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Thursday, 1 April 2004

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

NOTICES

Presentation

Senator Brown to move on the next day of sitting:

That the Senate—

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

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

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

(d) looks forward to Taiwan’s participation in the World Health Assembly as an observer, through consensus of all members.

Senator TCHEN (Victoria) (9.31 a.m.)—On behalf of the Standing Committee on Regulations and Ordinances, I give notice that 15 sitting days after today I shall move:

That the Excise Amendment Regulations 2004 (No. 1), as contained in Statutory Rules 2004 No. 27 and made under the Excise Act 1901, be disallowed.

I seek leave to incorporate in Hansard a short summary of the committee’s concerns with these regulations.

Leave granted.

The summary read as follows—

Excise Amendment Regulations 2004 (No. 1)
Statutory Rules 2004 No. 27

Schedules 1 and 3 are expressed to commence retrospectively, from 18 September 2003. The Explanatory Statement provides an assurance, referring to subsection 48(2) of the Acts Interpretation Act 1901, that this retrospective commencement confers a benefit on persons affected by the amendments. The Committee seeks advice regarding the arrangements, if any are needed, for providing a refund of duty claimable as a result of these amendments and, if so, how producers will be informed of this.

Senator TCHEN (Victoria) (9.32 a.m.)—On behalf of the Standing Committee on Regulations and Ordinances, I give notice that 15 sitting days after today I shall move:

That Temporary Order No. 4 of 2003, made under subsection 43(8) of the Fisheries Management Act 1991, be disallowed.

I seek leave to incorporate in Hansard a short summary of the committee’s concerns with this order.

Leave granted.

The summary read as follows—

Temporary Order No. 4 of 2003, made under the Fisheries Management Act 1991

This Order does not refer to the full title of the Act under which it is made, namely the Fisheries Management Act 1991. The Order refers only to ‘the Management Act’. Whilst the full title of the Act is provided in the accompanying Explanatory Statement, it is preferable for this also to be done in the actual instrument.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.32 a.m.)—I move:

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


No. 10 Superannuation Legislation Amendment (Family Law) Bill 2002.
LEAVE OF ABSENCE

Senator HARRIS (Queensland) (9.33 a.m.)—by leave—I move:

That leave of absence be granted to Senator Harris for the period 11 May to 13 May 2004, on account of family matters.

Question agreed to.

NOTICES

Postponement

Items of business were postponed as follows:

General business notice of motion no. 844 standing in the name of Senator Ridgeway for today, relating to World Health Day and road safety, postponed till 11 May 2004.

General business notice of motion no. 849 standing in the name of Senator Allison for today, relating to nuclear non-proliferation and disarmament, postponed till 11 May 2004.

General business notice of motion no. 850 standing in the name of Senator Allison for today, relating to the establishment of a select committee on tobacco, postponed till 11 May 2004.

HAMER, SIR RUPERT

Senator ALLISON (Victoria) (9.34 a.m.)—I move:

That the Senate—

(a) notes that:

(i) 6 April 2004 is a national day of action for seniors, observed in order to raise issues of concern for older Australians,

(ii) the majority of older people are active and healthy, contributing to the community, pursuing leisure activities and family support, undertaking voluntary work, and living independently,

(iii) some 10 per cent of people aged over 70 years are presently in residential care, and

(iv) the need for residential care is substantially reduced for the frail or ill aged when there is effective community support; and

(b) calls on the Government to urgently address community concerns about ongoing viability and choice of residential care, as reflected in the withdrawal from the aged care sector of significant non-profit organisations, including the Salvation Army, by:

(i) immediately releasing the finalised Hogan Report on aged care funding, to inform the community prior to a government response through the Budget process,

(ii) responding to claims that the present indexation measure the Government uses to increase recurrent funding is inadequate, and

(iii) reporting on the take-up of aged care nursing scholarships and appropriate...
specialist accommodation for young people with high care needs.

Question agreed to.

PARLIAMENT HOUSE: ART COLLECTION

Senator RIDGEWAY (New South Wales) (9.35 a.m.)—by leave—I move the motion as amended:

That the Senate—

(a) notes the resolution of the Senate of 30 March 2004 rejecting the recommendation of the review of the Parliament House art collection that it should not, as a rule, collect the works of the emerging artists; and

(b) resolves that the President of the Senate:

(i) immediately make representations to the Speaker of the House of Representatives seeking concurrence with the resolution, and

(ii) report to the Senate by 17 June 2004 on the instructions the Presiding Officers have given, indicating how the continuation of the policy of collecting the works of emerging artists will be implemented as a core component of the Parliament House art collection acquisition policy.

