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Wednesday, 24 March 2004

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

PARLIAMENTARY LIBRARY

The PRESIDENT (9.31 a.m.)—I wish to make a statement regarding the Parliamentary Library and the position of Parliamentary Librarian. The 2002 report on aspects of the administration of the parliament by the Parliamentary Service Commissioner, Mr Andrew Podger, and the Senate resolution in August 2003 establishing the Department of Parliamentary Services both included important elements intended to protect the independence of the Parliamentary Library.

The Speaker and I have consulted the joint Library Committee on proposals to give effect to the parliament’s wish to protect that independence, and we have reached agreement on a package of proposals that I believe will guarantee that independence for the future.

The package consists of proposals for a more formal establishment of the joint Library Committee, drafting instructions for amendments of the Parliamentary Service Act 1999, and a duty statement and selection criteria for the position of Parliamentary Librarian, to be created as a statutory office.

The proposal to establish the Library Committee on a more formal basis arises from the parliamentary resolution establishing the DPS and will be the subject of further consultation with senators and members. I will write to party leaders and Independent and minor party senators about that.

The Parliamentary Service Commissioner’s report proposed that the Parliamentary Librarian have a senior position in the Department of Parliamentary Services. The Senate Standing Committee on Appropriations and Staffing, and the resolutions passed by the Senate and in the other place, proposed that the Parliamentary Librarian should be a statutory position with direct reporting lines to the Presiding Officers and the library committees.

The Speaker and I propose that the act be amended to create a statutory position of Parliamentary Librarian, set out the functions of the Parliamentary Librarian and require those functions to be performed, among other things, in an impartial and confidential manner and on the basis of equality of access for all senators and members.

The Speaker and I believe that it is important to specify the core functions of the Parliamentary Librarian in the act.

Another element of protecting the library’s independence is that the bill will require the Parliamentary Librarian to have professional qualifications in librarianship or information management and professional membership of a recognised professional association in such a discipline.

The bill will contain provisions relating to the statutory appointment that largely mirror those covering the Secretary to the Department of Parliamentary Services, including that an appointment may only be terminated by the Presiding Officers after receiving a report from the Parliamentary Service Commissioner.

As proposed in the parliamentary resolutions, there will be a significant role for the Library Committee in advising the Presiding Officers on the annual resource agreement between the Parliamentary Librarian and the Secretary to the DPS. As well, the Parliamentary Librarian will formally report to the Library Committee at least once a year.

The duty statement and selection criteria reflect the proposed provisions relating to the functions of the Parliamentary Librarian and the qualifications required.
When a draft bill is available, the Speaker and I will consult further with party leaders and Independents. At that stage, provided there is no objection, preliminary recruitment action will begin, although of course an appointment to the statutory position of Parliamentary Librarian will have to await passage of the bill.

I thank the Senate.

BUSINESS
Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.34 a.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:

Greater Sunrise Unitisation Agreement Implementation Bill 2004
Customs Tariff Amendment (Greater Sunrise) Bill 2004.

Senator BROWN (Tasmania) (9.34 a.m.)—The Greens oppose the motion.

Government senators interjecting

Senator BROWN—No, it is not a surprise, as one of the government senators points out. There is no urgency with this legislation—in fact, quite the reverse. It is so important and it will have ramifications for so many years to come for the relationship between Australia and Timor Leste that we should be giving maximum consideration to this legislation. That means that we should have the opportunity to, in the fullest sense, understand Timor Leste’s position on this. We should be able to communicate with government, parliamentary and community representatives of our small and very impoverished neighbour, as well as with community groups—including, of course, the oil companies involved, such as Woodside—in particular those community groups representing Timor Leste’s position here in Australia.

The truncated nature of this process, whereby we effectively drop standing order 111, which is meant to facilitate senators to do exactly those things, is wrong. I have yet to hear from the government why this matter is so urgent that we must ignore the cut-off—that we must ignore the parliamentary norm that there be time for consultation. As I said, this legislation will have ramifications for decades. It involves the theft from East Timor of its gas and oil resources by the Australian government, with the involvement of the oil companies. Billions of dollars are involved here. It is a matter that concerns the major resource for the funding of the future welfare of the poorest neighbour in our region, namely Timor Leste. We should be giving this maximum consideration.

On Monday night there was a committee hearing with two witnesses: the conjoint departmental representatives representing the Australian government and one very presentable—but nevertheless one only—non-government organisation from Australia doing the best it could to represent the alternative point of view. That is manifestly inadequate. We are not proceeding with this legislation on the basis of information that is appropriate to its importance. If ever there was a need for us to observe the rules of the Senate—in particular standing order 111—which provide that there should be some time between the introduction of a piece of legislation and the Senate’s consideration in voting on that legislation, this is it. So, no, the Greens do not accept that this bill should be exempted from standing order 111. Standing order 111 is precisely there to ensure and to cater for the adequate informing of the Senate before it proceeds on complex pieces of legislation like this one, which does have major ramifications for our relationship with not just East Timor but also the neighbour-
hood. We object. We do not accept that there should be a cut-off here.

Senator STOTT DESPOJA (South Australia) (9.38 a.m.)—The Democrats also oppose the motion before us today to exempt the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and the Customs Tariff Amendment (Greater Sunrise) Bill 2004 from the cut-off, for many of the reasons outlined by the previous speaker. The way this legislation has come to this parliament has been an abuse of process. The way this legislation has arrived in the parliament has been absolutely outrageous. As honourable senators would be aware, it was expected to be debated almost within hours of being introduced in this place. I think we had the legislation for about three hours, and some of us not even that. I acknowledge the government’s apology for failing to give the Democrats the bill but giving it to the Labor Party and the Greens. I take on board that apology from Senator Abetz. Within three hours of that legislation being provided to senators, there was an expectation that it be debated.

More importantly, in relation to the so-called urgency there is actually no compelling reason why this legislation should be debated in such haste, no compelling reason for it to be exempt from the cut-off, no compelling reason for it to have been dealt with in this way and no compelling reason for the committee process to have happened with the alacrity that it did on Monday night. The report was tabled, as senators would know, after 6.30 last night, giving some of us the opportunity to write our supplementary and dissenting reports in a very short period of time. Through you, Madam Acting Deputy President Knowles, that is with all due respect to the secretariat, who handled that process with great aplomb. A committee report was tabled last night, there is a cut-off motion this morning and there is an expectation that we will now debate this legislation.

This legislation is complex. It is not only about issues of great wealth; it is about international jurisdictional issues and maritime boundaries. These are complex issues and they deserve more time for debate both in this chamber and through the committee process. I record my disappointment at the way this process has been conducted and acknowledge that many in the community have also put on record their concerns about the process. Many community groups would have been interested in providing information to the Senate deliberations and they feel that they have not had an adequate time or opportunity to do so.

I acknowledge that these bills relate to resources that are desperately needed by the people of Timor Leste. I do not think any of us can afford to forget that Timor Leste is a fledgling nation, one of the poorest in the region and of course an important new neighbour. Why are we treating the government and the people of that new nation in such a way? The Democrats accept, very much so, that it is desirable for both governments to come to an arrangement that provides legal and fiscal certainty not only for governments but, indeed, for those corporations that are involved in this process. But we do not accept that as a reason for rushing these bills through the parliament in a manner which we believe has compromised the proper scrutiny of the legislation. There is no specific commercial deadline for the ratification of the agreement in the way there was a specific date for the ratification of the Timor Sea treaty. Yet one of the effects of rushing these bills through the parliament is that it has severely limited the possibilities for consultation and debate.

I am glad that the Senate Standing Committee on Economics had the opportunity to
look at the bills, albeit briefly. I do believe the bills would have been greater served by consideration over a longer period of time. I note that the Timor Sea Justice Campaign indicated to the committee that they were aware of a number of organisations, including large NGOs, that were considering making submissions but that, due to the extremely short time frame and limited nature of the invitation to give submissions, were deterred from doing so. I want to record their view—and they argued this in their submission—that the small number of submissions should not be interpreted as a lack of interest in this particular issue. In fact, on the contrary, I think there is a growing interest. Certainly they indicated that there is a growing interest across various sectors of Australian society regarding Australia’s relationship with Timor Leste and the Timor Sea negotiations.

The Democrats want to record today our deep regret at the way this legislation has been rushed through. Not in the committee process nor even today as we deal with this exemption from the cut-off have we been given any compelling reasons or shown compelling evidence to support the suggestion that Australia or Timor Leste would lose any revenue if ratification were prolonged even for a few weeks let alone a few days. There is no evidence to suggest that Australia or Timor Leste would lose out. That we could not even take a few extra hours is an absolute indictment on the parliament. It is particularly disappointing that the Economics Legislation Committee was deprived of the opportunity to hear additional evidence which I think may have assisted its assessment of this legislation and consequently the Senate’s consideration of these bills.

For these and many other reasons the Democrats today strongly oppose the exemption from the cut-off. As we can read the numbers in this chamber, this debate will come on. I will move an amendment to this legislation to try and ensure not only that Australia gets a good deal but also that we do not rip off one of the poorest nations on earth—a nation that we have had positive dealings with, particularly in recent times, dealings of which we can be proud and this government can be proud. This process is not one that makes me proud. I am sorry that we will be debating this legislation with such haste.

Senator HARRIS (Queensland) (9.45 a.m.)—I also rise to speak to the cut-off motion. In doing so, I want to raise some real concerns from One Nation in relation to what I believe is not only undue but also inappropriate haste. If we want to start anywhere, all we need to do is look at the document I have in my hand which is provided by Woodside. If you look at the diagram at the back of this document—and I will seek leave during the debate to table this document—you will see that clearly shows that the entire Sunrise field is well and truly in the Timor half of the sea. So this is step one: we should not interfere in a natural resource of Timor. But the situation gets much worse when we look at the way in which the current boundary between Australia and East Timor was set. It was set with undue haste, it was set in a period when there was considerable turmoil in East Timor and it was set under less than satisfactory circumstances. I also have an article from the Australian Financial Review of Friday, 5 March this year. The heading is ‘Bribery case rocks Timor Treaty.’ The article says:

A $US30 billion lawsuit accuses major politicians of bribery and questions the validity of the Timor Sea Treaty ...

So not only do we appear to be placing Australian jurisdiction over a resource that, under international law, is well and truly within the confines of East Timor; there is also, in this situation, a clear possibility of bribery being used to obtain what has been set as the
boundary at the moment. If we look at a case that has come out of the District of Columbia in the United States, we see a very clear indication of where international law has set boundaries—that is, halfway between the actual countries. This is very clear. I have in my hand a complete transcript of that case. If we want an example of where the boundary should be, this case will give it very clearly and very succinctly. We should not be interfering in a natural resource of East Timor. One Nation will oppose the cut-off.

Senator O’BRIEN (Tasmania) (9.49 a.m.)—I have to say that Senator Harris did not let the facts get in the way of a good story with his contribution then. The fact of the matter is that the legislation before the Senate, it has been established by the Economics Legislation Committee’s inquiry, reflects the agreement between the governments of Timor Leste and Australia. That was a very appropriate purpose of the Senate’s inquiry. Of course, Senator Brown and Senator Stott Despoja did not mention that the treaty itself was the subject of examination by the Joint Standing Committee on Treaties. I believe that committee reported at the end of 2002. So this legislation, we have established, follows a treaty entered into between the two nations. The legislation that is before the Senate accurately reflects that treaty. So it is not as if this has been rushed through the parliament at all, because the question of the treaty itself was the subject of a proper inquiry by the Joint Standing Committee on Treaties, which was concluded over a year ago.

If anyone has dragged their heels in this matter, it is the government getting this legislation here—and I intend to be critical of the government in that regard during the second reading debate. There are issues which go to the development of the field. No doubt there are commercial issues. We need to understand that, whatever we do here, nothing will happen in this regard without parallel action from the legislature of Timor Leste. I would not want to have the finger pointed at me or my party if we did not deal with this legislation or have it said that we were responsible for delaying or preventing a development which will have significant economic benefits for that fledgling nation.

The opposition will be supporting the motion to exempt this bill from the cut-off, because there is no prejudice in dealing with the debate now. The issues about the treaty were dealt with by the Joint Standing Committee on Treaties quite some time ago. If people want to run their case again before the Senate, I think we have to call a halt to that and say, ‘You’ve had an opportunity to present your case’—and indeed they have. The Joint Standing Committee on Treaties has made recommendations. The government has taken quite some time to act on them. The legislation we are considering to be exempted from the cut-off is in line with the treaty; we have established that. We should get on with it and deal with it. And if the government of Timor Leste do not wish to proceed, it will be in their hands.

Senator LEES (South Australia) (9.52 a.m.)—I also want to speak against our rushing the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and related bill through this place, and I will be voting against the motion to exempt these bills from the cut-off. The facts of the matter are that we do not need to rush today. Very late last night I was able to obtain a copy of the Senate Economics Legislation Committee’s report, and I understand that because of printing problems other senators still do not have a copy. We managed to get a photocopy.

This treaty is simply unfair. Yes, Timor has agreed to it, but the amount of revenue they are going to get, particularly from the Sunrise field which is worth up to something
like $30 billion, is only 18 per cent. As the Labor Party has just said, while they do get significant benefits from it compared with any other revenue opportunities they have—and that is, I think, why they signed: the fact that they will get at least something from it—it is nothing like what they are entitled to. I believe we need more time to air this matter here and publicly. While Australians obviously want their government to maximise opportunities for revenue, to provide the best possible services for Australians, in this case we are going to be doing it at the expense of a very impoverished country, a country that is supposedly our neighbour and our friend. We are going to be doing it in a very rushed and hurried manner when we should, I believe, be opening this up to far more community consultation. I think most Australians will agree that it is far better to support this country by ensuring they get what they are entitled to from this gas field than to continually be giving them direct aid and support to provide basic things such as schools and health services. So I see no reason to rush and will be voting against the motion to exempt the bills from the cut-off.

Senator BRANDIS (Queensland) (9.55 a.m.)—I was the Chairman of the Senate Economics Legislation Committee which conducted the hearing into this bill last Monday evening. I want to respond briefly to some of the statements that we have heard from Senator Brown and Senator Stott Despoja, both of whom participated in that hearing, and also from Senator Harris and Senator Lees, who did not. The Greater Sunrise Unitisation Agreement Implementation Bill 2004 and related bill were referred to the legislation committee on 10 March, and I am advised by the committee secretariat that the hearings were advertised in the ordinary fashion on the Internet on 12 March. The secretariat also approached by telephone various interested parties, not only commercial parties but also NGOs who had taken an interest in the legislation. Only two NGOs indicated an interest in appearing before the public hearing, one of which ultimately did not appear. However, written submissions were received from four NGOs—that is, the Timor Sea Justice Campaign, which did appear; the East Timor Institute for Reconstruction Monitoring and Analysis; Australians for a Free East Timor; and Oxfam Community Aid Abroad. Those submissions were before the committee and were considered by it in its deliberations, as were submissions by four interested private citizens. The only commercial party which made a submission but which did not appear before the hearing was Woodside Energy Ltd.

So although it is true to say, as Senator Brown has said, that there were only two brackets of witnesses, that is, Mr Nicholson from the Timor Sea Justice Campaign—and I interpolate to say that I agree with Senator Brown that Mr Nicholson was a very impressive witness—and the Public Service witnesses from the department of industry, Treasury, DFAT and the Attorney-General’s Department, nevertheless there were eight other interested parties whose submissions were before the committee.

The next point I wish to make is that the government of East Timor did not make a submission to the committee nor indicate an interest in appearing before it. Perhaps that is not surprising, because all these bills do is give effect to an agreement between the government of Australia and the government of Timor Leste. Nevertheless, out of abundant caution I asked the secretary of the committee, Dr Bachelard, to approach the East Timorese embassy in Canberra to inquire whether or not the ambassador wished to make a submission or wished to appear, absent a written submission, at the hearing. That approach by telephone was followed up by a letter which I sent to His Excellency the
Ambassador, Mr Teme, on 19 March reminding him of the hearing and again indicating that if he wished to appear on behalf of his government he was welcome to do so but there was no necessity for him to do so. The committee secretariat was contacted by the embassy during the course of Monday, and it was indicated to the secretariat that they did not wish to appear or otherwise to make a submission. So the suggestion that this has been done in a rush which has prevented interested parties, including NGOs, let alone the government of East Timor, from putting their point of view to the committee simply is not so.

Mr Nicholson, the one witness who not only made a written submission but also appeared before the committee in person, gave a very vigorous critique of the legislation and gave a very good account of himself. As chairman of the committee, I indulged Senator Brown and Senator Stott Despoja by allowing the hearings of the committee to run on for almost three-quarters of an hour beyond the scheduled adjournment time so that it could not honestly be said that there was any constraint on the capacity of Senator Brown or Senator Stott Despoja—two senators who adopted a critical attitude to the legislation—to ask the questions which they wished to ask. No time limit was imposed upon either of them.

Those are the facts. Before I sit down, I wish to comment on something Senator Harris said. This is not the time to debate the merits of these bills, but the record should not go uncorrected. Senator Harris made the assertion that the Sunrise field—which falls across the boundaries of the joint petroleum development area which has been defined in the agreement between the government of Australia and the government of Timor Leste—is in East Timorese territory. The maritime and seabed boundary between Australia and East Timor is still the subject of negotiation between those two nations. The commercial arrangements to which this legislation will give effect and which reflect the agreement of the government of Timor Leste and the government of Australia are expressed, by the terms of the agreement—which is a treaty, or has the character of a treaty, between the two nations—without prejudice to any ultimate determination of the negotiations of the line of the seabed and maritime boundary. Although the JPDA is to the north and west of the median point between the coastlines of Australia and East Timor, it is factually incorrect to say that this area of seabed falls within East Timorese seabed territory, just as it is quite incorrect as a matter of law to say that, ordinarily, the seabed and maritime boundary between two littoral states is the median point between their coastlines.

What Senator Harris did not tell the Senate—perhaps because he was ignorant of the fact—is that the edge of the Australian continental shelf, which projects from the north-western coast of Western Australia, is much closer to the southern and eastern boundaries of the land mass of East Timor than it is to the northern and western boundaries of the land mass of Australia. Senator Harris is perhaps ignorant of the fact that, in the determination of international seabed and maritime boundaries, the locality of the continental shelf between littoral states is a much more highly relevant circumstance than the median point between the coastlines. The locality of that boundary is now the subject of negotiation between those two governments. This treaty, and the agreement which gives effect to it, are expressly without prejudice to any outcome which those negotiations might produce.

Senator HARRADINE (Tasmania) (10.04 a.m.)—I want to express concern. I do not want to get into the debate itself; nor are we allowed, I think, under standing orders to
get into the debate. Various assertions have been made. Senator Brandis has made some statements recently. I do not want to discuss those statements or anything that other senators have said. I express my concern at the fact that the way we are proposing to deal with this matter is to make it the subject of a cut-off from the requirements of standing order 111. That is the motion before us. From my point of view that is inappropriate. Others might have known about this beforehand, but I have only just received the report of the Senate Economics Legislation Committee; it is just to hand. I have not had the time to rapidly read through it because I was trying to listen to some of the submissions that were made. I do not know whether I am the only one who has a printed copy. I may have the first printed copy.

Senator Brandis—We furnished a copy to Senator Brown yesterday, incidentally, Senator Harradine, before the end of question time. I should have mentioned that in my speech.

Senator Harradine—Well, you didn’t give me one. I am just expressing my point of view in coming upon legislation and trying to understand it. Normally, Senator Ian Campbell, the Manager of Government Business, makes certain that people have the relevant documentation upon which to make a decision.

Senators might say that this legislation is giving effect to a treaty that is already signed. That is an argument that the government may well make, and make validly from its point of view, but we should not take away the rights of others in the arena, including the parliament if it wishes to thoroughly consider the agreement to see whether or not the implementing legislation is appropriate. But, to do that, you do need to have the information. All right, the treaties committee reported some time ago, but this latest report has just come in, as I said, and I did not have the legislation in my hands until this morning. I do not know where the slip-up was, but I have not had a chance to read the legislation.

I just wonder whether a few days here or there would make a big difference. I know some indication has been given that certain honourable senators do not want to be responsible for the lack of flow of what money may come out of this for the benefit of the other party—or for the benefit of this party, as far as that is concerned—but I presume from my brief reading that, if we pass this legislation eventually, the agreement will have effect anyhow retrospective to the dates that presumably are in the agreement. All I ask is for a fair crack of the whip. It is a bit hard to ask an individual senator or senators to make up their minds on a piece of legislation about which we have received information only very recently.

Senator Nettle (New South Wales) (10.09 a.m.)—The Greens are opposing this motion by the government to push through this legislation because we recognise it is not urgent. The government has put a case to say that it believes it is urgent that we grab the oil away from the Timorese before there is a capacity to deal with this in the International Court of Justice, where the matter of the maritime boundary should be dealt with. This government has withdrawn itself from the jurisdiction and so from being able to be involved in that determination about the maritime boundary, and now it is trying to pull through a piece of legislation that does not just put in place a treaty that has already been ratified.

There is a range of questions that will be asked during the debate about the process by which that treaty was ratified, but what we see here in the piece of legislation the government is trying to bring through today is
not simply a transferral of what was in the treaty into a piece of implementing legislation. With this piece of legislation, the government is attempting to ensure that if the decision about the maritime boundary between Australia and East Timor is made in the court—the maritime boundary that, if we put it in the centre of the two continents, ensures that the entire gas reserve is on the side of the East Timorese—then that decision by the court will be dismissed.

Firstly, let us remember that the government has withdrawn from the court in which the determination will be made, and now it is attempting in legislation to ensure that if a decision is made in the court it will not be primary to the decision because it will already have a piece of legislation through that will ensure that Australia gets its hands on the oil of the East Timorese. East Timor is one of the poorest nations in our region, a country over which this government made a great fanfare about the role it played in going in and supporting the Timorese at the time of the Indonesian militias. Having been in East Timor after the Indonesian militias had gone through and devastated the country, with many Australians working there, Australians have a responsibility to that country—and it is not to grab the oil out from under their feet before they have the capacity for a determination to be made in the International Court of Justice, where it is right and proper that a determination should be made as to whom the oil does belong.

That is the intention of this government, and its intention in relation to the urgency of this legislation is to ensure that greater pressure than has already been exerted is put on the East Timorese government over the issue of the Timor Sea Treaty. It is not urgent that we grab the oil from the Timorese before they have the capacity to have the boundaries determined under in the International Court of Justice. The Greens will never support this raping of resources from East Timor by the Australian government. It is not urgent that we take their oil, and we will not support this motion to ram through a piece of legislation that ensures that Australia takes from the East Timorese the oil that under international law is rightly theirs.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (10.13 a.m.)—I thank all honourable senators for their contributions to the debate. I particularly thank Senator George Brandis, the chairman of the committee that diligently inquired into this bill. I just make the point that the government, under the standing orders, brings forward legislation. The reason we seek exemption from the provisions of standing order 111 is that we would like to deal with this legislation in these sittings. What occurs on days like today is that the government brings forward a bill and seeks to have it dealt with by the democratically elected Senate of Australia, the Senate will vote on this motion and determine whether or not this legislation shall be dealt with in these sittings by being read a second time today, and so democracy will work.

I note that we circulated a statement of reasons why this bill needs to be introduced and why the government seek passage of it in 2004. In his contribution, Senator Brown said that the government had not given any reasons for that. That is not true. We have given reasons. He may not like the reasons, nor may Senator Nettle, Senator Lees, Senator Harradine or others, but we believe that this is important for Australia and important for the Greater Sunrise development, which is a fantastic project that an Australian company, Woodside, should go forward with. Quite frankly, without being melodramatic about it, I want to say it really is a wonderful week. We had BHP Billiton in Western Australia announcing the go-ahead for the
Ravensthorpe nickel project yesterday afternoon—a wonderful project for Australia and a great project for the south-west of Western Australia—and today, 24 hours later, we are debating the need to progress and seeking passage of a bill that will see one of the greatest petroleum projects in the history of mankind progress just off our shores between Australia and one of the world’s newest nations, if not the newest nation, Timor Leste. It is a wonderful achievement.

It is entirely appropriate that the Senate deals with it if there is a majority to deal with it. Standing order 111 does not say that you cannot deal with it; it just says that the Senate needs to think about whether it should deal with it in that session. That is what we are doing. It is entirely appropriate that we debate it. The committee that Senator Brandis chairs had this matter referred to it on 10 March, a fortnight ago. Any senator who had an interest either could have been involved physically, as Senator Brown and Senator Stott Despoja were, or could have followed the proceedings if they were unable to attend. The committee report, I am assured, was available less than an hour after the committee reported in this chamber last night. Any senator who wanted to get a copy last night could have had a copy and read the report of the Brandis committee.

Senator O’Brien made the very good point that the treaty itself has been considered by a very worthwhile committee of the parliament. No-one can say that these matters have not been given thorough consideration by the parliament of Australia and most particularly by the Senate of Australia. Any senator who wanted to take an interest in these matters or anyone in the community who had an interest in these matters—it was advertised to the world 13 days ago that there would be an inquiry—could have been involved in the proud democratic traditions of Australia and this Senate’s scrutiny of legislation and policy. I commend the motion to the Senate.

Question put:
That the motion (Senator Ian Campbell’s) be agreed to.

The Senate divided. [10.22 a.m.]
(The Acting Deputy President—Senator S.C. Knowles)

AYES

Bishop, T.M. Boswell, R.L.D.
Brandis, G.H. Buckland, G.
Campbell, G. Campbell, I.G.
Carr, K.J. Chapman, H.G.P.
Crossin, P.M. Denman, K.J.
Eggleston, A. * Evans, C.V.
Ferguson, A.B. Ferris, J.M.
Forshaw, M.G. Hogg, J.J.
Humphries, G. Hutchins, S.P.
Johnston, D. Kirk, L.
Knowles, S.C. Ludwig, J.W.
Lundy, K.A. Macdonald, J.A.L.
Mackay, S.M. Mason, B.J.
McGauran, J.J.J. McLucas, J.E.
Moore, C. O’Brien, K.W.K.
Patterson, K.C. Payne, M.A.
Ray, R.F. Santoro, S.
Scullion, N.G. Sherry, N.J.
Stephens, U. Tcheon, T.
Treeth, J.M. Watson, J.O.W.
Webber, R.

NOES

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

* denotes teller

Question agreed to.

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Busi-
ness in the Senate) (10.26 a.m.)—by leave—
I move the motion as amended:
That the provisions of paragraphs (5), (6) and
(8) of standing order 111 not apply to the follow-
ing bills, allowing them to be considered during
this period of sittings:
Higher Education Legislation Amendment
Bill 2004
Telecommunications (Interception) Amend-
ment Bill 2004.
Question agreed to.

Rearrange

Senator IAN CAMPBELL (Western
Australia—Manager of Government Busi-
ness in the Senate) (10.27 a.m.)—I move:
That intervening business be postponed till af-
ter consideration of the government business or-
der of the day relating to the Greater Sunrise Uni-
tisation Agreement Implementation Bill 2004 and
a related bill.
Question agreed to.

GREATER SUNRISE UNITISATION
AGREEMENT IMPLEMENTATION
BILL 2004

CUSTOMS TARIFF AMENDMENT
(GREATER SUNRISE) BILL 2004
Second Reading

Debate resumed from 10 March, on mo-
tion by Senator Ian Campbell:
That these bills be now read a second time.

Senator O’BRIEN (Tasmania) (10.27
a.m.)—The Greater Sunrise Unitisation
Agreement Implementation Bill 2004 and the
Customs Tariff Amendment (Greater Sun-
rise) Bill 2004 give effect to the international
unitisation agreement between Australia and
the Democratic Republic of Timor Leste for
the development of the Greater Sunrise pe-
troleum resources. This agreement was
signed by Australia and Timor Leste in Dili
on 6 March 2003. The interests of both Aus-
tralia and Timor Leste will be best served by
the Greater Sunrise petroleum resources be-
ing developed as soon as possible. In particu-
lar, the development of these resources will
generate for East Timor revenue desperately
needed to rebuild an independent and sus-
tainable future.

Labor warmly welcomes Timor Leste into
the community of nations and welcomes the
progress achieved by the people and gov-
ernment of Timor Leste in working to build a
viable, self-sustaining, independent and sov-
eign state. The status of Timor Leste as an
independent nation amongst all others is a
tribute to the resolve of its people. But the
resolve of a people is not enough for a coun-
try such as Timor Leste to take its place
amongst the prosperous nations of the planet.
That nation continues to face significant
economic and social challenges in its nation
building, including the re-establishment of
essential social services, revitalising the
economy, generating employment and
achieving food self-sufficiency.

The development of the petroleum re-
sources of Timor Leste and the funding that
will flow from this is vital to that country’s
economic and social development. The pas-
sage of these bills is just a small step for
Australia to take in enabling that develop-
ment to occur. However, more important for
Timor Leste than the passage of these bills is
the conclusion of a permanent maritime
boundary. This government has shown a de-
sire to ram these bills through both houses of
parliament in just one day; yet it appears in
no hurry whatsoever to meet with representa-
tives of the Democratic Republic of Timor
Leste to negotiate a permanent maritime
boundary.

Worse than this, its actions with respect to
these bills are completely at odds with the
concept of negotiating in good faith. There
can be no doubt that this was all about bully-
ning the government of Timor Leste and press-
suring them in the lead-up to maritime
boundary negotiations. Unlike the bullyboy tactics of the Howard government and those particularly of the foreign minister, Labor in government will negotiate in good faith with Timor Leste and in full accordance with international law and it will do all things reasonably practicable to achieve a negotiated settlement within three to five years. I call on this government to match that commitment. The shadow minister, Mr Fitzgibbon, tells me that this government has told East Timor:

... it does not have the resources to meet on a monthly basis on this issue as requested by Timor Leste.

Thanks to the economic reforms—which were shirked, might I say, by the current Prime Minister when he was Treasurer but implemented by Labor after 1983—Australia is one of the wealthiest nations in the world. For the Howard government to say that Australia does not have the resources is an affront to the people of Timor Leste, one of the poorest countries in the world.

Such a statement by the Howard government to Timor Leste can mean only one of two things—either it is a diplomatic smoke-screen or it is a portent of the state of the Commonwealth budget after the Howard government, lacking an agenda and looking very tired, has attempted to buy itself back into office. Labor considers that Australia should generously assist the people of Timor Leste—the people who assisted our troops so greatly and at great cost to themselves during the dark days of the Second World War—as they work towards an independent future. We should be comprehensively engaged in supporting sustainable development in that country, and the settlement of a permanent maritime boundary is a critical component of this. The dragging out of negotiations on this issue by this government is shameful behaviour in the international community.

This government can, and I guess in all likelihood will, drag out negotiations on what is the single most important issue for Timor Leste—the permanent maritime boundary—yet it condemned the Labor Party for delaying these bills by just one week after providing less than 24 hours to review these bills when it had a whole year to draft them. This government claimed that referral to the Senate Economics Legislation Committee could delay the bills for a year. Is this government already preparing itself to lose control of the legislative agenda, which under the quaint practices of the Westminster system is in the sole control of the government of the day? If the minister had answered Labor’s questions relating to the customs tariff amendment bill when the bills were first introduced, the bills may not have been delayed at all. Woodside’s move to immediately address Labor’s concern on Australian industry participation puts Minister Macfarlane’s lack of knowledge on this matter into sharp focus. Now that Woodside has provided the written assurances that should have been provided to Australian industry and Australian workers by this government, Labor is pleased to give passage to these bills.

Petroleum projects wholly in Australian waters must undertake a process of consultation with Australian industry to maximise Australian industry participation and to qualify for the duty-free entry of goods not able to be sourced competitively within Australia. This process is known as the enhanced policy by-law scheme, item 71 of the fourth schedule of the Customs Tariff Act. In its current form as drafted by the Howard government, the Customs Tariff Amendment (Greater Sunrise) Bill 2004 means that in the case of Greater Sunrise there will be no requirement for these consultative processes to occur. Unlike the anti-Australian business stance of the Howard government, Labor’s
view is that these processes should occur with respect to the Greater Sunrise area, and Woodside has now committed to undertake them. This government should have been looking after the interests of Australian industry and Australian workers, yet it was nowhere to be seen on this issue. The Senate committee process has been important and useful in allowing time for this issue to be addressed and resolved and allowing time to more fully review the bills to ensure that they are entirely consistent with what has been already agreed between Australia and Timor Leste and that they will not prejudice Timor Leste’s right in the Timor Sea in any way.

As I said before, when these bills were originally introduced into the Senate, Labor had less than 24 hours to undertake this review, while the government had sat on them for a year. The all-party committee has concluded that in all respects these bills are entirely consistent with the Timor Sea Treaty and the international unitisation agreement as they were signed by both the Australian government and the Democratic Republic of Timor Leste in Dili on 20 May 2002 and 6 March 2003 respectively. For that reason—that the bills simply implement what has already been agreed between the two countries—Labor is happy now to give the bills passage. Labor is not happy about the things that have not been agreed, however, and calls on this government to do the right thing and to negotiate in good faith and in a timely manner with Timor Leste to establish a permanent maritime boundary that is just and fair and that reflects the joint aspirations of both countries. The Labor Party is not alone in its deep concern about this issue. This is one of the main concerns raised in evidence to the inquiry.

It is also important to Labor that the passage of these bills in no way prejudices Timor Leste’s right in the Timor Sea or the maritime boundary negotiations. I note that article 2(b) of the Timor Sea Treaty states:

Nothing contained in this Treaty and no acts taking place while this Treaty is in force shall be interpreted as prejudicing or affecting Australia’s or East Timor’s position on or rights relating to a seabed delimitation or their respective seabed entitlements.

I also note, however, the concerns expressed by the Prime Minister of Timor Leste, Dr Mari Alkatiri, that the Howard government’s statements and actions are inconsistent with the spirit and the letter of the international unitisation agreement.

While Labor shares these concerns and calls again on the Howard government to act in good faith on these issues, we are satisfied that these bills do not, in themselves, prejudice in any way Timor Leste’s rights in the Timor Sea or the negotiations to establish a permanent maritime boundary. The concerns expressed by Dr Alkatiri lie not within these bills but on the shoulders of this government.

The other major area of concern raised in evidence to the inquiry relates to 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 Timor Leste is settled. According to the Timor Sea Justice Campaign this would remove any incentive for Australia to delay a settlement on the maritime boundary and would remove the possibility of Australia being unjustly enriched at the expense of East Timor. Under a Labor government this will be totally unnecessary because we will negotiate in good faith with the people of Timor Leste and we will do all that we can to settle the maritime boundary issue expeditiously. In any case, the Attorney-General’s Department said that there is no need for a trust or escrow account because the unitisation agreement itself specifies the allocation of the proceeds between the two countries.
The Senate committee noted that there is provision in the unitisation agreement for either country to request a review of the production sharing formula and for the formula to be altered by agreement between Australia and Timor Leste. The passage of these bills will provide the developers of the Greater Sunrise field with the regulatory certainty that is so important to attracting investment capital and product markets to underpin development, for which there is intense global competition. Timely development of Greater Sunrise will deliver investment, exports, jobs and revenue to both countries. Timely agreement on a permanent maritime boundary will provide many more opportunities for economic development for both countries, but particularly for Timor Leste in its enormous challenge to rebuild an independent sovereign state and provide for the economic and social welfare of its people.

Labor, as I said, has deep reservations about the conduct of the Howard government over the course of this entire affair—the bullying of the East Timorese and the contemptuous approach the government has taken in the Senate in relation to these bills. As far as I am aware, however, no representative of the Democratic Republic of Timor Leste has asked that these bills not be passed. We also note that Timor Leste must legislate for similar measures for these matters to take effect. In these circumstances, we do not intend to obstruct passage of this legislation. Ultimately, we believe, it will fall to Labor to address the damage to Australia’s relationship with Timor Leste that this episode has caused and we will embrace that responsibility when it is presented to us by the Australian people, hopefully later this year.

**Senator STOTT DESPOJA** (South Australia) (10.40 a.m.)—Once again I rise in this chamber to express my disappointment, shame and anger at the way that this government has treated the people of Timor Leste, particularly in relation to its dealings on the matter of the Timor Sea. I think it is a tragedy that a nation which was instrumental in assisting Timor Leste to achieve its independent status could subsequently treat its newest neighbour with contempt.

Let us be clear: when it comes to plundering the rich resources in the Timor Sea, Australia staked its claim from the outset—literally from the first moment of Timor Leste’s independence. On 20 May 2000 Timor Leste became the world’s newest nation. Before the day was over the Australian government ensured that they had signed the Timor Sea Treaty and an exchange of notes to govern arrangements until the treaty came into force. The drafting of these agreements was not the only preparation undertaken by the Australian government in the lead-up to Timor Leste’s independence. Two months earlier the government had apparently secretly sent officials to New York to lodge declarations in which Australia withdrew from the jurisdiction of the International Court of Justice and the United Nations Convention on the Law of the Sea specifically in relation to maritime boundaries. Later, in the national interest analysis, the government conceded that the secrecy surrounding that mission was intended to prevent any claims being brought against Australia under international law prior to the lodging of the declarations.

There is plenty of evidence to suggest that Australia’s withdrawal from UNCLOS and the ICJ has been interpreted as an act of bad faith by the people of Timor Leste. The evidence is out there; it is in the public domain. The evidence is in grassroots reports from non-government organisations. Indeed it is in evidence before committees: the Joint Standing Committee on Treaties and the Economics Legislation Committee that dealt with this legislation. This evidence has been presented to inquiries into this legislation and to
the Joint Standing Committee on Treaties during its inquiry into the Timor Sea Treaty. I note that in the previous debate there was an acknowledgment of the fact that the agreement was considered by the Joint Standing Committee on Treaties. The Democrats were involved in that process and we have a report that outlines some of our concerns.

The conduct of Australia in withdrawing from those bodies not only reflects very badly on Australia but sets a poor standard of behaviour for our newest neighbour. In their submission to the Joint Standing Committee on Treaties, the East Timor Institute for Reconstruction Monitoring and Analysis said:

Australia and others in the international community consistently encourage East Timor’s new government to implement democracy, the rule of law, transparency and safeguards against corruption as we develop our governmental structures and practices ... at the same time, Australia is not practicing what you are preaching us to do. When your country withdrew from legal processes for resolving maritime boundary disputes, you taught us the opposite message—that when the booty is large enough, the legal principles go out the window.

The Australian Democrats have long believed that it is in our country’s best interests to support the structures and principles of the international legal system which have been established to promote collective security, the just resolution of disputes and international peace. In practical terms this means submitting to the rule of law even when this may be contrary to our immediate financial interests.

There is also an obvious point: if Australia is so confident of its claim under international law, why would we fear submitting it to the jurisdiction of the ICJ as a last resort—that is, if negotiations should fail in any way? If our claim is so strong and we are so confident of it, why would we withdraw from those jurisdictions? Why would the claim fail in the ICJ? Is it that our government may suspect that Timor Leste may just have the stronger claim? After all, the Joint Petroleum Development Area lies on Timor Leste’s side of the median line between it and Australia, and the Greater Sunrise field is twice as close to Timor Leste as it is to Australia.

Australia’s withdrawal from UNCLOS and from the ICJ was one of the first heavy-handed tactics used in relation to Timor Leste in the history of this shameful saga. There is also the fact that Timor Leste was compelled to sign the Greater Sunrise agreement in circumstances in which it had little choice. This goes to the heart of the bills before us, the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and the Customs Tariff Amendment (Greater Sunrise) Bill 2004. The government has consistently argued that these bills should be passed because they simply fulfil Australia’s obligations under the Greater Sunrise agreement. This, of course, is also the argument that has been put forward today and previously by the opposition. That is the justification that the opposition has put forward for supporting the bills that are before us.

The response of both parties to the serious concerns expressed by Democrats, NGOs and others is that the agreement has already been signed and, more specifically, that it was agreed to by Timor Leste. On face value, this argument is accurate. However, the Greater Sunrise agreement must be considered in the context in which it was signed. Prior to the signing of that agreement, Timor Leste expressed serious concerns regarding its terms. These concerns related to Timor Leste’s view that most, if not all, of Greater Sunrise falls within its borders under international law and therefore it is entitled to any taxation revenue.
It remains unclear whether or not the agreement would survive a subsequent change to Timor Leste’s maritime boundaries or whether it would be possible to amend the agreement to reflect the new boundaries. On the basis of these concerns, Timor Leste wanted the ratification of the Timor Sea Treaty to proceed independently from the negotiations of the Greater Sunrise agreement. However, evidence suggests that it was Australia that insisted that Timor Leste sign the agreement before Australia would proceed with the ratification of the Timor Sea Treaty. This doggedness was compounded by a looming commercial deadline for the ratification of the treaty. It had to be ratified by 11 March 2003 to ensure that the $15 billion Bayu-Undan development would proceed. We all remember that debate in the chamber. It seems that these debates are always characterised by rush and haste to get them through.

By insisting that the Greater Sunrise agreement be finalised prior to the ratification of the Timor Sea Treaty, the Australian government compelled Timor Leste to agree to compromise its long-term interests in order to meet its short-term needs. Timor Leste has also indicated that it signed the Greater Sunrise agreement on the understanding that Australia would proceed with the negotiation of the permanent maritime boundaries expeditiously and in good faith. We have heard a lot about good faith in this chamber today. In a press release issued this week, the Timor Leste Prime Minister, Dr Alkatiri, said:

We signed this agreement on the clear understanding that Australia recognised our claims and sought not to prejudice our rights in the Timor Sea, as stated in the IUA, and that consequently, it would engage in good faith negotiations on permanent boundaries.

Yet Dr Alkatiri notes that while Timor Leste has proposed monthly meetings aimed at resolving this dispute expeditiously, Australia claims it does not have the resources to meet more than twice a year. As the release points out, Timor Leste is one of the poorest countries in the world, yet we are one of the richest. Meanwhile the Australian government continues to grant licences and collect revenue in areas of the Timor Sea which potentially belong to Timor Leste.

If we were under any illusions or uncertainty in relation to that last statement, it was clarified in questioning at the Senate committee on Monday night. Certainly, I and others put to the government, to representatives of the departments, that we wanted to know the rationale for the monthly meetings. Indeed, a strong argument was: that is not enough time in which to judge the complexities of this debate and, indeed, the legal debates that are taking place. But I did not hear compelling evidence for six-monthly meetings—meetings twice a year—instead of each month as requested by the government of Timor Leste. We have not heard compelling reasons for such a great period between meetings. That does not smack of good faith—quite the opposite. It smacks of a government that is taking its time; it is not indeed proceeding in an expeditious manner.

The Timor Leste government points out that, since signing the Greater Sunrise agreement, Australia has issued two exploration licences in areas adjacent to the Greater Sunrise field. It has also earned an estimated $1.5 billion from the Corallina, Laminaria and Buffalo fields, all of which are in disputed areas. I do not think anyone denies that. Once again, I refer to Prime Minister Alkatiri’s press release:

Timor-Leste has no maritime boundaries, and securing them is an integral part of the new nation’s right to self-determination. The resources that Timor-Leste is entitled to under international law will be crucial in helping to rebuild the shattered nation, address mass poverty and achieve economic independence.
While I acknowledge that people in this chamber today have put forward potential views, or have speculated about the views of the government of Timor Leste, you cannot get it bolder than that. It is a statement from the Prime Minister of Timor Leste, in the Prime Minister’s own press release. They are incredibly concerned about the process and the rate at which it is proceeding.

This brings me to whether or not ratification of the Greater Sunrise agreement is in Australia’s best interests. The rhetoric that we so often hear from government officials and, indeed, from the government today in this place is that Australia has a right to pursue its own interests in the same way that Timor Leste will no doubt pursue its own interests. However, this argument is based on the assumption that Australia’s best interests are somehow inconsistent with those of Timor Leste.

The Democrats do not believe this is the case. On the contrary, we believe that it is in our nation’s best interests to help the people and the government of Timor Leste to become a strong, independent and financially secure nation. As the Timor Sea Justice Campaign argues, it is not in Australia’s interests for Timor Leste to have significant debts and to remain dependent on aid. Oxfam Community Aid Abroad have argued:

For Australia, an economically unviable East Timor could threaten national security and that of the region. An unstable East Timor could lead to a flow of refugees to Australia with associated costs. The Australian and international community would expect the Australian government to bear much of the responsibility for increased humanitarian aid and assistance, and the provision of continued peacekeeping and security assistance to East Timor.

