposed section 8(5)(d) ensures that a convicted prisoner held in these circumstances would still be the subject of a transfer back home. It is worth noting that, although those in Cuba are clearly in our sights now, it is possible that in the future this extended definition might apply to those convicted in Hong Kong or Thailand, or in other countries or regions that have unusual or irregular status—and perhaps even in countries under the temporary administration of other countries, such as Iraq, and in the foreseeable future in other countries.

The bill also extends the definition of court or tribunal to include a military commission of the United States of America for the purposes of this act. If it were not for the fact that this legislation is being introduced purely to ensure that convicted Australians can be returned to Australia to serve out their sentences, Labor might have a very serious reservation about changing this definition. If the government were seeking to change the definition of a court or a tribunal generally, or for any other purpose, we would not support that. Labor does not support the use of military commission processes by the United States government to try our citizens. This process is not independent and it is not fair, and any decision in any other context should not be given equal status to that of a court or tribunal.

Labor accepts that the definitions and amendments to the overall act are only on the basis that this bill is in fact beneficial, and that it is beneficial to those two citizens who might immediately be affected. It is possible that the legislation is entirely premature and unnecessary as no charges have yet been laid, let alone any conviction having been made against those two Australian citizens. But it is important that the mechanism is at least put in place. We accept that the process, even though it has moved incredibly slowly so far, may move more quickly. If and when charges are laid we would not want to stand in the way of supporting these beneficial provisions. Certainly, if prisoners convicted overseas were able to serve out their sentences in Australia, it would be of great benefit not only for those individuals but particularly for their families and support networks, to whom they would then be near.

If Mr Hicks and Mr Habib are convicted and returned to Australia under these new provisions, it would end what has been more than two years of isolation and disconnection from their families in Australia. In this context, clearly it would be wrong for us to refuse to support the bill. It should be noted, however, that this legislation on its own is not enough to secure the transfer of Mr Hicks and Mr Habib from Guantanamo Bay to Australia if they are convicted. I understand, and the broad scheme of the act makes this clear, that a separate agreement between the Australian and US governments would still have to be entered into to organise the final details, timings and conditions of any transfers and the terms of any ongoing sentence to be served in Australia. Any transfer under this act, if it is amended, still requires the consent of the prisoner, the transfer country and the receiving country, and in the case of Australia the state or territory where the prisoner is to be held to serve out their remaining sentence. We do not know whether the government has sought the consent of the US for such transfers in the event that either of these two persons are convicted.

I moved the second reading amendment in order to make two general points. One is that the ongoing detention of an illegally indeterminate nature of an Australian citizen without charge is an outrageous position for this government to remain silent about. The
Labor Party condemns the government for acquiescing in this process, for making no comments, for negotiating no improved conditions and for failing to explore all of the options for Mr Hicks and Mr Habib to be tried according to a fair process. Our amendment recognises two fundamental aspects in which the government has failed in its responsibility and in its handling of this matter. Neither the Prime Minister as the leader of this country nor the Attorney-General as its first legal officer has taken any stand on this issue. Neither of them has challenged, queried or pushed the United States government for holding two of our citizens in these legally questionable circumstances. Neither of them has effectively explored other options under which these two Australians could be tried in Australia.

Labor want to make it absolutely clear in this debate that we condemn the use of a military commission to try those detained in Guantanamo Bay. Labor have consistently argued that the US military commission process is seriously flawed and that there are inadequate safeguards against an unfair trial. Our criticisms include the lack of independence of the commission from the US executive arm of government, the absence of any rules of evidence and the absence of any appeal mechanism to an ordinary court. Given that the Attorney-General is sitting not far away in the House of Representatives, we are extraordinarily concerned that the US Secretary of Defense, Mr Donald Rumsfeld, has made the incredible comment in recent days that, even if people held in Guantanamo Bay are tried by a military commission and acquitted, the US may indeed continue to detain these people. That is an outrageous suggestion. I would urge the Attorney-General to speak strongly to the US government to say that that would not be an adequate way to treat not only Australian citizens but people from any other country who might be detained.

To make it clear: it is now close to a year since the announcement and comments by the Australian government that charges were to be laid imminently. Mr Hicks now has a military and a civilian lawyer representing him, and we understand that both Mr Hicks and Mr Habib now have some limited consular access. The US government maintains its view that the detainees are not subject to the ordinary protections of US law and yet it also holds the view that they are not entitled to the status of prisoner of war. As I understand it, they are classed as enemy combatants, leaving them with this indeterminate legal status—or, as it has been described elsewhere, in a twilight zone.

The precise nature of the detention of all of those held by the US in Cuba is being tested currently in the US Supreme Court. We expect that the government will pay close attention to the outcome of that case to see whether it should have been arguing about the status of Australian citizens well before this. Labor will also be examining that trial process and its outcome in order to press the government about its responsibilities. The US is satisfied that its military commissions are appropriate and, as I have already referred to, its most recent comments indicate that it may continue to detain people even if they are acquitted by the military commission. That seems to be the position that has been adopted by the US. Hopefully, the US Supreme Court will test that position. The US government has not provided any information publicly that confirms whether its intention is to charge Mr Hicks and Mr Habib under US law, international law or some other combination of known or unknown laws.

The Australian government’s comments on these cases have been very inconsistent.
and misleading. The government says that it does not know what evidence the US has against the two Australians and yet in the same breath continues to assert that it knows that they cannot be tried for any offences in Australia. The government also appears to have taken little action to advocate to the US that charges be laid quickly and a fair process be used. In fact, the government has taken an entirely hands-off approach, allowing the US to proceed in any way it sees fit. It seems it has expressed very little concern about the process to be used in the military commission. In summary, the Howard government seems to be willing to allow the US executive arm of government to act as prosecutor, judge and jury for these alleged terrorists—removing any pretence of the doctrine of separation of powers that we so cherish—and to consolidate power in its hands not only to set the rules for the military trials but also even to decide whether people will be released from detention if acquitted by the military commission.

The military order that set up these military commissions that would sentence Mr Hicks and Mr Habib if they were found guilty of any offences they have been charged with is obviously going to be an exercise of US executive power, not judicial power. This raises a further question as to whether, if they were transferred back to Australia following a conviction, their continued detention would be challenged under the Australian Constitution. As the Attorney would know, under our Constitution there is no authority for executive detention by the Commonwealth government, except where it is connected with a head of legislative power and is reasonably necessary for the purpose of its exercise.

The government has declined to share with the opposition its legal advice on the constitutionality of this bill, but we believe that the obligation is fairly and squarely on the government to satisfy itself that these limitations can be overcome. To seek further advice on this, we raise the question of whether the government is satisfied that it would be constitutionally valid to continue to detain people in Australia if they were transferred here under the amended bill following sentencing by a military commission with this extraordinary use of executive power. It would be helpful if, in answer to the second reading debate, the government provided the opposition with advice on this point.

In the time remaining I will outline what the Australian Labor Party believes would be a much fairer and more just way of dealing with this situation in general. Firstly, Labor believes that alleged terrorists must be dealt with quickly. Once caught and detained, they must be charged and brought to trial to face justice. It is the responsibility of any democratic government to ensure that the process such people face is fair and that they are not left in a legal no-man’s-land. Labor wants to be convinced that all options for an Australian prosecution have properly been considered, based on the evidence available to Australia and the US. Labor will continue to demand that the government actively look at all the available options, including the use of existing domestic or international laws, the application of international laws in Australia—even if new enabling legislation would be required—and any other options that would deliver a quick and fair process.

Labor will pursue options with legal experts and international, criminal and constitutional lawyers. The government does not appear to have aggressively pursued any of these options. Despite the government’s assertions that it cannot use any of these options, it has not addressed numerous options that could be pursued that have been raised by others in the community and by experts in the legal world. I say to the government and the Attorney-General that the bottom line is
that, if Mr Hicks and Mr Habib cannot be tried in Australia, Australia must demand from the US a quick and fair process there. If they are eventually tried and acquitted in the US, they must not continue to be detained after acquittal. If they are tried and convicted, they should be able to serve their sentences in Australia.

In my view and in Labor’s view, the government has neglected its basic obligations to Australian citizens detained by other countries. The government does not know whether the detention of those citizens is lawful. It has left them in a legal no-man’s-land. It has expressed no concern publicly about the military commission process. Unlike the British and others, it has not actively advocated to the US the return of these Australian citizens, a better process for them, or their speedy prosecution. Most inconsistently, Australian citizens charged in other countries with offences like murder, drug trafficking and other criminal matters have got more attention from the government than these two people being held in Guantanamo Bay. Labor wants suspected terrorists to be brought to justice where charges should be laid quickly and trials should be fair. The Australian government should chase all options and pursue a trial here for Australians involved in alleged terrorist activities if such a trial is legally possible.

In summary, Labor support the bill that is before the Senate because of the beneficial impact it would have on those affected. It is certainly a humane approach to allow people to serve in Australia a sentence they have received in an overseas jurisdiction, so that they are closer to their families. We support that in principle and we understand why the government wants to change the provisions of this act to allow Mr Hicks and Mr Habib, if they are convicted by military commission, to serve out their sentences here. But we strongly disagree—and we register our disagreement—with the approach that the Australian government has taken in this matter more generally. We disagree with its acquiescence to US demands. We disagree with the US government’s use of a military commission, which will not achieve a fair outcome. We disagree with the government’s ongoing acquiescence and its failure to push the US to charge and bring to trial the two persons who have been held for over two years in detention in Guantanamo Bay.

Senator GREIG (Western Australia) (1.37 p.m.)—The Democrats believe the International Transfer of Prisoners Amendment Bill 2004 represents a failure on the part of the government and a massive abrogation of its responsibility to Australian citizens. This bill seeks to ensure that Mr David Hicks and Mamdouh Habib can be brought home to Australia to serve any sentence of imprisonment imposed by a US military commission. We Democrats certainly support bringing these two men home to Australia but we believe they should have been brought back here months ago. The government’s position is that they can be returned only after they have been convicted by a dodgy US military commission with little semblance to a proper court of law. There is no expected time frame in which this might occur, despite the fact that both Mr Hicks and Mr Habib have been detained for more than two years. On the other hand, if they are not tried or if the military commission finds them innocent, there is no guarantee that they will ever be released from Guantanamo Bay. In fact, the US has expressly stated that they could continue to be detained even after being found innocent.

The Australian government’s handling of this issue has been disgraceful from the outset. It has been negligent and irresponsible and has disregarded the welfare of its own citizens. Australia’s acquiescence to the farce that is Guantanamo Bay stands in stark con-
Contrast to the approach taken by other comparable jurisdictions such as Britain and Denmark, both of which secured the return of their respective nationals. While these governments have been vigilant in their efforts to secure the return of their citizens, the Australian government has placed its alliance with the US above the most basic rights of its own citizens and this has now resulted in a situation where different standards of justice apply depending upon which country you come from. We Democrats firmly believe that it should not be up to the United States to decide what Australian citizens can and cannot do. The Australian government has ultimately neglected its responsibility to Mr Hicks and Mr Habib, and this legislation fails to rectify that situation.

The United States has been widely criticised in relation to the regime at Guantanamo Bay, including over the location of the detention facility, the physical conditions in which detainees are being held, the refusal to treat them as prisoners of war and of course the structure and procedures of the proposed military commission. By holding these detainees outside of the United States the US government has sought to ensure that they do not have access to any protection that might otherwise be afforded to them under US domestic law. It is this situation which has, up until recently, prevented detainees from challenging the legality of their detention in the US courts. I note, however, that the US Court of Appeal recently held that it had jurisdiction to determine a habeas corpus action brought by the Guantanamo Bay detainees and that such an application is currently pending before the court.

The US has sought to strip detainees of their rights not only under domestic law but also under international law. It has done so by concocting a new category of detainee—the so-called ‘unlawful combatant’—and thereby escaping the obligations that would otherwise apply in relation to prisoners of war under the Geneva convention. This is unacceptable and a clear breach of international law. The result is that Guantanamo Bay detainees are being held in legal limbo—or, as some have suggested, in a twilight zone—between international law and domestic law, with no rights under either. It is this legal framework which has enabled the US to hold more than 600 detainees, including a number of children, without charge at Guantanamo Bay for more than two years.

Although improvements have apparently been made to the conditions in which detainees are being held, reports indicate that for many months they were housed in tiny wire cages, exposed to the elements on all sides. From the outset, it has been alleged that some of the detainees have never had any involvement in terrorism. This was confirmed when in 2003 more than 40 detainees were released without charge, including two elderly farmers who were taken into custody because they happened to be in the wrong place at the wrong time. It is no wonder that other countries have objected strongly to their citizens being kept in such conditions and have demanded their repatriation. Australia’s laxity in relation to the welfare of Mr Hicks and Mr Habib has been unconscionable.

Despite our strong objections to the way in which the government has handled this whole situation, we Democrats will be supporting this bill on account of its humanitarian benefits. We do, however, make it very clear that our support of one aspect of the bill is qualified, and that is the provision which categorises US military commissions as courts for the purposes of the prisoner transfer scheme. While we Democrats believe it is vital that Mr Hicks and Mr Habib have access to the scheme—and we are prepared to support the bill on that basis—we strongly object to any suggestion that the military
The proposed military commissions have been widely condemned by judges, lawyers, academics, various governments and human rights organisations, such as Amnesty International and Human Rights Watch. Some of the more disturbing characteristics of these commissions are as follows. The first point is that they lack independence. Not only will the detainees be prosecuted by the US military but the commission itself will include military personnel and the detainees will even be represented by members of the US military. The second point is that only the presiding member of the commission is required to have legal qualifications while the majority of the commission will be comprised of US military officers. The third point is that an individual being tried before the commission can only access a lawyer of their choice if they can afford one or the lawyer agrees to provide free legal representation. Even then, the lawyer will only be permitted to assist the US military lawyer appointed to represent the person. The fourth point is that the commission will not adhere to the usual rules of evidence. The fifth point is that the appeal process is limited. The sixth point is that President Bush may overturn the decision of the commission without any obligation to provide reasons for his decision. The seventh point is that, if convicted, the person can face the death penalty. Finally, the eighth point is that, if charges are not proved, there is still no guarantee of release.

As we know, the Australian government has managed to secure a number of guarantees in relation to the trial of Mr Hicks and there has been some vague indication that Mr Habib might be granted similar guarantees should he be listed as eligible for trial. Perhaps the most significant of these guarantees is that the death penalty will not be applied in the event of a conviction. Other guarantees include the right to consult an Australian lawyer and the right to have two family members present at the trial.

While the Democrats welcome these gains, they also serve to illustrate the different levels of justice that the US is applying to different detainees depending on their nationality. While some detainees have been allowed to return to face trial in their home country, others such as Mr Hicks and Mr Habib are left to face a dodgy military commission. Yet Mr Hicks and Mr Habib are in a better position than many of the other detainees whose countries have been unable to secure them the same guarantees. This kind of differentiation is abhorrent to the principle of equality before the law which underpins the entire rule of law.

One of the most alarming issues arising from this situation is that, while the US wants Australia to acquiesce to our citizens being treated in this manner, it expects an entirely different response from us if we be-
lieve American citizens have committed crimes against humanity. As we know, the US has asked Australia to enter into an agreement which would grant American citizens immunity from prosecution by the International Criminal Court through a so-called article 98 agreement. The request creates an interesting conundrum for the Australian government, which has been a strong advocate for the ICC and played an instrumental role in its establishment. Moreover, there are a plethora of legal opinions suggesting that such an agreement would be contrary to international law and Australia’s obligations under the Rome statute. Despite Australia’s strong advocacy of the ICC and the potential illegality of article 98 agreements, the government has indicated that it has no objection to entering into such an agreement with the US; in fact, it is currently negotiating such an agreement.

In December 2002, we Democrats successfully moved to refer the proposed agreement to the Joint Standing Committee on Treaties. We remain deeply disappointed that the committee has refused to commence the inquiry claiming that it is unaware of any such proposed agreement. Once again, during the recent budget estimates, the government acknowledged that a request had been made by the US, the Australian government had indicated preliminary agreement and negotiations were continuing. In the meantime, the US has coerced almost 50 other countries into entering similar agreements. It has made it very clear that a refusal to sign such an agreement will carry serious consequences, particularly for poor nations. The US has already suspended $47.6 million in military aid and $613,000 in military education programs to 35 countries who have refused to sign such agreements.

Despite its failure to secure agreements from these countries, the US has implemented contingency plans should they attempt to refer a US citizen to the ICC for prosecution. In particular, it has passed legislation dubbed the ‘Hague Invasion Act’, which permits US military personnel to invade The Hague, where the ICC is situated, in order to retrieve US citizens who have been referred to the court. Once again, we are seeing a clear double standard of justice depending on which country you are from. Moreover, there is little doubt that US citizens will be afforded the most rigorous standards of protection, even to the point of granting them impunity for the worst possible crimes against humanity.

We Democrats firmly believe that the Australian government should be doing more to combat this unequal system of justice being pushed by the United States. Firstly, it should be doing more in relation to Mr Hicks and Mr Habib. An arrangement to facilitate the repatriation of these men following their conviction is insufficient, in particular because, after two years, neither of them has been charged with any offence. If and when they are eventually tried, there is no guarantee of their release even if they are found to be innocent of the charges laid against them—in other words, conviction is the only means by which either man can be returned to Australia at any time in the near future.

Secondly, the government should be making strong objections to the US regarding the entire regime at Guantanamo Bay. In the context of its very close relationship with the US, Australia has the capacity and the opportunity to encourage the US government to dismantle this flawed regime and implement new measures to ensure that detainees are dealt with according to the law and humanely. Finally, Australia should refuse the US request to enter into an article 98 agreement which would grant American citizens immunity from prosecution in the International Criminal Court. In closing, we Democrats welcome this development which
will hopefully result in the repatriation of Mr Hicks and Mr Habib to Australia, although there is no guarantee of that. We once again take this opportunity to voice our very real anger at the appalling way in which the government has handled this entire situation.

Senator BROWN (Tasmania) (1.51 p.m.)—I congratulate both the previous speakers. The International Transfer of Prisoners Amendment Bill 2004 has a humanitarian aspect but that cannot distract us from the failure of the Howard government to stand up for Australia in matters of law, of international jurisprudence and of us being an independent country, whichever way you look at what is going on here. Two Australians who have been detained—one in Pakistan and one in Afghanistan, but both having no arms at the time and both with other people who have not been held or charged—were transferred to Guantanamo Bay, an illegal prison in Cuba, under the authority of the President of the United States, George W. Bush. They are held illegally under international law by the President of the United States, who is acting illegally with the complicity of the Prime Minister of this country. One has to ask: how could this be?

The best excuse that has been given for the holding of the prisoners illegally, with their basic human, civil and political rights and, most importantly, their rights of access to the law having been suspended these last two years, is that there is not a domestic opportunity to charge these people if they have engaged in some form of hostilities in another country. That itself is wrong. It just does not stand up to scrutiny and I will be questioning the government closely about this in the committee stage of this bill because there is available in Australia and has been available for a long time—in fact, since 1978—the Crimes (Foreign Incursions and Recruitment) Act. Section 6(1) of this act states:

A person shall not:
(a) enter a foreign State with intent to engage in a hostile activity in that foreign State; or
(b) engage in a hostile activity in a foreign State.

The penalty is imprisonment for 14 years. Section 6(3) states:

For the purposes of subsection (1), engaging in a hostile activity in a foreign State consists of doing an act with the intention of achieving any one or more of the following objectives:

One of those objectives is 'engaging in armed hostilities in the foreign State'. If Mr Hicks and Mr Habib cannot be charged under that, just what are they going to be charged with? It is the business of the government to know that. Moreover, it is the business of the government, in seeking to have this legislation passed, to tell the Senate what that is. In acquiescing to the military commission, the government says that with regard to this trumped up court, which does not fit any of the modern tenets of justice in Australia, the United States or Europe, an agreement has been reached. Only when that agreement has finally been consummated, presumably by a signature by both governments, will this bill come into law. That agreement has essentially been chartered. The Attorney-General announced that the agreement had been made with his counterpart in the United States in November last year. Amongst other things, it says that the death penalty would not be applied in this case. I doubt very much that the death penalty could be applied even under US law for whatever we might imagine the charges will be against Hicks and Habib. It provides for a number of other things, including the rights of the prisoners.

I will be going through the presumed provisions of that agreement with the government representative at the table when we get to the committee stage, but it would be a complete affront to the Senate if that agree-
ment is not tabled. Where is it? How can this Senate deal with a matter as serious as this when the agreement upon which this piece of legislation is based is secret and is being withheld from the parliament? George W. Bush knows what that agreement is and serial bureaucrats in the United States know what it is but presumably this parliament is not to be told. This is a cavalier attitude from the executive in this country—from the Howard government—which we simply should not accede to. I want to flag that during the committee stage I expect that agreement to surface so that it can be debated and so that the government can explain it. It would be an affront to this place for the minister or the minister’s representative to expect us to debate the issue without that agreement being extant.

I foreshadow a second reading amendment. I note that the Labor Party have a second reading amendment in similar terms. If Labor’s is put up first and is agreed to, I will then move part (1) but not part (2) of the Greens’ amendment, because it is quite different from the Labor amendment. We will be supporting the Labor amendment when it comes before the chamber later this afternoon. I want to come back to a couple of matters that I will put on notice for the government so that they will have time to look at them and inform the committee when the time comes. We know that prisoners in Guantanamo Bay have now been repatriated to Russia, Saudi Arabia, the United Kingdom, Denmark, Spain and other places. The Greens will be pursuing the government to explain why arrangements have been made with those countries to have their prisoners repatriated and why indeed the two US prisoners have been repatriated to face the domestic courts in the United States but why the Australians have not.

Why is there this double standard? Why is there third-rate treatment as far as Australia is concerned? What is it about the Australian prisoners Hicks and Habib that they are not being repatriated while prisoners in Guantanamo Bay from several other countries have been repatriated under an agreement struck by the governments of those other countries? One has to presume that Prime Minister Howard and Attorney-General Ruddock see Australians as inferior to Danes, Spaniards, Britons, Russians or Saudi Arabians. There will be the need for the government to inform the Senate about that matter when we get into the committee stage later this afternoon. I will continue my remarks when we come back to this matter later.

Debate interrupted.

QUESTIONS WITHOUT NOTICE

Health: Program Funding

Senator MACKAY (2.00 p.m.)—My question is to Senator Ian Campbell, the Minister representing the Minister for Health and Ageing. Why did the minister tell the Senate last Thursday that sexual health services were funded under the Commonwealth-state public health outcome funding agreements, or PHOFA, when these services are actually funded under the Commonwealth Department of Health and Ageing’s family planning program? Given the Commonwealth’s direct and sole responsibility for this program, can the minister therefore now reassure the women of Australia that the family planning program will continue beyond 1 July 2004 and that the organisations providing these vital services will be able to continue to do so?

Senator IAN CAMPBELL—I read my briefing on that issue very closely and gave the senator a full description in response to the question of the process leading up to decisions prior to 1 July. I have nothing else to add to the answer I gave to the Senate last week.
Senator MACKAY—Mr President, I ask a supplementary question. I again ask the minister to indicate why he has talked about the wrong program, and ask him whether he now understands that these services are actually funded under the Commonwealth Department of Health and Ageing’s family planning program? I ask him again: given it is the Commonwealth’s direct and sole responsibility, will family planning services continue beyond 1 July 2004? Is he aware that the Commonwealth department has, to date, failed to commence negotiations with family planning services, in contrast to previous years when their funding would, at this time of year, have been finalised for the forthcoming financial year?

Senator IAN CAMPBELL—As I recall, I went through the process that will lead to the future funding decisions for those organisations in some detail. I would imagine that those organisations have a very strong interest in ensuring that they have ongoing funding—

Opposition senators interjecting—

Senator IAN CAMPBELL—You would suspect, Mr President, that organisations that have been funded have a strong interest in ensuring that that funding remains. The Commonwealth, as I described last week in question time, is going to ensure that taxpayers’ money within the health portfolio is spent on achieving quality outcomes. That is the process I described last week in question time. No taxpayer, or anyone who is interested in outcomes in health expenditure generally or family planning in particular, would want other than a diligent process to ensure that the funding the Commonwealth expends on that area is spent efficiently and effectively. That is the process the Commonwealth is going through, and I described that in some detail last week. Clearly Senator Mackay did not understand the explanation.

Senator Mackay—You had the wrong program!

The PRESIDENT—Order!

Women: Government Policies

Senator PAYNE (2.03 p.m.)—My question is to the Minister for Family and Community Services, Senator Patterson. Will the minister update the Senate on the ways in which the government’s policies are delivering better outcomes for Australian women?

Senator PATTERSON—I thank Senator Payne for her question, which is particularly pertinent today as it is International Women’s Day. I also thank my colleagues who attended the celebration we had at lunchtime for young women from Canberra and its surrounding areas. This celebration gave these women the opportunity to speak to members of parliament and to show examples of people who are working in the area of science. I do not thank the Deputy Leader of the Opposition, Ms Macklin, for her opportunistic comments today at Amnesty International’s launch of its report about violence against women. Ms Macklin said we were not going to go ahead with our campaign to alert young people in particular to the fact that violence against women is totally unacceptable. That campaign will go ahead, and any suggestion it will not is scurrilous and unacceptable and totally inappropriate on a day like today.

The Australian government has made enormous inroads into assisting women with choice and balancing work and family. When you talk to young women, opportunity and choice are the two things they want to talk to you about. We have given $11 billion in assistance to families through the family tax benefits—almost $2 billion a year more, which means about $6,000 per family. In addition we have funded family tax benefit B, which enables a member of the family to stay at home and gives a family choice. Family tax benefit B costs about $2½ billion each
year and assists about 1.2 million single-income families. I could go on about some of the other benefits but I will not, because there are other things to cover. We have assisted families in making the choice about who will stay at home and who will go to work. We have increased the spending on child care; we have doubled it. We have increased the number of child-care places by over 200,000, which is a significant increase, and there are now over 500,000 child-care places.

There are now more women in paid employment. More than 600,000 jobs have been created for women; there are now more than four million women in the work force. There has been an increase of 17.2 per cent in the number of women in the work force. In 1996, when we came to government, the female unemployment rate was 7.6 per cent. It is now at an all-time low of six per cent. Under this government average weekly earnings for women have increased by 18.8 per cent—a real increase of over $132 per week. But what did we hear Jenny Macklin saying out there today? She was harping and carping from the sideline that the gap between men’s and women’s wages has blown out to over $300 a week under the Howard government. According to the figures I have, the gap is less than half of that claimed by Jenny Macklin. Under the Howard government women’s wages have increased at a greater rate per year than men’s wages, and under this government women’s wages have risen three times more than they did under Labor. Ms Macklin ought to go back and get her figures right and tell the true story, not half-truths.

We have had a significant campaign against domestic violence—$66.5 million and 235 individual programs, ranging from working with victims, training and alerting business to the issue of domestic violence in businesses. This wide range of programs will now include the program which we will roll out to alert young people that violence against women is totally unacceptable. That program will roll out when there is appropriate backup behind the program. The message will be clear and unequivocal; it will ensure that those people whose concerns are raised, who have been the victims of domestic violence, are directed to the appropriate support.

(Time expired)

Veterans: Entitlements

Senator MARK BISHOP (2.07 p.m.)—My question is to Senator Coonan, the Minister representing the Minister for Veterans’ Affairs in this place. I draw the minister’s attention to the Prime Minister’s announcement last week of changes to veterans’ entitlements. Can the minister advise why it will take until March 2005 to pay war widows their promised rent assistance? Minister, isn’t this standard allowance paid by Centrelink, with few technical matters to be addressed to enable payment, and isn’t the delay just another sign of a mean and tricky government?

Senator COONAN—The government’s response to the Clarke review is a comprehensive response that values our veterans. It puts in place a range of measures that were recommended by the Clarke review. The response has been very carefully considered and reconsidered by this government. It is reasonable in the circumstances to assume that the whole of the package responds appropriately to the needs identified in this area. Of course it delivers on a key government election commitment and responds to the particular needs of widows and totally and permanently incapacitated veterans. It certainly does not behove the opposition to be criticising the government for what it has done for veterans.

Senator Bishop’s question gives me an opportunity to remind the Senate and indeed those listening that, since coming to office in
1996, this government has actually increased spending on veterans affairs from $6.4 billion to $10 billion in the federal budget for 2003-04. That does not seem to be mean and tricky to me, Mr President. I think it shows that the Labor Party has a very strange view of what is mean and tricky—when you take into account what in fact has been done. Much of the increased spending has been due to the government’s recognition of the growing and changing needs of the veteran community, including Australian war widows and widowers, as they become older. That is why there has been a response to the proposal in the Clarke review, which has been taken into account in the time frame announced by the government to increase the payments.

The government have worked to meet the needs of the ageing veteran community in a number of ways, particularly by helping veterans and war widows to continue living at home. This is an additional initiative through programs such as HomeFront and Veterans Home Care. We have met our commitment to veterans, and we will continue to do so. In the circumstances it is extremely carping and unfair of the Labor Party to be calling these responses mean and tricky. Why is it that the Labor Party seem to assume any bipartisan approach to these matters—

**Senator Mark Bishop**—Mr President, I rise on a point of order. The question that was directed to the minister was a very specific one. It went to the issue of when the war widows assistance would be implemented and why it was to be March next year. You might care to direct the minister to pay some attention to that question so that those who are listening can have a response to it.

**Senator Ian Campbell**—What is your point of order?

**Senator Mark Bishop**—The point of order goes to relevance to the question. The minister has now had over three minutes to respond and has deliberately chosen to avoid the issue. I seek your assistance in that respect, Mr President.

**The PRESIDENT**—As you know, Senator Bishop, I cannot direct the minister on how she should answer the question. The minister has been referring to war widows. She has a minute left to answer her question. I rule there is no point of order, and I ask the minister to continue.

**Senator COONAN**—Thank you, Mr President. I can understand why the Labor Party is a bit sensitive about the comprehensive response of the government to meeting the comprehensive needs of veterans, particularly the recommendations in the Clarke review. Eleven thousand war widows and widowers will receive an increase in their income support payments as a result of the government’s decision to pay rent assistance, in addition to the ceiling rate of income support supplement. Far from not responding to the needs of war widows, this government values our veterans and understands the needs of their widows and families, and it will continue to respond sensitively to their needs as they unfold. The Clarke review made a number of recommendations. The government has considered them carefully and has implemented measures in accordance with those recommendations.

**Senator MARK BISHOP**—Mr President, I ask a supplementary question. In the same vein, can the minister explain why the indexation of the TPI special rate is to occur from this month, with backdating once the legislation and systems changes have been made shortly thereafter. If this timing can be applied in the indexation of the TPI special rate, why can’t war widows have the same deal?
**Senator COONAN**—As Senator Bishop would know, this government did take the Clarke review’s recommendations and did implement them. In respect of war widows—in addition, as I have just said, to the 11,500 widows to benefit—the cost of the particular measure to help widows is $73.1 million over five years. Senator Bishop might think that is mean and tricky. The government, after having carefully considered it, thinks it is an appropriate thing to do for war widows in valuing the relationship that they had with their husbands. We value veterans and we value their families. Under this change, eligible war widows will be able to receive up to the maximum rate of income support supplement, plus up to the maximum rate of rent assistance—which is currently $94.40 per fortnight. This is an appropriate response, and I suggest that the Labor Party try to lift itself up above politics, at least in dealing with veterans. (Time expired)

**Economy: Fiscal Policy**

**Senator LIGHTFOOT** (2.14 p.m.)—My question is addressed to the Leader of the Government in the Senate, Senator Robert Hill. Will the minister inform the Senate how the Howard government’s responsible fiscal management is providing lower rates of taxation for Australian workers? Is the minister aware of any alternative policy?

**Senator HILL**—I thank Senator Lightfoot for his important question. The Australian economy remains one of the best performing economies in the world. According to the OECD, Australia is expected to be one of the fastest growing industrial economies in 2004 and 2005. Economic growth in the December quarter of last year was the strongest quarterly growth in the last four years. Economic growth means more jobs and greater job security for Australian workers. We now have in Australia an unemployment level of six per cent and inflation below three per cent. It is the first time in 35 years—

**Senator Sherry**—So you want people to work until they drop.

The **PRESIDENT**—Senator Sherry, shouting across the chamber is disorderly.

**Senator HILL**—Senator Sherry does not want to hear it but I will repeat it. The unemployment level is below six per cent and inflation is below three per cent. This is the first time this has been achieved in 35 years. We have made the tough but necessary decisions to keep the budget in surplus while delivering funds to vital portfolio areas such as health, education and defence. We delivered $12 billion in personal income tax cuts as part of our reforms to the taxation system—the largest income tax cuts in Australia’s history. We also cut the business tax rate from 36 per cent to 30 per cent, enabling businesses to invest more and employ more Australians.

The government’s strong record of managing the economy is helping to create jobs and deliver lower taxation levels and stands in stark contrast to the alternatives being put by others. We know, for example, that the Labor Party and its new leader have had several opportunities to rule out tax increases but have refused to do so. We know Mr Latham specifically removed a pledge not to increase taxes from his speech at the ALP conference. The pledge was in the draft but Mr Latham took it out. Why? Obviously he intends to increase taxes if he gets the chance. We saw it last weekend when he was asked repeatedly to rule out tax increases and he repeatedly refused to do so. That is the major concern.

We remember Labor’s record on tax increases. Mr Latham has promised almost $8 billion of new spending but he will not say where the money is coming from. It is the same old Labor: big spending and big budget.
deficits, followed of course by higher taxes and higher interest rates on home loans. It is the same old story. Australians will remember the last time this occurred under Mr Keating—the 1-a-w tax cuts. What happened? They got re-elected, the promise was broken, they bumped up taxes, they put up taxes on Medicare, cigarettes, wine, cars, car parking, credit unions, friendly societies, light fuel oil, fringe benefits tax, departure tax, company tax and wholesale sales tax. Not once but twice. There were billions of dollars of tax increases. That is the Labor Party, and that is Labor’s alternative economic policy.

Women: Domestic Violence

Senator LUNDY (2.18 p.m.)—My question is to Senator Patterson, the Minister for Family and Community Services. I refer to the proposed $12 million sexual assault and domestic violence awareness program, including television advertisements which were due to have been aired right now. Given the recent allegations regarding sexual assaults committed by Rugby League players, is it not now even more important to run the ‘No respect, no relationship’ campaign? In light of these current events, will the government reconsider the decision to withdraw the campaign in order for it to be run immediately?

Senator PATTERSON—No, we will not be running it immediately, Senator Lundy. It always pays to look at the history of these things. Let us go back and have a look at what Labor did about domestic violence when they were in government. There was a little program here, a little program there. There was no coordinated effort. Labor do not have a leg to stand on when it comes to discussing programs in domestic violence.

We have had a program, initiated originally by Senator Newman, Partnerships Against Domestic Violence and another smaller program against sexual assault. There was $66.5 million allocated to 235 individual programs aimed at working with people who are working with the victims of domestic violence, perpetrators of domestic violence and businesses to address the issue of domestic violence in the workplace. I could go on for 235 of them. But Labor has picked on one program, which is a communications program aimed particularly at young people. When we looked at the advertisements and at the program as a whole, we were of the opinion that, first of all, the message was not clear and unequivocal. The message must be very clear that violence is totally unacceptable and in fact in a number of cases criminal. The message needed to be very clear and unequivocal.

Also, there was a web site for people to go to once they had seen this advertising. It was the Prime Minister’s opinion—and I support that—that that was not sufficient assistance for people who had been victims of sexual assault or violence or people who felt that they may be in a situation where they were at risk of sexual assault or violence. We decided we needed a 1800 number. You do not just put up a 1800 number—Labor might just put up a 1800 number—without structure and support behind that.

Last Friday I announced $500,000 to Lifeline to assist them to increase their resources to deal with people who are victims of domestic violence. There will be other resources rolled out to ensure access to the services provided by the states and territories. We can direct those people to those services. Senator Lundy happens to see herself as an IT expert but she is probably out of touch. There are people in this country who do not have access to IT, who have not used the Internet and who do not know how to use a web site. We want to make sure that they can pick up the telephone, use a 1800 number and be directed to an appropriate service.
in their state or territory. Ms Macklin said today that the program had been canned and that Labor was going to do it. We will roll that program out when we believe the message is clear and unequivocal and when we believe there is appropriate backup for those people whose concerns are raised as a result of the advertisement.

Senator LUNDY—Mr President, I ask a supplementary question. Minister, you have skated across a number of issues, saying the campaign will eventuate when the message is clear. Can you advise why the campaign, and in particular the television awareness advertisements, has not proceeded to date? You made the statement this morning:

We must make sure we’ve got appropriate resources so that when people phone the 1800 number they can be directed to appropriate services delivered by the States ... Has this campaign been held up by the Howard government’s ignorance of appropriate services delivered at the state and community level? Finally, can the minister advise Australian women of when and where these commercials will finally go to air?

Senator PATTERSON—I thought I had answered that question, but I will do so again very slowly and very clearly for Senator Lundy. I will also at some stage give her, slowly and clearly, a tutorial on effective marginal tax rates, because she has got that wrong. We will roll out that campaign when we are sure the message is clear and unequivocal, when there is appropriate support behind that advertising and communications campaign to ensure that particularly the young people to whom it will be directed have access to appropriate services in the states and territories and when we have backed that up with a 1800 number so that they can be directed to those services appropriately.

**Workplace Relations: Paid Maternity Leave**

Senator STOTT DESPOJA (2.24 p.m.)—My question is addressed to the Minister Assisting the Prime Minister for the Status of Women. Given that a system of national government funded paid maternity leave could be provided to all Australia’s working women for 14 weeks at minimum income for the cost of $213 million per annum or $352 million per annum, depending on whether or not you scrap the baby bonus, isn’t it time that the government acted on its barbecue stopper rhetoric and introduced a system of government funded paid maternity leave that would assist those two-thirds of Australia’s working women who currently cannot access any paid leave on the birth of a child?

Senator PATTERSON—I had the opportunity in answering a question from Senator Payne to talk about the various initiatives this government has brought forward to assist families in the very difficult challenge of balancing work and family. There is almost $2 billion more per year for families with children, particularly for those families on lower incomes, so families are getting on average about $6,000. In addition, for those families where there is a parent who chooses to stay at home there is the FTB allowance of about $2.5 billion, which is helping about 1.2 million families. There is a range of initiatives included in that.

One of the most important things we have done—which Labor will always forget to remind people about—was done by the then minister for health, Dr Wooldridge, and it was to use I think in a very appropriate way the maternity allowance to encourage people to ensure that their children were vaccinated. When we came into government, 53 per cent of Australia’s children were vaccinated. Now about 93 per cent of children are vaccinated.
It is very important that we use those policies to make sure we get not only one effect but two effects, and that had the magnificent effect of reducing the likelihood of children dying from preventable diseases like rubella. We have been able to do that.

The Prime Minister has indicated that maternity leave is one of the issues being considered in the context of building on the government’s family and work policy. But we have to make sure that whatever changes are made are fair to people who choose to stay at home. We also have to ensure that it does not have the perverse effect of discouraging employers from employing women in the workforce. We need to look at the whole effect. I have become aware, probably more in this portfolio than in any other, that there are very few degrees of freedom. When you move one lever, it has an impact on others, especially in the work and family area. You can be criticised for giving too much assistance to people to stay at home and you can be criticised for not giving enough assistance for people to go back to work.