Question agreed to.

UNITED NATIONS: HUMAN RIGHTS

Senator GREIG (Western Australia) (9.36 a.m.)—I move:

That there be laid on the table, by the Minister representing the Attorney-General (Senator Ellison), no later than 5 pm on Tuesday, 15 June 2004, the following documents:

(a) the Government’s formal response to the United Nations Human Rights Committee finding on 6 August 2003 in the case of Young v Australia, that:

(i) the Australian Government’s refusal to grant Mr Young a pension on the ground that he does not meet with the definition of ‘dependant’, for having been in a same-sex relationship, violates his rights under article 26 of the International Covenant on Civil and Political Rights on the basis of his sexual orientation,

(ii) the Australian Government provided no argument on how the distinction between same-sex partners and unmarried heterosexual partners is reasonable and objective, and no evidence which would point to the existence of factors justifying such a distinction was advanced,

(iii) as a victim of a violation of article 26, Mr Young is entitled to an effective remedy, including the reconsideration of his pension application without discrimination based on his sex or sexual orientation, if necessary through an amendment of the law, and

(iv) the Australian Government is under an obligation, as a signatory to the First Optional Protocol of the International Covenant on Civil and Political Rights, to ensure that similar violations of the Covenant do not occur in the future;

(b) an explanation as to why a response requested by the United Nations Human Rights Committee within 90 days of its finding will, by that time, have taken almost 10 months to produce.

Question agreed to.

IMMIGRATION: VISA APPROVALS

Senator LUDWIG (Queensland) (9.36 a.m.)—I move:

That there be laid on the table by the Minister for Immigration and Multicultural and Indigenous Affairs, no later than 5 pm on 12 May 2004, the following documents relating to the exercise of ministerial discretion under sections 351 and 417 of the Migration Act 1958:

(a) the documentary evidence from the case histories relating to the applications for the Minister to exercise his discretionary powers concerning which Mr Karim Kisrwani made representations on behalf of the applicant to the former Minister for
Immigration and Multicultural and Indigenous Affairs (Mr Ruddock) which resulted in the Minister intervening on behalf of the applicant, indicating the following:

(i) the Refugee Review Tribunal (RRT) or Migration Review Tribunal (MRT) outcome in relation to each case,

(ii) the outcome of the Minister’s consideration pursuant to sections 351 or 417, and the date of the Minister’s decision,

(iii) an indication of whether the case at any stage was assessed by officers of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) as falling outside the Minister’s guidelines,

(iv) the date of any such assessment,

(v) the date on which each case was first referred to the Minister’s office, and an indication of whether at that stage the case was a scheduled case (assessed as outside the guidelines) or a full submission,

(vi) the date on which the file was the subject of a submission (other than on the schedule) to the Minister’s guidelines,

(vii) details of any requests by the Minister’s office for a submission in relation to any of the files, as referred to in the letter, including the date, and any documentary record, of such requests,

(viii) details of the date or dates and nature of the contact with Mr Kisrwani referred to in the letter, and

(ix) copies of any correspondence or other documentation evidencing such contact;

(b) copies of all case files for all cases involving representations by Mr Cameron MP and Gateway Pharmaceuticals to Mr Ruddock to intervene on behalf of applicants and where the Minister exercised his powers under sections 351 and 417;

(c) the documentary evidence for each of the 105 case histories referred to in evidence given by DIMIA officers on 31 October 2003 to the Select Committee on Ministerial Discretion in Migration Matters, indicating in each case the following:

(i) the nationality of the applicant,

(ii) a timeline of the application process including processing of the ministerial intervention request subsequent to the decisions of either the RRT or MRT,

(iii) details of decisions made by departmental officers and review tribunals in relation to each applicant,

(iv) whether the case was assessed by the department as meeting the guidelines for ministerial intervention or placed on a schedule as being outside the guidelines and the date of such decisions,

(v) details including the date of any communication from the Minister or the Minister’s office regarding the case, including any request for a full submission, and

(vi) names of any persons who made representations on behalf of the applicant;

(d) all documents on case files relating to the exercise of the ministerial discretionary powers under sections 351 and 417 in the cases of Ibrahim Sammaki and Bedweny Hbeiche; and

(e) all documents on case files relating to the exercise of the ministerial discretionary powers under sections 351 and 417 in cases involving representations by Mr Fahmi Hussain.