The Democrats believe that financial benefit should not be the sole determining factor as to whether a particular action is in the best interests of Australia. Other factors, of course, need to be considered. In this case we believe that the overwhelming negative impact of the Greater Sunrise agreement on Australia’s foreign relations and standing within the international community far outweighs—certainly, it is beginning to far outweigh—the financial benefit that will flow from proceeding with ratification at this time. And the timing of the legislation is what we are talking about.

Let us be frank: there are other countries paying attention to this. Many countries are paying attention to how we are handling this. This subject is being viewed by the eyes of the world. Only last week, as we know, 54 Congress men and women from America wrote to our Prime Minister to express their concerns about the way in which negotiations were being handled and ask us to expedite those negotiations. Indeed, part of the letter, as I understand it, also referred to something which Senator O’Brien referred to, the notion of keeping that revenue in trust until the boundaries were finally determined. The letter called on our government to expedite negotiations.

This recommendation in relation to the trust has also been put forward by the Timor Sea Justice Campaign in its submission on the bills. The Democrats believe it is a good recommendation and one which the Senate should adopt. I will move an amendment to proceed in that way. This is the intent of the Democrat second reading amendment: we are calling on the government to hold all tax revenue it receives from Greater Sunrise in trust until the permanent boundaries have been determined. We believe that this will provide an incentive for our government to expedite the negotiations with Timor Leste. It is unfortunate that a financial incentive is required but obviously there is overwhelming evidence to suggest that, in the absence of such an incentive, our government will maintain what we consider is a lax approach.
to negotiations while still continuing to help itself to revenue that could belong to the people of Timor Leste.

I note that production on the Greater Sunrise field is not due to commence until 2009, which means of course that there is plenty of time for maritime boundary negotiations to be completed without holding up the flow of revenue from the field. In other words, it may be that there is no need to place revenue in trust because the permanent boundaries will have been determined before any revenue is collected. That is certainly what the Democrats are hoping could be achieved.

Significantly, the Australian government has not been able to identify any problems associated with the Democrats’s proposal. I specifically asked questions in relation to this at the committee proceedings on Monday night. While a number of officers, I acknowledge, expressed the view that the trust fund requirement was unnecessary, I do not believe that anyone sufficiently identified any problem or specific difficulty that would arise from the adoption of that proposal.

With that in mind, I urge honourable senators to consider the proposal carefully. I certainly call on the opposition, in light of their comments today, to favourably view an amendment which I think would be quite a constructive addition to this debate. We believe that it is important and eminently reasonable. It is a proposal that clearly has support outside this chamber. Its underlying objective is to ensure a just and fair distribution of resources in the Timor Sea in accordance with international law.

I want to make just a couple more comments about the process that has taken place in relation to this legislation. I was very careful in my comments in relation to the cut-off exemption debate not to go into the substantive issues surrounding the bills. I was keen to stick only to process and to speak briefly. While I acknowledge that some senators from the Labor Party and the coalition believe that this legislation has been adequately dealt with because it occurs within the context of the broader agreements that have already been debated and analysed, be it through other committees or specifically through the Joint Standing Committee on Treaties, I have to note that every time we have dealt with legislation pertaining to these agreements—firstly, the Timor Sea Treaty and now Greater Sunrise—we have dealt with them with an alacrity that is undeserved, unwarranted and inappropriate.

On both occasions now, we have run into the chamber, having been given legislation at very short notice. In fact last time this was due for debate, around 10 March, two weeks ago, senators came in here, having only just been given a copy of the legislation that morning—indeed, all senators except the Australian Democrats. I acknowledge that was a genuine mistake on behalf of the government; it was not intended. However, it was completely inappropriate, hence our insistence that this legislation be referred to committee. The committee process was expedited on Monday night. Clearly, we had a couple of hours for a hearing. Those of us who could participate did. There is absolutely no negative reflection on the secretariat; I thought they handled the situation incredibly well. Indeed, I acknowledge that people had the opportunity to present both verbal and written submissions. But that does not deny the fact that it was done very speedily and that there are other groups who, with more time, would have contributed to the debate in a more meaningful way.

I think that the government underestimates the level of community interest in this legislation, not just among the Australian
community but also among the Timor Leste community. It does that at its peril. I was not seeking to deny or delay these bills in a way that was unseemly or not constructive. But a couple of days? That is all we are talking about. My amendment seeks to amend the legislation in a way that does not corrupt the substantive nature of these bills despite my concerns with them and the concerns of others in this place. It is at least a reasonable and constructive addition to legislation that for many people has involved a process that has been heartbreaking. Once again, I put on record my concern about not only the process but also potentially what we are doing to the community and the government of Timor Leste. I move the second reading amendment circulated in my name:

At the end of the motion add:

but the Senate:

(a) condemns the Government’s withdrawal from the United Nations Convention on the Law of the Sea and the jurisdiction of the International Court of Justice relating to maritime boundaries;

(b) calls on the Government to:

(i) work towards the permanent delimitation of maritime boundaries between Australia and East Timor expeditiously and in good faith;

(ii) pending the permanent delimitation of maritime boundaries between Australia and East Timor, hold any revenue that might otherwise have been collected under the Petroleum Resource Rent Tax Assessment Act 1987 from the area to which the Greater Sunrise International Unitisation Agreement applies, in a denominated interest bearing escrow account; and

(iii) upon the permanent delimitation of maritime boundaries between Australia and East Timor, ensure that all monies and interest held in the escrow account be distributed between Australia and East Timor in accordance with the permanent maritime boundaries.

Senator Brown (Tasmania) (11.00 a.m.)—The Greens will be supporting that amendment. In the committee stage I will be moving two amendments on behalf of the Australian Greens: the first to refer the matter of the dispute on the border between Australia and Timor Leste to the International Court of Justice and the second to ensure that if that does not occur—if there is not an end to the dispute on the boundaries—then the agreement that is inherent in this legislation becomes null and void.

I want to reiterate the gravity of the situation that will arise out of this legislation. Timor Leste is the poorest nation in our region. Australia is the richest nation in our region. Following the fall of Suharto—after years of Australian governments of both persuasions supporting the Suharto dictatorship’s enslavement of East Timor—Australia went to the aid of East Timor after a very bloody insurrection by the East Timorese people. Remember that there was an East Timorese population of 800,000 and there were estimates of a quarter of a million people killed after the invasion by Indonesia in 1975. Remember the years following of complicity in that illegal occupation by serial Australian governments of both the coalition and the Labor Party. It is a shameful period in Australian history. It was not a position that was supported by the Australian people, but Australian governments took that position in the interests of economics and power politics in the region.

After the act of self-determination in which the great majority of East Timorese voted for nationhood and their own governance, Australia, with enormous support from the Australian people, helped gain the peace and restore security to East Timor. For that the East Timorese people have been hugely grateful. But the oil companies were present
in great numbers at the day of celebration of independence in East Timor. I know because I was there. It was quite amazing how many representatives of corporations were there, rather than people from the general spectrum of the Australian and international communities. We now know that the Australian government has been working in the interests of those companies to cement the theft of the oil and gas fields which lie on the East Timorese side of the border—that is, if it were properly placed halfway between Australia and East Timor.

Remember that in 1979 Australia agreed with dictator Suharto to a border arrangement with Indonesia which put the boundary between Australia and Indonesia at halfway. But with East Timor there was a different outcome. East Timor has been expendable in terms of justice. It became expendable because there were already very rich people in corporate Australia and elsewhere who could make themselves richer by the theft of resources from the East Timorese people.

I turn to one of the submissions made to the committee—which peremptorily met on Monday night to look at the matter—to put an East Timorese point of view. This submission came from the East Timor Institute for Reconstruction Monitoring and Analysis. It is in the name of Joao da Silva Sarmento, Timor Sea Project Coordinator, and it is authorised by the institute. It refers to the bills that we have in hand. Let me read the submission from the East Timorese people represented in this document. It is addressed to every member of this Senate and it says:

Last year, we pointed out that the Sunrise IUA—

the agreement we are dealing with—
as coerced upon the new nation of East Timor, is part of an ongoing effort by the Australian government to deny East Timor’s sovereignty for Australia’s short-term material gains. We are unhappy to observe that Australian policies over the past year, including the issuance of new exploration licences in disputed areas and the continuing collection of revenue from Laminaria-Corallina and other oil and gas fields claimed by both East Timor and Australia, continues this behaviour.

Under current international law principles, the maritime boundary between two nearby nations’ exclusive economic zones is almost always defined along the median line between their coasts. Once again, we urge Australia, as East Timor’s government has done officially, to recognise that East Timor has a legitimate claim to maritime resources which lie closer to East Timor’s coast than to Australia’s, and to seriously and expeditiously negotiate a permanent maritime boundary with your new neighbour to the north. Until that boundary is settled—

and note this, Acting Deputy President Kirk—

Australia’s extraction of resources and signing of contracts in this area is tantamount to an illegal occupation of our territory.

And so it is.

Senator Lightfoot—Rubbish!

Senator BROWN—The honourable government member opposite says ‘rubbish’ to a clear and unarguable point of view which the government knows to be true and which the government itself has recognised by withdrawing the International Court of Justice’s ability to adjudicate in the matter. This government knows what it is doing is illegal.

The submission from the East Timorese goes on to say:

In our previous submission—

that was mid last year—

we explained the self-serving mare nullius doctrine that seems to govern Australia’s actions, and the current legislation perpetuates that fiction. By repeatedly referring to the “Eastern Greater Sunrise Area” as “sole Australian jurisdiction,” you deny the independence that so many East Timorese people struggled and died for over the past quarter-century.
This is the East Timorese people speaking to every senator in this place. They go on to say:

Although Australia is rightfully proud of the role you played in leading InterFET in 1999 to help us emerge from illegal Indonesian occupation, many East Timorese are beginning to wonder if it was a more pragmatic move—the beginning of a new military occupation so that our southern neighbour could continue to steal our oil, just as our northern neighbour formerly took our lives.

One illustration of the content your Government has for our nation is the use of the term “Joint Authority” in the current legislation for an agency which represents only the Australian government. This is intentional obfuscation, but it exemplifies your government’s belief that there is no substantive difference between the TSDA joint authority comprised of two sovereign governments, and a “Joint Authority” between two hemispheres of a Commonwealth Minister’s brain.

Like many in Australia, we were surprised at the urgent pace with which your Government tried to push this legislation through Parliament last week without prior notice, although the IUA—that is, the agreement—was signed more than a year ago, and the JSCT issued its report in July 2003. The unseemly haste with which this legislation is now moving through your Parliament reminds us of 22 March 2002, when your government withdrew from impartial maritime boundary dispute resolution mechanisms under the International Court of Justice and the International Tribunal for the Law of the Sea, informing your Parliament only after the action was taken. At that time, your National Interest Analysis explained:

“The action was not made public prior to it being taken to ensure the effectiveness of the declaration was maintained. Public knowledge of the proposed action could have led other countries to pre-empt the declaration by commencing an action against Australia in the International Court of Justice that could not be brought once the new declaration was made.”

Here we have the East Timorese pointing out why the Australian government moved stealthily without informing this parliament, the people of Australia or anybody else: because it did not want a court to be able to be approached to seek justice in this matter. This was the Australian government acting to avoid the law, and quite deceitfully undermining international law in the interests of the oil companies against its obligation to inform the Australian people and the Australian parliament. It takes the East Timorese to tell us this. How must they feel about what is going on in this place today? Let me finish reading from this telling submission to this Senate from this East Timorese authority. It says:

We do not yet know which of East Timor’s legal rights your government is attempting to undermine by the rushed ratification of the Sunrise IUA legislation, but past experience makes us concerned. East Timor is Australia’s closest neighbour (as well as the largest, albeit unwilling, foreign contributor to the Commonwealth budget), and we believe that good relations between us, as well as the long-term economic and political stability of our new impoverished nation, are in the best interests of both Australia and East Timor.

Unlike Australia’s withdrawal from—the international court, this agreement—requires ratification by the Government of the Democratic Republic of East Timor as well as that of the Commonwealth of Australia. We hope that our new and under-resourced Government will act with more fairness, fuller deliberation of all relevant issues, attention to the rule of law, consultation with its constituents, and consideration of the long- and short-term consequences of its action than your Government is demonstrating with its approach to this legislation.

What an indictment of this government—and, indeed, this opposition—is this submission from East Timor. Here we have the fraudulent, coercive theft of the one great resource this new, poor neighbour of ours
has to develop its future and to secure its future.

Senator Lightfoot—It was discovered 30 years ago. You can’t call that a rush.

Senator BROWN—Let me say this against the interjections opposite: there is a matter of security here. You can hear in this submission from the East Timorese the rising tide of anger about this new colonialism being implemented by the Howard government and aided and abetted by the Latham opposition. It is despicable. It is untenable. It is unjust. It has no place in a democratic country which believes it went to East Timor on the basis of principle. It leaves the East Timorese people themselves saying, ‘Did you really come to save us or did you come to grab the oil?’ We believe increasingly the East Timorese are saying, ‘It looks like you are coming to get the oil.’ What will the Australian people think of this in the coming years and decades when they recognise this country is involved in high theft and illegal theft and is denying an approach to the international court because it knows it is theft? What a low point this is in Australian governance. What a cheating of the Australian people and their principles the two great parties in this parliament are involved in.

They would not stand up against the Suharto regime when it illegally occupied East Timor and killed hundreds of thousands of East Timorese. Not one of the big parties had the guts to stand up then, nor for decades. Now they are moving to thief this oil and gas resource which belongs to East Timor, not to this nation. This is theft. How dare this government and this opposition engage in it. What a rotten past this is. Where is the dignity, the decency and the neighbourliness in this process? How dare we consider this in the rush that is occurring today. How dare it happen. What a rotten position this is. It is left to the Greens, the Democrats and One Nation to stand up to what the big parties are doing. You must all feel ashamed, Acting Deputy President, because I do and so do the other members on the crossbench. What a terrible situation.

If I feel angry about it, how must the East Timorese who know about it feel? Involved in this is the robbery over the next three decades of at least $8 billion from East Timor. Do you know what, Acting Deputy President? The budget of East Timor represents $100 per head of population. That is $1 every third day that the government can spend per person in East Timor. Do you know what our budget is? It is hundreds of billions of dollars. Here is one of the poorest countries on the face of the earth—which needs to develop its schools, its hospitals, its police and security forces and its agriculture; to defend itself; and to build its tourism and hospitality industries—and we are involved today in the process of taking from it its rightful money to do those things for the next three decades. We will live to regret this.

Senator Lightfoot interjecting—

Senator BROWN—You will live to regret this because involved in the process is a measure of undermining our own nation’s security. If you increase the hostility in a neighbour then you increase the insecurity of yourself. To do so illegally makes it all the worse.

There will be questions asked during the committee stages today, but if this government acts true to form then it will not answer many of those questions. Even if it does and the information adds to the already compelling, unarguable case against this legislation and the process it involves, the opposition will go across and vote for this legislation with the government. We are going to live with this for decades, as I have said, and we are going to have to undo it further down the line. Woodside might be happy—it is going
to make millions, and so will its shareholders. I will be asking about its contributions to the parties during the course of the committee stages.

Let me just finish on the injustice of this whole process. A government member earlier referred to the fact that there has been no submission from the East Timorese government as such to the committee. So we have almost no notice, hold the committee overnight, confine it to 1½ hours and then complain when it goes over time. All this for a committee looking at such an important and complex matter as this. The East Timorese government did not appear because it is not for embassies and governments to appear before committees in cases like this—it is a minefield for them. I asked all of the government representatives on that committee if they had been down to the East Timorese embassy in Canberra. None of them ever had been. One of them thought he knew where it was. I could tell them that it was in a disused school building given to the East Timorese delegate through the ACT government, because the Commonwealth did not provide that facility. It has one staff member. Sure, there were lots of meetings with Woodside. Sure, lots of East Timorese have been to the Australian Embassy in Dili over this matter. But nobody in government has been down to the Timor Leste embassy in Canberra. In fact they do not know where it is, in the main. That says it all. *(Time expired)*

Senator CARR (Victoria) *(11.20 a.m.)*—Senator Brown has just delivered a highly emotional response to this issue. I congratulate him on it. I think these are issues he feels very strongly about and it is appropriate that these issues be put forward in a very forceful manner—and Senator Brown has certainly done that today. There is a point of fundamental difference here though. The Labor Party is supporting this legislation. It is not that we disagree per se with the view that this government has let down the people of East Timor. We do not disagree with that view at all. What we do disagree with is a number of assertions that Senator Brown has made today.

The first proposition concerns the actual nature of this debate. Senator Brown has, as I say, in a colourful way broadened out the debate to include a whole range of issues relating to Australia’s relationship with Timor Leste. He has, as he is entitled to do, drawn attention to what he sees as some of the implications of this legislation. He has not talked about the legislation itself. What he has emphasised is the failure of the Australian government to reach agreement on the general issue of the treaty and to ensure that there is appropriate support for the government of Timor Leste. He has further put the view that the government of Timor Leste does not agree with this legislation. That is not a statement of fact.

The reason I put that counter view to you, Senator Brown, is that the opposition does not rely upon the assertions of the Australian government on such sensitive matters. The Australian opposition has sought to talk directly to the government of Timor Leste, and the Prime Minister, Mr Alkatiri, spoke with Mr Rudd and Mr Jull last week. Specific questions were put on the issue of whether or not there were problems with the opposition in this country supporting this legislation, and the response was no. So we feel that the issue of this particular legislation, which should be the subject of this debate, is worthy of support—and I will explain the reasons for that—and that is the view that the government of East Timor is putting to us. We are not relying on hearsay here. We are not relying on press reports. We are not even relying on the Australian government. We are getting it directly from Dili.
This is legislation which gives effect to an international unitisation agreement between Australia and Timor Leste. This agreement was signed on 6 March 2003 in Dili and forms part of Australian and Timor Leste joint obligations under the Timor Sea Treaty. This legislation ensures the speedy development of the Greater Sunrise petroleum resource, which is a matter of great importance to both countries because it provides for the development of a project which will ensure significant numbers of jobs, significant infrastructure development and significant opportunities both for Australian industry and for the people of Timor Leste.

The ratification of this agreement will provide impetus for further exploration and development in the Timor Sea which is essential for the sustainability of the Timor Leste state—and it is important for the sustainability of the region, I might suggest. The development of the Greater Sunrise resource will provide a much needed injection of cash flow into Timor Leste. Revenue flow will allow for the provision of basic services, including hospitals, schools and other infrastructure. But that alone is not enough. More importantly to the government and to the people of Timor Leste, it goes to the broader issue, to which Senator Brown has drawn our attention again today, of the maritime boundaries. There are no internationally agreed maritime boundaries at the moment, and securing them, we in the Labor Party say, is of great importance to the development of the nation of Timor Leste. The resource assets identified will provide capital and revenue for the rebuilding process and underwrite the financial viability of the people of Timor Leste.

In contrast to the haste that has been evident in the way in which the government has sought to pursue this legislation through the parliament, the government appears not to have any real interest in securing that side of the arrangements. In my judgment, it has not negotiated in good faith, and now it appears that it is delaying still further the boundary negotiations. In this discussion here today we have already heard from a number of speakers who point to the fact that the Australian government has been tardy in the way it has addressed the very basic question of the number of meetings that can be called upon to resolve these issues. Frankly, there is no justification for the six-monthly meetings the government proposes, and I think that is reason for people to argue the case that the government has not been negotiating in good faith.

Unlike the government, Labor are committed to good faith negotiations to ensure the long-term benefits for the people of Timor Leste. In government, Labor will do this in an expedient way to ensure, in accordance with international law, that our commitments regarding the boundary negotiations will be resolved. We think that the whole range of issues should be resolved over the next couple of years. The Timor Leste people have endured many hardships in their independence struggle. These hardships are over and they are now entitled to look towards their independence and their position within the global community with the support of the Australian people. However, it strikes me that there are a considerable number of challenges that remain for the people of Timor Leste and its government, and there must be a clear priority given by the Australian government to maintain and build a sustainable socioeconomic infrastructure for that country.

We are not entirely responsible but we have a contribution to make there. Labor wholeheartedly supports Timor Leste in all these ongoing challenges: the development of infrastructure, sustainable health and welfare services, balanced economic employment opportunities and, obviously, the re-
requirement for the provision of basic services. Revenue is central to that nation-building role. You cannot sustain a modern state without adequate independent sources of revenue. It strikes me that the exploitation of petroleum resources is one way of facilitating that objective. This an area which is rich in resources, and it is appropriate that Australia facilitate the development of those resources.

This legislation also has important implications for Australian industry and represents huge opportunities for the Australian petroleum industry through the Sunrise joint venture project. Woodside have already invested over $200 million in exploration, appraisals and concept developments for the project. The total investment is up to $7 billion for the life of the project. That is a huge investment, and I see that we have an opportunity here to ensure—it is the parliament’s obligation to ensure—that development. In a similar way the development of the North West Shelf petroleum resource has generated 70,000 direct and indirect jobs since 1986. That is an example that can be followed as to the opportunities that flow from these sorts of ventures, so long as all the other requirements for approval processes are met and, of course, the appropriate negotiations occur with various levels of government—and that includes the government of Timor Leste.

The project also represents a huge investment in technology. There are opportunities here for further advancement in exploration technologies. The legislation also represents an investment in long-term economic development, which should be able to consolidate gas markets in Asia and further development of markets in the North American west coast. Market negotiations are currently under way with the joint venture partners. This is a project where there is a requirement to provide some certainty and security for those who are investing large sums of money.

The legal, administrative and financial framework is of key importance to the viability of the project. The international unitisation agreement is a critical step in that process. Ratification of this agreement through this legislation is therefore critical to the ongoing nature of the project. This is why the Labor Party will be supporting it. We appreciate that there are serious questions that need resolution through a proper legislative process. We are rightfully concerned about the tardiness of the government—not just in its relationship with Timor but also in its relationship with this parliament. This matter has been appallingly handled. How is it that the department can, presumably, allow the situation to emerge where in the legislative program this matter gets shunted back in the way that it has been? I trust that the department was able to provide adequate advice to the government, but I find it extraordinary that circumstances such as these can be allowed to develop to this point.

For the local industry, both in Australia and in Timor Leste, the speedy development of resources means ready and speedy access to other opportunities in construction and manufacturing and other allied industries. These opportunities relate both to the onshore and offshore components of this project. The construction work force alone is likely to peak at around 3,000. I am advised that many of these opportunities will flow through to opportunities for further development with regard to the training and employment of the Timor Leste people. Furthermore, the legislation requires the joint venture partners to meet licensing requirements across both the joint petroleum development area and the Australian portions of the project. The requirement will ensure best practice by the parties and the highest occupational health and safety and environmental standards. These are important considerations in this legislation. I look forward to
other senators drawing my attention to where that is not occurring.

Importantly, the legislation we are considering also includes customs duty concessions under the Customs Tariff Amendment (Greater Sunrise) Bill 2004. The purchase of material and plant not available in Australia has always been subject to duty concessions through the enhanced project by-law scheme. The scheme also requires Australian industry participation to be maximised. The Customs Tariff Amendment (Greater Sunrise) Bill 2004 means that these consultations would not be required for the project. That was the sort of thing we were very concerned about. The industry implications of that were matters that Mr Jull drew attention to in the other chamber. The minister, unfortunately, failed to provide satisfactory explanations in answer to our questions. As a result of the failure to provide that advice to the opposition, this matter had to be pursued through the Senate processes. It is important that we identify that Woodside have provided clear and direct assurances on these issues. We will be looking to Woodside to make sure that those assurances are carried out. These assurances of Australian industry participation are undertakings to maximise local content, and the development has been warmly welcomed by the Labor Party. The guarantee of local content delivers certainty and security for the industry and an ongoing impetus for further exploration and development. These combined efforts should prove to be of ultimate benefit to both the Australian and Timor Leste people.

Senator LEES (South Australia) (11.34 a.m.)—The legislation before us today, the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and the Customs Tariff Amendment (Greater Sunrise) Bill 2004, effectively ensures that Australia will have control over the huge Greater Sunrise gas and oil field in the Timor Sea. The legislation is so one-sided that East Timor has threatened to withhold ratification of the Timor Sea Treaty with Australia, which was signed to enable the development of these fields. This treaty provides a legal and financial framework for sharing the enormous potential revenue from the billions of dollars worth of gas and oil in the Timor Sea. But the treaty was negotiated under duress. Timor Leste were pressured into signing. They signed believing that we would negotiate proper boundaries in good faith. They signed on the understanding that we were friends and that we would sort out the boundary dispute in good faith. They signed knowing that this was virtually their only opportunity for real revenue, for a real chance to earn foreign currency.

The Australian government now claims that it cannot afford to meet more than once every six months, despite Timor Leste wishing to meet and keep talking each month to get the boundary dispute sorted out. The terms of the treaty state that East Timor will receive 90 per cent of the oil and gas revenue from the small Bayu-Undan gas field. The total income from this, once the field is developed, is expected to be around $3 billion. However, the terms of the treaty state that Timor Leste receives only 18 per cent of the revenue from the much larger and more lucrative Greater Sunrise field that we are discussing today. The estimated value of this is around $30 billion. Timor Leste receives nothing from the Corallina-Laminaria field, which is currently providing around $600 million in revenue to the Australian government.

Obviously, Timor Leste are very pleased to receive any revenue from this gas field, but we should not be happy in settling for so much of it. Yes, if we include our continental shelf, as has been argued again here today by members of the government, we can get the boundary inched out closer and closer, kilo-
metre by kilometre, towards their coastline, but this is not the usual method used. This resource is about two-thirds of the way across the sea as we head over towards Timor Leste. In other words, it is twice as close to them as it is to us. It is highly likely that under international maritime law Timor Leste can lay claim to a far greater proportion of the Timor Sea oil and gas reserves, particularly if a median line, a middle line, is drawn equidistant from both countries—certainly much more than the 18 per cent they have had to settle for—and we would get a lot less than the 82 per cent that we have basically pressured them into agreeing to.

But Australia has ruled out the option of being involved under international maritime law. We have actually withdrawn from the compulsory maritime boundary arbitration mechanisms of the UN Convention on the Law of the Sea and the International Court of Justice. Effectively, this has prevented East Timor from continuing the process, from seeking an independent resolution under international law, and control has been handed to us—and we are in a far more powerful position—over how the boundaries are going to be determined and how the revenue is going to be divided up.

I argue very strongly that Australia should not be acting in self-interest in this issue. We surely must consider what is fair and right. I believe, as a country, we have an international obligation—and surely a moral obligation—to assist Timor Leste whenever we can. We are neighbours, we are supposedly friends, and this is certainly not how you treat your friends. Australians have put their lives at risk in East Timor to help the East Timorese get self-determination, and now a wide range of Australians are helping in a vast array of ways as the people of East Timor struggle to get basic services. We have Australian schools linking up with schools in Timor Leste, helping them to get books and other school equipment and passing on second-hand clothes. We have people raising money for the peoples of East Timor with backyard barbecues and all sorts of other functions. We have aid agencies formally working in East Timor to make sure that their basic services, which were largely destroyed during the process of obtaining self-determination, are back and running—even basic infrastructure like roads that need to be rebuilt.

 Australians obviously want the government to maximise opportunities for Australians. We want money, we want income to provide Australians with services. But, given the details of what this treaty actually means and what we are doing today, I believe most Australians would want both houses of this parliament to be far more aware of the needs of the East Timorese and prepared to share far more fairly the income from this very valuable resource. They have virtually no other significant opportunity to earn foreign currency. They do not have a lot of options. To suggest that we will still keep taking care of them, that we will still keep giving them foreign aid, misses the point. They will be able to look after themselves far better if we are able to ensure that they get a fairer share of this tremendous resource.

This boundary dispute is something that absolutely has to be settled. If we simply cannot agree then it has to go to international arbitration and we have to put aside a large percentage of the revenue—40 or 50 per cent—into a trust fund. As a number of people have suggested—and I was able to listen to some of the committee hearing on Monday—a logical way to sort this out is to let Woodside go ahead. They should be given the green light to operate this field. It is not their problem. It is not up to them how the revenue that they provide to governments is shared. It is up to government, particularly
the government of Australia, to make sure that the income generated from this resource is shared fairly between us and East Timor.

As I have said, this is not an issue that we can quickly deal with in this place and hope it will go away. I am very disappointed that the government is pressing ahead today to deal with this legislation so soon after the committee hearing and without, I believe, a proper and adequate airing in the Australian community. Timor Leste is one of the poorest countries on this planet and we are one of the wealthiest. While of course we want to maximise our wealth, it is our responsibility to make sure that Timor Leste receives its fair share of this resource. I close by saying that, on this issue, Australia is simply being greedy.

 Senator CROSSIN (Northern Territory) (11.41 a.m.)—I rise this morning to provide some comments on the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and the Customs Tariff Amendment (Greater Sunrise) Bill 2004. These bills put in place the framework that is necessary to give effect to the agreement between Australia and the Democratic Republic of Timor Leste relating to the unitisation of the Greater Sunrise petroleum resources. We know that this agreement was signed in Dili on 6 March last year and that it governs the unitisation of the Greater Sunrise petroleum fields. We know that this agreement was signed in Dili on 6 March last year and that it governs the unitisation of the Greater Sunrise petroleum resources. Ratification of the agreement by both Australia and East Timor is required to provide industry—and, in particular, Woodside—with the certainty that is needed to proceed to develop this major resource. At this time, though, I am not aware whether East Timor has ratified, or when it will ratify, this agreement.

The Greater Sunrise Unitisation Agreement Implementation Bill puts into place the administrative arrangements for the development of this resource, and the customs tariff bill provides for the duty-free entry into the Greater Sunrise unitisation area of all goods and equipment required for the petroleum activities. The Greater Sunrise petroleum resource comprises the Sunrise and the Troubadour deposits and, as we know, lies in the Timor Sea. That is approximately 500 kilometres north-west of Darwin. So the development of this resource, the debate we have about this resource and bills such as these are of utmost importance to the Northern Territory but in particular to the city 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 adjacent Northern Territory area. I understand that a witness who appeared before the Joint Standing Committee on Treaties, which first looked at this last year, proclaimed that this resource:...

... is a world-class petroleum resource containing an estimated 8.4 trillion cubic feet of natural gas and 295 million barrels of condensate. It is estimated that 20.1 per cent of these resources lie within the JPDA ... and 79.9 per cent lie outside it.

As I said last year, Australia and East Timor agreed to the unitisation of this petroleum resource. Under the unitisation agreement, East Timor’s share of the Greater Sunrise field is calculated by reference to the agreed formula that applies to the sharing of the JPDA, where East Timor has title to 90 per cent of the petroleum resource. There has been much debate about this; I will perhaps go into the sea boundaries a bit later. In effect, this means that under this development and as the Timor Sea boundaries currently stand East Timor receives 90 per cent of the 20.1 per cent of the Greater Sunrise field that lies within the JPDA. Australia’s share is the 10 per cent remainder of the 20.1 per cent
from the JPDA—the 79.9 per cent of the Greater Sunrise field outside of the JPDA. Allowing for the calculations involved, this means that Australia’s actual share of the Greater Sunrise field is around 82 per cent. 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 bills before us, the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and the Customs Tariff Amendment (Greater Sunrise) Bill 2004, allow Australia to do exactly that.

We know that there have been many objections to these bills. Those objections have been raised by the Democrats, by the Greens and even by Senator Harris and Senator Lees. Let me say categorically that this party does not resile from the fact that we support the concerns that have been raised here this morning, particularly by Senator Bob Brown and Senator Natasha Stott Despoja, about the haste with which these bills have been dealt in this parliament—they were rushed through a couple of weeks ago in the House of Representatives—and about the demand that the Senate deal with these bills within 24 hours. The bills were in fact sent to the Senate Economics Legislation Committee. They had a public hearing on Monday night. We heard today that some people only received the final printed copies of the report late last night or this morning.

The process has not been adequate. It has been totally inadequate. It is not good enough. There have been no reasons given by the government as to why they would want to rush such legislation through this parliament in such a short period of time. One can only assume that it is because they want this legislation in place before negotiations on the Timor Sea boundaries begin around 25 April, as I understand it. There has really been no reason given for there being such a rush with this. We agree with other parties and Independent senators in this chamber that the process has been totally inadequate. Nevertheless, the bills are before us today. These bills need to be supported so that administrative arrangements can start to be put in place.

There have been some objections to the passage of the bills and these were raised in evidence to the committee on Monday night. It is not the first time they have been raised. Unless this government deals with some of these issues appropriately, it will not be the last time they are raised. In each case, the objections reflected concerns not primarily with the content of the bills but with the content of the agreement, with the processes or with the relationship that this government fails to have with the government of East Timor. The concerns that were raised in relation to these bills go to two issues, though there are a number of other issues that I believe have not been adequately addressed.

Predominantly, the groups that appeared before the committee on Wednesday night—that is, Australians for a Free East Timor and the Timor Sea Justice Campaign—had concerns about whether the Australian government has negotiated and intends to negotiate in good faith with the democratic government of Timor Leste in relation to the unitisation agreement with East Timor. The Timor Sea Justice Campaign suggested that Australia had coerced the government of East Timor into signing the agreement by refusing to ratify the Timor Sea Treaty until East Timor signed the Greater Sunrise unitisation agreement. The discourse between Minister Downer and that country is on the record. I spoke about that matter last year when the agreement was first put through this parliament.
Groups like Australians for a Free East Timor have continually raised concerns about this country’s commitment to reaching agreement with East Timor about the maritime boundary between the two countries—a boundary which is in dispute. This morning we heard Senator O’Brien quite clearly outline that the government have said they are only prepared to meet with the East Timorese government every six months, not each month as requested by the Timorese. Therefore, one has to wonder what emphasis or priority this government puts on it. As was said so eloquently this morning, this is one of the richest governments in the world negotiating with the poorest country in the world. It seems that we do not have the inclination, time, priority or commitment to meet more regularly. I fail to understand how that can be the case. We ought to ensure not only that we meet as often as the East Timorese government require us to but that we make it one of the highest priorities if we are really serious about trying to provide a better outcome for East Timor in this matter.

The Australian government has withdrawn its agreement for the dispute with East Timor to be arbitrated through the dispute resolution mechanisms of the International Court of Justice and the international treaty on the law of the sea. The government are not only fast-tracking negotiations with East Timor on the boundaries but also saying, ‘Where we have disagreement, we’re not going to enter the international arena. We don’t want to play by those rules. We’re not going to join that court. We’re not interested in resolving the dispute that way.’

According to Oxfam Community Aid Abroad, although states are obliged under international law to refrain from exploiting resources in areas of overlapping claims, this government has in the past year issued two new permits for exploration in the disputed area. Once these bills go through the parliament, perhaps it will be no longer a priority for this government to negotiate the boundaries in good faith or to do so in any sort of haste. But we will be watching closely and continuing to ask questions about that to ensure that it takes place.

Representations made to me point to the concerns that even the Congress in America has in relation to Australia’s treatment of East Timor. In fact I understand that on 9 March members of the United States House of Representatives called on Australia to fairly negotiate its maritime boundary with neighbouring East Timor within three to five years. I understand that in a letter to the Prime Minister, John Howard, 53 members of Congress called on Australia ‘to move seriously and expeditiously in negotiations with East Timor to establish a fair, permanent maritime boundary and an equitable sharing of oil and gas resources in the Timor Sea’.

So this is being debated in America and it would seem that, if America thinks we ought to do it, this government should probably be bound to take notice. That seems to be the track record of this government in the last 18 months. It is of concern that the rest of world is watching what we do and how we treat the poorest country in the world. We have the capacity to expedite the negotiations on the maritime boundary and the Timor Sea but we do not seem to have the will, the time or the commitment to make it a priority. The world is watching, and currently it is an appalling situation.

The Australian Labor Party agree with the Democrats, the Greens and the Independent senators in voicing their concern about that position. We agree that it is not good enough to be holding up this country and ensuring that we get a greater slice of the cake when what underpins the whole thing are the maritime boundaries in the area in which this re-
source sits. We believe there is a need to go ahead and negotiate a permanent maritime boundary between Australia and East Timor so that, at the end of the day, East Timor gets a better share of the deal.

The Labor Party have a long history of assisting the East Timorese. We warmly welcome Timor Leste into the community of nations, as we have done from day one, and recognise the progress achieved by the East Timorese people and government in working to build a viable, sustainable, independent and sovereign state. We recognise that the status of Timor Leste as an independent nation amongst all others is a tribute to the resolve of the East Timorese people.

Senator Kemp—And the leadership of John Howard. What about Whitlam, Hawke and Keating? It is an absolute disgrace.

Senator CROSSIN—In Darwin we have a very large community of people who have come from East Timor and chosen to make Darwin their home who still have a number of relatives in East Timor. Can I just say to the minister interjecting that, if the government were really serious about ensuring that there is Australian industry participation in the resource projects in this area. That is a concern time and time again when we look at the major developments that are occurring out of Darwin and involving the city of Darwin and in this instance involving Australian industry participation. It is good to see that Woodside has agreed to write to the minister committing, as the operator of the Sunrise gas project, to maximising local industry participation in the project and undertaking industry consultative processes of the kind normally required of projects under the Enhanced Project By-Laws Scheme.

We believe that this is a good outcome. It has perhaps taken the economics committee inquiry on Monday night to achieve that and to push the point, to push the envelope. I think it reflects a solution by agreement without the need for legislative amendment or changes to the IUA, which would have required treaty negotiations. I notice that paragraph 3.22 of the Senate report says:

... the Committee noted assurances received from Woodside Energy Ltd ... that its practice of maximising local content in its projects would be ‘unchanged by the Customs Tariff Amendment (Greater Sunrise) Bill 2004’.

We welcome that announcement and we will be working with Woodside to ensure that...
industry participation in this process is maximised.

Finally, one cannot help but make a comment about my colleagues from the Northern Territory in this place. This is the second time we have had bills relating to the Timor Sea and the Greater Sunrise resource coming before this parliament. As I said when I spoke about last year’s bills, I am very disappointed not to see Senator Scullion, my fellow senator from the Northern Territory, on the speakers list for the government. This is the second opportunity he has had to espouse the benefits of this resource for this country, for the city of Darwin and for the people of the Northern Territory, and he has failed to take the opportunity. In the House of Representatives we had Mr Tollner espousing what I believe are close to mythological statements in relation to what is happening there. It is one thing to come into this place and talk about a bill; it is another to be fairly loose with the truth, but that is the wont of members of this government from time to time. Mr Tollner said on 10 March 2004, just some weeks ago, in relation to the Northern Territory government:

They are doing nothing to progress the needs for onshore gas ...

He also went on to say in relation to the Northern Territory government:

They are happy to settle for a floating LNG plant which will see all of our gas exported overseas.

Nothing could be further from the truth—nothing at all. I am not sure who does Mr Tollner’s research for him. I doubt very much that he does any of his own. I doubt very much that he even stands up for his own electorate with statements such as that.

But what an indictment, not so much of the Northern Territory government—you would expect people like that to play politics with this issue—but of the business community in the Northern Territory, who through the establishment of Team NT have been diligently working with Clare Martin and the Northern Territory government to put a case for gas onshore. Dave Malone, Bruce Fadelli and Steve Margetig in particular have been outstanding. Many others have been involved as well, and of course the work of the Northern Territory Chamber of Commerce deserves a great deal of credit. In a speech that Clare Martin gave some months ago she reiterated that these people have lobbied their national business groups, they have seen federal ministers and they have kept up a relentless but appropriate campaign which has been of great assistance to the efforts of the Northern Territory government to get gas onshore. Clare Martin has done an east coast roadshow, winning support from influential bodies for gas onshore. Advertisements have been placed in the *Australian Financial Review* and the *Australian* leading to strong interest from members of the public. A business group has mailed out a synopsis of its report and has received strong support from 450 Territory businesses. A major outcome of Team NT’s work was the announcement by the producers of a review of the domestic gas case. There has been much done in pursuing this. *(Time expired)*

**Senator HARRIS** (Queensland) *(12.02 p.m.)*—I rise to make One Nation’s contribution to the debate on the Greater Sunrise Unitisation Agreement Implementation Bill 2004. What we are addressing needs to be clarified. The name of this bill does not articulate to a person in the street what it is about. It is clearly about the division of petroleum resources in the Timor Sea. The Greater Sunrise location in some cases falls within 40 kilometres of the East Timor coastline and lies approximately 450 kilometres from the Australian coastline.

If we look at the history, we see that Australia was a very strong participant in establishing the international law of the sea. Aus...
Australia’s participation goes right back to the early stages of the development of that agreement. However, in March last year Australia withdrew its support for that agreement, and that is consistent with the timelines that we see in the development of the Greater Sunrise issue. If we were to follow the basic intention of the international law of the sea, the resource would fall totally within the jurisdiction of East Timor. Statements have been made here this morning in relation to the division of the resource rental taxes and other revenues from the resource and how Australia is to ensure that 90 per cent of this is transferred to East Timor. However, a briefing note has been provided to us by Woodside. Woodside’s participation in this program is in relation to concessions that they have in the area relating to two exploration permits. Woodside says:

The project will generate estimated government revenues of A$10 billion, to be shared between Australia and Timor-Leste over the 30-40 year life of the project. It is not possible to be absolutely accurate about royalty streams or incomes from the project since contracts are yet to be signed and the project is yet to be completed. Even Woodside acknowledges that we cannot accurately say what Australia’s percentage of the royalties will be and what will go to East Timor. One Nation wants to put it very clearly on the record that we believe that all funds from this resource should go directly to East Timor.

The other concern that One Nation has is in relation to a current court action that the Australian government now finds itself tied up in in the District of Columbia. The action is between Oceanic Exploration Company, a Delaware corporation, and ConocoPhillips Incorporated, also a Delaware corporation. If we look very clearly at the complaint in relation to this case we see that it is listed in various forms such as violation of the Racketeering Influence and Corrupt Organization Act—an American act—intentional interference with a contract, intentional interference with prospective economic advantage, unjust enrichment and unfair competition. The primary action is, as I said, between Oceanic Exploration and ConocoPhillips, but co-joined to that there are approximately 20 other Phillips companies that are all Australian registered. Also cojoined in this is the Timor Sea designated authority for the Joint Petroleum Development Area—that is an unincorporated entity—and the Timor Gap Joint Authority for the zone of cooperation, an entity organised pursuant to the Timor Gap Treaty.

I will look at both of those entities. Firstly I will look at the Timor Gap Joint Authority for the zone of cooperation. It was established pursuant to article 7 of the treaty between Australia and the Republic of Indonesia on the zone of cooperation in an area between the Indonesian province of East Timor at that time and Northern Australia. That is known as the Timor Gap Treaty. The joint authority has established a banking relationship with the Chase Manhattan Bank in New York; it maintains and controls deposits and flowthrough accounts with the Chase Manhattan Bank in New York; and it directs those entities that owe money to the joint authority for activities in the zone of cooperation of the Timor Gap to deposit or transfer such funds by wire to its Chase Manhattan Bank account. So the joint authority, which is an organisation between Australia and the Republic of Indonesia, does not even house its banking in Australia.

Secondly, I will look at the designated authority. This is the Timor Sea designated authority for the Joint Petroleum Development Area, and it is referred to in this action as the designated authority. It is an unincorporated entity established by the joint commission pursuant to article 6 of the Timor Sea Treaty between the government of East Timor and
the Australian government. The designated authority is a customer of the Chase Manhattan Bank in New York and the designated authority maintains and controls both depositary and flowthrough accounts with Chase Manhattan Bank in New York. The designated authority directs firms that owe money to it for activities in the Joint Petroleum Development Area of the Timor Gap to transfer such funds by wire to its Chase Manhattan Bank accounts.

