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

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.31 p.m.)—I move:

That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004, allowing it to be considered during this period of sittings.

Question agreed to.

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.31 p.m.)—I move:

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

- Appropriation (Parliamentary Departments) Bill (No. 2) 2003-2004
- Appropriation Bill (No. 3) 2003-2004
- Appropriation Bill (No. 4) 2003-2004.

Question agreed to.

MIGRATION AGENTS REGISTRATION APPLICATION CHARGE AMENDMENT BILL 2003

MIGRATION LEGISLATION AMENDMENT (MIGRATION AGENTS INTEGRITY MEASURES) BILL 2003

In Committee

Consideration resumed from 22 March.

The CHAIRMAN—The committee is considering the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003 as amended.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (12.32 p.m.)—by leave—I move Democrat amendments (2) to (7), (10), (12) to (14), (25) to (27), (32) and (33) on sheet 4193:

(2) Schedule 1, item 60, page 13 (line 14), omit “and 306AG”, substitute “, 306AG and 306AGAC”.

(3) Schedule 1, item 75, page 19 (line 2), omit “section 306AG”, substitute “paragraph 306AG(1)(a), (b) or (c) or subsection 306AGAC(1)”.

(4) Schedule 1, item 75, page 19 (line 4), omit “section 306AC”, substitute “subsection 306AC(1) or 306AGAA(8)”.

(5) Schedule 1, item 75, page 19 (lines 7 and 8), omit “for disciplinary action”, substitute “to the Migration Agents Registration Authority”.

(6) Schedule 1, item 75, page 19 (line 11), omit “for disciplinary action”.

(7) Schedule 1, item 75, page 19 (line 17), after “must”, insert “consider whether to”.

(10) Schedule 1, item 75, page 21 (lines 17 and 18), omit “for disciplinary action”, substitute “under section 306AC”.

(12) Schedule 1, item 75, page 22 (line 6), at the end of the heading to section 306AF, add, “under section 306AC”.

(13) Schedule 1, item 75, page 22 (lines 9 and 10), omit “to refer a registered migration agent to the Authority for disciplinary action”, substitute “under section 306AC to refer a registered migration agent to the Authority”.

(14) Schedule 1, item 75, page 22 (lines 16 and 17), omit “for disciplinary action”.

(25) Schedule 1, item 75, page 23 (after line 13), after section 306AG insert:

306AGAA Minister may refer agent again if Migration Agents Registration Authority takes no disciplinary action

(1) If the Migration Agents Registration Authority decides not to discipline a registered migration agent under section 306AG the Minister must
decide whether or not to refer the agent to the Authority for disciplinary action under section 306AGAC.

Minister to consider Authority’s reasons

(2) In making his or her decision, the Minister must consider the reasons given by the Authority for its decision not to discipline the agent.

Minister must invite and consider submissions from agent

(3) If the Minister is considering referring the agent to the Authority for disciplinary action, the Minister must give the agent a written notice:

(a) stating that the Minister is considering making such a decision and the reasons for it; and

(b) inviting the agent to make a written submission to the Minister:

(i) in relation to the reasons given by the Authority for its decision not to discipline the agent; and

(ii) on the disciplinary action to be taken against the agent if the Minister decides to refer the agent; and

(iii) on any other matter the agent considers relevant; and

(c) stating that any submission must be made within the period (the objection period) of 14 days after the notice is given.

(4) Before the end of the objection period, the agent may, by notice in writing, request an extension of that period.

(5) The Minister must grant an extension of 14 days if the notice contains reasons for the request.

(6) The Minister must consider any written submission received within the objection period (or that period as extended).

(7) The Minister must also consider any written submission made to him or her under subsection 306AE(1) in relation to his or her decision to refer the agent to the Authority under section 306AC.

Minister’s decision to refer agent

(8) After considering the matters mentioned in subsections (2), (6) and (7), the Minister may refer the agent to the Authority for disciplinary action.

Note 1: If the Minister refers the agent, the Authority must discipline the agent: see section 306AGAC.

Note 2: The Minister’s decision and the Authority’s decision are reviewable by the Administrative Appeals Tribunal: see section 306AJ.

(26) Schedule 1, item 75, page 23 (after line 13), after section 306AG, insert:

306AGAB Notice of referral decision under section 306AG

Notice to Migration Agents Registration Authority

(1) The Minister must give the Migration Agents Registration Authority written notice of a decision under section 306AGAA to refer a registered migration agent to the Authority for disciplinary action.

(2) The notice must be given to the Authority by one of the methods specified in section 494B. The notice must specify the grounds for the referral.

(3) The notice must be accompanied by a copy of any submission made to the Minister under subsection 306AGAA(3).

Notice to agent

(4) The Minister must give the agent written notice of the decision to refer him or her to the Authority for disciplinary action.

(5) The notice must be given to the agent on the same day that notice of the referral is given to the Authority.
(6) The notice given to the agent must set out the grounds for the referral.

(27) Schedule 1, item 75, page 23 (after line 13), after section 306AG insert:

**306AGAC Migration Agents Registration Authority’s disciplinary decision after a referral under section 306AGAA**

(1) If the Minister refers a registered migration agent to the Migration Agents Registration Authority under section 306AGAA for disciplinary action, the Authority must:

(a) caution the agent; or

(b) suspend the agent’s registration; or

(c) cancel the agent’s registration.

*Findings of fact*

(2) In making its decision, the Authority must take the findings of fact made by the Minister in relation to the following decisions (the *referral decisions*) to be correct:

(a) the decision to refer the agent under section 306AC;

(b) the decision to refer the agent under section 306AGAA.

*Matters Authority must take into account*

(3) The Authority must take only the following matters into account in making its decision under subsection (1):

(a) any written submission made to the Minister under subsection 306AE(1) or 306AGAA(3) by the agent;

(b) the findings of fact made by the Minister in relation to the referral decisions;

(c) the grounds given by the Minister for the referral decisions.

*Natural justice hearing rule*

(4) This section, section 306AGAA and sections 494A to 494D are taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the decision the Authority is required to make under subsection (1) of this section.

Note: Section 306AGAA requires the Minister to give the agent an opportunity to make a submission before the Minister refers the agent for disciplinary action. Sections 494A to 494D relate to the giving of documents by the Minister under this Act.

(Time of decision)

(5) The Authority must make its decision under subsection (1) as soon as possible, but not later than 28 days, after receiving notice of the referral.

Note: Section 494C sets out when the Authority is taken to have received notice of the referral.

*Notice to agent*

(6) The Authority must give the agent written notice of its decision. The notice must set out the reasons for the decision.

(7) The decision takes effect at the time the agent is given written notice of it.

Note: Section 332H sets out when the agent is taken to have been given the notice.

(32) Schedule 1, item 90, page 29 (line 2), omit “or 306AG”, substitute “, 306AG or 306AGAC”.

(33) Schedule 1, item 93, page 29 (line 8), omit “or 306AG”, substitute “, 306AG or 306AGAC”.

Whilst we were close to finishing consideration of this legislation last night, this is an issue of significance that I did not think it was appropriate to rush through with just a few seconds comment. There are some issues here that still need to be explored and outlined on the record in the chamber. As I said in some of my contributions last night, I believe that both the amendments that the gov-
ernment have put forward and, more specifically, the amendments that the Democrats have put forward go a significant way towards addressing some of the concerns that were outlined not just by the Senate Legal and Constitutional Affairs Legislation Committee but also by a number of people involved in the migration agents and migration industry area. It is still undoubtedly the case that some people will not be fully happy, indeed the Democrats are not fully happy, with the final result. But we were in a context where it seemed to me quite clear that the bill would go through in some amended form or other and it would be best to try to acknowledge that reality, work with it and try to get the best package possible, rather than simply sitting on the sidelines and complaining about it, if there were scope to improve things. I am pleased to see that there have been opportunities to improve things.

The amendments that I have moved go to a further section to deal with procedure for disciplining registered migration agents. Not surprisingly, this is the area that causes apprehension not just to the agents themselves but indeed to MARA—the Migration Agents Registration Authority—which is the overseeing body. To recap briefly, the procedure that was agreed to with amendments last night was that the minister and the department would examine or investigate an agent that they had concerns about, that they had viewed as maybe engaging in vexatious conduct, and that the agent would provide a written submission to the minister which would outline their situation and their arguments in relation to the areas of concern. The minister would then make findings in relation to that and submit it to the Migration Agents Registration Authority.

The very important amendment that was made last night was that MARA now has the scope to decide not to discipline the agent if the authority is satisfied that there are special circumstances that justify making that decision. There are still issues here. As I said last night, one of the concerns is that the minister, in what he or she provides to MARA, will be providing the full package of all that MARA is allowed to consider. In making its decision about whether or not to discipline the agents, MARA is not allowed to consider information other than that provided to it by the minister. The concern is that that may hinder MARA in taking into account all factors if other information is around that subsequently comes to light or that perhaps they are aware of separately. That is a legitimate concern, and it is one that needs to be noted. As I said last night, a model that might be seen as a very rough comparison is an investigative agency putting together a brief similar to one being put together for a director of public prosecutions, for example, who has to work off that brief and then determine whether or not to take action.

The issue is whether or not there is scope to take into account any other information. It is one of those areas, frankly, where the test will be how it works in practice, particularly in terms of the practice of the minister and the department in the thoroughness of their investigations and in the fairness of their findings of fact that they provide to the MARA. It should be emphasised that there will still be scope, if there is any disciplinary action taken, for a review of that disciplinary action by the Administrative Appeals Tribunal.

There have been concerns expressed to the Democrats that there is not adequate scope for review by the tribunal or that that review power is limited or inadequate or may still prevent people from being able to practise while the appeal before the tribunal is being considered. I would appreciate it if the minister could put on the record the facts on how the Administrative Appeals Tribunal will operate under this new framework. Certainly
in some of the correspondence I have received—it is still coming through even this morning and there were extra emails yesterday—there is still concern amongst not just individual agents but experienced practitioners and representative bodies about how this new procedure will operate in practice. There is confusion out there because some people are going off the bills and some are going off the government amendments, not taking into account the amendments to the amendments that have already been made, let alone the extra amendments that I have just moved. It is important to have it on record in the chamber, given the fact that this is a work in progress and it has been a bit of a moveable feast, to try to ensure that from the outset there is a clear understanding of how this process will work so that misunderstanding and misinformation is limited as much as possible. I think it would be valuable to get some of that clearly on the record at this stage before the bill passes into law.

The Democrats’ understanding is that there is still scope for the Administrative Appeals Tribunal to review any action against a migration agent. Quite clearly if the procedures followed by the minister in terms of his or her findings of fact or the inability of the MARA to take other information into account have led to an unfair or unjust decision, then the tribunal should be able to detect that. If that is found to be a common practice then clearly the pressure will build very quickly to modify either the practice or the legislation.

Specifically, the amendments that the Democrats have moved this morning will put in place an extra step, if you like, in the process. Again I am not suggesting that this is the perfect model as far as the Democrats are concerned. It presents a reasonable compromise that should be workable. We will see in practice whether or not it is workable. Basically what the chamber did last night in adopting the Democrats’ first range of amendments was to give the registration authority, the MARA, the power and ability to make a decision not to discipline a registered agent regardless of what the minister may wish or think. That decision is communicated back to the minister by the authority in writing, setting out reasons why the authority decides not to discipline the agent. The minister can then still decide whether or not to continue to refer the agent to the authority for disciplinary action.

This new second step still, in my view, retains some of the concerns that were initially there. If the minister decides some disciplinary action needs to be taken and the authority says, ‘No, we don’t agree; we won’t do that,’ and then notifies the minister, setting out the reasons, the minister can still say, ‘No, I disagree,’ and send it back again, requiring the authority to undertake disciplinary action. The second time around there is not the scope for the MARA to make a decision not to take some form of disciplinary action. That is still of concern to me in that it would be preferable for the MARA to have total discretion, so it is quite clearly a compromise arrangement.

The other aspect that remains is that the MARA has the ability to take a range of actions in making a decision to discipline an agent. It is not compelled to cancel or to suspend the agent’s registration. It is still able to caution the agent. How that will operate in practice and what the impact of the caution will be over a period of time is something that we will have to wait and see. It does still mean, and it is obviously a very important issue for agents, that the scope is there for them to simply be cautioned by the authority. I assume that the authority can determine the wording and severity of that caution in its communications with the agent.
We should remember here that, whilst it is appropriate that we have concern for the consumer and concern that migration agents operate appropriately and not vexatiously, we are still talking about people’s livelihood. If an agent’s licence to practise is cancelled or suspended, you are taking away that person’s livelihood. In some cases, that is a person’s entire livelihood. It is not something that should be done lightly and we need to keep that in mind. There is, as I have said, still the scope for the agent to appeal a decision made by the MARA to the Administrative Appeals Tribunal whether it is a suspension, a cancellation or a caution. If the minister were to place that on the record, it would be of benefit.

So the amendments still give the scope that was originally there for the minister to require MARA to make a disciplining decision, but at the second stage rather than the first time around. The legislation still retains the ability for the MARA simply to caution rather than to suspend or, in the most extreme example, to cancel the registration. As I have said, that is not the ideal solution the Democrats would have preferred but one that is at least a workable compromise, given that the legislation was likely to pass in some form or other.

Senator SHERRY (Tasmania) (12.45 p.m.)—We are currently dealing with the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003, which provides the parameters for the operation of MARA, the Migration Agents Registration Authority, which oversees the licensing of migration agents in this country. The Labor Party will be supporting the group of amendments that we are currently considering as moved by Senator Bartlett on behalf of the Australian Democrats. I outlined our reasons in lengthy detail last night when we concluded the business of the Senate as to why we will be supporting the package of amendments moved by the Australian Democrats.

Senator Bartlett has touched on an issue that we would appreciate perhaps some response from the government on, and that is the difficulty a migration agent may face if there is a stay order placed on them by MARA and the practical problem that they may face if they seek to appeal to the AAT, and it is reasonable that they should have an appeal process. The time lag that it takes for the AAT to hear the appeal has an impact on an operator who effectively could, in some circumstances, be forced out of business while they are waiting for the AAT to hear their appeal. The minister might like to make some comment about what we certainly identify as a potential problem for some operators where a stay order has been placed. With those concluding remarks I reiterate that the Labor Party will be supporting the package of amendments moved by the Australian Democrats.

The bill that we will shortly be proceeding to approve has been much improved as a result of the Senate committee process. There are some 39 amendments which the government itself has moved and a significant number of amendments that the Australian Democrats have moved which, while not resulting in a perfect piece of legislation from the Labor opposition’s perspective, certainly will result in a considerably improved piece of legislation dealing with a very important issue—the overseeing registration of migration agents and their operation in this country. On behalf of the Labor opposition, I thank the Senate Legal and Constitutional Legislation Committee and certainly the two Labor members of that committee, Senator Bolkus and Senator Ludwig. I also want to thank the chair of the committee, Senator Payne, because the Senate committee report was a unanimous one as a consequence of the correct observations being
made about practical issues that did need resolving in respect of the original bill. The legislation committee is a committee on which the government has a majority and its report was unanimous, therefore I have not thanked just the Labor members. From the Labor Party’s point of view I should thank the chair, Senator Payne, who is a member of the government and, I think quite correctly in this case, came to an appropriate conclusion about the necessary amendments to produce a considerably better piece of legislation in respect of migration agents.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (12.49 p.m.)—The government will be agreeing with the Democrat amendments. Both Senator Bartlett and Senator Sherry have raised issues in relation to the operations of reviews by the AAT. The issue that Senator Sherry raises in particular relates to the circumstances in which a migration agent who has had an order—I think it is referred to in the trade as a ‘sanction’—may be placed in the position that they are unable to continue to act because on average the AAT, I am informed, takes something like 271 days to finalise an appeal by an agent. It is obviously a serious matter because in those circumstances the agent may well be unable to continue.

There is a difference, as I understand it, between those who are cautioned and those who are sanctioned. The people who are cautioned can continue. I am told, however, that the number of people who are sanctioned is very small. There are something like 3,300 registered agents and there have only been 60 sanctions since March 1998. So it is a very small number who would be affected, and those who are cautioned are not affected. Senator Bartlett raised questions about the processes around the AAT. The officers from Senator Vanstone’s office have indicated that we are very keen to work through those issues with agents and with Senator Bartlett and, if it is useful, we could facilitate relevant briefings and information packs as required.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (12.52 p.m.)—I will not hold up the committee unnecessarily. I think it is important to have this on the record because we are still having concerns expressed to us. A fax came through just late yesterday from the Queensland Law Society expressing concern that the law would operate on a non-transparent and unreviewable basis at the complete discretion of the minister. It is my understanding that that is not the case and that it is a reviewable situation. There is a full merits review. The merits review does not happen through the Migration Agents Registration Authority but through the Administrative Appeals Tribunal. Whilst that might not be ideal it means that there is scope for a full merits review at that stage of the process. If it pans out that people are put into a position where, through delays in the AAT, cancellations or suspensions might come into force in a way that prevents them from practising whilst that full merits review is considered then that would be of concern.

The other potential consequence, if that turns out to be the case, is that the MARA would be far less likely to impose a ‘sentence’, if you like, of a cancellation or a suspension. They would be more likely to go with a caution if they felt it would prevent people from being able to exercise their livelihood because of the length of time in the review process. It is not simply a matter of having the process work as fairly as possible; it is also a matter of ensuring that there are not unintended consequences. If I were in a position where I was considering whether or not to suspend someone’s licence I would take into account whether they would end up
not being able to practise while a review was carried out. It is important in that respect.

I note the minister’s final comments. They are welcome and I am sure that in conjunction with the MARA and the Migration Institute of Australia the minister will seek to require or enable full information to get out to relevant people as quickly and clearly as possible. As I stated, there is a lot of concern about this area. It has been pending for quite a period of time. The Senate has obviously made a lot of changes in the last 24 hours in relation to what people were fearing and I think those changes will alleviate some, although not all, of their fears. So it is important that people’s understanding of the final outcome is correct and I urge the government to get that material out there as quickly as possible, and in as understandable a way as possible. As I think I said yesterday, the goals of this legislation are shared by everybody and we just want to make sure that the legislation operates in practice.

In conclusion I would also like to note again the effectiveness of the Senate committee. As Senator Sherry rightly pointed out, it is not just the non-government members but also the chair, Senator Payne, who has contributed. Another government member, Senator Mason, produced a useful and occasionally fiery contribution at the committee hearings. Again, the work of others in the community has contributed not just to the committee inquiry but right through the process—as I said, right up until this morning—raising views, concerns and ideas. I think the work of those agents, particularly the Migration Institute, should be acknowledged. I do not think that in any way they should be held responsible for the final outcome—it is very much the responsibility of the Senate—but the Migration Institute and those people who work on behalf of the entire industry have certainly been responsible in part for it being in part for it being a lot better than it otherwise would have been.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (12.57 p.m.)—I move:

That these bills be now read a third time.

Bills read a third time.

AGE DISCRIMINATION BILL 2003
AGE DISCRIMINATION (CONSEQUENTIAL PROVISIONS) BILL 2003

Consideration resumed from 3 December 2003.

In Committee

(Quorum formed)

AGE DISCRIMINATION BILL 2003

Bill—by leave—taken as a whole.

Senator GREIG (Western Australia) (1.00 p.m.)—I move Democrat amendment (1) on sheet 3227:

(1) Clause 5, page 5 (line 12), at the end of the definition of employment, add:

; and (e) unpaid work.

This amendment deals with extending the scope of the bill to prohibit discrimination on the basis of age in the context of unpaid work. This amendment responds directly to the recommendations made by the Australian Nursing Federation, the Council on the Ageing, ACOSS and the Australian Lawyers for Human Rights. We Democrats believe that restricting the prohibition against age discrimination to the paid work force is inconsistent with the underlying objects of the Age Discrimination Bill 2003. If this amendment is not passed, many Australians who und-
take unpaid work will be left at risk of discrimination on the basis of their age.

In recent years, the government has repeatedly acknowledged the immense value of work performed by volunteers in the Australian community. Volunteering is an integral part of community life in Australia and we should be doing everything we can to support the many thousands of volunteers who perform invaluable but unpaid work. The government’s exclusion of these people is, I think, mean-spirited and hypocritical. Not only does it let down Australian volunteers; it also weakens the prohibition against age discrimination that the bill we are dealing with is attempting to establish. The Democrats believe that those who perform unpaid work should be protected from discrimination by the bill. That is what this amendment seeks to do, and I commend it to the Senate.

Senator LUDWIG (Queensland) (1.02 p.m.)—We have been able to look at Democrat amendment (1) and we agree that it has merit. Labor are prepared to support that amendment and a number of other Democrat amendments—it might have been easier to move them as a group. Like our amendments, this amendment will improve the Age Discrimination Bill 2003 and we think positive things will come out of it. I foreshadow that Labor are in a position to support Democrat amendments (1), (2), (5) and (6) as we try to get our head around the debate—I think it was some time ago that we finished the second reading debate and started the committee process. I also understand that the Democrats will be withdrawing amendments (3), (9), (10) and (11). We understand that amendment (3), which deals with the dominant purpose test, and amendment (11), which deals with the prohibition of harassment, are being withdrawn because they are covered by the amendments Labor propose to move on those issues. We will move amendments that relate to the dominant purpose test and the prohibition of harassment which are the same as the Democrat amendments, and we will be seeking your support to achieve that result.

Amendment (1) relates to unpaid work. Like the Democrats, Labor believe that limiting the bill’s provision to those only in the paid work force is short-sighted and inconsistent with the underlying objects of the bill. There is a massive contribution made to our community by older people in the unpaid sector. This includes both my now deceased father-in-law and my mother-in-law, who continues to work in the unpaid workforce, contributing significantly to the running of an auxiliary for a hospital as she has been doing for 20-odd years now—she is past eight score years. The work that she has done has contributed significantly, of the order of many millions of dollars, to the running of that hospital. By the dedication of volunteers, each year they make a donation of instruments and the like that they buy for the QEII hospital. I am sure she will be pleased that I have mentioned that, although I indicated that I probably would not.

My one example is really the tip of the iceberg of the unpaid work that goes on. The older people who contribute are a massive community sector and they contribute right across the board. There is not only that person working in that sector but a whole community or group who contribute in those and related areas. I would be remiss not to mention all of them, because I think they all stand head and shoulders above many people who retire and do not contribute in some way to citizens volunteering associations and all of those other things. They do things like caring for grandchildren. They also volunteer, as I have indicated, for charitable services and organisations. It is important that they be covered by the bill because it is a significant area, it is a growing area and it is
one that deserves recognition—recognition not only through the awards that they sometimes get and in other ways but recognition by the government that they are an integral part of society and deserve coverage under bills such as the one we are now debating. They should not be excluded simply on the basis that they do not do work that is integral to the overall fabric of our society.

In fact when you look at the recent call to arms made by the Prime Minister and the Treasurer over the growing ageing of our population, it is difficult to understand why the government are not prepared to treat older people in the unpaid work force on the same grounds as those in the paid work force. If the government want examples of how unfair age based discrimination could occur against people in the unpaid work force, they need only read many of the submissions made to the committee inquiry into this particular bill. The example of older people being refused work because of concerns about insurance costs or other liabilities does seem to fly in the face of the principle that it should be your ability to contribute, not your age, that determines your participation in unpaid work. I really did not want to make too long a speech in relation to this issue, but it is something that I have had a long interest in—not only representing paid workers but also being associated with many unpaid workers and the work they contribute to our society. Here is but one small way that the government can acknowledge the work that unpaid workers do and treat them similarly to paid workers, as they would expect to be treated.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.08 p.m.)—The government oppose this amendment. At the outset, I acknowledge the great work that is done by the many senior citizens who engage in voluntary work in the community. This was an issue which went before the Senate Legal and Constitutional Committee, and one on which the committee did not recommend a change—it supported the government view in relation to this. There are differing provisions in relation to the states and territories across the country. Some allow provision for measures to be taken where there is discrimination in relation to paid and unpaid work; others exclude the unpaid work. Accordingly, when the Commonwealth came to consider this issue, we were of a view that the voluntary sector could suffer an adverse impact if this were to be extended to unpaid work.

On balance, it was decided that employment should cover paid work. That is consistent with the Disability Discrimination Act 1992 and the Sex Discrimination Act 1984. In other words, the Commonwealth are saying that we have discrimination legislation which applies to employment. This age discrimination legislation should be consistent with that. We do not for one minute, though, ignore the great contribution that senior members of our community make in relation to voluntary work—and, I might add, that young people make as well. In my experience as a minister travelling around Australia I never fail to be impressed by the great contribution that is made on a voluntary basis by all Australians. But in this instance we believe that it would cause more problems to extend it to unpaid work and that those problems would be mainly visited upon the voluntary sector. For those reasons, the government does not support the Democrat amendment.

Senator NETTLE (New South Wales) (1.10 p.m.)—I will use this opportunity to make some general comments for the Greens on the Age Discrimination Bill 2003 before addressing this specific amendment. The Greens are opposed to forms of ageism and support initiatives to counter them in a whole range of different areas. We consider it fun-
damental that all citizens are accorded the same opportunities and respect regardless of their age. So we believe that the Commonwealth age discrimination legislation we are debating at the moment is long overdue.

The age discrimination legislation has been introduced in response to several recent studies on age discrimination, such as the *Age matters* report done by the Human Rights and Equal Opportunity Commission and the House of Representatives committee report *Age counts*. The purpose of this bill is to eliminate age based discrimination in a range of different areas. This amendment relates to work, but the bill also deals with access to goods, services and facilities; access to premises; Commonwealth programs; education; and accommodation. The Greens welcome this, particularly the bill’s aim of prohibiting age based discrimination in the workplace.

We note that the ACTU have outlined in their *Older workers* background paper that the main impediment to older workers’ employment prospects is the perception that they lack the ability to develop new skills. The ACTU *Older workers* background paper quotes a survey in which 42.5 per cent of those surveyed believe that mature age workers were discriminated against in the workplace. Older workers also make up a disproportionately high percentage of the long-term unemployed. Discrimination against older workers has a negative impact not just on the individual workers but, we believe, on society as a whole.

The Greens share the concerns of community groups who, in their participation in consultations and the Senate inquiry into this bill, have pointed out a raft of different concerns. Some of those concerns were about the legislation containing holes—for example, the failure to prohibit age based harassment, which we will get to later in the committee stage of the debate. The bill also contains far too many blanket exemptions. I want to talk about the broad exemption that exists within the bill for social security payments. The Greens acknowledge that, obviously, there are some social security payments—such as aged pension or family benefit payments—for which it may be required to have an exemption from this bill, but we share the concerns of organisations such as the Youth Action Policy Association, the YWCA and other youth advocacy groups that there is no sound basis for age discrimination in relation to most social security payments.

The example that I will give is rent assistance. The payment of rent assistance to students who are on Youth Allowance as opposed to students who are on Austudy is determined solely on the basis of the age of that person when they begin their study. If you begin study after the age of 25, you are eligible for Austudy payments but not for Youth Allowance and therefore you are unable to receive rent assistance. The Greens have, for a long time, campaigned to have rent assistance available for Austudy recipients. In fact, just last week the Senate supported a Greens’ amendment to the social security bill we were debating condemning the government for refusing to extend rent assistance to Austudy recipients.

We will continue to work on this issue because the Greens believe the fact that the government refuses to take the small measure that would be required to extend rent assistance to Austudy students indicates a lack of concern for the student poverty that exists within the higher education sector in Australian universities, particularly at a time when we are seeing government moves to increase the up-front fees that students face when they begin their university studies. There will be more opportunity during this debate to talk about some of the specifics but
I wanted to raise that issue as an example of some of the blanket exemptions that are in this piece of legislation. We will be supporting the legislation and we will support a raft of amendments in committee to improve the legislation to deal with some of these areas. We question the capacity of the legislation to cover all of the areas of age discrimination that the Greens believe need to be covered.

I indicate that we will be supporting the amendment that has been put forward on unpaid work. The Greens and many of us here come from community organisations and recognise the benefit of the unpaid work that a whole raft of individuals put in as volunteers in organisations and the contribution that they make. We support the amendment which we are debating at the moment, as we say that people who contribute to our community through their unpaid work should not be discriminated against on the basis of age. At this point it is probably worth also tossing in that the Greens do not want to see a situation that has been highlighted in the past by government comments whereby we come to rely on volunteer work forces to provide the sorts of services that, in the Greens’ view, the government should be providing, whether they be welfare services, support services for people on temporary protection visas or a whole raft of different things. We support the capacity of individuals to contribute to society in a way which they feel is appropriate, which may be in the unpaid workforce, as we are debating here. We do not think that should be a replacement for the work that the government needs to do. We support this amendment to ensure that those people who choose to make their contribution in the unpaid workforce are not discriminated against on the basis of their age.

Question agreed to.

Senator LUDWIG (Queensland) (1.17 p.m.)—by leave—I move opposition amendments (1), (2), (3) and (4) on sheet 3224 revised:

1. Clause 5, page 4 (after line 12), after the definition of age, insert:

   associate of a person means:
   (a) any person with whom a person associates, whether socially or in business or commerce, or otherwise; and
   (b) any person who is wholly or mainly dependent on, or a member of the household of, a person.

2. Clause 5, page 6 (after line 3), after the definition of public authority of the Commonwealth, insert:

   relative of a person means any person to whom a person is related by blood, marriage, affinity or adoption.

3. Clause 14, page 13 (lines 4 to 17), omit the clause, substitute:

   14 Discrimination on the ground of age—direct discrimination
   For the purposes of this Act, a person (the discriminator) discriminates against another person (the aggrieved person) on the ground of the age of the aggrieved person or the age of a relative or associate of the aggrieved person if:
   (a) the discriminator harasses, or treats or proposes to treat the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of a different age or who does not have a relative or associate who is of that age or age group; and
   (b) the discriminator does so because of:
      (i) the age of the aggrieved person or the age of a relative or associate of the aggrieved person; or
(ii) a characteristic that appertains generally to persons of the age of the aggrieved person or the age of a relative or associate of the aggrieved person; or

(iii) a characteristic that is generally imputed to persons of the age of the aggrieved person or the age of a relative or associate of the aggrieved person.

(4) Clause 15, page 13 (lines 19 to 28), omit subclause (1), substitute:

(1) For the purposes of this Act, a person (the **discriminator**) discriminates against another person (the **aggrieved person**) on the ground of the age of the aggrieved person or the age of a relative or associate of the aggrieved person if:

(a) the discriminator imposes, or proposes to impose, a condition, requirement or practice; and

(b) the condition, requirement or practice is not reasonable in the circumstances; and

(b) the condition, requirement or practice has, or is likely to have, the effect of disadvantaging persons of the same age as the aggrieved person.

These four amendments relate to the same issue. They seek to amend the bill so as to extend its protection to people discriminated against on the basis of the age of their relative or associate. These amendments also seek to introduce a prohibition on age based harassment. The interconnectedness of the amendments is the reason why I asked for them to be moved together, and I thank the Senate in committee for allowing me to do that. The first issue concerns the relatives and associates; it might be easier to deal with them both at the same time and I will then go on to talk about the harassment issue as well. Effectively, as I have said, they are interconnected, in truth. The amendments in terms of relatives and associates extend the protection of the bill to people discriminated against due to the age of an associate or relative of the complainant. This protection is necessary to ensure that secondary victims of age discrimination have some protection from irrational and counterproductive discrimination on the basis of the age of their relatives and associates. Age discrimination is a complex and entrenched problem and any legislative response to the problem will need to be sufficiently innovative and flexible to overcome this entrenched discrimination. This amendment, in Labor’s view, goes some way to achieving this necessary innovation and flexibility.

The second part of the amendments relates to age based harassment, which, as I have made out, is connected. Once again the amendments are necessary to ensure that the bill actually stamps out age based discrimination, rather than simply paying lip service to the concept. We are concerned that is what the current bill does, although we do not want to be too critical. Age based harassment is an entrenched facet of many workplaces and must expressly be prohibited in this bill to maximise the effectiveness of and minimise any legal uncertainty surrounding this bill. If possible, what we do not want to see—unfortunately sometimes it is hard to avoid it altogether but at least we can try to minimise it—is the courts’ involvement in trying to determine what this bill is. These amendments try to overcome that. We acknowledge that they are not going to be successful in every case, but we think they are a better approach than what the government has put forward and we think they improve the overall position. The Senate Legal and Constitutional Committee, as Senator Sherry acknowledged earlier in relation to its work on migration, has on this matter—I am a member of the committee and perhaps I
make my comments more to the other members—worked solidly to ensure that these issues are well aired and that parties have an ability to express their views to the committee so that the committee comes up with a well-considered report. I have covered most of the issues that I wanted to in relation to these amendments. I thank the Senate in committee.

Senator GREIG (Western Australia) (1.21 p.m.)—We Democrats will support Labor amendments (1), (2), (3) and (4). Amendments (1), (2) and (4) will extend the prohibition against age discrimination so that it incorporates, as Senator Ludwig said, provisions in relation to discrimination on the basis of the age of a person’s relative or associate. That is one of many issues that was raised in a number of submissions to the committee, including those from the Council on the Ageing, Australian Lawyers for Human Rights, ACOSS and HREOC. These amendments are designed to apply to circumstances such as discrimination against an individual who may be caring for an elderly relative or perhaps, as the Hon. John von Doussa, President of HREOC suggested in some of his evidence, a mother who is discriminated against because she has a young child. We Democrats believe it is important to protect individuals against discrimination in those circumstances. In fact, the Senate Legal and Constitutional Committee inquiry also took the view that this was important and recommended that the bill be amended accordingly.

The committee also noted that other antidiscrimination legislation contains similar provisions, so we Democrats welcome this particular suite of amendments from Labor which will broaden legislation against age discrimination. We also support Labor amendment (3) to extend the definition of discrimination to include harassment. The failure of the bill thus far to prohibit harassment does distinguish it from other Commonwealth antidiscrimination legislation. ACOSS and ALHR both argued that the bill should be amended to include such a provision, and we agree with that. We believe, too, that the Commonwealth really has a responsibility to provide legislative protection against harassment on the basis of a person’s age. For that reason, a little later on we will be dealing with Democrat amendment (11), which seeks to achieve that similarly. However, we are happy to concede that on this occasion Labor’s amendment is perhaps more appropriately worded, and we therefore support Labor’s amendment. I give notice that we will later withdraw Democrat amendment (11).

Senator NETTLE (New South Wales) (1.23 p.m.)—One of the concerns the Australian Greens have with this piece of legislation is that it does not deal with the issue of harassment, so we will certainly be supporting the amendment that we are discussing at the moment to ensure that age discrimination legislation is more comprehensive in its cover and that it does deal with the issue of harassment on the basis of age.

We will equally be supporting the other amendments that deal with relatives being included within the context of this legislation: for example, in circumstances where women are discriminated against on the basis of having young children to care for or of having older parents they are looking after—anywhere they have caring responsibilities that are a part of who they are, a part of the contribution they make to the community and a part of ensuring that they are looking after quality of life for themselves as individuals and for their families and communities. These are the examples and instances of why we need this kind of legislation—to ensure that, in terms of the contribution they make to our society, people who have young children or older parents they are looking
after are not discriminated against on the basis of these other responsibilities they have to the broader community and to their families. The Greens will be supporting the amendments that are being debated at the moment.

Senator Ellison (Western Australia—Minister for Justice and Customs) (1.25 p.m.)—The government will be opposing these four amendments which deal with the extension of the coverage of the legislation to an associate or relative of the person concerned and which also deal with the question of harassment. The government is of the view that it is not appropriate to extend the concept of unlawful age discrimination to cover an agreed person’s relative or associate. If that discrimination were to take place, we believe there are other avenues available. For instance, Senator Nettle has just cited the case of a woman with young children seeking employment. We believe that the Sex Discrimination Act or the workplace relations legislation could cover that. Similarly, if someone has a disabled relative, they are covered by other pieces of legislation. The government is of the view that extending the legislation in this manner is not appropriate.

In relation to the question of consultation—and this was an aspect we raised during the course of framing this legislation—different views were expressed about whether the proposed Commonwealth age discrimination legislation should prohibit harassment on the ground of age. Employers and business groups felt that the concept was too vague and could cause spurious complaints about legitimate workplace requirements. It was noted that state legislation does not generally prohibit harassment, other than sexual harassment, and I think that is an important point to remember.

Other groups, however, expressed the view that provisions against age based harassment were appropriate, and the government decided on balance that introducing this concept would not necessarily achieve the objectives of the bill. Indeed, the Senate Legal and Constitutional Legislation Committee expressed the view that not providing an offence of harassment is consistent with the bill’s objective of achieving attitudinal change. That committee did say that it should be extended to relatives and associates but, for the reasons I have outlined, the government did not see its way clear to accepting that recommendation. For those reasons, the government does not support these amendments.

Senator Nettle (New South Wales) (1.28 p.m.)—I would like to ask the minister about his response regarding the government not supporting the expansion of the definition of who should be covered by this legislation. Can the minister tell the committee whether, in the circumstances where an individual is caring for elderly parents—not necessarily disabled parents but elderly parents—he believes there is any other legislation under which they could be assured of not being discriminated against in terms of their capacity to engage in employment or on other issues?

Senator Ellison (Western Australia—Minister for Justice and Customs) (1.29 p.m.)—The Sex Discrimination Act enables relief to be sought in relation to direct discrimination on the ground of family responsibilities which takes the form of dismissal from employment. Likewise, the Workplace Relations Act provides that it is unlawful to take family responsibilities into account in relation to termination of employment. That covers the situation Senator Nettle has outlined. Both these acts prohibit discrimination on the ground of family responsibilities in certain circumstances. I mentioned children before; now Senator Nettle mentions elderly parents being looked after. That comes under
the ambit of family responsibilities. Persons faced with discrimination because of their responsibilities to care for children, elderly parents and relatives are able to seek redress for discrimination based on their family responsibilities under the two pieces of legislation I have mentioned, the Sex Discrimination Act and the Workplace Relations Act. I might add that many industrial awards provide leave for employees in relation to family responsibilities.

Senator NETTLE (New South Wales) (1.30 p.m.)—I thank the minister for his answer. I am not sure whether in his answer he was indicating examples where people would not face discrimination on the basis of being dismissed from their position. I am wondering whether that is the limit of the capacity or whether the discrimination example you provide would cover people with elderly parents or young children whom they were caring for in other facets of their engagement in the community rather than just their dismissal from employment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.31 p.m.)—The provision I mentioned relates to dismissal from employment. The issue of application for employment is something that I am taking on notice. It may take a moment. If there are any other matters Senator Nettle wishes to raise in the meantime, she can do that. That is something we can come back to in the course of the committee debate.

Question agreed to.

Senator GREIG (Western Australia) (1.31 p.m.)—The Democrats oppose clause 6 in the following terms:

(2) Clause 6, page 6 (lines 21 to 26), TO BE OPPOSED.

The Democrats seek to remove altogether clause 6 from the bill. Clause 6 provides that for the purposes of the legislation:

... a reference to discrimination against a person on the ground of the person’s age is taken not to include a reference to discrimination against a person on the ground of a disability of the person (within the meaning of the Disability Discrimination Act 1992).