There is always that fine balance in ensuring that you give women choice. We have increased that choice by assisting both men and women, but particularly women, with child care. We have increased the number of child-care places by over 200,000 since we have been in government. We have doubled spending on child care. We have increased assistance to families by over $2 billion. Maternity leave, as the Prime Minister has said, is just one of the ingredients in the mix that we are discussing in terms of balancing work and family.

Senator STOTT DESPOJA—Mr President, I ask a supplementary question. I thank the minister for her answer. If the government is concerned about discouraging employers from employing women or about stopping women returning to work, isn’t it the case that a government funded scheme would be less likely to allow that systematic form of discrimination? I also ask the minister, in relation to the government’s baby bonus: does the government accept that this has been an abject failure? Is the government aware that the figures show that only one-third of new mums have actually accessed the baby bonus and that nine out of 10 claimants have claimed less than $500, even though the Prime Minister guaranteed a minimum payment of $500 for families in the first year? Is the minister aware that more than half the claimants have received a payment of less than $300, which is not even enough to cover the cost of a new stroller from Target Baby Shop? Will the government concede that this has been an abject failure? While we understand the government’s concerns about women who are out of the workforce, what about the two-thirds of women who are in the workforce?

Senator PATTERSON—As I said, the government are constantly reviewing and looking at the challenge of people, particularly women, balancing work and family. The baby bonus is one way in which we have assisted families. Senator Stott Despoja points out how many people have received assistance and how much they have received. When you have a system that is based on a financial year you do get some differences, but we have been giving families more assistance than they have ever had under Labor, giving women more choice than they ever had under Labor and we have given them the opportunity for more jobs than they ever had under Labor.

Asia Pacific Space Centre

Senator CARR (2.29 p.m.)—My question is to Senator Minchin as Minister for Finance and Administration and as Minister representing the Treasurer and Minister representing the Minister for Industry, Tourism
and Resources. Does the minister recall telling the Senate last Tuesday that no money had been given to the Asia Pacific Space Centre? On Wednesday in his personal explanation he said that no money had been given to APSC and on Thursday he said that ‘no money has changed hands, no money has gone to APSC and no money will’. Does the minister still believe that that is the case? If so, how does this statement fit with an answer to a prime ministerial question on notice received on 27 August 2002 showing that, as at 31 July 2002, APSC had in fact been paid $1,497,000? Did the Prime Minister mislead the parliament back in 2002 or did the minister do so on a number of occasions last week?

Senator MINCHIN—I have no knowledge of the question on notice that the Prime Minister answered in the vein in which Senator Carr alleges it occurred. I stand by my answer. As I said, I have no knowledge of the matters to which Senator Carr refers. I am happy to have a look at that after question time. The advice to me—and remember, because I am no longer industry minister I receive the advice from the industry department, which is responsible for this matter and which I represent here—which I reiterate, is that no money has been paid to APSC. That is not surprising given that, under the terms of the agreement with APSC, after they achieve certain milestones—which, as I said before, they have not yet achieved—then there is a schedule of payments. The overwhelming majority of the funds the government agreed to provide to support this project go into common use infrastructure on Christmas Island, and the surplus from that goes to space port infrastructure for the project itself. I indicated that some $300,000-odd has been spent on road design works and we built the wharf, which is important for the immigration processing centre project. The advice to me is that no other moneys have been paid by the government to APSC.

Senator CARR—Mr President, I ask a supplementary question. Minister, I will be happy to show you that question on notice. I would further ask you this: given your claim again today that no money has been paid to APSC, can you confirm that the Department of Transport and Regional Services web site shows a one-off funding allocation of 2002-03 to APSC of $10 million? I ask again: precisely how much money has been paid to APSC?

Senator MINCHIN—I do not know how many times I have to say to Senator Carr that no moneys have been paid. I informed the Senate last week of a schedule of proposed payments once certain conditions and milestones had been achieved. There were the five preconditions to any payment and then there was a schedule of payments involving sums of $6 million, $10 million—whatever—when certain construction milestones had been achieved. Again, I am not familiar with the web site to which Senator Carr refers, and I will look at that, but I can assure the Senate that the advice to me is that no moneys have been paid to APSC because they have not achieved the milestones set out in our agreement with APSC.

Health and Ageing: Aged Care

Senator HARRADINE (2.34 p.m.)—My question is to the Minister representing the Minister for Ageing. Is the minister aware of an industry survey released yesterday by Aged and Community Services Tasmania which shows that one in three nursing homes faces closure and that eight out of 26 nursing homes cannot make ends meet in Tasmania? I am aware, Minister, that the government is increasing funding for new beds, but what is the government going to do about recurrent funding and ensuring that senior citizens in Tasmania are properly provided for?
Senator IAN CAMPBELL—I thank Senator Harradine for an important question. As he reflects in his question, the government have committed an enormous amount of money and policy time into ensuring just what he seeks in the last sentence of his question: that people who move into aged care facilities get good quality aged care. The senator would know that when this government came to power in 1996 we inherited what could only have been described as a mess in aged care. We brought in an accreditation system to ensure that people who entered aged care facilities knew that if it were Commonwealth funded then it would meet strict criteria in terms of both the quality of the accommodation and the quality of the care that people could expect if they were in aged accommodation that was supported by the government. Yes, I am aware of the article—there is one in today’s Mercury I think; and it did quote a Mr Stephen Richards of Aged and Community Services Tasmania. As I read the extracts of that article, he did make some claims about the potential closure of a third of nursing homes. He does say not imminently, however; the extract that I have been given says within the next few years. Clearly, any indication of the closure of aged care facilities that are important to the community is of concern.

The government have been investing heavily. For example, we provided something like $124.5 million for residential aged care in Tasmania in the last financial year, 2002-03. In the current aged care approvals rounds, we recently announced a total of 140 new high-care residential places and 53 new low-care residential places in Tasmania at an expected recurrent cost of around $6.6 million a year, with capital expenditure of $2.6 million also announced. In addition, 25 community aged care packages were announced late last year, at an estimated cost of $0.29 million.

One of the issues facing Tasmania is the coalition’s policy to try to bring all states to a fair and equitable level of funding. This funding equalisation assistance package for residential subsidies is being implemented. Senator Harradine should also know that the Minister for Health and Ageing, the minister whom I represent here, has recently received a report from the Productivity Commission into aged care funding. That report is with the minister. I recall from estimates committees that there was much questioning by members of the estimates committee on just when the review of the pricing arrangements for residential aged care would be responded to by the minister. The minister has assured me, and I am happy to assure the Senate, that she will be giving that report thorough consideration and that the outcome of the report and the response will be given in a timely manner.

Senator HARRADINE—Mr President, I have a supplementary question. Isn’t it the bottom line that lack of federal funding is putting nursing homes at risk in Tasmania? Wasn’t this the finding of the Tasmanian Chamber of Commerce and Industry, which conducted an independent analysis of the survey results?

Senator IAN CAMPBELL—I am not aware of the background of the interaction Senator Harradine has referred to, but I reiterate that it would be easy just to say that funding is the cause of the report findings. The senator and, I think, all people in aged care in Tasmania understand that the Commonwealth have massively increased funding to the sector. We have shown a commitment to ensuring that we have sound, ongoing funding for both recurrent expenditure and for the upfront capital. The government have got the runs on the board in relation to that. The minister has made it very clear that she is very keen to ensure that that is the case and that the sensationalist claims that have
have been the subject of reports in the press in recent days are just that—sensationalist. They do not reflect the commitment that the government has in terms of funding and also of policy effort to find long-term, sustainable funding outcomes to the benefit of all Tasmanians.

**Trade: Free Trade Agreement**

*Senator CONROY (2.40 p.m.)—*My question is to Senator Hill, representing the Minister for Trade. Minister, is it a fact that, under the terms of the US trade deal released last week, Australia has agreed to extend our copyright terms from death plus 50 years to death plus 70 years? With Australia a net importer of copyright material and the US a net exporter of copyright material, won’t it be US corporate monopolies that will benefit from this change? Can the minister confirm that, as Australia’s chief negotiator for the trade deal told a Senate estimates committee last week:

To the extent that this extends the copyright terms, there would be some additional costs to the users of the copyright material.

Minister, why has the government agreed to extend the copyright terms when it will impose additional costs on Australia’s libraries and universities?

*Senator HILL—*This particular issue was the subject of debate in the Senate estimates committee. I know that because I was present and I listened to the exchange. The answer to the question is that the agreement should be looked at as a whole and the benefit to Australia should be assessed in terms of the whole agreement. Furthermore, a free trade agreement will never succeed if it is unbalanced towards one party or the other. To be fair, it has to be an agreement that is seen to be benefiting both sides, and each side should assess their benefits on the basis of the whole agreement. On that basis, the Australian government is very confident that there are enormous potential benefits to Australia from this agreement, which opens up the US economy—the largest economy in the world—for our exports in a way which is unprecedented. It would be possible, as the honourable senator is seeking to do, to look to particular issues within it and say, ‘That will add some cost to Australia’, but when you look at the agreement as a whole it is the confident view of the Australian government that the agreement will be seen as a great boost to the Australian economy and all of the government’s objectives such as job creation and the like—the sorts of things that have been of such importance to this government.

In relation to the specifics of the question, as I recall the exchange, it was suggested to the honourable senator that he was perhaps being a touch negative on this issue, looking at Australian copyright producers in a negative way rather than looking at the extra opportunities that will flow to Australian copyright producers—in other words, to creative Australian industry—because they will get the benefit of a longer copyright period. Even on this specific issue, it is not a straightforward assessment as to which side wins and which side loses. This really reflects the substance of the agreement as a whole in that it presents great opportunities if Australian business is up to the task of seizing them—which we of course hope that it is.

*Senator CONROY—*Mr President, I ask a supplementary question. Is the minister aware that, despite the Prime Minister saying that the Australian sugar industry ‘have lost nothing’ from this deal, he has also promised they will still be compensated for being excluded from the agreement? On the same basis, what compensation will be provided to Australia’s libraries and universities to enable them to meet the increased costs of copyright arising directly from this deal?
Senator HILL—I do not think there will be significant increases to Australian libraries, but that is the sort of issue that can be looked at by both the Senate committee and the joint parliamentary committee that will be looking in depth at the agreement. In relation to the sugar producers, what the Prime Minister is saying is that they do not lose by this agreement. They do not get the increased market opportunities that they would have liked and we would have liked them to have. The Prime Minister is recognising that the sugar industry faces particular problems in an internationally corrupt market and should be assisted because of that overseas corruption, over which we have no control. That seems to be a separate and distinct issue, but also the government responding in a proper and reasonable way.

Australian Labor Party: Centenary House

Senator MASON (2.45 p.m.)—My question is to the special Minister of State, Senator Abetz. Is the minister aware of reports in the media about Centenary House and the outrageous rental being charged for the premises?

Senator Carr interjecting—

The PRESIDENT—Order! Senator Carr, shouting like that across the chamber is totally out of order.

Senator MASON—What will be the budgetary implications if this lease were to continue in its current form? What is the government’s view on renegotiating the rate to proper market values and is the minister aware of any alternative views?

Senator ABETZ—I thank Senator Mason for his question and can inform Senator Mason that I am aware of press reports over the weekend in relation to the Senate’s motion on Centenary House. I was therefore astounded by Mr Latham’s assertion on the Sunday program:

In 2002 and 2003, when Simon Crean was leader of the Labor Party they—meaning the government—didn’t say boo about Centenary House.

What a disingenuous thing to say. It has previously been suggested that Mr Latham may be a few rungs short of a ladder, but I think on this occasion the ladder actually fell on his head and caused some amnesia. As the ABC’s Louise Yacksley informed her listeners on Friday:

I have been speaking about the Centenary House rental rip-off rort now for 10 years.

As for his assertion that no mention was made of Centenary House until he became leader, that is not exactly the truth—apart from being quiet self-delusional. I am sure that Labor senators could disabuse Mr Latham of this false view, given the number of questions I have been forced to take from senators on this side of the chamber. I also acknowledge the fine work of Senators Ian Campbell, Jeannie Ferris, Brett Mason and George Brandis over the years in exposing this rort. But Mr Latham would have us believe that he did not hear any of that whatsoever. Is this the same Mr Latham, who, on the Sunday program also said that he had not told a lie since entering public life? Certainly his former Labor colleagues on Liverpool council, such as Aldermen Short, Lynch, Conway and Harrington, as well as Labor activist Frank Heyhoe, are under no illusions about the honesty and integrity of Mr Latham. Mr Latham also said, ‘I don’t see any need to do something on Centenary House, unless someone can show that circumstances have changed; there’s some new evidence about this matter in the last decade.’ Well, there are new circumstances. The inescapable truth is that the predictions made by the royal commission are simply wrong. The report, at page 100, asserted:
it appears that rents are likely to rise at the rate of about 9% in Barton …

Wrong. Growth in the intervening period has been less than one-third of that predicted. The report asserted that no party obtained unfair or above-market commercial advantage from the lease. Wrong. A figure of $36 million above market rates over the 15 years of the lease is unfair. The report asserted, ‘The lease cannot be described as unfair to the Commonwealth or unduly generous to the lessor.’ Wrong. Paying $871 per square metre instead of $314 per square metre is unduly generous. To use Mr Latham’s own words, ‘circumstances have changed’. The only thing that has not changed is Labor’s insatiable greed. When Mr Latham became leader, I wrote to him, as I had written to Messrs Beazley and Crean, asking him to renegotiate the lease. Three months later, there has simply been no response. Whilst ever the Centenary House rent rip-off continues, Mr Latham will continue to have an unsightly ladder running up his integrity stockings. And the harder he runs, the worse it will get. Labor and Mr Latham have to stop the rort now.

Honourable senators interjecting—

The PRESIDENT—The Senate will come to order. Twice last week the Senate was very disorderly and it looks like it is heading that way again today. I ask both sides of the Senate to reflect on what they are supposed to be doing here and to come to order.

Trade: Free Trade Agreement

Senator LUNDY (2.50 p.m.)—My question is to Senator Hill, representing the Minister for Trade. Could the minister explain why in the negotiated Australia-United States free trade agreement the Howard government agreed to set the expenditure for local content on subscription services or pay TV at only 10 per cent and that any increase will never exceed 20 per cent on drama channels? Why did the Howard government agree to such caps on pay TV when, as the Screen Producers Association of Australia points out:

The caps on expenditures on Australian adult drama (at 20%) and children’s, documentary, arts and education channels (10%) will be the lowest in the developed world and take no account of the future potential of the digital Pay TV platform in this country, particularly as the television market fragments with digital take-up. We have verified that the current 10% Australian drama spend requirement only amounts to 3.8 per cent of total transmission time.

Why has the Howard government agreed to local content capping at such low levels, which only serves to provide uncertainty about Australia’s ability to ensure the future viability of Australia’s film and television industry?

The PRESIDENT—Senator Lundy, that is a very long question. That is two very long questions we have had today. I remind senators that there are time limits on asking questions.

Senator HILL—I will ask the minister for a detailed response to the particular issue, but, again, consistent with what was put before the estimates committee—and I am sorry Senator Lundy could not have been there—is the argument that the cultural sector actually did well out of this agreement.

Senator Lundy—that’s not what the screen producers are saying.

Senator HILL—There are always individual groups within the community that would ask for more—some asking for even wider access to markets and some asking, as is your constituency, for greater protection in the future. But the agreement should be looked at as a whole, and if it is looked at in relation to the cultural sector I think that objective senators will find that the government met the commitments it made to the sector.
not only in relation to production in Australia but also in the presentation of extended opportunities for Australia within the US market. Again, I think you should not always look at these things from the negative perspective. The point is that the US market in this area is huge, and Australia has not traditionally been very successful within it. We on this side of the chamber would like to see the Australian industry expanding its opportunities within the United States, the largest market of its type in the world. In relation to the specifics of the question, I will refer them to Mr Vaile and get his response.

Senator LUNDY—Mr President, I ask a supplementary question. It is interesting that the minister talked about so-called expanded opportunities, because the production of Australian feature films decreased from 30 to 19 in 2001-02, which is a drop of one-third. So what does the Howard government plan to do to address the decline in production of Australian feature films, especially considering that the accepted position of the government on the Australia-United States free trade agreement will place further pressure on this already struggling industry?

Senator HILL—The Australian government has programs that support the Australian film industry, and they were not in dispute in this negotiation. That is a separate issue. We will continue to support the Australian film industry. We want to see it grow, and we want to see it not only making films for the Australian market, which is not a large market, but also making films that will be successful internationally, including in the largest market in the world, which is the United States of America. So again I say to the honourable senator: look at the opportunities; do not always look at these things so negatively, and encourage your constituency to do the same.

Superannuation: Parliamentary Scheme

Senator CHERRY (2.54 p.m.)—My question is to the Minister for Finance and Administration, Senator Minchin. I refer to the Prime Minister’s announcement on 13 February this year that superannuation entitlements for new MPs will be brought into line with community standards. Doesn’t this mean that, after the next election, the superannuation of any of the existing 226 MPs will grow at over seven times the rate of the superannuation of any new MPs? Despite receiving the same salary, won’t this create two classes of MPs, with the basic salaries of existing MPs being effectively 55 per cent better than the salary package of new MPs? Why will the government not support the Democrats’ proposal that would allow existing politicians to keep their superannuation based on existing entitlements but to move to a nine per cent contribution rate from the next election if they choose to stand for re-election?

Senator MINCHIN—The Prime Minister did announce that the government had made a decision that it would introduce legislation into the parliament forthwith that would provide for the closure of the Parliamentary Superannuation Contribution Scheme to all new members and senators elected after the next election, and that there would be a nine per cent employer contribution to new members and senators elected after the next election, which would go into an accumulation fund. That is the broad framework of the government’s policy position on this matter. It will be my responsibility to bring to our party room a proposal for detailed legislation to give effect to the government’s broad policy position.

The government’s position is that the new scheme will apply to new members and senators elected after the next election, and that existing members and senators will continue
with their current arrangements. We observe the new position of the Democrats on this. That is a matter for them to pursue if they so desire. This legislation will obviously have to come to this chamber, and they can move whatever amendments they like to the legislation when it is presented to the Senate. But the government’s position is clear: consistent with the position we announced in relation to the Public Sector Superannuation Scheme that, as from 1 July 2005, new members of the public sector will move onto an accumulation scheme and that existing public servants will remain on the existing arrangements, we believe that those arrangements are appropriate for public servants and appropriate for parliamentarians.

Senator CHERRY—Mr President, I ask a supplementary question. I ask the minister to tell the Senate when the legislation is expected to arrive here and whether he thinks it appropriate that parliamentarians should decide their own remuneration, given that the government backbench has on two occasions now, to my understanding, voted against imposing community standards on their own remuneration.

Senator MINCHIN—I have indicated that I hope the legislation will be introduced into the House of Representatives by the end of this month, and then it will weave its way into this Senate, as all legislation does.

Opposition senators interjecting—

Senator MINCHIN—Yes, there is the party room to overcome. Of course, all party rooms take a very keen interest in legislation that affects their own position. I expect that to be the case with this legislation. As to the question of remuneration, the Remuneration Tribunal is the body charged with our salaries and allowances; it does not actually deal with the subject of superannuation. That is a matter for the parliament, and the parliament will have an opportunity to express a view on that when this legislation arrives. Any changes to remuneration will be a matter entirely for the Remuneration Tribunal as and when it deems fit.

Superannuation: Children’s Accounts

Senator SHERRY (2.58 p.m.)—My question is addressed to Senator Coonan, the Minister for Revenue and Assistant Treasurer. I refer to comments made by the Prime Minister, Mr Howard, when he launched the Liberal Party’s previous superannuation policy in December 2001. Does the Assistant Treasurer recall the Prime Minister describing children’s superannuation accounts as the ‘centrepiece of Liberal Party policy’ and a trailblazer that would ‘teach children the wonders of compound interest’? Didn’t Mr Howard go on to claim that 470,000 children’s accounts would be established in the first four years of the scheme? Can the Assistant Treasurer confirm industry sources that reveal that barely 500 of these accounts have been established? Will the government release the take-up of rate of children’s accounts, and if not, why not?

Senator COONAN—The children’s superannuation measure was one of a number of measures designed to make the superannuation system more accessible, more attractive and more flexible. There is nothing compulsory about a children’s superannuation account. It was never intended that it had to be taken up to the extent that every single family with a child would take up a child’s account. I can understand how Senator Sherry might make up numbers from some source as to what the take-up has been—because that is certainly not the information that I have. This is a voluntary measure. It is a matter of people opening a child’s account if they wish. ‘If they wish’ does not mean ‘they must’; it means ‘if they wish’. It is one of the ways in which people can make some contribution for their chil-
It fits with this government’s extended view of making superannuation more accessible, announced in the last few days. What we are trying to do—with not much assistance from the Labor Party—is to reduce and eliminate the nexus with work, so that superannuation becomes a lifetime savings vehicle and not one just linked to employment. It makes sense that if anyone wishes to save on behalf of a child they can. It is absolutely true that the compound interest will mean that anyone opening an account on behalf of a child who is very young will indeed be able to save a great deal more than if the account is opened later—perhaps much later—when people start to realise that they need more to save for their retirement.

It is interesting that Senator Sherry seems focused on and obsessed about this particular measure. I can understand why he does not refer to the other measures that this government has introduced—some fantastic advantages in superannuation such as the co-contribution measure and the reduction in the surcharge. That was vigorously opposed by the Labor Party, although now of course it seems that they are taking into account the reduction in the surcharge—perhaps much later—when people start to realise that they need more to save for their retirement.

Senator SHERRY—Mr President, I rise to ask a supplementary question. This policy of children’s superannuation accounts was the centrepiece of the current government’s superannuation policy initiatives. I am happy for the minister to correct the record. If she believes the take-up rate is more than 500, why won’t she give us the figure?

Senator Hill—Mr President, I rise on a point of order. Senator Sherry cannot say what he is happy with and what he is—

Opposition senators interjecting—

Senator Hill—Well, he hasn’t asked it! He hasn’t asked a question! He is giving a speech on what he is happy with and what he is unhappy with. He ought to ask a question if he is going to ask it!

The PRESIDENT—I hear your point of order, Senator. Senator Sherry, would you return to the supplementary question.

Senator SHERRY—With pleasure. I ask the minister: will she reveal the government’s take-up rate for their children’s superannuation—so-called centrepiece trailblazing policy—which committed the government to 470,000 children’s superannuation accounts? What is the take-up rate?

Senator COONAN—What I was saying was that the Labor Party’s attitude to this reveals that it is the centrepiece of the Labor Party’s folly in failing to understand or have any view—

The PRESIDENT—I am sorry, Minister, I cannot hear you at all for the noise on my left. Members of the opposition, if you ask a supplementary question, at least you should let the minister try to answer it in some silence.

Senator COONAN—What I was saying was that the Labor Party’s attitude to this reveals that it is the centrepiece of the Labor Party’s folly in failing to understand the vaguest thing about superannuation and what
it is designed to do. What the measure is about is providing more choice.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS
Asia Pacific Space Centre

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.05 p.m.)—Last Thursday senators Faulkner and Carr asked me a series of questions concerning the APSC, and I undertook to provide further information. I seek leave to incorporate a minute from Mr Peter Hamburger, First Assistant Secretary in charge of the cabinet division within PM&C, and also a statement in Hansard providing further information.

Leave granted.

The documents read as follows—
DEPARTMENT OF THE PRIME MINISTER AND CABINET
Secretary to Cabinet
(through Secrets, Department of the Prime Minister and Cabinet)

PAUL McCLINTOCK: DECLARATIONS OF INTEREST

Senator Carr asked a question of the Minister for Finance and Administration in the Senate on 4 March 2004 concerning declarations of interest by Paul McClintock in relation to the Asia-Pacific Space Centre while Mr McClintock was Secretary to Cabinet (Senate Hansard page 20643).

I can confirm from the Cabinet records that:

- Mr McClintock handed his responsibility for signing cabinet minutes to officers of the Department of the Prime Minister and Cabinet on the only three occasions when Cabinet or a Cabinet Committee took decisions potentially beneficial to the Asia-Pacific Space Centre in relation to an investment incentive; and
- no declarations of interest by Secretaries to Cabinet employed under the Members of Parliament (Staff) Act 1984 are held in the Cabinet Secretariat; I understand such declarations are made to and held by the employing Minister.

I can also confirm that Mr McClintock made me aware of his father’s connection with the Asia-Pacific Space Centre on the first occasion that the matter came to Cabinet after my appointment as head of the Cabinet Secretariat. It was apparent to me at that time that others involved in the Cabinet process were also aware of the connection.

In my observation, Mr McClintock was extremely careful to avoid actual or perceived conflict of interest.

Peter Hamburger
First assistant Secretary Cabinet Division
8 March 2004

Firstly, Senator Faulkner asked “... was a due diligence study undertaken by the Department prior to the signing of the deed?”

- I am advised that the then Strategic Investment Coordinator, assisted by Invest Australia, undertook a rigorous assessment of APSC’s application for assistance under the Strategic Investment Coordination process.
- In assessing the application, the Strategic Investment Coordinator and Invest Australia undertook extensive analysis of the wide range of detailed commercial-in-confidence information provided by APSC and other parties.
- This included the financial aspects of the project and detailed background checks on the structure and ownership of APSC.
- The assessment also sought to ensure that any assistance to the project targeted the needs of the Christmas Island community.

After considering all of the information available to him, the Strategic Investment Coordinator concluded that the application satisfied all seven of the published criteria under the Strategic Investment Coordination process. The Government agreed with this assessment in deciding to provide an incentive to APSC.
Senator Faulkner also asked: “... did the government satisfy self that APSC would undertake basic requirements such as securing financial backing or applying for a space operating licence?”

- The answer is yes. As I have said on a number of occasions, the Deed between the Commonwealth and APSC requires that the Company secures financial backing and applies for a space license before any money is paid to APSC.

Senator Faulkner asked about the provisions of the Deed between the Commonwealth and APSC and asked me to table the Deed.

- As explained in my previous answers, no payments have been made to the company because the stringent Deed pre-conditions have not been met. The payment schedule is also dependent on the achievement of construction milestones by APSC.
- If the project fails to proceed by 31 December 2005 the Government will consider whether to extend the agreement with APSC.
- As with other such contractual arrangements, the Deed contains commercial-in-confidence termination provisions that I do not intend to discuss.
- I do not intend to table the Deed that the Commonwealth has with APSC. It contains commercial-in-confidence information that could affect the company’s operations if made public. The Opposition has done enough damage to the company already.

Senator Carr made scurrilous allegations about an unnamed former Assistant Secretary of the Department.

- I am advised that the Department is not aware of any misrepresentation by the officer, or any other officer, in discussions with the Russian Government or any other party.
- The officer in question left the Public Service around 4 years before the Strategic Investment Coordination (SIC) application was made. At the time of the SIC application his prior public service position was identified by the company.

Senator Carr also made unfounded accusations in relation to Former Cabinet Secretary Mr Paul McClintock’s role in the APSC decision.

- At the time of the SIC application, Sir Eric McClintock was a member of the APSC Advisory Board.
- I can confirm that Paul McClintock declared this relationship to the Prime Minister and acted in a way that ensured no conflict of interest, by not involving himself in any way in the SIC discussions.

Trade: Free Trade Agreement

Senator HILL (South Australia—Minister for Defence) (3.06 p.m.)—I have answers to two questions that were asked on 4 March—one from Senator Nettle and one from Senator Ridgeway, both in relation to the Australia-US free trade agreement. I seek leave to incorporate them in Hansard.

Leave granted.

The answers read as follows—

Senator Nettle

Given that the AUSFTA has attached at least 25 side letters making significant commitments in a range of areas from foreign investment to education services, will the minister explain the legal status of these side letters? For example, will future governments be prevented from returning Telstra to full public ownership by the text of one of these side letters, and will the important task of collecting and providing blood plasma for use in Australian medical services be opened up to US corporations as discussed in the exchange of letters on blood plasma products?

Answer:

The various side-letters to the AUSFTA may represent stand-alone, legally binding, treaty-level agreements; constitute part of the Agreement; or have no legal standing; depending on the language included in each individual letter. Side-letters are used in the Agreement in three main ways:

- To provide additional clarification on how a particular provision of the Agreement will apply to either the United States or Australia;
Where either the United States or Australia wishes to make additional commitments that apply only to that country, as part of the overall deal;

Where either the United States or Australia wishes to confirm to the other country how its current policies or systems operate.

In general, the first two categories of side-letter would be effected as an exchange of letters in which authorised signatories from both Parties affirm that the letters “constitute an integral part of the Agreement”. Letters of this type are a legally binding part of the Agreement.

The final category of side-letter does not normally become an integral part of the Agreement and is not legally binding. However, if there were a dispute between the Parties, these side-letters could be used to explain the context of the dispute.

The side letter on Telstra falls into the latter category. It makes no commitments but serves to explain the current Australian Government’s policy with regard to Telstra. The letter does not commit the Government to selling its remaining share of Telstra. Nor does it constitute a legal barrier preventing future Australian governments, or the Parliament, from returning Telstra to full public ownership. Rather, it explains that any future sale of Telstra would be conditional on the passage of relevant legislation by Parliament.

The exchange of letters on the treatment to be provided to blood plasma products and blood fractionation services is an integral part of the Free Trade Agreement and is subject to the dispute settlement provisions of the Agreement.

The letter commits Commonwealth, State and Territory governments to undertake a review, by no later than 1 January 2007, of the arrangements for the supply of plasma fractionation services. The Commonwealth Government undertakes to recommend to the States and Territories at such a review that, in future, suppliers of such services should be selected through tender processes consistent with the Government Procurement Chapter of the Agreement. It does not bind the Commonwealth or State and Territory States to take a particular decision in relation to the outcome of the review.

The Commonwealth of Australia currently has a contract with CSL Limited for the supply of plasma fractionation services that will expire at the end of 2004. The National Blood Authority is negotiating a new contract with CSL Ltd which will commence from 1 January 2005. Under the terms of paragraph 1, this new contract will conclude no later than 31 December 2009, or earlier if Australian governments decide that is appropriate.

The commitment in the Agreement to review existing arrangements by 2007 is a sensible and prudent course of action. If there were to be a competitive tender process agreed upon as a result of this review, the Australian Government would want to make sure that proposals from any local company such as CSL Ltd were properly weighed against proposals from overseas suppliers to get the best outcome for Australians.

The letter states the importance of each party maintaining regulatory requirements for ensuring the safety, quality and efficacy of blood plasma products and supply of blood fractionation services. In the case of Australia, the Therapeutic Goods Administration (TGA) will continue to regulate blood products. The TGA will keep regulatory control of standards, wherever the fractionation process takes place, and who ever is the fractionator. However, consistent with our obligations under the World Trade Organisation Technical Barriers to Trade Agreement, regulatory requirements should not unnecessarily obstruct trade.

The letter also acknowledges the right of governments to have policies that blood plasma products are derived from blood plasma collected in their own territory. This allows Australia to preserve its policy on using plasma collected from Australian blood donors.

Senator Ridgeway

(1) With regard to the provisions in the AUSFTA relating to exemption for “services supplied in the exercise of governmental authority”, is the minister aware that the AUSFTA uses the same definition as the GATS—that is, “any service which is supplied neither on a commercial basis, nor in competition with one or more suppliers”? 
Answer:
The Chapter of the Agreement on Cross-Border Trade in Services excludes from its coverage “services supplied in the exercise of governmental authority”. These services are defined in the same way as in the GATS, i.e. as “any service which is supplied neither on a commercial basis, nor in competition with one or more suppliers”.

(2) Is this not clearly ambiguous given that so many essential services either have been privatised or are in the process of becoming so under this government and many are supplied in a competitive environment?

Answer:
No problems have been experienced with the GATS definition of a service supplied in the exercise of government authority. For example, it has not provided the basis for any challenge to, or questioning, of government provision of essential services under the WTO or under other Free Trade Agreements that use this definition. Whether a particular service met this definition would need to be determined on a case-by-case basis. The intention of this definition is to ensure that government provision of essential services cannot be adversely affected by the Chapter while still maintaining the benefits of the Chapter’s protection; in cases where private suppliers are competing on a commercial basis with government-owned entities. Where a government-owned business is operating on a commercial basis, in competition with other suppliers, then Australia would want the protections of the Cross-Border Trade in Services Chapter to apply to Australian services suppliers competing with government-owned businesses in the United States.

(3) Can the minister guarantee that the government has not compromised the ability of governments at all levels in Australia to deliver essential public services to their communities?

Answer:
There is nothing in the Agreement that in any way compromises the ability of Australian Governments to deliver essential public services. None of the obligations, whether in the Cross-Border Trade in Services Chapter, or in other Chapters of the Agreement, limits the ability of governments to continue to provide essential public services. Furthermore, the Chapter on Investment states explicitly that nothing in it imposes an obligation on a Party to privatise.

(4) If there no effective exemption for public services, can the minister guarantee that these have not been sold out?

Answer:
It is misleading to say that there is no effective exemption for public services. There is nothing in the Agreement which limits the ability of Government to provide regulate public services.

(5) In annex 2 of the agreement, there is a very general reservation for Australia to reserve the right to “adopt or maintain” any measure with respect to a number of services including public education, health and child care. If the government has recognised the importance of these service; to the extent that they have secured a reservation in the agreement, why did they not go one step further and exempt essential public services from the agreement entirely?

The reservation in Annex II relates to the specific obligations of the Chapters of the Agreement on Cross-Border Trade in Services and Investment and not to the whole Agreement. It addresses a specific set of social services established for a public purpose. Australia judged that a specific reservation, in this regard was required in relation to the chapters dealing most directly with services.

There is no single approach in the Agreement to the treatment of public services, as the nature of the obligations and provisions varies significantly from Chapter to Chapter. For example, all the chapters relating to trade in goods and services incorporate the broad exemption, provided under both the General Agreement on Tariffs and Trade and the General Agreement on Trade in Services, for measures necessary to protect human, animal, or plant life or health. Many of the other Chapters have no relevance to the provision of public services. In some chapters, it is neither necessary nor appropriate to remove entirely the activities of public education or health services from the application of the disciplines. In the Government Procurement Chapter, inclusion of health and
veterans’ affairs departments means that Australian companies will now be able to supply goods and services to the substantial network of veterans’ hospitals in the United States.

(6) Why have other essential public services such as the provision of water, waste disposal and energy services not been mentioned in this annexure reservation?

There is nothing in the Agreement that would prevent Governments from providing water, waste disposal or energy services as public services. The decision on whether to provide such services as public services or through a system of competitive, commercial suppliers is one for each Party to make and there is nothing in the Agreement which favours one approach over the other.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Health: Program Funding

Senator MACKAY (Tasmania) (3.06 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Local Government, Territories and Roads (Senator Ian Campbell) to a question without notice asked by Senator Mackay today relating to funding for family planning services.

I am hopeful that Senator Ian Campbell will contribute to this debate so that we can get a sensible answer to what I believe was a very important question. The first thing to do is disabuse the minister and the government of where family planning is funded from. It is funded under the Commonwealth Department of Health and Ageing’s family planning program, not the Commonwealth-state public health outcomes funding agreement, PHOFA. The program is directly and solely the responsibility of the federal government.

I raised this earlier for a particular reason. Today is International Women’s Day. Anybody here can stress how critical the link is between women being able to control their reproductive lives and their ability to realise their potential as individuals. Without the ability to choose when and if to bear children, many other choices are denied to women. That is why alarm bells are starting to ring around the country. I note with interest that this was raised initially by Senator Allison last Thursday.

Something is holding up the usual negotiations around funding for these services. During two consecutive question times Senator Ian Campbell has been asked about the delay. Today he got the program wrong yet again, and we did not get a sensible answer to this. The government has been given two opportunities to guarantee the continuation of the Commonwealth Department of Health and Ageing’s family planning program and to guarantee the ongoing funding of those organisations that provide sexual and reproductive health services with assistance from that program. The government has been given the opportunity to urge for, and ensure, the continuation of funding. I believe it is also appropriate to ask the government to ensure that there will be no diminution of funding to these services either by way of a cutback, by way of no real funding increase or, as I suspect may be the case, by way of any plan to cost shift to the states.

I noticed with interest that Senator Ian Campbell has talked about the services that the states provide, but I make the point again that this is a direct Commonwealth responsibility. Normally at this time of year family planning and all organisations that are funded via family planning and this program would know what their funding situation is. They do not know at the moment, and that is quite unusual. I think there could well be a reasonable explanation for this: there could be a hold-up within the department or they could be waiting on more information; I do not know. What we are doing here, as I suspect Senator Allison was the other day, is attempting to find out what is happening. Why have the negotiations stalled? Why isn’t the final figure available now? What is hap-
pening with family planning to ensure that it will be funded beyond this year and next year and also ensure there is no diminution or cut in real terms? Are we seeing another attempt to cost shift?

The Commonwealth family planning program funds all the organisations that come under Family Planning Australia, with the exception of SHINE South Australia and Sexual Health and Family Planning ACT, which are funded under PHOFA. So there are some that are funded under PHOFA. Is the lack of commitment for ongoing funding to the other eight organisations, including Family Planning Tasmania in my home state, because there has been a hold-up? Is it an attempt to cost shift to the states? Is it because family planning may not be funded? Is there a plan to diminish funding to family planning?

These are critical issues, and I congratulate Senator Allison for first bringing this to the Senate’s attention. I am pleased that Senator Ian Campbell is in the chamber. I hope that in his contribution he will be able to respond. I asked that question quite seriously because it has been raised with many Labor senators and clearly the Democrats as well. The other thing we want to be assured of is if there is any intention by this government to conduct horse-trading over the government’s MedicareMinus package, which will need the support of the Senate to come into effect. I think these are reasonable and fair questions. I would like the minister to at least put some of this to rest and provide an assurance that family planning will be funded at its current levels. *(Time expired)*

**Senator Ian Campbell** (Western Australia—Minister for Local Government, Territories and Roads) *(3.11 p.m.)*—I would like to take the opportunity to respond to Senator Mackay because she has fallen into the trap that I accidentally fell into last week by saying in question time today that family planning is directly funded by the Commonwealth under the family planning program. Last week in the Senate in response to a question by Senator Allison I did exactly as I said: I went into detail about the use of the public health outcome funding agreements—and in fact I was right; there are family planning services—

**Senator Mackay**—Some.

**Senator Ian Campbell**—Yes, there are some. But Senator Mackay today said I was wrong. In fact, I was partially right and she was partially right—she was also partially wrong. They are funded in South Australia and the ACT under the agreements. She also needs to be corrected because the Commonwealth has consistently improved and increased funding for family planning. In my answer I did go through the details of funding for Victoria because that is Senator Lyn Allison’s home state, and in Tasmania the record is of increases as well.

The reality is that the minister is currently in discussions with family planning organisations. He is, I am told, meeting this week with them. One would expect that these organisations would create a lobbying campaign, lobbying senators of all political parties, to ensure that their funding was in place. What the Commonwealth is doing—and I made this point very clear in question time today and last week—is ensuring that we get the best outcome for the customers, the people who visit the centres. I do not think any senator would not want that outcome. We are discussing with the states the best model for delivering that funding and we will be discussing with the organisations the best model for delivering that funding.