Question agreed to.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.37 a.m.)—by leave—
At the request of Senator Patterson, I move the motion as amended:

That, on Thursday, 1 April 2004—
(a) the hours of meeting shall be 9.30 am to adjournment;
(b) if the Senate is sitting at 11.30 pm, the sitting of the Senate shall be suspended till 9 am on Friday, 2 April 2004;
(c) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) not be proceeded with;
(d) the routine of business from not later than 4.30 pm shall be government business only;
(e) divisions may take place after 6 pm; and
(f) the question for the adjournment of the Senate shall not be proposed till after the Senate has finally considered the bills listed below:

- Telecommunications (Interception) Amendment Bill 2004
- Appropriation (Parliamentary Departments) Bill 2003-2004
- Appropriation Bill (No. 3) 2003-2004
- Appropriation Bill (No. 4) 2003-2004
- Higher Education Legislation Amendment Bill 2004
- Intelligence Services Amendment Bill 2004
- Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004
- Customs Tariff Amendment Bill (No. 2) 2003 (subject to the agreement of the Senate to consider the bill)
- Excise Tariff Amendment Bill (No. 1) 2003 (subject to the agreement of the Senate to consider the bill)
- Communications Legislation Amendment Bill (No. 2) 2003
- Taxation Laws (Clearing and Settlement Facility Support) Bill 2003
- Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004
- Superannuation Legislation Amendment (Family Law) Bill 2002
- Dairy Produce Amendment Bill 2003
- Kyoto Protocol Ratification Bill 2003 [No. 2];
- and any messages from the House of Representatives in relation to:
  - Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2003
  - Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003
  - Migration Legislation Amendment Bill (No. 1) 2002.

Senator LUDWIG (Queensland) (9.38 a.m.)—by leave—It might be worth clarifying, while everyone seems to be here, that we could finish earlier than 11.30 p.m., with everyone’s assistance. However, if it gets close to 11.30 p.m., or thereabouts, and we are not that far away from finishing, I think there should be a little flexibility in the system. I will predicate by saying that, if we are not that far away from finishing, we might be able to finish with a bit of flexibility. Otherwise, it would be more sensible to come back rather than have a long night.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.38 a.m.)—by leave—Having looked at the program, I think it is very doable by dinnertime, quite frankly. If there is a perception in people’s minds that we are going to sit until 11.00 p.m. or 11.30p.m., we could perhaps talk until then. I am sure that we are all very capable of doing that. On my assessment of the program, and
in talking around the chamber, I think it is entirely doable by four or five o’clock this afternoon, if there is goodwill around the place. That is my expectation and that is my hope, and I make a plea to all colleagues around the chamber that we should seek to try to get out of here by dinnertime. This is a contingency.

Senator ALLISON (Victoria) (9.39 a.m.)—by leave—I indicate that the Democrats will cooperate with whichever arrangement is in place. But I make a plea for another level of flexibility—that is, if we reach 11.30 p.m., and there is half an hour or an hour to go, 12.30 p.m. might be an option worth considering so that we do not stay here unnecessarily.

The PRESIDENT—I think that is what Senator Ludwig was trying to say.

Senator HARRADINE (Tasmania) (9.39 a.m.)—by leave—I would like to make a couple of comments. First of all, I was not aware that the government had agreed to the opposition’s proposal to draw stumps at 11.30 p.m. and come back tomorrow. We all have individual commitments outside of this place. It is all very well for other senators to get pairs, presumably to meet their obligations, but I am not in a situation to provide a pair in those circumstances where I need to evaluate the arguments for and against particular motions or amendments that come before the Senate. Quite frankly, I have certain commitments and I do not intend to do otherwise than meet those commitments.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.41 a.m.)—by leave—I understand that this matter was in fact discussed at the whips meeting last night and that a representative from Senator Harradine’s office was there. My understanding and my belief is that the program is incredibly doable by dinnertime tonight. If we just get on with it, that is what will occur, and I think the rest of the chamber has agreed to a very flexible arrangement in case something goes wrong, as it sometimes can. I have no doubt that, if all senators here now want to get out of here by dinnertime or by five or six o’clock tonight, it is very doable, and I suggest we get on with the program.