Quite simply, we Democrats see no particular justification for the inclusion of such a provision in the bill. We believe that a person who has been discriminated against should have the opportunity to pursue a remedy under either piece of legislation. As the Human Rights and Equal Opportunity Commission indicated during the committee inquiry into the bill, it is well equipped to deal with any overlap between the two forms of discrimination, since its existing complaints processes and mechanisms allow for the determination of complaints relating to multiple grounds of discrimination—and that has always been the case with HREOC and its jurisdiction. So we would seek to remove that clause altogether and see no particular value in maintaining that clause within the bill as it stands.

Senator LUDWIG (Queensland) (1.33 p.m.)—The opposition sees its way clear to supporting the Democrats on this issue. Labor sees it as reasonable to remove clause 6 from the bill, thereby not preventing a person who is discriminated against on the grounds of both their age and a disability from pursuing remedies under either piece of legislation. I think that is the important point. Senator Greig made that well. In the administration of both pieces of legislation there are clear provisions for multiple grounds of discrimination to be heard by HREOC. We can see no reason why someone should be discriminated against on the grounds of both their age and their disability and not be able to make complaints against their discriminator on both these grounds, rather than trying to choose one under one particular act or run two separate actions under separate acts. It
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does not make sense, quite frankly. Unless the government can provide some compelling new evidence or reasons as to why this provision should remain in the act, we will be supporting the Democrat amendment to remove this clause.

Senator NETTLE (New South Wales) (1.34 p.m.)—The Greens will also be supporting this proposal. We recognise the instances that already exist where people who face multiple forms of discrimination have the capacity to make decisions about which form of discrimination they face. For example, if it is because of a non-English-speaking background and a disability then they can make determinations as to how they pursue those issues. We will certainly be supporting this amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.35 p.m.)—The government does not support this proposal. It believes that clause 6 does provide some certainty and addresses the potential overlap between discrimination based on age and that based on disability. It has been suggested that the Human Rights and Equal Opportunity Commission is already well enough equipped to deal with any overlap between these two forms of discrimination. The government’s view, however, is that the law must deal clearly with possible overlap between different areas of discrimination and not leave any areas which might lead to uncertainty.

As I said, the point of clause 6 is to make clear that where an act constitutes age and disability discrimination it must be dealt with under the Disability Discrimination Act. This was certainly something the Senate Legal and Constitutional Legislation Committee supported. It stated that it considered that clause 6 is appropriate to provide certainty in relation to matters that involve disability and age discrimination issues. For that reason we believe clause 6 should stand as printed.

Senator LUDWIG (Queensland) (1.36 p.m.)—It is necessary to at least argue that the minister has not provided a cogent reason. The issue that it should be allowable to deal with both under the one act is a more compelling argument. I do not think the minister has made the case but I will not draw it out any longer than that, other than to say those few words in relation to that. We will still support the Democrat amendment.

The TEMPORARY CHAIRMAN (Senator Bolkus)—The question is that clause 6 stand as printed.

Question negatived.

The TEMPORARY CHAIRMAN—The next amendment is Democrat amendment No. 3 on sheet 3227, which is the same as opposition amendment No. 5 on sheet 3224.

Senator GREIG (Western Australia) (1.37 p.m.)—I move Democrat amendment (3) on sheet 3227:

(3) Clause 16, page 14 (lines 1 to 6), omit the clause, substitute:

16 Act done because of age and for other reasons
If:
(a) an act is done for 2 or more reasons; and
(b) one of the reasons is the age of a person (whether or not it is the dominant reason for doing the act);
then, for the purposes of this Act, the act is taken to be done for that reason.

I note that the opposition had a similarly worded amendment, so the amendment would appear to attract support. At its heart, the amendment goes to removing the dominant purpose test of the bill. This test means that if an act is committed for two or more reasons, one of which is the age of the per-
son, it will only be discriminatory if the age of the person was the dominant reason for committing that act. This test does not apply in the context of any other piece of Commonwealth antidiscrimination legislation. We do not think the government has provided a compelling reason why it should apply in relation to age discrimination. Moreover, by including the dominant purpose test in this legislation but not in any other antidiscrimination legislation, the implication is that protection from age discrimination is less important than protection against other forms of discrimination. We find that unacceptable.

We note that HREOC has argued that the inclusion of the dominant purpose test in this bill will make it more difficult for complaints to succeed and will give rise to litigation with regard to the meaning of ‘dominant purpose’. It is also important to note that the dominant purpose test was previously included in the Racial Discrimination Act but was removed because its practical application gave rise to too many complications. If the dominant purpose test was unworkable in the context of the Racial Discrimination Act there is no reason to believe that its practical implementation will be any less complicated in the bill before us—that is, the Age Discrimination Bill. To conclude, the Democrats believe that the dominant purpose test is not strong enough and will present practical difficulties. It should be removed from the bill through the amendment that we have before us.

Senator Ludwig (Queensland) (1.39 p.m.)—I will just do some tidying up. It does not matter who actually moves the amendment because Democrat amendment (3) and opposition amendment (5) are exactly the same. They seek to do the same thing. On that basis I foreshadow that I will not move amendment (5). We support amendment (3) in relation to clause 16 of the bill, which is the dominant purpose test. The current test contained in the bill, as has been pointed out, is too weak to stamp out age based discrimination in the wider community. The legal loophole created by the dominant purpose test means that discrimination prohibition will only be enforceable in the most extreme cases. In those instances they will be surrounded by litigation and expense.

This amendment brings Commonwealth policy in line with other Commonwealth legislation. It will mean that this bill will actually deliver outcomes rather than provide rhetoric. During the Senate Legal and Constitutional Legislation Committee inquiry into the bill it was surprising to discover that there exists other Commonwealth legislation that provides what is being proposed here today, but the government has sought to use a weaker test than that provided in other legislation of this order. In my and the opposition’s view, without this amendment it will be almost impossible for complainants to make out the proof under the new regime.

There was extensive consultation in relation to the bill, as I understand it. Although the government sometimes do not get any recognition—perhaps ‘praise’ is not the right word to use in some instances—for taking a consultative approach in these issues, in this instance by and large they did. They put out an information paper with proposals for Commonwealth age discrimination legislation. That began in December 2002 and it went forward. Most issues were examined and considered. However, in relation to this provision I am not convinced that they did take a consultative approach. I will wait for the government to inform me about the consultative process they did take in relation to this provision to ensure that it did meet the expectations of the participants involved in the consultative process, but it is a matter for the government whether they wish to respond to that aside. The real issue is that the test that the Democrats put up and that we
similarly put up and support is a much better test. It is reflected in other Commonwealth legislation and should be reflected here as well.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.42 p.m.)—The government oppose this amendment. We believe that the dominant reason test in clause 16 is sufficient to achieve the attitudinal change which I mentioned before. This is designed to send a clear message that age stereotyping is unacceptable. It does that but without restricting employment opportunities for older Australians by imposing unnecessary costs and inflexibility on employers who are acting in good faith. In the preparation of this bill we have seen instances of jobs for which an employer is entitled to take age into account. We have exemptions for that. For instance, it might involve physical activity. There may be other exemptions, which I have touched on.

We do appreciate that in other discrimination legislation which the Commonwealth has passed we have the test of any reason. That relates to race and sex particularly. But in this particular case we believe that if you reduce that threshold in relation to clause 16 you will end up with more problems than you would otherwise have. It would perhaps hamper and not advance the cause of people who may be young or old. Remember, this is an age discrimination bill. We have been talking largely about older people but we have to remember that it will apply to younger people as well.

We believe this situation is not quite as cut and dried, if you like, as in the case of discrimination on sexual or racial grounds. Certainly there were different views during the Senate Legal and Constitutional Legislation Committee’s hearings. That committee preferred the any reason test, as I recall. But the Australian Chamber of Commerce and Industry supported the dominant reason test for the reasons I have outlined. Of course, the Human Rights and Equal Opportunity Commission opposed it. We can see the different arguments. But, again on balance, the government believe that reducing that threshold in clause 16 would attract more problems than otherwise and therefore we oppose this amendment.

Senator LUDWIG (Queensland) (1.46 p.m.)—As I indicated earlier—and it did take me a second to find it—I think one of the failings of the minister’s arguments in relation to this is that there were a number of submitters to the inquiry, including the Australian Chamber of Commerce and Industry, that supported the justifications for the dominant reason test. They did concede, however, that they had only really turned their minds to it—they are my words, but I think they would agree—and considered the dominant purpose test effect within the workplace setting not outside the setting of the workplace. So to rely on them is to rely on only a very narrow area. Mr Peter Anderson, representing the Australian Chamber of Commerce and Industry, indicated that the dominant test would assist employers in, as he said, minimising the risk of being exposed to the complaints and costs involved, but he did not expand outside of that. He confined his remarks to within the employment sphere. HREOC are a much better organisation to take a broad community based view. They opposed the introduction of the dominant purpose test. HREOC were of the view that the dominant reason test would make it more difficult for complaints to succeed. Labor adopts that view and I think they are right in that respect.

The real issue, as I alluded to earlier—and I found the particular section that I wanted to go to—was that the evidence from the representatives of the Attorney-General’s Department indicated that there was no public con-
sultation on providing a test different to other antidiscrimination laws. So the praise that I gave you for providing an information paper on proposals for Commonwealth age discrimination legislation remains valid. It is a good process, and I encourage you to continue to do the work that you have been doing in public consultation. This issue does not fall under that umbrella. It was an issue that came outside of that umbrella. Relying on the broader consultative framework may have come up with a different answer—it may have in fact come up with the answer which both the Australian Labor Party and the Democrats have come up with today. I commend that to the committee.

Question agreed to.

Senator GREIG (Western Australia) (1.48 p.m.)—As outlined in amendment (4) on sheet 3227, the Democrats oppose clause 25 in the following terms:

(4) Clause 25, page 23 (lines 6 to 15), TO BE OPPOSED.

This amendment goes to the heart of youth wages. We Democrats have long opposed the concept of youth wages. Our view is that people should receive equal pay for equal work and that should not be determined on the basis of age. As such we do not believe that youth wages ought to be exempted from the bill. As we previously argued, young people are required to pay the same amount for food, rent and clothing as other Australians. Only full-time students have access to public transport and other concessions. Moreover, the Democrats believe it is unjustifiable to, on the one hand, confer on 18-year-olds the same rights and responsibilities as other adults—including the rights to vote, to consume alcohol and to drive a vehicle and the responsibility of being held fully accountable for their actions under the law—and yet, on the other hand, pay them less for performing the same duties in the workplace as other adults.

Youth wages as a concept convey the implicit message that work undertaken by young people is less valuable than work undertaken by older people. It suggests that the worth of a worker is to be determined according to their age rather than their skills, training or experience. They represent a fundamental contravention of the principle of equal pay for equal work, which is enshrined in international and human rights conventions to which Australia is a signatory, not the least of which is the Universal Declaration of Human Rights. Youth wages, we believe, are inherently discriminatory. The policy justifications advanced in their favour are unconvincing. We Democrats do not believe that reducing the pay of young Australians is the way to create job opportunities for them. For all of those reasons we Democrats take the view that youth wages should not be exempted from the prohibition against age discrimination. This amendment seeks to address that through the bill we have in front of us.

Senator LUDWIG (Queensland) (1.51 p.m.)—Labor have of course given careful consideration to this issue. It is not a new issue; it has arisen in this place, in other forums and in other arguments. However, when we look at the sense of this legislation, Labor are not convinced by the arguments put forward by the Australian Democrats that these amendments are critical at this stage for the passing of this bill. We acknowledge that it is a very complex issue and not one that can be easily sorted through. There is complexity that surrounds this issue, with the interaction of industrial awards, certified agreements and the like and youth wages. There obviously may be improvements or changes proposed to the legislation at any time in the future. If such a case became fully apparent after being argued with suffi-
cient evidence, we might be of a mind to look at it a lot harder. We have certainly looked at this very hard but we cannot see ourselves supporting it in relation to the way it has been put forward with this bill.

Senator NETTLE (New South Wales) (1.52 p.m.)—As others have indicated, much of the discrimination that is faced by older people is also faced by younger people. It is disappointing that in the form of this legislation there appears to be a focus on the discrimination that older people face and no recognition with anywhere near the same emphasis of the discrimination that younger people face. The clearest example of this is the exemption of youth wages from this piece of legislation. Australia is a signatory to the International Covenant on Economic, Social and Cultural Rights. That covenant says that signatories are obliged to ensure that everyone has a right to ‘fair wages and equal remuneration for work of equal value without distinction of any kind’. It is difficult to reconcile this obligation with the youth wage, which by definition is a reduced wage given to a worker on the basis of their age. The Greens are inherently opposed to the discrimination that is a part of youth wages and will be supporting this amendment to remove the exemption for youth wages from the legislation.

We have campaigned with trade unions and many other voices in supporting the introduction of competency based wage systems rather than age based payments. Youth wages are discriminatory because they allow an employer to say, ‘You will be paid less for what you are doing, even though it is exactly the same as what your fellow worker is doing, based purely on how old you are.’ Youth wages reinforce the stereotype that young people are in some way less competent. They make the value judgment that, because you are younger, the work you do is inherently less worth while. They say to young people: ‘When you turn 18, you are expected to contribute and have responsibilities. Whether it be voting or participating in society in a range of different ways, we expect you to have these responsibilities. But the work that you do is less valuable than that done by your 22-year-old colleague.’ This is not a message the Greens believe it is appropriate to send to young people who are trying to be part of our work force.

The government recognises the discriminatory nature of youth wages by exempting them from the bill. The government believes that young people get a foothold in the employment market through youth wages, but the evidence does not support that. In 1999, the Australian Industrial Relations Commission found in its junior rates inquiry that youth rates were of little use in securing a direct entry to full-time employment. The real effect of youth wages is to put young people at greater risk of poverty. They still have the same bills to pay and pay the same price for food and the same price for rent and yet through a spurious argument the government believes that they should be paid less money for the work that they do in their community. It is an important amendment to support. The Greens will be supporting it and we recommend it to the Senate.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.56 p.m.)—It was part of the government’s election policy that it would work with businesses and communities to ensure that this legislation was fair and struck the right balance between the need to eliminate unfair discrimination on the basis of age and the need to ensure sufficient flexibility to specifically allow for situations where age requirements have particular policy significance: for example, in relation to youth wages, job training and social security. I highlight youth wages because that was an aspect that we went to the election on. The
The TEMPORARY CHAIRMAN (Senator Bolkus)—The question is that clause 25 stand as printed.

Question agreed to.

Senator GREIG (Western Australia) (1.58 p.m.)—by leave—I move Democrat amendments (5) and (6) on sheet 3227:

(5) Clause 33, page 29 (line 13), after “intended”, insert “and reasonably required”.

(6) Clause 33, page 29 (line 20), after “intended”, insert “and reasonably required”.

Democrat amendments (5) and (6) seek to introduce an objective element into the test relating to positive discrimination. The exemption for acts involving positive discrimination is of course an important one, so we must ensure that it does operate effectively. HREOC has expressed concern that in its current form this exemption may actually undermine the objective of the proposed legislation to eliminate age discrimination. This is because the way in which the exemption has been worded gives rise to a subjective test rather than an objective one. The test relies on whether or not the act in question is ‘intended’ to meet the need of a particular age group—not whether it is likely to actually meet that need. In this respect the test differs from the positive discrimination test used in other pieces of Commonwealth anti-discrimination legislation. The government has provided no explanation for that change.

What we Democrats seek to do with this amendment is ensure that whether or not an act will meet the need of a particular age group is assessed objectively and according to community standards of reasonableness. These amendments respond directly to the recommendation made by HREOC, and we believe that HREOC is best placed to identify potential problems associated with the practical implementation of exemptions.

Progress reported.

QUESTIONS WITHOUT NOTICE

Intelligence: Weapons of Mass Destruction

Senator FAULKNER (2.00 p.m.)—My question is directed to Senator Hill as Minister for Defence and Leader of the Government in the Senate. Does the minister recall his own words this morning when he said in relation to Iraq, ‘Now we are confident that there are no weapons of mass destruction’?

Given that the minister’s words were crystal clear, that he was acknowledging that there were no weapons of mass destruction in Iraq, why was the minister forced into a clarifying statement less than an hour later? Did the minister issue his clarification of his own volition or did he do so at the request of anyone else, such as the Prime Minister or Mr Sinodinos or the foreign minister or the Secretary of the Department of the Prime Minister and Cabinet, as was the case for Police Commissioner Keelty?

Senator HILL—I issued a clarifying statement when I heard that a journalist was misinterpreting what I said, because the journalist, like Senator Faulkner, was taking it out of context.

Senator Chris Evans—Out of context—you’re about to go up in a hot air balloon!

Senator HILL—I would like to give Senator Faulkner the benefit of the doubt and hope that he at least did read it in context, but I assume he did not because otherwise he would not have asked the question.

Senator Faulkner interjecting—
Senator HILL—I am pleased you have read it, because what I was saying is that, by the operations in Iraq, we have been able to remove any threat associated with weapons of mass destruction. What I said, and no doubt Senator Faulkner will confirm it, is that here was a dictator, Saddam Hussein, who had weapons of mass destruction, who had used those weapons of mass destruction against his own people, who had used those weapons against his neighbours and who had invaded his neighbours, and, by removing Saddam Hussein, the threat is removed. The threat to his own people from weapons of mass destruction is removed and the threat to his neighbours from weapons of mass destruction is removed, and we on this side of the chamber believe that is a good thing.

By contrast, what did Mr Latham say today about the operation in Iraq? He described it as mere folly. A situation where several hundred thousand innocent Iraqi people have been killed by Saddam Hussein and his ilk: how is that described by Mr Latham? He has described the removal of this man, the removal of the threat, as an act of folly. What story does that tell in relation to Mr Latham? What indication does that give in terms of his attitude to national defence, his attitude as to what is necessary to protect innocent people, whether they be Australians or others, from threat? It indicates to him that if it is not politically opportune, which he does not see as such at the moment, he will refer to it as an act of folly. As I said yesterday, we are pleased and proud that Australia has played a part in removing this threat and we are very proud particularly of the contribution that has been made by the Australian Defence Force in enabling this country to play that role.

Senator FAULKNER—Mr President, I ask a supplementary question. When the Minister for Defence said this morning, ‘Now we are confident that there are no weapons of mass destruction,’ didn’t the minister actually tell the Australian people the truth and didn’t the minister actually let the truth stand for a full half-hour before he was pulled into line by the government’s spin doctors? Isn’t this, Minister, the second time in the space of a week that the Howard government has gone into full damage control to hide the truth? Commissioner Keely told the truth. You told the truth—at least, for a short while—this morning, Senator Hill. When will the Howard government actually allow the truth to stand?

Senator HILL—As I said, we—in fact, the whole world—now know that no longer can weapons of mass destruction be used against the Iraqi people or the neighbours of the Iraqi people, and that is what I was saying this morning. In relation to the question of whether there are still remnants of Saddam Hussein’s weapons of mass destruction remaining, that, of course, is a matter still to be determined by the Iraq Survey Group. It has reported once; it is about to report again—

Senator Chris Evans—I bet they won’t—and we all know why.

Senator HILL—and probably, for Senator Evans’s benefit, that will not complete its work as well. So, until those who are charged with the responsibility of researching that issue can report, I think it is better that conclusions not be drawn. What I have said before, and therefore I am happy to say again, is that the longer the search goes on without finding weapons of mass destruction, I think the less likely it is that those weapons will be found.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from Tonga, led by the Attorney-General and Minister of Justice, the Hon.
Aisea Taumoepeau. On behalf of all senators, I welcome the delegation to Canberra. The delegation is also accompanied by His Royal Highness Prince Tu’ipelehake and the Speaker of the Tongan Legislative Assembly, the Hon. Tu’ivakano. With the concurrence of honourable senators, I propose to invite the Speaker to take a seat on the floor of the Senate.

Honourable senators—Hear, hear!

The Hon. Tu’ivakano was seated accordingly.

QUESTIONS WITHOUT NOTICE

Immigration: Border Protection

Senator EGGLERSTON (2.06 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Amanda Vanstone. Will the minister inform the Senate how the government’s tough border control has benefited the world’s most needy refugees? Will the minister inform the Senate of alternative policies in this area?

Senator VANSTONE—I thank Senator Eggleston for the question. He, along with all the senators on this side of the chamber, has a longstanding commitment to those refugees most in need around the world.

Senator Bolkus interjecting—

The PRESIDENT—Order, Senator Bolkus!

Senator VANSTONE—It is true that strong border protection and a strong economy—

Senator Bolkus interjecting—

The PRESIDENT—Senator Bolkus, come to order!

Senator VANSTONE—now pay the ultimate dividend to those refugees most in need. Today we have announced a 50 per cent increase in Australia’s refugee intake for 2004-05, increasing the number of refugees we take from offshore, in cooperation with the UNHCR, from 4,000 to 6,000. It is important to identify that these are not the people who have enough money to pay a people smuggler. These are the people in camps, such as Kakuma in Africa, who have nowhere else to go and who do not have the money to pay a people smuggler. We will lift our intake by 50 per cent to help those people most in need around the world. Over the past seven years there have been 4,000 places for—

Senator Bolkus—Three and a half thousand on average.

Senator VANSTONE—Senator Bolkus, I think you should just give it away. Of the 12,000 places in the humanitarian program over the last six or seven years, 8,000 have been humanitarian places and 4,000 have been refugee places. We will add the additional 1,000 to the 4,000 refugee places and also shift 1,000 from the humanitarian intake to the refugee intake. This is in response to consultations we have had with refugee groups who provide services on the ground to refugees when they come here, not with the refugee advocacy groups funded or, at least, sponsored and encouraged by senators opposite—advocacy groups that do not deliver services. We have been talking to the groups that actually deliver the services on the ground.

They tell us that they want an increase in the number of refugees coming from offshore, the people most in need who cannot afford to pay a people smuggler. They have asked us to rebalance the program and shift some of the places from the humanitarian program into the refugee program, and that is what we will do. That means that we will be picking up the bill for the travel and medical costs of these people who otherwise could not afford to get here and most certainly could not afford to pay a people smuggler.
They could not pay a people smuggler, so you could use Labor’s ‘coast guide’ policy: bring them in—all the people wealthy enough to get here—and bad luck about everybody else. Labor’s policy will simply not work.

Today Mr Latham was saying the Pacific solution has failed. In fact, it is the success of offshore processing that has reduced the numbers of people coming in through people smugglers. That means we now have the capacity to enjoy this dividend and to have a very significant increase in this program. Ninety-three per cent of people in this program come from offshore, places like Kakuma where, as I have said, people do not have the money to pay a people smuggler—those people to whom Labor will give succour and will, in fact, bring them onto the mainland and process them here.

**Senator Bolkus interjecting—**

The **PRESIDENT**—Order! Senator Bolkus, I have pulled you up quite a few times during that question. I would ask you to refrain from shouting across the chamber.

**National Security: Terrorism**

**Senator FAULKNER** (2.10 p.m.)—My question is directed to Senator Ellison as Minister for Justice and Customs. It is in relation to the government heavying of the Federal Police Commissioner. Does the minister recall his confirmation during question time yesterday that he:

... certainly discussed the matter with the police commissioner, which you would expect, but that statement was made by Commissioner Keelty.

Was the minister’s discussion with Commissioner Keelty on the day of Mr Sinodinos’s phone call, was it on the Monday or the Tuesday when ministers and the Prime Minister were publicly criticising the commissioner, or was it after Minister Downer linked the commissioner to al-Qaeda propaganda? Could the minister please inform the Senate precisely when he, as minister for justice, discussed this matter with Commissioner Keelty?

**Senator ELLISON**—I first discussed this matter with Commissioner Keelty on the afternoon of Tuesday last week.

**Senator FAULKNER**—Mr President, I ask a supplementary question. I note that the minister indicated that he first discussed this matter with Commissioner Keelty on Tuesday afternoon last week. Could he also indicate to the Senate on how many other occasions he discussed this matter with Commissioner Keelty and when those discussions took place? I also ask the minister if he could now inform the Senate whether legal advice was sought or received on the issue of a ministerial staffer seeking to direct a statutory officeholder in the conduct of his duties?

**Senator ELLISON**—I reject Senator Faulkner’s allegation, if that is what it is, that a staffer sought to direct anyone in the conduct of their duties. If that is the premise of his question, it is a false one. In relation to the other part of his question, I spoke to the commissioner for police on Tuesday only once and I have spoken to him since on a number of occasions. I will have to check, but I think it is only a couple of occasions. We discussed a whole range of matters, as you would expect, including this matter.

**National Security: Terrorism**

**Senator COLBECK** (2.13 p.m.)—My question is to the Minister for Justice and Customs, Senator Chris Ellison. Will the minister inform the Senate how the Mercury 04 national counter-terrorism exercise is further strengthening our national security arrangements? Is the minister aware of any alternative approaches to the defence of Australia’s national interest?

**Senator ELLISON**—This is a very important question for all Australians and it goes to the heart of protecting this country’s
national security. Of course, it is very important that across all governments—Commonwealth, state and territory—we have that vital cooperation between our law enforcement and intelligence agencies in relation to looking after Australia’s interests. The deployment phase of Mercury 04 has now begun. This is the most ambitious counter-terrorism exercise ever embarked upon in this country. In fact, it involves action, as I say, across Australia. It involves a range of complex terrorism scenarios and these include a simulated attack by terrorists on an offshore facility to the north of Darwin, simulated bomb blasts in Victoria and the Northern Territory and other simulated attacks and incidents in South Australia and Tasmania.

As with all counter-terrorism exercises, there will be a high level of commitment from the Australian government and state and territory counter-terrorism agencies. This exercise will reinforce the cooperation that is so necessary between these agencies. Mercury 04 is part of the government’s 2003-04 budget commitment of over $15 million to broaden the number and scope of counter-terrorism exercises. Australians can take comfort in the fact that we are working across the whole of government at a national level and state and territory levels in relation to this counter-terrorism exercise. The National Security Committee has met of course, and will be meeting, and yesterday the Attorney-General and I called upon the Governor-General at Government House in a simulated exercise concerning the call-out of troops in relation to the exercise to the north of Australia. This has been regarded as a very serious exercise by all concerned.

The bombing recently in Spain serves as a tragic wake-up reminder to the world that we cannot be complacent in the fight against terrorism. The Howard government takes this extremely seriously and this is reflected in Mercury 04. Just recently—and I think I referred to it yesterday—the Director-General of Security, Dennis Richardson, told Senate estimates: ‘The connectivity between Australian border agencies is probably the best in the world. It is quite unusual for counterpart organisations globally to be able to check directly from their desktop, and we can.’ This indicates the level of cooperation that we have. But we cannot be complacent. The sort of exercise that we have in place at the moment will ensure that we get it right in the event that, tragically, we have to respond to a real incident. We believe that this is essential and we believe that the system we have in place works.

Of course, others take a different view. I look at the opposition in relation to what they say about homeland security and the fact that we do not have this cooperation in place. They are ignoring the great work that is being done through all levels of our law enforcement agencies and intelligence agencies and across all governments. We have in place a very good system that is protecting Australia. It does not need tampering with and it does not need changing. We are intent on providing ongoing security for this country, and this exercise will serve to achieve that.

**National Security: Intelligence**

*Senator LUDWIG (2.17 p.m.)—My question is to Senator Ellison, Minister for Justice and Customs and Minister representing the Attorney-General. In relation to the media reports over the past two days regarding Willie Brigitte, can the minister confirm whether this material was released by Australian or French sources? What action has the government undertaken to determine the source of this leaked information? If, as has been reported, this information has been made public by French sources, what action has the government taken, or will it take, to*
raise with the French government its concerns about the leaking of sensitive intelligence regarding an ongoing investigation?

Senator ELLISON—I think Senator Ludwig is referring to the *Daily Telegraph* article on 22 March this year. Investigations into Mr Brigitte’s activities in Australia are ongoing. The Australian authorities are working closely with French authorities on this matter and I do not intend to comment further whilst this is ongoing.

Senator LUDWIG—Mr President, I ask a supplementary question. I was expecting that the minister would have more information in relation to this. Perhaps he can take that first part of the question on notice and go and secure more information for the Senate in relation to the questions I have asked. What action has the government taken to assess the damage done to ongoing security operations? Has this leak of material jeopardised the conduct of ongoing investigations into Willie Brigitte’s activities while he was in Australia? I am sure that the minister is capable of answering those questions.

Senator ELLISON—The opposition is sorely mistaken if it thinks that I am going to engage in public debate about an investigation which is crucial to the security interests of this country.

Senator Robert Ray—Where is the information coming from? Why don’t you chase it up? It’s not operational.

Senator ELLISON—It is. Senator Ray says that it is not operational but he wants to know where the information is coming from. If that is not operational then I think that he really needs to think again. We are not commenting on a matter which is under investigation. This whole affair is under investigation. It is a matter of ongoing investigation between Australia and France and I am not going to comment, nor is the Attorney-General.

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**Education: Funding**

Senator ALLISON (2.20 p.m.)—My question is to the Minister representing the Minister for Education, Science and Training. Given the latest ABS data that show that since 1996 non-government schools have substantially increased their share of enrolments of students from high-income families and decreased their share of enrolments of students from low-income families, isn’t it a nonsense to claim that your school funding policies increase choice for low-income families?

Senator VANSTONE—I thank the senator for the question. Clearly not, Senator, and perhaps I can go through the SES funding system and that may assist you to understand. Under the new SES system, which was introduced, as you know, in 2001, schools moved to a system of funding based on the socioeconomic status of their school community. Schools serving the neediest communities are now funded up to a maximum of 70 per cent of the average cost of educating a child at a government school. In 2003 maximum funding under the SES model was $4,240 per primary school student and $5,615 per secondary student. SES funded schools serving the wealthiest communities receive only 13.7 per cent of the cost of educating a child at a government school. In 2003 this was $830 for a primary school student and $1,099 for a secondary school student.

As to increases in non-government school funding, there are three principal drivers of the increases—and if you will just bear with me I will give you the details of that. The particular increases are in supplementation enrolments and phasing in of new recurrent funding. Supplementation is paid on the same basis as the government sector and the final phase-in of the new funding arrangements for non-government schools was in-
Budget measures are generally distributed having regard to enrolment share. The increase in non-government capital maintains the real levels of government and non-government capital over the quadrennium. Every school benefits from the generous supplementation arrangements which the Australian government is committed to continuing. That applies to all schools, government and non-government, and has delivered increases of between five and 7.6 per cent each year. Enrolments in government schools increased annually by four per cent up to 2002 and 1.6 per cent since 1996 compared to an annual increase for non-government sector schools of 2.4 per cent up to 2002 and 13.3 per cent since 1996. The increases in non-government school funding are due to the rise in non-government school enrolments.

Senator ALLISON—I have a supplementary question. The minister has not attempted to answer my question and I remind her that I did not ask about the SES funding. I ask her to answer the question about the ABS data which shows very clearly that enrolments of students from high-income families have increased and those from low-income families have decreased. While the minister is thinking about that I ask: why is it that just $4 million of the government’s recently announced schools grants for disadvantaged students will go to government schools—that is around 50c per student per year—whereas private and Catholic schools will receive $17 million? How can the government justify this ongoing discrimination against students and schools in the government sector? Aren’t these the schools that already have more than their fair share of disadvantaged students?

Senator VANSTONE—I am sorry that the senator does not appear to understand the concept of a federation and the responsibility that state governments have. Senator, you know full well that the state governments fund the state schools. If you want to say to state governments, ‘Where you can’t be bothered doing your job just come to the Democrats and we will try and badger the Commonwealth into doing it,’ good luck go to you. That is not our position. Our position is that the state governments must do their job. If you are complaining about inadequate funding in government schools then your complaint should go to the state governments.

National Security: Terrorism

Senator BOLKUS (2.24 p.m.)—My question is to the Minister for Justice and Customs. Given the minister’s inability to answer yesterday, can the minister now inform the Senate who drafted the statement released last Tuesday by Commissioner Keelty? Who put that statement to the commissioner and who requested that this prepared statement be put to Mr Keelty? Who authorised the process by which such a statement would be drafted and put to Commissioner Keelty for release on the government’s timetable and what precisely was the role of the Secretary to the Department of the Prime Minister and Cabinet, Dr Shergold, in this pressuring of Commissioner Keelty?

Senator ELLISON—I answered this question yesterday. I will repeat myself in case Senator Bolkus does not remember it. I said that the statement put out by the police commissioner was his own. He put that out. Senator Bolkus is trying to imply that it was not his statement. That is not the case; the statement was that of the Commissioner of the Australian Federal Police, Mr Keelty.

Senator BOLKUS—I have a supplementary question. I think it is disappointing that the minister is refusing to accept the truth of this. Can the minister also confirm reports that this prepared statement was put to Commissioner Keelty for release in precisely
that form, with no amendments to be counte-
nanced?

Senator ELLISON—I do not think I can add to the fact that the statement was that of the Commissioner of the Australian Federal Police, Mr Keelty. That statement is defini-
tive.

Health: Mental Illness

Senator HARRADINE (2.26 p.m.)—My question is to Senator Ian Campbell, the Minister representing the Minister for Health. It refers to the inadequate provision of psychiatric services and youth suicide prevention measures. Does the minister accept that the number of youth psychiatric patients suiciding after discharge from hospital indicates that there are insufficient re-
sources devoted to early intervention and relapse intervention? Does the minister ac-
cept that the number of youth psychiatric patients suiciding after discharge from hospital indicates that there are insufficient re-

Senator IAN CAMPBELL—Thank you to Senator Harradine for raising what is un-
doubtedly an issue that is very important in the minds of many Australians. Suicide is something that afflicts many communities and many families, particularly in rural and remote areas, particularly amongst Indige-

something that afflicts many communities and many families, particularly in rural and remote areas, particularly amongst Indige-

such as Senator Harradine has said, particularly amongst the young. Something like one in five Australians experience some form of mental illness during their lives and the early detection of mental illness and people at risk of suicide—as I think Senator Harradine would know better than most in this place—is something that the government has put a lot of energy into addressing through things such as the Na-
tional Mental Health Strategy. The premise of Senator Harradine’s question is quite clearly that the policies, in trying to focus on youth at risk and preventing youth who have been discharged from care from suiciding, have not been adequate. That is something which, in the quite numerous reviews of our strategies, we clearly need to take cognisance of. The progress in terms of reducing suicide as a cause of death in Australia is promising. However, when you look at the figures they send a shiver up your spine. There were something like 2,320 suicides registered, representing a death rate of about 11.8 per 100,000 in 2002. Although this was a big improvement on figures back in 1997 of 2,720 deaths, the figure is far too large.

It is interesting—in my other hat as Minis-
ter for Local Government, Territories and Roads—that the national road toll, or the death rate on Australia’s roads, is 1,700 peo-
ple and we are constantly bombarded by me-
dia advertising in all of the states and territo-
ries, quite properly, to warn us of the risk of death on our roads. I noticed today a promo-
tion for prostate cancer prevention for which I give credit to that council—the peeball strategy—for bringing to people’s attention that that kills about 2,500 adult males a year. For suicide we are confronted by very simi-
lar figures, yet it is the quiet illness. It is something that people do not like to talk about but it does afflict us.

At the Commonwealth level we have put considerable resources into early detection. As part of the funding of public hospitals in Australia—we currently put in $42 billion under the Australian health care agreements, recently increased by 17 per cent—about $331 million is specifically directed at men-
tal illness. Under the mental health care funding arrangements we have also put in another $120 million specifically, I think Senator Harradine would be interested to know, to give GPs an incentive to spend more time with people they have identified as having a mental illness or being at risk of suicide. The figures show that something like 3,272 general practitioners across Australia
have availed themselves of that program. We have also introduced mental health literacy measures trying to improve the media reporting of suicide as an issue—trying very importantly, as Senator Harradine will understand, to get into the school curriculum, to get into not only secondary schools but also tertiary institutions and TAFEs. So there were a range of measures and significant funding. *(Time expired)*

Senator HARRADINE—Mr President, I ask a supplementary question. I thank the minister for his fulsome answer. The Mental Health Council of Australia says that a significant proportion of the people with mental disorders are not being treated in accordance with international standards for optimal care. What is the minister’s view about that? Is the government considering increasing funding to the National Suicide Prevention Strategy? Could the minister answer how that fits into the overall program that he mentioned in his response?

Senator IAN CAMPBELL—Again, that is a very important question. The Commonwealth, as I have said, has increased funding under the Australian health care agreements by 17 per cent, and I understand that we are currently negotiating with the states on how that quite massive amount of money can best be spent. I think that roughly $330 million is being spent directly on mental illness at the moment. The Commonwealth’s own strategies are very well intentioned. Obviously the resources we are putting in have significantly improved over the past eight years of this government. Will more money do more good? I think the answer is that there is always a case where you have got such a horrendous problem that afflicts so many communities and so many families that you need to ensure it is adequately resourced. Some people will say it is not adequately resourced. That is clearly an issue for the minister to address within the budget framework. Can we do better at working with the states, medical practitioners, primary caregivers, communities and schools in raising awareness and identifying people at risk? The answer has got to be yes.

**Defence: Equipment**

Senator HUTCHINS (2.33 p.m.)—My question is to Senator Hill, the Minister for Defence. I refer the minister to his failure to answer a question on 11 March regarding the lack of Australian industry involvement in the project to acquire replacement tanks. Minister, I ask again: did the government consider the needs of the Australian defence industry before it decided to spend $550 million on second-hand M1A1 tanks? What local production arrangements are in place as part of this project? Is it true that the ammunition for the current Leopard tanks is manufactured here in Australia by an Australian company but all of the ammunition for the M1A1 tanks will be imported from the United States? Why didn’t the government seek to gain every possible benefit for Australian industry as part of this deal?

Senator HILL—This might be a surprise to the honourable senator, but Australian industry does not produce a tank.

Senator Carr—What about the ammunition?

Senator HILL—The question was primarily about the tank. I will get to the ammunition; let us start with the tank. Australian industry does not produce a tank. If Labor is now suggesting that we should try and produce a tank for only 59 items then it does not understand anything about economics.

Senator Cook—You’ve never heard of export.

Senator HILL—It is not surprising, therefore, that it is Senator Cook who is interjecting so much, because we have had experience of his lack of economic under-
The M1A1 Abrams tank was chosen because that was the tank the Army believed provided it with the greatest capability to support its forces on the ground. And the price of the package—the purchase of the tank together with its supporting equipment, training, ammunition et cetera—was lower for the Abrams than for the alternatives. So, on a value for money basis and on the basis of the best choice to do the job, the M1A1 was chosen.

In relation to the issue of ammunition, it is true that the ammunition for the current Leopard 1 tank is produced by ADI. ADI do not at this time produce the ammunition that would be used by an Abrams M1A1 tank. Whether ADI will in the future produce that ammunition is obviously something for them to consider on a commercial basis. But it is not surprising that they do not produce ammunition for a tank that we do not have; they have produced the ammunition for the tank that we have had in the past. I would not have thought that there was any surprise in that regard. In relation to support of the tank in Australia, obviously we would want to maximise the business opportunity for Australian industry and we will be seeking to do that.