In 2001-02 we gave these organisations $13,365 million. It went up to $14,057 million the year after and $14,38 million this year. I have just been told that it is actually
the minister’s office that is meeting with the organisations, not the minister—I wanted to make the record absolutely accurate. You can go around creating a scare campaign by saying the federal government is going to cut funding to family planning organisations, but that is a total beat-up. You go around saying that the government is going to cut funding and then when the government announces funding for post 1 July you can say, ‘We won. It was Senator Sue Mackay who saved the day.’ It is a great political game, but no one is threatening the funding. It is the biggest beat-up that I have seen so far this week. The week is only young, but it is a good start.

They say there is a secret agenda to slash the funding. We are absolutely committed, as I have said both today and last week, to finding a sensible way to ensure that the funding helps the people who get assistance from those clinics and organisations. You can look at government service delivery in two ways: one is that you worry about the people who receive the benefit of that service and the benefit of the investment of taxpayers’ money and the other is to worry about the people who run the service, and that generates supplier-captured outcomes. We want to make sure that when we are spending $14.38 million or thereabouts we are getting good value for money.

I do not think any senator, unless they believe it is better to look after the people who supply the service rather than the people who receive the service, would criticise the Commonwealth for being engaged in a constructive process to determine what is the best way to deliver the service. You are either worried about the people who receive the service or the people who supply it; we are worried about the people who receive the service. We want to make sure that when we spend $14.38 million, as we have done this year—an increase on the year before that—that we do it in the best way. I am informed—I use those words carefully—that in South Australia and the ACT the funding model under the public health outcome funding agreements has been very successful. We are very interested in talking to the other states about that. That is an entirely appropriate way to go—absolutely appropriate.

Senator Mackay—I see.

Senator IAN CAMPBELL—Senator Mackay, that is why we are talking to the organisations, the associations and the states. If we did not do that I do not think we would be diligent. That is the full explanation. I hope it corrects the record because both Senator Mackay and I can be accused of not being totally accurate in our reflections of how family planning services are funded.

Senator FORSHAW (New South Wales) (3.17 p.m.)—Anybody who might have been listening to this debate, particularly to Senator Ian Campbell’s response in the last five minutes, could be forgiven for being totally confused about what the minister has been talking about. We have just heard the minister admit that, one, he got it wrong last week when he answered a question by Senator Allison in question time about funding for family planning associations and, two, he has endeavoured to correct the record but in doing so has tried to shift the blame for his own mistake. It is therefore important to very quickly detail how this issue has arisen.

Last week Senator Allison asked a question of Senator Ian Campbell, the Minister representing the Minister for Health and Ageing, regarding the government’s proposals for the future funding of family planning associations. Normally, at about this time, the government sits down with the states to negotiate the funding arrangements for family planning associations across the country. Some 10 organisations are funded under the
family planning program arrangements. Senator Campbell, last week in answer to that question—a specific question about funding for family planning associations—proceeded to talk about an entirely remote and different funding arrangement that occurs between the Commonwealth and the states known as the public health outcome funding agreements. He said:

I am informed that family planning services are covered by Commonwealth-state agreements called the public health outcome funding agreements ...

That is what he said last week in his answer to Senator Allison’s question on 4 March. He did not at that time say, ‘Probably over 80 or 90 per cent of the services throughout this country are not funded under that program at all.’ His answer, if you read the rest of it, was clearly predicated on this minister believing at the time that all of the arrangements for funding of family planning associations are via the mechanism of the public health outcome funding agreements, otherwise known as PHOFA.

Today the minister has acknowledged that he got it wrong but, in the course of getting it wrong last week and again in question time today when this issue was pursued with further questions from Senator Mackay, Senator Campbell, in his usual manner, sought to attack the validity of the questions asked by Senator Allison and Senator Mackay. Today in question time when he was asked to explain how it was that he got it wrong last week, he actually said that he had not got it wrong last week. He said—these are the words that I took down, and I am sure the Hansard will bear it out—that he read his brief closely and then gave a full description last week. He did not. He just came in here a couple of minutes ago and acknowledged that he got it wrong. He got it very badly wrong. If this minister does not understand and cannot read a brief from his own department about how these services are funded, he should not be doing the job.

The Commonwealth is negotiating with the states regarding the further five-year period of funding for the public health outcome funding agreements. Those negotiations are continuing but that program of funding under those agreements goes to a whole range of public health issues that are not encompassed within family planning associations—things like the National Drug Strategy, the National HIV/AIDS Strategy, the national immunisation program and so on. This minister got it wrong. The facts are that the government has separate agreements with the states to fund family planning associations and the government has not told those associations or the states what it intends to do about further funding for them. It should come clean. It should make it clear to those associations how it intends to fund them in the future so that people’s minds can be put at rest. They certainly will not be put at rest by the sort of doublespeak and backsliding that we have had from Senator Campbell today, who clearly does not understand his portfolio and, furthermore, cannot even read a brief provided to him by his department. (Time expired)

Senator McGAURAN (Victoria) (3.22 p.m.)—Senator Ian Campbell, the Minister representing the Minister for Health and Ageing, has replied not only in question time but also in this take note of answers debate succinctly to Senator Mackay’s question. He has said that there is no so-called secret agenda to stop funding of family planning services. He went on to say that this is the beat-up of the week, and it is only Monday. Those opposite are at it again. On International Women’s Day you would think they could come into this parliament and celebrate the occasion with a bit more generosity. But, no, they come in here with their usual beat-up with regard to family planning.
which is hardly the broader issue of International Women’s Day. There are so many other subjects involved which they do not raise or celebrate. They come in here with a typically negative and nasty approach to all issues. This is a time to raise many issues, and I thought they would have taken the opportunity to do so.

The minister, nevertheless, in his generosity has given you a succinct, direct and committed reply, but you reject it out of hand. Of course, you have to. You think it is your job to and so you do. Today is an opportunity to recognise International Women’s Day in another way. I, as a National Party senator from Victoria, take the opportunity to recognise International Women’s Day by remembering the women of the bush, the women in rural and regional areas throughout Australia. First of all, I take this opportunity to remember the pioneering women, who were the backbone of those early settlers and families in times of drought, flood and hardship. There were hard times, as we know only too well from the poetry and legends that are told of those times, and we know how important a role women played.

Today, it is no different. Women from the country areas, the isolated areas, particularly in my colleague Senator Lightfoot’s state of Western Australia—more so than in Victoria—and outback stations still play the same role. They are the sisters of the old pioneers. In times of drought or flood they are the backbone of the family. But perhaps there is a new dimension to the times of the pioneering women; today’s women are now taking greater care in the finances of the farms. They seem to have taken up that role in times of financial hardship, particularly during the years when interest rates were soaring. It was the women who held the family together emotionally and were able to understand the finances when many farmers did not. More than ever we should recognise the role women played in the country during that period.

Of course, I am not just talking about women on the farms but also about women in the small towns and their volunteer efforts with the CFA—the fire brigades—with all the charity groups and, of course, those women in small business. I could go on. That group should be recognised on this day. I hope that Senator Stott Despoja, who is a great advocate for women, and Senator Denman, who has just entered the chamber, would jump up on International Women’s Day and raise subjects like that. They should have a bit of outlook. They should not come in here with negative beat-ups just to take a political opportunity on such a day. Also, we know only too well the opportunities within politics. Those women I have just pointed out—Senator Denman and Senator Stott Despoja—and Senator Stephens—

**Senator Stott Despoja**—What about the National Party women in the Senate?

**Senator McGauran**—For once I will take up one of your interjections, Senator Stott Despoja, considering how often I interject on you. Senator Stott Despoja would be interested to know that we have just preselected, possibly in a winning position, a woman for the seat of New South Wales. We have our own De-Anne Kelly, a real firebrand in politics. She has made her mark in politics and has gone up in the ranks to become a parliamentary secretary. Here in the Senate on the front bench—tragically I am not going to have time to go through each one’s contribution and the particular characteristics they bring to the job—we have Senator Patterson, Senator Vanstone, Senator Troeth and Senator Coonan, who hit the ground running in that very complex and difficult portfolio and who is probably the first woman to be on the Treasury benches. These are the women who have been given
Senator DENMAN (Tasmania) (3.27 p.m.)—I also want to take note of the answers given by Senator Ian Campbell. I will come to some of Senator McGauran’s points afterwards. My colleague Senator Mackay detailed what our concerns are about the possible discontinuation of family planning funding and I want to expand on those. Before I go any further, I had better admit that I was involved with Family Planning Tasmania about 10 years ago—not in recent years—so I have a particular interest in this area and also in seeing that their funding is not cut.

The Minister representing the Minister for Health and Ageing, in one of his responses, spoke about quality outcomes. That is exactly what family planning is about. But, coming to Senator McGauran’s point—and I am quite sure Senator Stott Despoja will agree with me—it is also about looking after the health of women, particularly in remote, rural and regional areas where they do not have access to a lot of the services that people in the cities do. Family planning organisations run clinics to educate women, to educate GPs and those sorts of issues, particularly in areas of concern to women’s health. When I was teaching, which was before I came into this place, we used to use family planning to talk to the children about various issues to do with health—not just women’s health but men’s health too. The children I taught were upper primary, and it was interesting to watch those children ask some of the questions that they would have liked to ask their parents about sexual health but were probably too embarrassed to do so. When family planning came into schools these children would go to the family planning person, not to me, and just quietly ask their questions.

One of the other issues to do with women is that a lot of family planning clinics are used by women for pap smear tests. A lot of women have male GPs and they would prefer to go to a family planning clinic to have a smear test. Family planning clinics are run by local female GPs, and a lot of women in rural areas use those clinics for that particular purpose. Young women also use those clinics if they have a sexually transmitted disease or they are concerned about their sexual health. Rather than go to their GP, they will go to a family planning clinic because normally the GP is known by the mums and the dads and these young women do not necessarily want their parents to know if they have a sexually transmitted disease. Family planning clinics are vital and this is why, as Senator Mackay has outlined, we do not want to see the funding discontinued.

I have a lot of information on Family Planning Tasmania, but I will not go through it all. One only has to visit the Family Planning Tasmania web site to see that it operates in three key areas: clinical intervention, education and training, and the absolutely critical disability support program. In some states the disability support program has been discontinued because of lack of funding to family planning. This is creating problems for those who have disabilities. The Family Planning Tasmania web site is targeted at two main groups: young people under the age of 25 and people living in rural and regional areas. People in rural and regional areas need to have access to these things because transport in those areas is not as freely available as it is in the cities. And, coming back to Senator McGauran’s point, the people who want to access family planning clinics are usually young women. Because of their limited access to transport in rural areas—they do not have access to public transport—the education programs that have been run by Family Planning Tasmania are abso-
lately vital. They educate these women; they give them somewhere to go if they are concerned about their sexual health or if they have questions they want answered. (Time expired)

Question agreed to.

Workplace Relations: Paid Maternity Leave

Senator STOTT DESPOJA (South Australia) (3.32 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Family and Community Services (Senator Patterson) to a question without notice asked by Senator Stott Despoja today relating to a national system of paid maternity leave.

I must pay tribute to Senator McGauran’s spirited defence of the political sisterhood, and I look forward to seeing that support reflected in the number of National Party women in the Senate one day. However, I take on board his comment that he wants positive energy and celebration today. I have always celebrated IWD. International Women’s Day is something that I have been proud to be a part of since I was a kid. I use that opportunity to celebrate the achievements and the progress of women, but I also use it as an opportunity to reflect on how far we still have to go. Today, whether it annoys Senator McGauran or not, I feel like a humourless feminist—to use that stereotypic phrase. I feel angry that domestic violence programs are not being acted upon or are having their funding cut. I feel angry that the wage disparity that exists between men and women in our society is continuing—indeed, in some sectors that chasm continues to grow. And I feel angry that all this rhetoric on the barbecue stopping topic of work and family is not being acted upon. I am sick and tired of the fact that paid maternity leave is a debate we have heard lots of rhetoric about but see no action on.

We have legislation before this parliament—tabled by me in May 2002—that would implement tomorrow a national paid maternity leave scheme, government funded at the minimum income. It would cost this government around $213 million per annum, or $352 million per annum, depending on whether or not you scrapped the baby bonus. If there is another scheme that the government thinks is better, make it average minimum incomes, make it more than 14 weeks—although that is the ILO standard—but for goodness sake I am sick of ministers talking about it. I am sick of the answers at question time that say, ‘Yes, this government is considering it.’ Government has been considering it for years. I know that Labor did not act on it in 13 years; I know that this government has not acted on it in nearly eight years. When are we going to see some action on this issue? Will it be in this budget? Until that time I will continue to launch e-petitions or postcards or letters to the Prime Minister.

The international media have exposed the fact that Australia is not simply out of touch with other developed countries. It is not something on which Australia is out of step with developing countries—it is developed and developing countries that have systems of paid maternity leave. We are one of two OECD countries that do not have a scheme, and there is no excuse. The government introduced its regressive, ill-targeted and ill-conceived baby bonus, which can cost up to $500 million per annum—although we acknowledged today that it has been an abject, pathetic failure—but only one-third of new mums have taken up the baby bonus. The majority of those are getting less than the maximum bonus, despite the fact that the Prime Minister guaranteed that women would get $500 from that scheme. It is targeted at wealthier women; it does nothing to alleviate the fact that two-thirds of Ausra-
lia’s working women still have no access to a system of paid leave when they decide to have a child. In this country the government has done nothing to alleviate or try to redress the systematic discrimination that working women face—and I take on board the minister’s comments about women who are in the home. Of course the principle of universal access to benefits and payment on the birth of a child is agreed with, but there are schemes in place for those women. It is the two-thirds of Australia’s working women who are missing out. Only a third of Australia’s working women have some access to paid leave when they have a child.

I am sick and tired of ministers talking about everything around the issue—work and family rhetoric; barbecue stoppers rhetoric—but not the issue itself. Look at fertility rates, for example. Senators and ministers in this place care more about fertility rates than they do about addressing this as a basic workplace entitlement. While I want to share Senator McGauran’s enthusiasm, and I am the first in this place to recognise and salute the achievements of women, on a day like today we owe it to each other and to our sisters and foremothers to be honest about the fact that there are still a lot of impediments and barriers and obstacles facing Australian women, and paid maternity leave happens to be one of the standout examples. Enough of the rhetoric, government, would you at least consider maternity leave for this budget, if not beforehand? Get your act into gear and bring us up to date with nearly every other country in the 21st century.

Question agreed to.

PETITIONS

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

Trade: Live Animal Exports
To the Honourable President and Members of the Senate in the Parliament assembled.

This petition of the undersigned citizens of Australia draws to the attention of the Senate the stress and extreme suffering caused to cattle, sheep and goats during their assembly, land transportation and loading in Australia, shipment overseas, and then unloading and local transportation, feedlotting, handling, and finally slaughter without stunning in importing countries.

Further, we ask the Senate to note that heat stress, disease, injury, inadequate facilities, inadequate supervision and care, and incidents such as on board fires, ventilation breakdowns, storms and rejection of shipments contribute to high death rates each year, e.g. 73,700 sheep and 2,238 cattle died on board export ships in 2002. Many thousands more suffer cruel practices prior to scheduled slaughter.

We the undersigned therefore call upon the Senate to establish an inquiry into all aspects of live animal exports from Australia, with particular reference to animal welfare, to be conducted by the Senate’s References Committee on Rural and Regional Affairs and Transport.

by Senator Bartlett (from 13,421 citizens).

Immigration: Temporary Protection Visas
To the Honourable President and Members of the Senate in Parliament assembled:

The Petition of the undersigned residents of Australia draws the attention of the Senate to the plight of the Hazara Afghans in the Albany area who have previously been granted Temporary Protection Visas. These individuals are at grave risk of harm should they be forced to return to Afghanistan. These individuals have such strong social and economic links to our community that their enforced repatriation to Afghanistan would be unwarranted and damaging to the Australian community.

Your petitioners ask the Senate to call on the Minister for Immigration to grant these individuals permission to remain in Australia permanently.

by Senator Webber (from 19 citizens).

Petitions received.
NOTICES

Presentation

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 2003-04 additional estimates be extended to 1 April 2004.

Senator Cook to move on the next day of sitting:

That the time for the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on the performance of government agencies in the assessment and dissemination of security threats in South East Asia in the period 11 September 2001 to 12 October 2002 be extended to 13 May 2004.

Senator Knowles to move on the next day of sitting:

That the time for the presentation of the report of the Community Affairs Legislation Committee on annual reports tabled by 31 October 2003 be extended to 1 April 2004.

Senator Allison to move on the next day of sitting:

That the Senate—
(a) notes that:
(i) the press coverage of the Australian Grand Prix in Melbourne on 6 March and 7 March 2004 again provided unparalleled advertising opportunities, and
(ii) this will be the ninth year that the race has made an operating loss, and Victorian taxpayers will again underwrite the event;
(b) urges the Federal Government to:
(i) bring forward the removal of the exemption for tobacco advertising at the Grand Prix from October 2006 to January 2005, in line with the recent decision of the European Commission,
(ii) progressively tighten conditions on tobacco advertising up until the removal of the exemption, and
(iii) ban incidental advertising of tobacco products outside the confines of the Grand Prix from 2005; and
(c) urges the Victorian Government to:
(i) investigate alternative venues for the Grand Prix,
(ii) make public the contract signed with the Grand Prix Corporation, and
(iii) reveal the extent to which it subsidised the Grand Prix in 2004.

Senator Brown to move on the next day of sitting:

That the Senate—
(a) notes:
(i) that the Australian Broadcasting Corporation’s Radio National is a vital part of Australia’s broadcasting sector, offering analysis and in-depth coverage of current affairs, politics, the arts, health, law and other key aspects of contemporary life, and
(ii) media reports that the Radio National network may be abolished; and
(b) calls on the Government to guarantee the future of Radio National.

Senator Crossin to move on the next day of sitting:

That the Senate—
(a) acknowledges:
(i) 8 March 2004 as International Women’s Day, a day when women across the globe mark the importance of continuing the struggle for equality and fairness, and the fight against discrimination in all of its forms, and
(ii) the massive contribution of Australian women to our community, through both paid and unpaid work; and
(b) urges the Government to:
(i) develop and introduce better policies to support women in both their work and family lives, and
(ii) introduce measures to combat barriers to the healthy, safe and independent participation of women in our society,
such as violence, poverty and discrimination, and ensure that such measures are adequately resourced.

Postponement

An item of business was postponed as followed:

Business of the Senate notice of motion no. 1 standing in the name of Senator Conroy for today, relating to the disallowance of Schedule 3 of the Corporations Amendment Regulations 2003 (No. 8), postponed till 24 March 2004.

ENVIRONMENT: CLIMATE CHANGE

Senator ALLISON (Victoria) (3.40 p.m.)—by leave—I move the motion as amended:

That the Senate—

(a) notes that:

(i) the weight of scientific evidence strongly suggests that:

(A) the global average surface temperature increased by approximately 0.6°C in the 20th Century and is likely to increase by between 1.4°C and 5.8°C in the 21st Century, and

(b) the primary cause of global warming is the increased concentrations of greenhouse gases in the atmosphere due to human activities, particularly the burning of fossil fuels,

(ii) the impact of climate change in Australia could include decreased water availability, lost productivity in the agricultural, fisheries, forestry and tourism sectors, increased fire risk, loss of alpine habitats and species, an increase in severe weather events, degradation and loss of coral reefs, and an increased risk of infectious diseases, respiratory illness, heat-related illnesses and allergies, and

(iii) despite the risk to Australia, the Howard Government has refused to ratify the Kyoto Protocol and failed to implement sufficient measures to reduce domestic greenhouse gas emissions and minimise the impact of climate change; and

(b) calls on the Government to:

(i) ratify the Kyoto Protocol and work cooperatively with the international community to devise a comprehensive agreement to reduce global greenhouse gas emissions,

(ii) increase the mandatory renewable energy target to a real 5 per cent by 2010,

(iii) introduce an emissions trading scheme,

(iv) amend the Environment Protection and Biodiversity Conservation Act 1999 to ensure approval is required for all actions that could result in significant greenhouse gas emissions, and

(v) develop and implement a broader range of measures to reduce domestic emissions and encourage the expansion of the renewable energy sector.

Question agreed to.

TRADE: FREE TRADE AGREEMENT

Senator RIDGEWAY (New South Wales) (3.40 p.m.)—I move:

That the Senate—

(a) notes that:

(i) the Government has committed to a public review of the economic impact of the free trade agreement (FTA) between Australia and the United States of America (US), and

(ii) under US trade law, before an agreement can be ratified, a thorough environmental impact assessment must be done to review the extent to which positive and negative environmental impacts may flow from economic changes expected to result from the prospective agreement; and

(b) calls on the Government to:

(i) conduct a full public analysis of the environmental impact of the FTA,
(ii) conduct a full public analysis of the social and cultural impact of the FTA, and

(iii) table reports of these reviews in the Parliament for its consideration.

Question agreed to.

MATTERS OF PUBLIC IMPORTANCE

Women: Domestic Violence

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

The $2.7 million spent on the Government’s anti domestic violence community awareness campaign developed by the Office of the Status of Women subsequently scrapped by the Government Communications Unit.

I call upon those senators who approve of the proposed discussion to rise in their places.

More than the number of senators required by the standing orders having risen in their places—

The DEPUTY PRESIDENT—I understand that informal arrangements have been made to allocate specific times to each of the speakers in today’s debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

Senator CROSSIN (Northern Territory) (3.42 p.m.)—I rise this afternoon to provide a comment on the government’s performance in relation to women’s programs, particularly programs administered by the Office of the Status of Women. It is particularly important that we use International Women’s Day, as my colleague Senator Natasha Stott Despoja said, as an opportunity not only to talk about and champion the work and the achievements of women in this country but also to raise what else needs to be done, what could be done and what has failed to be done by this federal government.

This matter of public importance goes to an examination of what has been happening with domestic violence under this government. It is interesting that less than three or four hours ago quite a few federal politicians attended the international launch of Amnesty International’s campaign called ‘Stop violence against women’. It is also interesting that the would-be Prime Minister—not his brother, the Rev. Tim Costello—Mr Peter Costello, was there representing the Prime Minister. Perhaps it was his five-minute opportunity to be in that role, as he embarks on his campaign to be the next Prime Minister. He should do that before the next election or else Mr Turnbull will be quickly in his shoes. It was unfortunate that the Minister Assisting the Prime Minister for the Status of Women, Kay Patterson, did not take the lead role in that launch. Of course, that is a position she has become accustomed to under this government—continually putting up ideas and having them knocked over, transformed or shelved by the men in her party.

The other interesting and significant factor of the launch I attended today was that all politicians were asked to put a handprint on a piece of material as a signal of their intention to support the campaign to stop violence against women. I noticed that there were a number of people from this government who put their handprint on that piece of material but, when it comes to what they have done about stopping domestic violence through campaigns, it would seem that the opportunity has simply slipped through their fingers once again.

Since 1997 the Office of the Status of Women has been conducting research into domestic violence in Australia under what has commonly been called the PADV program—that is, the Partnerships Against Domestic Violence program. Since the commencement of this program we have monitored as closely as possible through the esti-
mates process the Office of the Status of Women, the rollout of this program and the enormous sum of $50 million that was allocated to it. It is worth noting the consistent and continuing controversy that surrounds the operation of the Office of the Status of Women and the programs it administers under that banner. People will be well familiar with the $10.1 million which was redirected early last year from the Partnerships Against Domestic Violence program to pay for the Be Alert Not Alarmed campaign. You would know it as your fridge terrorist magnet. Now we have the antidomestic violence campaign worth more than $12 million which has not been delivered.

One of the major outcomes of the research conducted by OSW under the Partnerships Against Domestic Violence program was a national community awareness campaign costing more than $12 million. This campaign was due to be aired in December last year. A total of $13.64 million has been allocated to the Partnerships Against Domestic Violence community awareness campaign; $2.7 million of this, we discovered during estimates, has already been spent on television and magazine ads that were subsequently rejected by the Government Communications Unit. It has been a concerning and continuing trend that the Office of the Status of Women has been consistently underminded by this government. In May 2003 that office proudly reflected on the planned community awareness campaign. It was to be called ‘No respect, no relationship’. The officers informed the committee at estimates last year that the campaign would be targeted primarily at young people. In fact, the officers stated:

When that research was done it seemed that it would be preferable to look at a younger audience and a prevention approach on domestic violence given that with older people it is far more entrenched.

This was a campaign that was predominantly aimed at changing young people’s ideas. It was aimed at ensuring that there was inter-generational change. It has been pretty clear from the start from research conducted by OSW over a six-year period that targeting young people was desirable. It seems that the OSW has not been given a clear reason for the decision made by the Government Communications Unit. In questioning those officers at estimates I clearly remember that they simply informed me that they were looking at redefining and rephrasing the message. It became fairly obvious in the following days that Minister Kay Patterson had suggested that the campaign had in fact been deferred. The Prime Minister has given us a litany of reasons as to why that campaign has not gone ahead: it did not comply with government policy and he did not want people just accessing a web site. Now of course we find that Minister Kay Patterson has suggested that a 1800 number be set up so that people can access that number for assistance.

The message given by the Office of the Status of Women, the Minister Assisting the Prime Minister for the Status of Women and the Prime Minister has been mixed to say the least. No-one is really very clear at this time why exactly that campaign has been shelved. The Office of the Status of Women claimed the Government Communications Unit was concerned that the campaign was not targeted at the entire community. It was never meant to be, according to the OSW and their research. It was targeted at young people between the ages of 15 and 24.

The Prime Minister on the other hand, in an answer to a question without notice in the House of Representatives, said that the campaign had not been aired because he was concerned that television advertisements directed people to a web site rather than to the police or to a telephone number for assistance, such as a crisis line or Helpline. It is
interesting that this is not the reason the Office of the Status of Women was given by the Government Communications Unit. Perhaps it would be useful for the government to inform OSW exactly what was wrong with the ads rather than playing political games. I for one would not want to suggest that OSW misled us during the Senate estimates process. Once again, they were simply ill-informed by the Department of the Prime Minister and Cabinet.

The Government Communications Unit made the decision not to air the campaign only 10 days before the television and magazine ads were contracted to start. It was planned that the campaign would be shown in the lead-up to Christmas when there is usually an increase in the number of reports to police. This was a definite strategic approach which was ignored by the government and members of the Government Communications Unit who, I would like to note, do not necessarily have any expertise in this area. In fact, if my memory serves me rightly, that committee—headed by Senator Eric Abetz—comprised three other men of this government and the Prime Minister’s private secretary, Mr Tony Nutt. As I understand it from the Office of the Status of Women, they met a number of times during the development of the campaign. In fact, members of the committee saw aspects of that campaign no fewer than 11 times. Yet it was not until 4 December, when a meeting was held, that it was decided that the campaign should not run.

What was it and who was it that interfered in that decision at such a late hour after there had been months of planning, research and preparation and many meetings looking at the lines and the targeted message? One would have to assume that, at the end of the day, the Prime Minister solely was responsible for pulling the plug on this. The Office of the Status of Women was unable to indicate to us exactly when the ads would be run and in what form they would be run, and whether the ads which have already been produced would be used at all. It would be reasonable to assume that the money already expended will not be retrieved.

The $13.674 million has been drawn partly from the Partnerships Against Domestic Violence program and partly from the National Initiative to Combat Sexual Assault. The anti-domestic violence campaign has been cancelled, scrapped, delayed, postponed, refined or whatever other excuse we have heard from this government—

Senator Mackay—Rephased.

Senator CROSSIN—It has been rephased—thank you, Senator Mackay. The government insists on using a different phrase depending on what day it is. The fact is that, after six years of research into domestic violence, the Office of the Status of Women were again undermined by the Prime Minister’s personal agenda. According to the Prime Minister there is no longer a need for programs or policy specifically directed at women. According to the Prime Minister, reported in an article in the Sydney Morning Herald on 7 August 2002, the battle has been won.

Domestic violence in this country is occurring in endemic proportions. We know that, in 2002, 63,670 women reported to police that they had been assaulted and that there were 175 reports on a daily basis. Of these assaults, 41.2 per cent occurred in a private residence. The women’s safety survey conducted by the ABS shows that there are seven to eight times more incidences of assaults against women in this country that are being massively underreported. In the Northern Territory one in three Indigenous women has been affected by assault. Aboriginal women are 45 times more likely than other Australian women to be victims of do-
Domestic violence. About 6,000 incidents of assault against Indigenous women occur in the Northern Territory each year. Indigenous females between the ages of 15 and 24 are 15 times more likely to be hospitalised, and Indigenous people are 8.1 times more likely to be homicide victims. Associate Professor Paul Memmott, a leading author from the University of Queensland, who wrote a report last year entitled *Violence in Indigenous communities*, highlighted the fact that nationally most victims of domestic violence are women—not only that, but most are Indigenous women—and that there is very little reported of the phenomenon of rape and sexual abuse of small children in some remote communities.

The National Indigenous Family Violence Forum that was formed in 2001, coordinated by the Office of the Status of Women and the Partnerships Against Domestic Violence program, identified nine strategies aimed at reducing, preventing and redressing the impact of family violence in Indigenous communities but those strategies have gone nowhere. The meta evaluation report, which is now on OSW’s web site, makes no comment on where the implementation of these strategies is at.

At a time when domestic violence is there for us to see in black and white in the figures before us almost weekly, if not daily, from people around this country who are doing research into this area, this government has an opportunity to do something about it by addressing young people who are still at a stage of formulating their views about domestic violence. The domestic violence campaign ‘No respect, no relationship’ was initially to be targeted at young men. It was intentionally aimed at ensuring that there was a change in the intergenerational cycle. It was to be a community education and prevention campaign, which was desperately needed given the bad examples that we have seen even recently by high-profile footballers. This morning on the Seven morning news the minister said that this program would now have a different message, that it would change course. She said:

It will be rolled out when we have the ads in the form that we think are appropriate and clear. Also, it’s just not easy to get that backup. We must make sure we’ve got appropriate resources so that when people phone the 1800 number they can be directed to appropriate services ...

It now appears that this government is remodelling the campaign to direct it at domestic violence victims through a call centre. It appears that the government is up to its old trick of pushing the responsibility for what is a national issue onto state governments. As soon as you say the campaign is directed at victims, other people will say, ‘It’s really got nothing to do with me,’ and they will switch off. Unfortunately, many of those people may have or will adopt attitudes that may lead to domestic violence.

(Time expired)

Senator FERRIS (South Australia) (3.57 p.m.)—It is with pleasure that I take this opportunity to speak on International Women’s Day. March 8 is celebrated across the world as International Women’s Day and provides the opportunity for all of us to recognise the achievements of women and the contribution that they have made to our society. On this day, our women can celebrate the progress that has been made and contemplate what lies ahead in areas of women’s lives that are not as they should be. Australia has led the world in giving women political and social rights. On 12 June 2002, 100 years had passed since Australia became the first country in which most women were granted the right to vote and to stand for election to federal parliament. I am sure that every woman in this chamber celebrated in one way or another the 100 years of achievement in giving women the vote.
My home state of South Australia was one of the first places in the world to give women the vote in 1894. We were also one of the first places to allow women to stand for parliament. We have contributed many fine politicians. Kay Brownbill was a remarkable woman. On her election in 1966, she became the first woman from South Australia to be elected to federal parliament and she was the youngest and only the third woman in Australia to have achieved that. During her tenure in the House of Representatives, she was a very strong advocate of women’s rights. She campaigned hard to ensure that more women were appointed to government boards and committees, and she lobbied for equal pay during the days when equal pay was not the right that it is for us today.

Today we mark the opportunity to remember and celebrate those courageous women—those suffragettes—in their struggle to achieve equality for women. Let us never forget that it was the suffragettes’ courage and bravery that enables us to take for granted what we have today. We must never forget their courage and their achievements. They are freedoms that we now take for granted. They were not able to enjoy these freedoms, but they did not take it—they fought courageously.

It is a shame that, given the opportunity that we have today to celebrate the achievements of those women, all the opposition could manage to come up with was a negative and blatantly misleading matter of public importance. It makes me wonder what the suffragettes would say if they were sitting in this place today. What would they say at this negative and carping matter of public importance? Frankly, I think they would be quite disappointed and quite disgusted to see how bereft of policy the Labor Party is in debating this MPI today.

Not only is it bereft of policy but the treatment of women by members of the parliamentary Labor Party in recent weeks has been quite disgusting. Last week, a senator in this place made disparaging interjections about blonde-haired women during an answer being provided by Senator Helen Coonan, the Minister for Revenue and Assistant Treasurer. Last month, a House of Representatives member described the Minister for Veterans’ Affairs, the Hon. Danna Vale, as a ‘flip-flop floozy’. Endemic violence indeed, Senator Crossin. Violence is not just physical; violence is verbal. It was a disgrace. Most disappointing of all was that the leader of the Labor Party, Mr Latham, allowed those members and senators to get away with those very unappealing comments, particularly the comment made by Mr Edwards in relation to Minister Danna Vale, a Christian woman. I invite Mr Edwards to consult his leader’s Google to see what they described the word ‘floozy’ to mean. Of all the words that could be used to describe my colleague Danna Vale, that word is particularly repugnant. Mr Latham should have called his backbencher into line. Instead of that, we saw nothing.

So when women come in here today and talk about endemic violence, there is endemic verbal violence in this chamber and in the other place, and Mr Latham needs to call those men to order. He needs to discipline those people who think it is clever to make jokes towards colleagues in this place who choose for their own reasons of dignity not to respond. I challenge those who speak here today on this MPI to reject the disgraceful comments that were made in this chamber last week and in the other place by members of the Labor Party. We must never forget that violence is not limited to physical acts. I call on Mr Latham, someone whose record on violence is at best doubtful, to reject this
verbal violence against women members of this government. It is repugnant.

Let me address Senator Crossin’s claims. Reports that a domestic violence community awareness campaign has been cancelled are completely wrong. The campaign will proceed this year. The Australian government is committed to developing a campaign that sends a strong message to the Australian community that violence against women is totally unacceptable. I feel sure that I can speak for everybody in this parliament when I say that violence against women and violence against men is repugnant. It is unacceptable to everybody.

The issues of violence of one individual against another are complex and sensitive, and the government wants to ensure that the messages that we send in this very expensive campaign reach the desired target audience. As a result, some elements of the community awareness campaign are being refined. What is wrong with that? The Prime Minister said in the other place today that we are making sure that this campaign reaches its target appropriately. Let us make sure that this campaign when it is launched is the most appropriate campaign it can be.

As those opposite know, because they asked the questions at estimates, this government’s $66.5 million commitment to tackling domestic violence and sexual assault is admirable. We are spending $50 million on Partnerships Against Domestic Violence and $16.5 million for the National Initiative to Combat Sexual Assault. Partnerships Against Domestic Violence is a Howard government initiative designed to gather knowledge and find better ways of preventing and addressing domestic violence in the community. That does not mean a 1800 number or a website.

International Women’s Day provides an opportunity for all of us to honour the achievements of women and recognise the very complex issues that continue to affect women and girls in Australia—particularly, as Senator Crossin said, women in Indigenous communities, where the figures are a national tragedy. Sadly, women around the world continue to suffer as victims of sexual assault, domestic violence and discrimination. No woman should ever have to fear violence, whether it is at home, in the workplace or, indeed, out in the community. This government is committed to proceeding with the groundbreaking community awareness campaign to reinforce the message that violence against women is totally unacceptable and that violence against women is repugnant. What we are doing is making sure that the very acceptable campaign that we are proposing to launch targets people in the most appropriate way possible. As I say, starting with this chamber and the House of Representatives, violence towards women, verbal or physical, is not acceptable.

Senator STOTT DEPOJA (South Australia) (4.07 p.m.)—I begin by agreeing with the remarks on which Senator Ferris ended—that is, violence, regardless of how it manifests itself, is unacceptable. Amnesty International launched ‘It’s in our hands: stop violence against women’ campaign this morning. I note that a number of speakers there, including the Treasurer, Jenny Macklin and certainly the minister, all reiterated that whether it was violence in the bedroom or the boardroom it was unacceptable. This is true of our workplaces, including the Senate, just as it is unacceptable on or off the football field. So I concur with Senator Ferris’s comments in that regard.

I support this matter of public importance today and I commend Senator Crossin for bringing this debate to the chamber. I am sure that across the parties there are strong
views on this issue and that everyone will condemn, and appropriately so, the issue of domestic violence. I support this matter of public importance and urge the government to reinstate its anti-domestic violence community awareness campaign.

The government indefinitely postponed this campaign at the end of last year, announcing that it would not be launched until the government’s concerns were addressed. We have heard some of those concerns outlined. Some of us in this place are more concerned that there are other deeper issues that are holding up the relaunch of this campaign. The postponement of this advertising campaign has caused widespread community concern and outrage. This campaign was to be the first public campaign that we have seen around the issue of sexual assault particularly targeted at young people, as Senator Crossin outlined, and there were doubts initially that it would get to air, that it would go ahead.

Now it is time for the government to outline exactly what is the state of that advertising campaign. The public wants and deserves to know whether or not that campaign will go ahead, when it will go ahead and, if not, exactly why it is not going ahead. The further delay of these ads is regrettable and indeed potentially has an impact on the incidence of domestic violence or, at least, attempts to address the issue of domestic violence in our community. We also want to know if the government is changing or has plans to change the initial advertisements and, if so, why? We want to know why the ads need to be changed at all and why this perceived need for change, if it is indeed the case, was not recognised until the ads were almost ready to be launched—on the cusp of being launched; that is how close it was.

I understand that the Office of the Status of Women spent two years planning this particular campaign, which was due to start in December. It was in time for Christmas—and Senator Crossin has already outlined that on the record—which is a time of incredible vulnerability for many women in the community because indeed a higher number of assaults occur at that time. But most of all, apart from all these things we want to know, we want the ads to be released. We want the campaign to begin.

The Prime Minister has stated that the main reason that the ads have been postponed is that they refer people to a web site. Apparently, he believes that victims should be advised ‘to go to the police, to go to a doctor or to go and talk to your parents’. Admittedly, these options may be suitable in some individual cases, but the Prime Minister is missing the fact that the majority of victims of sexual assaults do not report what has happened to them. They do not report the assault; this is one of the biggest issues. We know from various studies that up to 85 per cent—that is a huge majority—of people who are sexually assaulted do not actually report the assault. In many cases, victims completely deny their experiences.

A key advantage of the postponed campaign is its aim to directly combat the low reporting of sexual assault. This is actually a target within the campaign. There was recognition that this is a problem and so it sought through the campaign ads, which I think are very impressive, to encourage people to report the incidence of sexual assault. One of the ads deals with this specific situation. It features a picture of a woman with the quote, ‘Well, it was assault and I reported him. It was so hard to do—but such a relief.’ The box next to it says, ‘You did the right thing.’ That second text is a reaffirming message that this woman has reported the assault, as she should.
I understand the Prime Minister also wants a specific response line to be established and that the Office of the Status of Women is looking into this. Certainly, a dedicated response line sounds like a good idea in principle, but the reality is that there are already many sexual assault services around Australia. Why not refer people to the existing bodies in their states and territories? Certainly, a web site has the potential to do this. There is also the added advantage that these sexual assault services can provide a much greater level of support and service than a response line possibly could.