Senator MACKAY (Tasmania) (9.42 a.m.)—by leave—I wish to make a short statement on this matter. I think that the Manager of Government Business in the Senate is right in what he says. I think what Senator Harradine is saying is that the fact that the government was likely to agree to the Labor Party’s proposition should have been communicated to Senator Harradine. Certainly his representative was there, but it was not indicated whether or not the government would agree. It is a procedural issue. I do take Senator Harradine’s point.

Question agreed to.

COMMITTEES
Economics Legislation Committee
Reference
Senator O’BRIEN (Tasmania) (9.42 a.m.)—I move:

That the provisions of the Tourism Australia Bill 2004 be referred to the Economics Legislation Committee for inquiry and report by 13 May 2004.

Question agreed to.

Lindeberg Grievance Committee
Establishment

Senator HARRIS (Queensland) (9.43 a.m.)—I 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 and 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.
Question agreed to.

PARLIAMENTARY ZONE
Approval of Works
Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.43 a.m.)—At the request of Senator Troeth, I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being the design and content of the Centenary of Women’s Suffrage commemorative fountain at the Old Parliament House gardens.

Senator LUNDY (Australian Capital Territory) (9.43 a.m.)—by leave—I think it is worth making a few points about this particular motion, which seeks to approve capital works within the parliamentary zone—namely, the design and content of the Centenary of Women’s Suffrage commemorative fountain in the Old Parliament House gardens. I know that the minister, like all of us, is aware of the history of this. Originally the commemorative capital works were to be a red fan. When the Joint Standing Committee on the National Capital and External Territories assessed the merits of the red fan and decided, early on, not to advise the minister to inquire into this issue, it was because we had assurances of full consultation from the National Capital Authority and assurances from them that the design had been tested.

Some time later it became clear that neither of these things had occurred. Not only did the design change substantially; indeed the National Capital Authority was challenged by a number of organisations as to whether the authority had consulted them. The issue was a combination of the subjective view of the red fan monument and concern about the process by which the National Capital Authority pursued the approvals. The joint standing committee does not have a problem with this proposal, so we are not seeking to oppose it in any way. But we do want to say that we understand that, once again, full consultation processes have been gone through. I know that the minister, as well, would have been assured of this in supporting this motion. We support the motion, but I think it is worth noting the controversy leading up to this point and that, once again, we have been convinced by the National Capital Authority that they have adhered to appropriate consultation processes in the context of the sensitivity of this issue.

Question agreed to.

ENVIRONMENT: ENDANGERED SPECIES
Senator BROWN (Tasmania) (9.46 a.m.)—I move:

That the Senate, concerned for Australia’s rare and endangered species of wildlife and plants, calls on the Government to protect the habitats of such species wherever possible.

Question agreed to.

FORESTRY: REGIONAL FOREST AGREEMENTS
Senator BROWN (Tasmania) (9.46 a.m.)—I move:

That the Senate—

(a) notes that areas subject to clear felling, burning and the use of 1080 poisoning of wildlife under the Tasmanian Regional Forest Agreement are habitat for rare or endangered species; and

(b) calls on the Government to ensure that each area is fully assessed for the presence of such species and that the Minister for the Environment and Heritage (Dr Kemp) is informed before any habitat destruction is permitted.

Question put.
The Senate divided. [9.51 a.m.]
(The President—Senator the Hon. Paul Calvert)
Ayes........... 8
Noes........... 40
Majority........ 32

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

NOES
Bishop, T.M. Boswell, R.L.D.
Brandis, G.H. Buckland, G.
Calvert, P.H. Carr, K.J.
Chapman, H.G.P. Denman, K.J.
Eggleston, A. Evans, C.V.
Ferguson, A.B. Ferris, J.M. *
Forshaw, M.G. Harris, L.
Heffernan, W. Hogg, J.J.
Humphries, G. Hutchins, S.P.
Kirk, L. Knowles, S.C.
Lightfoot, P.R. Ludwig, J.W.
Lundy, K.A. Macdonald, J.A.L.
Mackay, S.M. Marshall, G.
Mason, B.J. McGauran, J.J.
McLucas, J.E. Moore, C.
Santoro, S. Scullion, N.G.
Stephens, U. Tchen, T.
Tierney, J.W. Troeth, J.M.
Watson, J.O.W. Wong, P.