Senator HUTCHINS—Mr President, I ask a supplementary question. Minister, wasn’t the decision to buy 59 second-hand M1A1 tanks driven more by your desire to deploy Australian troops around the world as part of US led operations than it was by Australia’s strategic priorities? Was the acquisition of the second-hand tanks in part justified by the argument that Australian tank crews will now be able to travel around the world to man already deployed US owned tanks?

Senator HILL—Of course not, that is a silly suggestion. We employ our own equipment to support Australian national security interests, obviously. The Army has argued for the need for tanks to support its troops on the ground to provide the protection of armour. The Army is concerned that the Leopard 1 no longer provides adequate protection because the armour is too light. Therefore, the case was put for heavier armour. This government is a government prepared to support its forces, and it has been prepared to do so by purchasing these tanks. As to what tasks they will undertake in the future, obviously I do not know. How can you say? But what I do know is that, on the basis of objective and careful analysis, it is the best tank for the task that we face—and we are very pleased with the choice that has been made.

Immigration: People Smuggling

Senator PAYNE (2.38 p.m.)—My question is to the Minister for Family and Community Services, Senator Patterson. Will the minister update the Senate on the efforts of the government to prevent the trafficking of women?

Senator PATTERSON—I thank Senator Payne for her question. I know that she has had a long interest in this issue and I am pleased to be able to give her some further information. People-trafficking involves people being smuggled into a country like a commodity, and sometimes that smuggling is for the purposes of sexual exploitation. *One person who is trafficked is one person too many* is the title of a report released by an organisation which we have assisted—although I believe they said today that we had not assisted them—to undertake the work they do with trafficked women.

We have put in place a $20 million package to combat people-trafficking. Minister Ellison announced the government’s anti-trafficking package in parliament on 13 October 2003. That includes a new 23-member Federal Police mobile strike team to investigate trafficking. It involves a new senior mi-
igration officer in Thailand whose particular responsibility is focused on trafficking. We have improved legislation to comprehensively criminalise trafficking. There are three prosecutions currently under way. Ten people have been charged with Commonwealth trafficking relating offences, and two people have been charged with state trafficking related offences in New South Wales. Support is an absolutely vital part of the package and the Howard government’s anti-trafficking package has support as one of its major foci, with $5.6 million of this initiative being allocated for this purpose. The support for victims in this package includes income support, access to Medicare, support to find accommodation, assistance to develop social networks and training that will give the victims skills for their return home.

Trafficking victims are in a very vulnerable position. Most of the victims do not speak English and many are illiterate. Many of them come from very poor socioeconomic backgrounds. Many have been subjected to violence and abuse. Many of them suffer from ill health and special medical problems such as drug addiction and hepatitis. It is very difficult for law enforcement agencies to secure successful prosecutions against traffickers without the testimony of victims. Research shows that the provision of support for victims significantly increases their willingness to act as witnesses against their traffickers. That evidence seems to indicate that their willingness to cooperate is increased by about 50 per cent as a result of being supported and given assistance.

The victim support program ensures that victims who assist with trafficking investigations are fully supported while they remain in Australia. They will have a case manager to provide individualised assistance. This will involve accompanying them to interviews with police, which can be a fairly traumatic experience, and assisting them to find safe accommodation. As I said before, it will also involve income support, medical treatment, access to training and legal services, and the very important social support that they need in this very difficult time they face. We will be announcing the successful tender for the case manager in a few weeks time. In the meantime, professional social workers—people we now have in Centrelink offices to assist with Centrelink clients—are currently case managing five victims of people-trafficking and the Director of Public Prosecutions is currently managing another five victims.

**Defence: Air Warfare Destroyer Project**

**Senator CHRIS EVANS** (2.42 p.m.)—My question is directed to Senator Hill, the Minister for Defence. Can the minister confirm that the government, contrary to Navy advice, have demanded that a US-model warship be included on the design short list for the Air Warfare Destroyer Project? Who was it that actually made the decision to override the Navy recommendation and include the US option? Can the minister confirm that the US design is for a ship that has not been built as yet? Why did the government overrule the experts in the Navy and determine that they were better placed to assess the best design for our new naval warships, and on what basis was that decision taken? Can the minister guarantee that the government will not make a political decision in favour of a particular design, as they did for the replacement tank and joint strike fighter projects, but instead guarantee that there will be a full and open selection and tender process for the AWD project?

**Senator HILL.**—Senator Evans’s question is based on an article that appeared in the press a week or so ago. He should not assume that that is accurate in all regards. The National Security Committee of cabinet decided to seek a concept design from three
international designers. The first was from Blohm and Voss, the German design company which designed the Anzac frigates for Australia, and this was based on its F124 ship, incorporating an Aegis air warfare system. The second was from the IZAR company of Spain, based on its F100 ship, which is an Aegis capable ship already operating. The third is from Gibbs and Cox of the United States, which has designed the vast majority of the Aegis air warfare system destroyers in the world. Its concept design, which it had put to the Navy a few years ago, is—and I hope it does not mind me saying this—a scaled-down version of the Arleigh Burke class US destroyer, which is larger than what Australia would need and with greater capability than Australia would need. These three designs, in the view of the government, adequately cover the field and should be a basis from which a very sound concept design can ultimately be selected. That will obviously be selected on merit because the government wants the very best air warfare destroyer that it can afford.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I thank the minister for his answer but he did not answer the key question: was it a fact that the Arleigh Burke, the US product, included at the decision of the National Security Committee, was added to the Navy list, as has been alleged, or was it in the original list? He did not answer that question, so I would like him to do that. I would also like him to respond to a concern that has been expressed by many European owned defence companies that the prospects of securing major Australian defence contracts under the Howard government are virtually being closed off by the government’s decision to use the argument of interoperability and whether in competitive terms that is unfair to the Europeans, I just remind Senator Evans that Australia has chosen a new helicopter, the Tiger armed reconnaissance helicopter, which is a European designed helicopter, and that a European consortium is on the short list for a number of major procurement items that are before government at this time. The government chooses what is best—(Time expired)

Environment: Salinity and Water Quality

Senator BARTLETT (2.47 p.m.)—My question is to the Minister representing the Minister for the Environment and Heritage. I ask the question in the context of a report that was released yesterday entitled Ecological footprints of nations, which showed that Australia has the eighth highest per capita resource consumption and waste output in the world, along with our record as having the second highest number of threatened species and the highest per capita emissions of greenhouse gases. One of the major promises made by the Prime Minister close to
three years ago, before the election, was that at least $350 million of the extended Natural Heritage Trust money would be spent directly on measures to improve our water quality. Could the minister outline to the Senate exactly what percentage of this money has now been spent directly on measures to improve water quality?

Senator IAN MACDONALD—Senator Bartlett obviously raises very important questions on the approach the Howard government has taken to many of the environmental problems that confront Australia. Specifically, he asks for some detail about the amount of money spent directly on water quality issues. Unfortunately, my brief from the minister for the environment does not contain that information in the written documents I have, but I will find out the exact figure that the senator is seeking and will get back to him on it.

Suffice it to say that the Howard government is, I think, recognised by all fair observers as the government that has done most for this environment. Certainly this government has spent more money on the environment and environmental protection and advancement than any other government in history. I remember the days when Senator Faulkner was environment minister; he was outside cabinet and had the environment portfolio with arts, sports, tourism and territories. It was a minor department in a minor ministry. Under the Howard government it is a cabinet office position and it has had an enormous amount of money spent on it.

Senator Robert Ray—He was in cabinet as environment minister, unlike you.

Senator Faulkner—Don’t let the truth get in the way of a good story, Minister!

Senator Robert Ray—He was in cabinet as environment minister.

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

Senator IAN MACDONALD—You can see, Mr President, that the Australian Labor Party do not want me to be heard on this, because they understand that the Howard government have done more for the environment than any other government in history. The programs that we have embarked upon—the very significant work that has been done in the water quality area, in the waste management area and in fact across all fields of the environment—are something that is well recognised by fair observers right across Australia.

Senator BARTLETT—Mr President, I ask a supplementary question relating to the minister’s comments about what has indeed been a number of promises and announcements of action by this government in the environmental area, including water protection. Beyond promises and announcements, I welcome the minister’s commitment to get some information about what has actually been done. Could he also get information, if he is not aware of this, of how much the government has spent on another program that was announced, the Great Barrier Reef Coastal Wetlands Protection Program? How much has been spent so far and how much of this has been spent on on-ground projects to protect and restore wetlands?

Senator IAN MACDONALD—Again, the Howard government has a great interest in and is doing a lot of work in relation to wetlands—indeed, right across the coastal areas. Senator Bartlett, though, has been in the chamber long enough to know that if he needs detail on the various amounts of money spent on various programs he should go along to estimates.

Senator Robert Ray—He would not ask you.

Senator IAN MACDONALD—You go along to estimates and get those detailed amounts. Unfortunately, Senator Ray, unlike
you with the Collins class, where you knew every cent that you overspent on that particular project, I do not have all of these figures in my head. I am just suggesting to Senator Bartlett that he might front up at the environment estimates committee one day and put all of these questions. They would have all the information there to give to Senator Bartlett. If Senator Bartlett is too busy to get to the environment estimates committee, I will make it available for him.

**Veterans: Entitlements**

**Senator BUCKLAND** (2.52 p.m.)—I direct my question to Senator Coonan, representing the Minister for Veterans’ Affairs. Can the minister advise the Senate and all Australian ex-prisoners of war as to why the government has extended the $25,000 grant to surviving ex-prisoners of war from the Korean campaign or their widows? Why was this group ignored when the original grant was made to ex-prisoners of war of the Japanese? What brought about the change of heart, which cost less than a million dollars?

**Senator COONAN**—The situation in relation to widows has recently been the subject of quite a detailed examination in the Clarke review, and the Labor Party welcomed the response to the Clarke review. In relation to war widows and rent assistance, that matter has been the subject of a former question, which I have dealt with. In relation to war widows generally, as I said in this place before, this government does look after prisoners of war—those who have survived—because this government does recognise that those who have survived in very difficult circumstances obviously have situations where they need to be compensated. In relation to the Clarke report, as I said a little earlier, Senator Bishop in fact welcomed the response and put out a very effusive press release welcoming the package—

**Honourable senators interjecting—**

**The PRESIDENT**—Order! I draw the attention of both sides of the chamber to standing order 72.

**Senator COONAN**—and saying that the enhanced package that was announced following an exhaustive review of all of the issues in the Clarke report was welcome. It said not only that it was welcome but also that veterans and widows would be pleased with the package—which in fact they are—and that the bulk of the package was clearly targeted at need. When you look at what needs to be done for prisoners of war, obviously there has to be some comparability. In some theatres of war and in some situations it is not always appropriate to have an across-the-board response which entirely equates all of the experiences of everyone who has been in a theatre of war. The Clarke review did very carefully review what needed to be done in relation to the whole range of issues that it canvassed. There was very extensive consultation in relation to the response that was needed.

I reiterate that in this news statement the ALP made no criticism whatsoever of any issue to do with prisoners of war or of this government’s treatment of them. If there had been any reason to criticise, one would have thought that the ALP press release from Senator Bishop, which purports to be quite a comprehensive statement that goes across all of the matters that were canvassed in the Clarke report, would have picked it up. In fact, Senator Bishop has not and he says the veteran community can be pleased that the government has responded to the Clarke review and implemented the Clarke review’s range of measures in an appropriate way.

**Senator BUCKLAND**—Mr President, I ask a supplementary question. In the same vein, I ask the minister: why has the government not extended the same grant to ex-
prisoners of war from the European theatre of World War II? How does the government justify this discrimination and on what grounds does it differentiate between hardships suffered by all prisoners of war regardless of where they were interned?

Senator COONAN—What I was saying in my previous answer was that the government has accepted the Clarke review’s—

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left!

Senator COONAN—I was saying before I was interrupted that the government has accepted those recommendations in the Clarke review that were necessary to respond to the issues that were very broadly canvassed. We also accepted the committee’s recommendation to extend an ex-gratia payment of $25,000 to all surviving prisoners of war held captive during the Korean War, all their widows and all widowers who were alive on 1 July 2003. They did suffer extremely inhumane conditions, as indeed did many prisoners of war. This government takes very seriously the need to look after people who have been in these kinds of situations, and the government’s response to the Clarke review is comprehensive. (Time expired)

Sport: Drug Testing

Senator FERGUSON (2.58 p.m.)—My question is to the Minister for the Arts and Sport, Senator Kemp. Will the minister advise the Senate—

Opposition senators interjecting—

The PRESIDENT—Order! Standing order 72, amongst other things, says that the person asking the question shall be heard in silence. I ask you to accept that.

Senator FERGUSON—Will the minister advise the Senate of the government’s commitment to its Tough on Drugs in Sport policy and, in particular, to ensuring that Australia maintains its position as world leader in the fight against drugs in sport? Is the minister aware of any alternative policies?

Senator KEMP—I thank Senator Ferguson for that very important question. I do wish that members on the other side would show the same interest in and knowledge about the very important issue of antidoping in sport that Senator Ferguson shows.

Senator Robert Ray interjecting—

The PRESIDENT—Order! Senator Ray, you are being very boisterous today.

Senator KEMP—I think I would stop taking those pills if I were you, Senator Ray. I can inform the Senate that the Howard government has a very proud track record in the fight against drugs in sport. Indeed, Australia remains a world leader in antidoping research. The government’s commitment to its fight against drugs in sport is important and very significant.

Honourable senators interjecting—

The PRESIDENT—Order! There is too much noise across the chamber. The minister has the right to be heard in silence.

Senator KEMP—Thank you, Mr President. Funding for antidoping research in Australia, I am advised, is at record levels and there are a record number of antidoping projects currently under way. Mr President, you may be interested in the fact that currently there is some $3.3 million being invested in this research—research, I might say, that is being conducted in Australia by Australian scientists in Australian bodies and institutions. This sends, I believe, a very clear message to our athletes—that, although Australia is not immune from doping, if you are an athlete and you cheat, chances are you will get caught. It also means that athletes—the vast majority of them, as we know, do the right thing—have the best opportunity to
compete on an equal footing in a drug-free environment. Nobody likes drug cheats—not the government, not the fans and not the sportsmen and sportswomen themselves.

I was asked by Senator Ferguson whether I was aware of any other policies on this issue. I am aware of some statements that have been made by Senator Lundy in recent times. As we normally understand with Senator Lundy, those comments have been singularly ill informed. Senator Lundy made the claim yesterday, for example, that she has seen no evidence of research being started or completed in Australia. Well, Senator Lundy, I hate to rain on your parade but details of antidoping research currently undertaken in Australia by Australian scientists can be found on the departmental web site. Senator Lundy, with just a few clicks you will discover projects that have been completed, projects that are under way, how they are funded and so on.

Frankly, I thought it could not get worse from Senator Lundy, but I am afraid it has. Senator Lundy said that this government is, among other things, ‘banning the very research’—into antidoping in sport—‘that will win the battle’. That is what she is saying.

Senator Lundy—At the laboratory. You stopped the AIS from doing it.

Senator Kemp—Senator Lundy, we have not banned research. You are just dead wrong. Senator Lundy, how do you explain the 17 past and present research projects into doping in sport, the details of which are there for all the world to see? How do you explain this government’s record level of funding for a record number of research projects into doping in sport? Most importantly, how do those opposite explain the inability of Senator Lundy and Labor to fund one cent? I believe they did not fund any research when they were in government. The Labor Party have a very poor record in this area and are poorly served by Senator Lundy, who gets the key facts wrong consistently. (Time expired)

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

National Security: Transport

Senator Hill (South Australia—Minister for Defence) (3.04 p.m.)—Yesterday I was asked a question by Senator O’Brien in relation to communications between the government and Qantas concerning security matters. I have a further response from Minister Anderson in response to that question and I seek leave to have that incorporated in Hansard.

Leave granted.

I can confirm that:

- The government invests significant resources in keeping the Australian aviation industry informed about any threats to its interests
- The aviation industry is routinely informed of the nature and level of threat and any changes that they need to know in order to develop their protective security arrangements.
- Should information of a definite nature or a specific threat be received, those who need to know are immediately informed and provided with assistance to put in place appropriate counter measures.
- As Mr Anderson said on the ‘Sunday’ programme, Qantas, subsequent to Mr Carl Sullivan’s remarks of last week, clarified this matter by indicating they are satisfied with the current arrangements concerning the provision of security information
- Senator O’Brien raised the issue of information in relation to Japan. There was not an incident, as claimed in the Senator’s question.
What did occur was that Japanese regulators introduced additional security measures for airlines flying to and from Japan.

Qantas sought information about the additional security measures. I am advised that Australian Government agencies provided speedy and accurate information to Qantas about the additional security measures and the reasons for them.

Following further examination of all the matters raised over the last few days, the government has every reason to believe that communication arrangements between the government and Qantas have been and are continuing to work very effectively.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Defence: Equipment

Defence: Air Warfare Destroyer Project

Senator CHRIS EVANS (Western Australia) (3.05 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Defence (Senator Hill) to questions without notice asked by Senators Hutchins and Evans today relating to the Government’s purchase of tanks from the United States of America and to the air warfare destroyer project.

I want to concentrate on the minister’s refusal to deny the claim made in the Australian Financial Review that in fact it was the National Security Committee of cabinet that intervened to add an additional competitor for the air warfare destroyer project. The new air warfare destroyer project will be about $6 billion—the second largest defence acquisition project we have. The article, as the minister confirmed, made a number of accusations about the processes inside government. Today’s question in particular gave the minister the chance to refute those accusations but the minister again, as he normally does on such occasions, chose his words very carefully and described it as a ‘government decision’. This confirms by omission that again we have a situation where the government is intervening in defence decisions on political grounds rather than on the basis of getting the best capability or the best price for Australia when making major defence acquisitions. We have the government seeking to make political decisions very much now driven, it seems, by a philosophy to purchase American military supplies on the basis of enhancing our relationship with the United States of America.

Senator Ferguson—Tell us what you would have bought.

Senator CHRIS EVANS—What Labor has always called for, Senator, is a proper tender and evaluation project—the sort of project that your government had running on the Air 6000 project, the sort of project that would have provided for a proper evaluation of our defence needs and what future fighter would best suit our defence needs, the sort of project that would examine the capability and the cost and make an informed, rational decision. Instead of that, we had the government make a very hasty decision to go ahead with the JSF proposition—to abandon the Air 6000 evaluation and tender project and effectively make a decision to purchase the JSF.

That may or may not be the right decision in the longer term, but we had the Prime Minister visiting America, being shown over Lockheed’s factory and coming back saying, ‘We’ll buy those.’ We are talking about a $16 billion decision. There was no evaluation, no tender project and no proper assessment about whether this is the fighter aircraft that best suits Australia’s defence needs. We had a decision by the government to go with the JSF. Since that time we have had the tank decision. Again, there was no proper evaluation or tender process; we just happened to buy the American product. It may well be the
best product but there are serious questions about that.

There is a very serious debate in Australia’s defence circles about whether or not this particular tank is suitable for Australia’s defence needs but, because this government refuses to undertake proper evaluation and tender processes, we never get the answers to those questions. The decisions on what is best for Australia’s defence needs and what the best cost options are for Australia are never considered because this government immediately uses a political fix to intervene in these processes. We had it on the JSF, we had it on the tanks and we had it on the torpedoes for the submarines. They did not even fit our submarines. It cost us $200 million dollars extra because they ordered American torpedoes that did not even fit the subs. It cost Australian taxpayers $200 million to change our subs to fit the torpedoes that were bought from the Americans because we wanted to buy American.

Interoperability is the argument that is always used. Interoperability with American and other allied forces is important, but no other country is so driven by that as to rule out other products from other suppliers that meet our needs in terms of interoperability. We have seen a whole range of European and Australian based companies deciding that there is not much future for them in defence contracts in this country. They know that the government has a predisposition to purchase the American product without evaluation or tender.

Today, by refusing to deny the accusation and choosing his words about a government decision very carefully, we had the minister confirming that the Navy’s recommendations were overturned to add in the American supplier. I was seeking to get a guarantee from the minister that we would evaluate the projects on their merits and examine their costs and the best outcome for Australia’s defence needs and that we would not have a political fix applied driven by political motivations rather than by Australia’s defence needs. We did not get that guarantee. It looks like we are going down the same path as we did with the JSF and the tanks. (Time expired)

Senator BRANDIS (Queensland) (3.10 p.m.)—If you want some free entertainment in the sleepy hours of a Tuesday afternoon in Canberra, come along and listen to Senator Evans and other Labor frontbenchers lecture this government about making defence procurements and maintaining the standards, equipment, personnel and budgets of the Australian defence forces. It is a matter of notorious and disgraceful fact that during the 13 years of the Labor government—under Mr Hawke, Mr Keating and a succession of defence ministers, including Mr Beazley and Senator Ray—the capital needs of the Australian defence forces were depleted to the point where, by the time the coalition was elected at the 1996 federal election, the capital base of the Australian defence forces had never, in the post-war history of Australia, been allowed to deteriorate so far. That was the track record of the opposition when they were in government and when their senior ministers, including our colleague Senator Ray, held the Defence portfolio.

I say to the opposition: do not lecture us about defence procurement when two years ago, when this government produced the white paper which mapped Australia’s defence needs for the next 10 to 15 years, the then Leader of the Opposition, Mr Beazley, was speechless and was only able to say that he thought the white paper was fantastic. That was his word: ‘fantastic’. When he saw that white paper you could hear the sigh that reflected the thought: ‘If only when I had been defence minister’—because Mr Beazley was genuinely interested in defence—‘I could have persuaded my cabinet
colleagues’—like Senator Cook, who sat in cabinet, Senator Bolkus and Senator Faulkner—‘to spend that sort of money on defence procurement.’ This is the sort of money that the Howard government committed to with the publication of the white paper two years ago. Those are the comparative records, Mr Deputy President, which you, as a person who has taken a keen and informed interest in defence matters in this chamber, would also recognise: a 13-year track record of neglect and deterioration of the capital base of our defence forces during the Hawke and the Keating governments and the Howard government’s white paper, which even the then Leader of the Opposition embraced and for which he had not a syllable of criticism to utter.

But we should not be unfair. There was, of course, one great defence procurement contract for which the Hawke and Keating governments will be famous. It was a defence procurement contract which will be forever badged with the name and reputation of our friend Senator Ray, the then defence minister. That was the Collins class submarine project, the most mishap-ridden Australian defence procurement project in terms of costings, design, lateness of delivery and cost overruns in the post-war history of the defence of this country. When you think of the Hawke and Keating governments and when you think of defence, that is the project you always think of, isn’t it, Senator Ludwig? It is the Collins class submarine, which this government inherited and had to spend a fortune to try to correct.

Let me finish on this note. There was another subtext, a theme, that perhaps ever so gently crept into Senator Chris Evans’s remarks. That was Labor’s old reliable appeal to anti-American sentiment. Whenever the opposition run out of good arguments on defence or foreign policy issues, they can always be counted on to retreat lazily to their instinctive, reactive anti-Americanism. Why else would Senator Evans be at such pains to make the point that these defence procurement decisions were about appeasing American interests? Why else would that rhetoric have intruded into his otherwise artless and not very well informed remarks? The Labor Party, wanting for an argument, will always revert to anti-Americanism. It is yet another theme of Labor’s disgraceful, shameful, tawdry record on defence. Letting the forces run down, making artless, politically-driven procurement decisions and insulting our greatest ally—that is the Labor Party’s shameful record. So do not come in here and lecture us. (Time expired)

Senator LUDWIG (Queensland) (3.15 p.m.)—Senator Brandis, I will not lecture you; I will direct my comments through the Deputy President. Senator Brandis gets it wrong again and again. He comes in here with a lot of hot air and no substance. He accused the Labor Party of, when it was in office, politicising procurement. What he failed to say is that, in truth, that is what we are criticising this government for doing right now. They have done it in relation to the fighter planes and they are doing it in relation to the procurement of the 59 Abrams tanks. They are overstepping the mark clearly in relation to how you purchase defence equipment. What we have is a government making political decisions on the run about the Defence Force and its capabilities. What they should be doing is ensuring that there is a full and open selection and tender process for the purchase of Defence Force equipment.

The Military balance 2003-2004 out of Oxford University Press shows that when Labor were in government the supplier was domestic. In other words, the equipment for our own soldiers and air personnel was, where possible, sourced from domestic sources. Since the Liberal Party have taken
office they are slowly but surely skewing their Defence Force procurement to the United States. We have now, since 1999, seven procurements which have been sourced from the United States, and another two are in the pipeline out of a further three or four. The majority of procurements are now being sourced through the United States of America, as indicated on this list.

What is unclear, and what the government have not said, is why. They have not said it because they have not provided a full and open selection tender process. They have avoided that because they know the real reason. The real reason is what Senator Hill refused to rule out: interoperability with the United States in terms of hot crew changeovers and the potential that that can have. These are the questions that can flow from that. We do not know whether Senator Hill means that Australian soldiers will end up in US tanks with depleted uranium casings, whether they will use depleted uranium ammunition or whether they will then take command and orders from the United States Central Command. That is what is unclear from Senator Hill’s response. He had an opportunity to rule it out, but he did not.

When we look at the domestic situation, what we have from Senator Hill is that currently the ammunition for the Leopard tank is supplied by ADI, a great defence industry in Australia. He then said that it might be ADI’s commercial decision as to whether or not they supply ammunition to the new Abrams tanks into the future. What he has not done—and the government should say this—is provide leadership to ensure that Australian industries in Australia are not left out in the cold.

One of the other major issues that come from that is how you ensure supply. We already know about the ammunition for the 155 Howitzers. I am still waiting for an answer from Senator Hill about how you guarantee supply. You do not have any ammunition for those. That could potentially happen with Abrams tanks. We do know that, when you operate from overseas with US Central Command, the United States will give you a discount on their ammunition, which they will supply. You will not take your own ammunition; they will give you something like a 40 per cent discount on the ammunition if you are assisting in one of their operations. Senator Hill might take the opportunity today of telling us what happens if you are not with them, if you are in another regional conflict. (Time expired)

Senator KNOWLES (Western Australia) (3.20 p.m.)—There is a very worrying trend that has been coming from the Labor Party for quite some time, and that is that they will do anything to denigrate the forces in Australia. It does not matter whether they are the defence forces or, now, the Australian Federal Police. The record of the Labor Party in government in all of these areas was nothing short of despicable. The way in which, as Senator Brandis outlined today, they cut back expenditure on equipment—the budgets were all cut and slashed year after year in 13 years of government—and the way in which they held no respect whatsoever for personnel are nothing short of disgraceful. The way the Labor Party attacked at first blush the Defence personnel who were going to fight the war in Iraq last year was all part of this attack today on procurement. Decisions on procurement have to be made on an ongoing basis. It is just a shame that the Labor Party only made one—and that was a disaster. If they had taken a responsible attitude over 13
years of government then the procurement problems for the defence forces might not be in the state that they are in today. I will defend to the end the decision that this government is making to replace the equipment that the Labor Party allowed to run down.

As Senator Brandis said, the policy on defence procurement during the 13 years of Labor led to one decision and one decision alone—that was solely a decision on the Collins class submarine, and what a disaster that has been. Senator Robert Ray can come in here and interject on Senator Hill’s speech about procurement decisions now, yet he was the architect of the decisions on the Collins class submarine. As I say, the way in which the Labor Party are now undermining every force in this country is of concern to the people of Australia. It was not so long ago that they had a slightly different attitude to that which they are showing today. Take, for example, the AFP and Commissioner Keelty. It was not so long ago—in fact, it was in September 2002—that Senator Faulkner, who comes in here now so righteously defending Commissioner Keelty, had this to say about the same person. This was in the Hansard in relation to the nature and extent of people-smuggling and the disruption activities in Indonesia. Senator Faulkner said:

The issue of sabotage of people smugglers’ vessels has been canvassed by the AFP informant Kevin Enniss. I ask these questions: was Enniss involved in the sabotage of vessels? Were others involved in the sabotage of vessels? Do Australian ministers, officials or agencies have knowledge of such activities? And what about the vessel now known as SIEVX, part of the people-smuggling operation of the notorious people smuggler Abu Qussey? That vessel set sail on 18 October 2001 and sank on 19 October 2001, drowning 353 people, including 142 women and 146 children ...

I intend to keep asking questions until I find out. And, Mr Acting Deputy President, I intend to keep pressing for an independent judicial inquiry into these very serious matters. At no stage do I want to break, nor will I break, the protocols in relation to operational matters involving ... the AFP.

What a whole lot of nonsense. At that time Senator Faulkner was clearly and religiously undermining the commissioner and undermining the AFP. As the AFP said at that time—

**Senator Ludwig**—Mr Deputy President, I rise on a point of order. I am not sure of the matter that is being raised. Where is the relevance? We have wandered quite a long way from where we began. I think Senator Knowles should be brought back to the issue that is under discussion.

**The DEPUTY PRESIDENT**—There is no point of order.

**Senator KNOWLES**—It is interesting that the Labor Party do not like these comments. The AFP responded to Senator Faulkner by saying:

It is easy to make spurious allegations and many of the allegations made by Sunday, and repeated by Senator Faulkner are just that. When properly investigated, the allegations lack substance.

Senator Robert Ray also attacked the AFP. I might add that, given that the Premier of Western Australia has also attacked the police commissioner in Western Australia, this whole Labor attack on institutions is just a trend. It does not matter whether it is the defence forces or the AFP—the Labor Party are anti the lot until it serves their political purpose. *(Time expired)*

**Senator HUTCHINS** *(New South Wales)* *(3.25 p.m.)*—Today there were a series of serious questions asked of the defence minister in relation to defence equipment and the procurement of certain tanks from the United States. These were not frivolous or downright political questions; they went to the core of the difficulties that this side of politics has with that decision and where it leads
to. In essence, there are three areas that need to be addressed: the first is how the decision was made to purchase this equipment, the second is whether or not it was appropriate to purchase the equipment, and the third is what the purchase of this equipment indicates for the future of our defence forces.

In relation to the first issue, we understand—and it has not been disputed by the government—that the decision to purchase these 67-tonne Abrams tanks was made without tender or evaluation. These tanks are second-hand and are to be purchased from the United States. The ammunition that will be required for these tanks will also be purchased from the United States. No Australian defence industries were involved in the decision to purchase this equipment.

The second issue is whether the equipment is appropriate for Australia. Except for Defence Force excursions into the Middle East, our defence needs have reflected a commitment to our local region. We have a coastline of 37,000 kilometres, which I think is more important to our future defence needs than purchasing some 50-odd 67-tonne tanks. We have been and can be expected to be involved in our region. Mr Deputy President, with your experience, you would know as well as I do how inoperable 67-tonne tanks would be going around the streets of Dili, the Solomon Islands or Papua New Guinea. Clearly they are not operable for these regions. These tanks were not designed or made for those conditions.

The third issue is what this means for Australia’s defence industries and defence forces in the future. Does this mean that our Australian tank crews are, in essence, going to be interoperable with those of the United States in other parts of the globe where the United States’ and/or our own interests may be threatened in the future? I take offence to what Senator Brandis and Senator Knowles said in relation to the Australian Labor Party’s commitment to Australia’s defence, our decisions in the past and our relationship with the United States. The Australian Labor Party was the party in government that approached the United States for the first and still current relationship called ANZUS. It was not the conservative parties at the time, who were still very much convinced that the supreme defence relationship should be with the United Kingdom.

In the end, what I want to emphasise in the minute I have left is that if we are going to go down the path of having our equipment and our defence forces interoperable with equipment that is unable to be, or not likely to be, used in our region, then that is a discussion about which we should be going to the Australian people. I am disturbed that this was done without any evaluation or tender. But, in the end, if that is the direction of Australia’s defence policy, we should go to the Australian people and say, ‘This is the commitment we are making,’ and not be underhanded, as we have seen in the answers to questions that the minister has given. Clearly on two or three occasions today he was invited to rule on the ability to interoperate between ourselves and the forces of the United States, and he did not rule that out.

(Time expired)

Question agreed to.

Education: Funding

Senator ALLISON (Victoria) (3.30 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) to a question without notice asked by Senator Allison today relating to funding for education.

The minister did not, in fact, answer my question at all. She gave me a lengthy, prepared speech about the SES funding model, which I already knew. What she did not ad-
dress was my question, which related to the claim that the government often makes that the new funding model is all about assisting parents to choose a school. That is a bit of a euphemism for assisting parents to opt out of the government sector and move across to private schools. The government has done a great deal to encourage that shift, and I understand why they would do it. As long as you can get parents to fund the education of their children, it reduces the cost to government.

However, I want to address the specifics of this, because for a long time the government has said it is wrong to claim that Catholic and independent schools are only about wealthy families and that it is in fact the poor who are attending those schools. Last year Barbara Preston's study, *The social make-up of schools: family income, religion, Indigenous status, and family type in government, Catholic and other non-government schools*, looked at the 2002 census data. Her report shows that in government schools 42 per cent of students are from low-income families and, in contrast, in Catholic schools only 27 per cent of students are from low-income families. In other non-government secondary schools, only 23 per cent of students are from low-income families. In government schools, only 21 per cent of students are from high-income families. In contrast, in Catholic schools it is 34 per cent; and in other non-government schools, 47 per cent of students are from high-income families.

You can look at Indigenous students or children in single-parent families, for instance, but the same proposition holds true—there is a strong connection between high income and attendance at private schools. The groups recognised as suffering the greatest disadvantage are also far more concentrated in public schools. Nearly 88 per cent of Indigenous students attend public schools, with 4.5 per cent of students in public schools being Indigenous, compared with 1.4 per cent in private schools. The study shows that 82 per cent of students with disabilities attend public schools and that 3.2 per cent of students who live in remote areas attend public schools compared with 1.2 per cent for private schools. And so it goes on.

The second part of my question went to this supposedly new funding grant for schools which was part of the minister's press release a few weeks ago that talks about grants that would go to disadvantaged students. Lo and behold, government schools will receive $4 million out of that package, in contrast to non-government schools, which will receive $17 million. I would think that for over two million students, $4 million over four years is not going to make a substantial difference. It works out to be about 50c per student, which is really not going to make any difference whatsoever.

The minister says, 'The Constitution says that the states look after state government schools and that the Commonwealth looks after non-government schools.' This is a nonsense. There is nothing in the Constitution that suggests that. It is certainly the case that the states are responsible for schools, but we all know that the Commonwealth funds schools directly and indirectly so there is no clear-cut distinction between who funds what. It is a nonsense for the government to come in here time after time and claim that there can be no criticism of its ham-fisted approach to funding which sees so much new funding go into the non-government sector and so little made available for the public sector and claim that it is the Constitution that calls for this to happen. That is a complete nonsense. This is about ideology. It has nothing to do with fairness. The new SES model is not fair even within the non-government sector. There are schools that are so-called funding maintained; if the model were imposed on them they would lose
money. So how this model can ever be seen to be fair even in that sector is a mystery to me. Of course, worse than that is the fact that this new SES model will deliver so much more to the non-government sector compared to state schools. We are only seeing increases in funding and indexation—

The PRESIDENT—Order! The time for the debate has expired.

Question agreed to.

PRIVILEGE

The PRESIDENT (3.35 p.m.)—Senator Mackay, by letter dated 10 March 2004, has raised a matter of privilege under standing order 81. The essence of the matter of privilege is that there appears to be a contradiction between answers which were given by officers of Telstra at an estimates hearing of the Environment, Communications, Information Technology and the Arts Legislation Committee on 16 February 2004 and statements made in a Telstra document.

I am required to determine whether a motion to refer the matter to the Privileges Committee should have precedence, having regard to the following criteria:

(a) the principle that the Senate’s power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and

(b) the existence of any remedy other than that power for any act which may be held to be a contempt.

Paragraph (12) of resolution 6 of the Senate’s Privilege Resolutions, indicating matters which may be treated by the Senate as contempts, provides:

A witness before the Senate or a committee shall not:

(c) give any evidence which the witness knows to be false or misleading in a material particular, or which the witness does not believe on reasonable grounds to be true or substantially true in every material particular.

The Privileges Committee has indicated in its reports that evidence which leaves a committee with a misleading impression of the facts is misleading evidence for the purposes of this paragraph.

The Senate has always acted on matters of privilege which provide any indication that false or misleading evidence has been given. All such cases which have been duly raised in the past have been referred to the Privileges Committee.

The matter therefore clearly meets paragraph (a) of the criteria I am required to consider. In relation to paragraph (b), there is no other available remedy. I therefore determine that a motion to refer the matter to the Privileges Committee may have precedence under standing order 81. I table the letter from Senator Mackay. A notice of motion to refer the matter to the Privileges Committee may now be given.

NOTICES

Presentation

Senator MACKAY (Tasmania) (3.39 p.m.)—I give notice that, on the next day of sitting, I shall move:

That the following matter be referred to the Committee of Privileges:

Whether any false or misleading evidence was given by witnesses representing Telstra in relation to the matter of the network fault rate and deterioration of the network, and whether any contempt was committed in that regard.
PETITIONS

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

Social Welfare: Reform

To the Honourable President and Members of the Senate in the Parliament assembled:
The Petition of the undersigned shows that Australians support a simple and fair welfare system that protects people from poverty and assists them to participate in society.
Your Petitioners ask that the Senate support reform of the welfare system which will:
• encourage participation in employment, education, training and community activities on a voluntary basis and without the threat of harsh financial penalties;
• remove barriers to participation through the provision of accessible, quality housing, childcare and transport;
• replace work for the dole programs with accredited training programs and effective employment subsidies;
• increase unemployment payments to equal the age pension; and
• simplify the social security system.
We call on the Senate to guarantee that there will not be any reduction in pension or allowance rates of assistance.

by Senator Bartlett (from 60 citizens).

Child Abuse

To the Honourable Members of the Senate in the Parliament assembled.
The Petition of the undersigned draws attention to the damaging long-term effects to Australian society caused by the sexual assault and abuse of children and the concealment of these crimes within churches, government bodies and other institutions.
Your petitioners ask the Senate, in Parliament to call on the Federal Government to initiate a Royal Commission into the sexual assault and abuse of children in Australia and the ongoing cover-ups of these matters.

by Senator Bartlett (from 27 citizens).

Trade: Live Animal Exports

To the Honourable Members of the Senate in the Parliament assembled.
The petition of the undersigned protest in the strongest possible terms against the live-export of Australian animals.
During transportation the animals are subjected to inhumane conditions resulting in unacceptably high death rates and suffering. Upon arrival, they suffer extreme cruelty and barbarism prior to and during slaughter—practices that are illegal in Australia.
Your petitioners call upon the Senate to immediately, and without delay, ban the live export of Australian livestock.

by Senator Calvert (from nine citizens).

Trade: Trade Agreements

To the Honourable Members of the Senate in the Parliament assembled.
The Petition of the undersigned draws the attention of the Senate to the negotiation of trade agreements by the Commonwealth without adequate consideration of the impact of agreements on employment, social services and standards.
Your petitioners ask the Senate to support public scrutiny and consultation, the release of social and regulatory impact statements, and the inclusion of human rights, environment and labour standards, as requirements for any further multilateral or bilateral trade agreements.

by Senator Calvert (from nine citizens).