The chair of the National Association of Services Against Sexual Violence, Vanessa Swan, does not believe a response line would be the best use of resources, especially when existing sexual assault services are already underfunded. But the main concern that organisations working with victims of sexual violence have regarding the government’s postponement of this campaign is that the government has not guaranteed that it will not alter the campaign before it goes public. We are worried it is going to be watered down. That is why people are bringing this to the attention of the Senate. They are worried about the real motive behind this process. They want to know who it is who is suggesting that the government do not consider that the ‘escalating verbal violence and intimidation’—the issue portrayed in the ads—was appropriate and that ‘it was wrong that only men were shown as aggressors in the campaign’, because key Liberal MPs have been referred to. Whether we like it or not men are the majority of aggressors in our community—men are the majority of perpetrators of sexual assault and violence in our community—and, until we can talk honestly about that in the corridors of power and in our community, nothing is going to be done about it. (Time expired)

Senator KNOWLES (Western Australia) (4.14 p.m.)—Today we are discussing a matter of public importance, the terms of which, according to the letter Senator Crossin submitted, are incomplete. So I am not sure what she means when she says in her letter that the following matter be submitted to the Senate for discussion:

The $2.7 million spent on the Government’s anti-domestic violence community awareness campaign developed by the Office of the Status of Women subsequently scrapped by the Government Communications Unit.

The sentence does not finish. I am not quite sure what Senator Crossin’s objective is with this matter but I presume she is referring to the misleading nonsense that the Labor Party have been running, that this campaign has been cancelled. It is not just misleading, it is completely untrue. If this opposition were really dinkum about stopping a lot of the issues to do with sexual violence, sexual misconduct and attacks on women, one of the most fundamental things they could do, just to start with, would be to move a censure motion against some of their own male colleagues who continually make sexist comments about females. Not once have I heard any of the women in the Labor Party condemn the comments that are continually made by Labor Party members of parliament. It is about time they stood up to the mark and said, ‘Enough is enough.’ But they simply do not care; they just let it go on. There are two female Labor members of the Senate in the chamber today and I have not heard either of them condemn their colleagues for recent previous comments that have been made—let alone any of the men condemning their male colleagues.

As I said, this claim today that there has somehow been a cancellation of the $2.7 million government antidomestic violence community awareness campaign is plainly untrue. This campaign will proceed this year.
It is interesting that Senator Stott Despoja, who has all care and no responsibility when it comes to government—the Australian Democrats will never be in government to implement anything—claims that there has possibly been a permanent ditching of such a campaign. There is no thought of doing that and there never has been, but it suits the purpose of the Australian Democrats once again to hold hands with the Labor Party and try and say that there has been a ditching. There has been no such thing.

The Australian government is committed to delivering a campaign that sends a very strong message to the Australian community that violence against women is totally unacceptable. There are many elements of that campaign that are currently being refined due to the complexity and sensitivity of the issues. If either the Labor Party or the Australian Democrats believe that it is not the role of government to make sure that the campaign is right before the money is spent and the ads go to air, then once again they do not understand the role and responsibility of government.

There needs to be a sufficient call to action for when women become victims of sexual assault or domestic violence and we have to get it right. But of course the Labor Party do not worry about getting anything right. When they were in government they did not even bother getting right the expenditure on programs against domestic violence. It has taken this government to commit to over $66.5 million worth of initiatives: $50 million for Partnerships Against Domestic Violence and $16.5 million for the National Initiative to Combat Sexual Assault. Partnerships Against Domestic Violence is a Howard government initiative. What did the Labor Party do when they were in government? They did absolutely nothing. It has taken this government to spend $66.5 million on this issue. To date this initiative has funded more than 230 diverse and innovative projects related to domestic and relationship violence at the local, regional and national levels, and has supported the development of research into the documentation of good practice.

Domestic violence and sexual assault are not just wrong; in many cases they are criminal. Yet the opposition wants to politicise this issue without recognising that the government is trying to get this right, that there are many ramifications and that there are many parts in this jigsaw. We need to be able to support the victims and assist them in contacting the police and getting referrals to rape crisis centres or domestic violence crisis centres. We have already funded projects in the areas of Indigenous family violence, community awareness, the justice system and early intervention with children—just to name a few. But the Labor Party does not think that is good enough, despite the comparison of what has been done by this government in the last seven years vis-a-vis nothing of the sort that was done under 13 years of Labor government prior to this government coming to office.

The National Initiative to Combat Sexual Assault is, once again, a Howard government initiative that is developing a sound, effective base for effective policy and service responses to sexual assault. These initiatives have been focusing on making better use of existing sexual assault data, collecting new national data and establishing a research body to explore issues relating to sexual assault. We are committed to raising community awareness about domestic violence and sexual assault. Our leadership in this area demonstrates the government’s great commitment to creating strong families and strong communities that are crucial to maintaining a cohesive and compassionate society. And to think that the Labor opposition are once again trying to mislead the Australian public on this issue—along with many
other issues that I listed in this place last week! They cannot get their heads around the fact that this is a campaign that is yet to be run—and it is not up to them, as some group of mischief-makers, to suggest otherwise.

At what stage has one person in the opposition said to this government, 'Good on you for spending $66½ million in this area that we, in government, never spent'? Not once has anyone in the opposition ever said that. No budget where this money has been allocated has ever met with the vocal approval of the Labor Party. I would suggest that it is about time that the Labor Party acknowledged what has been done in this area and that there is much to be done. For them to go on mischief-making and, quite frankly, deceiving the Australian public about this campaign that is to run later this year is nothing short of disgraceful. But, with this opposition, we should be surprised about nothing.

Senator LUNDY (Australian Capital Territory) (4.22 p.m.)—It is interesting to follow on from the comments of the previous speaker. So much of what the Howard government has to offer in these areas is just rhetorical window dressing. The Howard government appears to be again intent on relegating women to the status of second-class citizens. I put it to the chamber that women have fared badly under this government and that the Minister Assisting the Prime Minister for the Status of Women, Senator Patterson, must surely concede that. At best she has been ineffective in influencing the Prime Minister and his cabinet to have regard to the welfare and interests of women in the immediate, the medium and the long term. Attacks have ranged from general attacks on Medicare and higher education to the failure to implement paid maternity leave and the increase in numbers of single parent families living in poverty. They are all examples of the lack of attention the Howard government has been paying to the needs of Australian women.

The latest example in a long list of issues showing disregard for women comes with the cancellation of the community awareness advertisements planned as part of the Partnerships Against Domestic Violence campaign that my colleague Senator Crossin outlined. This cancellation comes on a tide of sickening revelations about alleged sexual assaults by Rugby League players both in New South Wales and more recently in Victoria, and raises serious issues around the attitudes of some men towards women. Today, on International Women's Day, it has been reported by the Australian newspaper that Professor Catherine Lumby, a gender studies expert, has been asked by the National Rugby League to investigate whether a culture of misogyny exists in Rugby League and to ascertain the need for adjusting players’ attitudes towards women. Professor Lumby stated:

It’s not about the minutia of sexual behaviour or morality, it’s about creating a culture in which woman are humanised, in which women are seen as the equals to men.

Sadly it would seem that the challenge of creating a culture of respect and equality between men and women has a long way to go. In this more recent example of the football league, it seems that these cultural issues and challenges clearly offer no respite from the law.

The bottom line is that the statistics on sexual assault and violence reflect that the incidence of sexual assault and violence against women in our community is steadily rising. Reported incidents have increased every year for the last eight years. It is estimated that around 100,000 women each year are sexually assaulted, many of them in their own homes. As my colleague Nicola Roxon,
the shadow minister assisting our leader on
the status of women, stated yesterday:

This alarming figure is more than the Mel-
bourne Cricket Ground full of sisters, daughters,
wives, mothers and grandmothers suffering the
physical and emotional trauma of sexual assault.
How have the Howard government re-
sponded? They cancelled the release of the
Partnerships Against Domestic Violence
campaign. It seems that once again the How-
ard government have disregarded the impor-
tance of issues relating to women and have
put this campaign on the backburner. They
could not have chosen a worse time.

The Howard government allocated $12
million for the campaign, which focuses on
educating young people about acceptable
behaviour. It is a campaign entitled No Re-
spect, No Relationship and it focuses on pre-
venting violence and building strong and
healthy relationships. But we now know
from the evidence given at the February Sen-
ate estimates hearings that, despite this cam-
paign being ready to go in December, the
Howard government cancelled it, citing any
number of excuses for delaying its release—
and we heard more of that from the minister
in question time today.

According to the minister, the TV cam-
paign to combat domestic violence that was
scheduled to be screened in the December
Christmas period was only delayed and not
cancelled. The decision to postpone and 're-
focus' the campaign was taken by the gov-
ernment. It is worth noting that the decision
was not taken by the Office for the Status of
Women, who were in charge of the campaign
and who had tested and developed it to its
ready to go format. It has also been sug-
gested that the cancellation—only one week
before the campaign was set to be
launched—was specifically initiated by the
complaints of four men from the Liberal
Party, including the Prime Minister’s princi-
pal private secretary. The campaign was con-
sequently pulled at the eleventh hour.

Now, according to today’s press release
and the Minister Assisting the Prime Minis-
ter for the Status of Women, it seems that all
that is needed is the inclusion of a 1800
number in the ads. Labor demanded today in
question time—and we continue to demand
because, of course, we got no satisfactory
answer—the real reason for the delay. The
community deserves a straight answer, not
obfuscation, not rhetoric that covers up a
decision about this cancellation of the cam-
paign and that has no substance. We want
real reasons.

With an estimated $2.7 million already
spent and still no campaign, Labor believes it
is timely that today, on International
Women’s Day, and particularly in light of the
distressing allegations of sexual assault in
Rugby League, the Howard government act
to release the domestic violence and sexual
assault campaign immediately. Australia
needs this campaign and there is absolutely
no reason to continue to withhold it. The
Howard government has delayed it for far
too long, and we will never know how much
violence against women may have been
averted or ameliorated in the months since
the government’s decision to cancel the re-
lease of the community awareness campaign.

There is plenty of evidence that the cam-
paign is needed, and needed right now. Re-
cent surveys show that many young men still
believe that using physical and emotional
violence against their girlfriends or pressur-
ging girls into having sex is acceptable. The
beliefs that some young women are ‘just ask-
ing for it’ or that it is not always wrong to hit
someone and that sometimes it is provoked
are still present and strongly held by some
men. The thought that a culture of violence
against women still exists in Australia in this
way is absolutely frightening. The govern-
ment has a responsibility to act. The fact is that it is never the victim’s fault. The government needs to take responsibility for the role that it can play by putting that campaign to air.

Experts in the sexual assault field have already advised the government that, if we are serious about preventing violence against women in the community, and not just reacting to it—and it is a very important distinction—there are three areas to tackle: working with young people to break the intergenerational cycle of violence, working with victims and perpetrators to break the cycle of violence, and working with communities to educate against violence. The message which must be sent to our community should also be clear: using physical power or fame to have sex without consent is completely wrong; it is against the law. It is not just a social problem or a cultural problem; it is a criminal offence. There are no excuses and no exceptions—not for your neighbours, not for celebrities, not for anyone.

This morning at an International Women’s Day function here at Parliament House, Cathy Denino, convenor of the Canberra chapter of UNIFEM, told of a men’s group in Africa working to change the culture of acceptance of violent and dominating behaviour towards women. This government could well learn from these examples of the need for action and community education—that any form of violence or abuse cannot be tolerated in Australia.

The number of cases of sexual assault is too high. The price paid by victims is unacceptably high. I concur with Senator Crossin’s call for action, particularly in respect of Indigenous women and the need to act on the strategy that is in place. The Howard government must act to address the increase in sexual assault and domestic violence against women. We know that they have a campaign to do so, and they are choosing not to. I reiterate Labor’s call for that campaign to begin immediately. It seems that the squirming the Howard government are doing now—descending into the minutiae, into arguments about detail—is really just about squirming out of it, about not accepting responsibility for a level of political interference in what was a ticked-off campaign ready to go. That is absolutely unforgivable and, I conclude, fairly typical, unfortunately, of the Howard government in their reprehensible approach to so many women’s issues in Australia in 2004.

Senator PAYNE (New South Wales) (4.32 p.m.)—I will tell people what is really reprehensible—what is really, really testing the bounds of credibility in the discussion this afternoon—and that is the extraordinary naïvety or wilful ignorance displayed by those opposite, who refuse to acknowledge the extraordinary efforts that the government is making in this area. In the parts of the debate I have had the misfortune to listen to, it seemed to me that those opposite consistently pretended that the only activity being undertaken at Commonwealth level to address domestic violence in this country is the campaign which we have discussed—I acknowledge, Senator Crossin—in estimates previously and in the chamber today. That really does beggar the imagination. It really does make you wonder how genuine and realistic those opposite actually are and how prepared they are to engage in constructive discussion on these issues. The answer lies in the words they have spoken and laid on the table—they simply are not.

In question time, the minister made it quite clear—and I am more than happy to reiterate her words in that regard—that the program to alert young people that violence against women is totally unacceptable will be rolled out when, in the opinion of government, there is appropriate backup for it.
According to those opposite, that is no longer a role for government; it is a role for them. Apparently, making these decisions is no longer a role for the executive government; it is a matter for those opposite in the chamber, who want to decide when something is ready from their perspective. That is fine; that is an opportunity that we will all take up—on both sides of the parliament—whenever we are able to do so. That is absolutely fine—but it is totally unrealistic and it lacks complete credibility. The minister made her position and the position of the government emphatically clear in question time, and those opposite have failed to acknowledge it on any single occasion in the debate this afternoon. That is even more profoundly disappointing than any crocodile tears they might be crying.

In relation to matters concerning violence—domestic violence, family violence and sexual assault—the minister today also referred to some of the very important announcements that she has made, particularly in relation to International Women’s Day. She made it quite clear that domestic violence and sexual assault are completely unacceptable, untenable and reprehensible. Every single member of this parliament—Senate and House—must, I assume, agree with that; if they do not, they should review their position.

Last Friday, the minister announced half a million dollars in additional funding for Lifeline, a pivotal community organisation, to improve access for families at risk of domestic violence. That is the sort of backup and community support that those opposite have failed to acknowledge in any of their remarks today. The minister has also indicated—and it was reported in today’s media—that the government is intending to provide almost $100,000 for a national conference on sexual assault, to be held in September this year. And she has used International Women’s Day to sound in this debate a very important bell about how unacceptable domestic violence and abuse of women are in this country. As I said when I began my remarks, it is profoundly disappointing that none of those initiatives—centred around this particular day, this very important day—have been acknowledged in this debate.

As well as the contributions to Lifeline and the sexual assault forum to be held later this year, the government has said, as part of a range of initiatives also to be announced today, that it will provide $105,000 for five Indigenous women to undertake community leadership courses. I would have thought they merited remark and acknowledgment. In any comprehensive, realistic and credible debate on this subject, I would have thought that the whole of government activity in this area would merit some reference. But apparently not—not if you listen to those opposite.

I want to look at the government’s principles and policies in relation to the elimination of violence in the lives of women. It is not actually that hard. It does not take a lot of research, so it would not have been too difficult for those opposite to do that. It would not have been too difficult, for example, for them to have looked at some of the aspects of the Partnerships Against Domestic Violence initiative which this government has been pursuing since 1997 and to which the government has contributed over $50 million.

**Senator Crossin**—What about outcomes?

**Senator PAYNE**—It is all very well for those opposite to claim that there are no outcomes, but those who participated—those individuals and those communities who made a genuine effort and a genuine contribution—really feel short-changed by those who say their contribution is worthless. An evaluation of the project, which has been undertaken in this process, has illustrated...
quite clearly what the key issues are. It has disseminated information about best practice, trends and research that can be used at the local level—because this is about partnerships in relation to domestic violence. If you look at the second phase of the Partnerships Against Domestic Violence initiative, you will see that a number of priority areas were identified. They included working with children living with domestic violence, working with perpetrators, community awareness, the efforts of the Australian Domestic and Family Violence Clearinghouse, the Indigenous Family Violence Grants Program and women’s services in particular.

What about the campaign that the Partnerships Against Domestic Violence initiative has commissioned called Walking into Doors? This is aimed at raising awareness of violence in Indigenous communities and creating an impetus for community action. Matched with the sort of announcement that the minister made today in relation to the training of five Indigenous women to be community leaders in this area, it is a very important initiative. It has been totally ignored by those opposite. The Prime Minister has also indicated an extension of the Indigenous family income maintenance scheme. A major portion of that funding comes from the Partnerships Against Domestic Violence initiative.

The problem with the discussion this afternoon is that those opposite have taken a very small-minded approach to the process—and that is very disappointing given its gravity. I want to end by commenting on some of the remarks made by the Sex Discrimination Commissioner, Pru Goward, in relation to International Women’s Day. In comments reported in today’s Canberra Times, she said:

“Engagement on these issues with men is also crucial. Without their involvement our progress towards a society with gender equality at its core will definitely be stalled.” (Time expired)

Senator NETTLE (New South Wales) (4.39 p.m.)—I want to use this matter of public of importance on domestic violence to talk about the work done by the New South Wales Rape Crisis Centre and its current project to establish an online sexual assault counselling service. International Women’s Day is an appropriate time to remember that the vast majority of sexual assault victims are women and girls. Research shows that, if victims are able to share their ordeal as soon as possible after it happens, it can significantly improve their recovery time. Unfortunately, due to feelings of shame and fear, it is estimated that over 90 per cent of sexual assault goes unreported. The New South Wales Rape Crisis Centre was established almost 30 years ago to provide support to these victims. It now provides a 24-hour phone crisis intervention service, support counselling and referral services for women who have been sexually assaulted. The centre also provides information on women’s rights in relation to sexual violence. It now assists over 3,400 callers a year and provides a vital service for the victims of sexual assault, who find the prospect of reporting such an ordeal face to face to be too confronting.

For some women, even phone contact may be too confronting and that is where the online counselling service being provided by the New South Wales Rape Crisis Centre comes in. An online counselling service provides another avenue to access assistance and support, and in many ways it can be less confronting for some women than support accessed by telephone. Organisations such as Kids Help Line have already had success with online services. The New South Wales Rape Crisis Centre says that it is a way for some women to communicate what has occurred without actually speaking. The majority of sexual assault victims are young women and the online counselling service being developed by the Rape Crisis Centre...
will be of special benefit to young women, as well as to other people who are frequent users of the Internet, particularly young women who cannot access a telephone without it being within hearing distance of the other people in their household.

The centre estimates that up to 1,000 victims of sexual assault will make contact with this service, and many thousands more will get information from the web site. The value of the project is clear; however, it is still short of the target needed to bring the project into play. The Greens have already had the opportunity to contribute to the fundraising effort of the New South Wales Rape Crisis Centre—and I hope that other individuals and political parties represented here, as well as the federal government, can contribute to this groundbreaking project by the New South Wales Rape Crisis Centre so that an online sexual assault counselling service can begin.

**Senator Lundy (Australian Capital Territory) (4.43 p.m.)—by leave—I move:**

I rise today to speak on the Auditor-General’s report on the Australian Greenhouse Office, a report which reiterates the Howard government’s apathetic attitude towards addressing climate change. This Australian National Audit Office report, handed down last week, levelled some sharp and very accurate criticisms at the performance of the Australian Greenhouse Office. The report stated that the performance of this organisation in the administration of greenhouse programs has been characterised by ‘substantial administrative challenges’.

The report outlined the AGO’s failure to establish clear and quantifiable benchmarks when assessing the performance of major programs. The ANAO found that, for all seven of the programs considered, the objectives tended to be broad with few measurable targets. This makes it not only difficult to accurately measure outcomes but also virtually impossible to capture and meaningfully report on program results. Quite obviously this can lead to underestimating or, in the case of the Howard government, overestimating the success of a program. The AGO’s failure to carry out comprehensive preliminary risk assessments was also noted. The ANAO found that the absence of a comprehensive risk assessment in the early life of programs had a particular impact on the achievement of program objectives in the later stages of the program.

The lack of transparency and poor reporting associated with programs, especially in relation to the quality of annual reports made available to federal parliament, was also raised. The ANAO found that annual reporting to parliament to date has not provided sufficient information on actual performance against targets and on trends and changes
over time, as well as in clearly defining sig-
nificant risks and challenges.

Along with these considerable general administrative issues, the ANAO was par-
ticularly concerned about aspects of a num-
ber of specific programs. The report attacked
in particular the Alternative Fuels Conver-
sion Program for failing to make a realistic
preliminary risk assessment, which has sub-
sequently led to a low uptake of program
funds and significant underspending. The
report also highlights the fact that a number
of programs, such as the Photovoltaic Rebate
Program and the Renewable Remote Power
Generation Program, have been subject to
vague and abstract objectives. This, as noted
previously, casts serious doubts over the re-
ported performance of these programs.

The ANAO also found that the Green-
house Gas Abatement Program faces sub-
stantial risks in reaching abatement targets
by the Kyoto period of 2008-12, due to the
impact of long lead times of major projects
and a number of technical issues. Further, the
report says that disparity exists over the ex-
tent to which greenhouse gas abatement has
been achieved through the Greenhouse Chal-
lenge Program, due to problems associated
with abatement calculations.

The ANAO investigation into the financial
management systems of the Australian
Greenhouse Office also found a number of
shortcomings. The audit stated that controls
required tightening in order to avoid the situa-
tion arising of projects meeting mile-
stones but failing to achieve anticipated
benefits at the end of the program, as was
found in one case. In a budget analysis the
ANAO found that after four years, for the
seven programs examined, only 23.4 per cent
of money committed had been spent. This
again calls into question the government’s
bona fides on the world’s most urgent envi-
ronmental issue: climate change.

In the Senate estimates last year it was re-
vealed that the Australian Greenhouse Office
had confirmed a cut of more than two-thirds
to the original funding commitment to the
Measures for a Better Environment package,
which includes amongst others the Green-
house Gas Abatement Program. The original
MBE commitment was $896 million over
four years from 2000-01 to 2003-04. The
estimates process revealed, however, that the
actual spending would be cut by 67 per cent
to $297.6 million over this time. The Austra-
lian Greenhouse Office also revealed that
funding has now been pushed out to 2014—
an additional 10 years—with no new money.

Funding cuts, pushing out of funding time
frames and failure to expend committed
money all reiterate one fact: the Howard
government does not care about greenhouse
gas emissions in this country. Although the
Minister for the Environment and Heritage
tried to save face by implying that there was
new funding for greenhouse programs in-
cluded in this year’s budget, even Senator
Hill, representing the environment minister,
eventually had to concede that forward esti-
mates relating to claimed new money were ‘a
touch misleading’.

Climate change caused by the emission of
greenhouse gases is recognised as a major
issue that has the potential to cause signifi-
cant damage to the national and global econ-
omy and to seriously affect human welfare
and the integrity of natural ecosystems. The
CSIRO presents a very clear picture of the
threats that climate change presents to Aus-
tralia. Impacts include coral bleaching on the
Great Barrier Reef, increased droughts and
floods, a reduction in run-off entering our
waterways and a greater incidence of tropical
disease. This will have an enormous impact
on our tourism, agriculture and insurance
industries, with particular consequences for
coastal and regional communities.
Although our contribution to the world’s total greenhouse gas emissions is relatively small, our per capita emissions are high; and any failure of the international community to contain emissions will have a disproportionate impact on Australia. Our long coastline, unique plants and animals and dependence on the agricultural industry leave us particularly vulnerable to the impacts of climate change on the region. Climate change is already occurring; it is no longer a scientific debate. As a matter of priority we must identify the impacts on adversely affected regions and develop strategies to minimise social, environmental and economic impacts.

The sense of urgency for action seems to be lost on the Howard government. They have agreed to develop and invest in domestic programs to meet the target of limiting greenhouse gas emissions to 108 per cent of 1990 emissions over the period 2008-12. While the government will try to show that we have done well in almost meeting it, the reality is that Australia is likely to be two per cent over that target. Given that Australia had the very lenient target of not even reducing greenhouse gas emissions but limiting itself to an eight per cent increase in emission levels, overshoting that goal by two per cent hardly rates as an achievement.

Clearly the Howard government is not achieving when it comes to caring for the environment. It likes to talk up its commitment to halting climate change through the harnessing of renewable energy and through greenhouse gas abatement programs. When it comes to setting a concrete and measurable agenda for achieving this, the Howard government’s promises soon fritter away to nothing.

The Howard government’s reluctance to commit to the Kyoto protocol, its failure to implement practical and workable programs for greenhouse gas abatement and its half-hearted commitment to investing in a comprehensive renewable energy industry mean that Australia’s climate change strategy is in tatters. Meanwhile our world standing as a responsible environmental citizen continues to sink. In contrast, Labor is serious about tackling climate change. A Latham Labor government is committed to ratifying the Kyoto protocol and boosting Australia’s use of renewable energy now as a first step towards protecting Australia’s economic, social, cultural and environmental future.

Senator BROWN (Tasmania) (4.50 p.m.)—It was very sad to see government members laughing during that presentation by Senator Lundy, because this is an extraordinarily serious matter. What is uncovered in this report is nothing short of a dereliction of duty to the future of this great nation of ours by the current government. The seven programs engaged in by the Australian Greenhouse Office have been underspent by some 75 per cent. The Audit Office report shows that the Howard government’s claim to be spending nearly $1 billion on greenhouse programs is misleading and deceptive. In fact $204 million has been spent since 1998, an average of $40 million per annum. Of the $400 million allocated to the Greenhouse Gas Abatement Program, $350 million has not been spent.

At the same time the Photovoltaic Rebate Program, the $31 million allocation for solar panels, which is a direct action to ramp up renewable energy as against polluting coal energy, has been used up and the subsequent funding which should have been there has not appeared. In other words, that program has been starved. I look at this appalled. Australia is the worst per capita greenhouse gas polluter of the Western nations and there is ample evidence that we are not even going to meet the most generous targets that were gained under the Kyoto protocol mechanism. As Senator Lundy has said, the government...
has turned its back and joined Russia, of all countries, and the Bush administration in the United States in refusing to sign the Kyoto protocol, therefore stymieing world action on the matter. No alternative has come up. Neither this government nor any of its supporters in the big industries have come forward with an understandable or mature or responsible alternative to the Kyoto protocol and the process involved there in getting the world to prevent the catastrophe that is coming.

I know it is somewhat speculative but I draw your attention to the Pentagon report released something like a month ago entitled *An abrupt climate change scenario and its implications for United States national security*. The concluding remarks in this report state:

It is quite plausible that within a decade the evidence of an imminent abrupt climate shift—due to global warming—may become clear and reliable. It is also possible that our models will better enable us to predict the consequences. In that event the United States will need to take urgent action to prevent and mitigate some of the most significant impacts. Diplomatic action will be needed to minimize the likelihood of conflict in the most impacted areas, especially in the Caribbean and Asia. However, large population movements in this scenario are inevitable. Learning how to manage those populations, border tensions that arise and the resulting refugees will be critical. New forms of security agreements dealing specifically with energy, food and water will also be needed. In short, while the US itself will be relatively better off and with more adaptive capacity, it will find itself in a world where Europe will be struggling internally, large numbers of refugees washing up on its shores and Asia in serious crisis over food and water. Disruption and conflict will be endemic features of life.

A little further back in the report it talks about the heightened international tensions and says:

In this world of warring states—
a world that has fallen prey to a sudden massive change in climate on the planet and a resultant catastrophic loss of resources to feed, clothe and upkeep the human population—nuclear arms proliferation is inevitable. As cooling—this is cooling in the Northern Hemisphere as a by-product of the warming planet—drives up demand, existing hydrocarbon supplies are stretched thin. With a scarcity of energy supply—and a growing need for access—nuclear energy will become a critical source of power, and this will accelerate nuclear proliferation as countries develop enrichment and reprocessing capabilities to ensure their national security. China, India, Pakistan, Japan, South Korea, Great Britain, France, and Germany will all have nuclear weapons capability, as will Israel, Iran, Egypt, and North Korea.

Managing the military and political tension, occasional skirmishes, and threat of war will be a challenge. Countries such as Japan, that have a great deal of social cohesion ... are most likely to fare well. Countries whose diversity already produces conflict, such as India, South Africa and Indonesia, will have trouble maintaining order. Adaptability and access to resources will be key.

While the Pentagon report—and I recommend it to everyone to read—says that the chances of this are assessed as low at the moment, they are real. This is the tipping process where suddenly, due to changes in the currents on the earth, massive changes to climate occur in Europe and across the Northern Hemisphere, and consequently elsewhere on the planet there are huge human population shifts, political breakdown, chaos and massive social strife. The Pentagon has been concerned about that enough to see this as a major national concern. In the United Kingdom ministers and senior meteorologists alike have said that it is a worse threat than the current terrorism which stalks the planet.
The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! Senator Brown, I wonder whether that might be a proper point to ask you whether you concur with sharing your 10 minutes with Senator Allison.

Senator Brown—Senator Allison has said that I can proceed for the further three minutes. I thank her for that because I know of the Democrats’ utter concern about this issue as well. The picture I am painting from this Pentagon report may be at one end of the spectrum of concerns, but it is a real concern that needs to be met by preventative action. You do not wait for a war; you try to head it off. But the report from the Auditor-General shows an absolute dereliction of that preventative action and of the responsibility for that preventative action from the Howard government. This is a massive failure to act in Australia’s interests. It is also a cheat on the promises from the federal government that it was going to address this major environmental problem and on the good offices of the Democrats in trying to get some real action by this government on this.

It is hard to understand why its head is so far in the sand on this issue. The money is available, the goodwill is available and the Australian populace is manifestly receptive to government action on this issue, yet not only does the government stonewall on acting over global warming but it is actually undertaking actions which are rapidly making it worse. None is so obvious as the channelling of money which should be going into renewable energy research into the coal industry for research into the still unsubstantiated potential of so-called geosequestration. If the government wants to do that, that is fine, but that should not be at the expense of the renewable energies we have that we know work. This country should be leading the world. This is the sunshine country. We should be exporting renewable technology and energy efficiency technology to the rest of the world, not least to Indonesia, which is named in this Pentagon report as a site of substantial instability coming down the line due to the global warming which this country has been so derelict about under this government. This report by the Auditor-General is an indictment of the minister, the cabinet and the Prime Minister. It requires a response which shows there is a radical action plan in the interests of this country and on behalf of the feelings of the people of this country, who are way ahead of this government in understanding the problem and the answers to it.

Senator Eggleston (Western Australia) (5.01 p.m.)—In rising to speak on Audit Report No. 34 of 2003-04, I must say that I am really quite astounded by the remarks that both Senator Lundy and Senator Brown have made about the Howard government’s record in terms of environmental policy because in fact Australia is regarded around the world as a country which has an outstanding record in terms of managing the greenhouse gas problem and its general approach on environmental issues. Specifically, the Howard government has done more than any other federal government in this country to deal with environmental issues. The Howard government has recognised the importance of climate change and the importance of preserving our environment and protecting endangered species and has introduced programs to look after these problems, so I am surprised that both Senator Lundy and Senator Brown could get up in the Senate and keep a straight face while criticising the Howard government for its record in environmental policy.

I wonder, Senator Brown and Senator Lundy, who I presume is watching this debate in her office, if you have heard of the Natural Heritage Trust, which the Howard government introduced very early in our pe-
period of government and which has resulted in something like $2 billion going to environmental protection programs which have improved environmental protection and the protection of species across this country. It is regarded around the world as a benchmark program, an outstanding achievement and something which the Howard government have every right to feel very proud of—and we do. We are the first government to have ever given the federal government the power to intervene in environmental issues. That was done through the Environment Protection and Biodiversity Conservation Act, which the Howard government introduced, again quite early in our period of office. That has given the federal government, for the first time as a right, the ability to have a say on environmental issues early in the piece with developments and so on. In the past under the Labor government, the federal government could only get secondarily involved in environmental issues through the Foreign Investment Review Board and mechanisms such as that.

Senator Brown—What about our forests? Tasmania’s forests were left out! You left out the forests!

The ACTING DEPUTY PRESIDENT (Senator Bolkus)—Order! Senator Brown!

Senator EGGLESTON—Our forests record is outstanding. I think our regional forest agreements are something which this government has every reason to be proud of. They are doing a great deal to protect the forests of this country for future generations to come. Again, Senator Brown, I am a little bit surprised by what appears to be your hypocritical criticism of the government on this issue.

The ACTING DEPUTY PRESIDENT—Senator, I ask that you do not invite interventions. Please go through the chair.

Senator EGGLESTON—I am sorry, Mr Acting Deputy President; I will in future. The Environment Protection and Biodiversity Conservation Act, as we all know, provides five areas in which the federal government can be involved. They cover, as Senator Brown well knows, everything from rivers and oceans to endangered species and nuclear matters. It is a very important act which for the first time gives the federal government the ability to become involved in environmental protection as a matter of right early in the piece.

Most importantly, the centrepiece of the Howard government’s achievements on the environmental front has been the Australian Greenhouse Office, which is the world’s first government agency dedicated to cutting greenhouse gas emissions and is responsible for the coordination of domestic climate change policy and the delivery of national programs to deal with climate change. Those programs are very extensive and very effective. They include the $120 million program for the development and commercialisation of renewable energy. That is very important. We have a program worth $31 million for the use of photovoltaic systems on residential and community-use buildings to encourage the long-term use of solar energy to generate electricity. That is a very important program in a country like Australia, given that our biggest renewable energy source is in fact the sun. It is very commendable that the federal government are providing this sort of money to encourage people to access solar energy to generate electricity. We have an additional amount of up to $264 million for the use of renewable energy for remote power generation. I have been at the opening of wind farms in places like Denham—on the north-west coast of Western Australia, where the winds blow very strong and hard—and Esperance and I have seen this money being put to good use. It is out-
standing that the federal government of Australia are providing funding for this sort of remote renewable energy power generation.

Funding from this program has gone towards the establishment of hydropower in Kununurra in the Kimberley region in the far north of Western Australia—again, a very commendable outcome sponsored by the Howard government. We have a commitment to increase by 9,500 gigawatts—which is the equivalent of two new Snowy Mountains hydro-electricity schemes—the electricity from renewable resources, which include wind, solar, hydro and methane from landfill, by the year 2010. That is a pretty impressive target. I would have thought that both Senator Lundy and Senator Brown would agree that to be the case.

We have accelerated reforms to improve the efficiency of energy production to reduce greenhouse gas emissions. We are introducing the mandatory labelling of fuel efficiency in cars. We are implementing energy efficient building codes and standards. We have this $400 million greenhouse gas abatement program, which will result in maximum emission reductions or sink enhancements, and also $75 million to support conversions to alternative fuels in commercial vehicles over 3.5 tonnes and in trains and ferries.

The purpose of this motion today is to table the Australian National Audit Office report on the Australian Greenhouse Office. While the report has been criticised by both Senator Lundy and Senator Brown, may I say that the comments they have made have been somewhat biased and do not reflect the real findings of the Australian National Audit Office report. For example, the ANAO’s findings could be described as generally and broadly positive. But they do, I agree, highlight the need for early risk assessment of programs and for recognition of the fact that there are substantial administrative changes to be faced in implementing these programs.

The ANAO drew particular attention to the fact that it was difficult to administer these programs, and that is in part related to the fact that these are new and innovative programs. I think we have to show some understanding of the fact that the Australian Greenhouse Office faces these problems; nevertheless its record of achievement has been outstanding. According to the report, administrative improvements have been put in place to overcome initial shortcomings in planning, project appraisal and selection. According to the report, the AGO has put in place sound and well-drafted agreements to manage residual risk at the program level. We have to see this report in perspective and recognise the fact that the Australian Greenhouse Office, as I said, is a world first. It is breaking new ground. No-one else in the world has a greenhouse office—certainly not the Europeans, who Senator Brown seems to feel are doing a good job. (Time expired)

Question agreed to.

BUDGET 2003-04
Consideration by Legislation Committees
Additional Information

Senator EGGLESTON (Western Australia) (5.11 p.m.)—On behalf of the Chair of the Community Affairs Legislation Committee, Senator Knowles, I present additional information received by the committee relating to hearings on the budget estimates for 2003-04.

NEW INTERNATIONAL TAX ARRANGEMENTS BILL 2003
TAXATION LAWS AMENDMENT BILL (No. 2) 2004
First Reading

Bills received from the House of Representatives.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.12 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 shall move 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 ELLISON (Western Australia—Minister for Justice and Customs) (5.12 p.m.)—I table a revised explanatory memorandum relating to the Taxation Laws Amendment Bill (No. 2) 2004 and move:

That these bills be now read a second time.

Leave granted.

The speeches read as follows—

NEW INTERNATIONAL TAX ARRANGEMENTS BILL 2003

In this year’s Budget the Treasurer announced the outcome of the review of international tax arrangements. The Government initiated this review because we understand that the future of the Australian economy is fundamentally linked to global prosperity and to Australians being a part of that prosperity. We want our tax system to help that and not hinder it. So, in the Budget over 30 initiatives designed to modernise the international tax system were foreshadowed. These initiatives will help Australian companies compete abroad and boost Australia’s status as an attractive place for investment.

These reforms are not just about how we tax current international business transactions. The reforms are also about business that is not going on because some of our current international tax laws impede genuine business decisions, making it more difficult for our businesses to expand into global markets and to access foreign capital. And, it’s not just about the big end of town either—our small and medium businesses are more and more globally orientated. These reforms will free up new and emerging businesses so they can engage internationally and create more jobs for Australians.

The Government delivered on the first of these reforms with the signature of a new tax treaty with the United Kingdom which was enacted by the Parliament last week. That treaty reflects the policy position announced following the review.

The bill that I am introducing today covers the first of the foreshadowed legislative reforms. These measures will reduce unnecessary tax compliance burdens for the superannuation and managed funds industries. The Government intends to bring forward more of the announced reforms in the new year.

This bill modifies the foreign investment fund rules, which are designed to prevent the deferral of Australian tax by accumulating passive income offshore. However, these rules as they currently stand impose significant compliance costs—resulting in higher costs and lower returns for investors. These compliance costs also disadvantage internationally focussed Australian funds seeking foreign investment, compared to foreign funds. These rules are to be changed to provide a better balance between their integrity objectives and the compliance cost burden for taxpayers.

Compliance costs will also be reduced by increasing the threshold for the ‘balanced portfolio’ foreign investment fund exemption from 1 July 2003. The increase from 5% to 10% will allow Australian managed funds and investors to diversify their offshore investment portfolios without taking on excessive compliance costs associated with the foreign investment fund rules.

Superannuation entities and certain other concessional taxed entities will be exempted from the foreign investment fund rules from 1 July 2003. As these entities currently have a low tax rate, their investment decisions are unlikely to be biased towards investment in the kinds of offshore
investment vehicles that the foreign investment fund rules are designed to target. It is therefore not necessary to subject this industry to the compliance costs associated with the foreign investment fund rules.