* denotes teller

Question negatived.

COMMITTEES
Foreign Affairs, Defence and Trade References Committee

Extension of Time
Senator FERRIS (South Australia) (9.54 a.m.)—At the request of the Deputy Chair of the Foreign Affairs, Defence and Trade References Committee, Senator Sandy Macdonald, I move:
That the time for the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on the effectiveness of the Australian military justice system be extended to 5 August 2004.

Question agreed to.

Economics Legislation Committee

Extension of Time
Senator FERRIS (South Australia) (9.54 a.m.)—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I move:


Question agreed to.

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

That the Senate—

(a) notes the significant impact that the loss of ‘public benevolent institution’ status will have on the employees of organisations in the health and disability services sector, such as the Intellectual Disability Services Council, the Metropolitan Domiciliary Care, the Julia Farr Centre and the Institute of Medical and Veterinary Science; and

(b) calls on the Government to:

(i) declare a moratorium to prevent around 3 000 staff in the sector losing up to $15 000 in after-tax salary from 1 April 2004,

(ii) offer workers in the health and disability sector that will be faced with the loss of fringe benefit tax exemptions the same concessions that were recently provided to employees of public hospitals and public ambulance services, and

(iii) respond to the recommendation of the 2001 charities inquiry and introduce a new definition of ‘benevolent charity’
to ease the uncertainty within the charities sector.

Question agreed to.

COMMITTEES
Privileges Committee

Report

Senator ROBERT RAY (Victoria) (9.56 a.m.)—I present the 118th report of the Committee of Privileges, entitled ‘Joint meetings of the Senate and the House of Representatives on 23 and 24 October 2003.’

Ordered that the report be printed.

Senator ROBERT RAY—I move:

That the Senate take note of the report.

On 29 October 2003, the Senate referred to the Committee of Privileges two inquiries into aspects of the joint meetings of the Senate and the House of Representatives on 23 and 24 October 2003. The committee advertised the references and wrote to persons who it believed could assist with its inquiries. It received nine submissions and also had the benefit of transcripts from the Finance and Public Administration Legislation Committee’s supplementary budget estimates hearings on 3 and 4 November 2003, at which several aspects of the joint meetings and the arrangements for them were canvassed. In addition, the committee had regard to the Procedure Committee’s third report of 2003 which examined related issues.

I do not propose to give an account of what occurred at the joint meetings. These events have been traversed in detail in this chamber, at the estimates hearings and in another place. The committee encountered a number of difficulties in conducting its inquiries. The main problem was the paucity of evidence before it and the unlikelihood of obtaining sufficient further evidence to enable it to make sound findings of fact. I should mention that the terms of reference given to the committee did not require it to make findings as to whether specific contempt had been committed. Rather, the committee was tasked with examining possible instances of improper conduct or improper interference with senators, with a view to making findings of fact and then determining whether there had been any implications for the powers, privileges and immunities of the Senate arising from these matters and whether the Senate should take or recommend any action in consequence.

The difficulties faced by the committee in assembling evidence were in part related to the uncertain nature of the proceedings themselves. Procedurally, the joint meetings were simultaneous meetings of the Senate and the House of Representatives, in the House of Representatives chamber, and presided over by the Speaker applying the rules of the House of Representatives so far as they were applicable. Unlike the 1974 joint sittings or the joint meetings held in the 1980s to choose ACT senators to fill casual vacancies, these meetings were not preceded by any resolutions providing detailed rules for the maintenance of order or providing that they were proceedings in the parliament and, therefore, attracting the normal powers, privileges and immunities of the houses. The joint meetings had no apparent constitutional authority and the committee was unable to determine whether they were, indeed, proceedings in parliament.

The committee observes that serious doubts must remain about the status and validity of the arrangements under which the Speaker of the House of Representatives purported to exercise the disciplinary powers of the House over senators who were participating in a meeting of the Senate. On one view, by accepting the House’s invitation to meet with it in its chamber under House standing orders, the Senate in effect submitted itself to the jurisdiction of the House. On another view, this is not constitutionally or
legally possible. In short, joint meetings of
this kind are constitutionally uncharted wa-
ters.