Science: Stem Cell Research

To the Honourable the President and members of the Senate assembled in Parliament:
The petition of certain citizens of Australia draws to the attention of the Senate that we are concerned at the destruction of human embryos by scientists extracting embryonic stem cells and concerned at proposals by scientists to clone human embryos for the purpose of extracting embryonic stem cells.
Your petitioners therefore pray that the Senate will:
(1) Oppose the creation of embryos for the purpose of extracting stem cells and any
other scientific purpose (therapeutic cloning); 

(2) Oppose the use of already existing embryos for the purpose of extracting stem cells and any other scientific purpose;

(3) Support, encourage and fund scientific research using adult stem cells from all sources including umbilical cord blood.

by Senator McGauran (from 34 citizens).

Petitions received.

NOTICES
Presentation

Senator Eggleston to move on the next day of sitting:

That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts Legislation Committee on the 2003-04 additional estimates be extended to 25 March 2004.

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

That the Senate—

(a) notes that:

(i) the following nine universities have decided to increase their higher education contribution scheme (HECS) fees for 2005, most of them by the full 25 per cent across all disciplines: the University of Sydney, Griffith University, La Trobe University, Queensland University of Technology, Newcastle University, Deakin University, University of Southern Queensland, Swinburne University and Monash University,

(ii) only three universities have decided to decrease HECS fees for 2005 in a few disciplines,

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

(iv) 31 March 2004 will be the National Day of Action for university students who will be protesting against the Government’s ‘Backing Australia’s Future: Our Universities’ policy and specifically against HECS increases;

(b) supports constructive attempts by students to prevent the remaining universities increasing HECS fees; and

(c) condemns the Government for under-funding universities for the past 7 years to such an extent that universities are now turning to students to provide a short-term increase in funding.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) condemns the Israeli government for:

(i) the assassination of Sheikh Ahmed Yassin, the spiritual leader of Hamas, by the Israeli army,

(ii) the illegal assassination of political adversaries, and

(iii) the continued illegal occupation of Palestinian territories and the oppression of the Palestinian people;

(b) recognises the need for:

(i) a genuine commitment to a peaceful resolution in Israel and Palestine from all parties in the conflict, and

(ii) the international community to actively pursue strategies to assist in the peaceful and just resolution of the conflict; and

(c) calls on the Government to:

(i) express the strongest condemnation of Israeli assassination raids to the Israeli Government,

(ii) urge Palestinian groups to show restraint in response to these attacks, and

(iii) work with friends in the international community to redouble efforts to bring a peaceful and just settlement to the conflict in Israel and Palestine.

Senator Sherry to move on the next day of sitting:
That there be laid on the table, by the Minister for Revenue and Assistant Treasurer, no later than 5 pm on Wednesday, 24 March 2004, the document detailing the actual revenue collected during the 2002-03 financial year from the measure, ‘allowing departing temporary residents access to their superannuation’ referred to on pages 1 to 25 of the document *Budget strategy and outlook 2002-03* (Budget Paper No. 1).

**Senator Faulkner** and **Senator Bartlett** to move on the next day of sitting:

That the Senate—

(a) notes:

(i) the inappropriate and unacceptable public and private pressure applied by Federal Government ministers and ministerial staff to the Australian Federal Police Commissioner, Mr Keelty, following his comments regarding security risks in Australia, and

(ii) that this constitutes ministerial interference at the highest level of Government; and

(b) calls for:

(i) the Government to respond immediately to the recommendations of the Finance and Public Administration References Committee inquiry into staff employed under the *Members of Parliament (Staff) Act 1984*, and

(ii) the implementation of the recommendations of the Finance and Public Administration References Committee report into staff employed under the *Members of Parliament (Staff) Act 1984*, in particular the recommendation that ministerial staff should be required to appear before parliamentary committees where critical or important information or instructions have emanated from a minister’s office but not from the minister.

**Senator Nettle** to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) university students are faced with increased tuition fees, text book costs and living expenses,

(ii) Monash University has become the ninth university to increase its tuition fees since the Government passed legislation to allow universities to do so, and

(iii) on 22 March 2004, the students at Monash University exercised their right to direct non-violent action to protest against the university’s decision to raise tuition fees; and

(b) congratulates the students at Monash University for:

(i) rejecting the Government’s user-pays model of higher education, and

(ii) their brave action in the week beginning 21 March 2004, undertaken in the interests of their fellow students and the broader interests of equity and accessibility of the higher education system.

**Senator Faulkner** to move on the next day of sitting:

That there be laid on the table, by the Leader of the Government in the Senate, no later than 4 pm on Tuesday, 30 March 2004, copies of all drafts of the clarifying statement which was negotiated between the Australian Federal Police Commissioner, Mr Keelty, and the Secretary of the Department of the Prime Minister and Cabinet, Dr Shergold, and any other members or representatives of the Government and which was issued by the Commissioner on Tuesday, 16 March 2004.

**Senator MACKAY** (Tasmania) (3.41 p.m.)—At the request of Senator Conroy, I give notice of his intention after the adjournment of the Senate today to amend business of the Senate notice of motion No. 1 standing in his name for tomorrow relating to the disallowance of certain corporations regulations pursuant to standing order 77. This will provide the opportunity for any
other senator who so wishes to take over the remainder of the disallowance notice.

BUSINESS
Rearrangement

Senator FERRIS (South Australia) (3.42 p.m.)—by leave—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I move:

That the time for the presentation of the report of the Economics Legislation Committee on the provisions of the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and a related bill be postponed to a later hour of the day.

Senator BROWN (Tasmania) (3.43 p.m.)—The Greens will be agreeing to this delay but we make it clear that it should be a delay that gives the Economics Legislation Committee time to consider the evidence brought before it yesterday evening. It would mean in effect that we should not railroad this through here today but that we should wait at least until tomorrow. I believe that the Senate and the committee should consider that.

There is no urgency for this bill to say that it should not wait until there is proper consideration of the evidence before the committee and due weighing of that and the writing up of the reports. I believe that it should be made an order not for a later hour of today but at least for tomorrow. Remember, we are dealing here with a quite complex issue, one which is effectively taking East Timor’s resources and placing them in the hands of Australia and the oil companies developing them. It is an extremely important matter and it will have ramifications for Australia and its relationship with its poor neighbour for decades to come. It should not be pushed through here at the rate it is and at the rate at which the amendment would have it.

Question agreed to.

NOTICES
Postponement

Senator NETTLE (New South Wales) (3.45 p.m.)—by leave—I move:

That general business notice of motion no. 815 standing in her name for today, relating to fees for higher education, be postponed till the next day of sitting.

Question agreed to.

TRADE: FREE TRADE AGREEMENT

Senator MACKAY (Tasmania) (3.46 p.m.)—by leave—At the request of Senator Conroy, I move:

That the Senate calls on the Government to request the Productivity Commission, in accordance with the Productivity Commission Act 1998, to:

(a) undertake a thorough assessment of the impact of the free trade agreement (FTA) made between the governments of Australia and the United States of America in February 2004 on Australia’s economy, focusing in particular on:

(i) the impact on employment and investment,

(ii) the impact on Australian agriculture,

(iii) the impact on Australia’s manufacturing sector across states, territories and regions,

(iv) rules of origin,

(v) government procurement,

(vi) intellectual property,

(vii) the Pharmaceutical Benefits Scheme, and

(viii) the audio-visual sector; and

(b) report on any anticipated trade creation and trade diversion effects arising from the agreement and include in its analysis a full assessment of the environmental, social and cultural impact of the FTA.

Question agreed to.
NOTICES

Postponement

Senator RIDGEWAY (New South Wales) (3.47 p.m.)—by leave—Before moving general business notice of motion No. 812 standing in my name I wish to amend the motion to add that the Senate notes the increased support the government has given to sport and the Australian Institute of Sport and calls on the government to ensure that the AIS continues to be adequately supported so as to promote future Australian sporting excellence, and also to note that the motion is to be moved jointly by me and the Minister for the Arts and Sport, Senator Kemp.

Senator MACKAY (Tasmania) (3.47 p.m.)—by leave—I am not sure that we are aware of this amendment. I wish to be corrected if Senator Ridgeway believes we are. Perhaps he could indicate whether he has sought the agreement of the shadow spokesperson.

Senator RIDGEWAY (New South Wales) (3.48 p.m.)—by leave—I am not aware whether the shadow spokesperson or the minister is aware of the particular changes. I understood that, whilst they have not been circulated, this was a request from government in order to win support and I am happy to amend that further, subject to government concurrence, to include Senator Lundy. I think that what is most important on this occasion is not so much the politics but the intent of the motion and the importance of acknowledging Benita Johnson.

Senator MACKAY (Tasmania) (3.48 p.m.)—by leave—May I suggest to Senator Ridgeway that perhaps he could postpone this until tomorrow to allow the Labor Party to consult with its shadow spokesperson, because we are unaware of the amendment.

Senator RIDGEWAY (New South Wales) (3.49 p.m.)—by leave—I move:

That general business notice of motion No. 812 be postponed till the next day of sitting.

Question agreed to.

EDUCATION: TEACHER SHORTAGES

Senator ALLISON (Victoria) (3.49 p.m.)—by leave—I move the motion as amended:

That the Senate—

(a) notes that:

(i) according to the Australian Council of Deans of Education, there will be a teacher shortfall of about 5 000 teachers Australia-wide in 2005 and between 20 000 and 30 000 by 2010,

(ii) 40 per cent of junior secondary school students are currently taught maths and science by teachers who are not specifically trained in those subject areas,

(iii) 44 per cent of Australia’s 250 000 teachers are aged over 45,

(iv) demand for primary school teaching graduates will increase by 31 per cent and demand for secondary school teachers by 85 per cent, by 2005, and

(v) 3 330 people who applied and were eligible for teaching courses in Victorian universities missed out on places in 2004;

(b) calls on the Federal Government to provide more university places for teacher education because shortages are unlikely to be filled by retraining and encouraging the return of teachers who have left the profession;

(c) calls on the Government, as a matter of urgency, to develop a national plan for addressing teacher shortages overall and in specific subject areas of short supply; and

(d) reminds the Minister for Education, Science and Training (Dr Nelson) that the gender imbalance in the teaching workforce is only one aspect of the crisis of overall teacher shortages.
REDFERN COMMUNITY CENTRE

Senator RIDGEWAY (New South Wales) (3.50 p.m.)—I move:
That the Senate—
(a) notes:
(i) the opening of the Redfern Community Centre on 13 March 2004, and
(ii) that the centre, developed by the former City of Sydney Council after 18 months of community consultation, will provide a space for training and employment initiatives; art, sport, dance and self defence as well as local enterprise programs;
(b) commends New South Wales Governor Marie Bashir for coming to ‘the Block’ and joining with elder Aunty Joyce Ingram in officially opening the new Redfern Community Centre;
(c) notes the difficulty in finding lasting solutions to the problems in Redfern, in the absence of a balanced portrayal of the issues and the lack of leadership in driving the agenda for change forward; and
(d) calls on the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) to visit ‘the Block’ and the Redfern Community Centre as a way to better inform herself about the issues for Indigenous people in urban areas.

Question agreed to.

COMMITTEES

Legal and Constitutional Legislation Committee

Meeting

Senator FERRIS (South Australia) (3.51 p.m.)—At the request of Senator Payne, I move:
That the Legal and Constitutional Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 24 March 2004, from 5.30 pm, to take evidence for the committee’s inquiry into the provisions of the Disability Discrimination Amendment Bill 2003.

Question agreed to.

Finance and Public Administration References Committee

Meeting

Senator FERRIS (South Australia) (3.51 p.m.)—At the request of Senator Forshaw, I move:
That the Finance and Public Administration References Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 25 March 2004, from 4 pm to 6 pm, to take evidence for the committee’s inquiry into the second year of operation of the Senate order for the production of lists of departmental and agency contracts.

Question agreed to.

Economics Legislation Committee

Meeting

Senator FERRIS (South Australia) (3.51 p.m.)—At the request of Senator Brandis, I move:
That the Economics Legislation Committee be authorised to hold public meetings during the sittings of the Senate on the following days, from 4 pm:
(a) on Thursday, 25 March 2004 to take evidence for the committee’s inquiry into the Taxation Laws (Clearing and Settlement Facility Support) Bill 2003;
(b) on Monday, 29 March 2004 to take evidence for the committee’s inquiry into the provisions of the Treasury Legislation Amendment (Professional Standards) Bill 2003; and
(c) on Thursday, 1 April 2004 to take evidence for the committee’s inquiries into the New International Tax Arrangements Bill 2003 and the Tax Laws Amendment (2004 Measures No. 1) Bill 2004.

Question agreed to.
Corporations and Financial Services Committee
Meeting

Senator FERRIS (South Australia) (3.51 p.m.)—At the request of Senator Chapman, I move:
That the Parliamentary Joint Committee on Corporations and Financial Services be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 24 March 2004, from 4 p.m., to take evidence for the committee’s inquiry into Corporations Amendment Regulations.
Question agreed to.

FLAGS AMENDMENT (EUREKA FLAG) BILL 2004
First Reading

Senator MARSHALL (Victoria) (3.52 p.m.)—I move:
That the following bill be introduced: A Bill for an Act to amend the Flags Act 1953 to recognise the Eureka Flag as an official flag of Australia, and for related purposes.
Question agreed to.

Senator MARSHALL (Victoria) (3.52 p.m.)—I move:
That this bill may proceed without formalities and be now read a first time.
Question agreed to.
Bill read a first time.

Second Reading

Senator MARSHALL (Victoria) (3.52 p.m.)—I move:
That this bill be now read a second time.
I seek leave to have the second reading speech incorporated in Hansard.
Leave granted.
The speech read as follows—
FLAGS AMENDMENT (EUREKA FLAG) BILL 2004

The Flags Amendment (Eureka Flag) Bill 2004 amends the Flags Act 1953 to include the Eureka Flag alongside the Australian National Flag, the Aboriginal Flag, the Torres Strait, and the flags of the Australian Navy, Air Force and Defence Force as an officially recognised flag of Australia.

This bill is identical to one that was introduced in to the House of Representatives on 1 December 2003 by the Member for Ballarat, Ms Catherine King.

The bill, which has not yet been prioritised in the House of Representatives, has come about because of a necessity to have the Parliament approve the Eureka flag as an official flag of Australia in order for it to be permissibly flown from a flagpole in the Parliamentary precinct to mark the anniversary of the Eureka Rebellion.

It is particularly important that the bill pass through the Parliament this year, as 2004 marks the 150th anniversary of the Eureka Rebellion, which took place in Ballarat (in my home state of Victoria) on 3 December 1854.

In order for the Senate to understand how we have come to debate this particular bill, let me explain a bit of the history surrounding it.

Back in 2002, the Member for Ballarat in the other place, Ms Catherine King wrote to the Speaker of the House of Representatives requesting that the Eureka Flag be flown at Parliament House to mark the 148th anniversary of the battle at the Eureka Stockade.

In response to that request, the Speaker wrote to Ms King and refused it on the grounds that, “Parliament House protocol follows Commonwealth practice that only flags recognised under the Flags Act (such as the Australian National Flag and the Aboriginal and Torres Strait Islander Flags) and the flags of sovereign states, on the occasion of a relevant state visit, are flown at Parliament House”.

The Member for Ballarat then wrote to the Prime Minister asking that he write to the Governor General requesting that the Eureka Flag be proclaimed under the Flags Act 1953.

On the 17th of January 2003, a response was received from the Acting Parliamentary Secretary to the Prime Minister, which read:
The Eureka Flag occupies a place in Australia’s history as it has come to be regarded as a flag of protest against infringement of rights and liberties. It is an important historical flag that expressed a sense of identity growing out of the colonial period, along with other flags such as the National Colonial flag and the Murray River flag.

While the Eureka Flag is an important flag in Australia’s history, it does not, like the many flags or ensigns in use in Australia, come within the ambit of the Flags Act, which is intended to cover only those flags which represent the nation, its people or government.

Advice received by the Member for Ballarat then suggested that the only possible way the Eureka flag could be flown from a flagpole within the Parliamentary precinct was for it to be recognised as an official flag of Australia—and hence, the Flags Amendment (Eureka Flag) Bill 2003 was drafted and given a first reading in the House of Representatives.

We are now debating this issue from the Senate as no priority has been given to the Bill in the House of Representatives for some time.

The bill before us and the one sitting on the House of Representatives Notice Paper does not seek to replace our current National Flag. Nor does it seek to have the Eureka flag flown from the main flagpole above Parliament House.

The bill, if passed, would allow for the Eureka Flag to be flown from an appropriate flagpole within the Parliamentary precinct on the commemoration of the Eureka rebellion and at other times deemed appropriate by the Presiding Officers.

This is not a big ask—and it just seems right to me that the flag, which is associated with the birth of real democracy in this country is recognised for what it is.

This view is supported all around Australia.

For the past four years, the Eureka Flag has been flown at the Victorian Parliament House and for the past two years at the New South Wales Parliament House to mark the anniversary of the Rebellion.

The Parliaments of Western Australia, Northern Territory and Tasmania have all responded positively to a request to fly the Eureka Flag in 2004, to commemorate the 150th anniversary.

While the Ballarat City Council is awaiting official notification from these Parliaments, their intentions are encouraging.

Let us hope the Federal Parliament can join with state Parliaments in marking this anniversary by allowing the flying of a flag within the parliamentary precinct.

In order to understand the importance of the Eureka flag to the people of Ballarat, to the people of Victoria and to the people of Australia as a whole, it is important that we appreciate the event which took place back in December 1854.

The battle at the Eureka Stockade was a defining moment in Australia’s development as a nation.

The Eureka rebellion was a revolution, a struggle for principle and a stand against injustice and oppression—it was the birthplace of Australian democracy.

In 1854, anyone wishing to mine on the goldfields in Victoria was required to pay a licence fee of £2 every three months.

Author of Eureka, John Moloney noted that many miners queued up in the early days to pay the licence fee, expecting improvements in roads, health facilities and education facilities. These improvements were not forthcoming.

Maloney also noted that the licence fee was considered unfair as it fell upon everyone regardless of their ability to pay.

Unrest continued to grow on the Ballarat goldfields for a number of months.

The issue of taxation without the basic democratic right of representation led to a number of meetings of miners, where concerns were expressed about licence fees and the policing of the licence fees.

The most significant of these meetings were both the meeting of the Ballarat Reform League on the 11th of November and the “Monster Meeting” (as it became known) at Bakery Hill on the 29th of November, where over 10,000 people gathered, which was then about one third of the Ballarat population.

As Maloney wrote:
“With a veritable bonfire of licence-burning, the meeting broke. No shot was fired by or upon the diggers; few words were spoken in anger, much less in sedition.

All had pledged themselves to stand united in the event that the law should be determined to enforce its sanctions on licence-lacking diggers. How they would so stand—even where—had not been decided”.

The diggers then marched from Bakery Hill to the area chosen to establish the Eureka Stockade.

Tensions came to a head during a pre-dawn raid where police and soldiers joined forces against the miners.

The violent battle that followed was brief but remains a significant and powerful event in Australian history.

It wasn’t just about taxation, it was about the right of people to have a say in how they are governed.

There were over twenty nations represented on the Goldfields and at least sixteen at Eureka.

28 people died and many others remained unaccounted for.

The Eureka Flag, also known as the flag of the Southern Cross or the Ballarat Reform League Flag was first flown at the “Monster Meeting” of miners on Bakery Hill, on the 29th of November 1854.

It is thought to have been designed by a Canadian gold miner by the name of “Lieutenant” Ross and sewn by a number of the women of Eureka.

According to Frank Cayley’s book Flag of Stars, the flag’s five stars represent the Southern Cross and the white cross joining the stars represents unity in defiance. The blue background is believed to represent the blue shirts worn by many of the diggers, rather than represent the sky as is commonly thought.

The flag was also flown at the Eureka Stockade prior to and at the time of the attack by soldiers and police on Sunday 3rd December 1854.

It is recorded that the flag was removed from its pole by Police Constable John King on the morning of the miners’ uprising.

The flag was presented as evidence at the Eureka Trials in Melbourne during February and March of 1855.

The following extract from The Eureka Flag—Our Starry Banner expresses a view concerning the significance of the flag:

“The Eureka Flag although flown for only five short days has become indelibly etched into many hearts and souls.

It is only a flimsy piece of fabric, but because it commemorates courage, and vindicates human rights it has become a lasting and respected symbol.

The miners at Eureka were not committed of treason, and although the Starry Banner is a rebel flag, and “sang the rebel chorus”, it is not perceived as disloyal to the crown but rather as a sign of triumph, of common rights succeeding over excessive force and unjust laws.

The Eureka Flag commemorates victory, although the miners were not victorious in battle!

Because it began in the hands of the people, of the common mass, it is recognised, commemorated and identified as the flag of the people”.

So in conclusion, with the 150th anniversary of the Eureka rebellion upon us this year, wouldn’t it be timely for our country to finally recognise the event that the Eureka Rebellion was—the birth of true democracy in Australia—and to recognise the flag that was the symbol of the diggers’ cause?

Wouldn’t it too be timely for people to be able to view the Eureka Flag flying around the Parliament on the 150th anniversary of the event and in turn take some time to ponder about our history, our democracy and the fragile nature of it?

Surely we want people to be able to take pride in the country’s achievements and recognise that in 2004 we have come a long way from the struggles on the goldfields in 1854.

Our history is something to be proud of and our Eureka Flag is something to be proud of.

In France it was the storming of the Bastille, in America it was Gettysburg and in Australia the Battle of the Eureka Stockade which each represented a step in the march for liberty and democratic government.
As the Victorian Premier has said, the 150th anniversary of the Eureka Stockade is an opportunity for all Victorians (and Australians) to remember the history of the Eureka Rebellion, the importance it played in shaping democracy in this country and celebrating its legacy through an engaging and inspiring program of events and celebrations.

Let us hope the Eureka flag flying in the Federal Parliamentary precinct is one of them.

I commend the bill to honourable senators and strongly encourage its swift passage through the Parliament.

Senator MARSHALL— I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMITTEES

Employment, Workplace Relations and Education Committee

Membership

The DEPUTY PRESIDENT—The President has received a letter from an Independent senator seeking variations to the membership of certain committees.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (3.53 p.m.)—by leave—I move:

That Senator Brown be appointed as a participating member of the Employment, Workplace Relations and Education Legislation and References Committees.

Question agreed to.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Messages received from the House of Representatives returning the following bills without amendment:

Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Bill 2004

Fisheries Legislation Amendment (Compliance and Deterrence Measures and Other Matters) Bill 2003 [2004]

COMMITTEES

Legal and Constitutional References Committee

Reference

Senator BROWN (Tasmania) (3.54 p.m.)—I move:

That the following matter be referred to the Legal and Constitutional References Committee for inquiry and report by 14 May 2004:

Whether any pressure was put on the Australian Federal Police Commissioner Mr Keelty in relation to his views or comments on the connection between Australia’s involvement in the war on Iraq and the threat to Australia’s security and, in particular, what communications took place between the office of the Prime Minister, other ministerial advisers or public servants and Mr Keelty in his capacity as Police Commissioner in relation to that matter.

I move that motion because it is extremely important that in a working democracy, and in a bicameral system such as ours, the Senate act as a watchdog on the excesses of the government, particularly where you have a dominant government in the House of Representatives and particularly where you have a government in its third term that is forgetting that there is a clear delineation between politics in the country and policing of the country. Our Prime Minister, the Hon. John Howard, has crossed the dividing line between politics in Australia and the policing of Australia. We know from the public evidence that a week ago the Prime Minister interfered in a statement by the Australian Police Commissioner about terrorism, which of course is extremely important to the fabric of political discussion and to the security of this country in the current day and age.

On the Nine Network’s Sunday program, Jana Wendt interviewed AFP Commissioner Keelty. She said:
Well, Commissioner, that brings me to the question that most Australians are asking themselves. Could this happen here?

That is, could a terrorist attack happen in Australia? Commissioner Keelty responded:

Well, I think we’ve said all along this is an uphill battle. This is a marathon, not a sprint. The reality is, if this turns out to be Islamic extremists responsible for this bombing in Spain, it’s more likely to be linked to the position that Spain and other allies took on issues such as Iraq. And I don’t think anyone’s been hiding the fact that we do believe that ultimately one day, whether it be in one month’s time, one year’s time, or ten years’ time, something will happen.

And no one can guarantee it won’t. And I think there’s a level of honesty that has to exist here in terms of what the problems are here, not only in Australia but in our region.

But on the threat level, the threat level here in Australia hasn’t changed. It still remains at medium. It has been at medium for some time for an attack on Australians in Australia.

What Commissioner Keelty was saying is commonsense. If it is established that Islamic extremists were responsible for the outrage in Madrid then you can take it from there that it is likely to be linked to the position that Spain and other countries like Australia took in involving themselves in the invasion and continued occupation of Iraq. That is commonsense and an opinion poll since Sunday week has shown that two out of three Australians recognise that as commonsense. But as far as the Prime Minister of Australia is concerned, it was not politically edifying.

It was not to the government’s political advantage so he had his chief of staff, Mr Sinodinos, contact Commissioner Keelty within minutes of that Channel 9 interview and express the displeasure, or at least the discomfort, of the Prime Minister about the words that Commissioner Keelty had used.

After some days of growing public concern about this and the revelation on the Tuesday that Mr Sinodinos had indeed made that contact, Commissioner Keelty felt the need to put out what is called a clarifying statement, which did not alter his comment on the risks at all but said that he had been taken out of context. The question here is not the comment of Commissioner Keelty at all. He is concerned that he has a responsibility to be open to Australians about matters relating to his police work—not least, of course, the security of the country when it comes to terrorism.

The Prime Minister’s interference is a different matter altogether. It is not acceptable in our democracy that you have an elected representative in government—the most powerful political figure in the country—ringing the chief of police to say what should be said in public. That is a transgression. If it is allowed to pass, if it is not questioned and if there is not a breakthrough on the Prime Minister’s refusal to discuss the matter then we will become effectively complicit in what has happened. I, for one, am not going to be complicit in this. The full strength of the Senate needs to be brought to bear in discovering how the Prime Minister’s contact was made, why it was made, how it was followed up and why it led to Commissioner Keelty bringing out his subsequent statement.

The Senate has the power to establish a committee. It has the power to subpoena people and documents. It can certainly test the Prime Minister’s faith with the country and with the democratic system in this country by asking even him to appear. The Prime Minister should appear before such a committee; so ought the police commissioner. This can be done in camera if necessary, and it should be done in a way which does not infringe on the primary interest of the public—the public interest of this country. To let it ride—to say that we should do nothing and should simply allow a system in which prime ministers ring police commissioners, heads of security services or heads of armed ser-
vices to dictate or to influence what is said in the public arena by these esteemed public officers who know full well their primary duty to the government, the people and the long-term interests of this country—is not acceptable.

The Senate should be supporting this motion. The opportunity to direct the public servants who may be involved, the staff officers who may be involved and the principal figures to appear before such a committee is compelling. There is one alternative. That is that the Prime Minister, the Hon. John Howard, be direct, honest and aboveboard with the Australian people and explain the instructions he gave to Mr Sinodinos and others on his staff in contacting Commissioner Keelty—why he did that and how he can show that it was in the public interest to do that rather than in the political interest of a Prime Minister heading towards an election within months and rattled by the new debate that has arisen in the Australian community about not just the propriety but also the good sense of our nation’s involvement in the war in Iraq.

Let me make my assessment of this clear. We cannot allow terrorists to dictate what this nation does, what it thinks or how it acts—never: not now, not in the past and not in the future. Any robust democracy must not allow that to even enter into the debate. On the other hand, we cannot allow the political and public debate about terrorism to be unnecessarily truncated. It was in the public interest for Mr Keelty to express his point of view. It was, after all, sheer commonsense. It is not in the public interest to have the Prime Minister intervene in that for his own political purposes. This was an egregious and premeditated mistake by Prime Minister Howard. Where is his explanation for it? Where is his apology not just to Mr Keelty but also to the nation? It is not there. One is led to wonder what else this Prime Minister is prepared to do to further his own political kudos, or rather to cover his own sliding political fortunes by crossing the boundaries of democratic decency and what is understood in this country to be the divide between such things as policing functions and political interests.

Prime Minister Howard put political interest before the interests of this country. It is in the interests of this country that Commissioner Keelty and other major figures involved should be able to put on the public record their assessment of how this nation is proceeding. I do not for one minute think that these officers are going to fail the public interest. Certainly Commissioner Keelty did not do so on this occasion. He was serving the public interest. His problem was that he was not serving Prime Minister Howard’s interests. There is a divergence between the two, and that says something about the mood of this nation at the moment. The Prime Minister’s interest here was not the interests of the nation. When that occurs and when the Prime Minister infracts upon proper practice, as he has done on this occasion, he deserves to come under the full scrutiny of the Senate, of the other place in this parliament which, amongst its other functions, is a check on the executive government—in this case the executive government of Prime Minister Howard. It is more limited than that: it is actually government from the prime ministerial office.

This move for a Senate inquiry is the strongest move we can make. I say to other senators on this side of the house that it should be supported. I do not want there to be any stone left unturned in pursuit of the Prime Minister—he can defend himself—and the discovery of the motivation and the means he used to further his political interest in this matter. That is what this inquiry is about and that is why this inquiry should be supported. I note that the opposition is seek-
ing papers and documents. I say to the opposition that we should also be seeking the people involved. We all know that a Senate inquiry, which is able to get people to appear before it, is always much more successful than simply getting together papers to discuss them and to see whether or not they give some further clue as to how the government is behaving. The inquiry should be held now. It should be supported today. It should use the full powers of the Senate to discover the whole truth of this matter. That is why the Greens have brought it forward.

We know that there is the potential here for distress to be caused. We believe that the chief of police should be able to get on with his business. We also believe that this matter will not be settled unless every effort is made as soon as possible—and that time is now—to have it fully aired publicly and a determination made on it. Then we can move on. I am afraid that any other course of action will not achieve that goal. I know we must all be concerned in this place that with the Prime Minister we have and the way in which he works behind the scenes to influence events—with the way in which this government has invented information and has deceived, not least in the matter of sending Australians to war in Iraq at the behest of the Bush administration in America—it would be very difficult to extract all the information from the Prime Minister. He can exclude himself from the reach of the Senate, but let us reach those that we can. Let us get the information we can. Let us test this Prime Minister, and his administration, in the best way that we are able to—which is by supporting this motion.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (4.09 p.m.)—The public bullying of AFP Commissioner Keelty by the Howard government is certainly a serious matter. It is not surprising that this issue has dominated the media for more than a week and it is not surprising that this issue has dominated the Australian parliament over the last two days. Ask yourself why this affair has attracted so much interest. I think there are a number of reasons. It is not proper for a government to heavy an independent statutory office holder to toe the government line. The subject of the heavying, Commissioner Keelty, is held in high regard for his efforts to combat terrorism in Australia and abroad.

The comments for which the commissioner was heavyed seemed to be reasonable and, frankly, quite unremarkable. The government’s reaction to those comments was absolutely over the top, giving the impression of a panicked Prime Minister. As a result of the media scrutiny and the parliamentary scrutiny, we have a pretty good picture of what transpired. I would like to set out for the Senate what we know. We have the appalling terrorist attack in Madrid occurring on 11 March. It was one of the worst attacks in Europe since the Second World War, killing 202 people and injuring more than 1,500. In the following days, as many began to wonder if the terrorist attack was the work of al-Qaeda, Commissioner Keelty told Jana Wendt on the Sunday program on 14 March, and I quote:

The reality is, if this turns out to be Islamic extremists responsible for this bombing in Spain, it’s more likely to be linked to the position that Spain and other allies took on issues such as Iraq. Immediately after the interview, and still in the Channel 9 studio, Commissioner Keelty received a phone call from the Prime Minister’s Chief of Staff, Arthur Sinodinos. According to Steve Lewis’s report in the Australian on Tuesday, 16 March, the call was terse and Commissioner Keelty was personally chastised by Mr Sinodinos for contradicting the government claim that the Iraq war had not increased the terrorist threat to Australia. Sydney Morning Herald columnist
Alan Ramsey wrote that the Prime Minister’s media adviser, Tony O’Leary, confirmed Mr Sinodinos made the call to Commissioner Keelty after a conversation with the Prime Minister. In the ensuing days, we heard a number of ministers, and the Prime Minister, disagreeing with Commissioner Keelty and questioning the commissioner’s ability to make such a judgment. For instance, on Monday, 15 March the Attorney-General, Mr Philip Ruddock, said:

Well that’s not a conclusion I would agree with because the evidence doesn’t suggest that that is likely.

On the 7.30 Report on Monday, 15 March, Mr Howard went further, questioning whether Commissioner Keelty was in a position to make such a comment and comparing his assessments with those of ASIO Director-General, Dennis Richardson. I quote the Prime Minister:

And that is part of the background as to why somebody such as the Director General of ASIO, who, with all due respect to the other people you’ve mentioned, is a more authoritative person than most on the motives and the modus operandi of terrorist organisations.

There is a difference between the intelligence judgments that are brought to bear in relation to these organisations and the operational functions of police commissioners and police forces.

They are quite separate issues, and quite separate and different judgments are brought to bear.

But then on Tuesday, 16 March we had Foreign Minister Alexander Downer, as usual, going a bridge too far; this is his modus operandi. He told journalists in a doorstop interview at Parliament House:

I think he—

this is Commissioner Keelty, I interpolate—

is just expressing—expressing a view which reflects a lot of the propaganda we’re getting from al Qa’eda. I think what the bottom line of all this is is that they—al Qa’eda—are out there running this line on Iraq, and they’re doing it for propaganda purposes.

Then we had General Cosgrove, the Chief of the Defence Force, tell journalists:

I disagree with him—

I interpolate again: the ‘him’ is Commissioner Keelty—

on this occasion.

That was on 16 March. Then, according to the Australian, Commissioner Keelty was so concerned by the government attacks on his reputation that he seriously considered resigning. After the Sunday interview, according to Alan Ramsey, Mr Howard’s office began ‘heaving’ Commissioner Keelty over the phone, telling him to stay away from the media. Throughout Tuesday the Prime Minister’s office continued to press Commissioner Keelty to issue a clarification of his Sunday remarks. According to the Age newspaper, the PM&C Secretary, Peter Shergold, ‘negotiated’ with Commissioner Keelty over the press statement. According to Alan Ramsey, the offices of the Prime Minister and the Attorney-General were also involved in drafting the statement and, when completed, it was ‘vetted’ by Mr Howard’s office. By Tuesday evening the Prime Minister’s office had successfully pressured Commissioner Keelty into issuing a press statement to ‘clarify’ his remarks on the Sunday program. After the release of the statement we have Alexander Downer again. He put on that incredible performance on Lateline: he did a complete U-turn. I quote what he said on 16 March:

Now, as for Mr Keelty, let me just make a point about him if I could.

You are right, he has done a wonderful job in the fight against terrorism.

I’ll never forget the fantastic job he’s done with the Indonesians in the follow-up to the Bali bombing.
The extraordinary job he's done in the South Pacific, the work he's now doing with Papua New Guinea. He's an outstanding Australian. He will go down in history as one of the great police commissioners and I certainly have no intention of reflecting on him or his professionalism. He is an outstanding Australian.

On the Wednesday, ministers, the Prime Minister included, all changed their tune and began commending and praising the work of Commissioner Keelty. We had Attorney-General Ruddock saying:

I have the utmost respect for Mick Keelty. He's a very experienced officer ...

We had the Prime Minister saying:

I think he does his job extremely well.

Notwithstanding their ringing public endorsements of the commissioner, his original remarks still obviously rankle with the government. As recently as last Sunday the Attorney-General, Mr Ruddock, made this very clear when he said:

But look, I mean, people who work in Government agencies are expected to give frank and fearless advice to Government, but they are not free agents to be able to traverse every other area of responsibility as if they have relevant expertise in those areas.

It is not that Commissioner Keelty's original remarks were in any way remarkable: a number of terrorism and political experts have expressed a similar point of view. Professor Rohan Gunaratna, a former principal investigator with the United Nations Terrorism Prevention Branch and author of Inside Al Qaeda, told journalists on Monday, 15 March:

Certainly the conflict in Iraq has increased the threat of terrorism worldwide, especially to countries that have participated with the Americans in Iraq.

Clive Williams, Director of Terrorism Studies at the ANU, told Channel 10 on Wednesday, 17 March:

After our involvement in East Timor we were probably in the top twenty of preferred targets, and then after Afghanistan probably the top ten and I think after Iraq probably in the top four.

Then John Pistole, the FBI's executive assistant director of counter-terrorism, told 2UE radio in Sydney:

Any country that allies itself with the US, unfortunately, is a target. Whether it's a higher target is a relative issue that becomes moot once the place is attacked.

Let me quote what, back in August last year, ASIO Director-General Dennis Richardson said about the war in Iraq:

It's too early to tell what impact the war in Iraq will have, more broadly, on the threat of terrorism.

We are only up to chapter 6 in a 10 chapter book, with the last four chapters yet to be written.

At one end of the spectrum Iraq could be another Afghanistan in providing a cause celebre for young Muslims worldwide. At the other end of the spectrum Iraq might be re-made, with positive consequences for the Middle East.

That is from the ASIO Director-General's address to the Pacific Area Newspaper Publishers Association's annual conference in Brisbane. Last week Mr Richardson made similar remarks when he addressed the Security in Government Conference in Canberra:

The fact we are in close alliance with the United States and the fact that we were early and actively involved in the war on terrorism does contribute to us being a target.

Paul Wolfowitz, the United States Deputy Secretary of Defense, told Fox News that Spain 'has been a real stand-up country, and I suppose maybe that's one of the reasons they came under attack'. On Thursday morning, when Minister Downer was asked by the AM program if Paul Wolfowitz was wrong, Mr Downer said:
Look, everybody is entitled to their opinion, even the Australian Government is entitled to an opinion. Everybody is entitled to an opinion except Commissioner Keelty!

The treatment of Commissioner Keelty is not the first time a public servant has been pressured by the Howard government to clarify a statement seen as politically sensitive. Just recall the treatment of the then Chief of Navy, Vice Admiral Shackleton, in 2001. Do not forget that, after talking to Commander Banks on HMAS *Adelaide* and discovering the children overboard allegation was a lie, Vice Admiral Shackleton relayed this information to journalists at a press conference on 8 November 2001, three days before a federal election was held. It was a revelation. Vice Admiral Shackleton in effect told the media and the public that children had never been thrown overboard.

With only a few days remaining until an election, the government of course went into damage control. Instead of facing up to the truth, the government pressured Vice Admiral Shackleton to clarify his statement. What did we have? We had the Minister for Defence’s chief of staff, Peter Hendy, telling Vice Admiral Shackleton that he had contradicted the minister and must issue a press release. Interestingly, Hendy asked that a copy of the statement be cleared with—you guessed it—Arthur Sinodinos. Same person, same style, same approach. What did the statement say? It went as follows:

My comments in no way contradict the Minister. I confirm the Minister was advised that Defence believed children had been thrown overboard.

A year later the CMI report would find that the then Minister for Defence, Peter Reith, had deceived the Australian people during the 2001 federal election campaign. At the time, the Prime Minister claimed no-one pressured Vice Admiral Shackleton to clarify his remarks. He told *Lateline* on 8 November 2001:

I’m not aware that anybody in my office has spoken to him—
that is Shackleton—

But I just want to make it clear I have not put pressure on him and I did not ask anybody to put any pressure on him.