Companies carrying on business in Australia are currently able to receive an exemption from withholding tax on interest payments made to non-residents on debentures and other securities that satisfy a ‘public offer test’. However, other borrowers, including managed funds organised as unit trusts, are not similarly exempted from withholding tax. This bill removes this distortion and reduces compliance costs by extending the withholding tax exemption to public unit trusts and certain other unit trusts.

This bill also amends the controlled foreign company rules, which are designed to prevent deferral of Australian tax on certain income earned by foreign subsidiaries of Australian taxpayers. The amendments will remove the need for taxpayers to consider whether certain foreign source income derived by a controlled foreign company in a country with a broadly comparable tax system is to be included in their assessable income. As a future safeguard, if specific types of foreign source income raise integrity concerns, this bill permits regulations to be made attributing such income under the controlled foreign company rules.

This controlled foreign company change is part of a wider measure arising from the review of international tax arrangements, that will pare back the attributable income of controlled foreign companies in broad exemption listed countries. This will principally be achieved by changes, in the first half of 2004, to the current income tax regulations.

I commend this bill.

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TAXATION LAWS AMENDMENT BILL (No. 2) 2004

This bill makes amendments to the income tax law and other laws to give effect to several taxation measures.

Schedule 1 to this bill amends the A New Tax System (Goods and Services Tax) Act 1999 to ensure that a GST registered supplier of an eligible first aid or life saving course is able to treat the supply as GST-free.

The amendments in Schedule 2 will amend the Income Tax (Transitional Provisions) Act 1997 to modify the General Value Shifting Regime so that the consequences arising under that regime do not apply to most indirect value shifts involving services. These amendments will ease compliance costs for taxpayers on the transition to consolidation.

The consolidation measure is an important business tax reform initiative that allows wholly-owned corporate groups to elect to be treated as single entities for income tax purposes. The consolidation regime will promote business efficiency, improve the integrity of the Australian tax system and reduce ongoing income tax compliance costs for those wholly-owned groups that choose to consolidate.

The general value shifting regime is an important integrity measure designed to prevent the manipulation of tax rules by shifting value between assets by closely held entities that are not part of the same consolidated group. This new regime is complementary to the consolidation regime and reproduces the structural value shifting integrity achieved by the consolidation regime to those groups outside consolidation.

The measure in this bill ensures that groups that consolidate during a transitional period do not incur compliance costs associated with setting up systems to identify service-related indirect value shifts when those systems will not be needed after consolidation. The measure will reduce compliance costs for business during the transition to consolidation.

The measure would also allow groups that do not consolidate extra time to establish systems track service related indirect value shifts that may require adjustments under the general value shifting regime.

Schedule 3 will amend the Income Tax Assessment Act 1997 to improve the operation of the alienation of personal services income provisions.
The Fringe Benefits Tax Assessment Act 1986 will be amended to remove the potential for effective double taxation of payments that are made non-deductible by the personal service income provisions and which may also be subject to fringe benefits tax. This schedule will also make further amendments to the Income Tax Assessment Act 1997 to allow an individual working through a personal services entity to deduct a net personal services income loss.

The amendments in Schedule 4 will amend the Income Tax Assessment Act 1997 to specify the taxation treatment of sugar industry exit grants made under the Sugar Industry Reform Program. Sugar industry exit grants that are paid to taxpayers who leave the agricultural industry altogether will be exempt from income tax. Grants that are paid to taxpayers who leave the sugar industry but continue to carry on another agricultural enterprise will be included in assessable income.

Schedule 5 will amend the Pay As You Go withholding rules in the Income Tax Assessment Act 1997 so that the foreign resident withholding arrangements will apply as intended to alienated personal services payments that are payments of a kind prescribed in the regulations to be covered by those arrangements. This will facilitate the efficient collection of tax on the payments.

The amendments in Schedule 6 will amend the Income Tax Assessment Act 1997 to ensure that mutual friendly societies that are life insurance companies which restructure by demutualising can benefit from the taxation framework that applies to other mutual life insurance companies which restructure by demutualising.

Schedule 7 will amend the simplified tax system provisions in the Income Tax Assessment Act 1997 to provide optional roll-over relief when there are partial changes in the ownership of an simplified tax system partnership. Roll-over relief will ensure that a taxable gain or loss will only arise when the partnership ultimately disposes of its depreciating assets. These amendments will remove a barrier that may be deterring some taxpayers from entering the simplified tax system.

Schedule 8 also makes amendments to the consolidation regime, under which wholly-owned corporate groups are treated as a single entity for income tax purposes.

The amendments will provide additional flexibility in the transition to consolidation by allowing certain choices made by a head company to be revoked or amended before 1 January 2005. The amendments in this Schedule also ensure that the rules governing eligibility for the research and development tax offset apply appropriately in cases where companies join or leave a consolidated group part-way through an income year.

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

I commend this bill.

Debate (on motion by Senator Crossin) adjourned.

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

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

Senator BROWN (Tasmania) (5.13 p.m.)—by leave—I presume from that that the intention is to bring these pieces of legislation back for some consideration later in the day. If the government is going to do that, I would like to know why it is going to do that and when it considers it will be doing that so that we can consider the matter.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.14 p.m.)—by leave—As I understand it, this relates only to the second bill, the Taxation Laws Amendment Bill (No. 2) 2004, and that is as it appears on the order of business for the day. I think that had been discussed previously, and I thought the Greens would have been aware of that. There is certainly nothing untoward in this. If Senator Brown has a further question, he can put it, but that is as it appears.

Senator BROWN (Tasmania) (5.15 p.m.)—by leave—My understanding is that the tax laws amendment bill was struck off
the list that was put forward to the chamber this morning. I have not heard anything to the contrary, but I would be interested to know whether that is the case. I think the government should go back to the motion as it was passed this morning.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.15 p.m.)—by leave—The bill that was struck off this morning was Tax Laws Amendment (2004 Measures No. 1) Bill 2004. This is a different bill. This is the Taxation Laws Amendment Bill (No. 2) 2004. The bill that was struck off this morning was a different bill. It was previously known as Taxation Laws Amendment Bill (No. 9) 2003, and it is not liable to the cut-off as such. That could be why there has been some misunderstanding here.

Senator BROWN (Tasmania) (5.16 p.m.)—by leave—Could the government establish whether there has been a request to get the bill around the cut-off for legislation, or whether it is not required, and then move the appropriate motion? We are dealing with two bills, not with one, so we need to know exactly where we stand with each of them.

Senator LUDWIG (Queensland) (5.16 p.m.)—by leave—I heard on the monitor that one bill was dropped off this morning. The question is whether—and I do not have my Odgers with me at this point—the transmission of the bill into this chamber requires the cut-off to be waived or whether by dropping the bill yesterday we have not considered it, in which case it should not appear here today. The bill that was left out this morning was the Tax Laws Amendment (2004 Measures No. 1) Bill 2004. Sometimes they re-number them, but I am told it is a different bill from No. 2. So everything is fine.
dog that is properly trained for guiding or assisting a person with a disability.

This will afford taxpayers with ‘hearing dogs’ and ‘assistance or service dogs’ the same treatment under the medical expenses tax offset as is currently available to taxpayers who maintain a dog that is trained to guide or assist the blind.

Secondly, this bill provides an income tax deduction for transport expenses incurred in travel between workplaces.

The amendment maintains the deductibility of expenses incurred by taxpayers in travelling between two places of unrelated income-earning activity. This is consistent with a long-standing interpretation of the income tax law expressed in published taxation rulings and in TaxPack. For example, the amendment will maintain the deductibility of expenses incurred in travelling directly from one job to a second job.

The third measure amends the Income Tax Assessment Act 1997. It will improve the operation of the test that is used to determine when an entity controls a discretionary trust for the purpose of applying the small business CGT concessions.

The new control test is generally based on actual distributions in the four income years before the income year for which access to the small business CGT concessions is sought. Distributions to exempt entities and deductible gift recipients will be ignored for the purposes of applying the new control test.

Schedule 4 amends the Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003. This amendment will clarify the application of the transitional provisions in Schedule 7 of that Act, to ensure that an entity will be entitled to an energy grant for fuel purchased or imported in the three years before 1 July 2003, if that fuel was intended for a use that would have qualified for a credit under the Energy Grants (Credits) Scheme Act 2003 in the three years before 1 July 2003.

Schedule 5 amends the Income Tax Assessment Act 1997 to ensure that GST, which may later be recovered, does not count as part of the cost of an asset, when calculating capital gains tax.

Schedule 6 to this bill amends the A New Tax System (Australian Business Number) Act 1999. This will ensure that the law operates as originally intended and that the objectives of the Australian Business Number system are fully implemented. The amendments will clarify when protected Australian Business Number information can be disclosed to Commonwealth agency heads and State and Territory department heads.

This measure will make it easier for businesses to conduct their dealings with Australian Governments, as the amendments will prevent situations that require businesses to provide duplicate information to Government.

Schedule 7 provides a tax deduction for contributions of cash or property to deductible gift recipients, where an associated minor benefit is received.

Currently, a personal tax deduction under the income tax law is only allowed for gifts to deductible gift recipients. That is, where the donor does not derive any material advantage or benefit in return for the gift.

This amendment provides that if a minor benefit is received by a person in return for making a contribution of cash or property, that benefit will not prevent their ability to receive a tax deduction, provided that the benefit does not exceed a specified limit and certain conditions are met.

This amendment is designed to encourage philanthropy by addressing some community concerns regarding fund-raising.

Schedule 8 amends Division 7A of the Income Tax Assessment Act 1936. It inserts certain integrity rules dealing with payments, loans and forgiven debts made by a trustee to a private company’s shareholder or a shareholder’s associate.

These amendments address issues concerning the effectiveness and fairness of certain anti-avoidance provisions contained in Division 7A.

Broadly speaking, the amendments will more effectively ensure that a trustee cannot shelter trust income at the prevailing company tax rate and then distribute the underlying cash to a beneficiary of the trust through the use of a private company beneficiary. In addition, the amendments have been designed with targeted safeguards to ensure ordinary commercial transactions are not inadvertently caught by the rules.
Schedule 9 will correct an anomaly in section 46FA of the Income Tax Assessment Act 1936. This will ensure that the deduction for on-payments of certain unfranked non-portfolio dividends by a resident company to its wholly owned non-resident parent, continues to be available to certain resident companies.

The deduction was inadvertently made inoperative on introduction of the consolidations regime.

Schedule 10 will require charities, public benevolent institutions and health promotion charities to be endorsed by the Commissioner of Taxation in order to access all relevant taxation concessions. In addition, endorsed charities will now have their charitable status displayed on the Australian Business Register.

These changes are part of the Government’s response to the Report of the Inquiry into the Definition of Charities and Related Organisations. The changes will allow greater scrutiny of the use of taxation concessions by charities, improve public confidence in the provision of taxation support to the charitable sector and provide charities with certainty of their entitlements.

Lastly, this bill updates the lists of specifically-listed deductible gift recipients in the Income Tax Assessment Act 1997. It adds to these lists new recipients announced since 10 December 2002. Deductible gift recipient status will assist these organisations to attract public support for their activities.

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

I commend this bill to the Senate.

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APPROPRIATION BILL (No. 3) 2003-2004

It is with great pleasure that I introduce Appropriation Bill (No. 3) 2003-2004.

There are three Additional Estimates Bills this year: Appropriation Bill (No. 3), Appropriation Bill (No. 4) and Appropriation (Parliamentary Departments) Bill (No. 2). I shall introduce the latter two Bills shortly.

The Additional Estimates Bills follow on from the Appropriation Bills that were introduced into the House on the occasion of the 2003-2004 Budget. They seek authority from Parliament for the additional appropriation of monies from the Consolidated Revenue Fund, in order to meet funding requirements that have arisen since the last Budget.

The total appropriation being sought through the Additional Estimates Bills this year is some $1,430.7 million, which is partially offset by expected savings in appropriations of around $473.4 million. These savings are described in the document accompanying the Bills, the “Statement of Savings Expected in Annual Appropriations”.

Taking savings into account, the net increase in appropriation being sought since the 2003-2004 Budget is approximately $957 million, or about 2% of total annual appropriations.

Two new clauses have been added to the three Additional Estimates Bills. The new clauses will provide a mechanism for the Finance Minister, on request from a portfolio Minister, to lapse amounts of departmental expense appropriations which are not required. Such amounts may be not required because of an accounting reclassification, efficiency gains resulting in reduced spending or changes in the structure of Government.

The first clause provides the lapsing mechanism in respect of the three bills. The second clause provides the same mechanism in respect of the annual appropriation acts agreed to since the 1999 Budget.

The total appropriation being sought in Bill 3 this year is around $945 million. This appropriation arises from routine changes in the estimates of programme expenditure, due to variations in the timing of payments and forecast increases in costs, reclassifications and the introduction of new Government measures since the last Budget,
most of which have been described in the “Mid Year Economic and Fiscal Outlook” document published in December last year.

I will now briefly outline the main areas for which the Government is seeking additional appropriation in Appropriation Bill (No. 3).

- $235.8 million to the Department of Defence, Department of Foreign Affairs and Trade, AusAID and the Australian Federal Police, in relation to peace-keeping commitments and aid work in the Solomon Islands;
- $86.3 million towards Drought Assistance and interim support payments made as part of this package;
- $75 million in indexation adjustments for the Department of Defence;
- $75.1 million for rephasing from 2002-2003 into 2003-2004 of funds for the Department of Health and Ageing;
- $65.5 million to the Australian Federal Police to cover the costs of the Papua New Guinea deployment;
- $38.8 million for implementation of the MedicarePlus package;
- $19.3 million to meet Australia’s contribution payments to various international organizations;
- $19 million across 15 of the 17 portfolios in order to implement the findings of the Budget Estimates and Framework Review;
- $21.4 million in assistance for victims of the Bali terrorist attacks and their families and for meeting the cost of the investigations;
- $14.3 million in relation to changes in the Hearing Services model;
- and
- $12.8 million towards the Government’s response to the recommendations of the inquiry into regional telecommunications.

The remaining amount in Bill 3—around $269.5 million—relates to estimates variations and other measures.

I table the “Statement of Savings Expected in Annual Appropriations”, and I commend the bill to the Senate.

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APPROPRIATION BILL (No. 4) 2003-2004

Appropriation Bill (No. 4) provides additional funding for agencies for:

- expenses in relation to grants to the States under section 96 of the Constitution and for payments to the Northern Territory and the Australian Capital Territory; and
- non-operating purposes such as equity injections and loans.

The total additional appropriation being sought in Appropriation Bill (No. 4) 2003-2004 is around $485.4 million.

The principal factors contributing to the additional requirement since the 2003-2004 Budget are:

- $294.6 million in additional payments to the States and Territories including:
  - $187.7 million as part of the Drought Assistance package for exceptional circumstances;
  - $36.7 million in funding to enable payments for Drug Diversion activities for the Tough on Drugs Initiative;
  - $10.2 million in rephasings from previous years for the Commonwealth State and Territory Disability Agreement; and
  - $10.0 million in tax compensation payments to New South Wales and Victoria for an expected increase in revenue for Snowy Hydro Limited.
- $190.8 million for non-operating expenses including:
  - $47.0 million in equity injections for the Australian Federal Police in relation to the Papua New Guinea deployment, Solomons Islands operations and people trafficking;
  - $43.0 million in equity injections for the Australian Customs Service which will be accessed if shortfalls occur in a number of initiatives, particularly the Cargo Management Re-engineering project; and
- $32.4 million for payment to the Australian Rail Track Corporation Limited on finalisation of the company’s lease of New South Wales main line track.

I commend the bill to the Senate.

Ordered that Tax Laws Amendment (2004 Measures No. 1) Bill 2004 be listed on the Notice Paper as a separate order of the day.

Ordered that further consideration of these bills be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

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

Criminal Code Amendment (Terrorist Organisations) Bill 2003

INTERNATIONAL TRANSFER OF PRISONERS AMENDMENT BILL 2004 Second Reading

Debate resumed.

Senator BROWN (Tasmania) (5.20 p.m.)—I draw senators’ attention to the Greens amendment to the International Transfer of Prisoners Amendment Bill 2004, which will ensure that there is an appeal mechanism for Australian prisoners returned from Guantanamo Bay. The amendment has been circulated and reads:

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

(1) requests that the Government:
(a) immediately seek to obtain the release and repatriation of the two Australian citizens who are currently detained against their will in Camp Delta Guantanamo Bay;
(b) provide a report to the Parliament on the measures it has taken to achieve the release of the two detainees by 1 July 2004;

(2) condemns
(a) the use of military commissions in place of courts as being inherently flawed and designed to secure convictions at the expense of justice;
(b) the United States Government’s indefinite detention, without charge, of over 600 people in Guantanamo Bay, as an affront to human rights; and
(c) the Australian Government’s complete lack of support for Australian citizens detained in Guantanamo Bay as an appalling failure to provide for the welfare of its citizens”.

I now go back to the question of why Australians are being given third-rate treatment by this government and by the Bush administration. I point to the arrangement for the transfer of the Danish national from Guantanamo Bay back to Denmark. A statement from Richard Boucher, the spokesman for the Bush administration, said:

The United States has agreed to release the Danish national detained at Guantanamo to the control of the Government of Denmark. This decision is based on assurances provided by the Government of Denmark that it will accept responsibility for its national and take appropriate and specific steps to ensure that he will not pose a continued threat to the United States or the international community. This transfer is the product of extensive discussions between our two governments. Denmark is one of our closest allies in the war on terrorism, and we are satisfied it will do everything possible to ensure that the individual does not engage in terrorist activities. The timing and modalities for transfer remain under discussion.

The Government and the people of Denmark have been courageous partners in the fight against terror. Our cooperation on this issue, as on so many others, is a continuing testament to the close relationship between our two countries. What happened with Australia? What has happened to the special relationship between the Australian government and the Bush ad-
administration? Why is Denmark one of the closest allies in the war on terrorism but not Australia, apparently, for the purposes of considering people interned at Guantanamo Bay? Why is it that the US is satisfied that Denmark will do everything possible to ensure that the individual does not engage in terrorist activities, as an assurance about the repatriation, but the US is not satisfied that the Australian government will do that? What is going on behind closed doors that gives Denmark and Danes special status but not Australia and Australians?

On 1 March this year it was announced that Russian nationals will be transferred to Russia from Guantanamo Bay. The US Department of State news release said:

The United States has transferred seven Russian nationals detained at Guantanamo to the control of the Government of Russia to face criminal charges relating to their terrorist activities during an armed conflict. The transfer is the result of discussions between our two governments over the past year, including assurances that the individuals will be detained, investigated and prosecuted, as appropriate, under Russian law and will be treated humanely in accordance with Russian law and obligations.

One must hope that Russian law and obligations are up to international law and obligations, because those of the United States are manifestly not when it comes to Guantanamo Bay. But the question is: why has the Howard government failed to do what the Putin administration in Russia has been able to do—that is, get its nationals repatriated? What is there in this statement and in the assurances given to the US by Russia that Australia cannot give to the US on behalf of the two Australians who remain uncharged and languishing in illegal conditions in Guantanamo Bay? The minister is taking notes; I will be looking for answers to that question in the committee stage.

On 24 February the Foreign Secretary made a statement with regard to British detainees at Guantanamo Bay:

The UK Government has been in frequent and regular contact with the United States authorities concerning the 9 British detainees. British officials have visited Guantanamo Bay six times to check on the detainees’ welfare. We have kept their families, and Parliament, informed. In July 2003, two of the British detainees were designated by the United States authorities as eligible to stand trial by the US Military Commissions being established to deal with the detainees. That is the same as one of the Australian detainees. The statement continued:

The British Government has made it clear that it had some concerns about the Military Commission process. Unlike the Australian government, the British government is concerned about this military commission process. The statement says:

Consequently, the Prime Minister asked the British Attorney-General to discuss with the US authorities how the detainees, if prosecuted, could be assured of fair trials which met international standards.

The Attorney General has held a number of discussions with the US authorities about the future of the detainees. These have been paralleled by discussions between myself—that is, the Foreign Secretary—and US Secretary Powell and between British and US officials. There have been many complex issues of law and security which both Governments have had to consider. Although significant progress has been made, in the Attorney General’s view the Military Commissions, as presently constituted, would not provide the type of process which we would afford British nationals. Our discussions are continuing.

We have the British government—a Labour government—saying to the Republican administration in the United States, ‘These military commissions are not good enough; we won’t accept them,’ but we have a con-
servative government here in Australia saying to the Republican administration in the US, ‘It’s okay for Australians.’ This derogation of the standards of British justice has had the British Attorney-General and British Prime Minister standing up and saying to the Bush administration—with whom they are on excellent terms, as you know—’No, that’s not a standard our country will accept.’ But the Australian Prime Minister and Attorney-General not only are too weak-kneed to stand up for Australia and Australian law under these circumstances but have become complicit in selling out on both. The Foreign Secretary in London went on to say:

In the meantime, we have agreed with the US authorities that five of the British detainees will return to the UK.

He then names the five. The statement continued:

These men will be flown home to the UK in the next few weeks.

Why not any of the Australians? Because this government is not an upholder of the law in the way that the UK government is. It accepts inferior standards of the law, including international law, compared with the British government, and it is weaker in looking after the interests of its citizens than even the Russian government. Add to that the Danish government, the Spanish government and—goodness gracious—the government of Saudi Arabia, which has had some people put on the ‘for release’ list. There are no Australians but there are people from all those countries. When we get to the heart of the matter we understand that this military commission, which is unsatisfactory to the British government and which is an appalling failure of law—the rules of evidence do not apply there—is good enough for the Australian government. We understand that the US government is going to lay charges under international law. The Australian government says, ‘We can’t have these two men return to Australia because we can’t charge them with anything.’ If the US government is going to charge those in Guantanamo Bay or wherever under international law, why can’t they be charged under international law in Australia?

When we look at the Australian law, we find that it does cover this. Section 6 of the Crimes (Foreign Incursions and Recruitment) Act 1978 does cover people who would enter a foreign state with the intention of hostile activity or engage in hostile activity, including armed hostilities. So what is going on here? What we see is the Howard government, with Attorney-General Ruddock directing affairs, failing this nation, not just on international law but on our own law, and making a statement to not just two detainees but 20 million Australians that the way in which our laws are applied is not satisfactory in dealing with terrorists. If they are not satisfactory now, when will they be?

Clearly, under both international and domestic law—if we have the argument straight, and I have heard nothing to the contrary—both Hicks and Habib are as vulnerable in Australia as they would be elsewhere; certainly in Britain. But the Australian government, for some reason, has chosen not to have them here, and we must assume that the reason is that it is politically embarrassed by the prospect of these two men being brought back to Australia. One can question whether that is because there is no evidence that would justify the sorts of jail sentences that the government would like to see them receive—for political purposes; not for real and legal purposes; not justified, but for political purposes.

We know that these men were unarmed; we know that people who were with them on both occasions were not arrested and certainly were not taken to Guantanamo Bay; we know that they have been held without
charge for two years, illegally, by the President of the United States and we now know that the Australian government is pleased for them to go before a military commission in the United States, which removes their rights under the law—basic and fundamental rights, including appeal rights—and we are expected to say, ‘Yes, we’ll support that.’ It is an egregious failure of the Australian government as compared with several other governments in the world. The Australian government is worse than the Russian government in this matter, and surely that is saying something. In the committee stage we will move an amendment to ensure that there is an appeal right if Hicks or Habib—indeed, it is an ‘if’; it depends on President Bush—are repatriated to this country. (Time expired)

Senator BOLKUS (South Australia) (5.32 p.m.)—I also rise to support the International Transfer of Prisoners Amendment Bill 2004 and, in doing so, make some comments about the two Australian citizens who find themselves in Guantanamo Bay. I support the bill and I think it is necessary. It is a necessary extension to legislation that a previous Labor government was developing and which I had a role in developing as well. That was legislation which basically intended to reflect in domestic law that Australia does take an interest in its citizens wherever they are around the world. We have an attitude and a policy which means that, as a nation and a country, Australia’s facilities and resources—particularly its consular resources—are often deployed to the effect of assisting Australian citizens abroad, particularly when they come into contact with the law.

While we are very keen to ensure that we do not interfere with another country’s judicial system, the primary driving force in Australian policy in this area has over the decades been to ensure that the basic human rights that Australians enjoy at home are enjoyed abroad and that Australians abroad are protected in respect of those human rights. Fundamentally that means, of course, that there should be internationally accepted standards of process and internationally accepted standards of protection of one’s rights in a legal system, and we have an international framework to that effect.

Increasingly we are realising that, as a nation, we have more and more of our citizens overseas and quite often they are in need of consular assistance. For instance, at the moment there are over one million Australians who are living overseas as long stayers—860,000 or so permanent residents of other countries and one-quarter of a million or so who are visiting citizens who are staying overseas for long terms—and they and their families often require assistance from the Australian government. As I said, our activities in this area have been based on the premise that Australians abroad must be afforded a fair trial and, in that process, must be allowed a presumption of innocence. How often do we see Australians who, for instance, find themselves in jails and situations with standards of conditions that are nowhere near acceptable to us at home nor should they be acceptable to people abroad? How often do we see their cases paraded in the Australian media and governments of whatever persuasion coming in behind them not to assert their innocence but to try and achieve for them internationally accepted standards of human rights, process and deliberations.

There has, of course, been a consistent bipartisan approach in all cases apart from the two that we have before us this afternoon: the cases of Habib and Hicks. In this particular instance, it is fair—and unfortunate—to say that what we are seeing from the Australian government is kowtowing and neglect—the neglect of fundamental rights of Australian citizens. I do not claim that they are innocent; no-one knows. What I do claim is
that, as Australian citizens, they should not have been allowed to stay in detention for two years in conditions that I think, and which we are led to believe, are unacceptable and in a situation where their future prosecution is still to be determined. It has been two years and on the never-never, in essence, in most appalling conditions, with hardly a whimper from the Australian government. This is despite continuing evidence of conditions and despite the continuing detention of these two citizens who, as I say, are in appalling conditions. Also, as a fundamental part of those conditions, they have been denied rights to legal access—with respect to one of them for over two years and with respect to the other, Mr Hicks, until quite recently.

What has happened in these cases is that, from the start, we have defined these people as terrorists. Let us go to the evidence about that in a few minutes. We have defined them as terrorists and, as a consequence, we have been part of the chorus line calling for and defending different standards of justice for these people. By defining them as terrorists, we have defined away their rights as citizens of Australia. What I am saying is that we are in a situation where—despite the lack of charges and despite continuing evidence of conditions that have been identified by organisations such as the International Red Cross as well below standard, in essence, as mentally torturous conditions—we have not seen the Australian government take the position of asserting rights on behalf of these two Australian individuals.

What needs to be done is for the evidence to be tested in the normal course of proceedings, but we are not seeing that. We are not seeing the normal courts; we are not seeing the normal detention situation. I referred earlier to fundamental human rights. One of the most basic of human rights when in detention is to be charged or released. If one is not to be charged then one is to be released as soon as possible. In this particular case, we have claimed to have continual assessment of the evidence against these two citizens of Australia but without any conclusion to that consideration.

As an aside, we should learn from history. Quite often in history, people are put away in times of war and conflict and situations such as we have had over the last few years where there has been international conflict and, in our instance, terrorism. But history has shown quite often that people who are put away are proven later in the day to be innocent or, later in the process, we find that their detention has been quite unjustified. We are seeing that now. This is not just a case in history. We are now seeing people coming out of Guantanamo Bay, people who have been in there for almost two years or, in some cases, more than two years. Without even a sorry to see them go, they are sent back to their countries of origin: no charges have been laid and there is a quick exit from Guantanamo Bay. What about the last two years when many of these characters have been held in detention without evidence? Are we going to face the same situation with Hicks and Habib? I think it is fair to say that we in the Senate do not know and the Australian government does not know.

One of the concerns that I have with the Australian government’s approach is the way in which the Australian government seems to have accepted that there is evidence that Hicks and Habib will be charged but that there is insufficient evidence for them to be charged in Australia. We were told in the Senate estimates process that Australia had seen all the evidence. When one has a close look at the evidence of departmental officials, we find this amazing catch-22 situation. At page 51 of the transcript of the Senate estimates hearing, a senior officer of the department states:
On the basis of the evidence that was available to Australian law enforcement authorities, the Australian law enforcement authorities and prosecuting authorities have advised that no prosecution can be mounted in Australia against either of these individuals.

The next question was: ‘If you’ve seen all the evidence, can you tell us what they are going to be charged with?’ The response was: ‘We can’t tell you what they are going to be charged with because we believe the US authorities have evidence that we haven’t seen.’ The obvious question there was: ‘If they have evidence that you have not seen, how can you be sure that they cannot be charged in Australia?’ If the US authorities are going to pursue these people on evidence that we have not seen, how do we know that we cannot pursue these people in Australia on the basis of the same evidence?

The senior officer told us that the government has consistently said that, on the basis of evidence available to prosecuting authorities, there are no grounds to prosecute Hicks and Habib. As I said, the officers also went on to say that they did not know all the evidence. At page 52 of the Senate estimates transcript, a senior officer states:

Certainly during the course of the discussions that we have had with the Americans we have seen some of the brief of evidence that they have but, as the secretary—

Mr Cornell—
said, we have not seen everything that they might have.

That has to be of concern to Australians who have been listening to and accepting the word of this government in respect of Hicks and Habib. In essence, we have been told that they cannot be charged in Australia and that we have seen evidence. On closer examination, it is quite apparent that the government have not seen all the evidence and they cannot really give that assurance that Hicks and Habib cannot be charged here.

This is just one part of the evidence of the litany of neglect that I maintain the Australian government has been complicit in in this particular case. We are told by officers that it is not the policy of the US government to treat the inmates of Guantanamo Bay unfairly or in any other way than properly. But when one goes to the statements of people running Guantanamo Bay one sees that, for instance, the deputy commander, General Mitchell R. LeClaire, a National Guard officer, did not get off to a good start when he made the assertion that what they have there are terrorists, terrorist agents or those who support terrorism. There is no presumption of innocence, no question that these people are only suspected of terrorism. Immediately the assertion from right at the top of Guantanamo Bay is that there are definitely terrorists there. Geoffrey D. Miller, the task force commander, has been responsible for developing what the ICRC says is:

... a carrot and stick methodology that rewards detainees who cooperate with better food, some of which is culturally familiar ...

And so on. In essence, Red Cross officials have seen a worrying deterioration in the prisoners’ mental health and they have come up with stats that indicate that something like:

One in five Guantanamo detainees has been put on antidepressants, and 21 have tried to commit suicide a combined total of 32 times.

These sorts of stats have to be of concern to an Australian government concerned about the rights of its citizens in a place like Guantanamo Bay but they do not seem to have raised much more from the Australian government other than a cursory inquiry from time to time about the condition of Hicks and Habib. Two years later we do not know the charges; we do not know the evidence. Are we seeking the evidence? No, of course not. If you go through the estimates questions and answers, you will see that we are not asking
for any further evidence from the Americans. They have total control and that is the way it is going to be.

We have branded these people as terrorists and we have defined away their rights. But when one goes to some of the statements made by Australian government ministers claiming that we have hard and fast terrorists here—it was interesting to see the Attorney-General returning to type last week and making some firm comments once again about the criminal nature of the people involved here—we see that some of the assertions made by our ministers are based on very shaky ground. In November 2003 the Minister for Foreign Affairs, Mr Downer, said:

Our intelligence services have advised us that both these people, Hicks and Habib, participated in training with al-Qaeda.

Our intelligence services may have done that. To have done that they would have had to have been in the field to give us direct evidence from source—or are our intelligence agencies relying on primary information from other intelligence agencies? Is it a fact that we have been advised by other agencies that Hicks and Habib had participated in training with al-Qaeda? If so, are we using the cover of the intelligence agencies to assert something that we do not have primary knowledge about?

These have to be concerns not only with respect to the evidence that might be available at the end of the day but also with respect to the way in which the government seeks to colour the situation in which these two Australian citizens have been captured. We are asserting that we know they were training with al-Qaeda. But do we know that? On what grounds is the evidence admissible? Are we just going on hearsay, rumours and whatever, or do we find that these two people—Hicks and Habib—maybe were handed over at a time when many people were handed over in places like Afghanistan because they were too hard for the locals to handle or because there was a financial incentive to hand people over and so on?

As I said, the inquiries as to the health of Hicks and Habib have to be ratcheted up. In the estimates process I was keen to ask for medical assessments to be made of Hicks and Habib at the request of the Australian government. We have not done that so far. They have only been in detention for two years! We were assured by the departmental secretary that on each occasion that they were visited, the officers came back and reported that Hicks and Habib were in apparent good health. But have they been medically and psychologically assessed? The answer to that was no. ‘Maybe now we’ll look at trying to request that,’ was the response from officials.

You have to be concerned about the state of people in situations like this. You have to ask yourself why they are being subjected to this. None of us in this place wants to defend the sorts of crimes that have been perpetrated in the name of terrorism by organisations that we suspect these people were involved in, but you have an Australian citizen in detention in a small cell—less than 10 metres square, maybe—without access to radio or television and without access to stimulation, in isolation and with access to an exercise yard at certain times of the day and for very limited times on those days. The officers do not know, for instance, basic information such as how long Hicks and Habib can actually have access to exercise yards in a day and whether they are allowed out in sunlight. There have been some reports that they have been kept in isolation in a small cell with access to the outside air only after daylight hours. What sort of Western democracy enforces those levels of detention on people, many of whom are mere suspects? There have been no medical tests and there has
been no concern from Australia as to their mental state. There has to be some further concern with respect to Mr Habib, who, from all reports back to Australia, is obviously finding his environment very stressful. People have been increasingly concerned about his state in that environment.

I could go on but I want to dwell on one particular aspect, and that is the future conduct of the prosecution. Hicks has a lawyer now; Habib does not. This is a critical period right now. This is a period when charges may be formulated against Mr Habib and are being formulated against Mr Hicks. It is a critical period in any pre-charging or pre-trial process and access to lawyers is quite critical. It is totally untenable that Mr Habib has no access to a lawyer. It is totally indefensible that this person is going to go through the process of being charged without anyone there to protect his interests. It seems, from everything we hear, that Mr Habib is a person who needs protection from himself and of his interests.

It is the same with Mr Hicks. We have a prosecution agreement—an agreement between Australia and the USA in respect of the prosecution of Hicks. But we have not seen all of the agreement; much of it has been kept secret. We are told it has been kept secret by agreement between Australia and the USA. No person could be successfully charged in an Australian court if the prosecution had a secret agreement governing that prosecution—an agreement which was not made available to the defence. Habib and Hicks are in dire need of legal assistance.

I am concerned to get these people back; if they have to serve time, to have them serve time in Australia, as this legislation would facilitate. We have to get serious about their conditions and their rights where they are now. And we have to get the medical assessments made. We need to ensure that Habib is clearly assessed and has access to lawyers and that Hicks continues to have access to lawyers. We should get that agreement out and make it public. My concern here is that it is two years down the track. That is two years when Australian government officials have gone there on the odd belated occasion, copped the word from the authorities and come back and said, ‘Everything is okay,’ when we know no-one can live under these subhuman conditions.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.52 p.m.)—I rise to speak on the International Transfer of Prisoners Amendment Bill 2004. The bill relates to a system that was introduced by this government in relation to the transfer of prisoners so that foreign prisoners in Australia could be transferred to their home to serve out the remainder of their sentence and, on a reciprocal basis, Australians overseas who had been sentenced to a term of imprisonment could be returned to Australia. This is legislation which I had an involvement in, both in opposition and in government, and which I fully support. It is a system which has been working well and, leaving aside the more humanitarian aspects of it, there has been a bonus to the extent that we have many more applications from people wanting to return to their homes from our prisons in Australia than we have Australians wanting to return to Australia, which would see, in the long term, a reduction in the number of prisoners in the Australian prison system. Leaving that aside, there are of course the humanitarian and rehabilitative aspects, all of which go towards the working of the system.

Before I touch on contributions made by senators in this debate, I want to remind the Senate and those who are following this debate that this bill does not only relate to Mr Hicks and Mr Habib. This bill also expands the application of the International Transfer
of Prisoners Act 1997 to semi-autonomous regions to enable such a region to be declared a transfer country with which Australia can enter into prison transfer agreements. A classic example of that is Hong Kong. Discussions are proceeding in relation to that and to some other foreign jurisdictions as well, but Hong Kong in particular is an important jurisdiction for us to have an agreement with for the transfer of prisoners.

I will now turn to the contribution made by senators. A number of points were raised and I would like to respond to those. Many of the points relate to the treatment of Mr Hicks and Mr Habib. The government has made many statements on this issue and there has been some criticism that the government has not done enough. I know I went to Washington in July last year and we gained concessions from the United States authorities in relation to Mr Hicks, who had been declared eligible for trial. The President of the United States, Mr Bush, visited Australia later in the year and again the Hicks and Habib matter was raised. In January this year the Attorney-General, Mr Ruddock, visited Washington and again this was the subject of high-level discussions between United States authorities and him.

One aspect raised was the constitutionality of the amendment—I believe Senator Ludwig raised that. Can I say that, in relation to the return of any Australian to Australia from Guantanamo Bay, that would be done on the same basis as all other prisoner transfers to Australia under the International Transfer of Prisoners Act. The act provides a basis for the detention of Australian citizens sentenced to a term of imprisonment by a foreign court or tribunal where the prisoner transferring country and receiving country each consent to the transfer. You have to have the consent of the prisoner, the country where they are imprisoned and the country to which they are being transferred.

The trial judgment and imposition of the sentence involves the exercise of a judicial power of another country. The enforcement, therefore, of a sentence in Australia is not regarded as the exercise of judicial power in Australia and does not contravene the constitutional limitation on the exercise of judicial power. The detention of a transferred prisoner in these circumstances is also not considered to contravene the constitutional limitation on the power to authorise detention.

The detention of Australian citizens, other than in the exercise of the Commonwealth’s judicial power, must fall within a recognised exception. The range of exceptions is not, however, exhaustive. It is considered that the detention of a person who consents to transfer to Australia to serve out the remainder of their sentence would form a valid exception to the limitation of power to authorise detention. Of course, the international transfer of prisoners scheme is premised on first obtaining the consent of the transferring prisoner. Certainly I welcome the comments by Senator Ludwig that, if it is not possible to try Mr Hicks and Mr Habib for offences against Australian law, it is appropriate for them to be tried by the US military commission as long as that process is fair and transparent. This has been the government’s policy all along and that is why Australian authorities explored all options for charging Mr Hicks and Mr Habib with offences against Australian law.

Following extensive law enforcement investigations, the government was advised that both men trained with al-Qaeda, but neither can be successfully prosecuted for offences against Australia’s criminal laws that applied at the time that they were allegedly involved with al-Qaeda. Senator Brown has suggested that either or both men could be charged with offences against the Crimes (Foreign Incursions and Recruitment) Act. The government has been advised that, based
on the factual circumstances surrounding the respective cases, Mr Hicks and Mr Habib cannot be prosecuted under that legislation.