I would like to make a reference to an amendment that Senator Natasha Stott Despoja has moved. It highlights the importance of those funds being held in a trust account until this issue is sorted out. I will now go to the history of Oceanic Exploration, the company that is bringing this action. The saga goes right back to 1642, when Portugal colonised East Timor. Oceanic Exploration, at the end of 1968, applied to the Portuguese government for a concession in the East Timor area, and that was granted. Oceanic Exploration undertook extensive research and study, including the gathering of seismic information and the preparation of detailed prospect maps for exploration and drilling in the East Timor area.

During that period Australia began to adopt the position that it was entitled to the possible hydrocarbon reserves in the East Timor Sea off the East Timor coast. Australia took this position, despite the fact that the Geneva Convention on the Law of the Sea codified the principle that maritime boundaries should be an equal distance between the respective countries’ shorelines—approximately 300 miles off each country’s coast. Australia argued instead that the division for recognition of the exercise of dominion by Portugal and Australia should be drawn a mere 40 miles off the East Timor coast, which would leave discovered oil and gas reserves in the possession of Australia. At the same time Australia conducted negotiations with Indonesia, and on 17 May 1971 Australia and Indonesia signed the Australia-Indonesia continental shelf agreement which delineated the maritime border between Australia and Indonesia. Because East Timor was a Portuguese province the agreement did not address a maritime border in the East Timor Sea between East Timor and Australia.

Therefore the boundary line under this agreement between Australia and Indonesia had a gap for the area between East Timor and Australia. The gap in the boundary line has come to be known as the ‘Timor Gap’. That is the history of this whole East Timor sea resource. Australia, I believe possibly for the first time, has been named in a court action in relation to intentional interference with a contract, unjust enrichment and unfair competition.

What are the options for Australia? I believe, firstly, that they may try to challenge the jurisdiction of the actual case, but it will be a little difficult because the appellant, the plaintiff, is the Oceanic Exploration Company, which is a Delaware corporation, clearly American. The defendant that is named is ConocoPhillips Inc., also a Delaware corporation. Again, it is very difficult to challenge the jurisdiction of this case. Secondly, Australia could file a defence. Thirdly, they could cross-claim. This case is actually proceeding. It is in the preliminary direction hearing stage and it is going forward. It begs this question: while there is a legal case afoot based on the ‘international law of the sea’, why is Australia pushing this legislation through with undue haste? It is because, in one way, this case puts in question the leases that Australia has granted over this area since 1976.

I am not going to pre-empt the outcomes of a law case in America, but if they were to find in favour of the plaintiff then Australia would find itself in a difficult situation, because the next step, obviously, is a challenge
to Australia’s ability to grant the very exploration licences that this agreement is based on. That is the issue that One Nation brings to this debate. It is not whether the resource or the taxes and revenues from this resource should be divided and in what particular percentage. One Nation questions whether we should be progressing this legislation while this court case is afoot. The outcome of this court case will end up having a profound effect one way or another on these agreements. It is with these closing comments that One Nation places clearly on the record that we will be opposing the legislation.

Senator O’BRIEN (Tasmania) (12.18 p.m.)—In terms of the Democrat amendment, while Labor has some sympathy with the sentiments of the Democrats on this issue, these bills, the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and the Customs Tariff Amendment (Greater Sunrise) Bill 2004, relate simply to the implementation of matters already agreed between Australia and Timor Leste. Therefore, only those matters that are agreed should be included. Giving effect to those matters is essential to clear the way for the development of the Greater Sunrise resource so that revenue can start flowing to East Timor—where it is desperately needed to rebuild the country—and to Australia.

In government, Labor will of course negotiate expeditiously and in good faith the permanent delimitation of maritime boundaries with the Democratic Republic of Timor Leste, in full accordance with international law and all its applications, including the United Nations Convention on the Law of the Sea. In the past, we have noted with extreme concern the government’s decision to withdraw from the jurisdiction of the International Court of Justice. This has had the consequence that neither Australia nor Timor Leste now recognises its jurisdiction on such matters.

We condemn the government for dragging out the negotiations on the maritime boundary issue and we support the Democrat call for the government to negotiate expeditiously and in good faith. Under a Labor government, the Democrat call for moneys and interest from Greater Sunrise to be held in escrow would be totally unnecessary because we will negotiate in good faith with Timor Leste and we will do all that we can to settle the maritime boundary issue expeditiously. As the committee noted, there is provision in the unitisation agreement for either country to request a review of the production sharing formula, and for the formula to be altered by agreement between Australia and Timor Leste. Accordingly, Labor will not be supporting the second reading amendment of the Democrats.

Senator ABETZ (Tasmania—Special Minister of State) (12.20 p.m.)—I thank honourable senators for their contribution to these important bills, the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and the Customs Tariff Amendment (Greater Sunrise) Bill 2004. I welcome the comments from the opposition. I note the opposition’s support for the legislation, albeit that, in the other place, the member for Lingiari made some inappropriate comments, I would suggest, in relation to his anti-business stance. But we will let that go through to the keeper. I simply say that, if he wants to be shadow resources spokesman, the way to develop resources within this country and within our economic jurisdiction is to have a good relationship with those companies and enterprises that seek to develop them.

These bills implement an agreement between Australia and East Timor to develop and commercialise the Sunrise and Troubadour petroleum fields in the Timor Sea as a single unit. These fields, known as the Greater Sunrise petroleum resource, straddle
the border between the Joint Petroleum Development Area established by the Timor Sea Treaty and an area of Australian jurisdiction. Putting in place the legislative framework for the unit development of Greater Sunrise will contribute significantly to investor certainty—a necessary precondition for the development of the resource.

Development of Greater Sunrise will provide substantial benefits to both Australia and East Timor. From development will flow investment, exports, employment and revenue. Development can also be expected to enhance the Timor Sea as a destination for exploration activity, to the benefit of both nations, particularly East Timor. I am particularly pleased to note that the economic development of the Northern Territory will be greatly assisted by the development of the Greater Sunrise project. Senator Nigel Scullion from the Northern Territory has always championed the interests of the Northern Territory and this project, because of the benefits that will flow not only to the people of East Timor but to the Territory itself.

This year sees the first phase of petroleum production from the Bayu-Undan field in the Joint Petroleum Development Area. Further development of that project, which includes construction of a liquefied natural gas plant near Darwin, together with Greater Sunrise, will consolidate Darwin’s position as a major oil and gas centre. I know that prospect excites not only Senator Nigel Scullion but also David Tollner, the member for Solomon. This government has made economic development in the Territory a high priority, as demonstrated by its support for the Alice Springs to Darwin railway.

The credentials of Australia and East Timor to act in cooperation were established with the ratification of the Timor Sea Treaty, which governs the development of the resources of the Joint Petroleum Development Area. The Greater Sunrise unitisation agreement being implemented by this bill consolidates these credentials. Maritime boundary discussions are in progress between Australia and East Timor, but nothing in the Greater Sunrise unitisation agreement or in this implementation bill allows either nation to use the agreement to support its boundary claims. These are separate issues. The Australian government is pleased to honour its agreement with East Timor by making legislative provision for its implementation. The government looks forward to ratifying the agreement when East Timor’s implementation measures are also in place. The bill to implement the unitisation of the Greater Sunrise resource brings closer the day when Australia and East Timor can announce the expected commencement of petroleum production from Greater Sunrise.

I now seek to join issue with some of the matters raised by honourable senators during the debate. There has been some suggestion that there has not been the degree of consultation or meetings that would have been desirable. I indicate to the Senate that since the signing of the unitisation agreement by both countries on 6 March 2003, approximately 12 months ago, the Australian government has been in dialogue with the government of East Timor with regard to the implementation of the unitisation agreement and the Timor Sea Treaty, including those with the Australian Embassy in Dili. Since that time the records of the Department of Industry, Tourism and Resources show that there has been regular contact with East Timorese officials on a range of matters relating to petroleum activities in the Timor Sea, including Sunrise unitisation. Since that date there have been at least 10 meetings. These have been held in Dili, Darwin and Canberra, and there have been telephone conferences. In addition, there have been numerous email and telephone contacts. The Joint Standing
Committee on Treaties processes on the unitisation agreement were commenced in May 2003 and hearings were held in Canberra on 23 June 2003. The treaties committee reported on 19 August 2003.

I turn to the issue of East Timor’s maritime boundary claims. Australia does not accept East Timor’s claims to areas to the east and west of the Joint Petroleum Development Area, which include the Laminaria and Corallina oilfields to the west and part of Greater Sunrise to the east. It is the government’s view that these deposits are within areas of the continental shelf over which Australia has sole sovereign rights. Nevertheless, we are committed to negotiating a permanent maritime boundary between Australia and East Timor. It is an important matter and precedent indicates that such a process can take some considerable time. Nevertheless, following scoping talks with East Timor on 12 November 2003, some four months ago, it was established that formal negotiating rounds would be held twice yearly starting in April 2004—that is, next month. It is nothing out of the ordinary for maritime boundary negotiations to occur in half-yearly time frames; given the complexity of the issues as outlined in the committee report, it would be unrealistic to expect otherwise.

I turn to the issue of East Timor’s claims to revenues from petroleum activities outside the Joint Petroleum Development Area. We are aware of East Timor’s claims to revenues from petroleum fields lying to the west of the Joint Petroleum Development Area. However, the government does not accept that East Timor has jurisdiction over any of the deposits in the claim area and rejects any inference that petroleum companies—or for that matter, as Senator Brown claims, the Australian government—are operating illegally. The suggestion has been made that the Greater Sunrise revenue should be placed in a trust account. The unitisation agreement signed by both countries provides an agreed method for allocating the revenues and we are seeking to simply implement the agreement.

Then there is the issue of the legal basis of East Timor’s claims. In Australia’s view, international law does not require a state to cease petroleum operations in an area simply because another state subsequently makes an overlapping ambit claim to sovereign rights over that area. The issue of legal action being taken by Oceanic Exploration has been raised. The government stands by the actions Australia has taken with respect to the exploration and development of the resources of the Timor Sea and refutes any allegation of corrupt practices on its part. Any claims by Oceanic against Australia will be strenuously defended.

The issue of Woodside’s local industry participation plan has been raised. The government welcomes Woodside’s commitment to encouraging participation by both Australian and Timor Leste industry in the development of the Greater Sunrise resource. The preparation of a local industry participation plan similar to that required under the government’s new enhanced project by-law scheme will increase the benefits that flow from the project to both Timor Leste and Australia. But the government could not force the preparation of such a plan because Timor Leste insisted that there be duty-free entry of petroleum production related goods into the Greater Sunrise area.

I have already referred to the issue of consultation, but I amplify that by noting that Senator Brandis, Chairman of the Economics Legislation Committee, which looked into this bill, noted in his report that the bill was referred to the committee on 10 March. The committee received submissions from four non-government organisations, four private
individuals and Woodside. He emphasised that all these were considered by the committee, notwithstanding that they did not all appear before the committee at the hearing. He stated that this response demonstrated that the time frame did not prevent interested bodies or individuals from making their views known. Additionally, an invitation was made to the Timor Leste embassy in Canberra, advising them of the hearing and inviting them to participate.

Finally, I turn to the International Court of Justice issues. The government’s position is that maritime boundaries are best settled by negotiation, not by reference to third party dispute settlement. Indeed, domestically, more and more we are seeing a trend away from litigation—quite properly—and toward trying to have negotiated outcomes and results. I would have thought that that being done on an international level would be welcomed by most Australians. Consistent with this, the government has placed a condition on its acceptance of compulsory jurisdiction under the so-called optional clause of the International Court of Justice. It has also entered a reservation in respect of the dispute resolution procedures under UNCLOS. This is consistent with international law. I thank honourable senators for their contributions to the second reading debate and I commend the bill to the Senate.

Question put:
That the amendment (Senator Stott Despoja’s) be agreed to.

The Senate divided. [12.36 p.m.]
(The President—Senator the Hon. Paul Calvert)

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Ayes…………  43
Noes…………  11
Majority…….. 32

AYES

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Calvert, P.H. Campbell, G.
Chapman, H.G.P. Colbeck, R.
Collins, J.M.A. Conroy, S.M.
Cook, P.F.S. Crossin, P.M.
Denman, K.J. Eggleson, A.
Ferguson, A.B. Forshaw, M.G.
Hill, R.M. Hogg, J.J.
Johnston, D. Kirk, L.
Lightfoot, P.R. Ludwig, J.W.
Macdonald, J.A.L. Mackay, S.M.
Mason, B.J. McGauran, J.J.J. *
McLucas, J.E. Murphy, S.M.
O’Brien, K.W.K. Payne, M.A.
Ray, R.F. Santoro, S.
Scullion, N.G. Sherry, N.J.
Stephens, U. Tchen, T.
Watson, J.O.W. Webber, R.
Wong, P.

Original question put:
That these bills be now read a second time.

The Senate divided. [12.40 p.m.]
(The President—Senator the Hon. Paul Calvert)

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<td>Cook, P.F.S.</td>
<td>Crossin, P.M.</td>
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Ayes…………  43
Noes…………  11
Majority…….. 32

AYES

Abetz, E. Barnett, G.
Bishop, T.M. Boswell, R.L.D.
Brandis, G.H. Buckland, G.
Calvert, P.H. Campbell, G.
Chapman, H.G.P. Colbeck, R.
Collins, J.M.A. Conroy, S.M.
Cook, P.F.S. Crossin, P.M.
The report released last month by the Senate’s Economics References Committee, entitled *The effectiveness of the Trade Practices Act 1974 in protecting small business*, followed on from the Dawson review, which had been conducted prior to the High Court’s decision in the Boral case. Although the Boral decision was considered by the members of the Dawson review just prior to the release of their report, this Senate review is the first to also take into account the views of the public following the High Court’s Boral and Rural Press decisions. At the core of the report is section 46, the misuse of market power provision of the Trade Practices Act. The Senate committee has unanimously recommended reform to section 46 to clarify both the Boral and the Rural Press decisions.

This senate report is also important because it confirms, in a unanimous decision, that the Dawson review recommendation on collective negotiations by the means of notification should be implemented. The review received important input from all small business sectors, which are to be congratulated on their positive approach and now on their united response to the outcome of the report. Small business are also to be congratulated for their efforts in combining under several industry groupings to promote their cause. Submissions were received from groupings representing most small business sectors: pharmacies, independent grocers, retailers, panel beaters, the motor trades, liquor retailers, newsagencies and others. I have spoken directly to the pharmacists and the grocers and they are very happy with the recommendations.

This report is of special importance because of the continued significance of small business to the Australian economy, particularly in rural and regional towns and districts, where they are often the mainstay of local communities as an employer and as a contributor to local life. I am pleased to note that small business have come out strongly in support of the recommendations of the government senator’s report. Firstly, Senator Brandis’s report covers reforms to the misuse of market power provision in section 46. To quote Senator Brandis’s recommendation:...

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... ensure that the Act achieves its core objective of promoting competition.

The report from all senators pointed out how this section in particular had strayed from the original intention of the legislature when it was introduced in 1986. Support for this point of view and for the need for change to reflect the intentions of the original purpose of the section was agreed to by the Chairman of the ACCC, Graeme Samuel, in the submission from the ACCC. This has resulted in a unanimous agreement that section 46 must be available as a remedy for small business in a form that reflects the intentions of the 1986 test, when the test was changed from ‘substantial control of a market’ to ‘substantial degree of power in a market’. The then Attorney-General, Lionel Bowen, said:

... an effective provision controlling misuse of market power is most important to ensure that small businesses are given a measure of protection from the predatory actions of powerful competitors. Unfortunately, section 46 as presently drafted has proved of quite limited effectiveness in achieving that result, principally because the section applies only to monopolists or those with overwhelming market dominance.

The amendments are designed to address these problems. The government members’ report has suggested there be an amendment to section 46 to deal with predatory pricing to cover situations in which a corporation has a substantial degree of power in a market and has taken advantage of this power for the proscribed purpose in the act against their competition. Under this, the court may have regard to the corporation’s capacity to sell below cost. The Boral decision virtually required a monopoly position. In returning to the intent of the 1986 amendment, it is hoped to get through the threshold for small business.

The second area where there has been support from all committee members and endorsement from the small business community in relation to section 46 is to reverse the High Court decision in the Rural Press case, which resulted in a narrowing of section 46. All agreed with the ACCC proposal for reform to cover the situation where a corporation with substantial power in one market takes advantage of that power to engage in proscribed conduct in another market. Another important remedy under consideration is for actions brought by small business under section 51—actions which are a whole new remedy provided by the coalition government.

Following the Reid report, Senator Brandis has recommended a lifting of the statutory limit of the transaction from $3 million to $10 million. Small business and farmers have, for many years, needed a speedy process to allow them to negotiate on a collective basis with their large customers and processors. In the years following the deregulation of their rural and other industries, they have been faced with an increasing concentration of customers—for example, through the consolidation of grocery sales by Coles and Woolworth’s and the disappearance of other customers as small businesses have dwindled. This continues through the consolidation of other markets like liquor or insurance companies for the motor trades. Other small business people like newsagents also need these powers when dealing with a small number of publishers. With the increase in large national contracts becoming the norm, legislation allowing this process is needed now.

Introducing a notification process rather than a very protracted authorisation process will help to rebalance the market power and bargaining power between big businesses and small individual businesses and producers. The National Party has always been at the forefront of reform to the area of collective negotiations, which are presently only permitted following an authorisation by the
ACCC. It is pleasing to see that all committee members agree with implementing the Dawson recommendation for collective negotiations, including collective boycotts. That is very important. It is no good having collective bargaining if there is no end point to it. There has to be a point where there is some muscle. I am glad that everyone has agreed with that recommendation.

In the report government members stated that they noted that collective bargaining by small businesses was one of the key recommendations of the Dawson report and that the government has already announced its intention to legislate for it, adding that government members support this recommendation. I, too, am very supportive of this recommendation, which has now been a unanimous decision of several inquiries, the latest being the Senate committee, and was previously endorsed by the Dawson review.

The government has also been very supportive of this change to collective negotiations. Treasurer Peter Costello, in his response to collective negotiations in the Dawson review, said:

Rural and regional stakeholders ... will welcome the introduction of a notification process to facilitate collective bargaining by small businesses dealing with large businesses. This would apply to businesses that supply or acquire goods in transactions valued at less than $3 million per year, or a larger sum if varied by regulation.

I welcome this move but the limit must reflect the real terms of transactions. I give the example of dairy contracts, where some of the bigger farmers would probably have over $1 million worth of milk going to processors.

Collective negotiations are an important tool, an essential tool for small business in the present climate of commercial dealings with increasingly concentrated customers and suppliers, so granting the right to collectively negotiate must never form the basis of discrimination against a group that has chosen to get together to collectively negotiate. This right, agreed to not only by the government but by the main competition enforcer, the ACCC, must be respected by the strong party on the other side. I think Senator George Campbell would see the relevance in that. Big business must know that this right to collectively negotiate is a right granted by law which is a legitimate part of the bargaining process, that it is here to stay and that they must always operate within its framework. The government has made many gains in support of small business. This includes the reforms that came out of the fair trading review, such as representative actions being brought by the ACCC on behalf of small business and the recognition of regional economies.

A hugely important reform that came out of this review was the introduction of the Retail Grocery Industry Ombudsman. The grocery industry ombudsman and the grocery industry code of conduct are currently being reviewed after three years of operation. Both the ombudsman and the code have operated as a most worthwhile support for small business and farmers, and were introduced by this coalition government. I congratulate the ombudsman in his efforts in mediating disputes. His presence and the presence of the code and its industry committee have been of great assistance in normalising relations. I look forward to the continuation of the ombudsman and the system that has been established following the review.

Other important developments from this reform have been the increasing adoption of codes of practice, and I give an example of a code of practice being worked on with the assistance of the ACCC that will have great application for the horticultural industry through all its stages from the farm to the retailer. All parties need transparency in their dealings all the way along the line, such as
growers knowing whether they are dealing with an agent or with a wholesaler.

Governments have acted to assist the small against the big in our deregulated marketplace. The next welcome move will be the easier notification process for collective bargaining. As the premium dairy farmers will tell you, getting an authorisation can involve tremendous costs and take years, and then it can be subject to appeal with the need to go right back to the beginning and start again. The new recommended process will be simple, speedy, cheap and efficient and will be a process for all small business people and farmers to collectively negotiate. The notification process will assist any small business group, newsagents, the motor trades industry and farmers. It was a Nationals initiative announced by John Anderson prior to the last election, and now after examination by the Dawson review it has been accepted with bipartisan support in the Senate committee.

I am pleased that the recommendation for the reintroduction of an effective section 46 for small business has been welcomed by all small business groups. The Boral and Rural Press decisions acted to limit the remedy for small business. Now, as recommended in this report, small business should soon once again have an available and meaningful remedy for predatory pricing under reformed section 46.

For a long time the balance has been seesawing, with the seesaw getting higher and going more and more to big business. At the same time the market power has been getting more and more restricted, with power going to big business, depowering small business, through consolidations. This piece of legislation is a genuine attempt by the government to balance that market power.

Australian Broadcasting Corporation: Sports Coverage

Senator KIRK (South Australia) (12.58 p.m.)—I rise to speak this afternoon on a matter of public interest affecting a number of my constituents in Adelaide and in South Australia. Last week we saw an announcement by the ABC of the introduction of a national sports broadcast. This was a decision that was met with outrage by avid sports fans across Australia and, in particular, in my home state of South Australia.

As we all know, sport plays a very big role in the everyday lives of Australians. Australia identifies itself as a sporting nation, and many Australians take an active interest in sport and identify themselves with it. Sport is a point of pride for the Australian psyche; it is a part of our identity. We do have a national sporting identity, but individual states also have clear, state based sporting preferences. What varies from state to state is the type of sport that is particularly important in each state.

In South Australia the types of sports that are particularly important are the AFL and local sports events. As a South Australian senator it is my duty to bring to the attention of the Senate, the states house, the importance of AFL coverage by the national broadcaster. What the ABC’s decision means for South Australian viewers is that there will be less coverage of local sports events and much less coverage of AFL and SANFL. As the predominant code of football in the state, most avid football fans want good AFL coverage. The coverage of this sport will undoubtedly be affected, despite denials of this by ABC management. The effect will be that viewers from South Australia may decide not to watch the ABC news and its sports bulletins. If they do decide to watch, they will not be informed about the things happening directly around them in their communities;
instead, they will be watching things of very little interest to them. This could lead to several problems.

In my view, the ABC ought to promote the things seen as important by the public, including by South Australians, as it is after all a publicly owned broadcaster. The jobs of those who work for the ABC in South Australia are also very important and should be looked after. It is natural for those reporting the news to be reactive to what is happening in the area they live and work in. The introduction of the national sports presentation means that it will be incredibly difficult for Sydney based journalists to write effectively on South Australian sports issues. In fact, as was seen during the launch of the ‘national sports wrap’, Sydney and New South Wales issues dominated the presentation. Adelaide was mentioned only once and, even then, very briefly. This is frustrating for Adelaide viewers, who have come to rely on the ABC for informative and accurate coverage of sports news that is relevant to them—that is, of local sports and, in particular, Australian Rules football. Whilst these are not the only problems, they are the most immediately frustrating.

Along with the loss of coverage of high profile sports, such as the AFL, will come the quick death of coverage of lower profile sports. How are lower profile sports going to compete in a national, Sydney based sports bulletin? The simple answer is that they will not be able to compete. Instead, information on sports teams such as Adelaide United and important local events such as last weekend’s Clipsal 500 will not be presented to South Australian viewers. In addition, local women’s sports and junior sporting events will miss out. Without TV coverage by the ABC, many of these events will not receive sponsorship or gain public awareness. This will affect the teams and participants not only of today but also of the future.

While Australian children, as we know, are playing less and less sport and spending more time in front of the television and playing computer games, parents and schools are trying desperately to reverse this trend. We all know that young people and children are Inspired by watching their sporting heroes and following their careers but this will be made all the more difficult if local coverage of sports—particularly on the ABC, our public broadcaster—is not maintained. Each Australian state maintains its separate sporting identity. For South Australia this is closely linked with our two AFL teams—the Adelaide Crows and the Port Adelaide Power—as well as with local sport. The connection that people feel with the ABC is greatly enhanced by relevant and local sports stories being presented during the sports bulletin. Over the years the ABC has become an integral part of many Australians’ lives. It is highly regarded by many as it has a reputation for coverage of local events and issues in both metropolitan and regional Australia. This is important for the ABC to not only have the continued support of its viewers but also to fulfil its role as the public broadcaster—a public broadcaster that has obligations to every Australian, not just to Sydney-siders.

The ABC claim in their annual report for 2002-03 that they have a very high approval rating and that most Australians feel that they provide a useful and informative service for Australians. I think we would all agree with that. Whilst the ABC management claim that they alone are responsible for the editorial content of the ABC, surely public opinion counts. Public opinion says that the ABC should continue to broadcast sports news on a state-by-state basis, offering quality coverage of local events. The ABC have argued that their proposal for a national sports wrap—with Peter Wilkins, a man of all sports, who knows what is news and what is
not—is an upgrade. Again, I have no doubt that Peter Wilkins has the qualities that the ABC management have attributed to him. The ABC claim that they are ‘decommercialising’ their sports report and that most viewers have already seen a commercial news bulletin before they get round to watching the 7 o’clock news on the ABC. This may well be the case, but it is not a good enough reason for viewers to miss out on local news.

It is also claimed by the ABC that a broader wrap, including international sports news, will be better and more comprehensive than its regular sports reporting. If it will be so much better, why then does the ABC insist that it will only apply to its weekday sports news and not to its weekend sports news, which will remain the same? For the most part Australians, and South Australians in particular, want their local footy coverage—a coverage that would undoubtedly be missing from an eastern states and New South Wales dominated presentation. To this end, I call on the government to do something—whatever it takes—about this problem. We want an ABC management that does not consider coverage of sports outside of Sydney as expendable and an ABC that is adequately funded to ensure that it meets its obligations to all Australians.

Economy: Fiscal Policy

Immigration: Refugees

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (1.07 p.m.)—I wish to speak on two matters in this debate of matters of public interest. Firstly, I would like to draw the Senate’s attention and the public’s attention to a package of measures released today by an alliance of community organisations called Services First. It goes to what I believe is one of the most crucial public policy debates leading up to the election. It relates to what we do with budget surplus, the tax system and that continual and very important balancing act between revenue, income tax, other tax measures and expenditure on services. The group is putting forward the simple message of ‘services first before tax cuts’. The message in the debate about tax cuts—whether the public deserve any changes, whether we should be returning bracket creep or whether there should be changes to the income tax threshold—is: let us not forget that every dollar that is forgone through tax cuts to the public is a dollar that can no longer be spent on services. Plenty of surveys show that a lot of people would be more willing to forgo money being put back in their pocket through tax cuts if they were assured that that extra money would instead be invested in better services for them and the community.

It is significant that the Services First alliance that launched the package includes a wide range of organisations. It includes ACOSS—an umbrella organisation for community service organisations—Aged and Community Services Australia, schools and higher education organisations, the Federation of Disability Organisations, health organisations, the National Shelter in the important and often forgotten area of housing, and ATSIC in the also, unfortunately, often forgotten area of Indigenous assistance. Currently, ATSIC is having lots of difficulties and wrestles with the government. That is occupying a lot of the political focus. Let us not forget that the core purpose of ATSIC and the core commitment of the people who are involved in ATSIC and the commissioners is still to provide the assistance that is needed for Indigenous Australians. The fact remains, and it should not be forgotten in any debates about the future directions for service delivery for Indigenous people, that Australia’s Aboriginal people live, on average, 20 years less than non-Indigenous people. The debate we are having concerning Mr Costello’s ‘work till you drop’ and whether...
we should increase the retirement age to above 65 does not mean much to Indigenous people because the majority of them do not live that long, and that is a disgrace. Twenty years less than average life expectancy is a disgrace, and that will not be addressed through tax cuts.

I am not saying that tax cuts should be ruled out; what I am doing is drawing attention to the package of measures and the statements released today simply to ensure that we do not forget this part of the debate. Providing that extra assistance for health, schools, universities and housing will go a lot further towards addressing disadvantage and inequality in the community. As was also mentioned today by the groups in Services First, the gap between the well-off and the not so well-off or disadvantaged Australians has widened in the last decade. That is a simple fact. Part of it is to do with incomes and part of it is to do with affordability and accessibility of services.

The Senate Community Affairs References Committee spent some time in recent months examining poverty in its inquiry. Poverty is not just about how much money you have in your pocket; poverty is about whether you can access affordable housing, affordable health care and education. One problem with the growing inequality is that the less well-off not only have less money by definition but are less able to access those services because they need money to access them. That is why the Democrats have worked so hard on issues such as those in the Medicare debate, trying to cut through the politics to keep the core strength of Medicare there and to continue to make incremental improvements to move things in the right direction. Frankly, that is why it is such a tragedy that the Medicare legislation that went through this place, with the help of the Independent senators, has undermined the core focus of Medicare and refused to grasp the opportunity of setting targets for improved bulk-billing for GPs. There are plenty more issues within the health debate, not just in Medicare—let alone in other areas—that will continue to be debated. The Democrats will certainly continue with those through to the election.

I commend the groups for making this statement of concern. Health and education are top of the list when you look at community concerns. Housing is not as high on the list as I think it should be, and it certainly needs to be debated more often than it is. But there is now widespread acknowledgment that unaffordability of housing is a major problem for a growing number of Australians. There is a role there for the federal government to play that currently they are refusing to play. Even Allan Fels earlier this week was highlighting the problem of unaffordability of housing for many people. Other reports highlight that the amount of money that has been invested in public, social and community housing has been declining over recent years. The availability of public housing and social housing stock has declined. That is an indictment on state governments as well as the federal government. The fact is that community housing and public housing are the most efficient ways to deliver affordable housing through use of public money, and no less a body than the Productivity Commission—or its forerunner, the Industry Commission—found that was the case some years ago. The amount of money paid out in rent assistance through Centrelink payments is more than what goes into public housing around the country. The amount of money that went into the first home owners grant was around the same as the total amount of money that went into public housing around the country.

We are spending huge amounts in areas such as the first home owners grant and rent assistance, which are actually less efficient than the area of public housing. Yet the
amount of investment is declining in the pub-
lic housing area rather than in the other ar-
eas. I do not want to be misrepresented as
saying that we should cut out rent assistance
or that we should cut out the first home own-
ers grant, but we do need to look at how we
can provide the best value for the amount of
money spent. Also what I believe is impor-
tant about the statement made today is the
recognition of the value of services, not just
by endlessly pouring more money into them
but also by state and federal governments
focusing on and giving policy attention and
priority to improving services and getting
better value for the money spent.

There is no doubt that at the state level it
is not just a matter of the underfunding of
hospitals. State governments make a lot of
play about not getting enough money from
the federal government to fund their hospi-
tals, and there is some credence in that—
although, in my view, it is nowhere near as
much as they make out. There is also plenty
of credence in the fact that the value gained
from the money provided is not as good as it
should be, and state governments must bear
responsibility for that.

In drawing attention to this statement I am
not saying that the Democrats are signing up
to every single word, but I am saying it is a
valuable and important contribution to a de-
bate that as much as possible we need to try
to stick to the substance of, rather than just
political shadow-boxing. As part of the tax
debate that will undoubtedly flow as part of
the federal budget and through to the next
election, we need to make sure that it does
not become just another old-fashioned, terri-
ble and irresponsible tax cut option between
the major parties. We need to recognise that
this is all part of the one equation, and ser-
vices is part of that equation. There is sup-
port in the community for properly funding
services if those services will deliver for
people in fundamental areas like housing,
like health and like education. The Democ-
rats support that aspect of the debate and will
play a strong role to ensure that the debate is
as broad as possible.

I also want to take this opportunity to
speak briefly on the issue of the refugee in-
take. We had a welcome announcement yes-
terday from the federal government that the
overall intake of refugees into Australia as
part of our humanitarian program will in-
crease from 4,000 a year to 6,000 a year.
That is part of an overall increase of 1,000,
from 12,000 up to 13,000, in the humanitar-
ian program, of which the refugee program is
a part. For many years the Democrats have
been calling for an increase in our humani-
tarian program, which has been at about
12,000 for quite some time. So we certainly
welcome this increase and, indeed, we will
keep encouraging the government to go fur-
ther.

Our overall migration intake of permanent
arrivals has increased quite a lot in the last
few years. There was a dip when the Howard
government first came to office in 1996-97,
and the intake has gone back up to what are
very high levels by historical standards, I
think—do not quote me on this but I think
we now have about the third highest perma-
nent net migration intake in our history. So
the number is very high and, as we are taking
that number of people as part of our overall
permanent net migration intake, the part that
deals with humanitarian entrants should in-
crease proportionately.

The Democrats have been arguing for that
for some time. Indeed, we believe that more
priority should be given to our humanitarian
program than has been the case. Obviously
any increase is welcome, and the Democrats
congratulate the government for that. It is
such a tragedy that the government, at the
very same time as increasing the humanitar-
ian intake and the refugee program intake,
still tries to keep scoring political points in relation to people who arrive unauthorised to seek protection in Australia. We heard at a press conference and saw in a press release and during question time yesterday the minister continue to run this outrageous line that somehow or other people who seek protection in Australia and who arrive unauthorised are less deserving than other refugees.

The refugee principle is about protection from persecution. It is not about who has the least money or anything like that. If you look at the origin of the refugee convention, which stemmed from the Second World War, the idea that some of the Jews fleeing Germany were more deserving than others based on who had less money is ridiculous and offensive, yet that is the inference if not the blatant statement repeatedly made by this government. The suggestion the minister made that the only reason the government can increase the intake is the success in putting up barriers and keeping out people who are trying to seek asylum in Australia is just wrong. It is the government’s choice to increase its intake, and I support that very strongly. But it has nothing to do with how many arrive here seeking protection. It is to do with how many the government chooses to bring offshore, and to try to link those two is, frankly, irresponsible. It is not correct.

The continual rhetorical action of this government of vilifying refugees who seek asylum in Australia by suggesting that they are somehow less deserving as justification for the immense suffering that has been put on them is a continuing problem. You can double the intake to 25,000, but if at the same time you continue to oppress, punish and severely harm people who seek asylum at our borders it will continue to be a problem, and it will continue to receive the criticism it deserves.

I mentioned yesterday, and I repeat again today, the story of a young Afghani man who has now been in the Port Hedland detention centre for five years for doing nothing other than seeking asylum. He was unsuccessful at the Refugee Review Tribunal, but his story in relation to where he was from in Afghanistan and that his father had been killed by the Taliban was accepted by the tribunal. They did not accept other things and they obviously did not accept that Australia had a protection obligation to him, but he is still seeking that protection. The fact is that, as part of trying to get that protection, he has been imprisoned for five years for committing no crime, and has not even been charged with a crime. That situation cannot be acceptable, regardless of how big our humanitarian program is.

So there is a big tick for a good thing, but it does not negate the continuing unacceptable actions by this government in doing things such as detaining this person for over five years. There are many others, some of whom have suffered enormously and who have basically had permanent psychological damage done to them as a result of our detention regime. We have the people on Nauru who should not be forgotten. They are still suffering, and the Democrats will not back away from continuing to ensure that somebody speaks on their behalf even while we support what the government has done by increasing the refugee intake. As I said, we encourage them to go further.

Western Australia: Labor Government

Senator JOHNSTON (Western Australia) (1.22 p.m.)—Today I want to talk about the Western Australia state Labor government. When Premier Gallop unexpectedly won government in Western Australia in February 2001, he made a promise that he knew he would never be able to keep. He said that he would form a government that would govern for all Western Australians, including regional Western Australia. He was then es-
posing a very noble sentiment but, as we in Western Australia now know, his words lacked conviction. What he should have said was that he would form a government that was totally ‘city-centric’ in its focus and that his priority would be all Western Australians as long as they lived in the Perth metropolitan area.

The Western Australian state Labor government’s total disregard and contempt for people who live outside the Perth metropolitan area is offensive and, from a political perspective, quite bewildering. As soon as Labor assumed government, one of the first things they did was to let Minister McGinty off the leash so he could continue with his zealous ambition to disenfranchise regional Western Australian voters by promoting one vote, one value. People living in rural Western Australia did not put up with this Labor Party bullying and rallied to contribute to a fighting fund. They raised some $130,000, largely from local people from country shires. They took the fight against Labor all the way to the High Court of Australia and won.

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Since February 2001, we in Western Australia have seen country health, regional roads, law and order and essential infrastructure, including power and electricity, not just ignored but deliberately starved of funding in deference to the city. By way of example, prior to the 2001 state election Labor promised, hands on hearts, to rebuild hospitals across the state; secondly, to ensure that all police stations are staffed to their authorised strengths; and, thirdly, to ensure that road projects in regional areas are given priority. Premier Gallop has knowingly and wantonly breached these seemingly rock solid commitments. In health the Gallop government has once again failed dismally. Remember that, in the 10 years of the previous Burke Labor government, Labor failed to build one new hospital anywhere in Western Australia.

In the election campaign, Labor gave a solemn undertaking to the people of Western Australia to fix the health system. Everyone in Western Australia can remember the now Premier Gallop’s famous retort, ‘If Richard Court can’t fix the health system, then I will.’ However, in terms of meeting its pre-election commitment to ‘give priority to rebuilding Western Australia’s hospitals across the state’ it has been nothing but a cruel hoax for the people living in small towns and communities of regional Western Australia. The Gallop government has broken its promise to build a new hospital in Moora and in Denmark. It has broken its promise to redevelop the Port Hedland hospital, the Derby hospital, the Margaret River hospital, the Halls Creek hospital and Kununurra hospital. It has broken its promise to maintain health services at both Yarloop and Dumbleyung hospitals and has downgraded their status.

The promised new Moora Hospital has been canned despite it being a clear and unequivocal promise in the lead-up to the last state election. The people of Moora have shown their displeasure in being snubbed by this increasingly arrogant government and have shadowed Premier Gallop all over Perth. As recently as yesterday, at a media event in Denmark, they presented him with a crumbling brick from their run-down ruin of a hospital that is an absolute insult.
police station in every police district is understaffed. The Goldfields-Esperance district, at last count, was 10 police officers short and the Mid-West Gascoyne district is 13 police officers short.

The unkindest cut of all to country Western Australians has been the provision of regional road funding. Roads, as all Western Australian government members in this place know, are the lifeblood of country communities. If serviceable all-weather roads are not provided or adequately maintained, the bush and all its levels of productivity will slowly grind to a halt.

To fund its ‘city-centric’ programs like the redefined, redesigned and rerouted Mandurah to Perth railway line—a $1.5 billion funding extravaganza—Labor has blatantly failed to honour its commitments on roads to local regional councils. Since being elected it has cut $14 million from the local government roads budget alone, with another $200 million to be slashed from the Western Australian main roads budget over the next four years. It is estimated that, since coming into office, Labor in Western Australia has already cut total road funding by at least $400 million and probably as much as $600 million. When Minister MacTiernan was questioned on this recently, she flippantly responded by saying that the government had other priorities. However, what really sickens country people struggling to drive on their roads is the fact that this hopelessly incompetent state government has actually under spent $50 million from last year’s main roads budget. The net result of this lack of government spending on roads is a deteriorating road network in country Western Australia, with all of the consequences of safety and delay.

The hallmark of this state government’s reign is to fly-in and fly-out on day trips to regional destinations to announce this or that good news for a media event and then take off, usually without a word or any contact with local people or community groups. The reason is obvious: this state government simply does not want to know or hear about the problems out in the bush. More distressing still is that this government in Western Australia simply does not care.

Country people are sick of Premier Gallop’s lip-service to regional Western Australia. They want action. However, action is not very high on this government’s agenda. It is completely Perth-centric in its policy development; nowhere else is this better demonstrated than in its plan to build this outrageously expensive rail system from Perth to Mandurah. The cost of this black hole for government expenditure has started to blow out already. The project adheres to a master plan developed in the Department of the Premier and Cabinet. This plan is a monument to maladministration. The bypassing of Rockingham, a major satellite city of Perth, and the missing out completely of servicing the rapidly developing southern suburbs in the Canning Vale and Southern River areas is a disgrace.

The proposed new route of the railway line will go straight down the freeway into Perth because it was thought it would be 12 minutes quicker than the one previously planned. However, it has recently come to light—but it has not been announced by the hapless Minister for Planning and Infrastructure—that the new system will not only serve fewer people than was forecast by the previous coalition plan but take three minutes longer, as the train will have to slow down to a snail’s pace for the last segment of its journey as it navigates the Narrows Bridge and the very expensive engineering nightmare of a new tunnel into Perth near the proposed station near Parliament House, west of the CBD. The latest modelling by government appointed Voran Consultants is
devastating news. It exposes the Labor railway plan as hopelessly flawed, with its costs blowing out at a very rapid rate. The latest estimate is that it is going to cost $500 million over the $1.5 billion budget, with more blow-outs to come as this government's sloppiness in contract management is further exposed.

What really upsets country people is that this piece of Labor extravagance is not going to be funded by a public-private partnership or by private enterprise. It is going to be funded exclusively out of the public purse. Already $1.5 billion has been spent on it, and this is growing every day. The cuts to fund this Labor Party folly have already impacted upon regional Western Australia. We have seen massive cuts to road funding and country health, as I have mentioned; the closure of country schools; a country power supply system that is past crisis level; and the list goes on. Make no mistake: Labor is on the nose in the bush in Western Australia.

It would be remiss of me if I did not highlight the power supply crisis that is not only a serious problem in metropolitan Perth—as I mentioned a few weeks ago in this place—but also a problem of epic proportions in regional Western Australia. Regional power infrastructure is decaying rapidly under this 'do nothing in the bush' government, and blackouts in country towns are an almost daily occurrence. It is simply not good enough, and there is no excuse for the state Labor government to neglect this very basic and fundamental service to country people. City people will not wear it, as we have seen with the blackouts right across the Perth metropolitan area in February, and neither should country people. The former coalition government had already identified the need to upgrade regional power infrastructure and had committed to spending half a billion dollars to upgrade the network. The half a billion dollar blow-out in the poorly planned Perth to Mandurah railway line could have gone a long way to fixing up this most basic of services in country Western Australia.

School bus contracts have attracted plenty of attention recently in Western Australia for all the wrong reasons. School buses are the lifeblood of country education in Western Australia as they transport children within an 80-kilometre radius of the local primary and high schools to and from classes every day. Drivers start their pick-ups at 7.30 in the morning and drop off their last passengers at 4.30 every afternoon. Typically, school bus contracts are run by either local farmers who are dependent on the supplementary income or local small business people who need the cash flow of the school bus run to keep their small local business viable. However, after three years of harassment and intimidation—including late night letters faxed to school bus contractors on Christmas Eve by Minister MacTiernan, the state minister in charge of school bus contracts—a new low was reached in January when the minister refused to accept the contracts of many school bus contractors who attached a letter saying that they had signed the contracts under duress. In her well-renowned belligerent manner, the minister said that she will put out to tender all contracts of businesses that do not unconditionally accept her terms on the new contracts.

School bus contractors are not greedy people; all they want is a fair go and not to be forced to the wall by signing contracts that barely cover their costs. What the minister is trying to do is force out the local operators and replace them with buses supplied by major transport companies. Such an action may save a few dollars, but it is just another step by this increasingly arrogant government in decimating small local communities in regional Western Australia. Already since the election of the Gallop Labor government we have seen bus companies with head of-
serves thousands of kilometres away winning school bus contracts over local contractors. Such an action is just another knife in the neck for regional Western Australians.

It took nearly three years of dragging the Gallop government—screaming and kicking all the way—to make it finally come to its senses and sign the bilateral agreement with the federal government to address Western Australia’s No. 1 environmental black spot, namely salinity. The bilateral agreement is part of the Howard government’s $1.4 billion National Action Plan for Salinity and Water Quality, which is specifically directed at addressing the pervasive effects of salinity and water quality. Unfortunately for Western Australia, we are unnecessarily three years behind the game in tackling this insidious problem that is devastating large tracts of our wheat belt. In total, the Commonwealth has committed $157 million, with an equal amount to be provided by the state government.