I suppose it is true. I suppose it is true that the Prime Minister did not directly pressure Vice Admiral Shackleton; his colleagues did it for him. Sinodinos did the job for him, just like he did the job on this occasion, just as it was done in the case of Commissioner Keelty. That is how this mob operates. That is the modus operandi of the Howard government.

We have a very detailed picture of what actually happened in this case, how the heavying of Commissioner Keelty worked, and we know from the previous heavying of Vice Admiral Shackleton that it is standard operating procedure for the government. Even people as smart as Senator Hill can get caught up with this. He had to put out a clarifying statement himself, when he was honest about weapons of mass destruction this morning. He had to very quickly, after being up in a hot air balloon—a piece of interesting symbolism for a minister in this government—put out a clarifying statement.

**Senator Robert Ray**—Did Arthur contact him? No!

**Senator Faulkner**—We do not know that, Senator Ray. I did ask him in question time but, again standard operating procedure: no answer from Senator Hill. You would not expect government ministers to come clean on these sorts of issues.

But Senator Hill is not the issue. We ought to be more concerned about the sort of pressure that is applied to senior public servants and, when similar pressure has been applied to them, when it is applied to public servants,
to military officers and to statutory office holders. We know of two cases in detail; I have just gone through them. How many more have there been? The immediate question before the chair at the moment concerns a proposition moved by Senator Brown calling for a Senate inquiry. You have to ask yourself the question ‘Will a Senate inquiry illuminate the Keelty matter any more?’ I do not think so. Consider those who the inquiry might want to call. You might want to start with the Prime Minister. He will not front.

Senator Robert Ray—He has taken a vow of silence.

Senator Faulkner—He has taken a vow of silence. Perhaps you might then go to the Prime Minister’s chief of staff, Mr Sinodinos, a central player in this matter. He will not front. You would certainly want the Attorney-General, Mr Ruddock, to give evidence. He will not front. We have some idea of what happened in Attorney-General Ruddock’s office. His staff will not front. Does anyone believe that Mr Downer would have the guts to front up? Of course not. No-one seriously believes that these key witnesses would give evidence to a Senate inquiry. We know that is the case.

Does anyone believe that the Howard government would be any more honest in answers to questions about this affair from a Senate committee than it has been in its answers in question time in the Senate, in the House of Representatives and in previous parliamentary inquiries? I do not think so. I certainly do not believe they would—that is my view. Of course, what you are left with is Commissioner Keelty, who may or may not be instructed to come to the committee if a committee were established. If he were so instructed, of course he would not front, so he would end up being the fall guy. That is not what I believe should happen and I do not think it is what any senator believes should happen.

I do not think we are in a position at this stage where we can say that we need a Senate inquiry to expose the government’s reprehensible and ham-fisted behaviour on this particular matter and their ham-fisted and reprehensible behaviour towards Commissioner Keelty. The behaviour has been exposed and this government stands condemned for it. We will have an opportunity to question the government about any loose ends or new developments in this saga through question time and certainly through the Senate estimates process, where certain officials, including Commissioner Keelty, will be present.

There are other ways in which we can use the procedures and processes of this chamber to further expose the government’s action. This afternoon, for example, I have given notice of a motion to require the government to table the drafts of the clarifying statement which was prepared for Commissioner Keelty. I hope the government conforms with that order of the Senate, if it is agreed to, by Tuesday of next week. There is also a motion I have moved co-jointly with the Leader of the Australian Democrats, Senator Bartlett, which I would commend to the Senate. I want to say this: the opposition does sympathise with the motivation behind this motion and the good reasons Senator Brown has given for moving it. At this stage I have indicated we do not believe it warrants support, for all the cogent reasons I have outlined, but we will not give up on this issue. We will hold the government accountable on this matter. The truth will out.

Senator Robert Ray (Victoria) (4.29 p.m.)—All the issues under discussion today go back to the intervention in Iraq. The reasons the government put forward for intervening in Iraq had to be carefully crafted.
After all, they were subscribing to a new policy position of pre-emptive intervention. We were not intervening with the blessing or the authority of the United Nations; we were doing it as a pre-emptive act. Therefore the government had to carefully craft the reasons for intervention so that they could be argued in a consistent way with regard to international law and with an eye on domestic political agendas. Two reasons were put up. It was argued by the government that Iraq possessed weapons of mass destruction. Subsequently, on a better view, they no longer hold that position—although Senator Hill today still seems to hold out some hope somewhere that some weapon of mass destruction will be found, a view not shared by many.

Interestingly enough, the second reason for intervening was the supposed sponsorship by Iraq of terrorist groups. It having been put at that time, I have never heard the argument repeated and I have heard no evidence adduced for that particular rationale since the successful conclusion of the Iraq intervention. They have captured thousands of individuals and there have been hundreds of thousands of interrogations, yet there has not been one piece of evidence put forward that the Iraqi regime, with all its massive faults, was a sponsor of terrorism. It is very important, incidentally, that we actually isolate those countries that do sponsor terrorism, because the easiest way of wiping out international terrorism is getting host countries to change their mind about it. We all welcome the developments in Libya and Sudan—countries that previously were seen as sponsors of terrorist groups have now forsaken that as a course of action.

But, in part of this rationale for going into Iraq, another subtext emerged. That was to argue that our intervention in Iraq would not increase the possibility of a terrorist action occurring on Australian soil. It is a strange view. It is a political view—political spin here is more important than the national interest. That is why this view has been put forward. It does not sit well, though, with the counterviews held by Paul Wolfowitz—hardly a left-winger—who is the Deputy Secretary of Defense in the US and a long-time expert on terrorism. It does not sit well with some of the experts in the FBI and some of the UK experts on terrorism. A whole range of people have said that intervention in Iraq may up you in terms of the possibility of a terrorist act on your soil. This is well-known, so whatever comments Commissioner Keelty made were merely reflecting the view of many other experts around the globe.

I would make it clear that I do not expect any sovereign country to be browbeaten by threats from terrorists. We cannot afford that. A lot of people have talked about the Spanish experience and whether Spain was moved up the priority list. Quite possibly—not necessarily because terrorists even like Iraq or are concerned about Iraq but because it gives them an excuse. But, if you are looking for the reason that the Spanish government was thrown out, it probably was not the terrorist attack per se. It was the later political manipulation of the issue by a conservative government. To put it frankly, they tried to cash in. They immediately blamed ETA, the Basque separatists, when it never even looked like following a pattern of their previous activity, and they got caught out on it. Do you want to know why the turnout in the vote jumped from 57 per cent to 77 per cent within a few days? Because the public did not want to be conned by their government. The public of Spain wanted a government that would put the national interest at the forefront and not try to exploit it for domestic political purposes. Don't you get a sense of deja vu here with this government that constantly talks about the national interest.
but only ever dreams and thinks of its own political survival and political self-interest?

Much of the debate about Commissioner Keelty’s statement misses the point. Of course we were a target prior to Iraq—most open democratic societies are a target for these fanatics. The key question that Commissioner Keelty raised, simply so we could be properly prepared for it, was: have we moved up the priority list? Have these extremists used our intervention in Iraq as an excuse to move us up the list? He was basically saying that the answer to that is probably yes, as do all these other experts. What is so wrong with saying that? Understanding that, we can be better prepared to counteract it and to meet it in the future. But his problem was that he had undermined a central plank of political spin that sustains this particular government.

Such threats cannot govern our approach to terrorism, but what we want is an honest description of where we stand, not some contrived, false construction that deludes the Australian public. I do not want to hear any nonsense that intelligence suggests that we have not moved up the list. How would you know that through intelligence? Given the fact that strategic intelligence was a major failure with regard to Iraq, what has suddenly improved that this government could base its assessments on intelligence that says al-Qaeda has not targeted Australia more strongly because of intervention in Iraq? You would not know either way.

I suspect we will never get to the truth of what really happened between the government and Commissioner Keelty. We will not know whether he threatened to resign or whether the clarifying statement was foisted upon him by government spin doctors. So why not have an inquiry? I answer: simply because it will not work. As Sheridan once said, I am quite happy to beat my head against a brick wall; I do not want to build one for that specific purpose. That is the problem with this particular inquiry proposed by Senator Brown.

I acknowledge and endorse the remarks by Senator Faulkner that on this occasion Senator Brown is totally well intentioned. A couple of times I have been unkind enough to say that inquiries wanted by Senator Brown were just a circus, a public display. But that is not his motivation on this stage; he is trying to get to the truth of the matter. Where we disagree is that I do not think you will get to the truth of the matter through this inquiry. In fact, I do not think this inquiry that he proposes can get anywhere because of the lack of witnesses.

Let us go through it. Who would you want to call to such an inquiry? I do not think we would have a disagreement between Senator Brown and me. We would want Prime Minister Howard to front up, but there is the tradition of comity between the houses, which is usually an adequate excuse for him not to appear and certainly not to be compelled. We would want to know what instructions he gave Mr Sinodinos before he rang the police commissioner. We would want to know why he did it so rapidly. Why not wait till Commissioner Keelty got home or back to his office? Why ring him at the Channel 9 studios? It was by mobile phone, so they may not have known it. But why react so rapidly? It has nothing to do with the national interest. If you impinge on Liberal Party self-interest, there is an immediate reaction.

Another question is: why didn’t Mr Howard ring Commissioner Keelty himself? Why did he give it to his hatchet man to do? Why not ring the commissioner and say, ‘I think we have a difference of opinion here. Can we discuss it next week?’ No, no, no. Get the hatchet man to ring him up, because it is more humiliating to slap the police commis-
sioner around when it is a mere staffer, albeit a highly paid one. Why did the Prime Minis-
ter at a later time, by Monday, seek to invoke 
the Director-General of ASIO into the dis-
pute? To put Mr Keelty down, he says, ‘I’m 
really going to rely on what the Director-
General of ASIO, Mr Dennis Richardson, 
tells me.’ I can imagine how happy Mr 
Richardson would be to be dragged into this 
argument. That was a tool by the Prime Min-
ister, again to humiliate the police commis-
sioner. It is the same sort of thing as the 
Prime Minister waving an ONA report 
around on 8 November 2001 to save his po-
litical skin over ‘children overboard’—‘We 
have it in the report that backs up our point 
of view’—

Senator Faulkner—The same day Sino-
dinos got to Shackleton.

Senator ROBERT RAY—That is right, 
exactly the same, Senator. The next question 
we would like to ask the Prime Minister is: 
why did you involve the secretary of Prime 
Minister and Cabinet in this? Why did Dr 
Peter Shergold have to go and negotiate with 
the police commissioner? I cannot speak for 
him but I am sure he was not happy to do so. 
It was probably the last thing he wanted to 
do, so why involve him? If the police com-
missoner wanted to change or clarify any of 
his statements of the previous Sunday, why 
not just leave him to it? Why was it neces-
sary to get a government negotiator involved 
in this? Again, we have no answers to this.

Once things start to go pear-shaped, sud-
denly we have a Prime Minister that im-
ersonates a Trappist monk and takes a vow of 
silence. Suddenly our voluble Prime Minister 
becomes the soul of discretion. In an inter-
view on Adelaide radio that has to be ac-
knowledged as a fairly friendly interview, the 
following exchange took place—this is last 
Thursday, after five days of endless com-

REPORTER: Prime Minister, did your office urge Federal Police Commissioner Mick Keelty to issue a clarification over his remarks linking the Madrid bombings to Spain’s involvement in Iraq?

JOHN HOWARD: I’m not going to comment on that story.

REPORTER: Why not?

JOHN HOWARD: Because I’m not comment-
ing on it.

REPORTER: You can’t say whether Mr Keelty’s statement on Tuesday was made after a request from your office?

JOHN HOWARD: I don’t have any comment on those matters.

Yesterday at question time in another place the Prime Minister was asked by the Leader of the Opposition:

What did the Prime Minister instruct his chief of staff to say to Mr Keelty?

Mr Howard replied:

... there are numerous discussions between not 
only my office and the secretary of my depart-
ment and also the commissioner but other people. 
I do not intend to break the confidentiality of 
those discussions.

I interpolate: I will just get Tony to leak it out to the press. The Leader of the Opposi-
tion goes on to ask the Prime Minister:

What involvement did the Prime Minister, his 
staff or ... his department have in the preparation 
of the so-called statement of clarification issued 
by the Australian Federal Police Commissioner 
on 16 March?

Our Prime Minister says:

That statement was the commissioner’s statement. 
As to contact ... I do not intend to go into it ... 
So much for an honest, open approach. 
Where government requires transparency we 
have a Prime Minister, as the Americans 
would say, who takes the Fifth Amendment. 
We have a Prime Minister not willing to jus-
tify publicly the actions of his sanctioned 
assassin who carried out the task in private.
This is from someone who had the temerity, indeed the impertinence, to accuse former opposition leader Kim Beazley of lacking ticker. Come on down, Prime Minister. You have made a major miscalculation. Why don’t you own up to it? You must really be going bad, Prime Minister, if you are not fronting up on the Ray Martin program to explain yourself. That is when you know the Prime Minister has gone totally maggoty on an issue. Do not accuse anyone else of lack of ticker in future if you are not willing to front. If you are not willing to justify your actions, as Prime Minister, never accuse anyone else of lacking ticker.

The second witness we would like to see brought before the inquiry, if we had one, is chief of staff Mr Sinodinos. But again, he will not be available because he works under the MoP(S) Act—not subject to its salary limitations; he has been paid well above that for a number of years. Because of the ‘children overboard’ and other precedents, we cannot call Mr Sinodinos to give evidence. Only the Prime Minister, the silent Prime Minister, our newly enrolled sworn in Trap-pist monk of a Prime Minister can represent Mr Sinodinos, but he will not say anything.

We would like to ask Mr Sinodinos what instructions he was given by the Prime Minister on that Sunday morning immediately after the interview. We would like to know whether the nature of his conversation with Commissioner Keelty was proper or improper. We would also like to know why he did not obey the guide of conduct that suggests and instructs him as a MoPS employee and an adviser to go through the relevant portfolio minister before talking to a public servant in another area. This was totally and absolutely ignored.

Senator Ellison said yesterday that you cannot do that on every occasion. I accept that but, when you are issuing an admonishment or reprimand, you should follow the rules. When you are purporting to represent a Prime Minister and are slapping around a police commissioner, you had better follow the rules of the game. But of course none of these questions will be answered, and that would make a committee of inquiry next to useless. We could call Senator Ellison because he is a senator, but he is just the government’s resident doormat. That is clear because he was not even involved in a conversation with the police commissioner until as late as Tuesday afternoon—two days after the alleged offence—so we might as well leave him out of an inquiry.

If the answers he gave today in question time are any example, he would add nothing. He answered a dorothy dix on national security and tried to smear the opposition as though we are not on board in supporting national security. What a typically weak wedge effort—not even done with style and class, just a pathetic spray. He was then asked who leaked the Brigitte information—not the details of it, but how it got into the public domain. There was no answer whatsoever from the minister, from the doormat. It would be unnecessary to bring him before an inquiry because he would add absolutely no value to the inquiry.

We could compel Dr Peter Shergold to attend such an inquiry. He is a witness who could attend. I do not really want to do that because I do not think it would be fair on him. He was just following orders; he did not have any choice in the matter. If we were to bring him before the inquiry, I am certain he would give accurate and honest evidence. He would not be like a couple of the public servants in the ‘children overboard’ inquiry, including the Anastasia of the Public Service who on 53 occasions said, ‘I can’t recall,’ and on another 40 occasions said, ‘I can’t remember.’ In reward for that she received a Public Service Medal and the secretaryship...
of the biggest department around. Dr Shergold would not behave in that way, so why should I want to embarrass him for being an honest public servant? I would not want to do that.

We could ask Mr Downer to appear. But after watching him on Lateline the other night I do not want to cringe all over again. What a pathetic, miserable, hopeless performance that was. It was probably—and I really like Alexander Downer, so I do not want to say this too harshly—the equal of Senator Rod Kemp's Lateline or 7.30 Report performance.

Senator Faulkner—I don’t believe that; it couldn’t have been that bad.

Senator ROBERT RAY—Maybe not. I might withdraw that accusation. But I mean we are not going to get Mr Downer to come. We are not going to get any politician to front up at this inquiry. Yes, we could bring along the Director-General of ASIO to embarrass—and he should not be embarrassed because he has played a totally honourable role in all of these matters. What about Commissioner Keelty himself? Is it fair to bring him along? He would be in a no-win position at the inquiry. I have not always commended him for the evidence that he has given before committees, but I feel on this occasion he would be put in a totally invidious position.

Why has all this come up? It has come up because this government hates criticism. It just cannot stand any adverse comment. It detests scrutiny. Just look at Senator Alston’s and Senator Santoro’s attacks on the ABC’s coverage of Iraq. It is not as though the fourth estate does not support the coalition government. But it expects total hegemony in this area. Look at the swag of right wing chattering who day in, day out support the government’s foreign policy—be it Andrew Bolt from the Herald Sun, Alan Jones, Piers Akerman, Greg Sheridan, Christopher Pearson, Michael Baume, Dennis Shanahan or Janet Albrechtsen. The list goes on and on. There are hundreds of these right wing acolyte writers out there, backing up every action of the government.

But that is not enough—the first person who steps out of line and inadvertently upsets the political spin of this government gets slapped around by a ministerial staffer. If you are like Andrew Wilkie, what does this Nixonian government do? It is not just a question of being slapped around: suddenly a top-secret, AUSTEO, code-worded ONA document written by him is leaked to one of the government’s media hatchet men so the job can be done on him. That is the way it reacts in these circumstances.

Let me repeat that the miserable behaviour by the government will not be exposed by an inquiry because the witnesses will not turn up. They will turn such an inquiry into a circus. We will not get the truth; we will not get answers. The only people who will front up will be the honest ones and then they will be exposed to an inquisition that would be unfair in as much as the others will not be subject to it. I commend Senator Brown—and I do not often do it—for his thoughts behind this motion. I know he is genuine about it. I know he wants to get to the truth, but we disagree on the method of getting to the truth. The government are far worse than Senator Brown thinks they are—if he thinks any of them will front up to tell the truth.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (4.50 p.m.)—The Senate is debating what is an important matter and, while it has been considered and talked about in the public and political arenas for some time, I do not think the significance of it should be understated. This government has acted completely inappropriately by publicly and privately pressur-
ing an independent statutory officer in a very important position—the head of the Australian Federal Police—for expressing individual views, views which were not remarkable in any way, shape or form. But, because of what can only be described as the paranoia of the Prime Minister, those views were seen as somehow potentially reflecting on him and his government’s line in relation to Iraq.

The Senate is also debating whether or not to establish a Senate inquiry into the actions of the Prime Minister and other ministers and ministerial staff of his government. Senator Brown has outlined quite well why establishing a special Senate inquiry now is not necessary. He outlined in a fair bit of detail and quite accurately what has happened—how the Prime Minister and ministerial staff have acted inappropriately—and Senator Ray and Senator Faulkner have built on that.

Broadly speaking we know what has happened and we know that the Prime Minister is clearly guilty of very inappropriate behaviour. We do not need a Senate inquiry to tell us that. It would be nice to know some of the facts that we are not aware of but, as has just been outlined, a specifically set-up Senate inquiry would not tell us any of those details because the people needed before the inquiry to find out that information would not show up. The precedent has clearly been established.

It is important to highlight that this is not just a matter of trying to generate political embarrassment for the Prime Minister. This is not just a matter of the Prime Minister being caught out as paranoid and overly obsessive about having his particular viewpoint seen as the accepted truth. This is a serious matter for the Australian public. It is not serious because it might be a political problem for the Prime Minister and, frankly, to some extent not even because Commissioner Keelty has been put in a difficult position; it is serious because it is an indication of independent statutory officers having major and inappropriate pressure brought to bear on them over what is widely acknowledged as being a fairly minor divergence of views from the government. What if this independent official, the commissioner of police, had a significant disagreement with the government? What if he knew the government was putting out something that was blatantly wrong and wanted to say something about it? He now knows that even the tiniest divergence, most of it imagined in the mind of the Prime Minister, will bring immense pressure on him. It is through this incident that a very clear message has been given to the head of the AFP: that any form of divergence over any matter—including matters far more important than the one we are talking about today—is viewed by the government as a major offence.

That same culture of oppression of public officers applies across the board. The message that the Prime Minister and Mr Sinodinos sent to Mr Keelty was not just a message for Mr Keelty; it was a message for every single public servant and every single public officer that they do not step one millimetre out of line. We know that this is not the first occasion this has happened. The work that was done through the ‘children overboard’ inquiry—also known as A Certain Maritime Incident inquiry—quite clearly showed an obsession with control of information, public servants and Defence Force personnel. There was the complete gagging of a whole range of officials from making any public statements or releasing information without it being cleared through the minister. Enormous pressure was brought to bear, as has been outlined, on any officer who was seen as not toeing the line 100 per cent. The Public Service has become immersed in that culture across the board, and that is why it is serious. It seriously impacts on proper gov-
ernance in this country, and having a Senate inquiry will just reaffirm what we already know—that is, a serious offence has occurred. It is not the first time this has occurred; it is endemic and the Prime Minister is a serial offender in using ministerial staff to heavy everybody. We saw that through the 'children overboard' inquiry.

Frankly, the work has already been done by Democrat and Labor senators through the ‘children overboard’ inquiry and through estimates committees, when we have repeatedly followed up on a range of different incidents where inappropriate pressure has occurred. What we really need is action to try and prevent this sort of situation from continuing to occur. It is worth pointing out that the work has already started on this through other Senate committee processes, where Democrat and Labor senators are investigating ministerial staff behaviour. It has become very clear, and more and more of a problem over time, that ministerial staff are not held accountable. As previous speakers have said, they will not show up to any Senate committee inquiries. It is likely that the only person who would show up to an inquiry focused on this incident would be the commissioner, who would then be placed in an impossible position. Frankly, he is the last person, at least in relation to this incident, who should be put in that position.

There is scope for parliament, through budget estimates committees in May, to continue to pursue not only the fabric of this particular incident but also the broader pattern of behaviour of a whole range of officials, but it has the continuing problem that ministerial staff and the vast bulk of ministers will remain unaccountable. That is where the work needs to be done. The Senate Finance and Public Administration Committee has done some work on it, which has partly flowed from the ‘children overboard’ inquiry. It has brought down a report on an inquiry into ministerial staffers and other staff employed under the Members of Parliament (Staff) Act—the so-called MOPS Act—which included a number of recommendations. The Democrats believe these need to be acted on. If those recommendations were acted on, it would go some way to preventing a recurrence of the sort of incident that we are debating today. It is no surprise that the government has not responded to the recommendations of that report; indeed, it is no surprise that the government has not responded yet to the recommendations of the ‘children overboard’ inquiry from even further back. There is not even the slightest interest from this government in acknowledging recommendations of inquiries that have put the spotlight on misbehaviour and inappropriate behaviour by ministers and ministerial staff.

That is where we really need to put the pressure on the government; not to have an inquiry to tell us what we already know, but to increase the pressure based on work done elsewhere to get accountability of ministerial staff. These are staff who are, in effect, acting as de facto ministers of the Crown by ordering public servants—including independent statutory officers, such as the commissioner of police, senior defence personnel and senior public servants—on what to do, but they are not able to be in any way held accountable or questioned on their behaviour or actions.

The Senate Finance and Public Administration Committee recommended that ministerial staff should be made to appear before committees, including Senate estimates committees, when requested. There is nothing specifically in law to prevent this. The Senate’s powers to call witnesses are not tested, but I do not think there is much doubt that the legal power is there to require the attendance of ministerial staff. I believe the view of most senators is that it would not be
a desirable use of Senate powers to press those powers to the limit. It would probably end up requiring court action if the government continued to insist on directing staff not to appear.

Frankly, I have a stronger view than others on this. In a debate amongst different senators on the ‘children overboard’ committee, there was certainly an open question about whether or not former Minister Peter Reith should have been pressed harder to appear before that committee. I believe that that should have occurred, that there was no doubt the committee had the power to compel him; but others took a different view to me, saying that it was not appropriate to use those powers. I think it is about time we tested those powers, particularly when you look at the record of the government. That shows quite clearly their deliberate and wilful attempts to refuse to answer questions and to provide information. And it goes much further than just not appearing before Senate committees. As I have often said in this place, there is a record of widespread refusal by the government to comply with orders of the Senate to produce documents. With such deliberate and wilful ignoring of the Senate’s authority and with such deliberate and wilful deceit and hiding of information from the public, I think it is time for the Senate to consider using its powers more fully.

I accept that others for quite genuine reasons have a different view, and I guess it is a debate that we will continue to have. The key issue from the Democrats’ point of view on this matter is not to set up a specific, separate inquiry to examine what, broadly speaking, we already know. To use a very useful phrase that Senator Ray quoted: there is a lot of activity in this place of beating our heads against a brick wall, but we do not necessarily have to build one specifically for the purpose. I think that describes it quite well. But there are certainly other processes that have been used and are still being used to get movement in relation to the core problem here—and the core problem is not specifically the incident we are referring to but the entrenched attitude and behaviour of a government that is obsessed with control of all information and that insists its version of the truth is the only one allowed to have any sort of airing at all.

That is a problem at the best of times but, as we know with this government, we have a clear record of their repeated use of that so-called truth actually being very flexible—to put it politely—when often it is just being completely fabricated, to put it in its worst frame of words. In such a circumstance it is required of the Senate to explore every avenue on behalf of the public to get the truth into the political debate. In relation to this incident, broadly speaking, we know the truth; we know what happened. We might not know the specific conversations; we might not know some of the detail. That would be useful to know, but a Senate inquiry will not produce it—not a specific one set up for that, as is suggested in this motion.

The other work that has been done is not as glamorous and immediately appealing to media headlines; it is the typically grinding hard work that Senate committees need to do and that the Democrats are willing to do. It is the less visible, below-the-radar work carried out over a long period of time on the areas of government accountability that really gets significant shifts towards proper openness and transparency. It has been identified through a number Senate inquiries that there is a growing and now major problem with the lack of accountability of ministerial staff who are exercising their position with increasing authority but decreasing accountability. The focus needs to be on trying to ensure that these incidents do not continue to occur.
Senator BOLKUS (South Australia)
(5.04 p.m.)—The first point I would like to make in this debate is a rather curious one. This is a very strange debate. This is the first debate that I have seen in this place where, after five speakers—and I am the fifth speaker on this side of the debate—in a debate which is extremely critical of the Prime Minister and the government and other ministers, not one government senator has seen fit to get up and defend the Prime Minister. Not one government senator is expressing an interest in doing so, yet their behaviour is worthy of debate in this place. It is enormously critical and important behaviour. It is strange—as the record will show—that at a time when the Prime Minister needed to be defended and at a time when the foreign minister needed to be defended not one government senator showed an interest in defending them. I suppose across the board those on the other side share the respect for Mick Keelty that people on this side of the parliament do.

Senator McGauran interjecting—

Senator BOLKUS—Senator McGauran laughs; maybe he does not. He can go back and tell the people of Victoria that he does not. Borne out of that respect is, I believe, an embarrassment on the other side that they cannot defend the indefensible. They cannot defend the bullying behaviour that occurred last week, and it is good to see that they are not coming into this place and trying to defend that indefensible behaviour. They are embarrassed by it. They should be embarrassed by it. The whole government should be embarrassed by it.

What we are talking about today is quite a serious issue, one demanding of multiple responses but, as my colleagues indicated earlier on, probably not one that is immediately appropriate for the Senate committee process. But there is no doubt that what we have now—and we had it last week—is the behaviour of a government in decay. All the aspects of that decay were on parade as government ministers from the Prime Minister down took the long bat to one of the most respected leaders in this country, the Australian Federal Police Commissioner, Mick Keelty.

Last week we saw the worst aspects of this government. We saw an arrogant government bullying a senior independent officer. We saw a deceitful government selectively misusing the truth. We saw a hypocritical government undermining the reputation of someone they were falling over themselves to be photographed with just a few months ago. We saw a government in disarray as they shafted Mick Keelty one day and heaped praise on him the next. We also saw a desperate government who were prepared to dispense with the truth once again and, just as importantly, to dispense with the reputation of a decent, intelligent and highly respected professional officer. For what purpose? The only purpose was to save their skins.

At the helm of the government we saw a desperate and rattled Prime Minister. Aren’t we getting used to that? From day one of the Latham leadership of the Labor Party, we have become used to the Prime Minister being wrong footed and looking desperate and embattled. The man of steel is starting to look like Captain Mainwaring, and that is getting through to the Australian public. The Prime Minister has form on the issue of truth, and the Australian public saw once again a Prime Minister who wishes to deny them the truth. The Prime Minister continues to keep the truth from the Australian people. I am sure this issue is resonating in the Liberal Party polling, as it does with anyone who goes out and talks to the public. We all know that, when it comes to keeping the
truth from the Australian public, this Prime Minister is a serial offender.

The Australian public firmly believe now that the truth was kept from them in the ‘kids overboard’ affair. They do not believe, as we saw in this morning’s poll, they were led into Iraq with honesty but that they were misled into that war. As we have heard from expert after expert, as a nation the public firmly believe we are a greater target as a consequence of the engagement in Iraq. They know that this government is trying to keep the fundamental truth from them. Another firm belief of the Australian people is that the issues of national security and law enforcement should be above politics, and they do not like the fact that last week those issues were not. The Australian public see the government’s behaviour as an act of desperation, an act of deceit and an act of dishonesty. They are concerned across the country that these fundamental pillars of our system were dragged into a debate and the principal players were bullied.

Let us get a real fix on what happened last week. Commissioner Mick Keelty, the head of this nation’s peak police body, the Australian Federal Police, told the Australian public what they also firmly believe and what most experts around the world believe. He said:

The reality is, if this—the Madrid bombing—

turns out to be Islamic extremists responsible for this bombing in Spain, it’s more likely to be linked to the position that Spain and other allies took on issues such as Iraq.

He told the truth as he knew it and as he had analysed it. Not only have Commissioner Keelty and the Australian public expressed that view but also Minister Abbott and Paul Wolfowitz—conservatives in the extreme—have expressed that view. For that, Commissioner Keelty was jumped on and dumped on from a great height. Why? Essentially he was jumped on and dumped on because he told the truth in a way this Prime Minister did not want it told. Why didn’t this Prime Minister want it told? Because this Prime Minister’s only concern is his continuity in the job. He knows that it would be threatened if voters blamed him for increasing the risk of terrorist attacks within Australia. The Prime Minister ensured that by the end of last week those fundamental issues of the independence of our national security agencies and infrastructure, and the independence of our chief law enforcement officer and agency, were dispensable. They were dispensable at the altar of the security of the Howard government.

Commissioner Keelty is a person who is widely respected, and with good cause. I have known him for over 10 years, in the days when I was a minister, as a decent, intelligent and honest person. He had served previous governments skilfully, intelligently and honestly. With the transition to the Liberal government, I was continually confronted by Commissioner Keelty in estimates committees and other parliamentary committees, where he continued to show extreme dedication to the protection and security of the Australian public. He did so with honesty and intelligence. He is widely respected, and he deserves to be. He continues to serve this country professionally and intelligently.

In the days after the Bali bombing I am sure all Australians slept easier, as did I and my family, knowing that Mick Keelty was behind the wheel. He should be honoured rather than abused. Unfortunately, last week he was abused. But it was not just the person that was abused; it was also the institution of the highest ranking position in our national police force. In turn, the AFP as a whole was abused.

In this country we have legislative processes for interaction between different arms
of government, and we have them for good reason. Our Constitution provides that there be a separation of powers, which is designed to balance authority. The separation of powers is designed to protect our democratic system and the rights of our people. This separation dictates that law enforcement be kept separate from the government of the day. This separation protects the independence of judiciaries. It demands that the law be applied without fear or favour, and it demands that those who enforce the law be protected by statutory independence. Commissioner Keelty is protected by such constitutional principles. These principles are reinforced by the Australian Federal Police Act 1979 as amended. That act establishes the legally allowable forms of communication, and it clearly shows that last week the government acted outside the law by pressuring the police commissioner.

Let us turn to what the government did privately, and later on I will get onto what they did publicly. Privately, they berated him from within seconds of the interview on the Sunday program. We know that the Prime Minister’s senior adviser rang Commissioner Keelty—and it was not to ask him what he was having for breakfast. The senior adviser rang Commissioner Keelty within seconds of the interview, with essentially two demands: the first was that the commissioner keep away from the press; the second was that he issue a clarifying statement. The law, the AFP Act 1979, defines the allowable channels of communication and direction of government with respect to the AFP commissioner. In this instance last week the government acted outside the law. Section 37(1) of that act talks of general administration. It says:

Subject to this Act, the Commissioner has the general administration of, and the control of the operations of, the Australian Federal Police.

The subsequent two subclauses of section 37 detail what are allowable channels of communication and what areas that communication is allowable in. Section 37(2) says:

The Minister may, after obtaining and considering the advice of the Commissioner and of the Secretary, give written directions to the Commissioner with respect to the general policy to be pursued in relation to the performance of the functions of the Australian Federal Police.

Subclause 3 states:

In addition to … power to give directions under subsection (2), the Minister may give written directions (either specific or general) to the Commissioner in relation to the use of common services …

It is very clear from this legislation that, when the act was passed, when the AFP was set up, the allowable communication, the allowable direction had to be in writing and only as to general policy. Last week it was not in writing and it was as to a specific matter of intelligence and law enforcement. Going back to when the legislation was introduced in parliament, during the term of the Fraser government in 1979, in his second reading speech the Minister for Administrative Services, Mr McLeay said:

The responsibilities of the Minister and the Secretary, who in some limited matters also advises the Minister, are clearly spelt out. They refer to the giving of written directions by the Minister, after seeking both the advice of the Commissioner and the Secretary, on the general policy to be pursued in relation to the performance of the functions of the Federal police …

As I say, I think the government acted outside the law in pressuring the AFP Commissioner as they did last week. They did it privately. The legislation establishes the position of the AFP Commissioner as an independent one and it defines the allowable avenues of direction, and the government did not act within the law with respect to that. But this was not the full extent of the gov-
ernment’s response that I find distasteful—there is even more. It was the response that is probably best summed up by Verona Burgess, one of our most respected public servant commentators, if not the most respected, in the weekend *Canberra Times*, where she said:

What part of “children overboard” didn’t the Government understand? The part about ruining the careers of public servants who didn’t agree with them? The part about bullying those who dared speak out? The part about trashing the reputations of decent people who have committed their lives to the service of the nation? The part about playing senior officials against one another? Or the part about disguising the truth in a fog of confusion?

She goes on to say:

What is different this time is that the Prime Minister and his Chief of Staff, Arthur Sinodinos, have been caught with their pants down interfering with an independent statutory authority—the nation’s top cop, Mick Keelty…

I think that best describes the government’s response last week. They denigrated, they bullied, they played one officer against the other all in an attempt to disguise the truth. And when they wanted to get right into it, they called on the person whose conduct, I believe, alternates between village bully and town clown to take the police commissioner to task and to undermine his judgment and reputation. One of the most offensive performances I have seen in national politics was the performance last week by the Minister for Foreign Affairs, Alexander Downer, when he came to the crease and delivered the greatest insult of the lot. Of the man who probably, with the Director-General of ASIO, Dennis Richardson, has done more to keep Australia safe from terrorism, Mr Downer said, ‘Keelty is just expressing a view which reflects a lot of the propaganda we are getting from al-Qaeda.’ Would you believe it, even from Alexander Downer? It was an amazing over-the-top statement. In one sentence, a one-line put-down, Downer tells us that Keelty has been (1) duped by al-Qaeda propaganda and (2) is mouthing that propaganda as a mouthpiece for al-Qaeda. In one line, Commissioner Keelty is depicted as being inept and gullible. When Minister Downer was attacked in the House of Representatives for this sort of statement, this sort of denigration, when he was accused of being a ‘rotten lousy disgrace’, what was his response? The man who can throw it by the bucket load takes umbrage and demands a retraction. No-one has said anything worse in national politics recently than the statement by Minister Downer about Mick Keelty. But he is the one who is offended; he is the one who wants the attention. He is the one who least deserves it. Mick Keelty is the one who most deserves an apology from the minister—a profuse apology.

That was not the only line of attack on Commissioner Keelty last week. The other line—one used by the Prime Minister, the Attorney-General, the foreign minister—was to claim that Commissioner Keelty was only involved in ‘operational matters’. To me, that is the more insidious and belittling put-down of the lot. In other words, we are told that Keelty and his operation do not do the thinking; they are just the legs and arms and they do the legwork and all the analysis and intelligence analysis is done elsewhere. It was more subtle than the al-Qaeda connection but I think professionally more damaging and, of course, totally wrong. It is a good line for the moment. It gets the Prime Minister out of sticky moments in press conferences and with the odd talkback announcer who may be critical. When we look at the work of Commissioner Keelty and the AFP and we take into account what the Prime Minister and others have said—the allegation that the AFP and Commissioner Keelty have not been involved in the intelligence analysis—let us acknowledge that Commissioner Keelty has
been intimately involved in regional networking of intelligence, in global networking of intelligence and in domestic enforcement of laws based on intelligence.

Let us also remember, lo and behold, that after Bali, this government, this Prime Minister gave the Australian Federal Police a counter-terrorist role, including 100 jobs for intelligence analysts. We are asked to believe that Commissioner Keelty has 100 intelligence analysts working for him, yet we are told he has no role in intelligence analysis. How dishonest, how tricky, how deceitful, how normal. If these analysts are not reporting to the commissioner, who are they reporting to? We all know who they are reporting to. Mick Keelty is at the pinnacle of that analysis. We know he has a role and, as I said earlier, together with Dennis Richardson he is probably more critical than anyone else in the protection of Australia’s security. We see the theme over and over again. For Mr Downer it is us and them. He and his people are above the stairs with his mates. They are the ones capable of doing the analysis and the rest of us, people such as Commissioner Keelty, are the downstairs people. They are expected to do the legwork. They are the operational people. It is not a role in which to think about these things. I find that offensive. I am sure others in the community find it offensive and the sooner this country is rid of a patrician foreign minister like Downer, the better off we will be.

At the end of the week, I think Commissioner Keelty is probably more respected by the Australian people and Prime Minister Howard less so; he is obviously less respected by his own colleagues in this place. As I say, no-one is jumping up for the call in this place to defend the Prime Minister against, once again, serial behaviour. This is the Prime Minister who wants to keep the truth from the Australian people and who always finds ways to do it: tell a little half-truth here and a little lie there, always skating close to the edge. But where are his colleagues today? This is a critical issue of concern to the nation: it goes to the constitutional separation of powers concept, it goes to the administration of justice and it goes to honesty in government, but not one government senator is prepared to get up and defend the Prime Minister. That in itself is a reflection not just on his behaviour last week but also on what a difference a couple of Newspolls can make.

We have a couple of Newspolls and they are all scurrying back to their holes. Senator McGauran is sitting over there looking very embarrassed. Senator Vanstone is sitting over there wishing she was not here. That is the truth of it: no-one else wanted to come into this place to defend what we all know is the indefensible. In terms of public policy conduct it does not get much worse than the behaviour of Prime Minister Howard, Minister Downer and Minister Ruddock last week. To use this for their base political purposes, to use this as an excuse to save their skins and try to position themselves against any terrorist attack in the future I think is the basest of motives on which to undermine the reputation of a person widely respected both locally and in the region.