The government has considered all options for prosecution in Australia, including retrospective legislation and international law. The government does not support retrospective criminal laws. It is fundamentally wrong to make a criminal law retrospective. This idea was considered and firmly rejected by the government. As for international law, it is not part of Australian law unless it has been implemented by domestic legislation. Legal experts have advised that Mr Hicks and Mr Habib cannot be successfully dealt with for offences against criminal laws by implementing international criminal law offences. It is irrelevant whether participation in a terrorist organisation or another relevant act was a criminal offence under international law prior to the introduction of such an offence into our domestic law in 2002. What that is saying is that it simply cannot proceed on the basis that there is an international law and you can be dealt with in Australia. There has to be a corresponding domestic law and, of course, that domestic law was not introduced or enacted in this country until 2002.

Senator Ludwig also expressed concern about whether Mr Hicks or Mr Habib will continue to be detained if they are found not guilty of any offence by the US military commission. This was a matter that I certainly canvassed with the US authorities and that has been canvassed since. I can assure Senator Ludwig that the government does not expect Australian detainees to be detained if they are found not guilty of any offence.

Senator Ludwig’s concern—and it is one shared by the government—is that Mr Hicks and Mr Habib receive a trial that is fair and transparent. As I say, the government has taken steps to ensure that this is the case.

Senator Ludwig and senators from the cross-benches have pointed to the release of UK and other European citizens as evidence that the Australian government is not doing enough in relation to our citizens. I point to the fact that the United States has maintained that persons no longer of law enforcement, intelligence or security concern will be released. It is quite clear that there has been a release of people from Guantanamo Bay where the United States authorities have determined that they are no longer of interest for those reasons. That has been a matter for the United States authorities and, in the case of Mr Hicks and Mr Habib, that determination has not been made by the United States.

I also remind those who are raising these criticisms that they need to remember that there are still four United Kingdom detainees in Guantanamo Bay whose activities are of serious concern. There are other nationalities as well. The case of each detainee is unique, and comparisons between cases are misleading and, dare I say it, inflammatory to the extent that they are not a true reflection of the situation and do not advance the debate on this matter in any rational way.

Senator Greig questioned the independence of military commissions. Military commissions have orders which provide that people involved in the process must be given a full and fair trial. This was one of the aspects that I raised when I went to Washington and met prosecutors. I very clearly recall meeting with military defence counsel who assured me that one of the orders was that there be vigorous defence. We have seen no greater example of that than with Major Mori, who has been assigned to the case of Mr Hicks. In fact, by his actions he has given a clear example of the independence of defence counsel in these cases.

Furthermore, the review panel that will make recommendations to the President is
composed of a former US Attorney-General and a currently sitting chief justice of a US court. Any allegation of unfairness or bias therefore is inappropriate. We have a situation where there are orders—and no doubt I will touch on those in the committee stage—as to the presumption of innocence and conduct of trial. There is also the history of military commissions. After the last world war, Japanese prisoners were tried under a military commission. The United States has a long history of military commissions, going back to the Civil War, the war of independence. The trial of a man named Kennedy, who attempted to burn down New York, was one case where a commission was used. These commissions are nothing novel. They have a history of being used when people take part in armed conflict unlawfully.

The laws have all recognised that not all people taking part in an armed conflict do so lawfully. And, of course, people who do take part in unlawful conflicts may be tried for their participation in those hostilities. It is ridiculous to suggest that people caught fighting in an armed conflict unlawfully must be released and allowed to rejoin the conflict.

In July 2003 the government announced that, as a result of bilateral discussions, we would work with the United States to put in place arrangements to transfer Australian citizens convicted by a military commission to Australia for the purpose of serving any penal sentence in Australia in accordance with Australian and United States law. The government has developed the International Transfer of Prisoners Amendment Bill 2004 to meet this commitment. As I say, there are other aspects, too, which are covered in this bill.

The introduction of this bill is just one of the steps that the government has taken to look after those Australians detained at Guantanamo Bay. As a result of the government’s efforts, Australian detainees will receive a fair and transparent trial. We have gained concessions. There is an assurance from the American authorities that they will not be subject to the death penalty. Furthermore, they may retain an Australian legal consultant to act as a member of their defence team. And, of course, the Australian government may make representations to the panel responsible for reviewing the trial. I touched on the composition of that panel previously. Government officials and an independent legal expert will be present as trial observers. Once they have entered the military commission process, detainees will be allowed telephone contact with their families. I also point out to the Senate that, in discussions with the United States authorities, we obtained agreement that, should any other foreign national obtain a concession which was not enjoyed by an Australian national, that too would be extended to an Australian national.

The government has been presented with two stark options in relation to Mr Hicks and Mr Habib. The first is for either or both men to be tried by the US military commission. The second is for them to be returned to Australia and set free despite us knowing that it is alleged that both men have received terrorist training. A government that takes seriously its responsibility to ensure the safety of its citizens cannot consider the second option as a viable alternative. Mr Hicks and Mr Habib are Australian citizens, and they deserve a fair and transparent trial. They deserve the presumption of innocence. That is one of the United States military commission orders. We have negotiated important concessions to ensure that the trial of Mr Hicks and Mr Habib by the US military commission is fair and transparent. Because of that, we are here today with this bill which, in the event of any imprisonment, would see the
opportunity opened for them to be returned to Australia to serve out their sentence in Australia. This bill is an important one, not only because of that but also because of the other aspects I have mentioned and the expansion of the bill as it applies to semi-autonomous regions overseas.

I might add that this bill is facilitative only. At this stage, no Australian has been convicted by a military commission. It is not specific to any person currently detained at Guantanamo Bay. It will allow for the transfer of any Australian citizen imprisoned at Guantanamo Bay who is convicted and sentenced to a term of imprisonment by a US military commission. Of course, Mr Hicks and Mr Habib feature prominently in this debate because they are two Australians who are there at the moment. Mr Hicks has been declared eligible for trial. Mr Habib is yet to be declared as such, but we have urged the United States authorities that that be expedited and we are optimistic that Mr Habib will be included in the next round of people who will be declared eligible for trial.

This is an important bill. It is one which has very practical considerations. It has a humanitarian aspect, not only potentially for Mr Hicks and Mr Habib—because this will only apply to them in the event that they are convicted and sentenced to a term of imprisonment—but also in its application to other Australians imprisoned in areas which are not yet covered by our international transfer of prisoners scheme. For all those reasons, I commend the bill to the Senate. In relation to the second reading amendments which have been proposed by the Australian Greens and the government—

Senator Ludwig—You mean the opposition.

Senator ELLISON—Sorry. In relation to the amendment proposed by the Greens and the amendment moved by the opposition, the government will not be agreeing to those. I want to respond in particular to clause 1(b) of the Greens’ amendment, which requests that the government report to the parliament on the measures that the government have taken to achieve the release of the two detainees by 1 July 2004. In addition to the comments I have made previously I would like to add that there has been a good deal of coverage of the government’s efforts in relation to Mr Hicks and Mr Habib. We have reported regularly to the parliament, both in the other place and in the Senate, as to progress that has been made. There has been ample press coverage in relation to that. As has been demonstrated in the debate, the government have been questioned both at estimates and in the parliament as to the situation regarding Mr Hicks and Mr Habib. We do not believe, therefore, that a report of that sort is appropriate. As for the other points raised in the second reading amendments of the opposition and the Greens, I believe they have been covered in my reply.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—The question is that the amendments to the motion for the second reading moved by Senator Ludwig be agreed to.

Question agreed to.

Senator BROWN (Tasmania) (6.10 p.m.)—I move:

At the end of the motion, add:

“(1) requests that the Government:

(a) immediately seek to obtain the repatriation of the two Australian citizens who are currently detained against their will in Camp Delta Guantanamo Bay;

(b) provide a report to the Parliament on the measures it has taken to achieve the release of the two detainees by 1 July 2004.”

Question put.
The Senate divided. [6.16 p.m.]
(The President—Senator the Hon. Paul Calvert)

| Ayes......... | 10 |
| Noes.......... | 43 |
| Majority....... | 33 |

AYES
- Allison, L.F. *
- Cherry, J.C.
- Lees, M.H.
- Murray, A.J.M.
- Ridgeway, A.D.

NOES
- Barnett, G.
- Brandis, G.H.
- Calvert, P.H.
- Campbell, I.G.
- Chapman, H.G.P.
- Cook, P.F.S.
- Denman, K.J.
- Ellison, C.M.
- Ferguson, A.B.
- Forshaw, M.G.
- Heffernan, W.
- Hutchins, S.P.
- Kirk, L.
- Lightfoot, P.R.
- Lundy, K.A.
- McGauran, J.J.J.
- Payne, M.A.
- Scullion, N.G.
- Stephens, U.
- Tierney, J.W.
- Watson, J.O.W.
- Wong, P.

* denotes teller

Question negatived.

Original question, as amended, agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BROWN (Tasmania) (6.19 p.m.)—I move Greens amendment (1) on sheet 4158:

(1) Schedule 1, page 4 (after line 10), after item 4, insert:

4A At the end of section 45
Add:
(3) This section does not apply to a prisoner transferred to Australia following a conviction by the United States Military Commission established on 13 November 2001.

This would amend the International Transfer of Prisoners Amendment Bill 2004 by adding the provision for an appeal. It simply means that anybody who has been before a United States military commission where their rights are fundamentally removed would have a right of appeal upon their repatriation to Australia.

I reiterate the point that the British government is still negotiating on its nine prisoners. Five of them are to be repatriated but there are four others, two of whom have—in the terminology of Senator Ellison—become eligible for trial. The British government is not accepting that; nor should the Australian government and nor should we. But if a trial does go ahead under the United States military commission establishment whereby the usual rules of evidence, for example, are removed and the fundamental rights which we expect for all Australian citizens under international and domestic law are not there, then there should be an ability to appeal. If the government is satisfied with the United States military commission process it will have no concerns about allowing an appeal provision to be put in the act, and ditto for the United States administration.

Having said that, I return to the contention of the government that while both Mr Hicks and Mr Habib received terrorist training in, I presume, Pakistan and/or Afghanistan they could not be prosecuted under section 6 of the Crimes (Foreign Incursions and Recruit-
ment) Act 1978, which includes these provisions:

(1) A person shall not:
   (a) enter a foreign State with intent to
        engage in a hostile activity in that
        foreign State; or
   (b) engage in a hostile activity in a
        foreign State.

There is a penalty there of 14 years imprisonment. The section goes on:

(3) For the purposes of subsection (1)—
    which I have just read out—
    engaging in a hostile activity in a foreign State
    consists of doing an act with the intention of
    achieving—
    amongst other things—
    (aa) engaging in armed hostilities in the
         foreign State ...

What Senator Ellison is saying is that neither Hicks nor Habib have done these things. They did not enter a foreign state with intent to engage in a hostile activity. They did not engage in a hostile activity in Pakistan or Afghanistan. What is more, they did not have the intention of engaging in armed hostilities in that foreign state.

It does raise the question, of course, which is at the heart of this matter: just what have these two men done? The government should tell us. It may not have told the Australian prisoners. It may not have told their legal representatives or their families. But we are dealing here with a piece of legislation which is directly a result of the impending trial of both Mr Hicks and Mr Habib. In this place we do not have to judge them guilty or innocent. We have to determine that they, as Australians, have their rights upheld. That is what this debate is about.

The government is effectively saying that in the countries in which they were arrested they were not engaged in or intending to engage in a hostile activity. The question therefore is: what on earth is it that they are about to be tried for? The minister says that they both received terrorist training. The question that I put to the minister is: if you get terrorist training how can that be disassociated from the intention to act in a hostile fashion? And as they were getting terrorist training in a foreign country I have to ask: how come they were not intending to engage in a hostile activity in a foreign country? Is the minister about to tell us that terrorist training is not a hostile activity? I do not think there is logic in that. I do not think that the government is being open and honest with anybody involved in this. I think the case is one of this government being subservient to the US administration for political purposes and I do not think we should allow that. I put that question to the minister regarding the Crimes (Foreign Incursions and Recruitment) Act 1978 and I would very much appreciate his detailed response to that.

Senator ELLISON (Western Australia—
Minister for Justice and Customs) (6.25
p.m.)—The Australian investigating authorities and the Australian prosecuting authorities have looked at that question and determined that prosecution of Mr Hicks and/or Mr Habib under that provision that Senator Brown has outlined would not be possible. That is a decision they have taken. Ministers do not make that decision, I would remind Senator Brown, and he would be the first to jump up and down if I, as Minister for Justice and Customs, started determining who should be prosecuted and who should not. The determination has been made independently of any political judgment. It is the determination of independent investigating authorities and the Director of Public Prosecutions that a prosecution of these men would not be open under that act.

Senator BROWN (Tasmania) (6.26
p.m.)—Who is the independent investigating authority that the minister refers to?
Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.27 p.m.)—The Australian Federal Police.

Senator BROWN (Tasmania) (6.27 p.m.)—Has the minister or the government looked at the report from the Australian Federal Police following the investigation which found that it would not be possible to proceed?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.27 p.m.)—Yes, the government has seen that report.

Senator BROWN (Tasmania) (6.27 p.m.)—What is the argument from the Australian Federal Police which says that it would not possible to prosecute Hicks and Habib under this law which says that they could be charged if they had engaged in a hostile act or had intended to act in a hostile fashion in another country?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.27 p.m.)—On the evidence available the determination was made that under that particular piece of legislation a prosecution was not available. That, however, does not mean that one would not be available under current counter-terrorism legislation, and I state that for the record. The act that Senator Brown refers to is one which covers a different area from that covered by our counter-terrorism legislation, which we have seen passed through the parliament in the last couple of years. What is being alleged here is that these men trained with al-Qaeda. That comes squarely within our legislation enacted in 2002. The problem, however, is that it was enacted after the alleged activities of these men. That is the problem as to why these two men cannot be dealt with should they be returned to Australia.

Senator BROWN (Tasmania) (6.28 p.m.)—We understand that. The government has made it clear that it was not going to enact that legislation retrospectively. Would the minister please explain to us how, if these men trained with al-Qaeda, it could be not seen as a hostile activity in a foreign state or as an intent to engage in a hostile activity in a foreign state? Can the minister explain that? That is the law that I believe should be used to prosecute these men when they return to Australia if the minister’s assertions about training with al-Qaeda are true.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.29 p.m.)—I think it is inappropriate to go into operational detail here because of the fact that this is a matter which could be the subject of proceedings. But can I say that the question of a hostile act in a foreign country is one which depends on that foreign country.

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

Senator ELLISON—Before the break I was in the process of replying to an inquiry from Senator Brown in relation to the Crimes (Foreign Incursions and Recruitment) Act 1978. Senator Brown had asked why it was not possible to prosecute Mr Hicks and/or Mr Habib under that legislation. As I stated earlier, that act provides:

(1) A person shall not:

(a) enter a foreign State with intent to engage in a hostile activity in that foreign State; or

(b) engage in a hostile activity in a foreign State.

Firstly, in relation to that offence, you would have to make out that the activity complained of was a hostile activity in that foreign state. If that foreign state was a sponsor of terrorism and that person was engaged in training with that terrorist organisation, that foreign state, if it be a rogue state—and I am putting this in a general sense—might well
not regard that as a hostile activity. Subsection (4) of the same section says:

(4) Nothing in this section applies to an act done by a person in the course of, and as part of, the person’s service in any capacity in or with:

(a) the armed forces of the government of a foreign State; or

(b) any other armed force in respect of which a declaration by the Minister under subsection 9(2) is in force.

Again, the defence is raised in relation to that. It could well raise the spectre of the alleged terrorist training being part and parcel of the armed services of Afghanistan at the time. You have to remember that the Taliban’s was an oppressive regime—I am sure that by no means would Senator Brown regard it otherwise—and al-Qaeda more than existed there; it existed in that state with the sponsorship of that state. It could well be open to anyone who was training with al-Qaeda to raise a number of defences. I have cited some aspects of the legislation which I believe are relevant to the consideration of a prosecution under the Crimes (Foreign Incursions and Recruitment) Act 1978. I said I would not go into operational detail—but I will not. I just point out to the committee those aspects of this legislation that Senator Brown has referred to which really do complicate matters. The relevant legislation is really the counter-terrorism legislation which relates to the membership of a designated terrorist organisation. That is really the relevant legislation which, of course, was not in place when the alleged activities occurred.

Senator Brown (Tasmania) (7.33 p.m.)—It does complicate matters because the minister has not got an argument. He says, on the one hand, that Hicks and Habib both received terrorist training with al-Qaeda—

Senator Ellison—Alleged.

Senator Brown—Yes, alleged.
that state. It says ‘in that state’. That is a dif-
ferent matter altogether. If we are looking
particularly at Mr Habib, I ask the minister to
say what it is in his activities in Pakistan that
could possibly not be caught by this section
if he is to be charged, as Senator Ellison has
indicated—or alleged—he shortly will be;
that is, he will be given the privilege of trial
in the United States, according to Senator
Ellison. No, it is a specious argument. The
Crimes (Foreign Incursions and Recruit-
ment) Act 1978 does very clearly deal with
people who are intending terrorist activities
in another country.

Senator Ellison—Against.

Senator BROWN—If it says ‘against’
then let the minister quote the section and
show us where the word ‘against’ is. It does
not say ‘against’, and the minister is wrong.
That is all there is to it. What is happening
here is that the law is adequate to deal with
the two Australians were they to be returned
here. I am not talking about the serial
antiterrorist laws that have passed this place
in the last two years that the minister tries to
divert us to. I am talking about the law that
existed when these two Australians were
summarily arrested by the US authorities and
then transferred to Guantanamo Bay, where
they had their legal rights removed.

I reiterate that I do not have a brief for ei-
ther of these men, but I do have a very strong
brief for Australian law and justice, and the
government has put that on trial and found it
guilty. It does not want it because it gets in
the way of the proper processing under the
law of these two Australians in Guantanamo
Bay. The British Foreign Secretary can say to
the Americans, ‘We will not accept a military
commission as you have set it up in the
United States.’ Two of the Britains have been
declared ready for trial in the United
States—the same as Mr Hicks and the same
as Mr Habib is going to be, according to
Minister Ellison’s prognostications. No, it is
not good enough for Britain. Britain has
other laws, and it wants all nine prisoners
returned so that they can be tried there. But
that is not the case here in Australia. For the
last couple of months this government has
been deceiving the Australian people yet
again that there are not sufficient laws in this
country to deal with participation in terror-
ism overseas before the enactment of recent
antiterrorist laws, and that is patently wrong.
That is a deception.

What we come to here, very clearly, is the
ingratiating of this nation by Prime Minister
Howard to President Bush, and the two Aus-
tralians are the political exchange in this.
You can forget their rights. You can forget
standing by them as Australian citizens, be-
cause it does not figure in Prime Minister
Howard’s relationship with Mr Bush. When
you look at the military commission in the
United States, you find not only that their
rights are not there—it is not satisfactory for
Britain, for example; it is okay for Prime
Minister Howard but not for Prime Minister
Blair, who at least has the gumption to stand
up for a level of British law in a way that
Prime Minister Howard does not have the
gumption to stand up for Australian law and
rights in the international forum, let alone
with the United States—but also that the
rights of the Australians who are to appear
before it will be abrogated because Prime
Minister Howard has acquiesced to President
Bush on the matter.

In a series of abrogations of those rights
we find a court which is unworthy of any
Australian jurisdiction, and the minister
knows that and the Prime Minister knows
that. There are no appeal rights, except to
George W. Bush, the person who has already
judged these people guilty. What does the
minister say about that? How does that stand
with Australian justice? How can you argue
that a military commission is satisfactory for
Australians when there are no appeal rights and the only person who can intervene afterwards is the President, who has already judged these people publicly as guilty?

Worse than that, President George W. Bush, who executed some 75 people when he was Governor of Texas and who talks about ‘wanted dead or alive’ posters in the Wild West movies as an indication of the justice he believes in, can override what this court says. Even if it releases the Australians, he can keep them at Guantanamo Bay. And Prime Minister Howard says: ‘That’s okay. I won’t stand up for Australian rights. I won’t stand up for Australian law. I won’t stand up for Australian norms. If President Bush takes them away, I’ll agree to it.’ That is a failure of leadership in this country. It is not just Hicks and Habib who are having their rights derogated by this Prime Minister; it is every Australian. Insofar as you abandon one Australian for a political purpose, you can do it for any other, and that is where the Prime Minister himself stands indicted in this matter. I do ask the minister: is it true that, under the military commission in the United States, there will not be the usual rights and standards of evidence? Is it true there are no appeal rights? Is it true that the President can overrule the court even if it judges the Australians innocent?

Senator LUDWIG (Queensland) (7.44 p.m.)—The Labor Party’s position on this amendment is that we have not been persuaded by the arguments put by Senator Brown. Perhaps Senator Brown could take the committee a little further. The amendment seems to suggest that this section does not apply to a prisoner transferred to Australia following a conviction by the United States. When you put that with section 45, it appears to say that it is in relation to appealing the sentence. If, as I understand it, that is what Senator Brown is saying, then it relates only to an appeal that goes to the length of the sentence itself, should the commission sentence either of those two individuals.

Unless I am mistaken about this, I do not think it goes to an appeal against the conviction itself, only an appeal against the sentencing regime that may be provided. That is as I understand it, but I am happy for Senator Brown to clarify it. Even if it were to go to the latter, the opposition would still not support that position or the part about appealing the sentence. Section 45 says:

(1) On transfer of a prisoner to Australia under this act, no appeal or review lies in Australia against the sentence of imprisonment imposed by the court.

That seems to suggest that, once a prisoner is transferred to the Australian jurisdiction, there is no right of appeal against the sentence, whether it be a shorter or longer sentence—usually shorter, I suggest, and usually on the ground that the sentence is harsh or unconscionable or on some other ground. Even if it were the former the opposition does not see its way clear to support Senator Brown’s amendment.

Section 49 of the International Transfer of Prisoners Act 1997 is headed ‘Pardon, amnesty or commutation of sentences of imprisonment—prisoners transferred to Australia’. It says:

(1) During the period in which a sentence of imprisonment is served in Australia by a prisoner transferred to Australia under this Act, the prisoner may be pardoned or granted any amnesty or commutation of sentence of imprisonment that could be granted under Australian law if the sentence of imprisonment had been imposed for an offence against an Australian law.

When you dissect that a little, it goes to the issue of commutation of sentence. So, if Senator Brown is arguing that there should be an appeal to the sentence provision, it might already be caught by section 49—although perhaps not as clearly as Senator
Brown may wish it to be. It seems that you could at least argue that an amnesty or commutation of a sentence of imprisonment could be sought under section 49, so it might be captured by that sentence in any event. It goes on to specify the conditions, the form and a few other bits and pieces associated with that section. The point I am trying to make is that, although Labor cannot support Senator Brown’s amendment, it does appear that section 49 may assist if Senator Brown is suggesting that there should be an appeal against the sentence of imprisonment, and it may not require an amendment to section 45, as Senator Brown has suggested. It is not for me to suggest that; there are other provisions that might adequately deal with what Senator Brown is putting forward.

**Senator Brown** (Tasmania) (7.49 p.m.)—The minister has been struck silent and apparently does not feel that he has the wherewithal to answer the questions put to him, but there are more coming. As far as the response from Senator Ludwig is concerned, no, it does not say that on transfer of a prisoner to Australia under this act, no appeal or review lies in Australia against the length of imprisonment. It is against the sentence of imprisonment—against the sentencing of the person. Let me say this: if the opposition were being constructive and supportive in this, I would take on board its discussion, but it is not. It has decided that it will not seek an appeal mechanism for Hicks or Habib if they are returned to Australia. It wants to leave the Australian laws impotent on the matter and will not support the Greens amendment, which effectively gives an appeal. Which section it belongs to is no longer germane because the opposition is going to cast it down. So that will not occur.

I go back to the questions I put to the minister about the commission in the United States. I will read to him, from the *Canberra Times* of 16 February, the comments of Major Michael Mori, who has been appointed by the US government to be the lawyer for Mr Hicks. The story said:

Major Mori said he believed the military commission Hicks was about to face would be unfair.

This is a military lawyer defending Mr Hicks in the United States. The story continued:

He was concerned the process could backfire on the US if other countries followed the same rules when trying US defence personnel.

“This commission process will set a bad example under which the unfair process or rules can be used to try US service members in the future by foreign countries,” Major Mori told the Nine Network.

“ Fighting for David Hicks to ensure he gets a fair process also benefits all US service members.

“David Hicks has not injured a US service member or citizen so if he violated international laws it’s just as valid in Australia.

“If there’s a valid international violation that the US could try, it would be just as valid in Australia.”

The question that comes out of that, besides the questions I have asked about the commission itself, is: what is the government’s understanding of the statute or statutes that are to be used to try either Hicks or Habib? Is there any US domestic statute that is involved here? If so, that is news. Major Mori’s understanding, and the understanding of everybody involved in this, is that it will be international law. That being the case, I ask the minister to tell this committee: which international law has the US signed up to that is available to it that is not available in Australia to try these Australians?

**Senator Ellison** (Western Australia—Minister for Justice and Customs) (7.52 p.m.)—The government, for the record, opposes the amendment put up by the Greens. The Council of Europe Convention on the Transfer of Sentenced Persons, which forms the main multilateral agreement on the inter-
national transfer of prisoners, provides that any judgment against a person applying for a transfer under the scheme must be final. What is provided for in the commutation section, which was mentioned by Senator Ludwig, is that it must be in accordance with Australian law. That is quite different to what Senator Brown is trying to do here. From what Senator Brown has said, I understand that his amendment will in some way be seeking to allow an appeal which would interfere with the judgment made by the commission. That just cannot be done under the international transfer of prisoners that is provided for in the act and the European council convention. It really does fly in the face of the scheme of the act. The question that Senator Ludwig put was a good one and it is one that Senator Brown could not answer.

The situation in relation to the conduct of a trial before the military commission as proposed has the basic fundamentals of a criminal trial of Australia: the presumption of innocence, the right to call evidence, the right to remain silent without an inference being drawn against the person who seeks to avail himself or herself of that right, and the standard of proof beyond reasonable doubt. The fundamentals are the same as a criminal trial. In relation to appeal, there is a review which is allowed for by a panel. I mentioned that in my reply in the second reading debate. I will not go any further than to refer to that. I did stress that the government has reached an agreement with the United States that it can make representations to the review panel, as can the defence.

In relation to Senator Brown’s last question, which related to the international law that the United States adheres to which Australia does not, I am not aware of any law that fits into that category which is applicable here. The United States has stated that certainly it can rely on the procedure of the military commission, having regard to the use of them in the past. Certainly if someone is involved as an unlawful combatant in a conflict, that action can be taken. That was mentioned in my reply speech as well and I do not think I can add to that.

Senator BROWN (Tasmania) (7.56 p.m.)—This is the absurdity and danger of the government’s position. The minister has now said that there is no international law that cannot be used in Australia to prosecute Hicks and Habib that can be used in the United States. We are left with the position where we know that Hicks and Habib could be tried here as well as they could be in the United States. The minister is shaking his head about that, so we now move into the next range of territory: that is, what is the US domestic law that can be utilised which is not available in Australia? Now we are getting onto new ground.

I go back to the military commission itself. The minister implies that it is satisfactory and has certain safeguards in it. I ask him, first of all: what makes up the review process that Hicks and Habib can appeal to? My understanding is that under the military commission process in the United States a person has no right to seek any remedy or maintain any proceeding in relation to their status or trial in any US court, foreign court or international tribunal. In other words, Mr Hicks has no right of appeal. What is this review mechanism that the minister talks about? Is it within the US court jurisdiction? Is it a usual US court?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.58 p.m.)—As I stated earlier, the situation in the United States is that they have their process of military commission which, by virtue of executive orders as I understand it, enables action to be taken domestically. It is not a question of them saying that there is international law and it can apply in America or it
can apply anywhere else. They have a domestic arrangement which allows them to go down this path of using military commissions and to bring before it people who have been engaged in the activities which are alleged against Mr Hicks and Mr Habib. That is a domestic arrangement of the United States within their own jurisdiction. We do not have that domestic facility, because our laws were not in place during the time of the alleged activity. In relation to the operation of the review, the orders do provide for it and there is a provision as to the make-up of that panel. I have mentioned in passing two of the members but, as I recall, there are a few more than that. I will take that on notice and endeavour to get it to Senator Brown as soon as I can.

Senator BROWN (Tasmania) (7.59 p.m.)—We have established a new fact here: it is not that there is an alternative domestic law that can be utilised, it is not that there is international law available in the United States that is not available in Australia, it is not even, as I have argued earlier, that there is not a domestic law which could be utilised to arraign Messrs Hicks and Habib; it is that there is a military commission in the United States which removes the legal rights of people the likes of which there does not exist in Australia. That is the difference. This government is saying that Hicks and Habib can face the military commission in the United States because they are not going to get the protection under the law—their rights to a fair trial—that they would get in Australia or, indeed, the rest of the US legal system. That is the political decision at the heart of this now. It is the military commission itself which removes their rights to a fair trial and the use of evidential rules which are considered basic to any fair trial under an Australian or indeed a British system—the British will not have this, but the Howard government will. We now get to see that it is all about removing Hicks’s and Habib’s rights. That leads them to the military commission as against an Australian court. It is not to do with the law at all except the law which establishes a military commission, which Major Mori, a military man in the United States, said:

... will set a bad example under which the unfair process or rules can be used to try US service members in the future.

Because it is unfair in the United States when used against people from elsewhere. It is unfair and it is wrong. I have to ask the minister, then, is it a fact that military commission order No. 1 and the military commission instructions include the following: the defendant must be supplied sufficiently in advance of trial a copy of the charges in English and, if appropriate, in another language that he understands; the accused person is presumed innocent until proved guilty; in order to enter a guilty vote, a commission member must be convinced beyond reasonable doubt on the admitted evidence—and so on and so on? I also ask the minister: is it true that people brought before the military commission in the United States will have the rights expected in an Australian court? Will the rights be the same and, if they are not, what is the difference?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.02 p.m.)—I have already answered the question as to the fundamental principles governing a trial before a military commission. I undertook to provide the details in relation to the review. I table Military commission instruction No. 9, which deals with that review and outlines the procedures as well as the officials who are appointed. The names of those who have been appointed are not included in this document. I am still endeavouring to obtain those details, but I will table this in the meanwhile. In relation to Senator Brown’s question, I have answered that in
relation to the fundamental principles and have gone through those.

Senator BROWN (Tasmania) (8.03 p.m.)—The minister has not. Let me put to him what Human Rights Watch say about the US military commission:

Under the current rules, the commissions will:

- Deprive defendants of a trial by an independent court.
- Improperly subject criminal suspects to military justice.
- Try prisoners of war (POWs) in a manner that violates the 1949 Geneva Conventions.
- Provide lower due process standards for non-citizens—
as are Hicks and Habib—
- Restrict the right to choose one’s defense counsel.
- Deprive defense counsel the means to prepare an effective defense.
- Impose a gag order on defense counsel.

They also say:

It can also be argued that the military commission rules conflict with some of the requirements of article 14 and 15 of the International Covenant on Civil and Political Rights. For instance, it might be said that they do not provide the accused with access to a fair and public hearing by a competent, independent and impartial tribunal established by law with appropriate appeal rights, nor are their cases being determined without undue delay.

I put it to the minister that these things all infringe Australian justice. If they do not, I ask him to say in what way they do not.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.05 p.m.)—I have nothing further to add in relation to what I have already said, and that is that the government has impressed upon the United States that any trial of these men should be transparent and fair. There have been concessions made by the United States to Australia in relation to dealing with these two men and, in relation to the commission orders, the fundamentals remain the same for a trial before that commission as you would have in a criminal trial in this country.

Senator BROWN (Tasmania) (8.05 p.m.)—The minister is indicted by his own words: it is a failure of Australian justice here. I am not going to continue all night. He has been found out on this matter. We at least now understand what it is the Australian government has conceded to the United States, and that is the trial of two citizens under a military commission system which breaches fundamental rights in any Australian court—and, for that matter, the standards of the US court system outside the military jurisdiction. This is a trial being held at the behest of George Bush, for George Bush and with George Bush, ultimately, the arbiter at the end. He is judge, jury and executioner. That is what Prime Minister Howard has handed across to his friend at the ranch.

There is not much more to be said about it. I commend the amendment to the chamber, but Labor are not going to support it, nor would Labor—and a Labor senator can get up and check me on this, if they will—support any amendment brought in here to give appeal rights to these two men when they are brought back to Australia. What a failure that is. The very fact that they do not have such an amendment here points to that.

We have a government which is prepared to abrogate the rights of Australians and to ensure that they stay in the United States because no court in Australia approaches the derogation of human rights, political rights and legal rights that are involved in the chamber system in the United States. It is a terrible failure by this government.

There is not much more to be said about it, but at least we have cleared the decks tonight to establish that it is not the basis of some law being available in the United
States as against in Australia—it is not about that. It is not on the basis that there is not a law in Australia on which these men could be tried. It is simply that the military commission set-up deprives them of enough rights to ensure that they can be found guilty against the norms of a proper trial under the system in Britain, elsewhere in the United States or here in Australia.

The minister says the process is ‘fair and transparent’. He might speak to Major Michael Mori who, I understand, is in Australia this week and ask him why he thinks it is unfair because I think he has a much better bead on it than the minister. The minister says it is transparent. It is not. What has been transparent about the last two years when these men have been held incommunicado without even access to their lawyers, let alone messages going to and from their families, their kids, their parents, and in the case of Mr Habib, his wife? The government have not spoken up for any of that. They have prejudged these men and they are prepared to sacrifice them for a political point. It is disgusting.

‘Transparent,’ says the minister. He knows that this court can be closed, put into camera, any time the military says: ‘We don’t want this piece of information to come out. Remove anybody who can report on this commission.’ It is neither transparent nor fair. Nor is it Australian.

I say again that we do not have a brief for these two men, except that they are Australian citizens and they deserve to be defended by the Australian government in the way the American government would defend two Americans being held here. There is no way the American government would allow two American citizens to be held in Australia and tried before a trumped-up, rights-abrogating set-up such as this commission. Senator Ludwig referred earlier to the extraordinary laws that the United States has entertained of even invading The Hague if necessary to make sure that none of its citizens are brought before a criminal jurisdiction at all.

What a weak and pathetic government we have in that it will not stand up for Australia in this matter. It does not have the backbone to stand up for Australian laws, which are quite adequate to deal with Hicks and Habib. But no, it is a political decision and it is outrageous. We will live to regret having done this. I would have thought that the Labor Party would have had a bit more backbone as well to fight and ensure there could be some amelioration of this military court—a kangaroo court indeed for President Bush—and this terrible process, but that is not to be. While I am talking about this, the minister is chatting with somebody else because he knows that he has no response to it. He has no answer. He is a reasonable man, but he is in the service of President Bush via Prime Minister Howard in this matter and that is why it is so appalling.

Senator LUDWIG (Queensland) (8.12 p.m.)—Senator Brown, you have provoked me into a response. The Labor Party have been very clear and very loud about our position in relation to these two persons; the government knows, and the chamber knows, our position. There have been a number of speeches both in the other house and in this chamber and my speech in the second reading debate outlined our position. We are in the committee stage of a bill dealing with an amendment that you have put forward. It is an amendment about which, I might say, you did not consult with the shadow Attorney-General. That might be a matter for another day, but if you want some of these things to get up, sometimes it would be helpful if you advised the shadow minister that you were pursuing a particular course of action. That is entirely up to you and I will not use the chamber to explain the process to you now.
On closer examination of this amendment and on hearing your response in relation to what you believe it does, I think you are wrong. I think you have poorly drafted the provision and you have failed to deal with the position that you might want to put. I think the amendment that you have put forward actually fails for the reasons that I outlined earlier. I think the amendment only goes so far as to appeal against a manifestly unjust sentence, not the conviction, which you think it does. On that basis, the Labor Party is not prepared to support a poorly drafted provision that you have put forward in the framework that you have used. Also, the problem that you face, which I alluded to earlier, is that the International Transfer of Prisoners Act is a narrow act in respect of what it seeks to achieve. It only seeks to achieve the convention upon which it is based—that is, the international transfer of prisoners. Although I think Senator Ellison disagrees with the opposition, my view of this is that the only section that you can rely on, which is already there, is section 49.

That section deals with an appeal against a sentence. Those are perhaps my words; the section talks more of a computation of a sentence but I think invariably it would be a similar concept. Where a sentence is manifestly unjust—or there are some reasons why a person might appeal against a particular sentence—under Australian law there are certain grounds that can be used. There is a list of elements that you have to prove to demonstrate that a sentence might be manifestly unjust, wrong in law or some other matters, but now is not the time to go into those. Senator Ellison also referred to the fact that the provision might only operate when there is an Australian law in place, in which case it still may not go far enough to support the issue of Mr Hicks and Mr Habib, although that is a matter to be tested on another day, I suspect. I think Senator Brown has drafted a poor amendment, and Labor cannot support it.

Senator BROWN (Tasmania) (8.15 p.m.)—Senator Ludwig has just skewered himself on his argument. He says that the amendment that we have brought before this place would allow an appeal against a manifestly unjust sentence, but that is all. I invite the Labor Party to support an amendment the Greens have brought into this place which would at least give Hicks and Habib, if they are manifestly and unjustly sentenced in the United States, an appeal provision here in Australia. If that is the argument the Labor Party want to put they should support the narrow definition. The alternative is that they deny an appeal against a manifestly unjust sentence handed down in the United States—and an unfair sentence is what we are going to get because if you have an unfair trial you cannot get a fair sentence. It does not matter what the people involved have done, you must have a fair trial if you are going to get a fair sentence. I say to Labor: vote for this amendment because it deals with the unfair sentence which is coming; otherwise you are part of the problem.

Senator LUDWIG (Queensland) (8.17 p.m.)—The point I was making was clear to me but perhaps it was not clear to Senator Brown. Senator Brown seems to have shifted his position as to the intention of the amendment. I still think—even if he has changed his view about what it seeks to do—it remains poorly drafted and does not give effect to what he thinks it does anyway. I have said that I think the provision under section 49 may already achieve that which is in the International Transfer of Prisoners Act 1997, although that is a matter that can be tested at another time, certainly not here. I have also indicated that Labor cannot support an amendment such as the one Senator Brown has put forward because it is not something that seems to be clearly dealt with
within the remaining prisoners act. In any
event, I remain convinced that it is poorly
drafted and will not give effect to either of
the things that Senator Brown seems to think
it might, given that he has shifted his posi-
tion.

Senator BROWN (Tasmania) (8.18
p.m.)—I have not shifted my position. I have
accommodated the Labor argument. Labor is
not going to support the narrow reading it
has of this well-drafted amendment, but La-
bor has no amendment—and that speaks
volumes.

Question put:
That the amendment (Senator Brown’s) be
agreed to.
The committee divided. [8.23 p.m.]
(The Chairman—Senator J.J. Hogg)


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AYES
Allison, L.F. * Bartlett, A.J.J.
Brown, B.J. Cherry, J.C.
Greig, B. Lees, M.H.
Murray, A.J.M. Nettle, K.
Ridgeway, A.D. Stott Despoja, N.