A close watch must be kept on the Gallop government to make sure that the next state government budget allocates this agreed amount. The reason for the cautionary note is that Premier Gallop said as recently as 4 October 2003 that he hoped that the next state budget would identify the additional funds needed to fully match that Commonwealth money. Country Western Australia will be watching Dr Gallop very closely, as salinity—and all of the ravages that it brings to our state’s landscape and productivity—is already an unfolding environmental disaster. If the Premier reneges on his commitment, rest assured that the whole of Western Australia, not just regional WA, will come down on his government like a tonne of bricks.

Changes to environmental laws made by the Minister for the Environment, the Hon. Judy Edwards—who has shown herself to be a slave to the bureaucracy—and aided and abetted by injudicious interpretations by bureaucrats, are causing havoc in country Western Australia. It has got to such a critical stage that farmers are being forced into breaking the current laws just to go about their daily work. We had a ludicrous situation recently where an 82-year-old farmer was charged by CALM officers for driving on a CALM reserve. This farmer has devoted his retirement years to lobbying governments on both sides of the political fence to come up with workable solutions to Western Australia’s salinity crisis. This farmer had been at the reserve investigating an increase in salinity problems in the area and, for his trouble, he was booked by CALM officers and charged with offences of the most trivial nature.

The problems are being exacerbated by changes in environmental laws, where the current minimum size of one hectare is being removed from vegetation clearing restrictions. Instead, landowners now have to apply to zealous eco-bureaucrats for permission to remove even one tree or shrub, or a branch or leaves. It is clearly an untenable situation for landowners, particularly farmers, when they are forced to apply for a clearing permit when they want to remove even one single plant. Farm leaders are warning the state government—(Time expired)

Spain: Terrorist Attacks

Senator STEPHENS (New South Wales) (1.37 p.m.)—Yesterday evening Canberra paid tribute to the people massacred and the many injured in the Madrid train bombings at a mass at St Christopher’s Cathedral in Manuka. This followed more than a week of tributes and condolences, including floral tributes, at the Spanish Embassy and the establishment of a condolence book signed by many hundreds of Canberrans. Recalling the mark of respect paid to the victims of September 11 and the Bali bombings, the people
of Canberra joined with the Spanish community of Australia and in ‘solidaridad’ with the grieving nation of Spain for a moving tribute to the innocent victims of the latest act of global terror. Representing Spain was the charge d’affaires Alfonso Lucini, his wife, and staff from the Embassy of Spain.

The mass was conducted in Spanish and English by Fathers Frank Jones and John Armstrong and was attended by representatives of the Australian parliament, including the President of the Senate, the ACT Legislative Assembly and many of Canberra’s diplomatic community. In a moving homily Father Jones, speaking in both Spanish and English, called for all Australians not to become complacent about the victims of terrorism overseas. He said the fact that there were no Australian victims in the Madrid bombings should not and does not mean that we are not sharing that nation’s grief for the innocent victims who had done nothing more that day than go about their ordinary business. As well as the 190 people killed in the bomb blasts, another 1,500 were injured and, just as in Bali and New York, the Australian Spanish community is touched by knowing victims or their families. Prayers of the faithful were said in Spanish and English, binding the two nations in a ceremony of sorrow and understanding.

The randomness of this act of terror brings home the immediacy of the effects. Two massive bombs were placed at Atocha station in the city of Madrid. The two others, at El Pozo and Santa Eugenia, were on trains that had just begun the run into the city from the outlying suburbs. These sites were chosen to cause maximum damage. Atocha is the main railway hub in Madrid, serving much the same function as Sydney’s Central Railway Station. It is within walking distance of the Prado, the Plaza Mayor and the Puerta del Sol, the historic centres of Old Madrid, and close to the modern art museum, La Reina Sofia.

As Dr Judith Keene, the director of the European Studies Centre at the University of Sydney, wrote recently in the *Sydney Morning Herald*:

The timing was also striking. In a nation that rises late, those injured at 7.30am were the first wave in the day’s commuters. Ordinary working people—

including many immigrants from Peru, Ecuador, Argentina, Romania and Bulgaria were among those commuters. Dr Keene continued:

These are the workers whose days start first. They leave home early to get to the city to open up the office, to empty the bins, or to clear up and mind the children of those who arrive later at work.

With the exception of a vote in the elections, they are not people whose opinions are sought. Nor does what they think exercise great sway, except perhaps chatting on the stairs with the neighbour or at the local bar.

Dr Keene reminded us of the stoic response to the bombing by Spaniards across the nation. She said:

At midday on Thursday, the day of the bombings, Madrid Radio reported that Plaza Mayor and Puerta del Sol, normally teeming with noise and people, were quiet as befitted a city and a nation in shock.

The next day, however, by 6pm the streets were filled with people. In Madrid 2 million ... crowded along the great Castellana, the central artery and around Atocha.

The royal family, the prime minister and the socialist leader of the opposition attended a memorial service at Almudena Cathedral. An estimated 11 million people—more than a quarter of the population—took part in marches across the country. Dr Keene continued:

But it was not the official presence which was so riveting. It was the demeanour of the people.
Many carried candles even though it was broad daylight: old and young, families and groups. Travel on trains and buses in the city was free that day, making it easier for people to attend the demonstrations. Some shouted slogans and carried signs calling for an end to ETA and Basque terrorism.

Many more held aloft their open hands, on the palms of which had been painted “Basta” and “Ya” (“Enough” and “Now”). In general there was a dignity and a resolve that was very moving. And it was the same across the nation.

In Bilbao, in the Basque country, it poured with rain but nearly 2 million people stood quietly under umbrellas to mourn the deaths. In Barcelona, always more politically outspoken, there was antagonism towards Aznar and the Spanish government. In the posters and the speeches, Spain’s involvement in the Iraqi war was criticised because it had made Spain a terrorist target. Certainly, the size of the crowds across Spain recalled the demonstrations mid last year when 90 per cent of Spaniards, so the polls recorded, opposed involvement in the Iraq war.

Dr Keene continued:

... the Spanish elections have come and gone. The conservative government of Partido Popular, led by Jose Maria Aznar, has been defeated and there is now a Socialist majority in the Spanish Cortes.

Several arrests have been made and the Spanish Interior Ministry has identified them as part of an international terrorist movement. Certainly March 11, 2004, in Madrid will be remembered as the European equivalent of September 11 in the US—and Australia’s Bali tragedy. As Father Frank Jones, in thanking the Spanish community of Canberra for organising the local service last night said, ‘The danger of religious fundamentalism in fuelling terror and international instability in the name of God is a phenomenon of disenfranchisement and poverty.’ He urged the congregation not to allow their faith to be shaken by terrorism and this horrific event that had caused such pain.

Last night’s service also followed the call last Tuesday by the Irish EU presidency for nations all over the world to observe three minutes silence, when in Dublin—the current seat of the EU presidency—Prime Minister Bertie Ahern stood in silence beside the Spanish charge d’affaires to Ireland. In Berlin companies and public institutions observed the three minutes silence at midday and in Dresden the bells of the Church of Our Lady rang out at noon, when trains and buses stopped on their routes. Pope John Paul II joined in moments of meditation for the victims and devoted his daily morning mass to the victims and their families. In Bulgaria President Georgi Parvanov attended a service at Sofia’s Alexandre Nevski Cathedral. Bulgaria had lost four of its nationals in the blast. In Paris the French President, Jacques Chirac, laid a wreath at the Spanish Embassy. The President of the European Commission, Romano Prodi, led a show of silent solidarity in Brussels before urging EU leaders to respond to the Madrid attacks by agreeing at a summit this week to new concrete measures to fight terrorists. Swedish Prime Minister Persson, in expressing his condolences said, ‘We must never accept this.’

Here in Australia and in this place, we must never accept this. On behalf of my colleagues in this parliament, I express our condolences to the Spanish people. We have more than 12,000 Spanish immigrants living amongst us in Australia. Many of them have come from the city of Madrid. This was, as Labor’s leader, Mark Latham, said in speaking to a condolence motion in the other place ‘an evil act that appalled peoples around the world’. The Spanish are an open, generous people, yet they are proud and resolute, having lived with the horror of terrorism for over 40 years. Their public display of grief and call for peace were not those of a nation bowing to terrorism but very much those of a
nation in defiance, a proud nation, well loved and respected by the Australian people.

Father Frank Jones reminded us last night that, in the last year or so, terrorist attacks have taken place in Indonesia, Saudi Arabia, Morocco, Turkey and the Philippines. He reminded us not to forget and not to become complacent on the issue. Those attacks have taken the lives of many hundreds of people with no regard to their nationality or religious beliefs. The Prime Minister of Australia has said that Spain is a warning that it could happen here in Australia. In his condolence motion in the parliament he said that as a parliament and as a nation we must resolve to continue our ‘efforts to combat and defeat terrorism’. He continued:

In expressing our sympathy with the people of Spain, let us also declare that under no circumstances will threats of terrorism alter the stance that this country, this government or these people take on any issue.

Our thoughts, our hearts and our prayers are with the Australian Spanish community and the nation of Spain as they come to terms with this awful tragedy.

Sitting suspended from 1.49 p.m. to 2 p.m.

QUESTIONS WITHOUT NOTICE

National Security: Terrorism

Senator BOLKUS (2.00 p.m.)—My question is to the Minister for Justice and Customs. I ask: is the minister aware of AFP Commissioner Keelty having raised the issue of his resignation with any member of the government? The minister has stated that the commissioner never raised the matter with him but, as the minister responsible for the AFP, does the minister have knowledge of the commissioner’s resignation having been raised with any other minister, including the Prime Minister?

Senator ELLISON—I do not have any knowledge of the police commissioner offering his resignation to any other person apart from me. He did not raise it, as far as I am aware, and he certainly did not raise it with me.

Mr President, it is a bit rich. We have the opposition coming in here and making out it is defending the Australian Federal Police Commissioner. At least Senator Ray had the honesty yesterday to say that he had not always been satisfied with the evidence that the Commissioner of the Australian Federal Police gave at estimates committee hearings. But have a look at what Senator Faulkner had to say. The AFP issued a press release on 26 September 2002 saying that Senator Faulkner had got it wrong. This is what Senator Faulkner said in a press release:

Further questions have been raised about the quality of evidence provided to parliament by the head of the Australian Federal Police, Commissioner Mick Keelty.

Mr President, as outlined in the Senate and the House of Representatives yesterday, the opposition—led in this chamber by Senator Faulkner—is making out that it is in some way defending the Commissioner of the Australian Federal Police, when Senator Faulkner has a track record of attacking the Australian Federal Police Commissioner—without foundation, I might add. This requires an apology to the police commissioner. At least Senator Ray had the honesty, when he was addressing this issue yesterday, to outline his attitude.

The opposition does not like this—of course it doesn’t—because the truth hurts. I have made the position on this issue very clear. The matter is over and done with. The police commissioner has made it very clear that he wants to get on with the job of carrying out the foremost role of law enforcement in this country. He has a very important job to do in relation to law enforcement and the security of this country, and I want to work with him in that regard.
Senator BOLKUS—Mr President, I ask a supplementary question. All that bluster does not cover up the fundamental question. I ask the minister again: isn’t it the case that when the Prime Minister was asked yesterday whether he or his office were aware that Commissioner Keelty was considering his resignation last week, he restated—stating the obvious and avoiding the question—that the commissioner did not tender his resignation. Minister, isn’t this just typical of the government’s evasiveness on this and other matters? Can the minister now answer a simple and direct question: is he aware of Commissioner Keelty having raised the issue of his possible resignation with any member of the government?

Senator ELLISON—The answer is that I am not aware—and, for the third time, I have already answered that question. It was not raised with me and I am not aware of it having been raised with anyone else. Commissioner Keelty has indicated nothing but a desire to continue doing his job as police commissioner for the Australian Federal Police and in his role as Chairman of the Australian Crime Commission. This government intends to support him in that role—a role which he is carrying out very well.

Economy: Policy

Senator McGAURAN (2.04 p.m.)—My question is to the Minister for Revenue and Assistant Treasurer. Will the minister inform the Senate of the government’s strong economic record and commitment to balancing the budget? Is the minister aware of any alternative policies that would jeopardise this record?

Senator COONAN—I thank Senator McGauran for asking about this government’s economic achievements. Since the coalition government took office in March 1996, economic growth has been very strong. A recent article that appeared in the Economist said:

Thanks to wide-ranging structural reforms and sounder monetary and fiscal policies, the economy—

Australia’s—

has recently been one of the best performers in the world.

The chief economist of the OECD has said recently:

... experts in other economies are looking to Australia as a role model.

Australia’s economy has withstood a downturn like that experienced by many of the world’s major economies such as the United States, France and Japan, which are in recession. This good economic record is a result of the government’s strong economic policies, which include balancing the budget, reforming the tax system, reducing Labor’s debt by around $60 billion, introducing a broad based indirect tax, lowering company taxes and halving capital gains tax. The national accounts released earlier this month showed the Australian economy growing at about four per cent at the end of last year, the strongest quarterly growth in four years.

The government is also committed to important spending programs in health and education. The government is investing $2.9 billion in strengthening Australia’s health system through MedicarePlus. It will also provide $31.3 billion over four years for our children’s education—for schools, for literacy and numeracy programs and for capital works. Good economic management does not, unfortunately, happen by accident. It comes from strong, disciplined economic policy, which is the record of this government over the past eight years.

I was asked about alternative policies and the impact they might have on this record. In Labor’s magic pudding there is a growing list of unachievable and unfunded promises,
amounting to over $8 billion, such as Mr Latham’s announcement last week to reduce the superannuation contributions tax to 13 per cent, costing over $1 billion, and then abolish the tax in around 20 years, estimated to cost around $5 billion—and with no explanation about where that money is to come from.

Senator Sherry interjecting—

Senator COONAN—Senator Sherry reminds me of the ‘sloppy errors’. There was Mr Latham’s $8 billion ‘super blooper’, where it was obvious to everyone except Labor that he was pledging to increase the pension by at least $2 billion a year. With Labor steering the economy, we would be setting a course for higher taxes and greater deficits. It is obvious that Mr Latham and Labor are economic amateurs. Everyone knows that you cannot spend more, reduce taxes and keep the budget balanced.

Senator Sherry interjecting—

The PRESIDENT—Order! Senator Sherry, you know—and I remind other senators also—that chatting across the chamber while the minister is on her feet trying to answer a question is disorderly.

Senator COONAN—I was saying that we only have to look at the eight Labor state and territory governments for proof of the fact that you cannot do all things; that you cannot spend more, reduce taxes and keep the budget balanced. Last year, despite sharing around $31 billion in GST revenue, and windfalls from stamp duty of around $8.5 billion, every Labor state and territory government increased taxes. The Australian people should be alarmed at the possibility of eight Labor states and federal Labor ripping more tax out of hardworking Australian taxpayers. When it comes to balancing budgets and managing the economy, Labor are not only economic amateurs; they are sloppy, fiscal vandals who will blow the budget and drive this economy back into deficit and debt. (Time expired)

Defence: Equipment

Senator CHRIS EVANS (2.09 p.m.)—My question is directed to Senator Hill, the Minister for Defence. I refer the minister to the $170 million defence project to provide electronic support measures and a forward-looking infra-red capability, known as FLIR, for the Navy’s 16 Seahawk helicopters. Can the minister confirm that this project is now running three years late? Can he also confirm that 80 per cent of the project budget has already been spent even though only one aircraft—which was a trial installation—has received the upgrade? Does the government still seriously contend that the remaining funds of $35 million will pay for the upgrade of the other 15 Seahawks, or will this be another defence project that will require extra funding in order to meet the delivery?

Honourable senators interjecting—

The PRESIDENT—Order! Senators on both sides of the chamber, come to order. I again draw your attention to standing order 72, which states that a minister answering a question or someone asking a question should be heard in silence.

Senator HILL—I will deal first with the latter part of the question, in which Senator Evans asked: ‘Is this another defence procurement project in trouble?’ To put it in context, the DMO is doing much better with its program now than it has done in the past. In fact some of the most complex projects that it has before it, which one would have thought on the basis of history would be in trouble, are on time, on capability and on budget. For example, I talk about the Wedge-tail AEW&C aircraft project, which is extremely complicated in terms of new technology and integration of technologies. That program is on time, and the first aircraft attached with the new radar will fly in the
United States in May of this year. Another similar project was the Tiger armed reconnaissance helicopter project. Australia is in the forefront of the purchase of that particular helicopter, so you are looking again at a new and very sophisticated weapons system. That project is also on time and on budget, and in fact the first helicopter flew last month in France and I think there are four, or perhaps even five, of the helicopters now being assembled in Brisbane, Australia.

But there are still some legacy projects that are in trouble. Yes, Senator Evans smiles. He could acknowledge, for example, the great progress that we have now made with the Super Seasprite program. I would have liked to have seen him at the launch of the final Anzac ship in Melbourne last weekend, when three Super Seasprite helicopters flew over the works.

Senator Chris Evans—Were they armed?

Senator HILL—No, they were not armed. They do not fly around Melbourne armed. There are still some integration issues to be finally resolved, but the aircraft are delivered, they are flying and they are being used—

Senator Chris Evans interjecting—

The PRESIDENT—Senator Evans, you can continue the conversation outside with the minister but he is trying to answer the question.

Senator HILL—They are being used for training purposes, and the integration of the final software is making good progress as well. What I am saying is that if Senator Evans wants to pick out one program, if he has found one program in the DMO that is still with difficulties, then he should put that in context—to be fair to the department, to be fair to the many very dedicated officials that are working on improving performance within the DMO.

The Seahawk helicopter upgrade program is behind time, it is true. There are still troubles with that program. There have been unavoidable delays. For example, the test helicopter, as I recall, recently suffered significant damage due to weather and that delayed the program for some further months. But at least I can say to the honourable senator that a great deal of effort is being put in by DMO to get that project back on schedule in the same way as DMO has already succeeded in doing with so many of the other legacy projects. So, yes, there are still difficulties with that project. Efforts are being made to overcome those difficulties.

Senator Chris Evans—Have you got the money to deliver the project?

Senator HILL—There is no plan for additional funds. The job has to be done with the funds that have been made available, and that is the way the government is approaching these issues.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I acknowledge that I was unable to be at the Anzac launch. I would have liked to see the Seasprites flying. They have been flying since the Vietnam War but it would be good to see them again. Isn’t it the case that the larger Seahawk upgrade project will be late because of the delays with the FLIR project? Can the minister confirm that the Seahawk upgrade project, Air 9000 phase 3, will also be delayed by three years and will not arrive before 2011 and that the budget has now blown out by $300 million? Isn’t this project now shaping up to be a bigger disaster than the Seasprite purchase?

Senator HILL—I do not think that is the case. The existing platforms, whether they be the Seahawks or the Black Hawks, will have to be upgraded in time, that is true. As I recall, phase 3 of Air 9000 deals with the Seahawks and phase 4 deals with the Black
Hawks, but I think it is premature to draw such dire conclusions as Senator Evans obviously would like to draw for his political objectives. I urge the honourable senator not to be so negative about these things. If he put in a little time trying to draw just one aspect of defence policy for Labor, that would be a start. Then he might be making a more worthwhile contribution to the debate.

**Health: Tough on Drugs Strategy**

Senator TCHEN (2.16 p.m.)—My question is to the Minister for Justice and Customs, Senator Ellison. Will the minister update the Senate on how the government’s Tough on Drugs approach is protecting the Australian community, particularly children, from the ravages of illegal drugs? If the minister is aware of any alternative policies, will he inform the Senate what impact such policies will have on this important area of national interest?

Senator ELLISON—I thank Senator Tchen for his question, which is very important for all Australians. This government has taken unprecedented steps in relation to the fight against illicit drugs. Over $1 billion has been spent on the Tough on Drugs policy, which fights illicit drugs on three fronts: education for Australians, especially young Australians, about the dangers of illicit drug use; health for rehabilitation; and, of course, law enforcement to reduce the supply of drugs. Some very good results have been highlighted recently. The most recent national survey on drugs shows a 23 per cent reduction in people using illicit drugs since 1998. In particular, there has been a big drop in the number of drug-related deaths, from more than 1,100 in 1999 to under 400 in 2002. That is a dramatic reduction in the level of tragedy that overdose deaths have brought to people in Australia in relation to what is a very serious problem.

This unrelenting war on drugs continued last week when we put to the Standing Committee of Attorneys-General proposed legislation in relation to children who are endangered by the manufacture of amphetamines and amphetamine type stimulants. Unfortunately, in the United States, we are seeing situations where children are being exposed to clandestine labs. Surveys have revealed that 30 per cent of the children found at these sites have been affected by the chemicals in the drugs or the drugs themselves. This calls for condign punishment. With the approval and support of the Standing Committee of Attorneys-General last week, the Commonwealth will be enacting laws which deal with this very serious issue.

It is a shame that we cannot have a bipartisan attitude and approach in this fight against illicit drugs. Recently we had the Leader of the Opposition, Mr Latham, saying that Labor would support and promote heroin injecting rooms should a state government go down that road. But things did not exactly pan out too well for Mr Latham. He changed his tune. We saw Labor premiers, such as Mr Steve Bracks in Victoria, say that they will not be adopting heroin injecting rooms. We then had Mr Latham backtracking to say that the comment he made in relation to heroin injecting rooms in Kings Cross was a one-off. Mr Latham tried to sneak away from Labor’s policy on heroin injecting rooms. Yet a check of Labor’s web site at 12.30 p.m. today revealed that the policy of the Labor Party is still to support state government initiatives such as supervised injecting places. Where does Mr Latham stand on this? Is he for it or is he against it? Is Kings Cross just a one-off or does he endorse the policy that Labor still have on their web site?

The government are very serious about the fight against illicit drugs. Heroin injecting rooms are not the path to go down if you are serious about the fight against drugs. We
have shown how our policy has been working. We do not for one minute say that the fight is over or that the war is won but we are continuing that fight. We have some runs on the board, which is evidenced by the figures I have shown today of the dramatic reduction in overdose deaths and by the reduction in the supply of heroin that we have seen in Australia. Amphetamines are an emerging problem. We are addressing that, particularly in relation to children who are found at the sites of clandestine labs, and it is appropriate that we have laws in place to deal with that. (Time expired)

Defence: Defence Capability Plan

Senator HOGG (2.21 p.m.)—My question is to Senator Hill, the Minister for Defence. I refer the minister to the announcement by the Prime Minister on 19 December 2002 that the government was to accelerate the acquisition of additional troop lift helicopters. Wasn’t this commitment the centrepiece of the Prime Minister’s response to the Bali bombings? Doesn’t the new Defence Capability Plan in fact make it clear that the new troop lift helicopters may not be delivered until 2009, three years later than originally planned? Isn’t it also true that the budget for this project is now almost double what it was two years ago? Why does the minister expect Australian taxpayers to wear a three-year schedule delay and a $400 million increase in the cost of this project?

Senator HILL—I think I have actually answered this question once or twice before, but I am happy to do it again. The government was committed to purchasing additional troop lift helicopters. I think, for the benefit of Senator Evans, that is Air 9000 phase 2. We wanted to purchase the helicopters as soon as possible; we believe that there is a real need. That is why the Prime Minister made that statement about accelerating the purchase.

When it came to assessment of the helicopters that were available, it was put to the government that to achieve our objective would be to purchase a helicopter that was, in effect, not contemporary best standard. The technology, particularly in avionics, glass cockpits and that type of thing, is changing very rapidly and there was a concern that the helicopter we would purchase would be very quickly out of date. Most likely if you were going to do that, consistent with the fact that the balance of the fleet is Black Hawk, to purchase urgently you would purchase an existing Black Hawk. That would leave us with three different types of Black Hawk helicopters—

Senator Chris Evans interjecting—

Senator HILL—and, as Senator Evans reminds us, phase 4 is updating the last, the majority, of our Black Hawk helicopters. The advice then came back from Defence to government that to procure the helicopters on that basis would be unwise and that it would be better to take a little longer and get the helicopter that was of the new standard. That would not only give you a greater capability with the additional helicopters you were purchasing but also ease phase 4, which is the update of the balance of the fleet, to ensure that you got consistency at the best price. That is why phase 2 and phase 4 are being considered. That will mean that the helicopters will be delivered a little later than was anticipated. My recollection is that we said late 2006 and that it might slip to 2007. That is my recollection without referring back to the detail.

That information was taken on board and accepted by the government. So what we have is a competition. It has been reduced to two players: Eurocopter and Sikorsky. We are hoping for a decision on that, a recommendation from Defence, by the middle of this year. That will be for a helicopter that is
of the contemporary standard, and the decision will also take into account the upgrade of the balance of the fleet in the most cost-effective way and in the way to achieve the best capability. I respectfully put to the Senate that that is a very sensible way to approach this project.

Senator HOGG—Mr President, I ask a supplementary question. Minister, you did not address the part of my question which went to the almost doubling of the cost of the project from its original price two years ago. Further, isn’t it the case that the increase in the budget has been caused by the marinisation program which is to protect the helicopters from rusting in maritime conditions? Wasn’t the helicopter always designed to operate in a maritime environment? Who forgot to include this most basic element in the program costs in the original budget?

Senator HILL—I have answered this question before as well. It is true that the cost has increased, but the capability has increased as well. To be fair, if you are going to accuse somebody of making a mistake you should acknowledge the fact that what is being costed now has greater capability, in particular the flexibility for maritime operations, than what was included in the first estimate back in 2000. What we are interested in is getting the best helicopter we can afford to provide support for our troops in the whole range of functions they have, including, in this instance particularly, protecting us from terrorist threats. I think it is about time now, after eight years in opposition, that the Labor Party started telling us what their alternative is. Are they going to invest more money in capability for the ADF, or are they going to continually knock the upgrades of this government? Yesterday we had them knocking the tanks; today we have got them knocking the helicopters. (Time expired)

Taxation: Public Benevolent Institution Status

Senator STOTT DESPOJA (2.27 p.m.)—My question is addressed to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Is the minister aware that the Taxation Office is withdrawing public benevolent institution status from a range of groups in the health and disability sector from 1 April this year? This means that employees of organisations in my home state such as the Julia Farr Centre and the Institute of Medical and Veterinary Science will face a significant decline in their after tax income. Does the minister agree with the Prime Minister’s comment last week: ... it shouldn’t happen, I mean people working in that sector, large numbers of people shouldn’t pay more tax, that’s not the intention.

When will this government implement the recommendations of the Democrat initiated inquiry into charities in 2001 and change the 80-year-old, outdated definition of ‘public benevolent institution’ in order to resolve that uncertainty and, indeed, the distress that the ATO is causing some people?

Senator COONAN—I thank Senator Stott Despoja, who has outlined a serious issue that is of concern to the government. By way of background, I should say that the Tax Laws Amendment (2004 Measures No. 1) Bill 2004 includes changes to the law to require charities, including public benevolent institutions, to be endorsed by the Commissioner of Taxation in order to access all the relevant tax concessions. But it is a well-established principle of the existing case law that a government body is not a charity or a public benevolent institution. Whether an entity is a government body or not depends on whether it is actually subject to government control, and I think that some of the institutions Senator Stott Despoja mentioned may well be. I stress that the en-
endorsement legislation will not affect the eligibility of government bodies to claim tax concessions.

Should endorsement not proceed, government bodies would still be prohibited from claiming these concessions through self-assessment. An entity must already meet a number of existing conditions in order to be entitled to claim tax concessions through self-assessment, and there is no intention to change these conditions. This means that if an entity is eligible to claim a concession through self-assessment under the current law it will be able to be endorsed when the measure takes effect on 1 July. I would also note that certain government bodies may qualify for status as a DGR, a deductible gift recipient, and so be able to receive tax-deductible donations and access GST concessions as a deductible gift entity. The Treasurer has recently announced, and the tax office has recently confirmed, that, for instance, individual volunteer fire brigades are able to be endorsed to receive tax-deductible gifts. In addition, the government has recently legislated to allow all public hospitals to access the $17,000 capped fringe benefits tax exemption even when they do not qualify as a public benevolent institution and has announced its intention to extend this concession to public ambulance services from 1 April 2004.

The point about Senator Stott Despoja's question is that the change to the government status of bodies, and some have been changed in South Australia, is a decision that the South Australian government has made. If it wants to run these bodies then the bodies become government entities and, under the law, which has not changed—that is, the definition has not changed—they are no longer public benevolent institutions and hence are not entitled to some of the special tax concessions that public benevolent institutions or charities receive. The issue has been brought to the attention of the government. As I said at the start of my answer, I do think that Senator Stott Despoja has identified an issue that is of some concern and we currently have it under consideration.

Senator STOTT DESPOJA—Mr President, I ask a supplementary question. I thank the minister for her answer. Don't the exemptions she has just outlined highlight the difficulty and the problems that we now have with this outdated definition of 'public benevolent institution'? Given that these changes are due to take place from 1 April, how much additional tax is the government expecting as a consequence of those changes? In response to the minister's comments about the changes that have been announced by the Treasurer in relation to employees of public hospitals and public ambulance services, why have those changes been made when they have not been made for other employees of the vital third sector support organisations and services to which I referred?

Senator COONAN—I thank Senator Stott Despoja for that supplementary question. I doubt I will get through all of the issues that she has raised. I would be very happy to provide a brief or some further information. The important point is to emphasise that the structure of the law—the endorsement procedure—has been changed so that to access the tax concessions there will be a status attached to the Australian business number. It will allow greater scrutiny of the use of tax concessions by charities and public benevolent institutions. Overall, what we are aiming to do is improve public confidence in the provision of tax support to the charitable sector. That was the whole point of the review of the charitable sector—to make these structural changes. Anomalies or problems are something that, once brought to the government’s attention, we will look at.
Taxation: Deductible Gift Recipient Status

Senator MACKAY (2.33 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Is the minister aware that an organisation called the Constitution Education Fund has been sending out promotional material claiming that it has had deductible gift recipient status since June last year? Can the minister confirm that the Constitution Education Fund does not yet have deductible gift recipient status and will not have that status unless the Taxation Laws Amendment Bill (No. 7) 2003, as introduced on 26 June 2003, is agreed to by the parliament? In light of this fact, does the minister agree that the Constitution Education Fund is misleading donors in promoting itself as having DGR status? What action will the minister now take on this misrepresentation of taxation status?

Senator COONAN—I thank Senator Mackay for the question. Obviously, I am not in a position to comment on the individual tax status of any particular organisation. What is important is that once an entity has an Australian business number and once it is assessed for deductible gift recipient status, it is possible, as I understand it, for it to elicit donations. It is certainly not misleading for there to be an announcement or a holding out that this legislation is forthcoming. Strictly speaking, what you could say is that until the legislation is passed it might not be wise for them to do this. But there are circumstances where it is entirely appropriate. I know one case of an entity that was to assist Bali victims, and deductions were allowed to be given before the legislation had endorsed it.

It is a matter that this chamber probably should revisit. The Senate saw fit to refuse, other than by way of legislative amendment, the listing of deductible gift recipients. That to me seemed to be extremely short sighted. Very important charitable purposes are held up because of the need for a legislative amendment. Obviously, because of the legislative program it is not easy to get these things brought on quickly. We had asked the Senate to allow this to be done by way of regulation and that was refused. Many instances have been brought to my attention of the proper charitable purposes of deductible gift recipients being held up and this very important public purpose not being allowed to proceed because of the Senate’s obstruction in that it has to have a legislative amendment for every single one that is listed. Far from being an efficient way of doing things, the Senate has entrenched a cumbersome process that holds up the very purpose for which these things are brought into being.

Senator MACKAY—I have a supplementary question. I draw the minister’s attention to a press release issued by her and headed ‘Deductibility of gifts to the Constitution Education Fund,’ issued 20 June 2003. Doesn’t the fact that Professor David Flint is a trustee of the Constitution Education Fund and that the address listed for the Constitution Education Fund is the same as that for Australians for a Constitutional Monarchy, which Professor Flint also chairs, indicate that the CEF is an overtly political organisation misleading potential donors about its tax status? Is it government policy to provide generous tax benefits for donors to organisations that share the Prime Minister’s political objectives whilst removing beneficial tax treatment from staff of community organisations providing care to disabled children? What do these two tax decisions reveal about the Howard government’s political priorities?

Senator COONAN—I thank Senator Mackay for the question. Obviously, I am not in a position to comment on the individual tax status of any particular organisation. What is important is that once an entity has an Australian business number and once it is assessed for deductible gift recipient status, it is possible, as I understand it, for it to elicit donations. It is certainly not misleading for there to be an announcement or a holding out that this legislation is forthcoming. Strictly speaking, what you could say is that until the legislation is passed it might not be wise for them to do this. But there are circumstances where it is entirely appropriate. I know one case of an entity that was to assist Bali victims, and deductions were allowed to be given before the legislation had endorsed it.

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circumstances that went to a decision relating to any individual taxpayer or the circumstances under which deductible gift recipient status may or may not have been granted to that institution. The press release stands for itself and I am certainly not going to go behind the individual circumstances of the deductible gift recipient status. You will find dozens of my press releases in relation to this. It is interesting that Senator Mackay seeks to impugn the motives of a legitimate deductible gift recipient in circumstances where she has no comment whatsoever about in excess of $6,000 a day trousered by the Labor Party from the Centenary House rent. *(Time expired)*

**Environment: Renewable Energy**

**Senator LEES (2.39 p.m.)—**My question is to Senator Ian Macdonald, Minister representing the Minister for the Environment and Heritage. I ask the minister why there is still no announcement of a new mandatory renewable energy target by the government. The MRET report was presented when we were not sitting, back in January. I ask the minister why more and more money is being poured into the coal industry but nothing is said about renewable energy. Specifically, will the environment minister insist on an increase in the mandatory renewable energy target and will the government commit to a realistic target that will give a boost to these industries or do they plan to just keep funding coal research? I noticed the geosequestration announcement today. The renewable industries do not want any money. They want a new target set very quickly.

**Senator IAN MACDONALD—**I thank Senator Lees for her question. She would be aware, as all senators would be aware, that the Howard government is very keen and very much to the fore in promoting renewable energy. Renewable sources such as solar, wind and hydro have taken great steps forward because of the forward thinking of the Howard government. Members on both sides of the house would realise that our mandatory renewable energy target scheme has been responsible for the burgeoning renewable energy sector in Australia. As required by the enabling legislation, a review of the scheme was conducted last year and the government tabled the report in January this year. We remain committed to the mandatory renewable energy target and we are very carefully considering our response in the context of formulating Australia’s forward strategy on climate change and energy policy. In contrast, Labor’s approach has been fairly predictable—and predictably slipshod. Labor nominated a new target without consideration of the cost to consumers or high energy users who ultimately pay for this scheme.

As I said, that reflects Labor’s new approach to policy. It has had no new policies since 1996 and we are now seeing a return to the old ways of Labor letting special interest groups dictate its policy. I can tell Senator Lees again that the mandatory renewable energy target review is being closely considered by the government and I expect that a decision in relation to that will be made in the not too distant future. I might also say, while I am on my feet, that one of the renewable energy sources in Australia could be the waste product from the timber industry.

**Senator Boswell—**And from sugar cane.

**Senator IAN MACDONALD—**And from sugar cane. Senator Boswell, thank you for reminding me of that. There are real benefits to Australia if we use renewable energy and I am a bit disturbed that at times some of the senators in this chamber hesitate about using offcuts and waste from the timber industry—wood that has already been used for another process—in renewable energy. I hope that all senators in this chamber
will assist the timber industry in making sure that those waste products from timber are useable. As Senator Boswell has said, the sugar industry is diversifying and readjusting. It wants to look to its own future from its own resources, and renewable energy is one of the very important aspects that the sugar industry will be looking at as it considers its future.

Senator LEES—I have a supplementary question. I would like to pick up on the last point that the minister made in his answer. If we are going to assist the sugar industry we need to increase the target. If you are serious about your support for solar and wind energy—and hopefully cogeneration—then the target has to be increased. I ask the minister: can he guarantee—or can he ask the environment minister to guarantee—that the target is going to be increased and that we will have the announcement within the next few weeks? Does he agree that there are five jobs in these new industries for every one in the coal industry?

Senator IAN MACDONALD—I do accept that there are a lot of jobs in the renewable energy industry, as there are in all the energy industries. The government does have to look at a number of issues. Cost is an issue, as are the various industries that compose Australia’s energy industry and the jobs that they create. These are all things that we have to look at. I am not going to guarantee anything to Senator Lees today, but I can assure Senator Lees that, very shortly, all will be revealed when the government makes its response to this review.

Howard Government: Advertising

Senator MOORE (2.45 p.m.)—My question is to Senator Coonan, the Assistant Treasurer and Minister for Revenue. My question is about the original superannuation co-contributions TV advertising campaign which was revised by the minister. Who decided that the pig, the size of a house, which featured in the original campaign would make voters connect the image with federal government ‘pork-barrelling’ or telling ‘porkies’ as reported in the Financial Review? Was it the officers in the Government Communications Unit or the chair of the Ministerial Committee for Government Communications, Senator Abetz? Why was the error that $30,000 worth of single dollar coins, plus interest, would only partly fill the original, house-sized pig picked up only in the last stages of the advertising campaign approval process?

Senator COONAN—the first comment I would make about the question is that this government believes in truth and transparency in advertising.

Opposition senators interjecting—

The PRESIDENT—Senators, come to order and allow the minister to answer the question.

Senator COONAN—I am quite certain that the Labor Party thinks that is funny, but this government actually takes very seriously the need to have truth and transparency in advertising. It does show, of course, that you cannot always believe everything that you read in the newspapers. The co-contribution ads needed to be realistic and they needed to portray what this government is doing, which is encouraging people to save for their retirement. The government not only encourages people to save for their retirement but also helps people who are low-income earners to understand the value of patient investment compounding over a very long period. It also encourages people to start to save at a much earlier age than otherwise they would. I was able to extend the provisions last week so that those who otherwise would not be able to get an employer contribution will still be able to save for the co-contribution and get a matched contribution from the govern-
ment up to $27,500 and then a scoping payment up to $40,000.

This government actually cares about low-income earners. That is something that the Labor Party, with its warmed over superannuation ideas, does not seem to care about. It only wants to provide a tax contribution reduction to help high-income earners. Senator Sherry has stood in this place talking about high-income earners, and that is exactly what the Labor Party will do if it reduces contributions tax. On the contrary, this government is interested in co-contribution for low-income earners. It is, in principle, a much more targeted way to encourage Australians to save for their retirement. The ad campaign obviously has to tell people about it.

Unfortunately, a lot of people who are out there working do not understand the value of saving from a very early age. This government has a duty and a responsibility to tell the Australian public about good policies and good laws that we manage to pass through this parliament with the effective opposition of the Labor Party every inch of the way and with the assistance of the Democrats and the Independents. It is a good policy. It is now law and it is appropriate to tell the Australian people in an appropriate way, which the ads do, how they can save for their retirement. It is a shame that the Labor Party would seek to impugn a measure that is for the benefit of low-income earners. Senator Sherry, I would have thought, having regard to his fessed up mistake last week, would be keeping his head right down and not worrying about an effective ad campaign.

Senator MOORE—Mr President, I ask a supplementary question. Didn’t the federal Treasury make an emergency call to the Perth Mint at the last moment—because it was the only mint still open at that time of day—to discover that the actual savings would not fill the original house sized pig? How much extra did it cost to reshoot the advertisement to reduce the size of the pig? Was the print material changed to reduce the size of the pig as well? How big a pig would you have to build to fill it with the money wasted on this whole process?

Honourable senators interjecting—

The PRESIDENT—Order! Minister, you might have to wait a moment until the Senate comes to order.

Opposition senators interjecting—

The PRESIDENT—I asked the Senate to come to order!

Senator COONAN—The only oversized pig that I can think of is the Centenary House rent rip-off where the Labor Party had their snouts in the trough to the tune of $6,000 a day. Now there is an oversized pig, if ever I have seen one.

Health and Ageing: Policy

Senator JOHNSTON (2.51 p.m.)—My question is to the Minister for Family and Community Services, Senator Patterson. Will the minister outline to the Senate how the Howard government is providing greater opportunity and choice to mature age Australians? Is the minister aware of any alternative policies?

Senator PATTERSON—I thank Senator Johnston for the opportunity to answer his question. I know it is an area in which he is very interested. We believe that there has been a need to create opportunities and choice for mature age Australians and it is something that the Howard government has taken very seriously. The government’s retirement income policy is designed to provide opportunity and choice. In particular, mature age Australians should have the opportunity and the choice to continue participating in the work force or to re-enter the work force.
Participation in the work force in a full-time job or in a part-time capacity in mature years assists Australians to maintain their social contacts and networks, to live healthier lives—and the research data show that—and to be more likely to be in a better financial position when they choose to go into full-time retirement. The Howard government acknowledge the enormous contribution that mature age Australians make to our community. But we do not only acknowledge it; we believe in assisting them to have more money in their pockets and easier access to concessions. If the state Labor governments actually sign on so that people can have concessions for travel, older people will have the benefit of other concessions as well.

But the most important thing we are assisting in giving them is opportunity. We have given Australians the opportunity to be in about 1.3 million more jobs than existed when Labor was in government. This has not been isolated to younger people. If you look at the unemployment rates in 1996 for people aged 45 to 54, there was a 6.2 per cent unemployment rate. In 2004 it is 4.1 per cent. Under Labor, unemployment rates were 8.5 per cent for people aged 55 to 59. What is it now? It is halved at 4.2 per cent. If you look at people over 60, under Labor they were on the scrap heap. Seven per cent of them were unemployed. Now unemployment is 3.6 per cent. So we have given older Australians and mature age workers much more choice and much more opportunity to be in jobs. The Howard government have put in place policies to assist mature Australians who choose to continue to work past 65, contrary to the political scaremongering and the political cheap shots peddled by Labor—

Senator Sherry—Work until you drop!

Senator Patterson—and peddled over and over by Senator Sherry. The government’s view is that individuals are the best ones to determine their own retirement and they should not be told by the Labor Party when they will retire. The government encourage people to take advantage of the concessions provided for superannuation by making additional voluntary savings or deferring their retirement. The Howard government have also put in place other policies which will improve the living standards of retirees. We have linked the pension to male total average weekly earnings. That is total average weekly earnings, for the benefit of Senator Sherry.

Single pensioners are now $43 better off under this government. Every fortnight they get $43 more because we have indexed the pension to MTAWE. We have reduced the tax burden on people over 65 through the senior Australians tax offset, allowing eligible single older Australians to earn up to $20,500 without paying income tax. That gives them a tremendous opportunity to put away and save for their retirement. If you choose to work and you are eligible for the pension and work beyond the pension age, you can be eligible for a tax-free lump sum of up to $28,000 under the pension bonus scheme. The Attorney-General has introduced Commonwealth age discrimination legislation, and the Prime Minister, in community and business partnerships, is now looking at how we can encourage business to employ more mature workers. But when we look at alternative policies, there are none. There are three choices. (Time expired)

Senator Johnston—Mr President, I ask a supplementary question. Could the minister further expand on employment improvement for mature age Australians and alternative policies?

Senator Patterson—Thank you very much, Senator Johnston. As I was saying, the Prime Minister’s community and business partnership is working with business to find
ways to encourage businesses to employ more mature age workers, a very important point in giving more people the opportunity to have jobs. When we look at the Labor Party, what have they got? There are three choices. We have Mr Swan with no policies at all. We have Mr Latham with his $8 billion super blooper—and if that were extended to all pensions it would have been a $17 billion super blooper. Then we have got the tax trio—Mr Ferguson, Mr McMullan and Ms Plibersek—telling the truth, I suppose, about what Labor is going to do, and increasing tax. We are about choice and opportunity. The biggest choice for older Australians is between this government, delivering genuine opportunity and real choices, and the opposition, with no policies, budget blow-outs and increased taxes.

**Trade: Banana Imports**

**Senator McLucas** (2.57 p.m.)—My question is to Senator Macdonald, representing the Minister for Agriculture, Fisheries and Forestry. Can the minister confirm that the agriculture department commenced assessing the risk of introducing disease through banana imports from the Philippines in June 2002—that is, nearly two years ago? Is it a fact that a number of diseases found in the Philippines banana plantations are not present in Australia and, if introduced, would devastate our Australian industry, damage the environment and destroy our reputation as a producer of clean green product? Can the minister also confirm that, despite the work done recently to assess the risk, the risk assessment report released last month contains a serious error that, according to his department, will require a reassessment of the level of risk posed by these imports and force the publication of an addendum? Given the resources the government has put into this assessment process and given the time the government has taken to consider this application, how could the minister allow such a significant error to occur?