I must ask again: where are the Liberals? Where are the Nationals? Where are the defenders of this so-called man of steel who, as I said earlier, increasingly looks like Captain Mainwaring? We are concerned about it and Senator Brown is concerned about it. I think he has a legitimate proposition before the Senate but one that probably is not workable given the conduct of this government. But let us get another speaker up and let us hope that the government can find someone who can defend their position. I will not be holding my breath.
Senator LUDWIG (Queensland) (5.24 p.m.)—No, Senator Bolkus did not need to hold his breath in relation to that. The attempt by the Howard government to distort the message on an important national issue such as terrorism and to attack experts who hold a contrary view is poor and desperate politics. The government’s handling of the entire Keelty affair has been reprehensible. Not only has the government attacked the credibility of a man who has devoted his whole working life to protecting Australia and Australians; it has also undermined the independence and integrity of one of the most important statutory offices in this country.

I have personally known Mr Keelty in the sense of seeing him at estimates hearings a number of times and during the course of inquiries of both the Legal and Constitutional References Committee and the Legal and Constitutional Legislation Committee over some five years now. I think the government has clearly undermined the independence and integrity of one of the most important and independent positions we have. In defence of his own political spin Mr John Howard has muddied the reputation of and seriously undermined the office of the Australian Federal Police and he also attempted to do that to the commissioner himself. As far as I am aware, Mr Keelty has spent a significant part of his working life defending Australia and Australians. For close to 25 years, I think, he has gone to work every day to protect Australians from the worst kinds of criminals, organised gangsters, drug and gun-runners and, of course, other types of criminals. His hard work and dedication saw him rise through the ranks of the Australian Federal Police all the way to the top job in 2001, when he was appointed Commissioner of the Australian Federal Police.

During his term as commissioner, Mr Keelty has skillfully managed the significant increase in the scale and complexity of the Australian Federal Police mission that has resulted from the new threat environment we now face. His leadership of the Australian Federal Police has in my view been an invaluable asset in the war against terrorism. To have lost him should he have resigned, as suggested in the paper, would unquestionably have weakened Australia in this endeavour. It is worth while going through some initiatives to examine the person that the Prime Minister’s office sought to interfere with. Mr Keelty has overseen the establishment of new counter-terrorism teams, the expansion of the AFP’s overseas network, the reorganisation of the AFP’s intelligence capability, the implementation of a new regime to confiscate the proceeds of crime and a major overseas deployment to stabilise the Solomon Islands.

Many of these issues were covered at hearings of the legal and constitutional committees where I was able to inquire and hear from Mr Keelty about issues raised during estimates or about legal and constitutional committee issues. The achievements with which Australians would be most familiar would be the assistance provided by the AFP to the Indonesian National Police following the horrific terrorist attack in Bali on 12 October 2002. That assistance ranged from disaster victim identification, forensic investigation, criminal intelligence analysis and bomb data analysis, as well as preparation for prosecutions. At the time, the Prime Minister himself commended the work of Commissioner Keelty when he told parliament on 12 December 2002:

I record the gratitude of Australians to the Commissioner of the Australian Federal Police, Mr Mick Keelty ...
tic to defend its spin in defiance of the truth was to undermine the credibility of the police commissioner and to question his expertise in this area. That is why I took a couple of minutes at the beginning of my contribution to provide a backdrop to the ability of Mr Keelty, his experience and the issues he has been involved in over the last couple of years on behalf of this government and under this government’s minister. I am sure he has worked to the best of his ability.

Of all the government ministers who were then wheeled out to have a pot shot at Mr Keelty for daring to speak the logical truth, no-one went in harder or lower in my view than the foreign minister. The foreign minister’s suggestion that Commissioner Keelty was advancing al-Qaeda propaganda in suggesting that Australia faced a greater security risk as a result of our involvement in the war in Iraq is simply outrageous. One wonders why he went a bridge too far. It is a despicable slur on the commissioner, and the fact that the minister has repeatedly refused to apologise to him only reinforces that. These disparaging comments were backed up by the Attorney-General, the Minister for Defence, the Deputy Prime Minister and the Prime Minister himself—after first of all, of course, not wanting to comment on it.

The suggestion that the threat level faced by Australia has risen due to our involvement in the war in Iraq is not propaganda; it is one of those facts that we have to live with. A number of commentators have backed up the commissioner, including the United States Deputy Secretary of Defense, Mr Paul Wolfowitz, and the head of the FBI’s counter-terrorist unit, Mr John Pistole, whom I was fortunate enough to meet in America recently. Indeed, comments by the American ambassador to Australia, Tom Schieffer, also conceded this point. Other police chiefs who supported this view included the Commissioner of the New South Wales Police Service, Mr Ken Moroney, the Deputy Commissioner of the Victoria Police, Mr Bill Kelly, and former Commissioner of the Western Australian Police Service, Mr Bob Falconer. Add to this a significant array of international terrorism experts who also supported Commissioner Keelty’s view and it becomes obvious that this government is simply denying the plain truth.

Despite this defence of its own spin—perhaps ‘its own deceit’ is a better way of putting it; ‘its own political survival’ might even be closer to the truth—unfortunately for the government, polls reported recently revealed that the Australian people will not have the wool pulled over their eyes by this government. They will not allow government spin to overwhelm the facts. The point is that Commissioner Keelty was telling Australians that we cannot be complacent about the potential for a terrorist attack. Anyone who dismisses the relevance of the attack on Spanish citizens in Madrid and discounts the fact that it was an indication that we now face greater risks is naive. In my view, it would be dishonest not to raise that as an issue.

Last week our leading police officers, the commissioners of police at federal and state level, were hosting a conference with myriad international terrorism experts. It seemed, in retrospect, a perfectly logical opportunity for us to honestly and objectively assess the risks faced by Australia and, more importantly, to take constructive steps to address those risks. It was totally inexcusable that, rather than being able to concentrate on those constructive steps that could have been taken, Commissioner Keelty was distracted by what can only be described as political standover tactics. Indeed, alarmingly, reports suggested that he had—at one stage at least, as I suggested earlier—considered his resignation. This would have had a drastic effect on Australia’s counter-terrorism capability,
yet it was apparently a real possibility, caused by this government—unnecessarily, I might add.

This whole episode shows that we have a government that places its own partisan political interests ahead of the national interest. It was prepared to sacrifice a highly respected, highly determined and highly competent law enforcement officer—indeed, the chief law enforcement officer in the land—for its own political interests because that law enforcement officer was not citing the government’s spin. The government should be under no illusion that, when it comes to a question of having Mr Keelty or Mr Alexander Downer and government spin doctors defend the security of their families, the Australian people will choose Mr Keelty every time.

To demean such a man by requiring him to issue a press release drafted by the government—that is apparently so; the government has not denied it—is nothing short of a national scandal. To justify their political standover tactics on the basis of an assertion that Mr Keelty did not have a role in security assessment ignores, incredibly, the role that the Australian Federal Police now have to play and were asked to play in this issue by this government. The Attorney-General said, in answer to a question on notice from as recently as 18 March this year, that the Australian Federal Police—who will be seconded to the National Threat Assessment Centre that will be open in a month’s time—will be:

... fully integrated NTAC analysts and as such, will be directly responsible for the preparation of threat assessments.

So the Australian Federal Police will be playing an integral role in relation to the National Threat Assessment Centre analysis. Therefore, it begs the question: why would the government’s comments say that we can perhaps leave Mr Keelty’s view aside and go to, say, that of Dennis Richardson from ASIO or perhaps that of Alexander Downer? I have to say that, at the end of the day, you might want to consider Dennis Richardson’s argument but you also might want to listen to the Australian Federal Police on this issue, given their role. I think this demonstrates that the Australian Federal Police will be intimately involved in advising on matters of national security. There is no doubt about that. How can the Australian people have confidence, then, that in fulfilling its vitally important responsibility the AFP will be able to give frank and fearless advice in the interests of Australia’s national security and not those of their political masters? The position could not be stated more clearly and precisely than in the words of Australian Federal Police Commissioner Keelty himself, on 14 March this year, when he said, on that same Sunday program:

... there’s a level of honesty that has to exist here in terms of what the problems are here, not only in Australia but in our region.

No-one should be under any illusions that the viciousness with which the government has approached this matter was not intended to intimidate. It was intended to control the message and, if that message did not suit its political agenda, to stifle and deny the truth and the facts. We should not forget that, in the process of demeaning its distinguished law enforcement officer, the government quite frankly is prepared to con the Australian public on matters of security. I note, for instance, that Mr Ruddock was reported as saying that:

... the efforts by the United States and other allies to drive Saddam Hussein from power in Iraq had drawn terror groups to the country.

That is, Iraq. Mr Ruddock was then reported as saying that:
This was then reducing the possibility of those groups carrying out terror actions in other parts of the world.

That is what he said. He went on to say:

I suspect the fact that they are in Iraq probably diminishes the harm that they can occasion elsewhere.

The next thing you know is that the government not only will be standing over our primary law enforcement officers but will be proposing a diminished state of alert because it would like us to believe that all the terrorists in the world have been sucked into Iraq and we are now safe here. That is not the case at all. The point the government should take on board is that it is prepared to say anything for its political purposes even when those statements conflict with the national interest. It is a shameful thing to have to say that this government has now put itself in this position. This is typified by its response to terrorism. It seems that with this government it is all about the words, not about action. It is not about recognising and respecting people who have contributed to the debate. It is not about those who have contributed their efforts in the war on terrorism. It is about ensuring that there is a political spin which the government can live with that comes from its bureaucrats, the people the government thinks it controls.

We have seen the government espousing its toughness on security matters by adding words to statute books but we have not seen it exercise its powers. We have seen again today the further suggestions as to just what Willie Brigitte was up to in Australia, and the government still has not answered the question of how he was granted a tourist visa in circumstances where he was clearly a person of interest to French security authorities even before September 11. We have not heard an explanation from the government as to why it took more than two weeks to respond to a request from France as to whether he was in the country, even though they pointed out this man had trained with al-Qaeda linked organisations in Afghanistan. We have not heard the government say whether it is prepared to set in place a standard 24-hour response to such requests, a 48-hour response, a one-week response, a two-week response or only after an alerting country sends a second transmission urgently warning us about this individual—which was an urgent warning, I might add—remained unattended to because of a long weekend. We have also seen reported in the Sun Herald and elsewhere the security leaks. We do not know whether this government is going to investigate those or whether they emanated from the French authorities or from the Australian authorities.

What we heard in question time today in the Senate was a minister who is responsible for the area but who apparently did not know what was going on, who thought he could hide under operational requirements. But the question was not about operational requirements. The question was about what the government was doing about the leaks—an entirely different matter. Either this government is asleep at the wheel, or it hides behind its rhetoric or it does not like the truth. It can choose any of those, but they all lead to the incompetence that this government is now portraying in the issue of national security.

By way of an example we have seen over 400 individuals and organisations listed as terrorist organisations for the purpose of having their assets frozen in Australia and, of those 400 that have been listed, the government has taken action against two. The first organisation, Shining Light, was not a South American terrorist organisation but in fact a record store that it seems had its assets frozen by mistake. It then took a considerable amount of time and effort to get those assets unfrozen. The second organisation had its total assets of $2,100 frozen. That is a cashed
up organisation, that one! We have not been able to find out anymore about that, but as the case unfolds we may be able to see whether or not the government has struck another record store. As to associates of Willie Brigitte in Australia, have we seen in media reports any suggestion of a prosecution, investigation or perhaps even a short little speech in the House about what is going on? No. In short, virtually no assets have been confiscated and there have been no prosecutions.

There is a lot of rhetoric coming from this government. The rhetoric of this government is not good rhetoric. It is not talking the talk or walking the walk. What it is doing is in fact only talking about the rhetoric surrounding national security rather than national security itself. Again, the Australian people are not mugs; they can judge political charlatans a mile off. The conduct of the government, directly from the Prime Minister’s office last week, was disgraceful. The government knows it. The opposition knows it. Senator Brown clearly knows it. The government should acknowledge that disgrace, it should apologise to our primary law enforcement officer and it should give a commitment to the Australian people that it will not engage in such outrageous intimidation again. That will enable all senior public servants involved in the security of Australia to be honest and frank with the Australian people in their efforts to protect our national security.

The issue that Senator Brown seeks to refer to a Senate inquiry is one that, of itself, Labor believe the Australian people deserve answers on. They deserve to know the exact details of the role that the Prime Minister’s office, the Prime Minister himself and his staff had in muscling in on the commissioner. They deserve to know that the Commissioner of the Australian Federal Police in Australia will continue to give frank and fearless advice not just to the Australian government but to all the Australian people. Labor are committed to doing the work necessary to ensure that the Australian people get those answers. Our efforts yesterday, our continuing efforts today and the ongoing pressure we will be applying to the Howard government to extract the simple truth is a testament to that fact. Labor are committed to taking the steps necessary to extract the facts but we look at the issues as they stand. We will not support measures just for any reason.

Labor do not believe that a Senate inquiry into this affair will deliver answers to the Australian people, and that is why we will stop short of supporting it. We cannot send this issue off to a Senate inquiry, which may ultimately not provide the answers that we want from this government. I suspect that the Prime Minister’s chief of staff will not give evidence to the committee. The ministers who have attacked the commissioner will not front up. In truth the only person who would be likely to front up is Commissioner Keelty, for another round of questioning. I am not sure whether in truth that in itself would provide any answers for the Australian people. Senator Faulkner moved a motion earlier today to seek to extract information from this government. The government should not have to be ordered. (Time expired)

Senator GREIG (Western Australia) (5.44 p.m.)—I agree wholeheartedly that the issue at hand is important, and I particularly agree with the opening comments of both Senator Faulkner and Senator Ray. This issue has clearly captured the imagination of the electorate, and I think people understand the issues that underpin the motion of Senator Brown that is before us. However, I agree too with previous speakers who have outlined the reasons why a Senate committee of the nature proposed is not the best forum in which to try and get to the bottom of these issues. I would not like to see a situation
where Commissioner Keelty was the only person who was called on to present before a committee and ultimately presented only to find himself hammered repeatedly with questions, giving what he believed to be fair and frank answers but really not getting anywhere. I think he has already had enough public humiliation and scrutiny and is not necessarily deserving of any more of that. I am not suggesting that the issue should not be explored further but I believe strongly that, if nothing else, Senate estimates committee hearings are a better forum and a better place and time for that.

Out of curiosity I looked this afternoon on the parliamentary web site at the committee inquiry workload. I want to spend a few minutes talking about that. The inquiry Senator Brown is proposing would be referred to the Senate Legal and Constitutional References Committee, one of the committees on which I serve and have served since I first came into this place. I note with interest that since 1996 Senator Brown has proposed that the Senate inquire into some 27 different references. Of those proposals, the Senate rejected 19 but agreed to eight. I raise that just as a matter of interest. That got me thinking about the sorts of issues the Senate legal and constitutional committees—or legal and con committees, as we refer to them affectionately; and there is both a legislation and a references committee—have been dealing with in recent times. I was quite stunned to find that in just the last year those two committees have undertaken some 33 different inquiries, six of which are currently under way, and there may be another four potential inquiries by the end of this sitting period. I am reminded that this is all being done with three research staff in the committee secretariat. That workload is a considerable strain on those tremendous staff—Louise Gell and others. Also it can be difficult for the senators who serve on those committees if for no other reasons than geography and time.

As an illustration, since 2 April last year the legal and constitutional committees have inquired into the following references: averment provisions in Australian customs legislation; crime in the community—victims, offenders and fear of crime; the Australian Federal Police and Other Legislation Amendment Bill 2003 [2004]; the Australian Protective Service Amendment Bill 2002; the Australian Protective Service Amendment Bill 2003; the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and related matters; the Criminal Code Amendment (Espionage and Related Matters) Bill 2002; the Customs Legislation Amendment Bill (No. 2) 2003; the establishment of an Australian republic; the Family Law Amendment (Child Protection Convention) Bill 2002; the government amendments to the Proceeds of Crime Bill 2002; the Human Rights (Mandatory Sentencing for Property Offences) Bill 2000 [2002]; the Migration Legislation Amendment (Procedural Fairness) Bill 2002; the Migration Legislation Amendment Bill (No. 1) 2002, which led into migration zone excision and examination of the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 and related matters; the outsourcing of Australian Customs Services information technology; the Proceeds of Crime Bill 2002 and related bills; the provisions of the Age Discrimination Bill 2003, which we are currently dealing with; the provisions of the Australian Human Rights Commission Legislation Bill 2003; the provisions of the Disability Discrimination Amendment Bill 2003, and I understand hearings on that are still under way; the provisions of the Family Law Amendment Bill 2003; the provisions of the Migration Legislation Amendment (Identification and Authentication) Bill 2003; the provisions of the
Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003; other migration legislation; telecommunications interception; reconciliation; security legislation; the private senator’s bill on one vote, one value; the statutory powers and functions of the Australian Law Reform Commission; the capacity of current legal aid and access to justice arrangements to meet the community need for legal assistance; and finally the needs of expatriate Australians, which is currently under way.

I place those inquiries on the record purely to give an illustration of the workload being placed on the legal and constitutional committees. I think you would confidently agree with me that these committees will take on any inquiry that the Senate asks of them, will do so seriously and will consider it a duty, and all effort will be put into it. But it seems to me that it is getting to the point, with the time and resources currently allocated to these committees, where some inquiries cannot be done competently or comprehensively unless more time and resources are made available to these committees. There are other committees to which the Senate can refer inquiries. There is the rural and regional affairs committee, there is the community affairs committee and there are others. I note that three of the inquiries Senator Brown has successfully had referred by the chamber for investigation have gone to other committees. They were an inquiry into the MOPS staffing arrangements, an inquiry into Turkish asylum seekers and an inquiry into various chemicals, and I understand there were hearings for that in Parliament House this morning. But I make the point that Senator Brown, who moved and argued that those inquiries be referred to committees, did not participate—and is not participating—in any of the hearings of those three inquiries. I do not raise that, Senator Brown, to be unkind—

Senator Brown—Yes, you do.

Senator GREIG—No, I make the point to express the frustration. Those of us who are full and participating members on these inquiries can find it unsettling to be presented with extra work only to find that the originators, those people who specify particular areas of inquiry and move them through this chamber, do not follow through on the work that subsequently unfolds. I understand the expectations on senators of their party colleagues, their constituencies and their electorates in terms of work and obligations. I understand that we cannot be in all places at all times. But I do think it is incumbent on senators who propose and succeed with particular terms of reference to engage in the committee processes that flow from that.

I would like to conclude with a last point about the work that the committees are doing. I make the observation that there is an increasing trend in this place for inquiries to be held on sitting days. As a relatively new person to this chamber, having been here five years, I understand that that has not always necessarily been the case—historically it has not been frequent.

Senator Vanstone—Five years is reasonable. That is half a decade.

Senator GREIG—It feels like an eternity. I meant relatively.

Senator Vanstone—But what you say is right. The point you make is right.

Senator GREIG—I thank the minister. The point I am making is that the trend has shifted: a greater number of Senate inquiries are being held in-house on sitting days. I make a plea to colleagues to desist with that as best they can. I accept that there will be exceptions. There will be circumstances—and this might be one of them if Senator Brown’s motion before us were to succeed—where you might want to have an inquiry on
a sitting day in Canberra because those people who could reasonably expect to be called before that committee would likely be based in Canberra in the first instance. But there are many occasions when, particularly for those of us on the legal and constitutional committees who live in the more remote parts of Australia—Perth for me or Darwin for my colleague Senator Scullion—the time and distance involved in participating in the Senate committee processes can be challenging, to say the least. But we do our best to participate.

Having Senate committee hearings on sitting days is unfair on both senators and more particularly witnesses. As the bells in the chamber ring for divisions and quorums, as they do frequently throughout the day, it is unfair—indeed rude—to continually get up and leave committee inquiries, leaving witnesses and secretarial staff waiting for the return of senators so the hearings can continue. My final plea is to please desist from having committee hearings on sitting days.

I note a fax that came across my desk today from, I understand, Senator Brown proposing yet another inquiry—this time for the Sex Discrimination Amendment (Teaching Profession) Bill 2004 to be referred to the Senate Legal and Constitutional References Committee. This is yet another inquiry being asked of us. I am not suggesting that the inquiry itself is not worthy or that it is not something that we should not look into, but I make the point again that the legal and constitutional committees have six inquiries currently under way, potentially another four. I understand, by the end of next week and now this one coming across our desk. It lends greater argument—

Senator Ludwig—Does that include the teachers one?

Senator GREIG—I am uncertain, Senator.

Senator Ludwig—It has been referred.

Senator GREIG—It is now on the list as yet another bill. You may recall, Mr Acting Deputy President Bolkus, that I approached you informally some months ago and tentatively asked whether the Democrat Sexuality and Gender Identity Discrimination Bill 2003 might also go to one of the legal and con committees for investigation and you advised me that the legal and con committees would be too busy to deal with that.

The ACTING DEPUTY PRESIDENT (Senator Bolkus)—Now you know why.

Senator GREIG—I will in future perhaps take such comments with a pinch of salt because, subsequent to you saying that, an additional five—now six—bills have been referred to those committees.

The ACTING DEPUTY PRESIDENT—I told you they were coming.

Senator GREIG—I think it means two things. Ultimately we can and should deal with some of these issues in another forum, and Senate estimates does lend itself to that. As Senator Ray made the point, that is the time at which the very people you would hope to inquire of, particularly on this hearing, are going to be there before you. Secondly, perhaps senators might join their voices in a greater chorus for more resources for Senate committees, not the least of which would be the Senate legal and con committees.

To conclude, I say to Senator Brown that the terms of reference in his motion are fine. I have no objection to them. But I do genuinely believe that the Senate Legal and Constitutional References Committee is not the place but that Senate estimates committee does lend itself more readily to that.

Question put:

That the motion (Senator Brown's) be agreed to.
The Senate divided. [6.02 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes............... 2
Noes............... 49
Majority.......... 47

AYES
Brown, B.J. Nettle, K. *

NOES
Allison, L.F. Barnett, G.
Bartlett, A.J.J. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Campbell, I.G.
Chapman, H.G.P. Colbeck, R.
Cook, P.F.S. Crossin, P.M.
Denman, K.J. Eggleston, A.
Ferguson, A.B. Ferris, J.M.
Forshaw, M.G. Greig, B.
Harradine, B. Harris, L.
Hogg, J.J. Humphries, G.
Hutchins, S.P. Johnston, D.
Kirk, L. Knowles, S.C.
Lecs, M.H. Ludwig, J.W.
Landy, K.A. Mackay, S.M.
Marshall, G. Mason, B.J.
McGauran, J.J.J. * McLucas, J.E.
Moore, C. Murray, A.J.M.
Payne, M.A. Ray, R.F.
Ridgeway, A.D. Santoro, S.
Scullion, N.G. Stephens, U.
Stott Despoja, N. Tchen, T.
Tierney, J.W. Troeth, J.M.
Vanstone, A.E. Webber, R.
Wong, P.

* denotes teller

Question negatived.

Treaties Committee
Report

Senator KIRK (South Australia) (6.06 p.m.)—On behalf of the Joint Standing Committee on Treaties, I present the 58th report of the committee entitled Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, together with the Hansard record of proceedings, minutes of proceedings and submissions received by the committee. I seek leave to move a motion in relation to the report, to incorporate a tabling statement in Hansard and to make a few remarks in relation to the report.

Leave granted.

Senator KIRK—I move:

That the Senate take note of the report.

The statement read as follows—

On 26 November last year, the Senate resolved that the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment be referred to the Committee for inquiry and report. Report 58 contains the findings and conclusions of that inquiry.

Australia abhors torture and other cruel, inhuman or degrading treatment or punishment. Within Australia there are a range of mechanisms to prescribe and prevent torture. In addition to Commonwealth, State and Territory legislation, human rights are protected by an independent judiciary, Royal Commissions, ombudsmen, non-government organisations and our democratic system of government. The Convention against Torture (the Convention) entered into force for Australia on 7 September 1989.

The objective of the Optional Protocol is to establish a system of regular visits, to be undertaken by independent international and national bodies, to places of detention in order to prevent torture. The functions of the Optional Protocol are to be carried out by two mechanisms: the Subcommittee on Prevention, and independent national preventative mechanisms.

The Subcommittee on Prevention would conduct regular visits to State Party facilities, regardless of whether there are substantive concerns regarding allegations of torture. During a visit, the Subcommittee would assess the conditions of places of detention and the treatment of people deprived of their liberty. Following a visit, the Subcommittee would make recommendations and observations concerning the protection of people in the places of detention.
Under the Optional Protocol, State Parties would be required to establish one or more independent national preventative mechanisms, for the prevention of torture at the domestic level. The national preventative mechanisms would also conduct regular visits to places of detention and make recommendations.

The Optional Protocol was adopted by the United Nations General Assembly on 18 December 2002. It has not yet entered into force generally, as only 3 States of the required 20 have ratified the treaty.

The issue for the Committee was to consider whether Australia should sign the Optional Protocol to the Convention. In making its recommendation, a majority of the Committee found the following arguments persuasive.

Firstly, the issue of whether to sign the optional protocol needs to be examined in the context of the Australian Government’s approach to the UN treaty committee system. Australia remains concerned that the UN committees are not focussing on the most pressing of human rights violations. The subcommittee, when established will be able to conduct visits to State Party facilities, regardless of whether there are substantive concerns regarding allegations of torture. This is incompatible with the approach of Australia which is only to allow committee visits when there is a compelling reason to do so and to focus resources in the areas of greatest need.

Secondly, there is no suggestion that the independent national preventative mechanisms are inadequate in Australia. Commonwealth, State and Territory Governments all conduct education and training programs and have mechanisms to prevent torture. Although the Convention against Torture is not scheduled under the HREOC Act, there are a range of other human rights instruments which are and which proscribe and prevent torture.

Thirdly, there are also some procedural and substantive concerns with regard to the Optional Protocol. The procedural concerns are that the optional protocol was developed without widespread consensus and was not considered in detail by the Working Group which was established to consider the draft text. The substantive concerns relate to the need for UN treaty bodies to operate effectively with committees focussing on the areas of greatest human rights violations. As it stands the Optional Protocol will allow visits to any Member State, regardless of whether there are concerns regarding allegations of torture.

Several of the submissions which supported Australia signing the Optional Protocol argued that it would send a message or set an example on human rights. This is not a compelling reason by itself. Australia is already regarded as a leader in human rights standards. The issue for the Committee was to consider whether we should sign the Optional Protocol despite our concerns about the functioning of the UN treaty committee system.

A majority of the Committee has decided that there is no immediate need for Australia to sign and ratify the Optional Protocol at this time. If, over time, the Subcommittee on Prevention demonstrates that it has focussed its resources on the worst human rights violations in the world, then the Australian decision could be revisited. However while Australia continues to work for reform of the UN treaty committee system, Australia should not sign the Optional Protocol.

I would like to thank the Committee Secretariat—Gillian Gould the Committee Secretary and Jennifer Cochran the Inquiry Secretary. I would like to thank the organisations, individuals and Government departments that participated in the Committee’s inquiry—their contributions are greatly appreciated. I would also like to thank all Members of the Committee for their consideration of this reference from the Senate.

I commend the report to the Senate.

Senator KIRK—I rise this evening to make a few comments in relation to the report that the Joint Treaties Committee has just tabled through the Senate. The prohibition of torture is one of the most basic principles in international human rights and humanitarian law. The act of torture is an international crime and no exceptional circumstances of any kind may be used to justify the use of torture. The prohibition against torture is absolute. Governments that are party to the UN convention against torture have committed to preventing torture and
cruel, inhuman or degrading treatment or punishment. Australia is one of these states.

Australia is committed to the eradication of torture worldwide through its becoming a state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1985. However, the continued practice of torture reflects the need for more effective measures to work for its prevention at both national and international levels. Today I speak on the Joint Standing Committee on Treaties’ report into one such measure—that is, the optional protocol to the convention.

I, along with my fellow committee members Mr Kim Wilkie MP, Senator Gavin Marshall, Senator Ursula Stephens, the Hon. Dick Adams MP, Mr Martyn Evans MP and Senator Andrew Bartlett, agree with most of the findings of the committee’s report on the inquiry into the optional protocol to the convention, but we believe that certain sections of the report and the recommendations do not reflect the views of all committee members. The dissenting committee members note the strong support in the evidence that was received by the committee for Australia’s ratification of this protocol. In fact, 17 out of the 20 submissions received supported Australia’s ratification. The dissenting committee members were persuaded by arguments raised in those submissions—namely, maintaining Australia’s leadership in human rights standards and comments that were made on the Australian government’s reservations in relation to the optional protocol.

I will first address Australia’s international human rights leadership standards. Australia has recently become chair of the United Nations Human Rights Commission. The dissenting report suggests that Australia should place some weight behind its tenure of this position. Systemic torture has not been reported in Australia. Whether or not incidents of torture or cruel, inhuman or degrading treatment or punishment take place in a country should not adversely affect a state’s decision to sign the optional protocol. It is important for Australia to be in full compliance with international standards establishing an international and national framework for the effective prevention of torture and cruel, inhuman or degrading treatment or punishment.

While the report found that Australia has adequate existing mechanisms for the prevention of torture, the dissenting members did not find this to be an adequate reason to not sign up to the optional protocol. Australia does comply with all of its obligations under the convention. The Commonwealth Crimes (Torture) Act 1988 was enacted to bring Australia into full compliance with the convention. The committee was also advised by the Attorney-General’s Department that Australia has extensive mechanisms in place for ensuring that torture is not committed and that there has never been a case of alleged torture communicated to the committee in relation to Australia.

In addition to the protections afforded by Commonwealth, state and territory legislation, human rights are protected by Australia’s democratic system of government, an independent judiciary, free press, royal commissions and other official inquiries set up for specific purposes, as well as parliamentary committees, ombudsmen and non-government organisations. We owe our clean slate on torture to these institutions. Thankfully, Australia is not a country whose name is synonymous with human rights abuses, police states and political terrorisation.

However, our past success should not preclude us from signing up to the optional protocol. It is important that an institutional framework exists which can prevent torture and respond to any incidents should they
take place at a national or international level. The optional protocol sets up a key mechanism for this framework. It establishes a subcommittee on prevention to conduct regular visits to state party facilities. During a visit the subcommittee on prevention will assess the conditions of places of detention and the treatment of those people deprived of their liberty, and may make recommendations and observations concerning their protection. State parties must allow unrestricted access to information relating to the number of people deprived of their liberty, their treatment and conditions of detention, and the places of detention and their location.

The reporting mechanisms on the work of the subcommittee are prescribed in article 16 of the optional protocol. Following a visit to a state party institution, the subcommittee’s recommendations shall be communicated to the state party in confidence and, if relevant, to the national preventative mechanisms. The subcommittee on prevention will present a public annual report on its activities to the committee against torture. Notably, if a state party refuses to cooperate with the subcommittee or refuses to take steps to improve the situation in light of the subcommittee’s recommendations, the committee against torture may decide to make a public statement on the matter or to publish the report of the subcommittee.

The dissenting committee members believe that Australia is already in substantial compliance with the convention against torture and therefore has nothing to fear from becoming a state party and opening itself up to visits by the subcommittee against torture. In light of Australia’s recent appointment as chair of the United Nations Human Rights Commission, the dissenting members believe that Australia should ratify the optional protocol. Australia’s ratification of the optional protocol would be an important act of leadership and a significant step in maintaining Australia’s good human rights standards.

The dissenting members of the committee support the statement made by Ms Nicole Bieske in her evidence to the committee. She said Australia should:

... set an example. We need to show by our conduct that we have nothing to hide and open it to other countries. As time goes on and as more countries ratify, there is a kind of snowballing process. It becomes significantly discussed at an international level and there is increasing pressure upon other countries to ratify.

I will now make a few comments on the Australian government’s stated reservations in relation to the optional protocol. Australia essentially opposed the optional protocol on procedural grounds as the treaty was not adopted by consensus. However, a number of groundbreaking international treaties have not been adopted by consensus. For example, the Convention on the Elimination of All Forms of Racial Discrimination was adopted without widespread acceptance but is now one of the most widely ratified conventions with 169 parties. The same is true of the Convention on the Elimination of All Forms of Discrimination Against Women, which now has 175 parties. Australia, of course, is party to both of these treaties.

In its stated opposition to the optional protocol before the UN Economic and Social Council, and earlier before the UN Commission on Human Rights, Australia did not question the prevalence of torture worldwide. Nor did it argue that the existing committee under the convention against torture was adequate to deal with all instances of and prevent the occurrence of torture. Nor did Australia suggest that there was not a need for additional measures to prevent torture or improve conditions of detention around the world. Australia did not make criticism of the provisions of the draft optional protocol. Australia, in fact, was not
represented at the United Nations working group to develop the text of the optional protocol in 2001 and 2002. Further, the dissenting members are critical of the government’s reasoning that the UN working group did not warrant the focus of Australia’s ‘limited resources’ and was not seen as a ‘productive’ exercise.

The dissenting committee members also do not support the government’s substantive concerns in relation to the optional protocol. These substantive concerns revolve around the effective operation of UN treaty bodies and the need for reform. However, the dissenting members support the evidence presented to the committee that ratification of the optional protocol is likely to result in fewer complaints being taken to HREOC and the United Nations, and that it would enhance and strengthen existing international mechanisms.

For the reasons outlined above the dissenting committee members believe that, based on the evidence presented to the committee, it is in Australia’s national interest to continue to work with the UN and to ratify the optional protocol. Therefore, the dissenting committee members recommend that Australia take appropriate binding treaty action.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (6.17 p.m.)—I rise to speak to the report of the Joint Standing Committee on Treaties, which is an important matter that requires due recognition and some comments from me on behalf of the Australian Democrats. The report deals specifically with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, more specifically, whether or not Australia should ratify the optional protocol of that convention.

As Senator Kirk has outlined, there were a number of senators and members who dissent from the majority recommendation put forward by government senators and members. My view and that of Labor members of the committee is that Australia, as a country and a government, should support the optional protocol to the convention and take binding treaty action accordingly. I believe that is important and clearly so do a number of other members of the committee. Obviously the government members felt otherwise and thought that we should not and did not need to ratify it at this time.

One of the frustrations I have in relation to this committee—although it is a very important, worthwhile and indeed interesting committee—is that I have a lot of difficulty in being able to attend its hearings because of competing commitments in the other roles that I have. But I certainly follow the evidence and the various issues before the committee, and this area is one that I believe is significant.

The convention against torture has been spoken about in this chamber a number of times, including by me, particularly in relation to Australia’s existing obligations under the convention because we are a signed-up member of the convention. This report is about whether or not we should also ratify the optional protocol. One of the aspects of having ratified the convention proper is an obligation not to send anybody back—also known as refoulement—to a place where they are likely to be subjected to torture or other inhuman, degrading or cruel treatment.

The adequacy of Australia’s legal regime for ensuring that that obligation is met is something that has been questioned by a number of people, including the Democrats. There is a committee inquiry under way at the moment—indeed a meeting is supposed to be happening precisely at this moment to consider the report of the Senate Select Committee on Ministerial Discretion in Mi-
mation Matters, which has been examining in part the adequacy of our system in relation to our obligations under the convention against torture to not send people back to such situations.

Currently, even though we are signed up and have ratified the convention proper, the obligation not to send people back is not incorporated in Australian law. The only legal protection those people have is through the use of ministerial discretion. Without pre-empting what the committee report may say, it is certainly consistent with my previous comments on the matter to say that I do not believe ministerial discretion is sufficient to guarantee protection against people being sent back to face torture. A number of reports have been tabled in this chamber by the international committee that oversees the convention against torture, which have raised concerns about Australia potentially breaching that convention by virtue of sending people back. Any examination of the convention as a whole is one that deserves attention.

On top of that is the issue of Australia’s own behaviour. It seems that one of the main reasons why the government has objected to ratifying the optional protocol is that it would establish a standing committee that would be able to visit other countries to examine their compliance with the treaty and the optional protocol. The view of government members, and I guess the government in general, was that other countries are more likely to be in serious breaches of human rights than Australia and we should not be required to allow visits by committees to examine the situation here. There were also expressions of concern from government members about the way some UN committees currently operate and whether or not they focus their priorities in the right area. I do not generally concur with those concerns. I certainly agree that, whatever our failings as a nation, we are a very long way from being the worst offender in relation to human rights abuses, but that does not mean we can therefore say we should be immune from criticism. It must be acknowledged that the obvious area of sensitivity in this area is Australia’s detention centres. There has already been controversy in the past regarding visits by UN committees to examine our detention centres, and clearly the government is not keen to open itself up to further scrutiny.

The Democrats have previously called for the government to ratify the optional protocol to the convention against torture, and we take this opportunity, through the presentation of this report, to reiterate that call. The optional protocol seeks to strengthen the protection afforded by the convention against torture by providing preventative measures such as regular visits to places of detention. In criticising Australia’s practice of mandatory detention and the resulting impacts that it has, I am not in any way equating Australia with other nations that have far worse human rights abuse records. As I have said, there are many nations with a far worse record than Australia’s, but we should not exempt ourselves from self-examination or from any criticism. There is no doubt that mandatory detention has led to extreme suffering, and the words of this convention talk about the acts which cause severe pain or suffering—whether physical or mental.

The issue of other cruel, inhumane or degrading treatment or punishment—according to Australia’s interpretation of it by the Attorney-General’s Department—deals with excessive punishments out of proportion to the crime committed or treatment which grossly humiliates and debases a person. There is a legal fiction going around that mandatory detention is not a punishment, but quite clearly it is. It is also clearly out of proportion to the crime committed because there is no crime in seeking asylum, and yet people are detained for prolonged periods of
time which is causing them significant physical and psychological harm. That is a result of the law as it applies in Australia. There is a man from Afghanistan in Port Hedland, I think, who is today marking five years in detention for having sought asylum. There is a person in the Baxter detention centre who has been diagnosed with conversion disorder, a severe psychological condition, that has resulted in blindness. It has been caused, in significant part, by his experiences in our immigration detention facilities. That is the sort of impact we are having on some people. These are extreme cases, I acknowledge that, but there is still a significant amount of harm being done to people.

There is a growing amount of research and data now available that shows the degree of harm that is caused to people, particularly to children, through Australia’s detention regime—to people who have not committed any crime, and who certainly have not been charged with one. They are suffering sometimes permanent damage, psychological damage in particular, as a consequence of detention. That has to be acknowledged. If the Australian government feels that detention centres are run humanely, then it can have no concerns about whether it is contravening this convention and it can have no concerns about potential inspections of detention centres.

We have had bridging visas granted to people in Australia recently on the basis that they have medical conditions and cannot be cared for in detention. These are psychological conditions brought on specifically by the detention environment. How is it that these asylum seekers have suffered severe psychological conditions caused by the detention environment if the environment itself is humane? This is a genuine question that should not be swept aside simply by running the myth that, in asking the question, we are equating Australia with nations that seriously abuse human rights on a much wider basis. It is a serious concern; it must be addressed. Another question also has to be raised: why is it that Australia does not want to open itself up to the inspections that would occur if we ratified the optional protocol? I think the answer, unfortunately, is quite clear. The Democrats believe we should ratify the protocol. It would send a good signal to the world in an area where we need to get momentum happening in the right direction.