NOES
Barnett, G. Bishop, T.M.
Bolkus, N. Buckland, G.
Campbell, G. Carr, K.J.
Chapman, H.G.P. Colbeck, R.
Collins, J.M.A. Crossin, P.M.
Eggleston, A. * Ellison, C.M.
Evans, C.V. Faulkner, J.P.
Hogg, J.J. Humphries, G.
Hutchins, S.P. Johnston, D.
Kirk, L. Knowles, S.C.
Ludwig, J.W. Lundy, K.A.
Macdonald, J.A.L. Mackay, S.M.
Marshall, G. McGauran, J.J.J.
Patterson, K.C. Payne, M.A.
Ray, R.F. Santoro, S.
Scullion, N.G. Sherry, N.J.
Stephens, U. Tchei, T.

* denotes teller

Question negatived.

The DEPUTY PRESIDENT—Order!
The question is that the bill stand as printed.

Senator BROWN (Tasmania) (8.26
p.m.)—I wanted to ask the minister about
one other matter, and that is US jurisdiction.
We have debated the potential use of Aus-
tralian law against a person having violent in-
tent overseas, and I have argued that that
could be used here—and so it could be. I ask
the minister whether he knows of a similar
piece of legislation in the United States
against citizens acting to create violence
overseas or with the intention of creating
violence overseas which could be used
against US citizens?

Senator ELLISON (Western Australia—
Minister for Justice and Customs) (8.27
p.m.)—I am not aware of any US legislation
of that sort, but we can take it on notice and
advise Senator Brown. I do not have any
advice to hand about whether there is or
there is not any such legislation in the United
States.

Senator BROWN (Tasmania) (8.28
p.m.)—To save a third reading speech, the
point I am making is that not only are there
no international laws that can be used in the
United States that cannot be used here; there
is also no domestic law that can effectively
be used in the United States against Hicks
and Habib that is not effectively available
here. I suspect that the Australian law might
even better deal with Hicks and Habib. I will
be interested to see what the minister comes
up with in terms of their association and al-
leged—as the minister would have it—
training with al-Qaeda.

We are left with no other argument than
that it is the attractiveness to Prime Minister
Howard and the government of the military
commission—not a military tribunal, not a US court but a military commission—in the United States that has won the day here. The Danes do not want it, the Russians will not have it—they have got their people back. Britain is saying, ‘You have got two of our people who are in the exact same position as Hicks and who are eligible for trial, and we are not conceding on that.’ But we have got the Howard government, which says, ‘We are so keen to be a vassal and to make Australia a 51st state, mendicant to the wishes of the US White House, that we will turn our back on Australian rights, Australian laws and Australian institutions. We will sell them out for our political purpose.’ It is disgusting, but there it is.

Question agreed to.
Bill reported without amendment; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.30 p.m.)—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

TAXATION LAWS AMENDMENT BILL (No. 2) 2004

Second Reading

Debate resumed.

Senator SHERRY (Tasmania) (8.31 p.m.)—Taxation Laws Amendment Bill (No. 2) 2004 was formerly known as Taxation Laws Amendment Bill (No. 9) 1999. To use that all too familiar acronym, it is a TLAB. It has eight schedules, implementing a range of taxation measures. Labor will support the bill.

Schedule 1 provides a GST exemption for certain lifesaving and first aid courses. Currently, education courses must be certified by a state government body to be eligible for a GST exemption. However, lifesaving and first aid courses are generally certified not by state governments but by lifesaving and first aid organisations. This amendment will ensure that such courses are no longer subject to the GST. I notice that my colleague Senator Murray is in the chamber. I do not know whether he can remember the very famous debate we had about lifesaving and GST exemptions at about 6 o’clock in the morning three or four years ago. I can vaguely remember it, Senator Murray.

Senator Murray—And I am very pleased with this correction.

Senator SHERRY—At that time, I think we got to about 1,200 amendments to the GST.

Senator Murray—That is right. I was really impressed by your stamina.

Senator SHERRY—Not tonight, Senator Murray. This amendment will ensure that such courses are no longer subject to the GST. Consistent with the intergovernmental agreement on the reform of Commonwealth-state financial relations, all states and territories have agreed to this amendment. However, a subsequent government amendment to the bill, which would allow the listing of organisations that can certify courses by regulation, has not been agreed to by the states. This illustrates once again the absurdity of the claim that the GST is a state tax: changes to the GST are and can be made in the Commonwealth parliament without the agreement of the states. We have the absurd situation whereby this government still maintains that the GST is a state government tax despite the view of the Australian Bureau of Statistics and the National Audit Office that it is a Commonwealth tax—a federal tax—in law, by virtue of a Commonwealth head of power.
Schedule 2 provides transitional relief from the new value shifting regime. Value shifting occurs when a business, the losing business, provides goods or services to another business, the gaining business, in the same group of companies and the price paid for those goods or services is not the true market value. The effect of these transactions is to shift value between companies that are owned or controlled by the same entity. This is usually done for tax minimisation purposes. The new value shift regime ensures that these value shifts cannot be used to minimise tax. However, the new consolidation regime effectively delivers the same outcome by treating groups of companies as one for taxation purposes. As such, the new value shifting regime will not apply to consolidated groups. Making groups of companies comply with the new value shifting regime during the transitional period for consolidation would impose an unfair and unnecessary compliance cost on groups that have entered consolidation. The amendments contained in schedule 2 will ensure that this does not occur, doing so by excluding most indirect value shifts from the value shifting regime where value shifts occur before the beginning of the business providing the services in the 2003-04 income year or, if the business providing the service income year ends before 30 June 2003, the beginning of the 2004-05 income year. These dates ensure that companies that have consolidated some time in the first year of consolidation—2002-03—do not have to comply with the new value shifting regime.

Schedule 3 amends the alienation of personal services income provisions. The schedule aims to ensure that, where a deduction is not allowed for a business related expense due to the PSI provisions, fringe benefits tax is not applied. In addition, the schedule ensures that, consistent with the treatment of individual taxpayers, tax losses can be used by the individual whose personal effort or skill generated the income. Schedule 4 provides an income tax exemption for payments made under the Sugar Industry Reform Program to taxpayers who agree to leave the agricultural industry altogether. While supporting this amendment, Labor considers that a more transparent way to provide additional compensation for this group of farmers would have been to increase the exit grant.

Schedule 5 will ensure that foreign resident withholding rules apply to alienated personal services payments. Schedule 6 will ensure that, when mutual friendly societies that are life insurance companies demutualise, they are subject to the same taxation framework that applies to other mutual life insurance companies. These amendments will encourage mutual friendly societies that are insurance companies to demutualise without suffering a tax disadvantage. Schedule 7 amends the simplified tax system provisions to provide, under certain conditions, optional rollover relief for partnerships, similar to those provided under the UCA regime.

The simplified taxation system was a recommendation of the Ralph Review of Business Taxation and allows small businesses to opt out of some of the more complex taxation rules and into simplified, streamlined rules—for example, businesses can opt out of the unified capital allowance regime and into a simpler depreciation regime. However, the simpler depreciation regime does not currently provide the rollover relief that exists in the UCA regime. Therefore, when a partnership changes hands under the STS, a CGT event occurs. This is acting as a deterrent for some taxpayers to enter into the STS as it reduces their flexibility.

Finally, schedule 8 makes amendments to the consolidation regime. The consolidation regime allows groups of wholly owned com-
panies to be treated as one for taxation purposes. Under the new regime, businesses must have irrevocable decisions which affect the tax costs of assets or the ability to deduct losses. The amendments will allow companies to alter their choices up to 1 July 2005, providing greater flexibility and allowing time for companies to assess the impact of the consolidation regime. In addition, schedule 8 will ensure that, where a company joins or leaves a consolidated group part way through an income year, the R&D tax offset applies appropriately. With those few comments, I indicate once again that Labor will be supporting the bill.

Senator MURRAY (Western Australia) (8.39 p.m.)—The Taxation Laws Amendment Bill (No. 2) 2004 in its latest version is a relatively small omnibus—34 pages of taxation legislation—but it does highlight how much continual attention the tax system needs and the diverse range of potential overlaps within the tax law. As I have mentioned before in this chamber, ideally we need as a parliament and the government needs as a government to try and change the culture of Australian taxpayers so that there is a reduction in the ‘get away with what you can’ approach to paying tax by many in this country. Consequently, we regularly tighten the tax law not only to make the avoidance of tax harder but also, as this tax bill shows, to provide the proper moments of relief to make the tax law fairer.

In that respect we go straightaway to the first schedule—which, as Senator Sherry rightly remarks, has quite a long and exciting legislative history—on the issue of lifesaving and first aid courses being GST free. Courses will be GST free if the supplier of the course uses instructors who are suitably qualified. The relevant training qualification should be issued by Austswim, Surf Life Saving Australia Limited or the Royal Life Saving Society of Australia. I am informed that all of those are wonderful organisations. This schedule does have the greatest impact on revenue, costing $21 million over four years, but the Democrats believe this is a valuable contribution to improving the prevention of injury within the Australian community, particularly on our beaches.

Glancing at the eight schedules, I see that four of them have a negative revenue effect in the four-year cycle that is shown and that the remaining four have a nil or insignificant effect. Nevertheless, for those that have a negative effect, that revenue needs to be won back from elsewhere because there are constant demands on government for worthy causes. I might make some remarks later on about an area which I hope the government will attend to at last in the coming budget.

The second schedule deals with value shifting. This is a complex part of the law. When this schedule was originally introduced as part of Taxation Laws Amendment Bill (No. 6) 2003 the ALP did not support it. But the schedule has since had further scrutiny. The Democrats will support this schedule on the basis that it improves compliance without increasing the risk of tax avoidance. Schedule 3 ensures there is no double taxation as a result of the interaction of the fringe benefits tax and the alienation of personal services income provisions. Schedule 4 outlines the taxation treatment of payments made under the Sugar Industry Reform Program, which has the delightful acronym of SIRP, which sounds dangerously close to syrup. These are payments of up to $45,000 depending on whether growers satisfy income and assets tests. The payments will be exempt from tax if the grower gives an undertaking not to operate an agricultural enterprise within five years.

The fifth schedule deals with the interaction of the pay as you go withholding tax provisions and the alienation of personal ser-
vices income provisions to ensure there is no double taxation. Schedule 6 deals with the demutualisation of friendly societies. Demutualisation is the conversion of financial or other institutions owned by their members into companies owned by shareholders. Some mutual friendly societies that qualify as life insurance companies have restructured by demutualising.

However, due to technicalities in the law relating to the definition of a mutual insurance company in subsection 121AB(1) and division 9AA of part III of the Income Tax Assessment Act 1936, they are unable to benefit from the taxation framework provided. That taxation framework ensures the deferral of any capital gains tax liability until a subsequent capital gains tax event happens to the demutualised shares and establishes a cost base for the demutualised shares for capital gains purposes that broadly reflects the market value of the demutualised shares. These provisions ensure that tax considerations are not an impediment to mutual insurance companies demutualising. We will support that schedule as well but, as friendly societies are part of this bill, I will return later to a topic concerning them which concerns me and the Democrats.

Schedule 7 provides rollover relief for partnerships that are part of the simplified tax system. I always think governments and the parliament take an enormous chance with the English language when they refer to any part of the tax system as simplified. Perhaps there is a sense of irony in those dark grey suits that inhabit the tax halls of our country. Schedule 8 has some minor amendments dealing with choices and anomalies in the research and development tax offset rules. That is the omnibus package. It is good housekeeping stuff, and the Democrats will be supporting all the measures in this bill.

I conclude my remarks by briefly returning to the mutuality principle, as it does apply indirectly to schedule 6. Followers of tax speeches and debates know that I have previously outlined my concern about the loss of several hundred millions of dollars in revenue as a result of the loose application of the tax mutuality principle to super clubs and others such as pharmacies. The mutuality principle provides that, where a number of persons contribute to a common fund that is created and managed as a common interest, any excess earnings that are generated from the use of the fund are not to be considered income for the purposes of taxation.

The Democrats and I consider this a wonderful and necessary tax concession for thousands of community organisations, and we support that tax concession in their hands. However, we also believe that it is a very costly tax abuse in the hands of otherwise very large commercial business enterprises. For over six years I and the Democrats have been campaigning for tax reform in this area. We have got nowhere because this government will not address the inequitable abuse of this tax concession. The mutuality principle needs to be defined and administered much more tightly. Unlike the New South Wales Labor government, the coalition appears afraid of the power of the clubs. The net effect is that because this government supports a continuation of an abuse—even though it is legal, an abuse of the spirit and intention of the mutuality principle—the rest of Australia has to pay more tax than it should.

The Pharmacy Guild heard of my work in this area and acquainted me with the same problem in their industry. I am obviously no expert on pharmacies, and I have relied on them for industry knowledge. The question I put in previous speeches is: why do the more than 120 community pharmacies owned by friendly societies pay less tax than other
community pharmacies owned by ordinary businesses? They do so because they are considered to be mutual bodies and under this arrangement they pay no tax on income earned from sales—that is, non-Pharmaceutical Benefits Scheme sales—made to customers who have signed up as their members. It may be legal, but what a racket! Customers sign up as members so that the businesses do not have to pay income tax.

Under the regulations that apply to friendly societies, their pharmacies are able to utilise the mutuality principle in trading with these so-called members so that all non-PBS receipts from retail transactions are excluded for the purpose of determining their assessable income. Tax is paid at the relevant corporate tax rate only on amounts received from the Commonwealth for the supply of pharmaceutical benefits to members or non-members and for transactions with non-members. Other profit from trading with so-called members is tax free. That means no tax at all on private script sales and on all over-the-counter sales to these so-called members. Yet what is the real difference between the way this membership scheme for friendly societies operates and the various loyalty clubs available in other pharmacies and other businesses? There is no difference except that these other pharmacies and businesses pay full corporate tax on all income received from all sales, whether they are to members or not.

For an annual subscription of something like $60 or $70 per family, any member of the public can walk in off the street and be deemed to be a friendly society member whose purchase transactions with the pharmacy, apart from those involving PBS purchases, are then non-taxable in the hands of the pharmacy. There is no requirement for public records of friendly society membership lists to be maintained or for members to be kept informed of the financial status of the company. There is no approval process for the admission of new members. As friendly society members, customers are eligible to obtain the benefits that the membership brings, such as special discounted prices. Customers who are members of loyalty clubs in other pharmacies also receive benefits including special prices. It is a useful marketing tool but it does not mean any reduced taxation obligation for the business.

Has the Taxation Office bothered to audit the friendly societies and their membership systems? Judging by the lack of squealing from that sector, I suspect not. The ACCC recently conducted an inquiry into this issue. Its main finding was that while this tax benefit did not give friendly societies’ pharmacies a competitive advantage it nevertheless agreed that they did have a tax advantage. Frankly, if you have a tax advantage you have a competitive advantage. Its report incorporated a table showing that, in the case of a friendly society pharmacy making a net profit of $100,000, the application of the mutuality principle would reduce the taxable income by $25,000 to $75,000. At the corporate tax rate of 30 per cent, the amount of tax payable would therefore be $22,500 rather than $30,000. The report states: ‘This equates to a $7,500 benefit under the mutuality principle.’

The friendly society dispensary businesses date back to the late 19th and early 20th centuries. They were formed to supply pharmaceutical products and other benefits to their members who, for the most part, were from disadvantaged groups. This was at a time when there was no Pharmaceutical Benefits Scheme in place to provide equal access to essential medicines. There was no Medicare. There was no welfare system.

Life has moved on, and the tax system should move on. These are commercial en-
terprises and should be taxed as any other commercial businesses. They have complex and sophisticated corporate structures. They are professionals that are top-notch retailers. They participate in aggressive marketing campaigns for ‘non-therapeutic’ stock such as perfumes and cosmetics and they appear to be no different from any ordinary commercial venture for profit on a large scale. Friendly society pharmacy groups have turnovers of up to $200 million, with stores said to achieve an individual turnover as high as $20 million. It is hard to understand why Treasury and the Australian Taxation Office have taken no action unless you accept that the coalition has tied their hands. It is about time the super league clubs and the super clubs and others who are big commercial businesses stopped unfairly, even if legally, taking advantage of the mutuality principle. It is about time they were made by the government to pay their fair share of tax. A couple of hundred million so derived would go a short way to wiping off the revenue loss from this bill and would go a long way to helping children in need or any other worthy cause that the government might feel it needs to support.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (8.53 p.m.)—I thank colleagues for their support for the Taxation Laws Amendment Bill (No. 2) 2004. I do not need to delay the Senate very long but I want to make just a few comments about each of the schedules. The bill does amend the tax laws to give effect to several tax measures and each of the measures will refine the operation of the current law and go some way towards improving the fairness and equity of the tax system. As Senator Murray says, they are sensible measures.

Schedule 1 of the bill will ensure that a GST registered supplier of an eligible first aid or lifesaving course is able to treat the supply as GST free. The amendment will preserve the original policy intent that such services would not be subject to the GST. Schedule 2 modifies the general value shifting regime so that as a transitional measure the consequences arising under this regime do not apply to most indirect value shifts involving services, such as when consultancy services are provided by one company to another related company at non arm’s-length prices. This measure will help to reduce compliance costs for businesses during the transition to consolidation. The general value shifting regime is an important integrity measure—and I once again thank senators for their support for it—designed to prevent the manipulation of tax rules by a shifting value between related entities that are not part of the same consolidated group. The new regime is complementary to the consolidation regime and reproduces the structural value shifting integrity achieved by the consolidation regime to those groups outside consolidation. The measure in this bill ensures that groups that consolidate during a transitional period do not incur compliance costs associated with setting up systems to identify service related indirect value shifts when those systems will not be needed after consolidation. The measure would also allow groups that do not consolidate extra time to establish systems to track service related indirect value shifts that may require adjustments under the general value shifting regime.

Schedule 3 will improve the operation of the alienation of personal services income provisions. The fringe benefits tax law will be amended to remove the potential for double taxation payments that are made non-deductible by the personal service income provisions and which may also be subject to fringe benefits tax. It was never intended that such double taxation was to apply. This schedule also makes further amendments to
allow an individual working through a personal services entity to deduct a net personal services income loss. Under the existing law the entity rather than the individual providing personal services through the entity is entitled to any net loss. The change proposed by the bill is consistent with the intent of the rules generally, which is to put the individual earning personal services income through an entity in the same situation as if the individual had been deriving the income as an employee. These amendments were sought by tax professionals and will align the operation of the law with the original policy intent.

The amendments in schedule 4 will specify the tax treatment of sugar industry exit grants made under the Sugar Industry Reform Program. One component of the Sugar Industry Reform Program is Commonwealth government assistance for cane growers who wish to leave the sugar industry. The assistance consists of a one-off payment, one sugar industry exit grant of up to $45,000. Sugar industry exit grants that are paid to taxpayers who leave the agricultural industry altogether will be exempt from income tax. Grants that are paid to taxpayers who leave the sugar industry but continue to carry on in other agricultural enterprises will be included in assessable income.

Schedule 5 will ensure that the foreign resident withholding rules will apply to an alienated personal services payment, and that will obviously help the efficient collection of tax on the payments. The foreign resident withholding rules require an entity to withhold an amount of tax from a payment of a kind prescribed by regulations, and the government has not yet prescribed any payments. An alienated personal services payment is one that is received by an entity but is attributed to the employment-like services provided by an individual. These payments may also be of a kind to be prescribed by the foreign resident withholding rules. Under the existing law, where an entity receiving a payment of this kind is a foreign resident, withholding rules will not apply and the entity may be liable to pay an amount under the alienation of personal services income rules. In these circumstances the tax relating to the payment may not be paid by the entity that is outside Australia and recovery of the tax debt may be difficult. The amendments will ensure the effective operation of the foreign resident withholding rules so that tax is collected on any prescribed payments before they leave Australia.

The amendment in schedule 6 will ensure that mutual friendly societies that are life insurance companies and which restructure by demutualising can benefit from the taxation framework that applies to other mutual life insurance companies. In recent years some friendly societies that qualify as life insurance companies have restructured by demutualising. However, due to technicalities in the existing law, the tax framework that applies to other life insurance companies that demutualise does not apply to those friendly societies, and the amendments will remove this inconsistency. I will make a brief comment in a moment about Senator Murray’s comments further in relation to mutual friendlies.

Schedule 7 will amend the simplified tax system to provide rollover relief when there are partial changes in the ownership of a partnership. This rollover relief will ensure that a taxable gain or loss will only arise when the partnership ultimately disposes of its deprecating assets. These amendments will remove a barrier that may be deterring some small businesses from entering the simplified tax system and accessing the benefits that system offers—notwithstanding its title, Senator Murray. Schedule 8 amends the consolidation regime under which wholly
owned corporate groups are treated as a single entity for income tax purposes. The amendments will provide additional flexibility in the transition to consolidation by allowing certain choices made by a head company to be revoked or amended before 1 January 2005. The amendments also ensure that the rules governing eligibility for the research and development tax offset apply appropriately in cases where companies join or leave a consolidated group part way through an income year.

I thank senators for their support. I have listened carefully to what Senator Murray said in his comments and I thank him for his contribution. I am aware of the concerns about the use of the mutuality principle. I recall that Senator Murray wrote to the Treasurer on this issue last year and that the Treasurer, in his response, noted that the Australian Taxation Office would be maintaining what I think one might describe in colloquial terms as ‘a watchful eye’ over these arrangements to ensure that the principle of mutuality was not being misused. I had thought that was being done, but as Senator Murray has raised this—and I do think he raises some points that may need to be addressed—I will ask the commissioner for further advice on this. I commend this bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.02 p.m.)—I move:

That intervening business be postponed till after consideration of the government business orders of the day relating to Migration Amendment (Duration of Detention) Bill 2004 and the Medical Indemnity Amendment Bill 2004 and a related bill.

Question agreed to.

MIGRATION AMENDMENT (DURATION OF DETENTION) BILL 2004

Second Reading

Debate resumed from 4 March, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator SHERRY (Tasmania) (9.03 p.m.)—The Labor Party will not be supporting the Migration Amendment (Duration of Detention) Bill 2004. The very same substance of this bill was introduced last year by the former minister for immigration and, on that occasion, Labor pursued and successfully negotiated amendments with the government that ensured the integrity of our migration system but with a proper role for the courts. The measures which this bill seeks to re-present to the parliament are excessive and out of all proportion to the circumstances which the bill seeks to address. The bill in its substantive form is quite narrow and deals exclusively with the issue as to whether or not a court is entitled to award interim or interlocutory relief by way of the release of an unlawful noncitizen who is detained in an immigration detention or processing centre. Whilst the issue in the bill is quite narrow, the history with regard to the capacity of a court to order interlocutory relief—the interim release of an unlawful noncitizen from detention rather than waiting until a final determination has been made—in respect of an unlawful noncitizen’s position is longstanding.

Today the government—as did the former minister in the debate on the 2003 bill—
claim in effect that this bill is an important measure in upholding the principle of mandatory detention for all unlawful noncitizens under the Migration Act. The problem is that, if that is the case, we have all been doing it since 1992! If that is the case, we have all been doing that since the Msilanga case in 1992—one of the first cases on the mandatory detention regime introduced by the former Hawke-Keating government in 1992. When mandatory detention was introduced in 1992, effort was made in the legislation to exclude the capacity of a court to order the removal of an unlawful noncitizen, that unlawful noncitizen only being able to be released from detention with the granting of a visa, removal from Australia or deportation. The difficulty that presented—that which the Federal Court found in the Msilanga case in 1992—was that the Federal Court, under the Migration Act and the federal Judiciary Act, was able to order the interim release of an unlawful noncitizen, a criminal deportee, someone whose visa was proposed to be cancelled for character cancellation purposes or an unlawful noncitizen. The Federal Court could order interlocutory relief and release on an interim basis such a person from detention if the court was of the view that person was unlawfully detained. This has been the statement of law since the Msilanga case in 1992. More recently, in 2002 and 2003, we saw the Federal Court uphold the interim release of an unlawful noncitizen on the basis, in the VFAD case, that that unlawful noncitizen was not an unlawful noncitizen and, in the Al Masri case, that the detention had become unlawful. So we are looking at a very narrow point: can the Federal Court order the interim release of a detainee or must it wait until there has been a final determination of that detainee’s case? The starting point is not the VFAD case or the Al Masri case; it is the Msilanga case in 1992.

The government suggests there has been a spate of recent cases. Labor asked what information the department had about such applications made since 1992. The advice Labor received was that there was no corporate data of earlier circumstances, but the corporate knowledge was that there had been about four applications received from 1992 to 2002 and 48 applications received during the years 2002, 2003 and 2004, all of which have now been resolved. Of the resolved matters, the applicant was successful and the release ordered in respect of visa cancellation on character grounds in 15 cases. There were 16 cases described in the note received from the department that were persons challenging the lawfulness of continued detention based on the Al Masri argument and 16 matters where the applicant was not successful. On my calculation, in the financial year 2002-03, 126,000 people came to Australia as migrants, 12,500 people came on a humanitarian program and 8,000 to 9,000 people were here on temporary protection visas. These are not large numbers, but the issue was very important for the 15 people who successfully applied to a court to order their interim release. The issue was their freedom, whether they were to be detained or not detained.

It is Labor’s strong view that this parliament should move very slowly and cautiously to remove from the courts the capacity to remove a person from detention using, essentially, its habeas corpus powers. At the Labor opposition’s suggestion last year, this parliament responded to this issue—or this concern, as it was expressed then by the former minister for immigration—by suggesting to the then minister and to the parliament that we should close off the capacity for interim release in respect of character cases or criminal deportees. That sounded to me then, post September 11, and it sounds to me now like an eminently sensible thing to do. In the
end, the nation state has to be cautious about the protection and security of its citizens. Closing off that capacity, in Labor’s view, was sensible, bearing in mind that that very capacity had been open to the courts since the Msilanga case in 1992.

In respect of the court’s relationship to the Migration Act and its view of this matter, whilst the Msilanga case was, if you like, the threshold case for detention and the capacity of a court to grant interim or interlocutory release, the starting point is, in my view, the High Court’s decision in Lim’s case in 1992. In Lim’s case, the High Court was asked to determine essentially the legality and constitutionality of mandatory detention for immigration purposes. It is worth while recapping what the High Court had to say in that case and then referring to some of the reasons for judgment by the full Federal Court in the VFAD and Msilanga cases. They put into context, firstly, this parliament’s legislative powers as far as immigration detention is concerned and, secondly, the issue of the capacity of a court to order interlocutory or interim release. The High Court in Lim’s case affirmed the constitutionality of administrative detention under the Migration Act where the detention was reasonably necessary for immigration processing. Justices Brennan, Deane and Dawson, in a joint judgment, held:

... if the detention which they require and authorize is limited to what is reasonably capable of being seen as necessary for the purposes of deportation or necessary to enable an application for an entry permit to be made and considered. On the other hand, if the detention which those sections require and authorize is not so limited, the authority which they purportedly confer upon the Executive cannot properly be seen as an incident of the executive powers to exclude, admit and deport an alien. In that event, they will be of a punitive nature and contravene Ch. III’s insistence that judicial power of the Commonwealth be vested exclusively in the courts ...

The capacity of this parliament to legislate in respect of immigration detention is limited. It is limited for the purposes of immigration. If it turned from being limited administratively for the purposes of immigration to being punitive in nature, the only institution in Australian society in accordance with the Constitution that can order punitive detention is a court. This parliament has limited power in respect of immigration detention and that is why it needs to proceed, firstly, with caution and, secondly, with an eye to ensuring adequate and appropriate supervision by the courts of people who are in detention.

I move to the issue of the full Federal Court determining or viewing the question as to whether a court can order interim or interlocutory release. In the Msilanga case, the full Federal Court said:

Both sections empower the court in an appropriate case to restrain on an interim basis and pending final determination of a substantive claim administrative action where a serious question arises as to the validity of that action. So the test in the Msilanga case in 1992 was that, if a serious question arose as to the validity of the detention, a court was empowered prior to a final determination of a substantive claim to order interlocutory release. That has been the law since 1992.

The government maintains the position that this bill is an important measure, as it is about upholding the principle of mandatory detention for all unlawful noncitizens under the Migration Act. If this is true, the parliament, the government and the opposition have respectively turned a blind eye from 1992 to last year when we closed down and narrowed that capacity and excluded the capacity of the courts to order an interim release of those people of character concern or of criminal deportee status.

The two leading cases that we find in recent times are VFAD and Al Masri. Labor
regard both the facts and the circumstances of those two cases as being exceptional, if not unique. The VFAD case dealt with whether a person who was detained on the basis of being an unlawful noncitizen was in fact not an unlawful noncitizen. The Al Masri case involved an unlawful noncitizen who was being detained and who argued that this detention had become unlawful. In both of those cases, the full Federal Court upheld decisions of single Federal Court justices acting alone that their capacity to order interim release by way of interlocutory orders prior to the determination of the substantive case was correct and consistent with the Msilanga case. In Al Masri in April 2003, the full court said:

... the reasoning of the majority of the High Court in Lim ... leads us to conclude that unless the power and duty of detention conferred by s 196 were subject to an implied temporal limitation broadly of the nature of the second limitation found by the trial judge, a serious question of invalidity would arise. Without such a limitation it may well be that the power to detain would go beyond what the High Court ... considered to be reasonably capable of being seen as necessary for the purposes of deportation.

That second limitation referred to by the full court is also referred to in its conclusions in the appeal, at paragraphs 176 and 177 of the judgment. Paragraph 176 says:

The limitation is not encountered merely by length of detention and it is not grounded upon an assessment of the reasonableness of the duration of detention. ... the conclusion that there is no real likelihood or prospect of removal in the reasonably foreseeable future is one that will not be lightly reached.

There the full Federal Court made it crystal clear that the basis of the decision in Al Masri’s case was not the length of detention. It was not a view as to the reasonableness of the length of detention in this case. It went to whether there was a real likelihood or prospect of removal in the reasonably foreseeable future. It held that there was not that prospect, but it made the point that this was not a judgment which would be taken lightly. When a court is deliberating over its interlocutory power to order release or to make interlocutory orders in advance of a final determination of the substantive issues, it always proceeds in a cautious manner. That was the message that the full Federal Court was sending in that case.

If, for some reason, the Minister for Immigration and Multicultural and Indigenous Affairs, current or former, has the concern that they do not want the courts ordering the interim release of unlawful noncitizens prior to a substantive determination of their case simply off the back of the length of detention or a view as to the reasonableness of the length of detention, they have nothing to fear. That is not the basis of the Msilanga case, it is not the basis of Lim’s case, it is not the basis of VFAD and it is not the basis of the Al Masri case. In VFAD, the full Federal Court said:

The respondent in the present case is in a position not dissimilar in certain respects to that of the applicants in Msilanga. While we accept that at a formal level that case, and the many other cases which have subsequently followed it, can be distinguished, the principles which underlie those cases are not distinguishable. Those principles, in our opinion, remain correct, and are applicable to this case.

So why is the government compelled to have this legislation debated again? Is there greater damage, or a greater concern or issue raised, by proceeding down the road which the government would seek to have the parliament follow? Firstly, what is the motivation? The motivation is that the government does not want a court, presumably the Federal Court, to be in a position to order the interim release of an unlawful noncitizen prior to the determination of the substantive issues related to that case, irrespective of
whether there is a live issue as to whether that detention is in itself unlawful or whether the person being detained is an unlawful noncitizen.

On the basis of the rudimentary statistics supplied to me by the department, over the period of more than a decade since the full Federal Court said in the Msilanga case that that was open to a court, we have seen 50-odd cases. Of the successful cases in the last two or three years, half have now been ruled out by the action of this parliament in refusing to allow a court to have that capacity of visa cancellation on character grounds under section 501 or for criminal deportees under section 200. But the government comes before this parliament and says that we should take away the right and capacity of a court to make those interim determinations because of a handful of cases over more than a decade when tests were applied and rigour was applied by the High Court itself in Lim’s case and by the full Federal Court in the cases of Msilanga, VFAD and Al Masri.

Seeking to prevent a court from ordering the interim release of someone from detention, where the court has a live, serious and substantive issue as to, firstly, whether that person is indeed an unlawful noncitizen and, secondly, whether the detention itself is unlawful, is a grave harm to do to the individual concerned. It pays no respect to the capacity of our courts to determine such things sensibly and adds nothing to the rigour of our migration system and the order that the community expects and warrants from our migration system.

Labor will oppose this measure. We opposed it in 2003, when the government brought it before the parliament. The government sensibly responded to our suggestion that, if there were an issue here, that issue would be restricted and limited to section 200, which relates to criminal deportees, and to section 501, which relates to visa cancellation for character purposes. It seems like an eminently sensible approach to those cases, particularly post September 11. But, in the area of unlawful noncitizens, where a serious or substantive issue goes to whether the person concerned is not an unlawful noncitizen, or indeed whether the detention itself has become unlawful and therefore unconstitutional, we should not close off the capacity of the Federal Court to conduct itself in this way. As I said earlier, in the judgment in Al Masri’s case the court said that such a decision was ‘one that will not be lightly reached’—and one that will not be lightly taken.

On the basis of the statistics supplied to the Labor Party by the department, and on the basis of a lack of evidence as to any of these releases having caused any incident contrary to good government, good order or the public interest, there is absolutely no justification for seeking to exclude this capacity of the court, which has been there since the Msilanga case in 1992. On that basis, Labor opposes the bill.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.21 p.m.)—I speak on behalf of the Australian Democrats to the Migration Amendment (Duration of Detention) Bill 2004. As has already been stated, it is very similar to legislation brought forward last year. In fact, it is identical even in name. The Migration Amendment (Duration of Detention) Bill 2003 was opposed by the Democrats. The bill was amended to only apply to people being detained on character or criminal deportation grounds. It was then passed, still opposed by the Democrats. The fact that the Democrats opposed the bill last year—even with that watering down via the amendments made by the Senate—gives a pretty clear indication of the Democrats’ view of this bill, which is now back effectively in its original
form. This is not just a matter of the Democrats being ornery or oppositional; it is a matter of a fundamental legal principle. The issue of mandatory detention has been debated in various ways for quite a long period of time in this country, in this parliament, in this Senate chamber and outside. This bill is much narrower than the whole issue of mandatory detention, but to some extent it still relies on some of the underlying foundations that are used to make immigration detention permissible.

In simple terms, the bill seeks to prevent courts from ordering the release of somebody from immigration detention whilst an appeal seeking their release is before the courts. It prevents the courts from making those interim orders in relation to anyone who is in immigration detention and who is seeking judicial review of their case. It would be something that people could readily understand. People would be aware of examples in the criminal justice system where people who are in jail and who have an appeal, or people who are being tried for something, are able to be released into the community in the interim, pending the appeal and judgment. That is not an uncommon thing. It is a matter of judgment on the part of the courts.

This bill seeks to prevent that applying to immigration detention. It was thought that, until a relevant court decision, it did not apply to immigration detention. I would at least say one thing, which is not in support of the government’s view but an acknowledgement that the government believed, and probably still believes, that the existing section 196 of the act clearly states that no person or court can release from detention an unlawful non-citizen being held lawfully in immigration detention: if I read it I would possibly have the same view. In fact, I did when I read it, but I am not the High Court, or whichever court it was. They interpret the law. I have to say that it is an interpretation or position that I support regardless of people arguing about whether the wording in the act reflects it. Obviously the final arbiters of what the wording in the act reflects are the courts, and that is what has occurred in this case.

Whilst I may understand a bit of the frustration of the government in that respect—that they thought that section 196 said a particular thing and the courts said it did not—nonetheless the decision of the court was that if the parliament wished to prevent a court from ordering the interlocutory release of a person from immigration detention it must make this intention unmistakably clear. Obviously some may have thought it was clear, but it was something that could have been mistaken for being something else. Hence it was determined by the court that it should be unmistakably clear should the parliament wish this to be the case. I cannot speak for the rest of parliament but I can speak for the Democrats: we do not wish it to be the case. Section 196 was introduced with the original Migration Reform Act in 1992. Regardless of what the intention of parliament may have been at that time, it is the view down this end of the Senate chamber that that should not be the case. Our party’s opposition to mandatory detention is well known and it is consistent. It is appropriate to point out that it is a regime that was brought in by the then Labor government. It is something that the Democrats opposed at the time, and we continue to oppose it.

The principle of indefinite detention for administrative purposes is very dangerous. That point needs to be made. It is something that I suspect a lot of people do not realise. People are locked up—and we can have semantic arguments about whether or not it is a jail, but people are detained in a jail-like environment; certainly the detention centres in Australia that I have been to are jail-like environments—for prolonged periods of time
without even a clear release date. They are put in that situation—in most cases, anyway, in terms of asylum seekers—without any charge being brought against them, let alone being convicted of any crime. That can continue on because it is deemed that that detention is for administrative purposes necessary for processing their claim and resolving their status as an unlawful noncitizen. It has also been held that that detention is not punitive, which is an extraordinary finding given the evidence about the harm that is caused.

Perhaps the government did not like the court decision that rendered invalid their view of section 196. I do not like the court decision that determined that mandatory detention is legal. Neither of us on every issue gets the court decisions that suit our personal policy views and that we like. It is worth noting in the current context of this debate that there are challenges before the courts at the moment about the constitutionality of detention, particularly in relation to the constitutionality of children. The argument that is before the High Court at the moment is that administrative detention of indeterminate length, at least in relation to children, is not reasonably capable of being seen as necessary. We will see what happens with that. Either I or the minister will not like the decision, but I certainly hope that it finally pokes a significant hole in what I see as the legal fiction that keeps afloat the whole notion of indefinite mandatory detention that was put in place by the former Labor government over 10 years ago. It will be interesting to see what the flow-on is from that.

In stating that, of course, I am sure the minister would say—and has said a number of times, quite rightly—that this government has done more than the previous government to address some of the community concerns about children being in detention. There have been a number of children released from detention—certainly from the higher security detention centres in various parts of Australia—over the last few years. The Democrats welcome that—I try to take an approach of acknowledging any movement forward, even where it does not go as far as we would like—whilst obviously still indicating our view that nobody should be in indefinite mandatory detention unless there are clear security or health risks involved and that that sort of decision should be one that is assessable by a court.

Normally, if you ask people in the community, ‘Who should have the final say as to whether or not somebody ends up in jail and stays in jail?’ I suggest that nine times out of 10 they would say that they would prefer that that be decided by a judge rather than by a politician. That is not a politician-bashing answer; it is simply a statement and a reinforcement of why we have a separation of powers in Australia and why we do not do things like elect judges. We believe that, overall, it is best to have a situation where the independent arm of our system of government—namely, the judiciary—determines an appropriate outcome of an individual situation based on all the evidence before it and includes whether or not it is appropriate for somebody to remain locked up.

Obviously, it does so in the context of the laws that are passed by the parliament of the day. The role of this chamber, of course, is to determine what those laws are. Certainly the Democrats will not come at a law that enables ongoing, indefinite administrative detention of people. If there is a valid argument to be put that someone’s detention is unlawful and the court deems it appropriate or satisfactory that somebody be released in the interim then, frankly, as I said, I would rather that decision be made by the courts. That does not mean the courts always get it right either, but I think they have a better strike rate, quite frankly.
I will give an example that, sadly, is not going to be affected by this bill, because it has already been addressed by the bill that was passed last year. When we talk about people in detention or facing criminal deportation or character concerns that are now already covered and are not able to be released in an interim way, people hear that and think, ‘Criminal deportation—bad guys, we don’t want ‘em.’ I fully understand that, but if people became more aware of some of the individual circumstances where people are faced with criminal deportation from Australia—and in saying this I am certainly not saying we should not do it—they might think differently. I certainly have been involved with some cases where I think there has been a great injustice and an excessive, unnecessary and harsh punishment has been applied to a person who may have committed a crime but who has been convicted and served their time for that crime and then pays a second and, in many ways, much harsher penalty—in effect, long-term if not permanent exile from Australia—as a consequence.