**Senator IAN MACDONALD**—I think Senator McLucas’s question was whether the department has been looking at this since June 2002—

**Senator Carr**—Just a little bit more than that. What about an answer?

**Senator IAN MACDONALD**—That was the first part of it, I thought, wasn’t it? Does she want me to answer that or doesn’t she? Does Senator Carr want to speak to Senator McLucas? That is what I thought the first part of the question was. Do you just want me to answer some of the questions? Perhaps that is how they do it in Russia, Senator Carr, but it is not how we do it here.

Yes, I think it is correct that the department has been looking at this for some period of time and, as Senator McLucas knows, the revised draft report was released in February this year. The report did find that the unrestricted risk of moko, freckle and mealy bug is unacceptable. However, the unrestricted risk associated with black sigatoka, which does not infect banana fruit, is now considered to be within Australia’s appropriate level of protection. After extensive further analysis of scientific issues, including an assessment of additional risk management options, the import risk assessment team has concluded that imports of Philippines bananas could be permitted, but there will be stringent mandatory risk management measures recommended.

Senator McLucas also asked about Biosecurity Australia’s record keeping of the banana IRA team and suggested that it was unsatisfactory. This is a scientific report. Scientific reports work on the principle of scientists presenting a full account of their findings and the evidence underpinning them. The science of the banana IRA is already open to full public scrutiny. This is a
draft report. It goes out for public consultation, and the purpose of that is so that the industry and other stakeholders have the opportunity to look through a draft report and to indicate if there are errors or other things that should be looked at. I am very well aware that the banana industry has been looking at this very closely, and that is the purpose of this whole process. Biosecurity Australia does welcome the input if stakeholders do have new science or do have comments on the report. That is what it is all about. We need to have a look at everything that comes forward.

I come from an area where most of the Australian bananas are produced. It is a very efficient industry for Australia, a very good industry for Australia. Australian bananas taste much better than Filipino bananas, and I think all Australian consumers, were it the case that Filipino bananas did enter into Australia at some time in the future, would go to the Australian banana by choice because it is a far better product. But we do have obligations under the world trading regime, as senators will well know, and we are required to look very seriously at these matters. The Philippines import a very great quantity, in volume and in money, of the agricultural produce of Australia. Any threats by the Philippines to stop the import of Australian agricultural products because Australia does not deal with the question of Filipino bananas in the appropriate manner is of course something that would react very, very badly on Australia’s primary industries. I have great confidence in Biosecurity Australia and I am sure that they will come up with the appropriate result. (Time expired)

Senator McLUCAS—Mr President, I ask a supplementary question. Is the minister aware that significant doubt has been raised by two senior scientists about the integrity of the science upon which Biosecurity Australia has based its claim that importation of this fruit from the Philippines does not pose a quarantine risk? Given the errors in calculations undertaken by Biosecurity Australia and the problems raised about the science applied by the agency in its latest assessment, will the minister now direct Biosecurity Australia to undertake a full review of the whole import risk assessment process, with banana imports halted until that review is completed?

Senator IAN MACDONALD—There are no imports until this process is concluded, Senator McLucas, so there is no question of halting something. Yes, I am aware that there are scientists who have a different view to other scientists. The Banana Growers Association of Australia came and saw me, as they no doubt came and saw you, and they have made their case very well. But that is what the whole process is about. Scientists are a bit like lawyers: if you have 12 scientists you will have 13 different opinions. We have to—

Senator Sherry—That is exactly right! Look at all the lawyers there!

Senator IAN MACDONALD—I did not mention the lawyers. If you did that with lawyers, you would probably have 15 different opinions. It is a complex area. It has to be worked through very carefully. No-one is more concerned about this than the government. We want to make sure that we abide by our world trade requirements. At the same time, we want to ensure that this industry is protected and that we do not allow in diseases that could reasonably be excluded. So this is the whole process. This is what this import risk analysis regime is all about. (Time expired)

Senator Hill—Mr President, I ask that further questions be placed on the Notice Paper.
QUESTIONS WITHOUT NOTICE:
ADDITIONAL ANSWERS

Defence: Equipment

Senator HILL (South Australia—Minister for Defence) (3.04 p.m.)—Yesterday, in response to a question from Senator Hutchins, I indicated that Leopard tank ammunition was produced in Australia by ADI. I was subsequently advised that in fact some years ago ADI made a commercial decision to cease production of 105-millimetre tank ammunition. Since that time, the Army has procured the ammunition for the Leopard tank from overseas. This will continue to be the case for the new M1A1 Abrams tank. ADI does produce propellant for 105-millimetre artillery shells; however, this production is unrelated to Leopard tank ammunition.

Environment: Threatened Ecosystems

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.05 p.m.)—On 10 March this year, Senator Bartlett asked me questions in my capacity representing the Minister for the Environment and Heritage concerning threatened ecosystems. The Minister for the Environment and Heritage has provided an answer, and I seek leave to incorporate the answer in Hansard.

Leave granted.

The answers read as follows—

Senator Bartlett asked “why is it that more than three years after the stronger national environment act came into force that not even 10 ecological communities have been listed?” and “why is it that after such a period of time so few communities have been listed?” I assume that Senator Bartlett is referring to the Environmental Protection and Biodiversity and Conservation Act 1999 (EPBC).

Consideration of listing nominations requires considerable scientific research, public consultation as well as consultation with recognised experts. This rigorous approach is essential and ensures any new listings of ecological communities are scientifically robust and defensible. The rate of listing under the EPBC Act is consistent with the twenty-two ecological communities that were listed over the eight years of listing (1992-2000) under the Endangered Species Protection Act 1992.

I was also asked how many ecological communities have been nominated to the Threatened Species Scientific Committee and how many have been rejected. I am advised that there have been 27 ecological communities nominated since July 2000 and 11 of these have been rejected by the Minister on the advice of the Threatened Species Scientific Committee. A number of nominations are still being considered.

Senator Bartlett also asked, “is it not the case that grouping together different nominated ecological communities contradicts section 189 of the EPBC Act which forbids the consideration of any matter that does not relate to the ecological community that is the subject of the nomination?” and “why is it that the Minister and the Scientific Committee have adopted a practice that appears to contradict section 189?”

In answer to both questions, the Minister has advised me no, it is not breaching the Act.

ANSWERS TO QUESTIONS ON NOTICE

Question No. 2453

Senator FORSHAW (New South Wales) (3.05 p.m.)—Pursuant to standing order 74, I ask the Minister representing the Minister for Science for an explanation as to why an answer has not been provided to question on notice No. 2453, which I asked on 8 December 2003. I advised Senator Vanstone, who is the Minister representing the Minister for Science, that I would be asking her for an explanation today, but I note that she has already left the chamber. It has been 107 days since this question was put on notice, and I think it is about time that the minister answered the question. I cannot ask Senator
Vanstone directly, because she is not here, but I would ask—

Senator Mackay—Did you tell her office?

Senator FORSHAW—I certainly told her office. She was advised in writing by facsimile this morning.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Taxation: Deductible Gift Recipient Status

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

That the Senate take note of the answer given by the Minister for Revenue and Assistant Treasurer (Senator Coonan) to a question without notice asked by Senator Mackay today relating to the deductible gift recipient status of the Constitutional Education Fund.

In the time available to me I wish to lay out the case as the Labor Party sees it. The Constitution Education Fund Australia has been sending out information about its Constitution Education Fund prize scheme. The material being distributed lists the fund’s trustees as Professor David Flint, Commissioner Gareth Grainger and John Barrington Paul Esq. The address for the fund is Kent Street, Sydney—the same street and postal address as the organisation Australians for Constitutional Monarchy, whose national convener is Professor David Flint. This material states, inter alia:

In June 2003, the Federal Government granted tax deductibility for all donations to the Fund to the value of $2 or more.

A quick check of the Australian Taxation Office web site shows that in fact the fund does not have deductible gift recipient, DGR, status. The Constitution Education Fund prize scheme was launched at the Australians for Constitutional Monarchy national conference in October 2002. The Australians for Constitutional Monarchy web site tells those wanting ‘more information on the Australian Constitution and these prizes’ to ‘visit the official web site of the prize scheme’. However, no search engine I used could find any such web site. The only references to the Constitution Education Fund and the Constitution Education Fund prize that I could find were on the ACM site and in a press release issued by Minister Coonan that is in fact on her web site.

According to the information on the ACM web site:

The Fund’s principal objective is to educate Australians of all ages on the detail and workings of the Australian Constitution and the Australian system of government.

This is a noble objective—nobody on this side of the chamber would disagree with that. However, I am concerned about the balance that may exist in the educating of Australians when the fund itself is being administered by Professor Flint and Australians for Constitutional Monarchy. The Commonwealth identifies civics and citizen education as a priority. The opposition supports the $32 million that has been put into the Discovering Democracy program—it is a good program. In contrast to this program, or ‘complementing’ it, as Minister Coonan’s press release says, we have the proposed Constitution Education Fund prize program. This is administered by Australians for Constitutional Monarchy and with judging panels to ‘be announced’ but selected from ‘distinguished Australians’. There is no indication as to who they are. There are a number of prize categories with different sections for public speaking, web site design and essay writing. I am very intrigued with respect to the essay question. According to the web site, students will be asked to imagine that they are an adviser to the Prime Minister and then provide a 500 word factual scenario for an hypothetical constitutional crisis to be inserted here.
I wonder what that hypothetical constitutional crisis will be. The year 1975 springs to mind. What will the winners of the Constitution Education Fund prize program receive? There are a few categories and a number of prizes, but my favourite is the prize for the winner of the secondary public speaking section. That lucky student will get:

... an all expense paid ten day holiday for a family of four to the Palace of Westminster in the United Kingdom and the Constitution Center in Philadelphia.

Senator Sherry—We’re subsidising this!

Senator MACKAY—That’s right, Senator Sherry. Senator Coonan said on 20 June 2003 that she would introduce legislation as soon as practicable to give effect to her announcement that this organisation would be granted deductible gift recipient status. This makes me very angry. I am not sure that the minister should even be presuming that the Senate will pass this legislation. I call on the minister and the government to thoroughly investigate this issue to ensure that there are clear and valid grounds for granting DGR status to this Constitution Education Fund, before the legislation comes back before the Senate. I also call on the minister to act urgently to stop Professor Flint from continuing to mislead potential donors by promising that his fund holds DGR status when it does not at this point in time and may never depending on the will of the Senate.

Senator EGGLESTON (Western Australia) (3.11 p.m.)—This is a thinly disguised attack on Professor David Flint. That is the whole purpose of this issue. It is not anything, really, to do with the group being able to claim tax deductability. That is very false outrage. Professor Flint is a very outstanding public servant. He is Chairman of the Australian Broadcasting Authority and, it happens, coincidentally, the National Convenor of Australians for Constitutional Monarchy.

Senator Mackay—You’re a republican.

Senator EGGLESTON—I am a republican, as you say. I am quite committed to that cause. But I respect the right of other people to hold different points of view. Professor Flint certainly is a committed monarchist. I respect the fact that, as somebody who is involved in considering our Constitution, Professor Flint, and his organisation, should be able to encourage debate on the Constitution. That is the purpose of this organisation. The fact that they are offering a prize for an essay or a submission on the Constitution surely is a good thing because it provokes public debate and consideration of our Constitution and whether or not our Constitution in its present form is appropriate to the needs of Australia, as we are today.

Professor Flint travels around Australia. I suppose this is one of Senator Mackay’s points, because she raised it in estimates. In estimates she raised the issue of whether or not when he was in other cities he might not sometimes do business for the Australians for Constitutional Monarchy movement. One has to wonder whether or not the President of the ACTU, for example, who travels around Australia quite often on behalf of the union movement, does work for the Australian Labor Party. I do not think there is a real issue there or that Professor Flint, in his private time, should not be able to carry out private activities.

The broad issue is that Australians are not aware enough of the way in which we are governed. There is not a detailed understanding of our Constitution. We on this side of the house, the Howard government, believe that Australians should be encouraged—schoolchildren in particular—to have a greater understanding of our Constitution and our mode of government. Without doubt Professor Flint’s organisation is encouraging people to think about our Constitution and its
form. I do not see anything inappropriate whatsoever about this organisation being able to claim tax deductible status for its activities. I am sure that Senator Mackay and Senator Sherry would welcome any organisation which promoted a greater understanding of Australia’s Constitution, and that is what this organisation is doing.

Children in the United States and South Africa know full well what their constitution is. They understand and respect it. They have a much greater sense of national self-identity than Australia has—although that is changing in Australia now and more Australians celebrate Australia Day with a greater sense of who and what we are and where we stand in the world. I personally laud that. I think that is an excellent development. But one of the great gaps in our Australian education process is that we do not have sufficient education in civics and a sufficient understanding of our national Constitution. That is what Professor Flint’s organisation is seeking to do: to encourage people to understand our Constitution. I applaud that. I think the case which Senator Mackay is making is quite fallacious. There is no issue about whether or not these people should be able to claim a tax deduction for the excellent work which they are doing.

Senator SHERRY (Tasmania) (3.16 p.m.)—My colleague Senator Mackay raised an important issue today concerning the proposed extension of the tax deductibility gift recipient status to an organisation known as the Constitution Education Fund. This is an important issue because deductible gift recipient status is not awarded lightly in the sense that the organisations granted this status by the government via legislation have an important role to play in our society—for example, benevolent institutions.

There has recently been a debate about the extension and the granting of deductible gift recipient status to the volunteer firefighters and certain aspects of public hospital operation—ambulance services, for example. I might say in respect of ambulance services that that deductible gift status recognition occurred after a strong campaign run by my colleague Mr Cox in the other place. He pointed out that it was unfair and unreasonable for, in this case, ambulance services to be excluded from this status. There are a number of other organisations that are seeking but have not got deductible gift recipient status who perform important community, social and welfare functions in our society. The awarding of deductible gift recipient status comes at a public cost; it comes at a loss to government revenue. Therefore it is important that there is proper scrutiny as to who receives deductible gift status.

It was a surprise to the Labor opposition today to hear the answer of Senator Coonan, the Assistant Treasurer, when my colleague Senator Mackay asked why the Constitution Education Fund will be awarded such status in legislation to be brought into the parliament. The minister’s claim that she had no knowledge of the proposed extension was somewhat of a surprise. As my colleague Senator Mackay has pointed out, how can the minister not have any knowledge of this when she issued a quite specific press release dated 20 June 2003 headed ‘Deductibility of gifts to the Constitution Education Fund’. Apparently the minister put out a press release, and yet she claims she has no knowledge on this. I think the minister should come in and correct the record—certainly she should correct her answer to the question put to her by Senator Mackay.

As I have already mentioned, it is important to remember that the tax status of these types of organisations comes at a cost to revenue. The Labor Party would like to know what the cost to revenue will be of awarding this deductible gift recipient status to the
The Labor Party accepts that there are many organisations—I have mentioned some: ambulance services and volunteer firefighters—who are doing a great job in our community and who have and should receive deductible gift recipient status. But should the taxpayer be subsidising an organisation such as the Constitution Education Fund—which apparently is to award a prize of a 10-day holiday to the Palace of Westminster—through the awarding of deductible gift recipient status? I think it is highly questionable that the taxpayer should be subsidising holiday trips to the Palace of Westminster in London. When I look at that particular public subsidy through the tax concessions against issues relating to volunteer firefighters and public hospitals, I question the extension. (Time expired)

Senator CHAPMAN (South Australia) (3.21 p.m.)—The issue that has been raised today by Senator Mackay and Senator Sherry is nothing more than a thinly disguised attack on Mr David Flint from Australians for Constitutional Monarchy. Indeed it is a thinly disguised attack on the fact that, at the referendum held in 1999, the proposal for a republic to replace our current monarchical constitutional system was soundly defeated. Recently we have seen Latham Labor say that they are going to reopen that issue. The Labor Party, in raising this issue, are about nine months behind the times. A few moments ago, Senator Sherry quoted from a press release put out by the Minister for Revenue and Assistant Treasurer, Senator Helen Coonan, on 20 June 2003 in which the minister announced that, from that date, gifts to the Constitution Education Fund to the value of $2 or more would be deductible for income tax purposes.

Of course, the purpose of this organisation is to administer a nationwide competitive prize scheme commencing this year, 2004, that involves participants engaging in debates, public speaking and essay writing. The press release went on:

The Constitution Education Fund is designed to complement the Government’s Discovering Democracy Initiative in schools. The primary objective of the Fund is to educate students of all ages about the Australian Constitution and the workings of all levels of government.

Deductible gift recipient status will help the fund attract public support so that educational and personal development opportunities will be available for a broad scope of students, particularly for finalists who spend part of the Government’s Celebrating Democracy Week in Old Parliament House meeting distinguished Australians.

What is exceptional about that? This is an education program designed to improve the knowledge of young people about the working of the Australian Constitution and about the working of our precious democracy. As I said, it was announced nine months ago. It is only today that the Labor Party have somehow decided that this is an inappropriate organisation to receive tax deductibility gift status. Of course, they are doing that because they want to attack our constitutional arrangements and, as I said, they want to attack David Flint and the monarchist supporters. The fact is that the Labor Party have never got over the 1999 referendum to determine whether we were going to change our Constitution. They never got over the defeat of their support for a republic on that occasion, notwithstanding a very strong media campaign supporting the move to a republic.

As I understand it, the proposal the Labor Party are now going to adopt is a fraudulent move, because their proposal is to have a referendum at some stage in the future to determine whether or not the Australian people want a republic. Irrespective of what model republic might be implemented after that, they simply want to have a yes or no referendum—do you or do you not want a republic?—completely ignoring the very
important point that the essence of any change to our Constitution is the specific details of that change. In particular, if you are going to move from our constitutional monarchy structure to a republic, whether you have a republic in which you have a president directly elected by the people or a president who is appointed by the government or by the parliament is the key issue. We know only too well that the republicans themselves are deeply divided on the issue of the method of appointing the head of state that would be put in place in an alternative constitutional arrangement under a republic. To simply have a referendum in which people are given a choice—yes or no—as to whether or not they want a republic is, as I said, a very fraudulent approach to this issue, and it is an approach which deserves the strongest condemnation.

The Labor Party know only too well as a result of the last referendum that the popular view is that people, if they want to move to a republic, want a directly elected president. But at least the Labor Party have some measure of sense—they are sensible enough to know all the difficulties inherent in that proposal. So they have moved to this fraudulent approach of having a very simple question put up which really does not get to the nub of the issue and does not tease out the very important issues of concern that relate to any changes to our constitutional arrangements and the structure that we want to put in place. That is at the very heart of the issue they have raised today. It is simply an attack—(Time expired)

**Senator MOORE (Queensland) (3.26 p.m.)—** I also rise to respond to comments made by the Minister for Revenue and Assistant Treasurer, Senator Coonan, in her responses to questions in the question time period today. In her responses, Senator Coonan said that the most important issue was to improve the public confidence in the tax system and to ensure that the principles of truth and transparency were maintained. In this place today there are a number of students who would be very interested in those comments by the minister, because they are here as successful candidates through the existing education process on our Constitution, which is already taxpayer funded and which is integrated into the current education system—the Discovering Democracy program. They are the successful finalists who have competed in this process, written speeches, competed amongst their comrades on this particular point and have come today to Canberra to share their knowledge of the whole constitutional process. They are the people who are interested in the truth and transparency of our system.

This is not our concern about the Constitution. It is not our concern about whether there should or should not be a republic. The concern that we have on this side of the house is the questions we asked today specifically about tax deductibility—why one particular organisation has been able to claim tax deductibility for a program which is about education about the Constitution. The only place I could find any real information about this program was on the web site for Australians for Constitutional Monarchy, a web site which I do not read often but which I do read from time to time. When you scroll through that web site, which has lots of very valuable information about the principles on which that particular organisation is based—and it clearly talks about defending the place of the Crown and opposing the attempt of minority groups to promote a republican form of government, amongst many other principles of the Australians for Constitutional Monarchy—you find out about the very valuable program that is being funded through their organisation, the Constitution
Education Fund, which sounds great and, as Senator Mackay has pointed out, has some very noble concepts. It talks about education, developing public speaking and offering extremely generous prizes for people who are successful in the process. The prizes include educational help and in particular, as we have heard, the opportunity to visit what they describe as the homeland, which is England and the Westminster Palace. That is an opportunity I think a lot of people would gain much benefit from. What we are questioning is whether that process, which is linked to one particular group in the community, should receive tax deductibility.

We are also questioning whether in fact they have got it. In a system which we have been told is based on truth and transparency, and having read the web site and having seen a copy of Senator Coonan’s press release, I would immediately presume that if I made the open choice to donate to that program I would have tax deductibility. We do not believe that is actually accurate at this point in time. That is certainly a worry in terms of the very values on which the whole process is based, which are, we believe, truth and transparency.

Also, on other questions that were asked of Senator Coonan on the issue of an advertising campaign about superannuation co-contributions, we were unable to get a clear answer as to specifically how much the campaign cost and, if there was a reshoot of the advertisement, how much that cost. The issues of truth and transparency must be the basis of our democratic system. Certainly they must be the values which the people who are in this chamber now, learning about democracy, must be able to accept are the basis of our democratic process and the Constitution. If we cannot get a straight answer on how much something like that cost and have a matter like that taken seriously, questions must be raised.

Certainly we agree that it is important that people find out more about our Constitution and are involved in debate and discussion on it, but we do not need the cost of an individual community group’s program, which is in fact an outsourced education program, taking further funds from existing successful schemes. The Discovering Democracy program must be maintained and that must be what the public purse funds, and we should not be encouraging individual private enterprises to promote their ideas at our expense. We hope that this debate about the Constitution will continue. Should people have absolute confidence in what is being said about their tax system? Absolutely. (Time expired)

Question agreed to.

**Taxation: Public Benevolent Institution Status**

**Senator CHERRY** (Queensland) (3.30 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Revenue and Assistant Treasurer (Senator Coonan) to a question without notice asked by Senator Stott Despoja today relating to the public benevolent institution status of charities.

The question concerned the public benevolent institution status for tax treatment and a range of South Australian institutions and other institutions around Australia whose status is currently being reviewed. It is particularly concerning because what is coming through in these various decisions—I think it was noted in Senator Coonan’s answer—is that, as a result of a recent court decision, if an institution is found to have a link with a state government then it is essentially going to lose its PBI status. The tax office’s view—now confirmed in a court case—is that you cannot be a public benevolent institution and a government institution at the same time. Some of these areas get very dicey. One of the examples that Senator Stott Despoja used
was the Julia Farr Centre in Adelaide, which provides services for those with an intellectual disability. It is affected because the state government has the power to appoint some board members, and that is sufficient to make it a government institution for the purposes of tax office rulings.

This concerns me enormously because there are an awful lot of organisations in this world, where the dotted line between government and non-government is becoming less and less clear, that are doing genuine charitable work with minimal or no direction, control or support from government at various levels. It highlights to me the complete inconsistencies which are now emerging in the 80-year-old definition of ‘public benevolent institution’.

Let us recall that the definition of a ‘public benevolent institution’ was devised by the Bruce-Page government—Page was one of those forgettable Prime Ministers of the 1920s—as the result of a desire to meet a then budget crisis and ensure that charities did not get sufficient access to all of the tax concessions that go with being a public benevolent institution. That definition has been incredibly problematic in the charity sector, because it is a privileged group of charities that get access to PBI status. The wording used by the tax office to describe a PBI is extraordinary. It is such arcane language. A PBI, based on the Perpetual Trustees case, is ‘a non-profit institution organised for the direct relief of such poverty, sickness, suffering, distress, misfortune, disability, destitution and helplessness as arouses compassion in the community’.

This is the wording of the 1920s. It is social policy which was left behind by this country decades ago. Yet this is the basis on which tax deductions are being determined, as we speak, by the tax office in respect of public benevolent institutions. It is time the definition was updated. In fact, the charities definition inquiry, which was formed as a result of negotiations between the Democrats and the Treasurer, has recommended that it be updated. It recommended that the whole category be thrown out and replaced with a broader, updated category called ‘benevolent charities’. A ‘benevolent charity’ would have a much more comprehensive, more modern and more readable definition. A benevolent charity would be a charity whose dominant purpose is to benefit, directly or indirectly, those people whose disadvantage prevents them from meeting their needs. That recommendation was made over 2½ years ago and the government has yet to respond to it. Yet the government, as we speak, is doing a review of PBI status for a whole range of charities doing quite decent and proper work against the existing 80-year-old definition.

I am pleased to note that in Senator Coonan’s answer she says that this matter is now being looked at. I hope that the government is looking at finally providing a response to the charities definition inquiry. It does not matter which way it turns PBI status—upside down, inside out, or the wrong way round—the problem is that the definition itself is so old, arcane and restrictive. It is now causing massive problems. It does not keep up with the modern notion of charitable work and service work. There is now a sense of deep unfairness that any organisation with any relationship with a government is likely to lose PBI status. The frustration with this link has been found in some of the exceptions that even the government is now being forced to agree to.

The decision to give gift deductible recipient status to ambulance services and fire services highlights the increasing complexity of this area of law. Serious fundraising and charitable work is being done in this sector by government related institutions. It is frustrating because, as a result of this PBI defini-
tion review, a whole range of eminent organisations doing good work will lose their right to have fringe benefits tax concessions and, as a result, their workers will have a cut in their take-home pay. That concerns and frustrates me. It also frustrates the sector. I hope that the issue Senator Coonan spoke about in her answer is resolved quickly, comprehensively and thoroughly, and in such a way that workers in the disability sector are not disadvantaged.

Question agreed to.

PETITIONS

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

Education: Higher Education

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

The Petition of the undersigned draws to the attention of the Senate, concerns that increasing university fees will be inequitable.

Your petitioners believe:

(a) fees are a barrier to higher education and note this is acknowledged by the Government in the Higher Education at the Crossroads publication (DEST, May 2002, Canberra, para 107, p. 22);

(b) fees disproportionately affect key equity groups—especially indigenous, low socio-economic background and rural, regional and remote students—and note participation of these groups improved from the early 1990s until 1996 but have subsequently fallen back to about 1991 levels (lower in some cases) following the introduction of differential HECS, declining student income, support levels, lower parental income means test and reduction of Abstudy;

(c) permitting universities to charge fees 30% higher than the HECS rate will:
   a. substantially increase student debt;
   b. negatively impact on home ownership and fertility rates;
   c. create a more hierarchical, two-tiered university system; and

(d) expanding full fee paying places will have an impact on the principle that entry to university should be based on ability, not ability to pay.

Your petitioners therefore request the Senate act to ensure the principle of equitable access to universities remain fundamental to higher education policy and that any Bill to further increase fees is rejected.

by Senator Stott Despoja (from 39 citizens).

Petitions received.

NOTICES

Presentation

Senator Crossin to move on the next day of sitting:

That the following matters be referred to the Standing Committee for the Scrutiny of Bills for inquiry and report by the first sitting day in March 2005:

1. The Government’s responses to the committee’s Fourth Report of 2000: Entry and Search Provisions in Commonwealth Legislation and, in particular, whether there has been any resultant impact on the
practices and drafting of entry and search provisions.


(3) A review of the provisions in Commonwealth legislation that authorise the seizure of material and, in particular:

(a) the extent and circumstances surrounding the taking of material that is not relevant to an investigation and the use and protection of such material; and

(b) whether the rights and liberties of individuals would be better protected by the development of protocols governing the seizure of material.

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

That the Senate—

(a) notes that:

(i) Taiwan is a thriving democracy of 23 million people, with a world-class healthcare system, its achievements in the area of health include the highest life expectancy in Asia, very low maternal and infant mortality rates, the eradication of diseases such as cholera, smallpox, and the plague, and it was one of the first countries in our region to eradicate polio and provide children with hepatitis B vaccinations,

(ii) Taiwan has a strong commitment to international health security through provision of development aid in the form of funds and expertise, and, while this is limited by its exclusion from key international health bodies like the World Health Organization (WHO), this commitment has included sending emergency response medical teams to assist after the 2001 El Salvador earthquake, contributing over US$120 million in medical and/or humanitarian relief to 78 countries spanning five continents between 1995 and 2001, and maintaining permanent medical assistance programmes in Burkina Faso, Malawi, Chad, and the Republic of São Tomé and Principe,

(iii) the experience of SARS in 2003 shows the vital importance of seamless global coordination in responding to international health emergencies, as a matter of global security,

(iv) Taiwan’s efforts in containment and management of the SARS epidemic in 2003 were severely hampered by its inability to access the expertise and coordination of the WHO, including the WHO’s Global Outbreak Alert and Response Network (GOARN), endangering the people of Taiwan, of whom 73 were killed by the disease, and also undermining the WHO’s own efforts to stop the further spread of the disease,

(v) the Ruler of Procedure of the World Health Assembly (WHA) formally allow, through several mechanisms, for the participation of observers, as distinct from states, in the activities of the organization, and current observers include the Palestine Liberation Organisation, the Holy See, the Order of Malta, and the International Red Cross and Red Crescent,

(vi) Taiwan’s participation in the WHA as an observer, like the abovementioned precedents, will not involve the issue of sovereignty,

(vii) the WHO’s objective, as expressed in Article 1 of its Constitution, is the attainment by all peoples of the highest possible level of health, and as a specialized agency of the United Nations, is an essential non-political
organ for international coordination of health issues,

(viii) support for Taiwan’s previous bids has come from many other governments, including the United States of America, in the May 2003 Summit of the World Health Assembly in Geneva, and the European Parliament, Central American Parliament, Belgian Chamber of Representatives, Dominican Republic House of Representatives, Uruguayan Chamber of Representatives, and the Philippine House of Representatives have all passed official resolutions in support of Taiwan obtaining observer status of the WHA,

(ix) public support of Taiwan’s participation in the WHO has, in recent years, come from major professional medical organisations such as the:

- World Medical Association,
- International Paediatric Association,
- British Medical Association,
- Lancet, Britain’s premier medical journal,
- Standing Committee of European Doctors,
- World Congress of Traditional Medicine, and
- Philippine Medical Association, and

(x) in 2003, a private member’s motion was passed in the Australian House of Representatives supporting Taiwan in its 2003 bid to gain observer status in the WHA;

(b) commends Taiwan for its contributions to international health, particularly in assisting in developing countries;

(c) acknowledges the need for a fully integrated global healthcare system and recognises the appropriateness of Taiwan’s cooperation with WHO activities;

(d) recognises that Taiwan’s participation as an observer in the WHO would be consistent with a fully-integrated global healthcare system; and

(e) looks forward to Taiwan’s participation in the WHA as an observer, through consensus of all members.

Senator Faulkner to move on the next day of sitting:

That the Senate expresses its deep concern at the continuing politicisation of the public sector by the Howard Government.

Senator Brown to move on the next day of sitting:

That the Senate—

(a) opposes the recent recommendation of the Joint Standing Committee on Treaties against ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) concludes that the reluctance to ratify the optional protocol is caused by the Australian Government’s indifference to human rights in Australia and that this indifference includes, but is not limited to:

(i) the existence of immigration detention centres in Australia and in the Pacific region that imprison over 1,000 men, women and children,

(ii) the acquiescence by the Australian Government to the indefinite detention of David Hicks and Mamdouh Habib at Guantanamo Bay by the United States of America, and

(iii) the human rights abuses being committed in Afghanistan and Iraq;

(c) expresses concern that not ratifying this protocol would obviate a system of regular visits to be undertaken by independent international and national bodies to places of detention in order to monitor conditions and ensure that torture and other cruel, inhuman or degrading treatment or punishment is not used; and
(d) calls on the Australian Government to ratify this protocol immediately.

Senator Ridgeway to move on the next day of sitting:
That the Senate—
(a) notes that:
   (i) in the week beginning 14 March 2004, Burma’s military government refused entry to United Nations (UN) Human Rights Special Rapporteur, Mr Paulo Sergio Pinheiro,
   (ii) Mr Pinheiro released a report into the state of human rights in Burma in January 2004, which recommended that all restrictions on freedom of expression, movement, assembly and information be lifted, and that there be no further arrests for participation in peaceful political activities, and
   (iii) Mr Pinheiro was seeking to enter Burma to conduct follow-up investigations before reporting on the state of human rights in the country ahead of a meeting of the UN Human Rights Commission in Geneva in the week beginning 28 March 2004;
(b) acknowledges that the human rights situation in Burma remains extremely grave, with severe restrictions on political freedoms and continued use of forced labour, torture, child soldiers and other serious abuses; and
(c) calls on the Government to use all diplomatic means to ensure that the Government of Burma:
   (i) cooperates fully with the UN investigation,
   (ii) heeds the recommendations of the UN Special Rapporteur’s report, and
   (iii) restores the rule of law to Burma.

Senator HARRIS (Queensland) (3.39 p.m.)—by leave—I give notice that, on the next day of sitting, I shall move:
(1) That a select committee, to be known as the Select Committee on the Lindeberg Grievance, be appointed to inquire into
and report by 5 October 2004 on the following matters:
(a) whether any false or misleading evidence was given to the Select Committee on Public Interest Whistleblowing, the Select Committee on Unresolved Whistleblower Cases or the Committee of Privileges in respect of the matters considered in its 63rd and 71st reports, and whether any contempt was committed in that regard, having regard to previous inquiries by Senate committees relating to the shredding of the Heiner documents, the fresh material that has subsequently been revealed by the Dutney Memorandum, and Exhibits 20 and 31 tabled at the Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions, and any other relevant evidence; and
(b) the implications of this matter for measures which should be taken:
   (i) to prevent the destruction and concealment by government of information which should be available in the public interest,
   (ii) in relation to the protection of children from abuse, and
   (iii) for the appropriate protection of whistleblowers.
(2) That the committee consist of 7 senators, 3 nominated by the Leader of the Government in the Senate, 2 nominated by the Leader of the Opposition in the Senate, 1 nominated by the Leader of the Australian Democrats, 1 nominated by the One Nation Party.
(3) That the committee may proceed to the dispatch of business notwithstanding that not all members have been duly nominated and appointed and notwithstanding any vacancy.
(4) That:
(a) the chair of the committee be elected by and from the members of the committee;

(b) in the absence of agreement on the selection of a chair, duly notified to the President, the allocation of the chair be determined by the Senate;

(c) the deputy chair of the committee be elected by and from the members of the committee immediately after the election of the chair;

(d) the deputy chair act as chair when there is no chair or the chair is not present at a meeting; and

(e) in the event of the votes on any question before the committee being equally divided, the chair, or deputy chair when acting as chair, have a casting vote.

(5) That the quorum of the committee be a majority of the members of the committee.

(6) That the committee and any subcommittee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and have leave to report from time to time its proceedings and the evidence taken, and such interim recommendations as it may deem fit.

(7) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any such subcommittee any of the matters which the committee is empowered to consider, and that the quorum of the subcommittee be a majority of the members appointed to the subcommittee.

(8) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint investigative staff and persons, including senior counsel, with specialist knowledge for the purposes of the committee, with the approval of the President.

(9) That the committee have access to, and have power to make use of, the evidence and records of the Select Committee on Public Interest Whistleblowing, the Select Committee on Unresolved Whistleblower Cases and the Committee of Privileges in respect of its 63rd and 71st reports.

(10) That the committee be empowered to print from day to day such documents and evidence as may be ordered by it, and a daily Hansard be published of such proceedings as take place in public.

COMMITTEES
Selection of Bills Committee
Report
Senator COLBECK (Tasmania)  (3.39 p.m.)—On behalf of Senator Ferris, Chair of the Selection of Bills Committee, I present the fifth report of 2004 of the Selection of Bills Committee.

Ordered that the report be adopted.

Senator COLBECK—I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 5 OF 2004

1. The committee met on Tuesday, 23 March 2004.

2. The committee resolved to recommend—

That—

(a) the provisions of the Civil Aviation Amendment (Relationship with Anti-discrimination Legislation) Bill 2004 be referred immediately to the Legal and Constitutional Legislation Committee for inquiry and report on 30 June 2004 (see appendix 1 for statement of reasons for referral);

(b) the provisions of the Sex Discrimination Amendment (Teaching Profession) Bill 2004 be referred immediately to the Legal and Constitutional Legislation Committee for inquiry and report on
11 May 2004 (see appendix 2 for statement of reasons for referral); and
(c) the following bills not be referred to committees:
• Higher Education Legislation Amendment Bill 2004
• Telstra (Transition to Full Private Ownership) Bill 2003 [No. 2].

The committee recommends accordingly.

3. The committee deferred consideration of the following bills to the next meeting:

Bill deferred from meeting of 28 October 2003
• Intelligence Services Amendment Bill 2003.

Bills deferred from meeting of 10 February 2004
• Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003
• Corporations (Fees) Amendment Bill (No. 2) 2003
• Racial and Religious Hatred Bill 2003 [No. 2].

Bill deferred from meeting of 23 March 2004
• Resale Royalty Bill 2004.

( Jeannie Ferris)
Chair
24 March 2004

Appendix 1
Proposal to refer a bill to a committee
Name of bill(s):
Civil Aviation Amendment (Relationship with Anti-discrimination Legislation) Bill 2004

Reasons for referral/principal issues for consideration
This bill seeks to amend the Civil Aviation Act 1988 to empower the Governor-General to make regulations that may be consistent with the Disability Discrimination Act 1992 and the Sex Discrimination Act 1984.

The hasty introduction of this bill by government has precluded appropriate consultation with industry and community experts. It is uncertain if this bill is required when sufficient mechanisms already exist.

Possible submissions or evidence from:

Committee to which bill is referred:
Legal and Constitutional Legislation Committee
Possible hearing date: June 2004
Possible reporting date(s): 30 June 2004

Senator Sue Mackay
Whip/Selection of Bills Committee Member

Appendix 2
Proposal to refer a bill to a committee
Name of bill(s):
Sex Discrimination Amendment (Teaching Profession) Bill 2004

Reasons for referral/principal issues for consideration
To investigate whether the provisions of the bill meet the stated purpose of attracting more male teachers to primary schools.

To identify any negative impact of the bill on the general operation of the Sex Discrimination Act.

To identify other measures that would be more effective.

Possible submissions or evidence from:
HREOC, Catholic Education Office, experts/academics in boys education field, teachers colleges, other education providers (independent/government), principals association.

Committee to which bill is referred:
Legal and Constitutional Legislation Committee
Possible hearing date: May/June 2004
Possible reporting date(s): July/August 2004

Senator Sue Mackay
Whip/Selection of Bills Committee Member
NOTICES
Postponement
An item of business was postponed as follows:

Business of the Senate notice of motion no. 2 standing in the name of Senator Forshaw for today, relating to the reference of matters to the Community Affairs References Committee, postponed till 30 March 2004.

COMMITTEES
Privileges Committee
Reference
Senator MACKAY (Tasmania) (3.40 p.m.)—I 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.

Question agreed to.

SUPERANNUATION: TEMPORARY RESIDENTS
Senator SHERRY (Tasmania) (3.40 p.m.)—I move:

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).

Question agreed to.

NATIONAL SECURITY: TERRORISM
Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.41 p.m.)—I, and also on behalf of Senator Bartlett, move:

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.

Question agreed to.

COMMITTEES
Environment, Communications, Information Technology and the Arts Legislation Committee
Extension of Time
Senator FERRIS (South Australia) (3.43 p.m.)—At the request of Senator Eggleston, I move:

That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts Legislation Com-

Question agreed to.

NATIONAL SECURITY: TERRORISM

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.44 p.m.)—I move:

That the Senate—

(a) notes:

(i) the call by international student leaders on 22 March 2004 for international students to join the country-wide student protest on 31 March 2004 that is calling for free education,

(ii) the growing fee burden experienced by international students, who were the first students to face upfront fees, and

(iii) the move of some universities to allow for an increase in the yearly tuition fees paid by international students during the length of their courses;

(b) condemns the Government for its policies, which have resulted in spiralling student debt; and

(c) calls on the Government to reverse its regressive user-pays policies which are under-funding universities and driving international and Australian students further into debt.

Question agreed to.

JOHNSON, MS BENITA

Senator RIDGEWAY (New South Wales) (3.46 p.m.)—I, and also on behalf of Senator Lundy, move:

That the Senate—

(a) congratulates Australian distance runner, Benita Johnson, who won gold in the women’s 8 kilometre race at the World Cross Country Championships in Brussels on 20 March 2004;

(b) notes that:

(i) Ms Johnson is the first Australian in the 32-year history of the event to win any medal in the race, and that she won by more than 50 metres,

(ii) the world cross country meet is the most competitive distance race in the world, as each country can send up to six representatives, and that this race comprised 100 runners,

(iii) Ms Johnson currently holds the Australian 2, 3, 5 and 10 kilometre records, and

(iv) Ms Johnson developed her talent at the Australian Institute of Sport (AIS);

(c) notes the increased support the Government has given to sport and the AIS; and

(d) calls on the Government to ensure that the AIS continues to be adequately supported so as to promote future Australian sporting excellence.

Question agreed to.

EDUCATION: HIGHER EDUCATION

Senator RIDGEWAY (New South Wales) (3.47 p.m.)—At the request of Senator Stott Despoja, I move:

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.

Question agreed to.

EDUCATION: HIGHER EDUCATION

Senator NETTLE (New South Wales)

(3.47 p.m.)—I move:

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.

Question put.
The Senate divided. [3.52 p.m.]
(The Deputy President—Senator J.J. Hogg)

Ayes........... 6
Noes........... 39
Majority....... 33

AYES
Allison, L.F. * Brown, B.J.
Cherry, J.C. Nettle, K.
Ridgeway, A.D. Stott Despoja, N.

NOES
Abetz, E. Barnett, G.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Campbell, G.
Carr, K.J. Chapman, H.G.P.
Colbeck, R. Collins, J.M.A.
Coonan, H.L. Crossin, P.M.
Denman, K.J. Eggleston, A.
Ferris, J.M. Forshaw, M.G.
Hogg, J.J. Humphries, G.
Kirk, L. Knowles, S.C.
Ludwig, J.W. Landy, K.A.
Mackay, S.M. Mason, B.J.
McGauran, J.J.J. McLucas, J.E.
Moore, C. O’Brien, K.W.K.
Patterson, K.C. Payne, M.A.
Santoro, S. Scullion, N.G.
Sherry, N.J. Stephens, U.
Tchen, T. Troeth, J.M.

CHAMBER
Watson, J.O.W.  Webber, R.
Wong, P.  
* denotes teller

Question negatived.

SHEIKH AHMED YASSIN

Senator NETTLE (New South Wales) (3.56 p.m.)—I ask that general business notice of motion No. 818 standing in my name for today, relating to the assassination of Sheikh Ahmed Yassin, be taken as a formal motion.

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

Opposition senator—Yes.

The DEPUTY PRESIDENT—There is an objection.

Suspension of Standing Orders

Senator NETTLE (New South Wales) (3.56 p.m.)—Pursuant to contingent notice, I move:

That so much of the standing orders be suspended as would prevent me moving a motion relating to the conduct of the business of this Senate, namely a motion to give precedence to general business notice of motion No. 818.

I will start my contribution by reading out the text of Greens notice of motion No. 818. It reads:

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.

It is disappointing that it has been left up to the Greens to move this motion in the Senate, because it should have been the Minister for Foreign Affairs of this country putting forward such a motion. The Australian government has so far refused to join the voices around the world that are condemning the assassination that occurred this week. Kofi Annan said that the killing contravened international law and would not help the Middle East peace process. British Foreign Secretary Jack Straw said that the assassination was ‘unacceptable, unjustified and very unlikely to achieve its objective’. The EU foreign minister, Javier Solana, said, ‘This type of action does not contribute at all to create the conditions of peace.’ But the Australian government has refused to condemn this action.

In fact this morning I heard that the Australian government had voted against the United Nations Commission on Human Rights holding a meeting to debate a resolution about the assassination. The UN resolution that they were to debate read:

... notes with grave concern the implications of such targeted assassinations, liquidation and murder of political leadership by the Israeli occupation forces on the overall situation in Occupied
Palestinian Territory, particularly the possibility of a fresh wave of violence ...