Question agreed to.

AUSTRALIAN FEDERAL POLICE AND OTHER LEGISLATION AMENDMENT BILL 2003 [2004]

Report of Legal and Constitutional Legislation Committee

Senator EGGLESTON (Western Australia) (6.28 p.m.)—On behalf of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I present the report of the committee on the Australian Federal Police and Other Legislation Amendment Bill 2003 [2004], together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator BOLKUS (South Australia) (6.29 p.m.)—I seek leave to move a motion in relation to the report.

Leave granted.

Senator BOLKUS—I move:

That the Senate take note of the report.

One of the aims of the Australian Federal Police and Other Legislation Amendment Bill 2003 [2004] is to complete the integration of the Australian Protective Service into the Australian Federal Police by harmonising the legislative and employment frameworks which currently govern AFP officers on the one hand and APS officers on the other.
One of the ways it does this is by using the machinery in the Public Service Act for transferring Public Service employees to a Commonwealth authority. This involves the making of determinations by the Public Service Commissioner under that act and the AFP Commissioner under the AFP Act, preserving the employment conditions APS officers enjoy under the 170MX award which currently applies in the APS.

In its report tabled today, the Senate Legal and Constitutional Legislation Committee has recognised the desirability of all AFP staff being employed under an integrated employment framework. This will assist in providing operational cohesion to the newly integrated agency. However, a particular focus of the inquiry by the committee has been on the uncertainty faced by transferring APS officers in the transitional period until a new certified agreement is negotiated to cover the integrated work force.

The committee heard evidence on this issue from the CPSU, representing transferring APS officers, and from the AFP. What emerged is that there is still concern on the part of transferring APS officers about their capacity to maintain their safety net of remuneration and conditions and to access independent review of AFP decisions that affect employment arrangements during this transition period. There is concern that the AFP will be able to make unilateral decisions, altering remuneration and conditions, and that those affected will not be able to seek review of those decisions by the relevant authority, which in the AFP is a board of reference constituted under the Workplace Relations Act.

Not only is it unfair to transferring APS officers to face such uncertainty; it is plainly against the national interest for people tasked with such a critical protective security role to experience such a fundamental insecurity in their employment arrangements. I draw the Senate’s attention to the committee’s deliberations, and particularly to the end part of chapter 3 of the committee’s report, which addresses this issue.

My purpose for taking note of this report is to put the minister on notice that, in particular, Senator Ludwig will be questioning him about this issue when the bill comes on for debate. We expect the minister will be ready for those questions. Otherwise, on behalf of Senator Ludwig, who has carriage of this legislation, we will have to consider what alternatives are available to the Senate to ensure that transferring APS officers retain the same protection as AFP officers against unilateral variation of their remuneration and conditions and the same rights as AFP officers to resolve their disputes before an independent umpire.

Question agreed to.

BUSINESS Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (6.32 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day No. 3 (Migration Legislation Amendment Bill (No. 1) 2002).

Question agreed to.

MIGRATION LEGISLATION AMENDMENT BILL (No. 1) 2002 Second Reading

Debate resumed from 5 February 2003, on motion by Senator Ellison:

That this bill be now read a second time.

Senator MACKAY (Tasmania) (6.33 p.m.)—On behalf of Senator Sherry I wish to make a contribution to the Migration Legislation Amendment Bill (No. 1) 2002. This bill was introduced into the House of Representatives on 13 March 2002, and two years
later the government has finally got round to dealing with it in the Senate. Labor supports these changes to the Migration Act. It supported the bill in the House and still supports it. In 2002, the bill was referred to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 15 May 2002. The government moved amendments to the bill in the House, reflecting the recommendations of that Senate committee. Labor supported those amendments in the House, contained as they are now in the bill before us.

I turn to the contents of the bill. The bill makes the following changes to the Migration Act. Firstly, it clarifies the immigration status of noncitizen children born in the migration zone—that is, born on the Australian mainland or in non-excised parts of Australia. Children are born in Australia to noncitizens who are here in a variety of circumstances, such as on a tourist visa, a temporary entry visa, a student visa and the like. Children can also be born to noncitizens who are not immigration cleared. This applies to detained persons, including asylum seekers, who have not been taken to be immigration cleared until their claim has been processed and a visa has been issued.

Under the Migration Act there is no specific provision as to the immigration status of a child born in these circumstances. Conceptually under the act, a child who is born to a person here on a valid visa is not immigration cleared and would not be immigration cleared until separately processed. Clearly, as a matter of practice, there are not separate immigration clearance procedures for newborn babies, and the child is assumed to have the same status as his or her parents. This amendment clarifies this matter by providing that, at the moment of birth, a child is immigration cleared if a parent was immigration cleared on last entry into Australia.

Put simply, if a parent is immigration cleared and lawfully here, the child will be seen by virtue of this amendment and as a matter of law to be immigration cleared and lawfully here as well. If a child is born to a person who does not hold a substantive visa and who has not been immigration cleared, such as an asylum seeker in detention, this amendment provides that the child is not immigration cleared and the child’s immigration status will then be dealt with in a substantive visa application process.

Secondly, the bill clarifies issues relating to the cancellation of special purpose visas. These are used for classes of individuals such as aircraft crews, crews of visiting vessels and members of foreign armed forces visiting for the purposes of exercises or training. Given that a person qualifies for a visa because of his or her membership of the relevant class of person, if information comes to light about the undesirability of a particular individual within that class, it is necessary to have a process to cancel the visa, and to cancel it expeditiously. Section 33 of the Migration Act provides that the minister may cancel such a visa if it is undesirable for the noncitizen holder to travel to and enter Australia or to remain in Australia. The visa ceases to be in effect at the end of the day when a declaration is made.

It is not clear under the act whether the rules of natural justice apply to such a cancellation and, consequently, whether the individual has a right to be heard in these circumstances. The bill makes it clear that the rules of natural justice do not apply to such a visa cancellation and that the person involved has no right to be heard. This is a sensible clarification. Australia does not owe hearing rights to noncitizens in such circumstances. In addition, there are considerable logistical difficulties with offering hearing rights to individuals such as seafarers who may have deserted vessels. The amendment
also provides that the declaration to cancel a visa comes into effect immediately.

Thirdly, the bill deals with restrictions on bridging visa holders for onshore visa applications. Section 48 of the Migration Act provides that a person who has been in Australia and who has made an unsuccessful application for a visa can apply for only a limited number of visa types. This is obviously to prevent people from lodging countless applications, specifically to remain in the country. There has been some avoidance of the intent of this provision. Specifically, people are travelling a short distance overseas—for example, to Auckland—and then returning and seeking to make a whole new round of onshore applications. The bill proposes to stop this practice by providing that, for the purposes of this section, a noncitizen holding a bridging visa who leaves and re-enters the migration zone is taken to have been continuously in the migration zone despite that travel. There is a clarification that the force of this provision does not prevent a person on a bridging visa from lodging a visa application offshore.

Fourthly, the bill deals with the imposition of strict liability for people-smuggling offences. Section 233(1)(a) of the Migration Act makes it an offence to participate in ‘the bringing or coming to Australia of a noncitizen under circumstances from which it might reasonably have been inferred that the noncitizen intended to enter Australia in contravention of the Migration Act’. The provision says nothing about the state of mind of the accused in relation to the circumstances under which the noncitizen is brought or comes to Australia.

As part of a raft of migration legislation passed by the parliament in December 2001, the Migration Legislation Amendment (Application of Criminal Code) Act 2001 came into effect. The act added the following point to the matters that the prosecution has to prove under section 233(1)(a) of the Migration Act: ‘the accused was aware of a substantial risk that the noncitizen intended to enter Australia in contravention of the Migration Act and, having regard to the circumstances known to him or her, he or she was not justified in taking that risk’.

The application of the Criminal Code was not meant to change the nature of offences. The explanatory memorandum of that act stated that the relevant offences would continue to have the same meaning and apply in the same way as they did prior to the application of the Criminal Code. This bill therefore corrects the anomaly that arises, because the application of the Criminal Code has had an unintended effect. Lastly, the bill, as originally introduced into the House, also deals with the application of strict liability to section 241(1) of the Migration Act in relation to de facto spouses. This provision is not being proceeded with as a result of the government accepting recommendations from the Senate legislation committee and so amending the bill in the House.

Since the introduction of this bill into the House in 2002, the government has sat on its hands. There does not appear to be any reason for this delay, other than that the government does not consider it a priority, yet the bill includes the tightening of a people-smuggling offence that was slackened by the government’s own legislative management in 2001. Labor’s circulated amendments on people smugglers seek to implement Labor’s policies of three new offences, including life imprisonment for smuggling unlawful non-citizens into Australia causing the death of one or more people. Labor also proposes to increase some existing penalties to better deter potential people smugglers. These penalties include a minimum of 10 years imprisonment for repeat offences of high-level people-smuggling. Labor will increase the
People smugglers make money from human misery and deserve no leniency. Labor represents a zero tolerance approach. In the most recent case, when a boat reached Melville Island, the Howard government let the people smugglers go back to try a second, third and fourth time. Their ringmasters here and abroad have also escaped prosecution. Labor’s amendment contains two basic elements: firstly, a substantial increase in people-smuggling offences and, secondly, the introduction of three new people-smuggling offences. The new offences are: firstly, to introduce a people-smuggling offence of smuggling unlawful noncitizens into Australia causing the death of one or more persons, with a penalty of life imprisonment—unless mitigating circumstances apply, in which case a mandatory minimum penalty of 14 years imprisonment with a 10-year non-parole period will apply. The onus will be on the defendant to show mitigating circumstances as to why life imprisonment should not be imposed.

The second new offence is that of assisting a person reasonably suspected of being involved in people-smuggling so as to remove them from the jurisdiction for the purpose of avoiding prosecution under Australian law. The penalty here is a maximum of 10 years imprisonment and/or a $100,000 fine. The third new people-smuggling offence is that of supplying funds for the purpose of procuring the services of a people smuggler to transport an unlawful noncitizen into Australia. The penalty is a maximum of five years imprisonment and/or a $50,000 fine. Labor have zero tolerance for people smugglers, and we will put them where they belong—in jail. The government has remained immobile for almost two years on legislation that would tighten penalties for people smugglers.

The other circulated Labor amendment, if adopted, would amend the power to detain under the Migration Act. The government would be compelled to do two things: firstly, it would be compelled to place unaccompanied children into appropriate foster or community care arrangements rather than hold such children in detention facilities like Baxter and Port Hedland. Secondly, the government would be compelled to rehouse children who are currently here with their families in accommodation like the Port Augusta residential housing project. Labor has been campaigning for a long time to get kids out of these detention facilities. The substance of this amendment was first circulated in February 2002 and Labor’s position remains the same in 2004. That concludes my contribution on this legislation, on behalf of Senator Sherry. (Quorum formed)

Debate (on motion by Senator Coonan) adjourned.

GREATER SUNRISE UNITISATION AGREEMENT IMPLEMENTATION BILL 2004

CUSTOMS TARIFF AMENDMENT (GREATER SUNRISE) BILL 2004

Report of Economics Legislation Committee

Senator BRANDIS (Queensland) (6.48 p.m.)—I present the report of the Economics Legislation Committee on the provisions of the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and a related bill, together with the Hansard record of proceedings, submissions received by the committee and documents presented to the committee.

Ordered that the report be printed.
Senator BRANDIS—I seek leave to move a motion in relation to the report and to incorporate my tabling speech.

Leave granted.

Senator BRANDIS—I move:

That the Senate take note of the report.

The speech read as follows—

Mr President, the Greater Sunrise petroleum resource comprises the Sunrise and Troubadour deposits and lies in the Timor Sea, approximately 500 kilometres north-west of Darwin. The field straddles the border of the Joint Petroleum Development Area, which is the area of shared jurisdiction between Australia and East Timor established by the Timor Sea Treaty, and an area of sole Australian jurisdiction located within the Northern Territory adjacent area.

In 2003, Australia and East Timor agreed to the arrangements to govern the unitisation of this petroleum resource. ‘Unitisation’ refers to the development of the resource as a single unit. Without unitisation, production from one part of the resource could adversely affect the resource as a whole or the interests of those with an interest in the resource on the other side of the boundary.

The Greater Sunrise unitisation agreement will be ratified by Australia and East Timor once both countries have put in place the domestic arrangements required to enable them to fulfil their obligations under the Agreement. The Greater Sunrise Unitisation Agreement Implementation Bill 2004 [the Greater Sunrise bill] and the Customs Tariff Amendment (Greater Sunrise) Bill 2004 do this for Australia.

Development of the Greater Sunrise field will provide substantial benefits to both Australia and East Timor. These benefits will include investment, exports, employment and revenue. The passage of the Greater Sunrise bills through the Senate is an essential step in the provision of the fiscal and legal certainty required for the development of this important project.

There are some who have expressed concern about the bills and, more specifically, about elements of the Greater Sunrise Unitisation Agreement itself. The Economics Legislation Committee has carefully considered submissions and oral evidence on those matters. In essence, the concerns expressed relate to three issues. They are:

- whether the Australian government has negotiated and intends to negotiate in good faith with the Democratic Government of Timor-Leste;
- whether any revenue generated from the Greater Sunrise resource should be held in trust or escrow until such time as the maritime boundary dispute between Australia and East Timor is settled; and
- whether the customs exemption provided by the Customs Tariff Amendment (Greater Sunrise) Bill 2004 has the potential adversely to affect Australian industry participation in the development of the Greater Sunrise project.

Let me address each of these concerns briefly.

First, Mr President, there are some who have interpreted certain actions or decisions of the Australian government in negative ways. They suggest, for example, that Australia’s decisions about the pace of negotiations on maritime boundary issues or the mode chosen for arbitration of those issues are susceptible of sinister interpretation. The Committee rejects such interpretations, and notes the evidence from the Attorney-General’s Department to its inquiry: ‘The position is that Australia negotiates its agreements in good faith. It might have a disagreement in the course of those negotiations or a difference with the other party, but that does not mean it is not negotiating in good faith’.

Second, the Committee rejects the view that any revenue generated from the Greater Sunrise resource should be held in trust or escrow until such time as the maritime boundary dispute between Australia and East Timor is settled. It would be appropriate to have an escrow account if there was some contingency yet to be resolved about the disbursement of the fund. There is, however, no such contingency. The Agreement, which has been signed by both East Timor and Australia, explicitly sets the production sharing arrangements between the two countries. The concept of a trust or escrow arrangement thus does not apply.

Finally, the Committee notes that the customs arrangements implemented by the bill in relation...
to the Greater Sunrise development are designed merely to ensure administrative consistency across the whole field. The Committee notes assurances given by Woodside Energy Ltd that its practice of maximising local content in its projects would be unchanged by the bill.

Mr President, the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and its cognate bill, the Customs Tariff Amendment (Greater Sunrise) Bill 2004, put in place the framework necessary for Australia to meet its obligations arising under the Greater Unitisation Agreement with East Timor. Their passage is required if the Greater Sunrise resource is to develop and to bring great benefits to the people of both Australia and East Timor. The Committee therefore recommends that the Senate pass the bills.

Senator BRANDIS—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

DOCUMENTS

Wheat Export Authority

Senator McGAURAN (Victoria) (6.49 p.m.)—I move:

That the Senate take note of the document.

In taking note of the annual report of the Wheat Export Authority, I would like to give some background to the authority. The Wheat Export Authority, the WEA, was established on 1 July 1999. This is its fourth or fifth report, following the restructure of the former Australian board and the transfer of the government’s wheat marketing and selling role to a private company, controlled by wheat grower shareholders, known as AWB Ltd. The WEA operates under the Wheat Marketing Act and has the following statutory functions: to control the export of wheat from Australia; to monitor AWB’s international performance in the export of wheat; and to examine and report on the benefits to growers that result from that performance. One of the legislative functions of the WEA is to consider granting consent for shipments in bulk containers and/or bags. Within this charter, the WEA considers requests to export wheat from exporters other than AWB(I).

It was important for me to give that structured background and to advise the Senate how this body works, and to outline the accountability and flexibility that operate within the orderly marketing system. It is a fallacy, often levelled at the industry, that the WEA is a dinosaur, a monopoly and that it is denying farmers and, for that matter, the economy as a whole efficient returns. The deregulators who seek to abolish the export monopoly of the Australian Wheat Board push this line, but they operate as a minority. Vocal as they may be, they operate as a minority. Over 90 per cent of the farmers support the current industry structure—that is, the single desk arrangements for export wheat. Moreover, the single desk marketing arrangements are supported by this government. Like the Rock of Gibraltar sitting in the Mediterranean, the Wheat Board sits firm in this government.

Let me refer to a speech by the Minister for Agriculture, Fisheries and Forestry, Mr Warren Truss, given on 10 February at Old Parliament House, where Jack McEwen’s spirit still roams the corridors. He said:

... the Australian government is committed to the wheat export single desk arrangements, while ever they provide a net benefit to Australia’s ... growers ...

That is forever. He did not say that little piece; I just put it in for Hansard’s sake. But he would have said it because he meant it; we mean it here in the National Party. Mr Truss went on to say:

The Prime Minister has said it on many occasions, the Deputy Prime Minister has said on many occasions and I have stated it clearly and publicly, particularly in the context of the recent trade negotiations, that the government supports the single desk ...
That is, the single desk for wheat marketing arrangements. As you well know, Mr Acting Deputy President Chapman, the government did not flinch under the pressure of the strongest and most powerful economy in the world, the United States. When it came to the free trade agreement the single desk was never on the table; we would never have compromised it. Even before the greatest economy in the world we would not sell our principles; we would not allow it to happen. I thought I had 10 minutes to speak but I see that my time is running out. The minister made an important point: the bottom line is that only within the industry can the single desk be undermined. That is a timely reminder to farmers not to flirt in any way with changes at the edges of the single desk. Do not chip away at this Rock of Gibraltar, for any change no matter how slight or how seductive will bring down the single desk.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (6.54 p.m.)—We are debating the 2002-03 annual report of the Wheat Export Authority tabled today. The report on the single desk was brought out some time last week. The Wheat Export Authority is the mechanism whereby you can get permits to bypass the Australian Wheat Board. We in the National Party are concerned that that mechanism not be used to chip away at the authority of the Australian Wheat Board. We in the National Party are concerned that that mechanism not be used to chip away at the authority of the Australian Wheat Board. We realise that some sales can have a permit issued through the Wheat Export Authority, but we are concerned that the Wheat Export Authority not be used to undermine the great Australian Wheat Board, which delivers so many benefits to Australia.

A lot of people have put a lot of work into this, and one of the authorities has come out with a report that shows that the single desk selling arrangements delivered an average premium of $13 per tonne. On the current 2003 pool of about 19 million tonnes, this premium has the potential to deliver approximately $250 million into the hands of Australian farmers. The report estimates that the reduction in grower returns if the single desk were removed, and in particular the buyers of last resort obligation, would be significant and that the loss would be in the range of $US360 million to $US560 million. No single approach can adequately measure the value of the single desk, and that is why the report used a variety of methods and models to get an across-the-board indication of the value of the single desk to growers.

Australian Wheat Board International and the single desk have captured price premiums for growers right across the nine separate grades of wheat since 1996-97. On average, the benchmark APW grade gives a premium of between $15 and $30 a tonne, which is realised to the benefit of the farmers. The net welfare benefit of the single desk to the entire Australian economy gives an increase in consumption expenditure across the nation of approximately $50 million per annum. The wheat industry employs over 150,000 people in rural Australia and the single desk arrangements deliver almost 2,000 jobs in rural Australia. Approximately 45,000 non-farm business enterprises in rural Australia rely on the profitability of the wheat industry.

If we deregulate, the impact would be a reduction in grower returns of at least $134 million. The buyers of last resort provision ensures that all of Australia’s 36,000 wheat growers have ongoing access to the export market. Markets will be controlled by other steps on the vertical chain, most likely the bulk carriers. Deregulation of container shipments will result in losses of customers, volume and price premiums. As long as there is a National Party there will be a single desk.

Senator SANDY MACDONALD (New South Wales) (6.58 p.m.)—The retention of
Australia’s single desk arrangement for wheat exporting is of the utmost importance to the grain industry. In August 2003 the *Land* newspaper, which I do not always agree with, reported that an overwhelming 82 per cent of wheat farmers surveyed are in favour of maintaining wheat’s export single desk. It seems to me sensible that, when your constituents tell you with such overwhelming support that they want to do something, it would be very dangerous not to take the advice of those constituents.

The Nationals have given a firm commitment to fight to keep the single desk while there is a net benefit to Australian wheat growers and the nation’s export performance. Further, the agriculture minister, Warren Truss, rejected the recommendation from the Senate Rural and Regional Affairs and Transport Legislation Committee in its report on the Wheat Marketing Amendment Bill 2002 for further deregulation of exports in bags and containers. The value of the single desk has been demonstrated recently by the exclusion of the changes to the current arrangements under the proposed United States-Australia free trade agreement. Trade Minister Vaile made sure that the current arrangements concerning the export of Australian wheat under the single desk would not be compromised—for good reason.

The Australian Wheat Board has undertaken research into the value of the wheat single desk, and a major finding is that AWBI and the single desk are capturing an average premium across all grades of around $13 per tonne. On the current 2003-04 pool of about 19 million tonnes, this has the potential to deliver approximately $250 million back into the hands of Australian wheat growers. The research also found that deregulation of the single desk not only would negate these premiums but also could prompt a further reduction in grower returns if an unregulated duopoly or monopoly market emerged—something researchers suggested was not only likely but highly likely. These researchers estimated that the reduction in grower returns flowing from the removal of the single desk—and, in particular, the buyer of last resort obligation—would be of significant magnitude: somewhere between $US360 million and $US563 million to Australian wheat growers.

The 2004 review is about AWBI’s performance as the commercial manager of the single desk. The review is not about the existence of the single desk itself and it will not incorporate national competition policy principles. The government accepts that a review by an independent committee, with the assistance of the WEA, will improve the transparency of the review and provide greater confidence to growers and other stakeholders. The review will assess the benefits to growers from AWBI’s management of the single desk, and a report for growers will be tabled in the parliament. Deregulation of the domestic wheat market unfolded in the 1980s, and now the export single desk has been under fire for some years.

Senator Heffernan—Keep talking, Sandy! Talk it out!

Senator SANDY MACDONALD—I am tempted to take your interjection, Senator Heffernan, but your laughter might not be incorporated in Hansard. I believe that the majority of growers have got it right when they support the retention of our export monopoly. Australian growers are unlikely to gain from a deregulated export market, and that is why competitors like the US are so keen to get rid of it. Whilst the National Party remains, it will not be got rid of.

Senator HEFFERNAN (New South Wales) (7.02 p.m.)—I am fascinated by that speech. There was great preparation and there were a lot of notes. I do not have any notes. I do not need any notes to speak on
this issue, because one of the great furphies that has been put around in recent times to try to scare Australia’s wheat growers is that somehow the government is putting at risk the single desk. The government is not putting at risk the single desk, but the Rural and Regional Affairs and Transport Legislation Committee does say to Australia’s wheat growers that we are here to defend their interests. We are aware that most people that have approached the Wheat Export Authority inquiry are driven by their own self-interest. Most corporate companies are big and ugly enough to look after their own interests, but the average wheat farmer who grows 200 or 300 acres of wheat, and who still probably thinks that AWB Ltd is the Wheat Board, needs their interests protected.

We discovered through the committee hearing that the Wheat Export Authority was not equipped with the right tools to have a meaningful look at the operation of the Australian Wheat Board. As a result of the committee’s hearings and findings, which recommended the independent inquiry and a snapshot of the wheat industry, the Wheat Export Authority will be better equipped to do its job. We are not interested in getting rid of the single desk; we are interested in making sure that in its present form the single desk operates in the best interests of growers, that its costs are competitive and that it has meaningful benchmarking for competitive interests. There is a furphy around that somehow the National Party is the only defender of Australia’s wheat growers. It is the greatest load of rubbish that I have ever heard. The opposition are all down there grinning, after preparing all day, with a lot of notes. Australia’s wheat growers can rest assured that the independent inquiry by Alice Williams will take a meaningful and equitable look at the industry, and will come up with constructive criticisms if constructive criticisms are required.

Question agreed to.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Bolkus)—Order! There being no further consideration of government documents, I propose the question:

That the Senate do now adjourn.

Child Abuse

Senator SANTORO (Queensland) (7.06 p.m.)—Honourable senators will know that I spoke four times in this chamber last year on the matter of child protection in the context of the Queensland state government’s appallingly record of failure to respond to critical problems. Therefore, it gives me no pleasure to speak on this issue again tonight—a fifth speech in this place on a matter that is absolutely fundamental to government, to the community’s duty of care to children and to the civic values of our nation.

The Beattie Labor government in Queensland has finally moved on these matters. That at least is pleasing. It is late—it is too late, given all the prevarication and delay that the Queensland government is guilty of in this instance—but it is, nonetheless, welcome. What is not pleasing is that it may be both too late and too little. Premier Beattie and his two previous failed ministers responsible for child protection, Anna Bligh and Judy Spence, did nothing for five years, during which time they knew that the dysfunctional department of children’s services was simply not working.

Having had his hand forced, and having finally ordered real action rather than just another cover-up, Premier Beattie has announced a substantial effort by the state, backed by an extra $201 million to be spent on child protection by 2007. That is a lot of money, but it may not be the full cost. Already the Premier has been out there saying he will have to find a way to fund it without
raising state taxes or charges. According to the *Courier-Mail*, the state government has ‘already promised’ to fund the reforms through the surplus, and not by raising taxes or charges. Seasoned watchers of the Beattie machine will detect some fertile ground for the Premier’s tractor to plough up later, on the basis of a further cost blow-out, for example, or other hitherto unsuspected additional costs.

The ‘promise’, delivered as it was on the run and off the cuff, could so easily turn into one of the growing list of undeliverable objectives in the Premier’s bulging dillybag of undertakings hidden, mislaid, forgotten or indeed forgone. He is showing all the signs familiar to Queenslanders of preparing the ground for a budget—this year, next year or perhaps even the year after—about which he will be able to cry poor on the basis of his unavoidable expenditure on child protection and go for a deficit because he has no other option. In fact, he does have an option. At a later time I will come back to the detail of that. Yesterday the Premier’s office announced instant action on the blueprint for child protection in Queensland, produced by the government’s consultant Peter Forster. To quote from his media release on the subject, circulated yesterday afternoon, the Premier said:

> These funds are needed to give the most vulnerable Queensland children—and they are the most vulnerable—the best child protection system in Australia.

From worst to best in one great leap. That is vintage Peter Beattie spin. Regrettably—and, in the circumstances, regretfully—we shall have to wait to make a judgment on whether this time Beattie Labor actually delivers the goods.

The children at the centre of the scandal will have to wait too. That remains the real tragedy. It is additionally tragic because it would all have been so avoidable if Mr Beattie had not needed the 1999 Forde inquiry; exhaustive parliamentary and media probing, extending over the period from 1999-2003; continuous lobbying over at least the same period by organisations such as Bravehearts and others; and two highly visible crises within the system—one of which his first failed minister, Anna Bligh, flicked away to the source of the problem, her department, and the other dismissed by his second failed minister, Judy Spence, as something she needed to get the help desk to sort out—to convince himself that there really was a problem he needed to fix.

We have heard about the millions of dollars that are to be deployed to create an instant solution to the problem that Mr Beattie, his two failed ministers and his government ignored for five years or more. But it is sound implementation and safe and focused delivery and administration that is really needed. That is less a matter of money than of focus and leadership. The new money that is to be deployed to protect children is obviously essential, but this is not a throw-and-forget dollar solvable problem. It is an institutional problem. Mr Forster’s report is clear about that. His report is thorough, so far as it goes, but it reads as if he wrote it within a preset budgetary limit. Perhaps he was told where the dollars were concerned, ‘Go for double, that’s OK; but no further,’ instead of on the basis of applying maximum effort to meeting actual needs.

It has not satisfied the chief lobbyists, Hetty Johnston of Bravehearts and David Woods of the Abused Child Trust. They say the blueprint for child protection reform lacks the promised whole of government approach and neglects the bulk of children and families who would come into contact with the counter abuse system. Ms Johnston says no money has been factored into the $201 million costing to help other govern-
ment departments meet their new obligations in accordance with their role in child protection. She also says no money has been allocated for therapy services for children other than those with complex needs and extreme behaviours—in other words, for any affected children other than those in care. This is a point taken up by Mr Woods, who described it as stupid and negligent—hardly a ringing endorsement for the country’s best child protection system that the Premier promises is just around the corner.

Obviously, where finite sums are involved and other priorities exist, it is impossible to satisfy everyone or to meet every need that someone or some organisation claims exists. But in all the circumstances it seems strange, given that what Premier Beattie is dealing with is a painful, historic and systemic failure to provide child protection. Even from his administration, which clings to the belief that the zing of the spin cycle is much more important than the whiteness of the wash that results, it is an oversight that we should not have had to expect after so much time and so much anguish.

Queensland Liberal leader, Bob Quinn, says he suspects the state government is squibbing on some of the costs by shifting a greater burden of responsibility on to other departments, which might have to divert funds from other areas to pay for it. It is in precisely that area of budgetary operations that future problems are likely to arise. It is a way of hiding the true cost of meeting the state government’s obligations in child protection, but it is of course in no way a solution to the difficulty. The money is one thing. But, as I said earlier in this speech, actual delivery of services—and, in this instance, actual protection for children—is by far the more important point.

The fact is that there is ample anecdotal evidence of continued poor decisions by Queensland family services and evidence of a continued desire to sweep matters under the carpet or to fail to deal effectively with them. In one instance that has come to my attention an incident that commenced with one injury of unknown cause has by poor management created a whole extended family of victims. It has been characterised by hostility from a child protection officer towards someone who became involved simply as a charitable act towards the mother in the case, who had asked for that involvement. It has been characterised as well by heavy-handedness on the part of the authorities, particularly in relation to a child protection order issued by the Children’s Court. As the matter is before the courts, under existing arrangements there appears to be no avenue of complaint, either through the Crime and Misconduct Commission or the Children’s Commissioner. My informant makes the point that it is anomalous, that it is not possible to complain to a state body about poor decisions by a state public servant simply because the matter is before a court. In the Commonwealth jurisdiction, matters before the courts that become the subject of complaint are investigated by the Commonwealth Ombudsman.

The brief facts of this sad case are tragically all too common in the area of child protection. The three children involved have all been removed from the mother’s care. Police have interviewed people who might have knowledge of an injury to one of the children. Child protection officers say there is no evidence against any person, or any admissions. They do not know what caused the injury, a skull fracture, or whether anyone else was involved. The injury could be the result of abuse, neglect, misadventure or the otherwise innocent action of a sibling. There appears to be no real evidence that would indicate one possibility being greater than another. These are the sorts of intricacies on
which an emotive area of administration such as child protection ultimately stand or fall. It is not a matter of dollars, irrespective of whether it is $10, $200 or indeed $2 million. It is simply a matter of commonsense. Queensland’s new minister for child protection—the third of the Beattie regime and, we all hope, the best or at least the least-worst yet—will have his work cut out in mandating commonsense in what has been a closed mind bureaucracy.

Indigenous Affairs: Foetal Alcohol Syndrome

Senator MOORE (Queensland) (7.15 p.m.)—Last week I had the opportunity to visit some women in Cherbourg, an Aboriginal community about three hours west of Brisbane. This opportunity was given to me by an Aboriginal woman health worker who works in that community by the name of Lorian Hayes. Ms Hayes has a particular interest in and has been active for a long period on the issue of foetal alcohol syndrome, which is known as FAS. This is a particularly interesting problem and one that is very confronting. It is only when we have the chance to research the issue at the international level and to meet with the families of people who are immediately affected by it that we can understand what a major problem we are faced with. It is important to know that foetal alcohol syndrome is not just an Aboriginal issue; it is an issue that faces all communities. In Queensland this problem has been faced directly by a number of Aboriginal communities and some amazingly innovative programs have been introduced. We must research these programs, make sure they are widened and make sure there is more information around about this terrible condition.

Ms Hayes was talking with a group of women in Cherbourg and describing the program on which she had worked in the North Queensland cape areas of Kowanyama and Wujal Wujal—remote communities. The program that was run in these areas had been jointly funded by governments and the community. She had worked directly with young people, many of whom had faced a long-term problem with alcohol, on the issues of literacy, health understanding and, in particular, the probable—indeed, actual—damage that can be done to the foetus as it is forming by any alcohol consumption by the parent.

There has been significant research done in this area internationally, particularly in Canada and the United States where research has been done over a 25-year period. We are not that advanced in Australia, but one thing we have found is that there continues to be a lot of information floating around about what constitutes safe alcohol consumption during pregnancy. There is information around that says minor amounts are okay as soon as you work out the stage of your pregnancy or as long as you are healthy it seems to be reasonable to continue with your normal lifestyle. The information provided by the foetal alcohol syndrome people in Queensland—and certainly by those in the Aboriginal communities—is that no consumption of alcohol during pregnancy is safe because the risk is too great. Also, all those involved must take ownership of this issue. It cannot be taught from on high; it must be taught from within the community itself.

The structure of the training program in Kowanyama is very much around working with the community, working directly with people who have already identified as being pregnant, and with their parents and teachers, so that the skills used in the training can then be passed on and the information is not linked to just one or two individuals. The program is based on community understanding and learning. One of the more interesting parts of the program is the use of beautifully formed baby dolls so that people can see
what a natural baby looks like and how they react, how they perform and how they cry. Also, there are dolls that have the characteristics of children affected by the foetal alcohol syndrome—that is, dolls whose limbs are not perfectly formed, whose facial features are not clearly defined and whose cries have a particular moan in them which is immediately identifiable as not natural. The children—and many of those undertaking the program are very young—can see, hear and feel the direct impact of foetal alcohol syndrome on babies affected by it.

The program depends on the understanding of all the community. It depends on people being able to be mobile and having the tools at their disposal to work with each other and pass on the skills. There are relatively small costs involved. One thing we talked about with the women was the need for certainty of ongoing funding for this program so that it would not fall over and end up like so many other government programs which have a period of effectiveness before being shelved, with all the value being lost. The cry of the people involved in this program is that no longer is this type of work to be subject to one-off pilot programs. No longer can there be an expectation that these things will work for one or two years, be translated magically and from then on just work. There has to be the confidence and the understanding that such support programs are jointly funded and jointly owned and will exist for an extended period into the future.

The women at the local meeting understood the needs of their community; they understood the difficulty of training and working with young people and they understood the difficulties and the horrors of unlimited alcohol consumption through all periods of life but what they needed was support from their governments at all levels—

Senator Ian Macdonald—Did Mr Beattie take a bottle of wine up there?

Senator MOORE—so that they could move forward—and, Senator, not use humour on such an important issue. One thing we have to understand is that too often issues to do with alcoholism and child care have been able to be pushed aside. There may have been lots of words spoken and lots of rhetoric but the actual funding, the insurance for the future, has not been committed. There needs to be a clear study into the future so that we can look at the generational impact of these issues. Children being born now suffering from foetal alcohol syndrome will have emotional and physical disadvantage and their ability to learn, to act and to relate to each other, to their parents and to the rest of the community will be affected by this medical condition. One fear of the community is that, if this generation of children is impacted by this problem and then continues the same behaviours—and there is the same access to alcohol and the same ongoing process so that people are continuing to act in this way—there will be monumental problems for the future generations in our communities.

We have already worked out—we know from other debates in this place—how much it costs to put someone into foster care. We know how much it costs to have someone in prison for a period of time. What we need to know is how much it genuinely costs to provide the support networks in the communities—not just the Aboriginal communities, all communities—to ensure that the education programs are in place, that there is effective understanding of the issues surrounding foetal alcohol syndrome and that, importantly, children who already have this condition receive the support they need through their schooling processes. It has been clearly identified that children who have had this syndrome given to them through their par-
ents have greater difficulty in school, need different programs and support with the basic issues of literacy and communication and then need skill based training for employment opportunities. Once again, the children of today who may be affected by these issues need to have an effective future. They cannot be sidelined and they cannot be left just as victims of the ignorance and the illnesses of the current generation. We have no option. The women we met in Cherbourg who are facing these issues front on have given us no option. We must take the opportunity which we have been given to look at the research that we have from overseas, to place it in an Australian context and to make sure that the future is brighter and becomes a reality for the children today.

**Telstra**

*Senator CHERRY (Queensland)  (7.24 p.m.)—On 11 November 2002, the Australian Communications Authority delivered a report to the Minister for Communications, Information Technology and the Arts on the long-running dispute between Telstra and Brisbane businesswoman Ann Garms. Mrs Garms claimed that Telstra was largely responsible for the serious losses incurred at her Tivoli restaurant because of failed phone calls in 1992-93. She argued that other Fortitude Valley businesses had similar complaints, and that she had been told by Telstra employees that a ‘major upgrade’ of the Fortitude Valley exchange had occurred in September 1993.

Over 100 irate Telstra customers had attended an AUSTEL meeting in Fortitude Valley on 13 September 1993, with AUSTEL reporting:

... a high level of dissatisfaction at the standard of services provided by Telecom through its Fortitude Valley exchange.

A key piece of evidence she had found after many years of stonewalling by Telstra in respect of the release of documents was the Design Pak for the modifications made to the Fortitude Valley exchange in 1993. If it was true that the exchange was upgraded in September 1993, then the millions of dollars spent by Telstra in various court cases, arbitrations and Senate investigations denying that faults associated with the exchange were the cause of their problems would have been suspect. Telstra would also stand accused of having misled the parliament and the Victorian Supreme Court, as well as the commercial arbitrator.

The ACA report concludes that work done on the Fortitude Valley exchange did not constitute an ‘upgrade’ because, in the authority’s words:

... these works were not for any enhancement of exchange capability or service quality.

Since then, Mrs Garms and her technical advisers have engaged in an extensive round of correspondence with the ACA. The ACA’s response to Brian Hodge, of BC Telecommunications, in August last year is particularly instructive. Mr Hodge, a former Telstra engineer of 29 years standing, wrote to me to outline his concerns with the ACA response. He concluded that the ACA advice is technically and factually flawed:

It is apparent that the ACA are not operating as an Independent Regulator, rather a tool of Telstra and the Government.

He contrasts the view of the ACA in 2003 that the works were not ‘corrective’ with the November 1993 report from Telstra to then regulator AUSTEL that the same suite of works were performed:

... to significantly increase the quality of calls and the performance and reliability of the network.

What a difference a decade makes. I quote again from Mr Hodge:

The DESIGN PAK reveals that the upgrade specifically related to the Fortitude Valley Exchange as it became the Hub/Node, an ‘upgrade’ not only...
in terms of technology but service delivery and importantly ‘performance’.