There is a case I am dealing with at the moment of a person from a Middle Eastern country who has been in Australia from a very young age—I think about four or five and certainly less than 10. He does not speak his native language anymore and all of his immediate family is in Australia—brothers, sisters and parents. He is married and has four children—two step-children, I think, and two children with his current partner. That person was put in jail for offences relating to drugs—I am certainly not arguing about that—was convicted, was sentenced, served his time and was released. He was then grabbed and put back in jail—it is called ‘immigration detention’, but it is immigration detention in a jail—awaiting deportation. He has been in there well over a year now with a number of appeals to do with his deportation. He was initially successful, lost on appeal and there is further action pending.

I have raised this case with the minister. I am not trying to engage in a debate on the merits of this particular case. I use it purely as an example that these things are not black and white. Even in areas that might seem straightforward, like criminal deportation, a person who has served their time for their crime and has then been faced with a second penalty of, in effect, potentially permanent separation from family—from their children and from all of their family here—and put back into a country where they do not speak the language anymore and do not even have a great number of immediate relatives seems like an extremely harsh punishment, particularly when you could quite reasonably say that anything that is perhaps wrong with that person’s character, given that they have been in Australia for virtually all of their life, is much more the responsibility of Australia—in as much as you can blame society—certainly much more so than the country that we are trying to deport them to. If someone has been in Australia for 30 or 40 years, sure, they were a bit foolish not to become a citizen, but to then send them back to a country that they left when they were aged four or five is something that I do not believe should be done lightly. My personal view in this case—and obviously it is before the courts as well, so we will see what they determine on that one—is that it is too harsh.

That is under another section of the act that was also passed in the Senate some years ago, which was also opposed by the Democrats, and is another example of the injustice—or the harsh justice, to put it in the nicest possible way—that can already be visited on people as a consequence of some of the decisions that we make in this chamber. Of course, it is not even the person that is being deported that is the biggest victim
there, I would suggest; it is the children who are about to be made wards of the state in Queensland. Those of you who are aware of some of the publicity about the treatment of wards of the state in Queensland in recent years would not necessarily think that that is something that would fill anybody with confidence that they are necessarily going to face a positive future under the care of the department, particularly given that the children are part Aboriginal. But perhaps the state government will be successful in reforming things there dramatically. I certainly hope they are.

That is simply an illustration of the sorts of things that can be visited on people. What the Democrats are saying in relation to the specifics of this bill is simply, ‘If the court decides on all the evidence that it is appropriate for somebody to be released from immigration detention pending a court decision, then let them do it.’ We have already dramatically reduced the jurisdiction and scope of the courts in the migration area. If the government had had its way, it would be even more restricted.

I can understand the government being frustrated when the court makes decisions which it does not like. It seems as though the longer a particular party is in government, the more their frustration grows and the more they feel that they should be able to do what they like untrammelled. It is fairly similar to the level of frustration that governments have with the Senate. The longer they are in power, the more frustrated they become when the Senate does not allow what the government would like to happen. But that is the role of the Senate and it is the role of the courts. It is called checks and balances, proper scrutiny and weighing up the arguments.

Certainly, whilst I understand the government’s arguments, from the long-held policy positions and views of the Democrats, it is not a position that we can support. We do not support mandatory detention. We do not support widespread, unilateral, ongoing, long-term migration administrative detention without any review by the judicial system. People who are going to be imprisoned for a long period need to have some scope for an independent judicial review of the decision to keep them imprisoned or detained or whatever phrase you would like to use. Therefore, by a simple follow-on of our position, further restricting the scope of the courts—removing one of the very small areas where they do currently have scope to consider whether or not somebody should remain in immigration detention—is not something that we are of a mind to support.

Pending future High Court decisions, this could well be an area—and I hope it is an area—that requires revisiting by the Senate. If we were to revisit it, it would mean that some of those High Court decisions have put holes in the detention regime, whether or not it is the case relating to the constitutionality or otherwise of ongoing detention of children, whether it is the Al Masri principle—which eventually will be challenged in full before the High Court and a determination made—or whether it is aspects of the other case before the court to do with the definitions of citizenship in relation to children born here. There are important matters of law being considered by the courts at the moment that in part overlap this area. The Democrats would not be of a mind to reduce the court’s oversight and scope in relation to releasing people from migration detention. We are certainly not going to do it at a time when there are very significant matters going in part to the heart of this issue of detention and with High Court judgments pending as they are at the moment.

This is an area in which the Democrats have been consistent. As I have noted a
number of times, the regime of mandatory detention, including detention of children, was introduced by the Labor Party when in government. It has since been expanded upon in most respects by the coalition government. I welcome the fact that there has been some movement from the government in relation to detention of children in some respects and I encourage them to go further. I welcome the fact that there has been movement from the ALP in relation to their policy on detention, which seems to me to be a shift away from mandatory detention while still retaining the term ‘mandatory detention’. In any case, it is clearly a shift in what the Democrats believe is a positive direction. I encourage further movement in that regard.

I am pleased to see the ALP are holding to their position from last year in relation to this issue. I do know that it is a difficult issue politically for them. I think it has to be acknowledged that it is something that is not as easy as sometimes people on the cross-benches might like to make it sound. I acknowledge that the government have moved somewhat, no doubt for a range of reasons, but at least in part because of concern about the impact that detention has on children. I think that they should recognise that the courts also have some wisdom to bring to the matter. I believe that the power should be retained with them, regardless of whether or not they were correct in their interpretation of section 196 as it may have been viewed originally by the parliament. I hope it is the view of the Senate now that it should not operate in the way of removing that power from courts.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (9.41 p.m.)—I thank senators for their contribution to the debate on the Migration Amendment (Duration of Detention) Bill 2004 and, in particular, Senator Bartlett for pointing out what section 196 says, for admitting that he too looked at it and thought it was as clear as a bell and for showing great compassion in understanding the government’s frustration with something that he admits on its plain reading is very clear. Senator Bartlett also cited the point that the court said that parliament has not made its intention unmistakably clear. That is the very purpose of this bill, to make it unmistakably clear. I understand that Senator Bartlett also wants to make it unmistakably clear, unfortunately in a way which is diametrically opposed to the government’s view, but at least I clearly understand his position.

Question put:
That the bill be now read a second time.

The Senate divided. [9.47 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes……….. 30
Noes……….. 33
Majority…… 3

AYES
Abetz, E. Barnett, G.
Boswell, R.L.D. Calvert, P.H.
Campbell, I.G. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Ferris, J.M.*
Heffernan, W. Humphries, G.
Johnston, D. Knowles, S.C.
Lightfoot, P.R. Macdonald, I.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.J. Patterson, K.C.
Payne, M.A. Santoro, S.
Scullion, N.G. Tchen, T.
Tierney, J.W. Troeth, J.M.
Vanstone, A.E. Watson, J.O.W.

NOES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Bolkus, N.
Brown, B.J. Buckland, G.
Campbell, G. Carr, K.J.
Cherry, J.C.            Collins, J.M.A.
Conroy, S.M.            Cook, P.F.S.
Crossin, P.M.           Evans, C.V.
Faulkner, J.P.          Forshaw, M.G.
Greig, B.               Hutchins, S.P.
Lees, M.H.              Ludwig, J.W.
Lundy, K.A.             Mackay, S.M. *
Marshall, G.            McLucas, J.E.
Murray, A.J.M.          Nettle, K.
Ridgeway, A.D.          Sherry, N.J.
Stott Despoja, N.       Webber, R.
Wong, P.                * denotes teller

PAIRS

Brandis, G.H.           Hogg, J.J.
Hill, R.M.              Denman, K.J.
Kemp, C.R.              Stephens, U.
Minchin, N.H.           Kirk, L.

International Women’s Day

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (9.50 p.m.)—Today, 8 March 2004, is International Women’s Day. Earlier today in the Senate chamber I gave notice of a motion noting that today is International Women’s Day. I would particularly like to reflect tonight on the status of rural women, for whom I have ministerial responsibility. In Australia, 70,000 women define themselves as farmers or farm managers. They represent 32 per cent of Australia’s farm work force. Women are the primary providers of off-farm income to farming families and they perform 81 per cent of off-farm work. These women contribute an estimated $14 billion to the economy, and that comprises on-farm work, off-farm work, unpaid household work as well as volunteer and community work. But, despite the pivotal role that women play in agricultural and resource management sectors, their work and, indeed, sometimes the women themselves are largely invisible.

Since taking over responsibility for this part of the portfolio over two years ago, I have embarked on several initiatives which I believe ultimately will raise the profile of rural women and encourage them to become part of the decision-making processes in their industry. Firstly, the government has always supported the Rural Industries Research and Development Corporation Rural Women’s Award, which is comanaged with state governments. And each year there are seven winners of that women’s award at a state level and also, at the same time, 12 winners of industry partnerships scholarships, on which I will elaborate in a moment. Supporting the Rural Industries Research and Development Corporation Rural Women’s Award, which is designed to recognise and encourage the vital contribution women make to rural Australia, means that in some three weeks time I will be holding a reception here in Parliament House to showcase their expertise and innovation. As well, we have encouraged and supported women’s participation as speakers and chairs, particularly at events like ABARE Outlook and regional Outlook conferences which are held throughout regional Australia.

Secondly—and this I regard as very important—we have been working with industry and community organisations to ensure that women are included in consultation and decision making and are supported to become industry leaders. We have helped industry and four national rural women’s non-government organisations to build partnerships through providing workshops and funding under the Building the Future, Sharing the Work initiative.
Thirdly, we have formed partnerships between the Department of Agriculture, Fisheries and Forestry and 12 rural research and development corporations to run what are called Industry Leadership Corporate Governance for Rural Women initiatives, and we sponsor rural women to develop their skills, their knowledge and their networks to enable them to take a more active or representative role in their industries. The way we have done this is by providing Australian Institute of Company Directors courses, and training and mentoring by industry leaders for 12 women under the industry leadership program. Twelve women are chosen by corporations in the industry in which they work to do the Institute of Company Directors course and then be mentored around the industry in the following 12 months.

We also provide bursaries and a place on that Institute of Company Directors course for the seven state and territory winners of the Rural Industries Research and Development Corporation’s Rural Women’s Awards, to which I referred earlier. When industry leaders come to me and say, ‘We would love to put women on industry boards but we simply cannot have any because we do not know of any—there aren’t any out there,’ I can say to them, ‘At the end of this year we will have 12 women very well qualified to take their place as leaders of industry.’ At the end of two years there will be 24 women, and so on.

We have also supported the national rural women’s non-government organisations to enhance their ability to provide leadership roles. For instance, we have made sure that those non-government organisations have met with senior executive officers in our department on the outcomes, for instance, from the National Rural Women’s Coalition called Managing Drought, Managing Solutions forum, which was held in Dubbo in September 2003. We have also encouraged women and their non-government organisations to provide comments and suggestions on Australia’s national drought policy via submissions to the drought review panel, which will shortly be presenting its recommendations to government.

The initiatives I have just spoken about largely refer to women aged 36 and over because there are separate programs catering for younger women and I particularly wanted to cater for those women whose household responsibilities are perhaps in the past and who now feel able to take a wider role in industry. We also have a range of programs for women aged 18 to 35 under our Young People in Rural Industries program. Certainly we provide leadership training to 20 young women under the young rural leaders course which is aimed at improving confidence, leadership, communication and interpersonal skills as well as initiative and involvement in industry issues. We also provide 13 young women with training under the Young People in Rural Industries export market development training course aimed at building awareness of the value of Australian agribusiness exports and providing them with the knowledge, skills and networks they need to move into exporting.

We provide three young women with funding under the Young People in Rural Industries study awards to undertake a study project, such as an overseas study course, attend a conference or undertake a specific study project. Lastly, we provide a place on the Australian Institute of Company Directors course to six young women under the young people’s corporate governance scholarship to develop the skills necessary for them to become a member of an industry committee, organisation or board.

Several of my colleagues have pointed out to me that they wish we ran similar men’s courses. But I can tell you, Mr Acting Dep-
uty President, that after spending a large part of my life moving through the agricultural industry I know that the number of rural women engaged in leadership and in leading their industry on to more profitability, sustainability and competitiveness is still badly lacking. What I have tried to do through these initiatives is to provide women with the opportunity, if they want it, through a variety of doors that are now open to them, to gain the skills that they need to provide industry leadership. We should never forget that there are still hundreds and thousands of women who prefer to play their role back on the farm or back in the country town and provide leadership where it is needed at that local level. Today I particularly wish to acknowledge their contribution, too. What we all need to do is to work harder at these initiatives so that rural women can take the place in the world which they should be accorded.

International Women’s Day

Senator MACKAY (Tasmania) (9.58 p.m.)—I congratulate Senator Troeth on her speech. On the same matter, I would like to be standing here today joining with other women around Australia and around the world celebrating International Women’s Day 2004. Unfortunately, I feel that, whilst there is still much about women’s lives and achievements to celebrate, there is a pall over this year’s International Women’s Day. That pall is in the shape of the Prime Minister and his government, who have been systematically destroying many of the gains women have made in this country.

That destruction is a result of inaction on the part of this government to pursue programs aimed at allowing women to fully participate in the life of this nation and to realise their full potential as individuals and of the deliberate defunding and removal of programs that existed to assist with achieving those goals. The most recent example of what I am speaking about is the decision taken by the Prime Minister’s ‘gang of four’ not to run the advertisements the government spent $2.7 million to produce which are aimed at preventing violence against women. This decision comes on the back of the redirection of $10 million in 2002 from programs to address violence against women to the Prime Minister’s antiterrorism fridge magnets.

There remains, for Australian women, a much greater threat of injury or death from criminal assault in the home or from other forms of assault by their fellow citizens than from terrorism—not to mention fridge magnets. In 2002 about 63,000 women reported assaults to the police. Accepted wisdom suggests this is probably around 10 per cent of the actual number of assaults, which gives us about half a million women a year who are victims of assault. Despite the many gains that Australian women have made, how can women ever be free to realise their full potential when the constant threat of violence is hanging over their heads?

Despite these appalling statistics, for some reason a committee consisting of three male government MPs and Mr Howard’s male private secretary have made the decision to shelve a campaign aimed at addressing this issue. This well-researched campaign—I think initially it was a good campaign—was aimed at preventing this violence by targeting the attitudes of young people. This contrasts with many other important strategies to address violence which are ‘end stage’ strategies aimed at getting women to report assaults and imposing criminal sanctions against perpetrators.

I do not know why the ‘gang of four’ decided to can the campaign. Senator Abetz is here in the chamber; he might enlighten us. Mr Howard has made some comments suggesting he would rather see the advertise-
ments refer victims of assault to the police, their priest or someone else to talk about the issue rather than direct them to a web site. I find that astounding. This preventative campaign was directly targeting the attitudes and values around violence; it was not aiming to tell women what to do once they had been assaulted, although I am sure the web site would have provided that information. The irony of Mr Howard suggesting that victims of violence go to their priests frankly leaves me nearly speechless given what we discovered happened to the young people and their families who turned to our last Governor-General, Archbishop Hollingworth, for help.

But I digress. It has also been suggested that the all-male committee—which, I should point out here, included Tasmanian Liberal Senator Eric Abetz, who is here in the chamber and who I think was there in a ministerial capacity—thought it unfair that the ads portrayed men as the abusers and women as the victims. Unpleasant as that may be, unfair or untrue it is not. Some will have us believe that women commit violence at rates similar to men, but they will usually rely on the work of Martin Fiebert to support such claims. Fiebert’s ‘research’ has been dismissed by most scholars as it allegedly takes selected numbers out of context and makes claims that are in opposition to those of the authors of the original studies. As Dr Michael Kimmel, sociologist and author, says: Fiebert’s (1997) scholarly annotated bibliography thus turns out to be far more of an ideological polemic than a serious scholarly undertaking.

The fact remains that men are much more commonly the perpetrators of such violence.

Where does all that leave us? We have a campaign addressing attitudes to violence against women being canned by a group of the Prime Minister’s male friends on spurious grounds—grounds that we are still not sure of. We have had these preventative ads canned despite a recent study of 5,000 young Australians aged 12 to 20—quoted in Dr Michael Flood’s article in the Sydney Morning Herald on 3 March—which showed that one in six young men agreed with the statement, ‘It is OK for a boy to make a girl have sex with him if she has flirted with him or led him on.’ That is the sort of attitude that this campaign was targeting and that is why it is so urgent that those ads get onto our television screens as soon as possible.

It is time for the Prime Minister to take a lead on this issue. I know the Prime Minister does not personally condone violence against women, but his silence over this issue—and, I must say, his comments on the alleged assault of a woman by six Rugby League players—does not set a great example. As more and more evidence emerges about the culture of violence against women that exists in Rugby League, the Prime Minister—as reported in the Sydney Morning Herald on 4 March 2004—asks us not to judge the game on the alleged behaviour of a few players. What the Prime Minster should have been doing was loudly condemning all violence against women and expressing his horror at the suggestions that this alleged incident may be part of a sporting culture that actively encourages such behaviour. He should have been making a commitment to address this as a matter of urgency.

We need a Prime Minister who will take the lead on this, who will tell his fellow men that violence against women is wrong whenever and however it takes place, who speaks out against violence perpetrated in the home, who says it is not okay for men to buy or take women’s bodies for their own use and who says that men must not abuse their power. We need a Prime Minister who genuinely believes that men must share their power with women and who works to change the structures that privilege men over women.
As I said at the start of my remarks, it does not feel as though there is too much to celebrate this year on International Women’s Day. The issue of the ads is but one of many, many examples of how this government has failed Australian women. Despite the Prime Minister’s promise at the last election, we have seen nothing aimed at assisting women to better balance work and family responsibilities. We have money diverted from campaigns aimed at preventing and addressing violence against women. We have the fridge magnet campaigns—$10 million worth. We have a refusal to introduce paid maternity leave. We have an increasing gap between the wages of men and women. We have decreased funding per child-care place. We have had an attempt to abolish the office of Sex Discrimination Commissioner. We have the failure to commemorate the 100 years of women’s suffrage, despite 100 years notice of the event. And we have the bland and chilling statement on page 45 of the budget papers of the Department of the Prime Minister and Cabinet ‘Women’s programs end in 2004-05’. Australian women deserve better.

Heath, Mr Jeff

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.06 p.m.)—Tonight I would like to put on record my appreciation for the contribution of a long-serving member of the Australian Democrats who passed away yesterday. His name was Jeff Heath and he was also very well known as an activist in the area of disability. He had a significant disability himself but, having known him in various ways over a number of years through his work in the Australian Democrats, he was certainly the perfect example of a person who never let any of those disabilities get in the way of living a full and very comprehensive life. He made a significant contribution in many areas of the community.

He had a number of senior roles with the Democrats, which I will touch on briefly. He was a representative for South Australia on our national executive and was our national journal editor. He was a candidate for us in the state electorate of Norwood way back in 1982 and then again as recently as the last federal election was No. 2 on our South Australian Senate ticket under our then leader Natasha Stott Despoja. From that very brief and very incomplete summary of his involvement with the Democrats, one can see that he was somebody involved for a long time in many ways. He had the support of many in the party to play significant roles, and he certainly performed those roles effectively. He also had, I am sure he would say, the privilege of being a partner to Yvonne, who is a marvellous person in her own right, and he also had a 21-year-old daughter, who I know is much loved by them both.

Whilst Jeff had to step down from his role as our national journal editor last year because of the onset of significant illness and a diagnosis of mesothelioma, it is my understanding that his death was rather more sudden than expected. Even though when he got that diagnosis he stepped back from some of his formal positions, such as that on the national executive and as national journal editor for the Democrats, he could not help himself and was still involved. I saw him at a number of functions in Adelaide towards the end of last year and also saw him here in Canberra in Parliament House in the final sitting week of last year. He was still meeting with government officials and trying to lobby to get issues addressed on behalf of the disabled. This was an area where he was very effective and very committed over a very long period.

Even though he was in the Democrats and proud to be a Democrat member, he did not constrain his lobbying activities just to the Democrats. He urged all parties, all people in
the community and all organisations—indeed, Democrat MPs alongside other members of parliament—to have a greater understanding and better recognition of issues affecting disabled people and to ensure that the disabled were not forgotten, as they so often are. Perhaps a good example of the spirit of Jeff can be measured by his activities in the 1970s. Back in those days, wheelchair users rarely ventured far from home. He showed his real spirit by hitchhiking in his wheelchair around New Zealand. He travelled to Japan, where he taught English, featured in a TV documentary on disability in Central America, drove a motorhome across the USA and wrote a book on disability in the Pacific islands.

As well as his role in the Democrats, he had many other achievements. He was a recipient of an Order of Australia in January last year for service to people with disabilities and as an advocate for improved services and through the publication of *Link* magazine, which he and his partner Yvonne managed as their own business. He was a pioneer in the disability and advocacy field in Australia and was so recognised through his award of the Order of Australia. As I have already said, he was an author and commentator internationally as well as in Australia. He was a successful small business man and a paralympian in archery in the 1976 Paralympics. He was an ambassador for the yes vote for the constitutional referendum on the republic. He was also, beyond disability issues, passionate about and committed to home based care and support for carers; improved compensation for the extra costs of disability; more satisfactory education, work training and options for people to be volunteers; and a strong advocate not only for accessible housing for disabled people but also for energy efficient housing and flexible housing able to accommodate the changing nature and needs of Australian families. He was a strong supporter of an independent and financially strong ABC. He was a supporter of transport and urban design and also followed foreign aid and foreign affairs issues.

He is somebody who, in many ways, is able to be held up as an inspiration to many people. He certainly will remain so to many people in the Australian Democrats. He had a very cheerful disposition. He was always speaking positively and supportively. I appreciate the support he expressed to me during the brief difficulties I had towards the end of last year. He reminded me that there are important issues that we need to keep focused on and that we should not get distracted by other less significant things. He certainly did not get distracted by inconveniences but focused on the important issues that needed to be addressed. He continued to work tirelessly for those issues, even at times when his illness would have suggested that he might step back a bit.

As well as the Order of Australia that I mentioned earlier, Jeff held a range of different awards and positions—and I will not list all of them. Even back as far as 1972 he was awarded the Queen Scout Award, a Rotary youth leadership award, a Churchill Fellowship, other Rotary awards and an award for outstanding services to the non-profit industry. He received a human rights award for his *Link* publication—which focused on disability issues—and also received a health and wellbeing award from MBF for the same publication. He was ambassador for South Australian tourism and a torch bearer in the Paralympic torch relay for Sydney 2000. He was selected to lead Australia’s first street march for people with disabilities in Sydney in 1981. He was active in the establishment of a disability information and resource centre and of radio for the print handicapped, a resource that is still of great value to many people around Australia.
It is clear even from that incomplete summary that Jeff Heath led a very full and effective life, a life that touched a lot of people and a life that has improved things for many people. His contribution to the Democrats will be missed, not just for the specific tasks he performed—tasks that I am sure we all appreciate in the organisational wing of parties, where we rely a lot on the goodwill and the long-term efforts of volunteers—but equally, if not more, for his friendly disposition and his continual desire to focus on the positive. My very sincere condolences go to his partner, Yvonne, and his daughter. I know he will be greatly missed. I speak on behalf of all of the party membership in recognising his contribution and in giving our condolences to his partner and daughter and wishing them well at this difficult time.

United Nations: Australian Parliamentary Delegation

Senator KNOWLES (Western Australia) (10.15 p.m.)—Last year my colleagues and the parliament extended to me the privilege and the opportunity of attending the United Nations General Assembly in New York. Strangely, there is no compulsion for us to submit a written report on this experience. However, the Hon. Warren Snowdon and I provided a report to the Minister for Foreign Affairs at the conclusion of our visit. We also provided a copy of that report to the President and to the Speaker. To have had the honour and the privilege to experience firsthand the United Nations at work—the General Assembly, the committee system and the vital role the Australian mission plays in the process—is something I will cherish for a very long time. However, the purpose of my contribution this evening is not to re-run the written report Mr Snowdon and I have submitted but to recognise and thank, on the parliamentary record, all those who made the time in New York so informative and thoroughly enjoyable.

If you were to hand-pick a group of people with whom you would like to associate for three months, you could not pick a nicer or more competent group of people than those in the Australian mission. The head of mission, Ambassador John Dauth, leads a group of outstanding professionals. He was terrific in the way in which he gave us total access to all his staff, involved us in the staff meetings and generally ensured that we were able to be on top of things, as much as possible, on a daily basis. The deputy head of mission, Peter Tesch, was extremely generous with his time whenever it was required in explaining the nuances of the UN in more detail when certain things or issues became something of a maze—and I can assure you that that happened quite often.

My comments about the remainder of the staff are not in any particular order of seniority. I cannot thank Fiona Guthrie enough for being our guardian angel. Especially in the early days, I am sure we could quite easily have sunk without trace in a place like the United Nations and New York without Fiona’s wise counsel and terrific sense of humour. I make special mention of Patti Robinson, who is the PA to the head of mission. Patti has worked in the mission for some time and willingly shared so much of her knowledge and so many of her jokes.

The staff who are responsible for the work of the committees were nothing short of brilliant—tolerant and accepting of the fact that we did not know the finer details of the United Nations. Bassim Blazey, Colonel Steve Jones, Mark Palu, Paul Stephens, James Choi, Jessica Thorpe, Rebekah Grindlay, Michael Bliss, David Dutton, Squadron Leader David Potter, Lisa Brice and Simon Crafter were absolutely fantastic in explaining the roles of the committees, the way the committees interacted with the General Assembly and the subject matter of each committee’s consideration. Many of those
girls mentioned are very good singers too—and they would know what I mean.

In addition to these professionals were others who completed the team with great aplomb: John Stanley; Kelvin Birrell, who is almost an institution in the Australian mission—he has been there for many years and it was an extremely interesting experience to have the opportunity to talk to him about much of what he has seen and experienced over those years; Robyn Sunderland; Barry Chapman and Natalie Ellengold.

The efforts of Federal Agent Richard Moses and his wife, Nova, in ensuring that we gained a comprehensive understanding of the issues surrounding security and policing in New York could not have been better. That was on top of the role Richard plays as the first Australian Federal Police representative at the United Nations. Their assistance in organising a fantastic program in Washington DC with federal agents Kevin Zuccato and Stephanie Taylor, as well as Customs briefings done with the aid of Theresa Conolan and Justin Wickes, was first-class.

No list of thanks could be complete without including Australian Consul General Ken Allen, his deputy, Bob Witynski, Consul Samantha Callinan and all the staff. We were advised of, and included in, much of what the consul general did for Australians abroad, which provided a comprehensive insight into Australia in New York. It was amazing to see just how many Australians are in New York and going through New York for a variety of reasons. There were outstanding actors, singers, pianists, painters and other kinds of artists who were really starting to make their mark in an international sense. It was a wonderful thing for an Australian member of parliament to be able to see just how well our own young people are doing overseas. Special thanks go to Rene Reinhard for his organisational skills and his valuable contacts.

From a hospitality standpoint it is hard to know where to start. The generosity of hospitality extended to Mr Snowdon, Michelle White and me was breathtaking and utterly memorable. People went far beyond what one would ever have thought or hoped in their wildest dreams could be extended by way of hospitality. The ambassador, John Dauth; Peter Tesch and Mark Rose; Fiona, Graham, Maddie and Bella Guthrie; Steve and Soudi Jones; Samantha and Martin Callinan; and, in Washington DC, Kevin and Trish Zuccato and their family Joel, Kyle, Megg and Kate, and Stephanie Taylor—I want them to know that all they did to make the after hours as fantastic as the work hours is greatly appreciated.

I could not, of course, conclude my thanks without again mentioning Federal Agent Richard Moses and his wife, Nova, and Bobby—otherwise known as ‘Bad’. I know we have probably saddled them with a nickname that may prove to be a pest but all they did to ensure our time in New York was as fulfilling and fun as it was will be very fond, lifelong memories. Their ability to be able to engage other people and to involve us certainly brought about a great friendship that will be cherished, I am sure, forever. Their Thanksgiving contribution on the day of Thanksgiving—the lunch on Thanksgiving, of course, is something that we do not experience here in Australia—was a first time for Richard and Nova as well. They really turned it on and they included us, for which we are eternally grateful. I want to thank Mr Warren Snowdon, the member for Lingiari. He was terrific to work with every day for three months. He was supportive and great company. Warren: I would just like to say a huge thank you.

Finally, I would like to say to DFAT, the Department of Foreign Affairs and Trade, that they should be proud of all the team that Australia has at the United Nations. I think
that Australia is served very well by a diplomatic team that is young and enthusiastic. I was struck by the relative youth of so many of the diplomats over there and the level of responsibility that they carried. Their ability to be able to be across so many subjects and to be able to get their briefings overnight with the time difference from Canberra to New York and to be able to translate those into action the next day was something of which we can all be very proud. They are a true indication of the quality of the Australian Public Service.

Ministerial Reply

Senator ABETZ (Tasmania—Special Minister of State) (10.24 p.m.)—In the few moments left I will seek to try to set the record straight in response to the ill-informed contribution by Senator Mackay during tonight’s adjournment debate. Her comments about the proposed domestic violence campaign confirm that ignorance will not stop her from entering any debate. Domestic violence is abhorred by all of us.

Senator Sherry—All of us who are listening and there are not too many!

Senator ABETZ—Some seek to joke about it and some give speeches and think that they have made their contribution. I was very pleased to have been able to be involved in the establishment of a women’s shelter prior to my entry into this place, donating my services as an honorary legal adviser and a committee member over many years. I simply indicate that when you have worked in the area of seeking restraint orders for and on behalf of many women who have been the victims of domestic violence you realise that it is not a topic that you would seek to make cheap political capital out of. Nor would you choose to seek to demean it by bringing it into this arena in the way that Senator Mackay has.

One of the things that Senator Mackay seemed to ridicule was the fact that only a web site was referred to. It might be all very well for those of us with a good education and the financial capacity to have computers at home and to be online—and I accept that domestic violence is across all the sociodemographic areas within our community—but for a lot of the people especially within a particular cohort in the community it would be fair to say that giving somebody access to an Internet site would not necessarily be a very sensible or fulsome way for them to deal with a threat or the actual delivery of physical violence.

The other great irony is that whenever we as a government seek to run an information campaign, who are the first people to condemn it? None other than the Australian Labor Party. They come into this place forked-tongued asking us to spend more money and they then go out into the community and say, ‘We will spend less and we will make government savings.’ You cannot have it both ways. Here again tonight the Australian Labor Party in typical flip-flop fashion suggest that they can somehow urge us to run a campaign whilst behind their hands they give background briefings to the media saying that of course if they were in government they would be cutting out these campaigns because they are political and they are such a terrible waste of money. We happen to believe that domestic violence is a genuine problem within this community. It is a real problem that we as a government are dealing with. The Minister for Family and Community Services, Senator Kay Patterson, gave a very good answer today in question time in relation to this matter and it is quite obvious that we as a government have a long-term commitment on this vital social issue. We do want to see a change in social attitudes and social behaviour. I simply indicate that for Senator Mackay on this particular day to
seek to make cheap political capital out of this issue—

Senator Mackay—Why did you can the ads?

Senator ABETZ—Senator Mackay, in a very disorderly fashion—some might even say unladylike fashion, but I won’t—

Senator Mackay—I’m going to tell Senator Ferris!

Senator ABETZ—seeks to interject. We have not canned the ads. We have deferred them and a campaign will be run. You can be assured of this: when the campaign is run Mr Latham will be out there condemning it as a waste of taxpayers’ money and saying that he will be cutting the funding to it. If they support the campaign, it behoves Senator Mackay and the Australian Labor Party to come out and say whether they support the Tough on Drugs campaign, whether they support Defence Force recruitment campaigns, whether they support citizenship campaigns et cetera. They will not come out and say that because they know that if they were in government they would have to run campaigns of a similar nature. So all they ever do is attack the global budget. We as a government are committed to fighting domestic violence, and Senator Mackay has belittled herself and the Labor Party in her comments tonight.

Senate adjourned at 10.30 p.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:


Class Ruling—

CR 2003/84 (Addendum).
CR 2004/19.

Goods and Services Tax Determination

GSTD 2004/1.


Superannuation Act 1976—


QUESTIONS ON NOTICE

The following answers to questions were circulated:

Fisheries: Patagonian Toothfish
(Question No. 1979)

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; 2001-02 and 2002-03: what was the estimated illegal catch of Patagonian toothfish and other fish species taken from the Heard and McDonald Islands region.

(2) For each of the following financial years; 2001-02 and 2002-03: what assessment has the Government made of incidental mortality, including marine species and sea birds, resulting from this illegal fishing activity.

Senator Ian Macdonald—The answer to the honourable senator’s question is as follows:

(1) The estimated illegal catch of Patagonian toothfish for fishing season 2001-02 from the Heard and McDonald Islands (HIMI) region was 3489 tonnes.

The estimated illegal catch of Patagonian toothfish for fishing season 2002-03 from the HIMI region was 1512 tonnes.

(2) The Australian government has input into the calculation of incidental mortality of sea birds and mammals. Representatives of the Department of the Environment and Heritage sit along with other Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) member country experts on the Commission’s working group on Incidental Mortality Associated with Fishing.

Drugs: Research
(Question No. 2436)

Senator Allison asked the Minister for Justice and Customs, upon notice, on 1 December 2003:

With reference to the answer to question on notice no. 2184 (Senate Hansard, 24 November 2003, p 17764/65): Given that the Government advised that it had commissioned research into the economic drivers of the drug market and illicit drug marketing strategies: (a) when was the research commissioned; (b) when is the report due to be tabled in Parliament; (c) what was the cost of the tender(s); and (d) who is the successful tenderer.

Senator Ellison—The answer to the honourable senator’s question is as follows:

I am advised that the Federal Government has commissioned research into drug market and illicit drug markets through the following mechanisms and organisations:

Drug Use Monitoring in Australia (DUMA)

(a) The Australian Institute of Criminology (AIC) is funded through the National Illicit Drug Strategy to conduct the Drug Use Monitoring in Australia (DUMA) project. An addendum to the research on drug dealing and drug markets was conducted during the 3rd quarter of 2002.

(b) The DUMA Annual Report 2002 contains information about the addendum findings. DUMA commenced in 1999 and publishes annual reports which are publicly available. Reports are not tabled in Parliament.

(c) Funding was provided for DUMA in the 2003/04 budget at $1.1 million per year over four years.
(d) There was no tender process. AIC was commissioned to undertake the project to examine the relationship between criminal activity and drug use and to monitor drug markets in the DUMA catchment areas with an emphasis on the increase or decrease of specific drugs.

Illicit Drug Reporting System (IDRS)

The National Drug and Alcohol Research Centre (NDARC) was established at the University of New South Wales in May 1986 and officially opened in November 1987. It is funded by the Australian Government as part of the National Drug Strategy. NDARC coordinates the Illicit Drug Reporting System (IDRS).

(a) The IDRS includes information on drug prices and availability. The IDRS has been operating nationally since 2000. Previous iterations of IDRS going back to 1996 have been produced for some jurisdictions. The IDRS commenced as a trial of the methodology in NSW in 1996. After the successful piloting of the methodology, it was expanded to three states in 1997, and continued in 1998. In 1999, a truncated version consisting of two methodological components was expanded to the remaining jurisdictions, while the three original states continued the complete methodology, including the IDU survey. In October 2000, the National Drug Law Enforcement Research Fund (NDLERF) made available funding with which to expand the complete IDRS survey to all jurisdictions.

(b) Annual reports are publicly available from the NDARC web site. There is no requirement for reports to be tabled in Parliament.

(c) Funds provided for this initiative in 2002-03 total $460,422 (GST exclusive) with a further $502,327 (GST exclusive) allocated in 2003-04. NDARC both undertakes and facilitates the IDRS on behalf of the Australian Government.

(d) NDARC coordinates the IDRS, but user interviews and other data collection activities are performed by other national centres and jurisdictional research bodies.

The National Drug Law Enforcement Research Fund (NDLERF)

The National Drug Law Enforcement Research Fund (NDLERF) was established in 1999. The Fund is administered by the NDLERF Board of Management, which includes law enforcement agencies from Commonwealth, State and Territory governments and the Commonwealth Department of Health and Ageing. NDLERF is funded by the Department of Health and Ageing. Dissemination of NDLERF reports are considered on a case-by-case basis by the NDLERF Board of Management and are not required to be tabled in Parliament.

All projects are funded as a grant from NDLERF. The only way in which they are differentiated is through the means by which the various projects are initiated. Some projects are initiated on the basis of project proposals formulated by the Board (and are put out to tender), others are initiated once researchers’ project proposals are approved by the Board.

Current projects related to drug markets approved and funded through NDLERF include:

1. The causes, effects and implications of the heroin shortage in NSW, SA and Victoria
   (a) The project commenced in October 2001.
   (b) Draft reports are currently being reviewed by Board members. The method of publication has yet to be decided.
   (c) Final payments have not been made for this project however a total of $407,038 (GST exclusive) has been allocated.
   (d) The project was put out to selective tender. This project was undertaken by a consortium of researchers. State and Commonwealth law enforcement and health agencies have provided extensive support, such as access to data holdings, to this project.

3. Benzodiazepine and pharmaceutical opiate misuse and their relationship to crime
(a) The project commenced in May 2003 and is due for completion in August 2004.
(b) Draft reports are currently being reviewed by Board members. The method of publication has yet to be decided.
(c) The cost of the project is $232,646 (GST exclusive).
(d) This project went to open tender. The project is being undertaken by a consortium of researchers.

4. Cocaine use in New South Wales and Victoria
   (a) The contract for the tender has just been signed and as such the project has not yet commenced.
   (b) Draft reports are currently being reviewed by Board members. The method of publication has yet to be decided.
   (c) The cost of the project is $185,981 (GST exclusive).
   (d) This project went to open tender. The project will be undertaken by a consortium of researchers.

5. The Party Drugs Initiative
   (a) The national Party Drugs Initiative was commissioned in 2003.
   (b) Results from the first national study of party drug trends were published in 2003. The preliminary results of the study were presented at the National Drug Trends Conference on 26-27 November 2003. Detailed state and national reports will be available in early 2004. The reports are not required to be tabled in Parliament.
   (c) A total of $801,224 (GST exclusive) is allocated over two years for this project.
   (d) This project was undertaken by the National Drug and Alcohol Research Centre. No tender process was conducted.

6. The emergence of potent forms of methamphetamine in Sydney
   (a) The project commenced in January 2003. This project aims to develop a better understanding of the availability and use of potent forms of methamphetamine, especially crystalline methamphetamine.
   (b) The final report is expected to be completed by the end of September 2004.
   (c) Funding for this initiative totals $245,781 (GST exclusive).
   (d) NDARC were commissioned to undertake this project. Support is provided by New South Wales Police and Customs. No tender process was conducted.