The Australian government opposed this motion even being debated. Incidentally, it also opposed in the United Nations a resolution condemning the construction of the so-called security wall that cuts off Palestinian villages from their fields and takes more land from the occupied territories. The region has already been pushed into further spirals of violence since the assassination earlier this week.

The Palestinian people have suffered an illegal military occupation for 37 years. The Australian government and the Australian Senate must not remain silent. The Greens motion in no way endorses the views or the actions of the assassinated leader of Hamas. This parliament should not fail to condemn violent action. It should not fail to stand up for peace because of a fear of false accusations about supporting suicide bombing. This parliament should condemn the assassination as we have and will continue to condemn suicide bombings. To sit mute after this assassination is to imply endorsement for a strategy that will result in more suicide bombings. The editor of Rupert Murdoch’s Telegraph in London described the attack as ‘not an antiterrorist action, but more of a show killing’.

The peaceful resolution of the injustices in the Palestinian territories is central to so much global insecurity, particularly in the Middle East. Australia has to do more to assist in achieving a just resolution. The refusal to condemn this assassination and the ongoing occupation in Palestine will consign the children of Israel and Palestine to oppression and violence for many years to come. The Greens find that utterly unacceptable. Therefore, we are moving this motion rather than the foreign minister, who should be moving it. We urge all senators to support the motion.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.01 p.m.)—The opposition have denied this motion being taken as formal because it does not capture the complexity of the current security situation in Israel, the West Bank and Gaza. The opposition strongly believe that terrorism in all its forms cannot be tolerated. It must be eliminated root and branch. We extended bipartisan support to the Australian parliament’s proscription of the terrorist arm of the Hamas organisation. We did so because we recognised then as we do now that the terrorist wing of Hamas is a threat to peace and stability in the Middle East. Its members have refused to accept Israel’s right to exist behind secure borders. They reject the vision contained in the road map for peace for two states—one Jewish and one Palestinian. They reject the notion that these two nations can live side by side. The military wing of Hamas has declared that the purpose of every operation is to kill Jews.

The opposition have always believed that Israel has a right to defend itself against terrorism and act decisively within the law against terrorists, but we are absolutely opposed to any state resorting to extrajudicial assassinations as a tool of policy. Let me be clear: we oppose Israel’s decision to resort to assassination in the case of Sheikh Yassin. We also fear that the actions taken by Israel will lead to greater instability, violence and, tragically, deaths of both innocent Israelis and innocent Palestinians.

Neither bombings nor violence help bring about a just, lasting peace settlement for the Middle East. Bombings and violence bring nothing but retaliation, and retaliation takes us further from the peace process. In this context we note that Shimon Peres, the Israeli Labor leader and former Prime Minister, is reported to have said that if he were in Prime Minister Sharon’s cabinet he would
have voted against the decision. He is also quoted as saying:
Liquidating Sheikh Yassin won’t liquidate terror.
He is right. We on this side recognise that the conflict between Israel and the Palestinian peoples is one of the primary causes of instability in the Middle East. A peaceful negotiated resolution will go a long way to removing one of the chief justifications provided by radical Islamist terrorists around the world for their continued callous actions.

The opposition continue to urge both sides to exercise restraint in the current environment in order to avoid the further deterioration of an already fraught and fractured situation. We urge both Israel and the Palestinian authority to re-engage with the peace process and we remain of the view that both parties should as a matter of priority, together with the United States, re-engage with the processes set out under the road map to peace.

Finally, let me put again on the record the opposition’s objection to dealing with complex international relations matters such as the one we have before us by means of formal motions. Such motions are blunt instruments. They force parties into black and white choices—support or oppose; they do not lend themselves to the nuances which are so necessary in this area of policy. Furthermore, they are too easily misinterpreted by some audiences as statements of policy by the national government. It is for these reasons that we, the opposition, have denied this motion being taken as formal. The opposition will not be supporting the suspension of standing orders.

Senator HILL (South Australia—Minister for Defence) (4.06 p.m.)—The government opposes the suspension of standing orders. It does not believe that now is the time to debate this motion. However, in the spirit where I notice that others have made some comment on the content of the motion and on the issue, there are a few points that I want to make. In my view the motion is unbalanced, it is inflammatory and it would be highly unhelpful to pass it in its current form. If there were to be a serious and considered debate on this issue, then it would call for substantial amendment to the motion.

The government strongly supports Israel’s right to defend itself from terrorism. Hamas is a terrorist organisation, and I do not see that acknowledged within the motion. On 21 December 2001, the government listed it as a proscribed organisation for the purposes of asset freezing and, on 9 December 2003, it proscribed the Hamas military wing under separate criminal legislation which makes membership of that organisation illegal. Hamas has used suicide bombers to target and murder many innocent Israelis. Sheikh Ahmed Yassin supported these actions. In December 2002 he told 40,000 Hamas followers:
Jihad will continue, and martyrdom operations—which of course we know to be suicide bombings—will continue until the full liberation of Palestine.
He therefore was an advocate of violence and violence against innocent individuals in order to seek a political objective. In such circumstances, it is the view of the government that one can understand the response of Israel.

Having said that, we nevertheless regret the use of targeted assassinations. We are concerned that the killing of such a high-profile Palestinian leader will also lead to further violence and loss of innocent life. We urge calm and call on both sides to exercise maximum restraint. In the view of the government, violence will not settle the Middle East dispute, and the long-term interests of both sides lie in a resumption of negotiations under the internationally endorsed road map.
If the motion had been drawn in those terms then at an appropriate time we might well have been able to support it. We think it would be very counterproductive for Australia, in making a positive contribution towards peace and stability in that region, to engage in debate in these terms or to support the motion that Senator Nettle has advocated. In those circumstances we do not support the suspension of standing orders.

Senator STOTT DESPOJA (South Australia) (4.10 p.m.)—I begin by acknowledging a comment by Senator Faulkner about the use of motions in this place that deal with foreign affairs issues. As one who utilises motions to highlight policy areas that are related to foreign affairs issues, I defend the right of all senators to use that process. I also acknowledge that they can be perceived as a blunt instrument, to use his language, or that sometimes they may have inherent dangers, to use the allusions of Senator Hill. But I also think everyone in this chamber is clever enough to recognise that the issue before us is an incredibly complex and an incredibly emotive one. We probably all have different and passionate views on the issue, but the one thing that unites us in this place no doubt is a commitment to peace and a desire to see a peaceful outcome.

I concede that Senator Nettle’s motion could have been more balanced, but I do not know how we would achieve a balance that would satisfy a majority in this place. Maybe it is time that we had a debate here about this complex and, as I said, emotive issue. Maybe it is the responsibility of the government to initiate that discussion and debate. I heard Senator Nettle say that the government should have brought this discussion on—and maybe there is an argument for that—but I have also heard Senator Hill and Minister Downer state that they regret the use of targeted assassination. Minister Downer said yesterday:

... we don’t support targeted assassinations, that we are concerned that the killing of such a high-profile leader will just lead to further violence and loss of innocent life.

He also said that the government strongly supports Israel’s right to defend itself from terrorism and that Hamas is a terrorist organisation.

People in Australia are making statements on this issue, as indeed they are around the world. On behalf of the Democrats I want to put on the record our unreserved opposition to the use of targeted assassinations by any government, and in this case by the Israeli government, specifically the assassination of Sheikh Ahmed Yassin. Targeted assassinations are inherently unjustifiable regardless of the circumstances in which they are committed. Suicide bombings which target innocent civilians are equally abhorrent and inexcusable.

It is important to take the opportunity to send a message to all parties in the conflict that resorting to this kind of violence is entirely unacceptable and will not be tolerated by the international community. The Democrats deplore and oppose the use of violence—whether it is by a state, an organisation or an individual—as a means by which to resolve conflict and to advance the interests of either side or to seek retribution.

We note the widespread condemnation of Israel’s assassination of Sheikh Yassin by leaders around the world. For example, the Secretary-General of the United Nations, Kofi Annan, highlighted the illegality of the assassination. He said that he is concerned that such an action will lead to ‘further bloodshed and death and acts of revenge and retaliation’. European Union members have expressed their deep concern at the assassination, as did Russia and the United States. The United Kingdom Foreign Secretary, Jack Straw, condemned the assassination as ‘un-
justified’ and ‘unacceptable’. The United Nations special rapporteur on extrajudicial, summary or arbitrary executions has pointed out that the right to life and security allows for no derogation. It must be applied with no exception, in all circumstances, including in times of emergency and internal unrest or in the context of the fight against terrorism.

Almost all of these leaders have expressed the concern that this assassination will simply escalate tensions in the region and lead to more spates of violence, a concern that our leaders in Australia have also identified. Given the remarks of Palestinian and Israeli leaders in recent days, it almost seems that this is inevitable. On the one hand, there are reports that the Israeli defence minister has indicated that Israel will continue to pursue its policy of ‘liquidating terrorists’. On the other hand, Gaza Strip Hamas leader Abdul Aziz Ranteesi has warned that Hamas will continue to attack Israelis. He is quoted as saying: ‘We will fight them everywhere. We will hit them everywhere. We will chase them everywhere. We will teach them lessons in confrontation.’ All of these statements are frightening. They are truly of concern to the international community, which must do everything in its power to defuse these tensions and bring an end to the cycle of violence. That is why we are all committed to the roadmap. (Time expired)

Senator BROWN (Tasmania) (4.15 p.m.)—Firstly, I want to congratulate Senator Nettle on bringing forward this motion. It is one of the most difficult matters that can be dealt with by parliamentarians anywhere in the world, and I agree with Senator Nettle that to sit mute after this assassination is not the response this parliament should adopt. Senator Nettle has brought forward a motion which condemns the Israeli government’s assassination of Sheikh Yassin and I endorse that, as do many people around the world—including in Western democracies. The opposition has said it could accept the words ‘absolutely opposed’. I think that would have been a good thing to bring to Senator Nettle before she brought this motion forward. The fact is nobody in this parliament approached her to amend this motion, and that leads me to the conclusion that nobody wanted this matter debated because of difficulty of it.

Senator Stott Despoja—That is not fair!

Senator BROWN—I acknowledge the Democrats; I am referring to the big parties. It should be the government, as Senator Nettle said, putting forward the motion. It should be couched in terms which are going to contribute to the global debate on this vexatious matter. One of the threats that has come out of the assassination of Sheikh Yassin—who I note was out of step with Muslim teaching and the asseverations of Muslim leaders elsewhere in the world who are opposed to terrorist acts and suicide bombings—is a commitment by some Hamas leaders to extend the actions of Hamas internationally. You only have to listen to news broadcasts talking about link-ups with al-Qaeda to see how fraught the escalation of terrorism is between Israel, Hamas and the Palestinian authorities and to see that the rest of the world has to intervene—in particular, the United States of America. The need for that is urgent, and I agree with Senator Stott Despoja that this parliament should be setting aside time to debate it in a constructive fashion.

If the government agrees that it does not support targeted assassination, then let it bring forward a motion that is couched in those terms and the Greens will engage in that debate. One cannot get away from the feeling that there is no other motion here because the government and the opposition do not want to engage in a debate on the matter simply because it raises passions in our own community. If we do not face up to
it and do not try to contribute to the global debate, and we are not clear about eschewing violence and terrorism from both sides and targeted assassination—‘liquidation’ as it is horribly called by a democratic government like Israel—then it is terrorism; the same as suicide bombings in buses is terrorism. Other people were killed with Sheikh Yassin. What about them? It has got to stop, and the world has got to move to stop it.

When you hear that moves in the United Nations to debate the matter were not supported by the Australian government, you see a failure of nerve and a failure of will to intervene. What we need is nerve; a determination to stand up for peaceful resolution and a determination that Australia will be involved, because inevitably we are involved. Whatever people might think of this motion and however they vote on the question now before the Senate, it is healthy that we are engaged in this debate and that we take part in it. In fact, that is our responsibility.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (4.20 p.m.)—I certainly do not support this motion coming before the Senate, and if it did come before the parliament I would certainly vote against it. However, one thing I do agree with Senator Brown on is that the continual killing on both sides is horrific and the world wants to see an end to it. But you cannot blame just one side for this; you cannot move a motion that condemns just the Israeli government. The Israelis have lost 400 people in suicide attacks in the last 3½ years. It is one thing to turn the other cheek, but how often do you have to get hit in the other cheek? Surely, with the loss of 400 people, questions have got to be asked. What do we do? How do we stop this? How do we defend our citizens? How do we stop our children being blown up in buses?

I think it is entirely inappropriate that a motion like this comes before the Senate, and I am very pleased that the Senate will not pick it up. Sheikh Yassin was founder and architect of Hamas, and Hamas has been guilty of killing many Israelis. Therefore, I think a continuation of this debate is not going to help the situation. It has to be solved, but our taking sides on it in this parliament is not going to be helpful. The terms and conditions have to be reached over there. I believe the Camp David accord was put up, and then the roadmap accord was put up by the Israelis. There have been about three or four attempts to seek a peaceful solution, and they have all been rejected. So I do not think it is appropriate to come in here and condemn one side.

Senator Nettle—Or assassinate somebody. Well, it is.

Senator BOSWELL—There were 400 people assassinated. So let us have a bit of condemnation for the other side. I am very pleased that this motion will be consigned to the rubbish bin.

Question put:
That the motion (Senator Nettle’s) be agreed to.

The Senate divided. [4.28 p.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes………………9
Noes……………..47
Majority………..38

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

NOES
Barnett, G. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Senator CROSSIN—(Northern Territory)

(4.32 p.m.)—I present the third and fourth reports of 2004 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills Alert Digest No. 4 of 2004, dated 24 March.

Ordered that the reports be printed.

Senator CROSSIN—I move:

That the Senate take note of the third report.

The third report of the Scrutiny of Bills Committee goes to the examination that we undertook on the quality of explanatory memoranda accompanying bills. As senators are aware, the Scrutiny of Bills Committee considers legislation to ensure that it complies with appropriate civil liberties and principles of administrative fairness. It does this by bringing to the attention of the Senate provisions of bills which may infringe upon personal rights and liberties or delegate legislative powers inappropriately or without sufficient parliamentary scrutiny.

In doing this, committee members place considerable reliance on the explanatory material that accompanies each bill, in particular the explanatory memorandum. The work of the committee, and the work of the Senate, is made more difficult where this material fails to explain clearly the operation and impact of legislative proposals. The result is that the committee has to initiate correspondence with ministers when its concerns could have been met by a proper explanatory memorandum. In most cases, after the minister responds to a request for further information, the committee is satisfied that the provisions meet its requirements.

In a series of statements to the Senate in 2003, the Scrutiny of Bills Committee expressed its concerns with the number of explanatory memoranda that failed to provide an adequate explanation of the bills that they accompanied. The committee has seen little noticeable improvement since then and therefore considers that a comprehensive report on this aspect of its proceedings is warranted. It is this report that I table today.

The committee is concerned that it has to continually seek information from ministers that should be included in the explanatory memoranda. For example, it regularly seeks information on retrospective or delayed commencement provisions even though the Office of Parliamentary Counsel’s drafting directions and the Department of the Prime Minister and Cabinet’s Legislation Handbook specifically require explanatory memoranda to explain such provisions.

Other matters that regularly attract the committee’s attention concern the quality of information provided on the delegation of powers, absolute and strict liability offences, legislation by press release and the reversal
of the onus of proof. In most instances, the officer responsible for preparing the explanatory memoranda appears not to have complied with the requirements set out in the Legislation Handbook and the Office of Parliamentary Counsel’s drafting directions. On other occasions, although information is provided, it is not sufficiently detailed to allow the committee to satisfy itself that the provisions do not affect personal rights and liberties. The only conclusion to be drawn is that quality control checks on the final explanatory memorandum are inadequate or ineffective. The reasons for this inadequacy cannot be explained solely by noncompliance with the requirements of the Legislation Handbook and the drafting directions or the guidance provided by those publications.

The committee is of the opinion that, although the Legislation Handbook provides guidance on a number of issues that would attract its attention and comment, it does not provide sufficient guidance to enable a departmental officer to determine whether provisions in a bill may infringe on the committee’s terms of reference. The committee believes that an officer’s understanding of the committee’s position on provisions that affect personal rights and liberties would be enhanced if the handbook included examples of the types of matters that attract the committee’s attention in the Alert Digest and reports.

Chapter 4 of the report identifies other influences on the quality of the final explanatory memoranda. The Office of the Parliamentary Counsel found that the responsibility for preparing these documents is generally delegated to staff inexperienced in legislative work who received little in the way of guidance and training from their supervisors. The other influence is the timing of the legislative program where the deadlines for lodging explanatory memoranda are the same as those for lodging bills with the Department of the Prime Minister and Cabinet, leaving little scope for any final polishing of explanatory memoranda.

The committee believes that steps should be taken to address the deterioration in the quality of explanatory memoranda. After considering the different influences impacting on the preparation of these documents, the Scrutiny of Bills Committee makes four recommendations in its report: further guidance should be provided in the Legislation Handbook on the matters that the committee wishes to see addressed in explanatory memoranda; all relevant information on the preparation of explanatory memoranda should be consolidated into the Legislation Handbook; an appropriately qualified person should check an explanatory memorandum before a bill is introduced into the parliament; and, consideration should be given to developing a course to train departmental officers in the preparation of explanatory memoranda.

The committee also notes that private senators’ bills are generally accompanied by only a second reading speech. It was the committee’s consideration that these bills would be assisted if they were accompanied by explanatory memoranda. The committee therefore recommends that the Department of the Senate develop a set of guidelines to assist senators with the preparation of private bills.

In conclusion, the report highlights the difficulties the committee has experienced in its examination of proposed legislation when the information provided in explanatory memoranda has not been of a quality to sufficiently explain the purpose and operation of the bills. However, the Senate will be pleased to note that it is not all bad news. On occasion the committee has commented on explanatory memoranda that have effectively addressed the content of the bill, one such
example being the explanatory memorandum to the Customs Legislation Amendment Bill (No. 2) 2003, which did inform the consideration of legislation and we felt was adequate.

The committee presents this report with the expectation that it will improve the quality of the information provided in explanatory memoranda, resulting in greater transparency of the legislation introduced into the parliament. We will be sending a copy of the report to ministers, parliamentary secretaries, departmental heads and leaders of parties in the Senate. The committee strongly urges ministers to consider its concerns and to implement the recommendations contained in the report. Surely, if that is done and those recommendations are picked up, the work of the Scrutiny of Bills Committee will be not only assisted but enhanced. I commend the report to the Senate. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Community Affairs Legislation Committee

Senator McGauran (Victoria) (4.40 p.m.)—On behalf of the Chair of the Senate Community Affairs Legislation Committee, Senator Knowles, I present the report of the committee on its examination of annual reports tabled by 31 October 2003.

Ordered that the report be printed.

TRUTH IN FOOD LABELLING BILL 2003

Report of Community Affairs Legislation Committee

Senator McGauran (Victoria) (4.40 p.m.)—On behalf of the Chair of the Senate Community Affairs Legislation Committee, Senator Knowles, I present the report of the committee on the Truth in Food Labelling Bill 2003, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator Brown (Tasmania) (4.41 p.m.)—I move:

That the Senate take note of the report.

I want to draw attention to the need for this legislation to be endorsed rather than set aside, as recommended by the committee. The evidence before the committee in support of the legislation was quite clear. I will not take very long on this, but I point out that this bill—which has a complementary bill in the New Zealand parliament brought forward by the Greens spokesperson on health and related matters, Ms Sue Kedgley—simply extends the right of Australians and New Zealanders to know what they are buying. For example, it extends the right of consumers to have better labelling of the chemical contents in foodstuffs on shelves. The main point is that consumers should be given the right to know if the food for sale is derived from genetically modified stock.

As things stand, if there is more than one per cent contamination from a genetically modified material in food, it is labelled. Europe is going to a 0.5 of one per cent standard but, moreover, to a standard which states that if the food, such as margarine or oil coming from canola crops, is derived from genetically modified crops it should be labelled, even if it does not have genetically modified protein in the food. The reason is that consumers want to know whether they are buying products that support genetically modified crops and the spread of genetically modified organisms. There is an educated consumer population in Australia, as there is in Europe and New Zealand, which does not want to have genetically modified food production because of the inherent dangers to ecosystems and indeed potentially, because it
is uncharted territory, to the health of the human community.

Moreover, the evidence to the committee is that the European Union will insist that foods imported into Europe have with them a clear statement either clearing them of having come from genetically modified sources or, if they have come from genetically modified sources, tracing them back to those sources. So if we do not endorse this legislation and the government has no similar regulation or legislation, we have a double standard within our countries of Australia and New Zealand. On one hand, domestically the unsatisfactory current laws will prevail and consumers will not know whether their food comes from GM crops; on the other hand, when we export from Australia or New Zealand to Europe it will be necessary for there to be a certificate saying whether or not the foodstuff comes from genetically modified crops. European consumers will know, but Australian and New Zealand consumers will not know the genetic status of foods coming from our countries.

It is time we caught up. We should have laws that are consistent with those in that most fastidious market which is the European Union. To not do so is to say that Australian and New Zealand consumers can have second-rate information on their supermarket shelves to that which pertains in Europe. We Greens on both sides of the Tasman maintain that that should not be the case and that Australian and New Zealand consumers deserve exactly the same level of information when they buy foods as do their counterparts in Europe. In fact, there should be international law which ensures that consumers have these rights.

For those reasons, we believe the legislation committee should have recommended this legislation. It did not, but the Greens will keep the legislation before the Senate and before the New Zealand parliament and we will do all we can to progress it. I predict that future governments will legislate exactly as the Greens are putting forward now. The only argument against this came from the food-processing industries, the big industries. They do not want to label goods, because they know there will be consumer resistance to goods that come from genetically modified sources. How do you get over that resistance? Instead of going to clean, green and, hopefully, organically produced foods, you deny consumers the information they have a right to. That is the alternative endorsed by this legislative committee report. I do not entertain it and I do not accept it. I believe the committee ought to have found otherwise. But there it is: the legislation will remain before the Senate and I will bring it before the Senate at the earliest possible time for debate.

Question agreed to.

COMMITTEES

Australian Crime Commission Committee

Report

Senator McGAURAN (Victoria) (4.48 p.m.)—On behalf of the parliamentary Joint Committee on the Australian Crime Commission, I present a report entitled Cybercrime, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator McGAURAN—I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

The report had its genesis in the apparent proliferation of available opportunities to commit criminal acts using information technology. The Committee had noted over a period of time that
there were several key areas in which these opportunities were particularly evident, and wanted to assess what the Australian Crime Commission was doing, and could do, about it.

The terms of reference required the Committee to inquire into and report on recent trends in practices and methods of cybercrime with particular reference to:

1. child pornography and associated paedophile activity;
2. banking, including credit card fraud and money laundering; and
3. threats to national critical infrastructure.

The Terms of Reference are authorised by paragraph 55(1) (d) of the Australian Crime Commission Act. The section lists the duties of the Parliamentary Joint Committee on the Australian Crime Commission, one of which is to examine trends and changes in criminal activities, practices and methods and report to both Houses of the Parliament any change which the Committee thinks desirable to the functions, structure, powers and procedures of the Australian Crime Commission.

In 2001, the Parliament enacted the Cybercrime Act, which amended a number of Acts and inserted computer and related offences in the Criminal Code.

The Committee wanted to examine the place of the ACC in this scheme, and to examine possibilities for prevention and detection to which the ACC might be able to contribute.

The Committee took evidence in Sydney, Melbourne and Canberra, and heard from a wide range of witnesses. Thirty five submissions were presented to the Committee, and have been placed on the Committee website.

From the evidence and the submissions, the Committee noted that there were four main community concerns:

- access by children to unsuitable Internet content;
- access to children by paedophiles;
- the regulation of Internet Service Providers; and
- the potential for crime in relation to Internet financial transactions.

During the course of the Inquiry there were incidents reported in the press which highlighted some of the issues canvassed by the Committee. These included the proliferation of spam and the use of chat rooms by paedophiles to groom children for sexual purposes.

The Parliament has already responded with the introduction of the Spam Act 2003, to which is added the very recent government initiative to amend the Telecommunications legislation, the Crimes Act 1914, and the Criminal Code Act 1996. These measures contained in draft legislation include the creation of a range of offences designed to prevent use of a telecommunications device to transmit pornographic material, and to procure a person under the age of consent for sexual purposes.

The Committee recommendations complement these initiatives. Included among them are:

- a recommendation that the regulation of Internet Service Providers be examined, and the status of material held by them assessed;
- a recommendation that the Government investigate partnerships for establishing a multimedia education campaign on the safe use of technology by children;
- a recommendation that Commonwealth State and Territory Attorneys General liaise to ensure consistent cybercrime and related legislation within Australia in accordance with Australia’s international obligations; and
- recommendations that both the Australian Crime Commission and the Australian High Tech Crime Centre investigate the secure provision of general information on fraud trends to financial institutions, and, with other law enforcement agencies develop a national intelligence gathering strategy for cybercrime in the banking industry.

The issues canvassed by the Committee are among the most important facing our post industrial society. Parliament and the government must respond quickly to the challenges thrown up by rapidly changing technology: the security of personal data, including banking and financial in-
formation, and the protection of our children from those who seek to use technology to prey upon them, are essential to the healthy functioning of our families and our communities. The recommendations in this report are intended to assist this process.

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

Leave granted; debate adjourned.

Corporations and Financial Services Committee

Report

Senator Chapman (South Australia)

(4.48 p.m.)—I present the report of the parliamentary Joint Committee on Corporations and Financial Services entitled Corporations amendment regulations 2003 (batch 6); Draft regulations—corporations amendment regulations 2003/04 (batch 7); and Draft regulations—corporations amendment regulations 2004 (batch 8), together with the Hansard record of proceedings and submissions received by the committee.

Ordered that the report be printed.

Senator Chapman—I move:

That the Senate take note of the report.

The Financial Services Reform Act 2001 was the culmination of a comprehensive reform project looking at the regulatory requirements applying to the financial services industry. The parliamentary Joint Committee on Corporations and Financial Services has taken an active interest in the development and implementation of this legislation, including regulations which now form an important and solid body of the financial services reform regime. The making of regulations, however, is an ongoing process. The government released its most recent set of regulations in December, January and February as batches 6, 7 and 8. The committee resolved to inquire into and report on this package of regulations.

They traversed a range of matters but, overall, only a few regulations attracted comment, either in submissions or during the public hearing. The report focuses on two of the regulations: radio advertising and dollar disclosure. General advice is usually accompanied by a general advice warning which alerts those receiving the advice that their personal circumstances have not been taken into account. The Financial Services Reform Amendment Act recognised that there are situations where general advice is given but providing the warning may be neither practical nor enhance consumer protection. The amendment act inserted a regulation-making power that could specify limited circumstances where the general advice warning would not need to be provided. It anticipated that the regulations would only be made in circumstances where the absence of the warning would not have a material detriment to consumers.

The committee believes that the current disclosure requirement places an unnecessary and unfair burden on radio advertising compared with other, especially visual, forms of advertising. According to evidence, under the current arrangement, the requirement to give a general advice warning increases the time, and hence the cost, of a 30-second radio advertisement by some 50 per cent. The committee recommended that the regulation governing radio advertising be amended to require only a brief general disclosure statement.

The second regulation that generated discussion was concerned with dollar disclosure. In addressing this issue, the Senate during debate last December on the Financial Services Reform Amendment Bill agreed to a number of amendments which require the disclosure of items in dollar terms in statements of advice, product disclosure statements and periodic statements unless otherwise provided in regulations. In turning to
the regulations, Senator Ian Campbell informed the Senate that the government was going to commit to changing the wording of the regulation to, effectively, dollar disclosure of fees and commissions and the like, unless ASIC determines that for compelling reasons it is not possible to do so.

The wording of the various proposed regulations dealing with dollar disclosure is in keeping with the government’s undertaking. They share common phrases to the effect that if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with the relevant statutory provision as an amount in dollars, the information may be set out as a description of the amount as a percentage of a specified matter, including, if appropriate, worked dollar examples. If the Australian Securities and Investments Commission determines that, for a compelling reason, it is not possible to state information as an amount in dollars or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the remuneration, charge, benefit, interest or cost et cetera including, if appropriate, worked dollar examples. With periodic statements the requirement is similar.

A number of witnesses raised concerns about the strict application of the terms ‘compelling reasons’ and ‘not possible to state an amount in dollar terms’. According to the evidence there are instances where dollar disclosure, while possible, simply may not be economically viable, practicable, sensible or in consumers’ interest. The committee believes that each case needs to be examined thoroughly before any determination can be reached. It would appear that in such cases the solution would be to make a new regulation that would provide the necessary exemption, but only for the specific product. In this way relief can be granted to genuine cases without in any way weakening the dollar disclosure requirements. Thus, the message remains unequivocal that the providers of financial services or products must fully disclose amounts in dollar terms.

The committee noted the number of witnesses who raised concerns about the difficulties they may have in complying with the strict interpretation of the wording of the regulation. It accepts that there may be genuine cases where dollar disclosure obligations are inappropriate, impracticable or inconsistent with the intention of the legislation to promote efficiency and enhance consumer protection. It understands, however, that with the current wording of the regulation, ASIC does not have the discretion to offer relief. The committee believes that there is a real need for the legislation to have some flexibility to take account of such situations.

There was the option for the committee to recommend that the regulation be reformulated to provide ASIC with the necessary latitude to allow for the economic impact of the dollar disclosure requirement on the provider, the practicality of dollar disclosure or whether dollar disclosure is in the interest of consumers. Having said that, however, the committee remains firm in its conviction that the regulations must not allow any opportunities for providers to avoid their dollar disclosure obligations where it is possible for them to meet that obligation and it is in the interests of consumers for them to do so.

At the moment, the committee is disinclined to tinker with the current wording of the regulations and favours the promulgation of additional regulations to provide the necessary flexibility to accommodate the particular cases where ASIC determines that dollar disclosure is not appropriate, impractical or at the time imposes an unreasonable burden on the provider. This means the making of regulations that will allow ASIC to grant relief—either class relief or individual
product relief—in limited circumstances and in some instances for a limited period. In this way ASIC, which is best placed to assess the validity of a claim for relief, in consultation with Treasury would recommend that a particular class of product or individual product be exempt from the dollar disclosure requirement. The regulation would then be promulgated and, as a disallowable instrument, be subject to parliamentary scrutiny.

The committee also appreciates that the time frame for the implementation of the proposed regulations is short and may cause difficulties for some providers. It recommended that a regulation be made that would allow a transition period to extend to 1 January 2005. This recommendation would allow additional latitude for an extension of time for providers genuinely struggling to have systems in place to meet their dollar disclosure obligations. The committee, however, is strongly of the view that those capable of meeting their dollar disclosure obligations should do so from 1 July 2004.

Much of the evidence presented to the committee went beyond the regulations under consideration and dealt with the broader issue of effective disclosure, with the focus on a fee disclosure model. Although outside its terms of reference, the committee briefly discussed this matter, which it regards as the next important step in ensuring that consumers are fully informed about the costs and charges of financial services and products. The committee recognises the challenge involved in devising a disclosure regime that will equip the customer with the information needed to make an informed choice and sees the formulation of a fee disclosure model as the next goal. The evidence presented to the committee highlights the pressing need to develop and adopt a fee disclosure model that will ensure that disclosure is effective and meaningful for consumers, and has identified key elements that should be considered before a common fee model is finally adopted.

They include firstly that the fees and charges represent the total cost to the consumer or investor—in other words that all charges, costs or fees are disclosed. Second, they recommend that the fees and charges be presented in one statement in a clearly defined and prominent location in the disclosure document. Thirdly, they recommend that the amounts be disclosed in dollar terms. Fourthly, they recommend that the fees and charges be presented in a table format. Fifthly, they recommend that the fees and charges be set out in such a way that consumers can compare them. Some spoke of the need to have separate demarcated categories, such as up-front fees and ongoing fees. Sixthly, they recommend that there be a single bottom line figure. Seventhly, they recommend that common or standardised terminology be used. Eighthly, they recommend that a similar format be used for the different types of disclosure documents to enable consumers to compare like with like. For example, the format in the periodic statement should resemble that used in the product disclosure statement. Finally, they recommend that the fee model be consumer tested and approved.

In conclusion, on 10 March 2004, the Parliamentary Secretary to the Treasurer, announced that the government wished to expedite and bring to an effective conclusion current industry discussions on the matter of a simple fee disclosure for investment based financial products, such as superannuation funds. He explained that he had written to the chief executive officers of ASFA and ISFA to seek a resolution to the long standing impasse on the matter of fee disclosure. The committee welcomes the government’s decisive action but notes that, before the adoption of an agreed fee disclosure model, certain requirements should be met.
As noted in its discussion about models, the committee identified a number of key features that fee disclosure should include. We believe that the agreed format for fee disclosure should not depart from those suggestions. We note particularly the requirement for the model to be consumer tested and approved. I commend the report to the Senate and I particularly thank Kathleen Dermody and the staff of the committee secretariat for their work on this report.

Question agreed to.

DOCUMENTS

Auditor-General’s Reports
Report No. 35 of 2003-04

The ACTING DEPUTY PRESIDENT (Senator Watson)—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 35 of 2003-04—Business Support Process Audit—Compensation Payments and Debt Relief in Special Circumstances.

PARLIAMENTARY ZONE
Proposal for Works

The ACTING DEPUTY PRESIDENT (Senator Watson)—In accordance with the provisions of the Parliament Act 1974, I present a proposal by the Department of Parliamentary Services, together with supporting documentation, to extend the approval for temporary vehicle barriers.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.00 p.m.)—by leave—I give notice that, on the next day of sitting, I shall move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the Department of Parliamentary Services to extend the approval for temporary vehicle barriers around Parliament House.

SUPERANNUATION: TEMPORARY RESIDENTS

Return to Order

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.01 p.m.)—I seek leave to make a short statement on behalf of the Minister for Revenue and Assistant Treasurer, Senator Coonan, in relation to the order to table revenue collected during the 2002-03 financial year in respect of the measure ‘allowing departing temporary residents access to their superannuation’.

Leave granted.

Senator TROETH—Let me begin by briefly outlining the measure to which this order refers. The government put this measure in place in recognition that temporary residents leaving the country were unlikely to retire in Australia and that it would be appropriate to allow them to access superannuation before preservation age. Since 1 July 2002 temporary residents have been allowed to access their superannuation upon permanent departure from Australia subject to withholding of tax concessions provided to the benefits. Under this measure, benefits paid from a taxed source are taxed at 30 per cent and benefits paid from an untaxed source are taxed at 40 per cent. Any personal undeducted contributions are returned to the temporary resident untaxed. The measure benefits many temporary residents, including those who have already permanently departed Australia and those who may depart in the future. The measure rightfully returns superannuation benefits to temporary residents who might otherwise lose track of their benefits forever.

As with all measures, there can be an initial period during which eligible people become aware of the measure and are educated on how to comply. To this end, the Australian...
Taxation Office has undertaken an extensive education campaign to raise awareness of the ability of departing temporary residents to access their superannuation. It has contacted temporary residents who have left the country and temporary residents currently in Australia, and is now advising new arrivals of this program. The ATO advises me that awareness of the scheme is increasing. The number of departing temporary residents providing email contact details on departure cards or accessing the web site has increased from around 2,000 per month at the beginning of the scheme to 16,000 per month in January 2004. Over time this is expected to translate into increasing take-up of this measure.

On the subject of revenue collected, the government has not published the figures being sought by this order because it is but one component of the overall collections from superannuation taxation. The government is committed to the disclosure of revenue and expenditure. The government publishes the result of its consideration of all relevant factors influencing revenue when it releases its forecast in the budget and Mid-Year Economic and Fiscal Outlook. Indeed, it was this government that introduced the requirement on government to publish revenue estimates twice per year under the charter of budget honesty.

However, it is not usual practice to disaggregate superannuation tax revenue, or indeed any other head of revenue, into its many constituent parts. Generally speaking, it would be impractical to track revenue for every measure the government introduces and for each subcomponent of each revenue head because of the considerable number of subcomponents. This is also the case for superannuation tax revenue. Further, there is no strong public interest to depart from established practice. Accordingly, in keeping with established practice, the minister is not proposing to provide the revenue information being sought by this return to order.

Senator SHERRY (Tasmania) (5.05 p.m.)—by leave—I move:

That the Senate take note of the statement.

Firstly, this is the quickest response to an order for the production of documents; we only passed the order earlier today. It is obvious why the response has been so quick—it is an outright refusal by the government to provide the revenue detail of the moneys that were collected from this new measure. The new measure we are discussing relates to tax collection from temporary residents who leave the country and who may voluntarily transfer overseas their superannuation that accrued whilst they were working in Australia, once they leave the country. As a consequence of that transfer, the tax revenue is collected—or is proposed to be collected, more to the point.

What is outrageous about the outright refusal of the Assistant Treasurer, Senator Coonan—presumably on instructions by the Treasurer, Mr Costello—is that the revenue that is claimed will be collected was the major savings component of the Liberal Party’s last election commitments. It was listed as a savings measure to raise some $325 million over four years. In the first year it was listed, it was claimed that some $70 million would be raised in the financial year 2002-03. The government do know what revenue is being collected from this measure. That is clear. But they are refusing to provide the precise figure that was collected in the financial year 2002-03. This is a cover-up. The government are refusing to disclose the revenue that they actually collected from this measure in 2002-03. They have forecast in the budget papers the collection of some $70 million in 2002-03 and some $325 million over the four years of the forward estimates. Why is it a cover-up? It is a cover-up be-
cause, on my information, the government cannot collect the money. They cannot collect anywhere near that $70 million in the first year of operation. I am reliably informed by my sources in the superannuation industry that the government would have been lucky to collect $10 million from this measure in the 2002-03 financial year. We do not know the precise figure because the government will not release the figure actually collected.

Why is the figure much lower than the one included in the budget estimates for 2002-03? It is simply because the government cannot collect the revenue. Only the Treasurer, Mr Costello, would claim that you could collect tax from departed residents—and that they would pay voluntarily—when you do not know where they have gone to. The Treasurer, Mr Costello, is claiming that he can collect $325 million over four years when the tax office cannot find a significant proportion of the temporary residents who have left the country. If you cannot find the temporary residents—if you do not know where they have gone—you cannot tell them to voluntarily transfer their superannuation out of the country and then collect the tax revenue, which the Liberal government has claimed it will do. That is the basic flaw in this approach.

This is Alice in Wonderland stuff—to believe that you can collect $325 million in tax revenue when you cannot find the temporary residents, the backpackers and the like, who have left the country to collect the tax. That is the reason why the government will not release the figure of what was actually collected in 2002-03. That is the reason why they are covering this up. They cannot collect the $325 million in tax that they budgeted for in the commitments they made at the last election and put in the forward estimates. There will be a significant shortfall in the revenue to be collected from this measure.

That is why the government refuses to release the figures for the year 2002-03.

It is very clear that the government, in covering this up, does not want to admit to a serious mistake that is probably going to cost the budget revenue between $200 million and $250 million over the four years. If I am wrong, I challenge the Treasurer to release the figure of the moneys actually collected in 2002-03. If I am wrong, release the figure. But the Treasurer, through the Assistant Treasurer, is refusing to release the figure because the Treasurer does not want to admit that he has got it wrong. The Treasurer does not want to correct the public record and admit that he cannot collect $325 million in revenue from backpackers and the like who have left the country and who Treasury cannot find to collect the tax. I challenge the government to come clean. I challenge the Treasurer and the Assistant Treasurer to correct the public record and to come clean on the actual revenue collected in 2002-03. If I am wrong then they should produce the figure for the moneys collected. It was supposed to be $70 million. Let us see the figure. Let the Assistant Treasurer and the Treasurer prove that I am wrong in saying that they are going to fall $200 million-odd short on a measure that was used to justify the funding of their election commitments and is now in the budget.

Question agreed to.

COMMITTEES
Memberships

The Acting Deputy President (Senator Watson)—The President has received a letter from a party leader seeking a variation to the membership of a committee.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.13 p.m.)—by leave—I move:
That Senator Cook be discharged from and Senator Hutchins be appointed to the Foreign Affairs, Defence and Trade References Committee.

Question agreed to.

DAIRY PRODUCE AMENDMENT BILL 2003

First Reading

Bill received from the House of Representatives.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.14 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 TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.14 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—

DAIRY PRODUCE AMENDMENT BILL 2003

The Dairy Produce Amendment Bill 2003 seeks to amend the Dairy Produce Act 1986 to make provision for a number of activities of the industry services body, Dairy Australia, in relation to its administration of the Dairy Structural Adjustment Fund. These provisions, which are minor in nature, were not included in the Dairy Industry Service Reform Bill, which gave effect to the conversion of the Australian Dairy Corporation into a private company, limited by guarantee—Dairy Australia.

Dairy Australia has been declared the industry services body for the purposes of receiving the dairy service levy and undertaking functions on behalf of the industry. As the industry services body, Dairy Australia is also responsible for the management of the Dairy Structural Adjustment Fund. The Fund is, by law, administered by the company as a Trust.

During the course of the reform process undertaken earlier this year, it became clear that, as the company is the trustee of the Structural Adjustment Fund Trust, the directors of Dairy Australia, if not fully indemnified, could be personally liable under the Corporations Act, for any liabilities arising that could not be satisfied from the Fund. It is common, in such situations, for trustees to be fully indemnified, to ensure that any liabilities, should they arise, are not the personal responsibility of the trustees.

The risk of any liabilities arising in relation to the Fund is remote, as the Dairy Adjustment Levy will continue to fund the Dairy Structural Adjustment Fund until all payments have been met. Nevertheless, it is appropriate that the company be indemnified against any liabilities arising to ensure that there is no personal risk to the directors of the company in their role of undertaking this very important service to the dairy industry.

Therefore, these amendments provide for the industry services body to be fully indemnified, out of the assets of the Dairy Structural Adjustment Fund, for any liabilities incurred by it in keeping and administering the Fund. The indemnity is to be paid out of the assets of the Fund, and will apply to liabilities arising before, on or after commencement of these amendments.

Of course, these amendments do not serve to indemnify the industry services body against liabilities that arise as the result of activities related to negligence, fraud, a breach of trust or other actions not in accordance with the principles of trust law. Having said this, the existing provisions in the Dairy Produce Act, coupled with the strict provisions governing the company's management of the Fund in the Statutory Funding Agreement between the Commonwealth and the company, will ensure that the Fund continues to be prudently and professionally managed into the future.

A second matter that arose in the course of the conversion of the Australian Dairy Corporation into Dairy Australia, was whether the Act makes
it clear that in its capacity as trustee of the Dairy Structural Adjustment Fund, the industry services body has the power to enter into and perform financial accommodation arrangements other than borrowings and to enter into and perform contracts and other arrangements for managing risks associated with the administration the Fund.

To ensure the company can continue to deal appropriately with financial institutions, these amendments specify the financial activities the company can undertake in its role of keeping and administering the Dairy Structural Adjustment Fund.

Specifically, the amendments allow the company to borrow or raise money by dealing in securities. For the purposes of the Act “dealing in securities” is to mean:

(a) creating, executing, entering into, drawing, making, accepting, endorsing, issuing, discounting, selling, purchasing or re-selling securities;

(b) creating, selling, purchasing or re-selling rights or options in respect of securities; and

(c) entering into agreements or other arrangements relating to securities.

“Securities” includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents.

For consistency, it is also considered prudent to include a clause that expands on the interpretation of raising money other than by borrowing, to pick up examples of raising finance by way of acknowledgements of debt in relation to deposits and other arrangements.

Additionally, it is intended to insert a clause in relation to hedging through currency and other types of contracts in relation to borrowing or raising money other than by borrowing. Again, this is to make clear that the company has the ability to undertake such activities in relation to its management of the DSAF. This clause will apply to currency, interest rate and futures contracts as well as contracts relating to interest rate swaps, commodity swaps and options.

The amendments will provide for the company to apply money standing to the credit of the DSAF for the purposes outlined above. These financial arrangements were available to the Australian Dairy Corporation as a statutory corporation and it is considered appropriate to make clear in the Act, that these arrangements are also available to Dairy Australia in its role of managing and administering the Dairy Structural Adjustment Fund.