The work described in the DESIGN PAK no MCHO/93/002—Reparent MCHO onto VLLX did not merely relate to creating capacity for the reparent of MCHO onto VLLX as asserted by the ACA, but to a sophisticated reengineering of the Fortitude Valley Exchange and Tandem by Telstra to upgrade the network to eliminate inherent problems with its admitted antiquated network of an analogue foundation with a digital overlay. This was a major corrective upgrade of massive proportions, the additional traffic loading was an upgrade of that switch, 1000% increase in circuits, new technology, new transmission equipment, new AXE power etc. installed in September 1993 for the major corrective reparent on 12 September 1993 through the Fortitude Valley VLLX intelligent node.

This was a major corrective upgrade that has a material effect on the telephone service provided by Telstra to the Tivoli Restaurant.

He points to the evidence from former AUSTEL technical adviser Cliff Mathieson, who told the Federal Police that a senior Telstra exchange officer had told him in July 1993:

... Fortitude Valley was an exchange that had been put too long and was past its useful life.

He points to the evidence from a senior Telstra officer who dealt with the Garms complaint that, in October 1992:

Brisbane regional STD call quality rates were the worst in Australia at 10%.

He even points to former Telstra CEO Frank Blount’s 1999 book where he states that the Design Paks works were performed to:

... improve existing service levels.

Mr Hodge says:

These problems could only be fixed by the DESIGN PAK major works and upgrades to eliminate the old Ericsson Exchange and switches and the reparenting to the new Fortitude Valley VLLX Exchange Intelligent Node.

AUSTEL reported at the time in 1993 that:

Telstra has recently announced that it will spend some $25 million upgrading its Brisbane local access network.

Significantly, the ACA acknowledged on August 22 last year, after examining the Garms documents and in reply to Mr Hodge’s first report, that:

In its analysis of network structures, telephone traffic flows and data the ACA acknowledges some significant gaps in hard information.

This is precisely the argument that Mrs Garms put to the Supreme Court, and also to the Senate committee’s working party back in 1999.

The ACA is firm and resolute in its advice to the government in November 2002, yet nine months later it acknowledges to Mr Hodge that there are significant gaps in hard information. The missing data, contained in microfiche traffic data, would, according to Mr Hodge, show that calls were being misplaced. The ACA of course disagrees and says that the data would not:

... uniquely enable insights that are not already possible from other available data.

After years of trying to get the data, Telstra told Mrs Garms in 1999 that the microfiche data had ‘disappeared’ for the specific critical period of July to November 1993. Mr Hodge concludes:

The ACA and I agree that, in contrast to Telstra’s stated sworn position in the Arbitration, Supreme Court and Telstra AGM, there are some significant gaps in hard information in regard to network structures, telephone traffic flows and state in regard to the important network issues to be deceived before the Arbitrator and the Supreme Court.

The ACA’s advice that the major works and upgrades did not have an effect on service quality and call delivery is unsustainable. It is a flawed proposition that cannot be sustained under any circumstances. The ACA cannot assert that the major upgrades were not ‘corrective’.
Stephen Scandrett, another senior telecommunications consultant, has also reviewed the ACA advice and found serious technical problems. He argues that the ACA erroneously advised the minister that ‘an upgrade had definitely occurred in May 1993 when the processor was upgraded’, when Telstra documents clearly show that this work was preliminary to the reparenting which occurred on 12 September 1993. He argues that this and other preparation works would not have had a major effect until the reparenting of the Mitchelton exchange and routing changes, which occurred on 12 September 1993. In Telstra’s own words, he argues the purpose of the May work was to ‘upgrade the existing processor ... for the pending recovery of the Mitchelton AXE node’ which did not occur until September.

A second document relied on by the ACA refers to long-term averages on regional performance but not specific data on the performance of the Fortitude Valley exchange. That, Mr Scandrett says, would require the missing microfiche traffic data. Another document referred to the ‘average performance for metropolitan Queensland’—again, nothing specific about the valley. Even the standard levels that that data was reporting showed that Queensland was having service faults 10 times worse than the world’s best practice and five times worse than New South Wales. Scandrett concludes:

The overall thrust of the ACA Advice is worthless because it is not based on evidence relative to the Fortitude Valley telephone exchange traffic; rather, the ACA conclusions are largely based on generic long term averaged traffic for Queensland ... but not the Fortitude Valley exchange.

The ACA Advice is factually and technically flawed and unsafe. The ACA Advice and Reply illustrates the importance that needs to be placed on a truly independent professional highly skilled Regulator who is capable of evolving with the requirement of a strong vigorous competitive communication sector.

The content of the 5 Telstra documents relied on by the ACA is fundamentally incapable of eliciting and supporting the ACA’s stated conclusions. Telstra's historical admission to Austel in November 1993 in response to Mrs Garms and the CoTs complaints, refutes entirely the validity of the ACA Advice to the Government 10 years later.

Should we be concerned about events that occurred 10 years ago? The Senate has already tried to resolve the Garms case through a working party under the ECITA committee some five years ago. My concern is that the ACA continues to downplay the significance of these matters. If the technical experts Hodge and Scandrett are correct, the ACA has presented to the minister seriously flawed advice over a matter that is still of significant public interest. If the ACA’s advice is wrong, the Senate has been misled, the Victorian Supreme Court has been misled and the Australian people and the minister have been misled. The ACA report was written in just seven days. In light of its admission some nine months later that there are significant gaps in the hard data, I think it is time that that report itself be reviewed.

Defence: Equipment

Senator JOHNSTON (Western Australia) (7.33 p.m.)—Tonight I want to talk about a unique specialist defence capability. Australia’s six Collins class submarines are our ‘most important strategic asset for decades’, starting from the year 2000, and, as a project, have been ‘Australia’s most ambitious and technically advanced defence industrial project ever’. These were the words of Malcolm McIntosh and John Prescott who, in June 1999, presented a comprehensive review of the Collins project to the then Minister for Defence, John Moore. Those who commissioned the project to build these submarines should be congratulated. Australia’s Collins class submarines have their home at Fleetbase West, HMAS Stirling, in my home state.
of Western Australia. May I say that all Western Australians are delighted and proud to have this force element group, its personnel and support staff based in Western Australia.

So just what is so special about these submarines? Historically this design—the AB type-471—originates from Swedish defence firm Kockums, whose experience and knowledge flow from decades of operational activity in the Baltic against the Soviets during the Cold War. This design has proved outstandingly successful in stealth, speed and reconnaissance intelligence gathering. The Collins class has been built in Australia for Australian maritime conditions. Each of the six submarines has a total displacement weight of 3,350 tonnes, a length of 77.8 metres and a diameter of 7.8 metres and is capable of diving to a depth of around 200 metres.

The ship’s company comprises 45 officers and sailors. The propulsion system is based around three specially manufactured 18-cylinder Hedemora turbo charged B210 diesel engines. The propulsion system provides a surface speed of approximately 10 knots, with a submerged speed of in excess of 20 knots. To make a comparison, a speedboat towing a waterskier is travelling somewhere between 20 and 30 knots. Can you imagine a 3,350-tonne vessel about 150 metres under the water travelling almost as fast as a waterskier? That is an amazing concept.

In terms of weapons systems, the submarine has six forward torpedo tubes and carries both wire-guided torpedoes and harpoon missiles. Each torpedo is guided over a range of more than 29,000 metres—29 kilometres—by a wire which maintains control of the weapon to the target at a speed in excess of 55 knots. Each torpedo is powered through the use of a specialized non-oxygen burning nitrate ester based fuel called ‘otto fuel’. The submarine has a range in excess of 10,000 nautical miles. It contains two periscopes—an attack periscope and a search periscope. The latter has significant magnification properties together with photographic, video and infra-red capabilities.

The six submarines of the Collins class have been built by an Australian company—the Australian Submarine Corporation—in Adelaide, South Australia, as part of a project in excess of $5 billion. The project has been further enhanced by the investment last year of a further $3.5 billion contract to the Australian Submarine Corporation for the design maintenance of the Collins class submarines over the next 25 years. This contract will ensure that the Collins class will continue to be what it was originally designed to be: the world’s most advanced conventionally powered submarine.

Senator Forshaw—Great decision by a great Labor government. What a visionary we were!

Senator Ian Macdonald—You blew the costs out enormously—

Senator Johnston—I have already said that someone needs to be congratulated for the idea; we will get to the management in a moment. As Australia’s most technical and ambitious defence project, the construction and acceptance into service of the submarine was not without various problems. As set out in the McIntosh review, it was to some greater extent inevitable that a new class of equipment as complex as a submarine would have some design deficiencies.

Of the technical construction problems, the project was required to manage and rectify the following: the propeller shaft seal on HMAS Collins, which was discovered to leak at depth and required redesign; the fuel system, which had significant seawater contamination difficulties; the Hedemora diesel engines, which proved unreliable with sig-
significant internal part failure problems; noise issues arising from the hull design configuration and from the cavitation and metal quality of the propeller; the propellers, which had a high fatigue failure rate that appeared to relate to the special Sonoston material from which they were constructed; a number of initial design shortcomings associated with the periscopes which impaired their operational performance; and, finally, the well-documented combat system issues.

Having spent two days aboard HMAS Waller at a dive depth of approximately 70 metres in September last year, I can say that these issues were not evident. In exercises against two Singaporean Victory class corvettes and two Australian Anzac class frigates, the Collins performed magnificently. The submarine was consistently undetectable, notwithstanding the Singaporean frigates had the very best sonar detection and antisubmarine warfare equipment available. I am aware that the Collins class has performed with outstanding success at Australian-US Navy joint war game exercises conducted off Hawaii in recent years known as RIMPAC. I have sought to separately confirm the submarines specialist ability and conventional success with senior US naval commanders. I have no reason to doubt that the glowing reports I have received are accurate.

The problems which I have set out have been remedied as was anticipated by McIntosh in his review when he said:

... it is also our view that, once the deficiencies are remedied, the Collins class has the potential to be an extremely potent strategic and tactical defence asset for Australia, which should serve the country well and retain a technical edge, with periodic upgrades, for decades

The most important issues with the submarine relate to matters of project management and administration. I do not propose to go into the details, suffice to say that the project was alarmingly over budget, very much overdue in terms of time and contractually in a state of malaise with respect to the intended transfer of intellectual property.

This government’s defence ministers have confronted these issues and Minister John Moore and Minister Robert Hill in particular require special mention for having the strength of conviction to firstly identify the root cause of the various highly technical administrative problems with this project, all of which had their genesis prior to 1996, and then move to implement resolutions. Earlier this month the defence minister declared that with these equipment modifications the Collins class submarines are the most capable conventional submarines in the world and provide the Royal Australian Navy with a long endurance, quiet, shock resistant and stealth capability. He said:

The Howard Government’s decisions to make interim modifications to the current combat systems, to upgrade the boats for better acoustic performance and reliability, to enter into a statement of cooperation with the United States Navy so that we can utilise its technology and expertise, to acquire a replacement combat system and a replacement anti-surface warfare and anti-submarine heavyweight torpedo is clearly paying dividends.

Having disclosed to the Senate that I have had the amazing and unique opportunity to go to sea in a Collins class submarine and witness first-hand the science of this magnificent craft and the professional and inspirational skill of the men and women in its operation, I wish to place on record that this project and its end product are something that all Australians should be very pleased with and proud of.

To be an Australian submariner is to be a very rare species of professional. I witnessed a group of men and women operating this highly technical vessel as if by second nature. The cohesion and unitary calm focus of
each crew member in his or her job in terms of each eventuality in the course of day-to-day events held me in awe. These people—and they are all surprisingly young—are very good at what they do. I was filled with great confidence as to their reliability in times of crisis. The Navy deserves considerable special praise and congratulations for the level of expertise and discipline that its training of submariners has achieved.

Six Collins class submarines have now been launched and accepted into operational service by the Royal Australian Navy. They are operating, as planned, as the very best conventionally powered submarines in the world. The six submarines have a stealth capability that is so advanced that they can be deployed into battle to destroy enemy assets without anybody being aware that they are in the area, as well as a corresponding ability to eavesdrop and secretly deploy personnel behind enemy lines. These submarines have already proven their worth in numerous naval exercises conducted in numerous localities around the world and have technically sunk the very best equipped naval ships of the very best equipped navies worldwide. They are simply an awesome operational defence platform.

Child Abuse

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (7.42 p.m.)—I rise today to speak about the very disturbing issue of child sexual abuse. Child sexual assault or abuse is a crime. It occurs when someone uses a child or young person for their own sexual gratification. When the abuse takes place in the family it is called incest. There have been a number of studies of child sexual assault conducted in Australia. The World Health Organisation reports that the occurrence of sexual abuse in males is around one in 20 and as high as 27.5 per cent in females, which is a truly shocking statistic.

The onset of abuse occurs on average at age 10 with most starting before age 12. In 40 per cent of cases, the abuser is a family member and in 75 per cent of cases, the abuser is known to the child. The statistics clearly show that the abuser is usually male. These are brutal statistics that reflect a brutal human reality. As abhorrent as it is to all of us here, child sexual abuse, including incest, is common in our society and it happens to both male and female children. The World Health Organisation reports that only a minority of children who experience child sexual assault report it to their parents and only a minority of these parents report the abuse to the authorities.

It is not appropriate to gloss over the reality of child abuse. Child sexual assault can be subdivided into three levels of severity: firstly, non-contact abuse involving sexual solicitation or exposure by an older person; secondly, contact abuse involving genital touching or fondling; and, thirdly, penetrative abuse involving oral, anal or vaginal intercourse by an older person. The trauma usually does not end when the abuse and the assault stop. Child sexual abuse can affect the child’s life in many ways and for the long term. It can cause them to hate their body, not trust anyone, find intimacy in relationships very difficult, feel sex is disgusting or humiliating, force themselves to be busy and on the move all the time, feel angry at people or everybody, or often space-out and not feel present physically. Many adults who were sexually assaulted as children continue to feel scared to tell anyone, anxious or panicked, suicidal, sad at the loss of part of their childhood, guilty, angry, depressed, isolated, insecure, confused about what really happened, betrayed, ashamed, tricked and afraid.
Research indicates that people who report contact or penetrative abuse in childhood have double the normal rates of mental disorders and suicide attempts. Attributable risk calculations suggest that 11 per cent of depression in women and three per cent of depression in men can be attributed to sexual assault in childhood. Quite apart from increased rates of mental disorders, children who have experienced sexual abuse continue for years to show significantly more distress and disturbed behaviour. Only a minority of children are able to surmount this type of adversity and remain unaffected. For those who do not, the outcome can be devastating, with great personal and societal costs.

Child sexual abuse is not a new social problem but, thankfully, there has been an increasing desire to acknowledge and recognise it and develop strategies for prevention and intervention. While state governments retain responsibility for intervention in cases of child abuse, including sexual assault, the police also play a central role in the detection and investigation of cases and in the prosecution of alleged abusers. Conviction of offenders is not simple, even in the minority of cases in which there is clear medical evidence as apart from the child, the victim, there are usually no witnesses. The attitude towards sexual assault still reflected by some adults in authority is to just expect the abusers to behave better, and that is not enough.

Heightened media coverage has ensured that parents are more aware of the threat to children by sex offenders. This increased awareness has raised alarm for many families as we grapple to find ways to protect our children. We must actively arm young children with personal safety skills to protect themselves when those in positions of trust cannot or will not do so. To this end I welcome the launch this week—officially, I think, tomorrow—of a program called Ditto’s Keep Safe Adventure. This is a computer based personal safety program for children, an interactive CD-ROM program which provides a safe, non-confronting and fun way for adults to help children learn to keep safe. The program, produced by the organisation Bravehearts with assistance from the Department of Family and Community Services and the Telstra Foundation, incorporates key personal safety concepts into an engaging computer game for children.

Ditto’s Keep Safe Adventure provides a means for responsible adults and children to learn together. This is important because research indicates that educational programs on this topic are most effective when communication between children and parents occurs. Ditto’s Keep Safe Adventure provides a great start to a protective behaviours program for young children. It alerts children to unsafe feelings and the need to tell someone and seek help when these feelings arise. It is relevant to families on a one-to-one basis or for classroom based groups of children.

As I said earlier the fact is that a lot of abuse happens within families and is perpetrated by family members, so I am certainly not suggesting that this is a cure-all by any means. However, I believe it is an important initiative, not just in itself and for its own benefits but as part of the continual efforts to look for a range of different ways to prevent abuse and to intervene as early as possible where there are risks and problems occurring. This is critical and it is still an area with a lot of room for improvement. I have to say that—and this may only be relevant to Queensland—while it is pleasing to see some movement from the state government in relation to child protection issues, I certainly remain to be convinced that all will be fixed, even in the medium term. There is a long history of inaction and inappropriate action at a government level in Queensland, and most likely in other states, that will take a long time to overcome.
The program that Bravehearts are launching encourages communication and is, therefore, likely to be most effective in increasing children’s resistance to potential abuse. As some senators would be aware, Bravehearts are a community group whose members include survivors, parents, friends, partners, professionals and all non-abusive members of the community who share in the belief that child sexual assault must stop. Bravehearts aim to provide healing and support, engender child sexual assault prevention and protection strategies, advocate understanding and promote increased education and research. I commend them for the release of the program and the funding support from the federal government department and the Telstra Foundation.

The executive director of Bravehearts, Hetty Johnston, has a reputation Australia wide for being an extremely passionate campaigner on this issue, and I believe she is also an effective campaigner. While some people may focus on some of her media appearances and her almost ferocious tenacity, it is important also to acknowledge her other area of activity that perhaps is not as immediately apparent in the headline news but is very important in putting forward programs that seek to identify, address and prevent problem areas, particularly to assist children in developing skills to deal with and avoid where possible such assaults and abuse. We all want everybody in the community to do all they can to protect children. The terrible reality is that, even if we try to watch our children every single second of the day, we cannot guarantee their safety. Giving the children themselves some skills will further help in reducing to as low a level as possible the atrocious crime of child sexual assault.

Australian Broadcasting Corporation

Senator SANTORO (Queensland) (7.52 p.m.)—Some things have been said over recent days in relation to the ABC that, in my view, require to be answered. Senator Cherry, the Democrats’ communications spokesman, is worried that the ABC may be sent broke by the costs it imposes on itself in answering its critics. Senator Cherry specifically referred to former communications minister, Richard Alston, and to me. Richard Alston is no longer in this place to defend himself from the guilt-by-innuendo campaigns of Senator Cherry and his co-conspirators in the pro-ABC camp. The former minister and former senator is certainly in no need of defending by me. But he has been the object of an outrageously concerted campaign by those who apparently think it is unacceptable for a minister for communications to form a view about the ABC that includes the view that in some respects it has feet of clay, and then to express those views.

The fact is—and Senator Cherry and others who think it is a crime to criticise the ABC should come to terms with this—that the former minister was substantially vindicated in his stand by the final outcome of the inquiry process that he initiated. Who can say what a genuinely independent inquiry would have found if such a remedy was in fact available? What can be said is that the process Richard Alston started, and which I have continued, reveals serious flaws in the ABC’s internal corrections apparatus. It seems purposely designed to put no-one in jail except anyone who complains about the ABC or who imputes ill motive to it. This system will not survive. Whatever the rhetoric emanating from Ultimo, that much is crystal clear. The ABC knows that it will have to change its ways. We can expect some rearguard action by so-called friends of the ABC, whether or not they are Friends of the ABC, from within the ABC itself and from political rent-seekers such as the minor parties in Australian politics—but I suggest,
with respect to them all, the game is indeed up.

On that score, I was interested to read at the weekend—it was in the Sydney newspaper the Sun-Herald—a contribution to the debate by Senator Cherry. There was much in his article with which I did not agree. His assertion that the so-called Howard government cutbacks have forced ABC management to cut innovative programming is one of these. The ABC manages its own budget. But there was also a lot with which I did agree. It is, as Senator Cherry says, beyond dispute that the ABC is an important part of our democracy. Without question, it provides a lifeline to regional Australia—this is something on which all senators from Queensland, regardless of party or level of affection for the ABC, would instantly agree. Indeed this is the very point that worried me recently when, from whatever source and motivation, the story resurfaced that the ABC had considered, or was considering, scrapping Radio National. I am happy to report that the ABC managing director, Russell Balding, to whom I quickly wrote about this, guarantees that this is not under consideration. That is good. Radio National in its present manifestation may have low audience numbers and some programming curiosities, but it represents the ABC’s core business.

To return to Senator Cherry’s argument: the ABC does indeed provide informed current affairs reporting, and it does make vital contributions to Australian culture and provision of Australian content. According to Senator Cherry, the Democrats believe that democracy depends on diversity of opinion, including questioning of those in power. I do not think that anyone who believes in the democratic ideals on which our society is based would argue with that. Liberals simply take it as a given. We do not see the need to beat our chests about it.

Senator Cherry wrote that he sees the dispute over sport reports as the latest attempt by the government to hurt the public standing of the ABC. It is true that the Prime Minister has commented on this issue. It is true that the foreign minister has too, but he was wearing his South Australian federal member hat, as Senator Cherry well knows. It is true that the minister for sport, my honourable friend from Victoria, Senator Kemp, has also weighed into the debate. But the bulk of the opposition to the ABC’s plan for a national sports wrap in its main 7 p.m. television news bulletin has come from within the ABC and the state premiers. ABC staff went on strike about it—I suggest that Senator Cherry remember that—and last time that I looked at all the state and territory leaders they were Labor politicians. So let us have no nonsense about Liberal government conspiracies on that score.

The complaint is that however you dress it up—and the ABC is very, very good at dressing things up—putting a two-and-a-half minute segment in a 30-minute news bulletin is going to take two-and-a-half minutes away from whatever else might have been there otherwise. That is not a political statement; it is simply a matter of pure mathematics. In the circumstances it is disingenuous of the ABC to argue that taking two-and-a-half minutes out of state based news programs for a national sports wrap is an enhancement of sport coverage. The only state to escape this Sydney-centrism is Western Australia where, for once, the tyranny of distance appears to have worked in its favour.

I am not saying that the ABC plan is necessarily a bad idea, though I note that ABC’s Insiders host Barrie Cassidy, a highly significant member of the ‘commentariat’—who properly voted against the strike action, by the way—was reported in the Age on Tuesday last week as saying it was a dopey one. What I am saying is that if ABC man-
agement really thinks it is on a winner, then it should have the courage of its convictions and explain precisely why. But all of that is peripheral to the main issue, which continues to be the ABC’s inability to understand what the question is that it is being asked. Senator Cherry seeks to put about the implication that criticising the ABC is the same as not being a friend of the ABC—or worse, of not being aboard the good ship political correctness.

In relation to FOI requests to the ABC, I say this: the ABC is a public utility that is required to answer questions from the public and from parliamentarians. The ABC says it has spent 98 staff hours looking into my requests for information about how the ABC covered the Iraq war, the *Tampa* incident in 2001, the Pacific solution for asylum seekers, and Australia’s political and military relationship with the United States. It says that this exercise cost $10,000. I am not sure whether that sum includes my $30 FOI application fee as a debit or a credit. If, as it claims, the ABC spent $10,000 on furnishing me with answers, then it is saying it charged itself $102 an hour to meet this request. The problem would seem to lie not with the questions but with the answers. At seven items—on a total of 11 pages of documentation—the ABC spent $1,428 per item or, if you prefer, $909 a page. To express it another way: it spent 14 staff hours per item or 8.9 hours per page. It may well be that some of the material was hard to source. The ABC experiences regular difficulty locating the fruity little leftist quips some of its on-air talent comes up with. But I suspect that what we are being given here is a lily that has been shamelessly overgilded.

Perhaps the ABC administration charges itself QC’s fees to answer questions. The way the ABC manages its internal accounting is not the issue, even though it is highly relevant to the matter of whether or not the corporation is as disastrously underfunded as its management and apparently Senator Cherry would like people to think. Senator Cherry believes—as he puts it—that it is time to pump up auntie’s volume. I actually agree with him. I certainly believe the ABC is capable of producing a better decibel-to-dollar result than it does, and I would like to help it improve its performance.

There are three separate issues here. One is the matter of ABC funding. I look forward to receiving from the ABC its own assessment of an alternative—and I think better and more accurate—way of calculating the actual worth of its publicly provided budget that I have provided to it. The second is the question of whether ABC programming actually meets the requirements of the Australian audience. Audience satisfaction surveys suggest people are happy, predominantly, with what they get from the ABC. The unasked question is what they would like to get from the ABC. These two things are primarily matters for the ABC, except where whingeing over its budget is concerned.

The third issue is that of bias and lack of balance. That is an ongoing issue, and one on which the ABC and its preferred defenders, including those opposite, simply cannot be left to deal with by themselves. Of course the ABC should give air time to pluralistic voices and views. But that does not mean—and it can never mean—that the ABC, whether deliberately or inadvertently, should ever be allowed to get away with broadcasting views as news. It should leave that to the John Pilgers of this world.

It already gives them air time to continue fabricating history in accordance with their peculiarly poisonous and fictionalised image of Australia and the world. It already provides them with a forum in which to argue that Australians should leave tyrants alone to monster their own people for fear that they
might turn their oppressive and murderous attentions to us.

**Tasmania: Mersey Community Hospital**

Senator COLBECK (Tasmania) (8.02 p.m.)—I rise this evening to place on the record a matter relating to the Mersey Community Hospital at Latrobe, near my hometown of Devonport in my home state of Tasmania. If there is pecuniary interest here, it is declared. Last Tuesday in a cruel confluence of announcements, services at the Mersey Community Hospital were downgraded. This has left the community insecure, uncertain and crying for information and support from the Tasmanian government—which has not been forthcoming.

Only 30 minutes before the release of the Tasmanian government’s much awaited issues paper, following a review of public and private hospital services, Minister Llewellyn announced the downgrading of services at the Mersey Community Hospital, specifically accident and emergency and obstetrics. There is no question the real fear in the community is that these services will never return—a situation that is totally unacceptable. This belief is fuelled by the actions of the state member Brenton Best and the total lack of assurance by Minister Llewellyn. The only thing that the community are left with is the issues paper, which recommends at item 5.6:

That a single site hospital ... be developed, at the site of the collocated public-private hospitals in Burnie, to service North West Tasmania.

That any state funds that are currently used in providing services across the Mersey Community Hospital, the North West Private Hospital, and the North West Regional Hospital not be lost to the area.

In my view, the community has real cause to be concerned. The Tasmanian government has a record of turning discussion papers into reality, regardless of community consultation.

I say a cruel confluence of announcements because there is strong evidence to suggest that HealthScope, the operators of the Mersey Community Hospital, deliberately established the circumstances that forced the downgrading of services to coincide with the release of the discussion paper. Information given to me since the announcement and from recent contact I have had with the hospital on other matters relating to the employment of medical specialists all point to this being set up.

I am advised that there has been little or no attempt to advertise for obstetricians and that offers by obstetricians to work at the Mersey have been turned down. Further, and perhaps even more disturbingly, an obstetrician who was encouraged to come to Tasmania was offered more money to work at Burnie than at Latrobe. However, HealthScope may have seen no other alternative than to create the situation due to the contract it has with the Tasmanian government to provide services. That contract makes it almost impossible for them to do anything but lose money. HealthScope is the third owner of the hospital, and all owners have raised concerns regarding the contract and the position it puts them in.

The Tasmanian government could make a real difference to the situation by negotiating a reasonable contract with HealthScope for the provision of services at the Mersey Community Hospital. It could also help to allay community concerns over the future of services by indicating what it might do to assist in alleviating the shortage of specialists, which has caused the situation, so that services to the community may be restored. The community have been left hanging, and they are rightly concerned and angry.
The handling of this whole mess by the Tasmanian government only provides further weight to the argument that the Australian government should take over the management of hospitals and health nationally. Some valuable matters that were raised in the report could well result in the more efficient management of some aged care issues and add even further weight to the argument: given the recent record of performance of the state on health, how could you trust them with further responsibility?

There has long been discussion that there should be one hospital on the North West Coast—and there is certainly scope for consolidation of some services—but there will also be some that are not negotiable and, in my view, full accident and emergency, and obstetrics are two of those. The Mersey Community Hospital serves a population of 60,000 to 70,000 people at the eastern end of the North West Coast. It is absurd to suggest that this community should not have ready access to the accident and emergency services and the obstetric services that they have had up until this week. Likewise, Burnie and the 50,000 people at the western end of the coast deserve similar access through the North West Regional Hospital in Burnie and its satellites at Queenstown, Rosebery, Smithton and King Island. The recommendations of the discussion paper makes a geographic, not a demographic, recommendation. The provision of these services should be where the people are, not based on anything else.

It may sound like I am arguing for the status quo but that is not the case. If the Tasmanian government has a genuine desire to change or, some people might say, to fix the delivery of hospital services, they should put a process in place that genuinely does that. Even if it is evident that it may take some time or even cost a bit extra up-front to deal with existing leases or agreements, now would be the best time to do so given the admission by the Tasmanian government that Tasmania is in the best financial position it has ever been in. Mr Llewellyn should be committing resources and assistance to the community to get the right result, not presiding over an outcome that isolates such a large sector of the community.

In anticipation of the Llewellyn standard that the Australian government should provide more funding for health, perhaps he could explain why state governments’ share of hospital funding has fallen from 47.2 per cent to 43.4 per cent while the Australian government’s share has grown from 45.2 per cent to 48.1 per cent. There has been absolutely no guidance from the government at all on what the delivery of health services in the region should or could look like. There has been no discussion about issues such as public transport or logistics, just that an additional ambulance would be put into service for the period of the downturn. The community has been left high and dry. There has been no leadership at all from the Tasmanian government. The locals feel abandoned by their local member, Brenton Best, and the health minister, David Llewellyn, is essentially mute.

Senate adjourned at 8.09 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

Australian Trade Commission (AUSTRADE)—Export Market Development Grants—List of grant recipients for 2002-03.

Productivity Commission—Report for 2002-03.

Telecommunications carrier industry development plans—Progress report for 2002-03.


Tabling

The following documents were tabled by the Clerk:

Civil Aviation Act—Civil Aviation Safety Regulations—Airworthiness Directives—Part—


106, dated 17 February; and 4 [2] and 5 March 2004.

107, dated 26 February; and 4 and 5 March 2004.


Export Control Act—Export Control (Orders) Regulations—

Export Control (Fees) Amendment Orders 2004 (No. 1).

Prescribed Goods (General) Amendment Orders 2004 (No. 2).
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Copyright: Digital Agenda
(Question No. 2203)

Senator Ludwig asked the Minister representing the Attorney-General, upon notice, on 9 October 2003:

With reference to the Attorney-General’s announcement that the law firm Phillips Fox is to conduct a major part of the Government’s broader review of the digital agenda reform: (a) what probity requirements have been sought from Phillips Fox in respect of this review; (b) has the Government required Phillips Fox to ensure that the firm has appropriate safeguards in place to separate its business interest from that of the work on the review; if so, how; if not, why not; and (c) which government agencies or departments have Phillips Fox acting on their behalf.

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator’s question:

Specification of actual or perceived conflicts of interest was a mandatory criterion of the Request for Tender (RFT). All tenderers were required to include details in their tender of any known circumstances which could give rise to either an actual or perceived conflict of interest in connection with the provision of the contract services. Where circumstances existed that could give rise to either an actual or perceived conflict of interest the tenderer was required to include in their tender a proposed management plan for dealing with each issue.

Phillips Fox complied with the conflict of interest requirements in the RFT and satisfied the Tender Evaluation Team, consisting of officers of the Attorney-General’s Department and the Department of Communications, Information Technology and the Arts, that they could carry out the contracted services independently of stakeholder interests.

Phillips Fox stated in its tender that the firm acted for a number of owners and users of copyright material, who have an interest in the proper and efficient operation of Australia’s copyright system and, possibly, an interest in making submissions to the review. Phillips Fox specified particular organisations in this category and indicated that it also acted for a number of traditional media publishers and Commonwealth and State departments and agencies.

Phillips Fox stated that as far as the firm was aware, it was not the exclusive or sole provider of legal services in respect of copyright or other intellectual property matters to these clients and was not aware whether any of those clients, or any other clients, intended to make a submission to the review.

Phillips Fox also stated that the firm operated a library that fell within the definition of section 18 of the Copyright Act 1968, which may be affected by any decision, whether as a result of the review or otherwise, to exclude ‘corporate libraries’ from the operation of that Act.

Phillips Fox specified a management plan in its tender to deal with any actual or perceived conflict of interest. Among other things, Phillips Fox explicitly undertook not to act for any person, or provide any other assistance, in connection with any submission or possible submission to the review, without the prior written consent of the Attorney-General’s Department.

Following submission of the tenders the Tender Evaluation Team met with Phillips Fox in order to seek further clarification on issues identified in its tender, including mechanisms for dealing with potential conflicts of interest.

The Tender Evaluation Team was satisfied as a consequence of the management plan put forward by Phillips Fox, subsequent clarification by letter and from face to face discussions, that Phillips Fox ad-
dressed all concerns about any actual or perceived conflict of interest in connection with the provision of the contract services.

The contract between Phillips Fox and the Commonwealth also contains provisions to deal with any conflicts of interest that may arise during the performance of the contract. The contract provides that if during the performance of the contract services a conflict of interest arises, or appears likely to arise, Phillips Fox agrees to notify the Commonwealth immediately, make full disclosure and take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the conflict.

In accordance with its contractual obligations Phillips Fox has informed the Attorney-General’s Department when retaining any work that may be perceived to give rise to any actual or potential conflict of interest and the Department is satisfied that no such conflicts have arisen. Phillips Fox has assured the Attorney-General’s Department that it has not contributed in any way to or assisted with any submission made in response to the Issues Papers released as part of their contracted services.

The names of Phillips Fox clients are subject to legal professional privilege. The Department is therefore unable to provide information about which Government departments and agencies have engaged Phillips Fox to perform legal work for them.

Tasmanian Regional Forest Agreement
(Question No. 2501)

Senator Brown asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 13 January 2004:

With reference to the Tasmanian Regional Forest Agreement (RFA):

(1) What is the meaning of the term ‘economic accessibility’ in section 55 of the RFA.
(2) What factors should be taken into account in assessing ‘economic accessibility’ for the purposes of the RFA; for example, should they include: (a) costs of surveying and assessing areas to be logged, including environmental assessment; (b) the full cost of providing roads; (c) costs of logging operations, supervision and transport; (d) costs of environmental damage such as increased fire frequency, loss of carbon banks leading to greenhouse gas emissions, impacts on water quality and quantity; and (e) detrimental impacts on, and lost opportunities for, tourism.
(3) Can a copy be provided of the economic analysis completed in accordance with section 55 of the RFA.

Senator Ian Macdonald—The answer to the honourable senator’s question is as follows:

(1) The term “economic accessibility” is not defined in the Tasmanian Regional Forest Agreement.
(2) The “Review of the Deep Red Myrtle Resource in Tasmania”, April 2002 explains on pages 27 and 28 the factors taken into account by Tasmania in conducting the review in respect to Clause 55 of the RFA.
(3) The Review at (2) above includes an economic analysis and is available at the Tasmanian Government website.

Tasmanian Regional Forest Agreement
(Question No. 2502)

Senator Brown asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 13 January 2004:

With reference to the Tasmanian Regional Forest Agreement (RFA):

(1) (a) How much Commonwealth funding has been spent directly or indirectly through the RFA process to evaluate the availability and other issues associated with logging Deep Red Myrtle (DRM); and (b) can details be provided of individual projects.
(2) Why was 4,500 m³ per annum of DRM chosen as the supply benchmark in section 55 of the RFA; and (b) in what way could the supply of this quantity be considered ‘ecologically sustainable’.

(3) What volume of DRM has actually been supplied from public land in each of the past 10 years; and (b) how does this compare with the 4,500 m³ per annum benchmark.

Senator Ian Macdonald—The answer to the honourable senator’s question is as follows:

(1) (a) $273,190.

(2) (a) The 4,500 cubic metres was the supply level proposed in the Tasmanian Forests and Forest Industry Strategy.
(b) This level was based on the best available information at the time.

(3) (a) Figure 3.2 of the Review at 1(b) above provides myrtle sawlog and outspec volumes supplied from public land in Tasmania each year from 1995/96. Further information should be sought from the Tasmanian Government.
(b) See 3 (a) above.

Tasmanian Regional Forest Agreement
(Question No. 2503)

Senator Brown asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 13 January 2004:

With reference to the Tasmanian Regional Forest Agreement (RFA):

(1) Has the Tasmanian Government complied with: (a) the spirit; and (b) the letter, of the RFA in deciding to log the Tarkine for Deep Red Myrtle.

(2) Does the Prime Minister support the Tasmanian Government’s decision to log the largest temperate wilderness rainforest in Australia; if so, why.

Senator Ian Macdonald—The answer to the honourable senator’s question is as follows:

(1) (a) and (b) The decision to harvest deep red myrtle in the Savage River Pipeline corridor was made by the Tasmanian Government, in accordance with clause 55 of the Tasmanian Regional Forest Agreement.

(2) See 1.

Commonwealth Serum Laboratory
(Question No. 2599)

Senator Nettle asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 1 March 2003:

(1) Is the Minister aware of the imminent sale of the Commonwealth Serum Laboratory’s Veterinary Division.

(2) Given the current terrorist threat, is the Minister aware of any strategic implications of this sale in relation to products such as botulinum vaccine production.

(3) (a) What process must the sale go through before being accepted.

(4) How has the Minister assessed the strategic issues arising from the sale.

(5) Can the Minister assure Parliament that these issues have been resolved.

(6) Will the Minister undertake a review of the strategic implications of the sale; if not, why not.
Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) Yes. CSL Limited, a private company, has entered into an Agreement with Pfizer Inc. for the sale of its animal health business.

(2) No. The government continues to place a high priority on ensuring the preparedness of agencies to respond to disease threats to the livestock industries.

(3) Questions relating to the broader issues of foreign ownership and manufacturing industry policy are best addressed to the Treasurer and the Foreign Investment Review Board. However, any sale of an Australian business to an overseas company is conditional on approval under Australian foreign investment policy and requires notification under the Foreign Acquisitions and Takeovers Act, 1975.

(4) The Australian Government Department of Agriculture, Fisheries and Forestry continues to work on ensuring that the livestock industries of Australia are not left exposed should important vaccine supplies be required. The veterinary pharmaceutical industry has undergone significant rationalisation worldwide over recent years. A number of Australian vaccine manufacturers have consolidated resources and moved production capacity overseas. However, other manufacturers such as Intervet Australia Pty. Ltd. are expanding their capacity within Australia. There are also a number of smaller, specialised Australian vaccine manufacturers that are expanding their capacity to produce livestock vaccines.

It is relevant that CSL Animal Health Division has facilities at Parkville, Victoria but also has operations overseas in Upper Hutt, NZ and Omaha, USA. Thus Australia is used to sourcing vaccines and other animal health products from overseas manufacturers even under current arrangements with CSL.

(5) The approach outlined in answer (4) to ensuring access to animal vaccine supplies in Australia is an ongoing one capable of addressing changing circumstances. All veterinary medicine products supplied by CSL in Australia must meet the stringent requirements of, and be registered by, the Australian Pesticides and Veterinary Medicines Authority (APVMA). They must be manufactured using premises and systems, which are licensed and audited by the APVMA under its Manufacturer’s Licensing Scheme. These requirements apply to all manufacturers and suppliers of veterinary medicines in Australia, and will therefore apply equally to the new owners of CSL Animal Health Division.

(6) No. Possible implications for the agriculture sector are already being addressed.