A consequential amendment will also be made in relation to the termination of the levy to provide that the levy termination day will not be declared until the obligations in relation to contracts entered as outlined above have in all reasonable likelihood, been paid out of the DSAF. This provision currently exists in relation to all other purposes for which the money standing to the credit of the Fund can be used.

Finally, the Bill also amends the definition of an Australian Deposit Taking Institution to include the Reserve Bank—as is appropriate.

The Dairy Produce Amendment Bill, while minor in nature, will assist Dairy Australia in its ongoing management of the Dairy Structural Adjustment Fund, and will ensure that prudent and practical financial management of the significant sums involved continues, for the benefit of the dairy industry and the Australian community.

Debate (on motion by Senator Crossin) adjourned.

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

**HIGHER EDUCATION LEGISLATION AMENDMENT BILL 2004**

First Reading

Bill received from the House of Representatives.

**Senator TROETH** (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.15 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 TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.16 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—

HIGHER EDUCATION LEGISLATION AMENDMENT BILL 2004

Late last year I introduced into Parliament a package of comprehensive reforms to Australia’s higher education system. The reforms now contained in the Higher Education Support Act 2003 and the Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003, have clearly assured a vibrant future for Australia’s universities and will enable the continued provision of world class education to thousands of Australians.

The measures contained in these two vital pieces of legislation will deliver to universities more than 34,000 Commonwealth supported places and $2.6 billion over the next five years. The Commonwealth will provide close to $11 billion in new money over ten years. Just as importantly, this legislation will deliver much needed reform to the sector, enabling the growth and diversification of our already excellent institutions.

The bill now before us will adjust the operation of these acts to make the transition between the current and new funding arrangements as smooth and effective as possible.

The Higher Education Legislation Amendment Bill 2004 will amend the maximum funding limit for grants made under s23C of the Higher Education Funding Act 1988 to allow for price increases for current programmes and for the creation of new initiatives. It will ensure that the Regional Protection Fund has a sufficient allocation for 2004, in line with this Government’s commitment that no regional university would be detrimentally affected in its research funding by the Knowledge and Innovation reforms in the first three years of their implementation.

This increase will also provide $1.5 million this year to enrich Indigenous higher education in the Northern Territory through Batchelor Institute of Indigenous Tertiary Education and Charles Darwin University. A total of $3 million will be provided for this initiative.

The bill will also amend the Higher Education Support Act 2003 to reflect the correct funding to be provided under the Act in relation to the Commonwealth Grant Scheme and Other Grants for the years 2005-07. It will also make some minor technical amendments to HESA relating to the setting of student contributions and tuition fees, the remission of HECS-HELP debts for work experience in industry units, the definition of Equivalent Full Time Student Load, and the notification of tax file numbers by students.

The bill will also allow higher education providers to set in advance the student contribution amounts and tuition fees which will be paid over the life of a course by the students who commence in that course in that particular year.

The bill will provide the Minister with a discretion to approve funding increases under the Commonwealth Grants Scheme in the first year of implementation, where a higher education provider has met some, but not all, of the requirements of the National Governance Protocols by 2004 that they have taken all reasonable steps within their power to meet the requirements of the Protocols and had met the workplace relations requirements. This will enable universities to benefit from additional money in 2005 where delays in amendments to existing individual State laws may prevent them from complying in full.

Finally, the bill will simplify the transitional funding arrangements in the Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003 for the University of Notre Dame Australia. My Department has advised me that the current drafting of the transitional provision may create some unforeseen negative consequences for UNDA. Under this amendment, the transitional arrangements will be more effectively managed through the National Priorities component of the Commonwealth Grant Scheme Guidelines. This amendment will stream-
line administrative measures already in the Act to ensure that UNDA’s current HECS-liable students can continue in their courses until 2008.

Full details of the measures in the bill are contained in the explanatory memorandum circulated to honourable senators.

By making these adjustments to the Higher Education Funding Act 1988 and by further refining the operation of the Higher Education Support Act 2003, this bill improves the transition between the current and new funding frameworks. It will give Australia’s higher education providers the certainty they need to plan for the implementation of the new framework in the coming year. In doing so it further enhances the package of reforms which will be the new foundation for Australia’s higher education sector.

I commend the bill to the Senate.

Debate (on motion by Senator Crossin) adjourned.

ASSENT

A message from His Excellency the Governor-General was reported informing the Senate that he had assented to the following laws:


COURT AMENDMENT

CORPORATIONS AMENDMENT

REGULATIONS 2003 (No. 8)

Motion for Disallowance

Senator CONROY (Victoria) (5.20 p.m.)—I move:


Labor is seeking to disallow these regulations because they are not in the best interests of consumers. These regulations are flawed. They are flawed because they say that product issuers, many of whom are listed companies, only have to disclose fees and charges in dollar terms if it is ‘reasonably practicable’ for them to do so. That test simply is not good enough. The choice of a superannuation fund is one of the most important investment decisions that any Australian will make. Given the importance of this decision, we must do everything we can to ensure that every Australian knows what the fees and charges are in dollar terms when choosing a super fund. The same applies for managed funds. We must not allow the old ‘reasonably practicable’ test to take effect. If the government and other parties fail to agree on the form of the new draft regulations, the rejected reasonably practicable test will become the law.

For those who are new to the debate, I will provide a brief history. In December 2003 Labor and the Democrats combined to insert a requirement into the FSRA for fees and charges to be disclosed in dollar terms. During that debate, Labor and the Democrats indicated their serious concerns with the government’s reasonably practicable test—the same test that is included in today’s regulations. This test, enshrined in the regulations we are debating today, gives every product issuer in the country an escape route to avoid disclosing fees and charges in dollar terms. That escape route is called the reasonably practicable test. The government’s reasonably practicable test sets the threshold for disclosure too low and will create a loophole for product issuers and other participants in the financial services industry to avoid disclosing in dollar terms.

In response, the government committed to replace the existing regulations, which require dollar disclosure where reasonably practicable, with new regulations. The government has now drafted the new regulations to replace these regulations and other regulations currently in force. The new draft regulations include Labor’s and the Democrats’ new test—that dollar disclosure is required
unless ASIC determines that, for compelling reasons, it is not possible. This new test raises the bar for disclosure. It is no longer good enough for a product issuer to say that it is not reasonably practicable for them to disclose in dollar terms. The new test is significantly more stringent than the old reasonably practicable test. Professor Ramsay, one of the few individuals who has considered all of these issues over a long period and is quoted extensively by the industry—by the product floggers—was so moved by the misrepresentation of his views on this matter that he has written to the JPC and said that he supports the new draft regulations on the basis that they accord with his recommendations in his report to ASIC.

Let us be clear. The product manufacturers, issuers, floggers—call them what you will—will not, unless they are made to, provide consumers with all of the information that they need. What is all of the information? I have a very simple definition of it. I call it the total cost to the customer. Why won’t they provide it? Why is this like a wooden stake to a vampire? Why is it that IFSA are so resistant to providing their customers with the information they need to know?

Today we are not arguing about the merits of the two tests. The government has produced draft regulations which replace the old reasonably practicable test with our new test. The issue is whether the new regulations will ever become the law. In spite of producing these new draft regulations, the government has not withdrawn the old regulations with the old reasonably practicable test. If the government is committed to introducing the new test, the existing regulations with the old test should not be allowed to pass into law with effect from July. If these regulations did pass, industry would begin to make the necessary changes to systems and documents that allow compliance with the reasonably practicable test. I do not believe that, once this test becomes part of the law and industry gears up for it, the government will have the inclination to change the law at a later stage.

Think about it: this is a bizarre argument. The one issue more than any other that business consistently brings to us in the parliament is, ‘Please don’t chop and change. Don’t send us off on one path and then change your mind after we have spent hundreds of thousands, if not millions, of dollars conforming our systems to a piece of legislation that you will be ultimately changing.’ Yet, for the first time in my memory—and perhaps, Senator Murray, you may have a more enhanced memory—we have business lobbying to put in place a test that they know, or claim, will be replaced in three or four months time. It just does not ring true. Why would they want this test in place and then, in three or four months time—after they have spent all that time and money conforming their systems to the old test—want to see a new test come in? Why don’t they simply wait until we get the new test, which is not that far away? If we let these regulations pass into law, the reasonably practicable test becomes the law from July 2004. The pressure to put Labor’s and the Democrats’ new higher, improved test into the law will vanish.

At the moment there are negotiations—and I have to say to you that I would love to be selling tickets to the meeting between IFSA and ASFA, because they have been going at this for two years. That may sound extraordinary. For two years these two organisations have been at loggerheads over what should be disclosed to customers. You may think, ‘This is quite extraordinary. How on earth can they be arguing about telling a customer what the total cost they are being charged for a product is?’ But that is what it is about.
At the moment I understand—and I am hoping that my information is correct; it may not be—that we are close to an agreement. If we are close to an agreement, why on earth do we want to mandate this when we are not long from having the agreed test that the industry is prepared to put up? If the government were serious about replacing the old reasonably practicable test with our new higher test, they would withdraw these regulations. In my view, once the reasonably practicable test becomes enshrined in the law, it is highly unlikely that the more stringent test produced by Labor and the Democrats will ever become part of the law.

The vested interests in this industry are unparalleled. At the recent joint parliamentary committee inquiry into the new draft regulations, a number of witnesses referred to the vested interests in the financial services industry. I will quote three of them who appeared. Firstly, Mr Kevin Bailey from The Money Managers—for anyone who is in Victoria, he has a regular Saturday morning program and is considered one of the doyens of the industry—said:

I am well aware that there are many people within the financial services industry that are fighting very hard for standards but are having a tough time of it because of the weight of vested interest in the status quo. Many people call themselves fee based advisors, but the majority of their revenue comes from trailing commissions, which are not disclosed and are very much hidden. Most people would not know what they have paid in trailing commissions to their adviser over the last 12 months, but they know what their telephone bill is and they know what their electricity bill is, because they are delivered in dollars-and-cents terms.

This is somebody who has an intimate knowledge of the industry. Secondly, Ms Wolthuizen from the Australian Consumers Association advised the committee:

Sectors of the financial services industry are benefiting at the moment from a level of protection because of the opacity of fee disclosure that is simply not available to most other areas of the Australian or international economy.

Thirdly, and finally, Mr Lannon from 20/20 Funds said:

I think there is a strong incentive for fund companies not to disclose all these fees. I call it the fee-fest. They collect them and make great profits and that is fine, and they are invisible. The banks have had their heyday of being beat up over fees and so they have moved into the next lucrative category—fund management—by acquiring fund management companies, and those fees are invisible.

Let us make it clear: what we have is an industry that has concentrated from a vast array of companies down to five—and if you want to be generous, six—the big four banks and AMP, and you can toss AXA in as well. Something like 80 per cent of financial plans written nowadays are controlled by those five or six companies. This is an extraordinary concentration. It is putting enormous power in the hands of the banks and a few other financial services companies. They are a strong-willed and determined lobby group who will not, unless they are made to, come clean to their customers. They will not.

The Senate must take a stand. The government are asking the Senate to put the interests of product issuers and groups with vested interests like IFSA above the interests of consumers. If you vote against this disallowance, you will be putting the interests of product floggers—the banks—above the interests of the consumers. The government are asking the Senate to pass regulations which they say they will replace. Why? I for one cannot look consumers in the face and say that I allowed regulations which included a flawed method
of disclosing fees and charges to pass through the Senate.

The new draft regulations—not those that we are debating today—provide the first step to empowering consumers by requiring dollar disclosure unless ASIC determines that it is not possible for a compelling reason. In Labor’s view, the second step is for the disclosure of a single bottom line figure in dollar terms. Again, it is not a radical concept. We are asking that a consumer who receives all the blurb from these product floggers—the banks and financial institutions—is able to pick up a piece of paper and look in one place for the cost: one single figure. It does not seem like it is that hard. The richest, smartest, most powerful industry in the world bar none—the banking and financial services industry—makes all this money off its customers. Why? Because the customers do not even know what they are paying half the time. That is what the surveys show. I challenge any senator to pick up a PDS and the information that is handed to them and work out what they are paying for the product.

Labor believes that consumers have a right to know what fees they are paying in dollar terms and they are entitled to know a bottom line figure. It is a simple concept. A single fee will allow consumers to compare different super fund products. To make a fully informed investment decision, consumers need a single fee for fees and charges. Survey after survey shows that most consumers do not understand fees and charges on super products and managed funds. The ANZ—that is a bank—conducted a financial literacy survey in 2003 and found that 56 per cent of people with superannuation did not have a good understanding of the fees and charges associated with this investment: their most important investment, their future retirement income. The survey also found that 40 per cent of people investing in managed funds did not have a good understanding of the fees and charges associated with their investment. In relation to financial literacy, Mr Lannon from 20/20 Funds advised the committee:

What happens typically out here ... is that the average person is bamboozled. When you walk in to see a financial adviser to get advice in an area where you have little or no knowledge—there are technical terms—

we have all seen them—
you are trying to find someone you trust.

In relation to other recent surveys the Australian Consumers Association stated:

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

Experts who were hired to have a look at fees in the end threw their hands up and said, ‘We just can’t work out what it is costing,’ Even the industry has acknowledged the problem.

Although Senator Murray has heard this before, I go back to the words of the Chairman of IFSA, Mr Doug McTaggart, who said:

I am concerned that our industry will be seen to have created a supply driven monster that is out of control. A monster that has too many product features, too many different types of fees and too little effective disclosure. I marvel at how the average politician, regulator or consumer can get their head around our various products and services. Is it any wonder that we are under constant criticism? The industry needs to focus on simplifying its offerings ... if it is not possible to quantify a fee in a product disclosure statement or
Financial Services Guide, we should consider banning that fee.

The Chairman of IFSA—the chairman of the product floggers—had a moment of clarity when he said that he marvels at how the average person can understand the fee structures, that it is no wonder that there is constant criticism and that the industry has created a ‘supply driven monster’. That is what we have, and ultimately it is up to parliament to try to save consumers from this supply driven monster. Labor want to empower consumers to control the supply driven monster and we can do that by giving consumers a single bottom line fee.

I welcome the decision of the Parliamentary Secretary to the Treasurer, Ross Cameron, following our inquiry to give IFSA and ASFA one month to come up with a model for a single bottom line figure. But do not think that is the end of it. Ross Cameron did a good thing. He finally got sick of people dragging their feet. But it looks like he has been nobbled by his own party. Mr Cameron’s office were reported as saying that the single fee model will be implemented by 1 July whether or not industry devises its own model. In contrast, Senator Coonan has said, ‘I think all he really meant was, you know, hurry up.’

IFSA have also publicly joined the debate about timing. It is quite clear that Senator Coonan is trying to noble Parliamentary Secretary Cameron. She is throwing her weight around and trying to let him know who is the minister. These timing squabbles have a direct impact on consumers. With each day that goes by where consumers are not given a single fee measure showing their fees and charges they are unable to make fully informed investment decisions. Industry have had since at least 2002 when Labor, the Democrats and the minor parties combined to defeat the shonky figure that was used previously—and that is the one that many of them are modelling themselves on right now. They have been using a fee that the parliament has rejected. (Time expired)

Senator MURRAY (Western Australia) (5.40 p.m.)—What we have here is a clear contest between concepts which are inconsistent. The Corporations Act in its various manifestations has been developed through the Senate processes and passed. Its provisions are quite clear. The draft regulations which the Parliamentary Joint Committee on Corporations and Financial Services reported on in part today are consistent with the act. The regulations that are in force and were devised to be consistent with the bill, not the act, are inconsistent with the act. The provisions that the regulations refer to come into effect on 1 July. So the question that the Senate faces is that, were it to support the disallowance, would there be a regulatory hole where the certainty and decisiveness that is required in regulations would be absent? Well, they are not absent. There are details and specifics before us.

An important point to recognise as well is that this disallowance motion has been amended by the mover. In its original form the disallowance motion would have affected all the regulations, and frankly we would have found it very difficult to support it on that basis. Altogether there were 31 items in the regulations. This disallowance motion only affects seven of them, so a substantial proportion of the regulations—namely, 24—would proceed. That is an important point: we are focused on the area of inconsistency and we are not focused on getting rid of the lot just because there is a problem with some of them. We are less alarmed than we were and therefore we are able now to deal with the specifics of this disallowance motion.

The second point to observe is that the Parliamentary Joint Committee on Corporations and Financial Services, on which Sena-
tor Conroy and I sit and which comprises both members and senators, has unanimously agreed with recommendation 4—that is, the committee recommends that the wording of the proposed regulations on dollar disclosure remain as currently drafted. That is a particularly important recommendation. It means that the specialist committee of the whole parliament has confirmed that not only do the draft regulations comply with the act but also the decision of the Senate in determining how the act should be is valid and they are supportive of it.

In addressing these regulations, where do we stand? We commence with a prejudice, with a bias. I will repeat something I said on 4 December 2003:

The Democrats strongly agree with the dollar and then percentage description hierarchy of fee disclosure that is enshrined in the regulations. We share the concern that the 'reasonably practicable' test in the regulations would prove to be too weak. We support the Labor Party in seeking to legislate to specify dollar disclosure unless ASIC considers that this is not possible. This would send the clearest message to financial service providers that dollar fee disclosure should become the norm.

These regulations, as a whole, are important implementation measures, and the disclosure fees and charges are only part of the regulations that we are dealing with. The Financial Services Reform Act 2001 was the result of a comprehensive Wallis reform project which sought to facilitate a more efficient, flexible and regulated regime for financial services and products. It drastically improves disclosure and consumer accountability in the financial services industry. It is a part, namely chapter 7, of the Corporations Act 2001. The transition period ended on 11 March 2004, and the act is now in force. Regulations implement the act’s provisions, and for some of those the implementation period, or the commencement period, stretches out some time before us.

It is important to note remarks I have made again and again on this legislation. This is gutsy legislation on behalf of the government, and Labor’s support for the legislation has been strong and consistent. There is, without doubt, cross-party support for the concepts and intentions of this legislation, which has been confirmed again and again in inquiries by the specialist committee of the parliament with respect to Corporations Law.

As Senator Conroy has outlined, there are two fundamental issues at stake. I shall use the terminology used in the report tabled today. Those two issues are dollar fee disclosure and meaningful disclosure. I will deal with dollar fee disclosure first. Among other important measures, the regulations at issue in this debate require dollar fee disclosure. Consumers are far better informed if they know what fees and charges apply in dollar terms than percentages. Survey after survey and all the research indicate that consumers are most comfortable with dollar language, and that it is the one most understood by them. That is particularly important since investment products are now bought increasingly by unsophisticated consumers. The mass of Australians who have entered into financial service transactions far exceeds those of a decade ago and, therefore, the language by which they are addressed needs to be as understandable as possible to ensure that people are not conned or taken advantage of.

The regulations also give industry an exemption from dollar fee disclosure if it is not reasonably practicable to disclose a dollar fee. I do not propose to repeat the arguments that were outlined in December 2003 or that have been outlined again by Senator Conroy today. I will merely say that in December 2003 the Labor Party and the Democrats ar-
gued that the ‘reasonably practicable’ test was effectively a loophole encouraging avoidance of disclosure. It is important, for the record, to recognise that the government accepted the validity of those arguments and accepted the amendments that arose from that. Consequently, the government accepted that the act should be strengthened to impose a test that dollar disclosure is required unless ASIC determines, for a compelling reason, that it is not possible.

The draft regulations which were the subject of today’s tabled report have been drafted to reflect the law change that was made in December 2003. The Joint Parliamentary Committee on Corporations and Financial Services has inquired into those draft regulations and supports them. The 2003 regulations that are the subject of disallowance now are already in force until disallowed, and they include the old ‘reasonably practicable’ test. They will be amended or replaced by the draft regulations, but it must be recognised that they are inconsistent with the act.

The second issue is what the report describes as meaningful disclosure. My reading of it is that the government agrees with both the Labor Party and the Democrats that a simple, single-fee disclosure model should be adopted as an industry standard, but the government recognises—as do the other parties that are informed on this basis—that there are complexities and difficulties that have to be addressed. I really want to compliment the new Parliamentary Secretary to the Treasurer, Mr Ross Cameron, because he understands, as we all do, that deadlines produce action. He has set an ultimatum to the two key industry players that if they get their act together they will have the chance to determine what model should be the standard. Otherwise it will be imposed by the government with the support of Labor or by the government with the support of the Democrats, but preferably by the government with the support of both parties—so the two key players had better get their acts together. Of course they will have ASIC to tick off their agreed model, and once that happens we can make progress. I want to be sure that you understand this as a compliment: I think that Mr Cameron’s ultimatum is an effective device to try and produce an outcome, and they can have it one of two ways. They will determine the outcome as agreed with ASIC and to be ticked off by the parliament, or we will impose it. That approach has our support.

The opposition has said that because the government has not yet withdrawn the existing regulations which contain the old test there is a danger that, if you leave the old regulations in, their substitution by the new draft regulations could be delayed because of tremendous industry pressure—I would think the parliamentary secretary is going spare with it—to not introduce the regulations as outlined. In doing that, he will also be assailed by backsliders within Treasury who do not like the shift that the parliament has determined from ‘reasonably practicable’ to ‘compelling reasons’.

We are the parliament. We represent the people. We have made the judgment and, frankly, we have to get on with it. By the way, I am not suggesting all Treasury officers are backsliders; but, given what I know of human nature, I would be very surprised if they do not try and defend an attitude previously arrived at. I understand the very clear difficulty they have—which was exposed in the committee inquiry—of a tremendous difficulty in reconciling ‘compelling reasons’ with the ‘not possible’ test. It makes it very hard; but it was made deliberately hard. We do not want many people to be able to avoid the dollar disclosure approach. I have over these eight years come to have a tremendous
respect for the brain power in Treasury. I am absolutely certain they will find a way to ensure that the parliamentary intention gets proper legal effect and is well expressed in the regulations.

So where are we with the Labor Party disallowance motion? As I understand it, the Australian Consumers Association share their concerns, members within the industry at large share their concerns and, of course, there are others who are strong combatants who delay or obfuscate in this area. The question of trust arrives. In one respect, it is not a question of trust with respect to individuals, because the integrity of people carrying these issues is probably not to be questioned. The question of whether the government as a whole will have the fortitude to carry through on both issues in a pre-election environment has to come into our minds. The other side to that is the question of whether disallowance would produce a disruptive regulatory void at a sensitive and costly compliance or implementation time. I would normally be alert to that possibility, but the point has been made to me that the draft regulations have already been constructed and have already been tested through the committee process.

In summary, Labor’s argument is that, by disallowing that part of the regulations as proposed, pressure will be put upon the government to enact or enforce positions to which they have already agreed. This is not trying to force the government to do something to which they have not agreed. This is asking them to do something to which they have agreed. So the Democrats accept at the outset the government’s commitment to the compelling reasons test. We do not believe that they wish to backslide from it. We accept that the government have a commitment to a simple, single-fee disclosure model, but we recognise that they are trying to resolve the complexities and difficulties attached to that. We think there is adequate time prior to 1 July 2004 to replace any disallowed regulations with the new draft regulations as adjusted, hopefully, with respect to the committee’s points made to the government.

To my concluding remarks I put the proviso that unless the government have any persuasive views as to why I should not proceed in this manner, it will be my intention on behalf of the Democrats to support the disallowance; however, I will listen to the government’s arguments against the motion. But they should recognise that it is going to be an uphill battle, because I have come to a view for the reasons I have enunciated.

Senator TROETH  (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry)  (5.57 p.m.)—Before I turn to my substantive remarks on this disallowance motion, I will move a government amendment to the motion moved by Senator Conroy. I move:

Omit “, [6], [8] and [9]”.

The government’s reason for doing so is that, should the regulations be disallowed, in particular items 6, 8 and 9, industry will be uncertain as to the disclosure requirements that will apply to them until new regulations have been made for reporting periods after 1 July 2004. There is generally a long lead time required to implement changes to periodic statements, which are typically provided on an annual basis. That is the reason for the amendment. However, the government also believe that there is no basis on which the disallowance motion should be accepted. We remain fully committed to honouring the commitment given to the Senate by Senator Ian Campbell on 5 December 2003 on issues that we understand form the reasoning for the disallowance—that is, implementation of regulations to support the disclosure of information in dollar terms under the Financial Services Reform Act 2001.
The government is developing regulations to underlie the legislative amendment it accepted during debate on the Financial Services Reform Amendment Act 2003 requiring disclosure of information in dollar terms. It released draft regulations for public comment on 7 January 2004. The government has been awaiting a report from the Parliamentary Joint Committee on Corporations and Financial Services following its inquiry into those draft regulations. That was tabled 10 minutes ago and has not been printed.

While the government fully accepts the need to tighten the current exemption, it has received legal advice that the use of this form of words would have the effect of requiring dollar disclosure even when this would impose massive and disproportionate costs on industry. The government therefore considers that the objective of tightening the regulations should be achieved through a different form of words. The disallowance motion affects regulations that deal with unrelated but nevertheless important matters. Of the nine items within the schedule, five deal with other financial services reform matters relating to further disclosures of information. These include measures to, firstly, enhance disclosure of superannuation benefits and any associated fees in periodic statements to members, items 5 to 8; secondly, close a loophole affecting the disclosure of so-called common fund fees—that is, those fees and charges not paid directly by a product holder for financial investment products, item 9; and, thirdly, require disclosure of means to access additional information sources to the information provided in periodic accounts for superannuation fund members, items 5 to 8.

Removing items 5 and 7 from the disallowance motion is an ill-considered amendment that effectively does not avoid disallowing important but unrelated regulations. Disallowing the regulations would still result in, firstly, the loss of enhancements to the disclosure of superannuation withdrawal benefits and fees associated with other significant benefits in periodic statements to members, items 6 and 8; secondly, the closing of the loophole affecting the disclosure of so-called common fund fees—that is, those fees and charges not paid directly by a product holder for financial investment products, item 9; and, thirdly, requiring disclosure of means to access additional information sources to the information provided. This motion affects other regulations, and it constitutes an inappropriate and completely unnecessary use of parliamentary time and disallowance procedures. The government has given a specific public commitment to address outstanding issues relating to the regulations, and it is already acting to give effect to that commitment. This commitment is in no doubt. The remaining regulations are worthwhile and necessary measures that add to the government’s aim to improve the transparency of financial products and to aid consumer comprehension. The regulations should be welcomed and supported by the Senate, not disallowed.

Senator CONROY (Victoria) (6.02 p.m.)—Parliamentary Secretary, I am interested in legal advice about imposing massive costs. It must be a very unusual type of legal advice that gives you not legal advice but a financial price. Could you table it so it is available to us? It does seem like unusual legal advice. Let me make a couple of points: firstly, we are here today because the government and the industry wanted the OMC, the ongoing management charge. Two years ago, the Senate courageously blocked it because it did not believe that it was good enough. Consumer testing on the OMC showed that it was worse than nothing because it significantly misled consumers. That is why, ultimately, a majority—Labor, Democrats, minor parties and Independents—
voted to defeat it. The government argue that they are trying to help consumers, when consumer testing showed that the OMC seriously misled consumers. Those opposite have said that certain regulations are subject to the disallowance to enhance disclosure. As Senator Murray has so eloquently put it, the problem is that these are fundamentally inconsistent with the piece of legislation that we passed in December.

Senator Murray—Which is now in force.

Senator CONROY—Yes, it is now in force. The government know this, yet they choose to proceed. They have already accepted that we are going to have a new regulation. The parliamentary committee has looked at it. We believe that we have made substantial progress—consumers are going to be better off because of this. If we let these regulations go through, we will be back to square one. ‘Square one’ is the rejected reasonably practicable test. Consumers need disclosure. We do not want a situation where disclosure is made if the product issuer considers it to be reasonably practical, which is what this regulation enshrines. Fees and charges must be disclosed.

The government has also raised the issue of timing. I appreciate the point made by the parliamentary secretary about the committee report, because it only came into the chamber today for everyone to see. The most interesting part of the report is that all of the experts on the committee that Senator Murray described have unanimously recommended to the government that there should be a transition period of six months, to 1 January. That will allow us to fix almost all of those problems that the government is arguing will potentially arise. It was a unanimous recommendation based on an in-depth study. We want to give that six months to end the uncertainty. We do not want to create more by putting in place one set of regulations that we will be phasing out a few months down the track. What the parliament and the Senate are seeking to do today is to give certainty to industry. Why are we here today? For those who remember the debate back in 2002, we are here because during the debate and afterwards, Senator Ian Campbell, who then had carriage of the bill, made it clear that he would not allow any work to be done to create the new OMC or an enhanced OMC or a single bottom line or whatever.

He stood there in the parliament, he put out a press release and he said in the newspapers, ‘Right; that’s it. We haven’t got OMC. We’re going to have nothing. I’m not going to countenance any work whatsoever.’ Remember, Senator Murray and Senator Lees? That was what Senator Ian Campbell said and that is why we are here today. That is why it is being done in such a rushed why. That is why the parliamentary committee said, ‘We don’t have the paperwork.’ because Senator Ian Campbell decided that we were not going to progress the issue. It is now two years later and it is five minutes to midnight and the government are coming back talking about uncertainty. They have had two years to clear up the uncertainty, to make their points and have the arguments. Senator Murray is dead right. Parliamentary Secretary Cameron has taken a very courageous position and he deserves the support of the Senate. I hope he gets the support of all of his backbench and all the other ministers.

Senator Sherry interjecting—

Senator CONROY—Don’t be provocative. We have a situation where members of the government are seeking to undermine Parliamentary Secretary Cameron. They are seeking to undermine the intent of the Senate’s decision previously. That is why it is important that we take the stand today. He deserves support for a courageous decision.
Senator Murray—Don’t choke on it!

Senator CONROY—I am not. Senator Troeth has set me off. I want to thank the Democrats, the minor parties and the Independents, who are indicating they will support this disallowance motion. This is a victory for consumers today. We are very close to getting what consumers need—a genuine piece of information that is meaningful to them. We are close to creating genuine competition in this sector, so a consumer can pick up one document from one investment and see a figure, they can look at another document from another investment and see a figure and make a price comparison. Ultimately, in a market economy, you need to have a price. You need to have price signals so the market can respond, so that consumers can respond. If you do not give consumers a price, there cannot be a price signal. It creates inefficiency and ultimately that means consumers are paying more than they should.

I thank those who are supporting this motion. I hope the government will reconsider it even at this late stage and be willing to support this disallowance motion and that we can move on and quickly get a solution to this. I think we are very close to a solution in terms of those industry discussions.

Senator MURRAY (Western Australia) (6.10 p.m.)—In speaking to the amendment moved by Parliamentary Secretary Troeth to Senator Conroy’s motion, I want to commence my brief remarks by quoting from an urgent email which has just reached me. The email is from an expert, a reputable and respectable person whom I take advice from, which I think is very sound. He is extremely highly placed in the industry. I will not tell you who he is because that would embarrass him. I want to illustrate the problem we have when we are dealing with even the most senior people who are not across what is happening. The email begins:

Dear Senator Murray—

which is nice. I love being called ‘Dear’—Continual disallowance of good regulations is becoming incredibly frustrating for certainty in our industry—

I am not sure that I have been involved in more than three cases maximum of disallowance in Corporations Law over eight years, perhaps more, but I think it is about three—of good regulations.

The government have announced and put out drafts which are to replace the regulations that we are discussing. What does he mean? Is he saying that the government should not be doing that or has he forgotten that the government are doing that? He further states: It is becoming incredibly frustrating for certainty in our industry.

They have certainty because they have the draft regulations. They have given evidence to the Joint Standing Committee on Corporations and Financial Services, so they know exactly what they are getting. They just do not know when they are getting it. What we are doing by disallowing this is making sure that they will get it pretty damn quick, as opposed to a lot later. I think that first statement in the email indicates a problem. He goes on:

Each time the Senate disallows a reg, the cash register rings out another five to $10 million in costs.

I do not know how you work that out, but I would have thought they would have been designing their software and all their paperwork to match the draft regulations which have been put out by government and will be replacing these regulations that we are dealing with. I would be very surprised if they do it with the ones that they are going to replace. That sounds to me like an exaggeration. He further states:

We have just spent more than $240 million, banks, planners, financial services, companies,
preparing for the FSRA and we’re losing customers to less regulated industries, such as real estate, stockbrokers and self-managed super funds.

I would agree with that. I do not know whether those figures are accurate, but we are very conscious that the cost of major regulatory change in the interests of consumers—and that is what it is—has a direct business cost, which eventually gets passed back to consumers. It does not come out of a net payment. We are conscious of that, and what we are doing is trying to minimise that expenditure. The Financial Services Reform Amendment Act says one thing. The regulations that we are dealing with are inconsistent with the act. The draft regulations should be applied as soon as possible. So whilst I am in sympathy with the remark, I think it does not refer sufficiently to the reality of the situation. He goes on:

I urge you for the sake of certainty to support the government on this issue.

I would have thought that if we support the government on this issue we will introduce more uncertainty; because when will the draft regulations be introduced? I have tried in preparation for this debate to get the government to tell me, and they cannot yet. There might be very good reasons for that, but the fact is that I as a legislator do not know when they will be put in. I think that is all I will quote from this particular email so that I do not give too much away. But you can see what we are faced with, the sort of pressure on us—and I am sure it has also been applied to the government and to the parliamentary secretary—from a basic position of misinformation, even by those who are at the peak of their circumstance.

I have looked at the regulations to which the amendment is put. The difficulty for me, Parliamentary Secretary, is that each of those regulations contains wording which is the very subject matter that we are dealing with here today. I understand what you are trying to do, and I wish I could find a way to tighten the Labor Party’s disallowance even more. If they were prepared to accept those, then, obviously, I would, but I suspect they cannot because the words ‘reasonably practicable’ are included in each of those. I am not one of those who enjoys doing disallowances, unless it is something fundamental to my beliefs, like human rights or something of that nature. But this is about money and finance and other things, and I think the arguments put by the Labor Party with respect to this particular matter are accurate. It is my job to make a decision, and my decision is to continue to support the Labor Party’s disallowance.

Question negatived.
Original question put:
That the motion (Senator Conroy’s) be agreed to.

The Senate divided. [6.21 p.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes......... 36
Noes......... 30
Majority....... 6

AYES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Bolkus, N.
Brown, B.J. Campbell, G.
Carr, K.J. Cherry, J.C.
Collins, J.M.A. Conroy, S.M.
Cook, P.F.S. Crossin, P.M.
Denman, K.J. Faulkner, J.P.
Forshaw, M.G. Greig, B.
Harradine, B. Harris, L.
Hogg, J.J. Hutchins, S.P.
Kirk, L. Lees, M.H.
Ludwig, J.W. Mackay, S.M. *
McLucas, J.E. Moore, C.
Murphy, S.M. Murray, A.J.M.
Nettle, K. Ray, R.F.
Ridgeway, A.D. Sherry, N.J.
Stephens, U. Stott Despoja, N.
Webber, R. Wong, P.
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Question agreed to.

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

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**BUDGET**

**Consideration by Legislation Committees Reports**

_Senator EGGLESTON (Western Australia) (6.24 p.m.)—Pursuant to order and at the request of the chairs of the respective committees, I present reports from all legislation committees, except the Environment, Communications, Information Technology and the Arts Legislation Committee and the Foreign Affairs, Defence and Trade Legislation Committee, in respect of the 2003-04 additional estimates, together with the _Hansard_ record of the committees’ proceedings and documents received by certain committees.

Ordered that the reports be printed._
make sure that the proposal comes with an environmental impact assessment.

Senator Abetz—But there is no proposal.

Senator BROWN—The poor minister says that there is no proposal but the committee, for example, was forwarded a submission from Woodside, who, with a couple of other major proponents, is putting forward a very clear proposal to develop the oil and gas fields that are in question. They have been working on assessments of infrastructure and the value of that oil field for many years, and we know there is a rival proposal from Conoco which goes back 20 years. There has been a huge amount of work done in assessing and sizing up this oil and gas field. Are we, as a committee, really to be led to believe that, in the many years of effort and the millions of dollars expended in doing that assessment, there has been no environmental assessment done? Of course we are not. Of course that is not acceptable. Of course there has to be an environmental impact assessment.

If the minister is saying there is no proposal, I think the committee can go home. Why are we dealing with a piece of legislation if there is no proposal? Of course there is. That is daft. We have a proposal and out of that proposal comes a unitisation agreement for the development of the oil and gas fields called Greater Sunrise and Troubadour. The question is: where is the environmental impact assessment? We are dealing with two countries here, Timor Leste and Australia. There is a disputed border but there is no doubt about where this development is going to take place.

There is also no doubt that it can have major impacts, as all oil and gas extraction in marine regions have, on the marine environment. One does not have to be Einstein to know that there is a very significant risk over the decades of production of these oil and gas fields of a blow-out, an escape, of oil and/or gas into the marine environment. There will of course be direct and undeniable impacts of the drilling process, the platforms involved, the consequent transport through pipelines of the gas to either East Timor or the Northern Territory and/or the processing of the products at sea for export to Australia or other countries around the world. This is a gargantuan project—$35 billion is being talked about as the overall outcome, with billions of dollars to be spent developing it and $10 billion in royalties, most of which is going to be taken by Australia improperly. So it is a very big proposal indeed. It has potential direct major impacts not just in the region but as far away as the shores of both nations involved. We ought to be dealing with this legislation in light of the knowledge that would come from both a social and an environmental impact assessment.

That is the other matter: the social impact. Where is the assessment of the impact of this development on both Australia, and more particularly, Timor Leste? That would have to include the difference between the $2 billion royalties it is assessed that Timor Leste will get and the $10 billion it would be getting if it were not being deprived in this fashion to its legal entitlement to total ownership of the oil and gas field. It is not acceptable for legislation like this, which effectively authorises the go-ahead on this project and without which we are told the project cannot proceed because it is needed for investor security. What about environmental security?

The minister opposite might shrug his shoulders and go, ‘Hah,’ about this but it is a very, very important matter. The government’s environmental track record is second to everybody’s. But we can expect, and we should expect in the Senate, to be presented with an environmental and social impact assessment. I reiterate: where is it? It does not exist. When is it going to be forthcoming?
Who will do it? Who has the power of vetting the result of that environmental and social impact assessment and deciding whether, in light of the environmental and social impact assessment, this project should proceed? Without the impact on the environment and society being paramount, the assessments are worthless. The project should be contingent on those assessments being amenable and acceptable to both East Timor and Australia—both the social assessment and the environmental assessment. So where are they? In light of the fact that they are not here, when are we going to see them, who will do them and at whose expense will they be done?

Senator ABETZ (Tasmania—Special Minister of State) (6.34 p.m.)—Senator Brown has established a reputation for simply asserting things as facts and hoping that he is never questioned about the validity of what he is asserting. Of course, that is what he is doing again this evening. He knows full well, or he should know full well, the difference between an actual proposal and a development concept. At this stage we are only at the development concept stage. This legislation is needed to enable a proposal to be forthcoming. It is when that proposal is forthcoming that the environmental legislation and the requirement for an environmental impact statement will come and that will be under legislation which, if I recall correctly, Senator Brown voted against—but that is another story. He now wants that legislation that he voted against to be used and applied to this situation at the Greater Sunrise.

I indicate to the Committee of the Whole that this government is very proud of the environmental protection legislation that it passed, which I understand the Democrats moved considerable amendments to and negotiated with the government on. At the end of the day we think a pretty good environmental outcome was achieved. That is an indication of the practical approach to these situations rather than the dog in the manger attitude adopted by the Australian extremes. We are concerned about the environmental issues for any future project of significance. That is why we passed the legislation that we did at a previous time. That legislation will be required to be adhered to by anybody that comes up with a firm proposal. Concepts are all very nice, but what you actually need is a firm and detailed proposal. The detailed proposal has not been forthcoming as yet.

When this legislation is—hopefully—passed, proposals will come forward. When the proposals come forward, they will have to come with an environmental impact statement paid for by the proponents, as I understand it. The environmental impact statement will then be assessed by the Joint Petroleum Development Authority under the Australian law that currently applies. Our friends from East Timor will have just as much input as the Australian representatives to ensure that the environmental impact statement is appropriate and rigorous and that the environmental concerns held genuinely by all of us in this chamber are addressed. Some of us in this world do not see a project and straightaway ask, ‘How can we stop it?’ Some of us say: ‘Here is a potential project. How can we make it work whilst also protecting the environment?’ That is the big difference between Senator Brown’s approach and the government’s approach. From an environmental point of view our legislation will apply as will also, as I understand it, the requirements of annex II of the treaty—which was signed by both East Timor and Australia.

If there were a proposal, at the end of the day the social impact of the proposal and the development of that proposal would be something for the two governments to determine through their democratic purposes. Suffice to say that I think the social impact
will be absolutely huge and beneficial to the people of East Timor. Make no mistake: if this legislation is not passed, we will not be moving from concept to proposal, and the natural resources that are available there will be either not harnessed or delayed from being harnessed for a long time. As a result, the struggling nation of East Timor—and, when I say struggling, I mean in financial terms—will be denied considerable dollars. Senator Brown can say that we are grabbing a share that is too big. We as a government reject that categorically. We say an agreement has been signed by the two governments et cetera. Make no mistake: there will not be an argument about the share if Senator Brown has his way because the resource will remain where it is and neither East Timor nor Australia will get the benefit of this joint gas field. It will have a great and beneficial financial impact on the people of East Timor, and the funds that flow from harnessing the gas will allow them to upgrade a lot of their services and infrastructure and to engage in considerable nation building. The social impact will be of great benefit to our friends in East Timor.

Senator BROWN (Tasmania) (6.41 p.m.)—The nonsense about there not being a proposal is disposed of if one just looks at Woodside’s prepared submission to the Senate inquiry. It talks about hundreds of millions of dollars having already been invested in ‘exploration, appraisal and concept development’. No proposal? What nonsense. Woodside says:

However, Sunrise—
that is, the oil and gas field—
will not progress to the next phase, take a final investment decision—
the proposal is up; the next stage is for the corporations involved to make their final investment decision—
or secure gas customers until outstanding legal and fiscal issues are resolved, the most immediate being the entry into force of the International Unitisation Agreement (IUA). Investors and customers must be convinced that there is fiscal and legal certainty for the project. A large part of that certainty is delivered by a ratified IUA.

That is effectively what we are doing here, undertaking the ratification of that agreement. By the way, according to its submission:

Woodside holds a 33.44% interest in and is Operator of the Sunrise Unit Area located in the Timor Sea. The other Sunrise participants include ConocoPhillips (30%), Shell (26.56%) and Osaka Gas (10%).

The question is: where in this submission is there any reference to environmental or social impacts? There is none. The submission says that $200 million has been spent on concept development, which includes exploration and appraisal, but neither its environmental impact nor its social impact have been appraised. These are ordinary assessments that any developed country should insist and demand are carried out by this stage of a proposal. What we are hearing from Woodside is that the proposal will go ahead if the ‘outstanding legal and fiscal issues are resolved’. I want to know about the outstanding environmental and social issues, not to speak of the political ones. The minister, when he was assessing my submissions on this matter, said that I did not agree with the way in which this oil and gas field was shared. No. Let us get this straight: this oil and gas field is in Timorese territory. It is 100 per cent on the Timorese side of the midpoint between Australia and Timor. So there is not a question of sharing it. It is Timor Leste’s provision.

Senator O’Brien—Everywhere else in the world there is a 200-mile limit.

Senator BROWN—Senator Kerry O’Brien interjects that everywhere else it is a
200-mile limit. What he says, in effect, is that Australia recognises the 200-mile limit for itself, but forget about the East Timorese. The 200-mile limit does not, apparently, matter to them. That is the whole thing that is wrong here. There is this view that Australia has some right to determine boundaries and to take resources which does not apply to East Timor—it is not an equal nation. That is a colonial attitude and that is just not acceptable.

I come back to the social impact, because there is a lot to be said about the political impact. Woodside says in its proposal that there will be a peak of 3,000 in the workforce involved in the development of this field. That presumably involves the processing of the gas and oil to the point of sale at least, if not export to wherever it is going to go. I ask the minister: how many East Timorese are going to be in that workforce? If we are into sharing, what is the expected East Timorese component of that workforce? I will add a couple of questions to that, because they may be worthy of consideration. No, I will ask the minister now: can he tell me who the minister for the environment for East Timor is and can he tell me how many people are working in the department of the environment in Timor Leste?

Senator ABETZ (Tasmania—Special Minister of State) (6.46 p.m.)—Starting at the beginning of Senator Brown’s comments, as he spoke he realised that he was getting on shakier and shakier ground and then quickly tried to shift the goalposts as he was talking to try to regain some credibility. The simple fact is that articles 19, 20 and 21 and annex II provide for a common legislative and administrative regime in relation to matters concerning occupational health, safety and environmental protection.

That is what the East Timorese have signed up to. Here we have a senator from the state of Tasmania suggesting—in a very colonial way, if I might suggest—that he knows better than the democratically elected government of East Timor in relation to the treaty that they signed. How patronising can you get! This is the sort of nonsense that we have to put up with from the Australian Greens day after day. Thank goodness we still have a few minutes on broadcast which allows me to expose the sort of nonsense that Senator Brown has gone on with.

We have this nonsense of asking, ‘Can you name the minister for the environment for East Timor?’ What a bizarre and stupid proposition and question. If you were to ask me to name the minister for the environment of the country that I was born in, Germany, I could not tell you. I do not even know who the minister for the environment is in the state of Queensland. I am sorry, I cannot tell you the state minister’s name. How has that got anything to do with the quality of the concept, with the quality of the legislation that is before us and with the quality of the treaty that the democratically elected government of East Timor signed—which the Prime Minister of East Timor personally signed, as I understand it?

If Senator Brown, being elected by a few thousand Tasmanians, thinks that he knows better than the democratically elected Prime Minister of East Timor, so be it, but it is a very patronising attitude and a very colonial attitude. Of course, as honourable senators opposite are reminding me, I am elected from the state of Tasmania as well by just a few thousand Tasmanians. I accept that, but that is why I would never have the breathtaking arrogance of asserting that, being elected out of the state of Tasmania, I somehow know better than the democratically elected Prime Minister of East Timor.

This is the sort of nonsense that we are fed day after day by the Australian Greens. We
are getting sick and tired of it on this side of the chamber. I have no hesitation in indicating that this is a treaty that was signed by both countries for the benefit of both countries. We now have legislation to try to drive that forward for the benefit of the people of East Timor. If Senator Brown and the Australian Greens have their way, nothing will happen and the East Timorese and Australians will be denied the benefits.

Progress reported.

ADJOURNMENT

The DEPUTY PRESIDENT—Order! There being no consideration of government documents, I propose the question:

That the Senate do now adjourn.

Education: Boys

Senator SANTORO (Queensland) (6.51 p.m.)—Educating boys is not an easy task. It is as difficult and challenging as educating girls. Educating young people of either gender is always going to be challenging. It is a fundamental and vital task of any society to bring up its next generation of workers and leaders. In fact, if we do not find it challenging from a policy perspective and in terms of constantly rising outcomes, we are not doing it correctly. There is at present a national debate about gender balance in the teaching profession. Falling proportions of male teachers coincide with falling levels of academic attainment among boys. We need to note that they coincide; they do not necessarily correlate. But it does seem to me that boys in the classroom need male role models in that environment.

I spoke in the Senate last year on this issue. It is one of the things I set my mind to when I came into this place in 2002. It seemed to me then and it seems to me now that in this country we have a historic opportunity to put right one of the things that has been wrong with our system of education. In the Australian newspaper last week, the academic commentator Ross Fitzgerald suggested that Australia needed to make education a bipartisan issue. I think that is a sensible proposition. There can surely be no fundamental argument over the benefits of education. Issues of emphasis and certainly a standard curriculum can be overcome at the national level. Fitzgerald wrote:

Parents increasingly want national standards applied to schools, with a national curriculum, testing systems and tertiary entrance benchmarks.

He also wrote that teacher unions needed to note:

... parents want results, not political or social activism or Emily’s List-style gender agendas.

It is in this context that Australia needs to examine scholastic achievements and devise ways of improving levels of achievement among the school cohorts that show significant failure. Among those who are failing as a group, regrettably, are boys. Boys do need access to a social environment, even in the classroom—perhaps especially in the classroom—in which there are relevant and appropriate male role models. It has been fashionable to sniff in dismissal at such things, yet those who do so—and I note that the feminist Dale Spender was doing some sniffing in the opinion pages of the Brisbane Courier-Mail today—entirely miss the point.

The argument is not about bringing men back into the classroom to ‘redress the gender imbalance’; it is about providing young Australians—of both genders, actually—with access to the appropriate role models. It has been fashionable for some years to sniff at the concept of role models too, as if this is somehow no longer appropriate. Perhaps the subliminal argument is: why place emphasis on human relationships when everyone is in a relationship with their personal computer? Yet we know from our own responses to all manner of things that human society has ac-
tually changed very little. And all of us who are parents understand very well that loving firmness, strict moral precepts and strong social codes unquestionably remain the best way to help our children grow up into warm-hearted, sociable, sensible, community-minded adults.

The focus of the moment is on boys’ academic achievement levels and how to improve these. As I said in my speech on this issue in this place on 5 February last year, it is vital for Australia’s future that we reverse the dangerous trend of falling school achievement levels in boys. Unlike girls, who tend to be collegiate, cooperative, lateral thinking by nature and—as they never tire of telling mere males—capable of doing so many things at once, boys need a firm focus, a clear set of rules and a clear knowledge of who is in charge. Their interests as well as their capabilities are dissimilar from those of girls. There is nothing wrong with that—it is the way nature has made the human species. We need to recognise that—some ultrafeminists more so than most—and step away from mistaking gender equality for gender convergence.

I think this is at the base of much of today’s debate about male teacher numbers in schools, particularly in primary school classrooms, and it is something that unites many people across party lines. There has been plenty of movement on this issue since I spoke about it in the Senate 13 months ago. The Howard government has acted on this issue under the strong leadership of the Prime Minister. Labor, under new leader Mark Latham, has unfortunately only reacted—and that is a pity. It is a pity because it demonstrates that, for all his own public activism on returning male teachers to the classroom, the member for Werriwa is still the caucus captive of Labor’s femocrats, among them, apparently, his deputy.

The Minister for Education, Science and Training has acted strongly and in a highly focused way throughout the process begun by the House of Representatives Standing Committee on Education and Training report Boys: getting it right, which, of course, the minister co-chaired. There is a proposal—and it was still alive at last report, at least—for amending legislation to clear the way for proactive measures to increase the number of young men who choose teaching as a career. It was no surprise to see that Labor’s education spokeswoman and teacher unions are as one on this issue. They think it is a bad idea. They apparently have a predisposition to preference hypocrisy when it comes to voting on education issues. We have seen this highlighted particularly over teacher scholarships. But it is a pity because Labor and the teachers unions are missing a historic opportunity.

We need to move away from stereotyping and from knee-jerk responses to fundamental policy issues in education. As a society we need to understand that the present debate is not about the relative values of male versus female teachers. There is no such issue. Australian teachers are among the best in the world; in many respects, I would contend that they are the best in the world. The fact that, by an increasing majority, they are women is peripheral. In this debate we really are arguing, or we should be arguing, for a reversal of the usual enjoinder to look to the quality and not the quantity. There are strong arguments to suggest that boys do benefit from being taught by men and probably in all-boy classes.

There are two linked but essentially separate matters at stake here. The first is academic outcome, which basically rules future earning capacity, career options and life choices; the second is the crucial need to educate boys in the broader sense, as civic citizens and, later, as good fathers. These are
absolutely vital achievements for the future health of our society. This has nothing to do with old stereotypes about he-men and she-women and everything to do with giving every Australian child, female and male, the best possible start in life.

Some academic commentators point out that the data shows falling school performance by boys is patchy. Beth Gaze, an associate professor of law at Monash University, is the latest to give voice to this opinion, in print at least, in the Melbourne Age on Monday. But, to a large extent, that response begs the question. It is a cop-out. Falling performance by boys in Australian schools may well be patchy, but the national task is to ensure that boys do not fail within the school system, whether in patches or across the board. It is certainly no argument to suggest—and this is the subliminal message of much criticism—that it is not so much of a problem because the data shows it is only a patchy problem. It could be, in fact, patchy data. That is another problem that would be solved by a shift to a truly national curriculum under which apples—bad or otherwise—could be compared with apples.

Other critics may be right when they say that teaching is undervalued in the monetary terms by which our consumer society measures worth. But so are a lot of occupations, and even more so vocations, under that scale of measurement. It is true, as Dale Spender argues in her comment in the Courier-Mail today, that some of the decline in boys' school performance is relative. She notes that 30 years ago as many as 30 to 40 per cent of boys could not read or write proficiently and they are probably doing better today. But that also begs the question of whether it is a cop-out. A relative decline in education outcomes is a decline nonetheless. It is the decline we must combat, not the relativity. What we are in danger of falling into here is, as the minister for education said at the weekend in another educational context, a situation where political correctness overtakes common-sense. Ross Fitzgerald put this most aptly in the Australian:

The great political debates in this country are generally conducted by and between relatively small numbers of interested people. I suggest that education is not—as he suggests, and I agree—fundamentally a partisan question. It is much too important for that.

Health: Hepatitis C

Senator HUTCHINS (New South Wales) (7.00 p.m.)—I rise tonight to speak on hepatitis C, which affects 210,000 people, and 16,000 Australians are infected each year. It is an illness which has an enormous effect on the lives of those people who are unfortunate enough to become infected. Hepatitis C is acquired as a result of a variety of procedures but the common element is that it requires blood-to-blood contact. According to the Australian Hepatitis Council, approximately 83 per cent of people with hepatitis C acquired it as a result of injecting drug use; 12 per cent through various other means such as unsafe tattooing, needle-stick injuries or blood contact in the home; and the final five per cent, which is over 10 000 people, as a direct result of receiving transfused blood or blood products which contained hepatitis C.

Those who suffer from hepatitis C, no matter how they acquired it, deserve the best health care available. In my opinion, those who received what has come to be known as tainted blood, in particular, deserve assistance from governments and government agencies to manage a condition which they acquired through standard medical procedures. Hepatitis C is an insidious illness which develops slowly, and some people may not know they have it until a decade or so after they acquired it. Early symptoms of the illness are most often lethargy, fatigue and nausea. Once the illness progresses, liver
damage can occur as a result of attempts by an individual’s immune system to destroy infected cells within the liver. In the most severe cases serious scarring becomes cirrhosis of the liver, which can affect the liver’s ability to work effectively.

As Chair of the Senate Community Affairs References Committee, I will be a member of the committee’s inquiry into hepatitis C and the Australian blood supply. The committee will inquire into the history of post-transfusion hepatitis C in Australia—those five per cent of hepatitis C sufferers who acquired hepatitis C as a result of what were, in many cases, standard medical procedures. Groups within the Australian community have raised the issue of post-transfusion hepatitis C with me and explained that they are concerned by a number of the decisions made and procedures undertaken by Australian blood providers and blood product manufacturers.

I expect the most important issue addressed by the inquiry will be the circumstances surrounding the actions of the Australian Red Cross Blood Service in applying tests for hepatitis C which became available during the 1980s. Surrogate testing and ALT testing were introduced in the United States of America and other nations before they were introduced here, and this raises obvious concerns about the appropriateness of decisions made in Australia. While neither of those tests could exclude all blood containing hepatitis C, they could have reduced the amount of infected blood in the blood supply, which could clearly have reduced the number of people who acquired hepatitis C.

This is most certainly an issue which deserves the close attention of any government. In many ways the current government has been part of the problem. It has refused to provide all victims of post-transfusion hepatitis C with compensation to cover their medical costs and loss of income and to allow for the considerable pain and suffering they have endured. Many of the victims in this unfortunate episode have been from groups which already deal with difficult medical conditions. Haemophiliacs, for example, have a very high rate of hepatitis C infection because of their regular requirement for blood transfusions and blood products. As a result of their reliance on blood and blood products, haemophiliacs were exposed to more blood and blood tainted with hepatitis C. In the process of treating their difficult medical conditions, those people have encountered another serious illness which makes their lives even more difficult and their pain even worse.

Many of the submissions the committee has received so far have been from women who acquired hepatitis C during childbirth or as a result of medical procedures which were required as a result of childbirth. At a time in their lives when they should have had the opportunity to raise their children and give them the best opportunities available, these women have been forced to contend with a battle against a very serious and energy-draining illness.

Other countries, such as the United Kingdom, Ireland and Canada, have already dealt with these issues. They have set up compensation schemes which do not require victims of tainted blood to litigate in order to receive compensation. They simply need to apply to the relevant authority such as the Hepatitis C and HIV Compensation Tribunal in Ireland. I would hope that once the committee’s inquiry has concluded the Australian government decides to move in a similar direction for the victims of post-transfusion hepatitis C here. Considering that many of these people seriously suffer from a debilitating illness, it is entirely unfair that they should be required to expend money and energy on litigation to receive compensation for an illness acquired
through exceptionally unfortunate circumstances.

I look forward to the commencement of the hearings for this inquiry, which start next Thursday. They will give the people who have suffered an opportunity to voice their concerns and tell their stories. They will give the organisations involved in making decisions about testing for hepatitis C the opportunity to explain their actions. But, more importantly, they will give the government evidence that will, hopefully, lead to increased resources for the sufferers of this serious illness that they acquired as a result of having complete faith—which is justified now—in the Australian blood supply.

Madam Acting Deputy President McLucas, as you would know only too well, my tenure as Chairman of the Community Affairs References Committee is about to expire. I have thoroughly enjoyed being part of that committee. It is one through which I have learnt a great deal about my country and my fellow countrymen. I particularly thank the committee members who at times were very tolerant of my eccentricities. I thank you, Acting Deputy President McLucas, and Senator Moore and the two Liberals who despite being Liberals are not bad people—Senator Sue Knowles and Senator Gary Humphries. In particular I thank the dedicated secretariat led by a very decent man Mr Elton Humphery and the people under him—Christine McDonald, Peter Short, Leonie Peake, Ingrid Zappe and Geraldine Badham.

Trade: Free Trade Agreement

Senator SANDY MACDONALD (New South Wales) (7.08 p.m.)—I want to discuss the Australia-United States free trade agreement tonight because the dust has settled since it was announced in February. The document has now been published, and it is proper to again recognise the incredible effort made by our Minister for Trade, Mark Vaile, and his team in negotiating the agreement. The document has been scrubbed and published. It is being looked at by the Joint Standing Committee on Treaties, and a Senate select committee is also making inquiries. They will report their findings in due course.

The negotiation of the free trade agreement between Australia and the United States will bring huge benefits for the Australian agricultural and manufacturing industries, providing a tremendous boost for trade and our trade relationship with the United States. We are both leading trading nations in a world where trade is often corrupted. We came together in a bilateral sense with clean hands in negotiating the FTA. The United States is our most important trading partner, with an economy that accounts for one-third of the world’s GDP, and I suspect our relationship will become more important over the next 20 years, not less. After that who knows? I guess that will depend on the strength of the Chinese influence as we understand it, and it is very important that we have a good trade relationship with China as well.

Our trade relationship with China has grown exponentially over the last four or five years, upwards of 10 or 15 per cent per year. It was interesting that in November last year we had visits from both the President of the United States and the President of China on consecutive days. That reflected not only the importance that Australia puts on its trade relationship with the United States, as evidenced by the FTA, but also the enormous synergy we have the Chinese economy.

The opening up of trade channels between Australia and the United States is incredibly important. The FTA will mean many Australian exporting companies will now have free and open access to markets in the United States. Agricultural producers will see the
majority of tariffs reduced to zero immediately, and the rest over time. I believe that Australia will get far more out of this trade deal than the United States. On that point this is probably the most exciting thing that has happened to Australia since I have been in the Senate. This FTA is incredibly good news for Australia, and I do not think we should sell it short for one moment.

Agriculture will certainly benefit. Manufacturing will benefit. Existing jobs will be retained and new jobs will be created. Our economy will continue to grow from the benefits that will flow from new opportunities. Over 97 per cent of Australian non-agricultural exports to the United States, worth about $6½ billion last year, will gain duty-free entry into the United States. Under the FTA around 66 per cent of tariffs on agricultural products will be cut to zero immediately, with a number of other tariffs reduced over the following five years of the agreement. In time our beef industry will achieve completely free trade with the United States. The in-quota tariff is to be eliminated immediately, saving around $16 million a year in tariff revenue alone. Presently our quota with the United States is about 380,000 tonnes. Only once in 15 years have we reached our quota of beef into North America, so the elimination of the in-quota tariff is very useful.

In addition to the substantial WTO quota that Australia already holds with the US, our beef producers will have access for an additional 15,000 tonnes of beef in year 2, increasing to 70,000 tonnes in year 18. Then effectively it will be free trade. There has been some criticism of the time that it will take for our beef quota to become in effect free trade. Eighteen years may seem a long time but, in terms of the development of trade links and relationships and industries developing and strengthening, 18 years is like an evening gone.

Australian dairy farmers will more than double their access to the world’s second largest dairy market, and that will happen immediately. It is suggested that this initial increase will be worth over $50 million in 2005, and there will be about a five per cent increase every year after that. This is wonderful news for the dairy industry. I see my colleague Senator McGauran in the chamber. He represents the state of Victoria, which produces a very large percentage of our export dairy product. I know he is delighted with the impact that this will have on his state and on his industry.

Other agricultural sectors will see a reduction in tariffs and will benefit from gaining access to a market of more than 300 million people. The single desk exporting arrangements in wheat, rice and barley will all remain intact. That was of the utmost importance to the Australian government when it was negotiating the deal and, of course, to crop producers nationwide. While sugar has not been included in the FTA and will not benefit from increased market access, it is no worse off for not being included and will certainly be better off when the government delivers on its promised compensation arrangements as we move into 2005. The agricultural deal in the US FTA delivers substantial market access gains for the majority of Australian agricultural producers—including the beef and dairy industries, which have faced restrictive barriers in the US market before.

Under the manufacturing industry, virtually all of Australia’s exports to the United States—worth a very substantial amount of money—will be duty-free from day one. Tariffs on textiles, some footwear and a handful of other items will be phased out, with all trade in goods free of duty by 2015. A mechanism to address nontariff barriers will also be established. Access to US markets has been enhanced for Australian service
suppliers such as providers of professional, business, education, environmental, financial and transport services. A framework to promote mutual recognition of professional services has been developed—a big gain for Australian professionals doing business in the United States—and, most importantly, the Pharmaceutical Benefits Scheme will not be affected by the US FTA. The price of prescription medicines will not be increased by this agreement. The Australian government was firm in its stance that the PBS be retained and unchanged, and Australia will improve the transparency of the PBS processes. This will include making more information available about the reason for recommendations to add medicines to the PBS, which is something very dear to the Australian community.

I urge our political opponents, the Labor Party, to take a very good look at all the good things that will come out of the FTA with the United States. I do not believe that Labor are serving Australia well in opposing this one-off chance to conclude such a historic trade linkage with the United States, and I agree with a commentator who said that any other country that had been offered this deal could not have got to their pen quickly enough to sign it. You might say that Labor believe it is all right to have an FTA with Thailand or Singapore or even New Zealand, but when it comes to the United States they equivocate. I cannot understand this anti-America element in the Australian Labor Party. To me, it is inexplicable, it is opportunistic and it is sad on this occasion because it is not in the best interests of Australia. The United States is one of the most important economies in the world, and the deal negotiated is good for Australia; it is in Australia’s best interests in both the short and long term. I commend it to the Senate and to the Australian people.

Heiner Affair and Lindeberg Grievance

Senator HARRIS (Queensland) (7.17 p.m.)—This evening I wish to speak once again on the Heiner affair. Today I gave notice of my intention tomorrow to put to the vote the establishment of a Senate select committee on the Lindeberg grievance. You will recall that the Heiner affair came under debate in early December 2003 when the government, the Australian Democrats, Senator Murphy and I agreed that the issue was serious. The Labor Party wanted to put the matter behind us and look to the future welfare of children, rather than focusing on those caught up in the abuse of the past.

As always happens with Heiner, more serious revelations and important developments have occurred which confirm that we must revisit the affair in 2004 if our committee system, and this parliament itself, is to be respected and retain any credibility throughout the nation. I make this point clear: our first duty is to preserve and protect the Senate’s privilege. Unless parliamentary privilege is protected from abuse—for example, when we hear evidence in our committees or in this chamber it must be truthful, complete and not tampered with—our democracy will fail. The Senate cannot afford such a price. Unless we demand the truth, our findings will be open to ridicule—and rightly so. Providing evidence to us to formulate legislation in Australia’s interests will become a haphazard affair and a potentially deceitful exercise, because it will not seem to matter in the scheme of things if we do not care. However, I most certainly do care.

Heiner brings a litmus test to the Senate. Can a state government or a law enforcement authority, or perhaps others, wilfully provide untruthful evidence or tamper with it—in this case concerning child abuse—and get away with it? Or will the Senate live up to its historical and constitutionally important role
in our great democracy as a house of review and always demand the truth of witnesses who come before it? Will the Senate have the courage to refer a contempt or an inappropriate authority for remedy if it is found to involve possible obstruction of justice? Should sworn evidence be returned? This is a watershed moment in the history of the Senate.

Since I last spoke on this issue, an important criminal trial has been held and a verdict brought down in Brisbane on 11 March 2004 involving the same principles found in Heiner, except in Heiner the elements are clearer and far more serious. I refer to the State of Queensland v. Douglas Ensbey court case. In this case, Baptist pastor Douglas Ensbey was found guilty in the Queensland District Court of destruction of evidence pursuant to section 129 of the Queensland Criminal Code. Pastor Ensbey destroyed documents containing evidence of child sexual abuse some five years before the judicial proceedings commenced. Importantly, Judge Nick Samios ruled in a matter of minutes that section 129 of the criminal code did not require a judicial proceeding to be on foot to trigger it. This is exactly what Mr Lindeberg has been declaring is the law for the past 14 years.

This judicial interpretation accords with the views expressed by my colleague Senator George Brandis when he spoke on this matter in November. The Judge Samios interpretation was no surprise really, because it accorded with High Court Justice Ian Callinan QC when he represented Mr Lindeberg as senior counsel before the Senate in 1995. Eminent jurists, Messrs Tony Morris QC and Robert F. Greenwood QC, placed the Lindeberg grievance before this chamber in May 2001. Former Queensland supreme and appeal court judge Justice Jim Thomas advised the Justice Project in 2003 that section 129 was never open to any other interpretation—yet the Queensland government and CJC told this Senate otherwise.

There is compelling evidence which strongly suggests that this provision of the Criminal Code was deliberately twisted for an improper purpose by the Queensland government and the CJC, and thereby was knowingly done to mislead the Senate in its deliberations. The Senate cannot, in the face of overwhelming evidence, leave the present description of the shredding of the Heiner inquiry documents as ‘an exercise in poor judgment’ when the Senate now knows that an Australian citizen has been charged and found guilty, while others who engaged in the same heinous conduct have got off scot-free because they were politicians and senior bureaucrats. It makes a mockery of our standing in the community because, as long as that description stands, the Senate is showing to the world that it believes in double standards in the application of the criminal law when it affects parliamentarians.

I also inform the Senate that, on 16 March 2004 in Brisbane when Heiner came under investigation again by the House of Representatives Legal and Constitutional Affairs Committee, it was firmly established by a witness to the Heiner inquiry that Mr Heiner did indeed take evidence and inquire into the pack rape of a 14-year-old female Indigenous inmate, for which no-one—I repeat: no-one—has ever been held to account. That evidence, I remind you, was shredded by order of the Goss cabinet, when plainly it should have been referred to the police or the CJC. It was destroyed not only to deliberately prevent it from being used in evidence in a judicial proceeding but also so that it could not be used against the careers of the staff at the centre, who owed that girl a duty of care. Fresh evidence has also come to hand showing that a National Party family minister in March 1989 was either misled by departmental bureaucracy into believing that
the rape victim—assuming it was the same girl—was 17 when the rape took place. We know that the girl was 14 and not legally capable of giving consent to sexual intercourse.

This matter is the business of the Senate because it concerns possible contempt of the Senate. That is our threshold question of privilege which we must consider. We cannot avoid our responsibility in this; otherwise we will show ourselves to be hypocrites. This chamber was prepared to debate and deplore a former Governor-General’s handling of an allegation of child sexual abuse and to force him out of office. But when an incident of similar, if not worse, conduct of criminal paedophilia comes before us, it is too hard, too dangerous, or is it that we could not care less?

I do care, and this chamber should care. We should all abhor double standards. I have reintroduced the notice of motion, and I will put the motion to the vote on the next sitting day so that this nation can be proud that we care enough here in the Senate about privileges and about our children that we are prepared to take on the most difficult tasks involving possible political hurt by supporting the establishment of this Senate select committee on the Lindeberg grievance. If the motion is voted down tomorrow, the Australian people will hold us in derision forever.

**Dyson, Mr Will**

Senator **FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (7.27 p.m.)—Almost three years ago it became apparent that Will Dyson, Australia’s first official war artist, was resting in an unmarked grave at London’s Hendon cemetery. Since then, Dyson enthusiasts have worked to rectify this situation. Thanks to those efforts, the headstone of the Dysons’ grave was restored last year. Tonight I am pleased to inform the Senate that the Commonwealth War Grave Commission, in the United Kingdom, has made its first inspection of the grave of Will Dyson and his wife, Ruby.

The Commonwealth War Grave Commission has also agreed to include the Dysons' grave site on its inspection list and will carry out necessary maintenance work. The costs for this maintenance work will be met by the Office of Australian War Graves. This will ensure the headstone of the Dysons’ grave will not, as it did in the 1960s, fall into disrepair.

Will Dyson, who was born in Ballarat in 1880, was a gifted artist as well as a political satirist and writer. In 1910 Will Dyson and his wife, Ruby Lind—Norman Lindsay’s sister, who was also a talented artist—moved to London. By 1916 Dyson was famous for his artwork, including his bestseller *Kultur Cartoons*. Dyson is best known for his depictions of war on the Western Front, where he arrived in 1916 and was officially commissioned as an Australian War Artist with the AIF. According to the Australian War Memorial web site:

Dyson’s initiative played a significant role in the formation of the Australian Official War Artists program.

For two years, Will Dyson continued to work on the Western Front, ensuring that a comprehensive record of the soldiers was maintained. In *The story of Australian art*, author William Moore wrote:

Dyson closely identified himself with the operations of his countrymen and took risks which were not demanded from an official artist. He was wounded at Messines on 31 July 1917 and again at Zonnebeke five months later. He is represented by the largest number of works in the Australian War Memorial.

In 1919 Dyson’s wife, Ruby, suddenly died of influenza aged only 32. Dyson was changed forever by his experiences of war and the death of his beloved wife. In 1938, Will Dyson suddenly died of a heart attack.
and was buried next to his wife, Ruby, at London’s Hendon cemetery.

I want to thank everyone who has worked on this project in the past few years, in particular Robin Ollington and the dedicated group around him in London. I also want to thank the many people who have kindly donated money to this cause, particularly Dame Elisabeth Murdoch. The CEW Bean Foundation has also joined in these efforts. I place on the record tonight my appreciation of the Commonwealth War Graves Commission and the Office of Australian War Graves agreeing to maintain the upkeep and the ongoing costs of the grave site of Will Dyson and his wife, Ruby. In the moments remaining to me, I seek leave to incorporate a copy of the letter from the Minister for Veterans’ Affairs, Danna Vale, formalising these arrangements.

Leave granted.

The letter read as follows—

Dear John,

Further to verbal advice from Air Vice Marshal Gary Beck AO (Retd), Director of the Office of Australian War Graves, I am pleased to advise that the Commonwealth War Graves Commission (CWGC), United Kingdom, has now undertaken the first inspection of the grave of renowned World War I artist Will Dyson in the Hendon Cemetery, London.

In conjunction with the CWGC, the Office of Australian War Graves (OAWG) has arranged for inclusion of the grave on the Commission’s inspection list. Any future maintenance will be carried out by the CWGC, with costs to be reimbursed by OAWG.

Thank you for your interest in this matter.

DANNA VALE MEMBER OF PARLIAMENT

Senate adjourned at 7.31 p.m.

DOCSUMENTS

Tabling

The following government documents were tabled:

*Customs Act 1901*—Customs (Prohibited Exports) Regulations 1958—Permissions granted under regulation 7—

March to June 2003.

1 July to 31 December 2003.

Tabling

The following documents were tabled by the Clerk:


Indexed Lists of Files

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 July to 31 December 2003—Statements of compliance—

Department of Foreign Affairs and Trade.

Department of Transport and Regional Services.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Attorney-General’s: Paper and Paper Products**

*(Question Nos 2250 and 2260)*

**Senator O’Brien** asked the Minister representing the Attorney-General and the Minister for Justice and Customs, upon notice, on 14 October 2003:

For each of the financial years 2001-02 and 2002-03 can the following details be provided in relation to paper and paper products:

1. How much has been spent by the department on these products.
2. From which countries of origin has the department sourced these products.
3. From which companies has the department sourced these products.
4. What was the percentage of the total of paper and paper products in value (in AUD) sourced by the department by country.
5. What was the percentage of the total of paper and paper products in value (in AUD) sourced by the department by company.
6. What steps has the department taken to ensure that paper and paper products sourced by the department from other countries comply with the ISO 14001 environmental management system standard.

**Senator Ellison**—The Attorney-General has provided the following answer to the honourable senator’s question:

1. The department spent $131,769 in 2001-2 and $163,736 in 2002-3 on paper and paper products. These costs do not include toilet paper or paper rolls as these elements are included in the department’s cleaning costs as consumables.
2. The department has purchased its paper products from Australian companies and is unaware of where these companies source their products.
3. The department has purchased paper products from Detagna Pty Ltd (Commonwealth Paper/Edwards Dunlop); Envotec Pty Ltd (Australian Envelopes), Fuji Xerox Australia Pty Ltd, Kalamazoo (Aust.) Pty Ltd and Spicers Paper Pty Ltd.
4. The department has purchased its paper products from Australian companies and is unaware of where these companies source their products.
5. The percentage of paper and paper products sourced by the department for each company is as follows:

<table>
<thead>
<tr>
<th></th>
<th>2001-2</th>
<th>%</th>
<th>2002-3</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detagna Pty Ltd</td>
<td>116,416</td>
<td>88.3</td>
<td>148,512</td>
<td>90.8</td>
</tr>
<tr>
<td>Kalamazoo (Aust.) Pty Ltd</td>
<td>12,218</td>
<td>9.3</td>
<td>994</td>
<td>0.6</td>
</tr>
<tr>
<td>Fuji Xerox Australia Pty Ltd</td>
<td>1,539</td>
<td>1.2</td>
<td>1,871</td>
<td>1.1</td>
</tr>
<tr>
<td>Spicers Paper Ltd</td>
<td>1,596</td>
<td>1.2</td>
<td>1,514</td>
<td>0.9</td>
</tr>
<tr>
<td>Envotec Pty Ltd</td>
<td>-</td>
<td>-</td>
<td>10,845</td>
<td>6.6</td>
</tr>
<tr>
<td>Total</td>
<td>131,769</td>
<td>100</td>
<td>163,736</td>
<td>100</td>
</tr>
</tbody>
</table>

6. The department has purchased paper and paper products from Australian companies only.
Australian Broadcasting Corporation: Redundancies
(Question No. 2403)

Senator Mackay asked the Minister representing the Minister for Communications, Information Technology and the Arts, upon notice, on 27 November 2003:

How many individuals who accepted redundancy packages from the Australian Broadcasting Corporation (ABC) during the period 1 January 2000 to 1 January 2002 and who have subsequently turned to the ABC to perform paid work for the broadcaster, on a full-time, part-time, casual, contract, fee-for-service or consultancy basis, returned to the ABC within 12 months of accepting their redundancy packages.

Senator Kemp—the Minister for Communications, Information Technology and the Arts has provided the following answer to the honourable senator’s question:
The ABC has advised that, during the period 1 January 2000 to 1 January 2002, eight individuals undertook paid work for the ABC within 12 months of accepting their redundancy packages.

Shipping: Oil Discharges
(Question No. 2524)

Senator Nettle asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 3 February 2004:

(1) How many of the 345 ‘oil discharges’ off the coast of Australia in 2002 reported by the Australian Marine Safety Authority were investigated.
(2) Has the department found that some ships pump oil from sump tanks out at sea rather than disposing of the oil properly in port.
(3) How many ships leave ports annually without being inspected.
(4) (a) How much is the annual revenue from the marine oil pollution levy on large ships; and
(b) how is this spent.
(5) Will the Minister initiate a review of current ship inspection and tracking protocols to better account for oil waste management and facilitate spill investigation.

Senator Ian Campbell—the Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) All oil discharges reported to AMSA are investigated.
(2) Yes.
(3) This depends on the type and risk rating of each ship. In 2002, 80 per cent of all ‘eligible’ ships visiting Australian ports were inspected, including 95 per cent of eligible high risk ships. Since December 2002, all single hulled tankers have been targeted for inspection. An ‘eligible’ ship is one that has not been inspected in the last 6 months or 3 months for all double hulled tankers more than 15 years of age and passenger vessels.
(4) (a) $3.89 million in 2002-2003. (b) The levy funds AMSA’s management of Australia’s National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances coordinating the national preparedness and response capability to ship sourced oil and chemical spills.
(5) No. The inspection of foreign flag ships visiting Australian ports in relation to oil waste management and oil spill investigation is regulated under the International Convention for the Prevention of Pollution of the Sea by Ships 1973/78 (MARPOL) and Australia’s port State control inspection program already exercises the full powers available to Australia under the Convention.
The Navigation Act 1912 already requires position reporting by ships, in accordance with the International Convention for the Safety of Life at Sea (SOLAS), and the reporting of accidents and incidents occurring to a ship and the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 requires reporting by ships of oil pollution incidents.

Environment: Protected Marine Areas

(Question No. 2592)

Senator Bartlett asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 26 February 2004:

(1) How much has the Government spent on the processes of identifying and selecting Marine Protected Areas (MPAs) in the Murray and Zeehan Broad Areas of Interest within the South East Marine Region.

(2) Will the Government set targets for the percentage of the South East Marine Region bioregions that should be protected in MPAs and the percentage of the South East Marine Region bioregions that should be declared ‘no-take’ areas; if so, what are those targets expected to be.

(3) What role has the National Oceans Office played in the MPA identification and selection process for the South East Marine Region.

(4) Will a candidate system of MPAs be included in the final South East Regional Marine Plan; if not, why not.

Senator Ian Macdonald—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) $531,000, some of which will have an impact on the development of candidate MPAs in the remaining Broad Areas of Interest.

(2) No. Specifications have been developed to help identify comprehensive, adequate and representative samples of key bioregions in the South-east Marine Region. The specifications will be used by the government to work with guide stakeholders to identify candidate MPAs using the best available information on ‘representative’ features and ecological considerations.

(3) The National Oceans Office is responsible for the South-east Regional Marine Planning process and the collation of supporting information regarding resources and biodiversity in the South-east Marine Region. This process provides the framework under which the Department of the Environment and Heritage is developing a system of representative MPAs in the South-east.

(4) A complete candidate system of MPAs will not be included in the South-east Regional Marine Plan. The Government’s commitment to the extensive engagement and participation of a wide range of stakeholders including conservation groups, fishing industry representatives, petroleum industry representatives, indigenous representatives and recreational fishing representatives has meant that the full set of MPA options will be finalised after the Plan is published. The Plan will set out the framework and key policy parameters within which the regional system of MPAs will be completed.

Australian Customs Service: Counter-Terrorism Section

(Question No. 2637)

Senator Ludwig asked the Minister for Justice and Customs, upon notice, on 2 March 2004:

(1) (a) How many full-time Australian Customs Service (ACS) personnel are employed in the Counter-Terrorism Section of ACS; and (b) at what Australian Public Service (APS) levels are these personnel employed.
QUESTIONS ON NOTICE

(2) (a) How many part-time ACS personnel are employed in the Counter-Terrorism Section; and (b) at what APS levels are these personnel employed.

(3) Under what departmental output are these personnel employed.

Senator Ellison—The answer to the honourable senator’s question is as follows:

(1) The Counter Terrorism Section was merged with the Security Section of Customs in August 2003, forming the Security and Counter Terrorism Section. There are four full-time Customs personnel employed in the Counter-Terrorism sub-section.

Customs personnel employed in this section are:

1 x Australian Public Service (APS) Executive Level 1 (Customs Level 4)
1 x APS – Administrative Services Officer (ASO) 5/6 (Customs Level 3)
1 x APS – ASO3/4 (Customs Level 2)
1x APS – ASO1/2 (Customs Level 1)

(2) There are no part-time Customs personnel employed in the Counter-Terrorism Section.

(3) The Security and Counter Terrorism section is part of the Border Intelligence and Passengers Division and the Counter Terrorism sub-section’s personnel are employed under departmental output 2: “Facilitation of the legitimate movement of people across the border, while identifying illegal movements.”

Australian Customs Service: Bay Class Vessels

(Question No. 2642)

Senator Ludwig asked the Minister for Justice and Customs, upon notice, on 2 March 2004:

(1) Do the crews aboard Bay class Australian Customs Service (ACS) launches receive training specifically for boarding vessels with the consent of the masters of those vessels.

(2) Is this training conducted by ACS.

(3) Was the training package for this role designed by ACS; if not, who designed the training package.

(4) Do the crews aboard these launches receive training specifically for boarding vessels without the consent of the masters of those vessels.

(5) Is this training conducted by ACS.

(6) Was the training package for this role designed by ACS; if not, who designed the training package.

Senator Ellison—The answer to the honourable senator’s question is as follows:

(1) Customs National Marine Unit (NMU) seagoing crewmembers onboard Bay Class Australian Customs Vessels (ACVs) receive initial and annual Use of Force training which prepares them to conduct vessel boardings. This training prepares them to undertake ‘compliant’ (consensual) and ‘unco-operative’ boardings only. Current policy does not allow NMU seagoing crewmembers to board vessels considered ‘hostile’. Hostile boardings are those that surpass both compliant and unco-operative boardings where a target vessel’s crew or others onboard are acting in an overtly hostile manner. In essence a hostile boarding can be described as one where the use of force, including lethal force, in order to secure control of a vessel during a boarding may be expected. NMU Use of Force policy and training is designed so that officers are prepared to deliver Use of Force options in self-defence situations, where they may be called upon to defend themselves or others they are protecting.

(2) In part yes. Training is based primarily upon, and very closely aligned to, the Australian Federal Police (AFP) ‘Use of Force continuum’ model. AFP officers deliver training with the assistance of
NMU officers. Training is also very closely aligned with peacetime Rules of Engagement (ROE) policy adopted by the Australian Defence Force (ADF) when conducting the same civil surveillance and response activities. AFP officers, supported by NMU officers, deliver both initial and annual re-certification training, while NMU trained Operational Safety Training officers deliver regular continuation training.

(3) The training package is based primarily upon, and very closely aligned to, the Australian Federal Police (AFP) ’Use of Force continuum’ model. The package is modified as required by the ACS, in agreement with the AFP, to suit operations in a maritime environment.

(4) NMU seagoing crewmembers are trained to conduct ‘compliant’ (consensual) and ‘unco-operative’ boardings. An unco-operative boarding could very well be conducted without the consent of the Master of a target vessel and depends upon the level of resistance expected. If lethal force is expected from a target vessel or is expected to be used in boarding a target vessel this constitutes a ‘hostile’ boarding situation for which NMU seagoing crewmembers are not trained.

(5) AFP officers, supported by NMU officers, deliver both initial and annual re-certification training. NMU officers trained by the AFP and certified as Operational Safety Training officers deliver regular continuation training.

(6) The training package is based primarily upon, and very closely aligned to, the Australian Federal Police (AFP) ‘Use of Force continuum’ model. The package is modified as required by the ACS, in agreement with the AFP, to suit operations in a maritime environment.

**Australian Customs Service: Bay Class Vessels**

(Refer to Question No. 2643)

**Senator Ludwig** asked the Minister for Justice and Customs, upon notice, on 2 March 2004:

(1) (a). How many crewmembers do each of the Bay class Australian Customs Service (ACS) launches carry; and (b). at what Australian Public Service levels are they employed.

(2) Are these crew individually armed; if so, what armament do they carry.

(3) The ACS launches armed; if so, what armament is used.

(4) Is the supply of ammunition for these weapons contracted out to agencies or companies outside the ACS; if not, what is the annual cost of arming these launches.

(5) Is the maintenance of these weapons contracted out to agencies or companies outside the ACS; if not, what is the annual cost of maintaining these launches (weapons?).

**Senator Ellison**—The answer to the honourable senator’s question is as follows:

(1) (a) Bay class launches operate with a ‘nominal’ crew of eight Customs officers. This number is either reduced or supplemented to meet specific operational requirements and/or Australian Maritime Safety Authority (AMSA) requirements. (b) The table below outlines crew positions and equivalent Australian Public Service (APS) levels.

<table>
<thead>
<tr>
<th>Crew Positions</th>
<th>Customs Level</th>
<th>APS Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commanding Officer</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Engineer</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Second-in-command</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Third-in-command</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Second Engineer</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>General purpose hands (x3)</td>
<td>1</td>
<td>1,2 &amp; 3</td>
</tr>
</tbody>
</table>

(2) All National Marine Unit (NMU) seagoing crewmembers are trained in the use of the following weapons;
Glock 17, 9mm pistol,
M16 automatic rifle, and
Remington 12 gauge Marine Magnum Shotgun.

When conducting boarding operations seagoing crewmembers are individually armed with the Glock. The M16 is used to support operations from onboard the Customs vessel. Under such circumstances the M16 provides an additional show of force, can be used to fire warning shots across the bow of a target vessel (as one of the International signals for the vessel to slow or heave to for boarding) or provide covering fire to a deployed Boarding Party. The shotgun is not used as part of Customs ‘Use of Force continuum’. It is available for the self-protection of officers when conducting operations ashore in dangerous and remote environments where hostile animals, such as sharks, crocodiles, buffalo and other wild beasts might be encountered.

(3) Customs vessels are not armed with any deck mounted weapons or heavy calibre weapons. The weapons listed at paragraph 2 above are currently the only weapons carried onboard Australian Customs Vessels (ACVs).

(4) The NMU has no contract in place for the purchase and supply of ammunition with any one company. The NMU has an arrangement with the Northern Territory Police Service who purchase and house ammunition for the NMU in Darwin. Small quantities of ammunition are also purchased from local gun shops around the country. The annual cost of operational ammunition for all Customs vessels $8000.00.

(5) The NMU utilises the Australian Federal Police (AFP) armory at Canberra and the Northern Territory police armory for ongoing maintenance and servicing of all operational safety equipment – including weapons. Also, if an ACV is in a scheduled survey/maintenance period, firearms onboard may also be serviced by a local authorised armourer. Finally, routine maintenance of firearms is carried out onboard by seagoing crewmembers. The annual cost to service all operational Glocks, M-16 rifles and Shotguns is $5120.00 plus parts and transport.

Australian Customs Service: Counter-Terrorism Section

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Australian Customs Service: Counter-Terrorism Section

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Australian Customs Service: Counter-Terrorism Section

(2) The Counter Terrorism Section was merged with the Security Section of Customs in August 2003, forming the Security and Counter Terrorism Section. The function of the Counter-Terrorism sub-section is to provide an internal and external focal point for counter-terrorism representations, liaison and incident response preparedness. The Counter-Terrorism sub-section maintains Customs National Counter-Terrorism Plan, counter-terrorism specific contingency arrangements and secure communications with relevant Australian Government agencies.

(2) Customs personnel employed in this sub-section are:
1 x Australian Public Service (APS) Executive Level 1 (Customs Level 4)
1 x APS – Administrative Services Officer (ASO) 5/6 (Customs Level 3)
1 x APS – ASO3/4 (Customs Level 2)
1x APS – ASO1/2 (Customs Level 1)

(3) The Counter-Terrorism sub-section is based in the Customs Central Office in Canberra with counter-terrorism coordinators appointed in each Region.