Several aspects of these inquiries required
the committee to examine the conduct of
members and officers of the House of Repre-
sentatives. As all senators would recognise,
this raises the issue not only of comity be-
tween the houses but also of the inherent
limitation on an inquiry by one house into
the activities of the other—a limitation
which may be a matter of law. While the
committee was grateful to receive a submis-
sion from the Speaker, it notes that this sub-
mission comprised only the Speaker’s state-
ments to the House and that the Serjeant-at-
Arms declined to respond to the committee’s
invitation to make a submission.

The committee had other difficulties with
evidence. With regard to the scuffle at the
back of the chamber involving Senator Net-
tle, the committee had conflicting accounts
from two senators which it did not consider
were capable of reconciliation, even with the
dubious benefit of a public hearing. Further-
more, the committee wished to avoid provid-
ing a forum for further exploitation of the
politics of joint meetings. It decided, there-
fore, that there would be no benefit in hold-
ing public hearings.

Other terms of reference required the
committee to examine the possible improper
presence and activity of agents of foreign
governments. Clearly, it did not have the
jurisdiction to demand evidence from those
governments and was reluctant to embark on
a fruitless exercise of attempting to do so,
given the possible diplomatic ramifications.
Likewise, with regard to the role of foreign
media, the committee had little chance of
identifying and obtaining evidence from the
news crew that is alleged to have brought an
unauthorised camera into the House of Rep-
resentatives gallery. As an aside, the commit-

ee agrees that the treatment of Australian
media was unfortunate at best, and it ob-
serves that media arrangements for any fu-
ture events of this nature in Parliament
House should be the subject of early negotia-
tions between the press gallery and the Pre-
siding Officers to ensure that members of the
Australian media do not again find them-
selves at a disadvantage in their own country.

In conclusion, because of the constitu-
tional, jurisdictional and evidentiary difficul-
ties it encountered, the committee was un-
able to make findings on most of the terms of
reference. The committee does not believe
that under the present constitutional ar-
rangements there is any solution to the seri-
ous problems raised by the joint meeting
forum. It therefore endorses the Procedure
Committee’s recommendation that the Sen-
ate pass a motion expressing its opinion that
any future addresses by foreign heads of
state should be received by a meeting of the
House of Representatives in the House
chamber, to which all senators are invited as
guests. Under this arrangement, the status of
senators as guests of the House and the au-
thority of the Speaker over the proceedings
would be clear. I commend the report to the
Senate.

Senator BROWN (Tasmania) (10.03
a.m.)—I thank Senator Ray for the Commit-
tee of Privileges report to the Senate. How-
ever, I do not accept that the committee has
been unable, through public hearings, to
make further progress in this matter. There
are extremely important constitutional, legal
and procedural questions at stake here, which
now hang in the air because the committee
did not proceed to get further evidence on a
number of points.

Let me make the point of the submission
by me, Senator Nettle and Mr Organ, the
member for Cunningham, clear: the joint
sittings on 23 and 24 October 2003 in the
House of Representatives were nevertheless sittings of the Senate, and the authority of the Speaker in the House did not extend to treating the Senate in the way which unfolded. There is no constitutional authority for the Speaker of the House to prohibit senators from attending a meeting of the Senate, as occurred. There is no authority for the House to do that. I believe that, if the matter were taken to the High Court, the High Court would find so.

It is not constitutionally valid for the Speaker of the House to be directing senators as to whether or not they can attend a meeting of the Senate. Yet that is what occurred. That is not acceptable. And no privileges committee should have found that irresolvable or in some way a matter that could not be found upon. It was wrong. It was constitutionally invalid. It was an affront to the Senate. It was not defended by the President of the Senate as it should have been. It remains a wrong to two senators and to the electorate of this country that two senators were prohibited by the Speaker of another place from attending a meeting of their Senate on 24 October, and the Privileges Committee should have found so.

On the matter of the scuffle at the back of the House, which was irresolvable, as we submitted to the committee, Senator Nettle was very clearly restrained by an attendant of the House. There is the question of competing evidence about Senator Lightfoot’s elbows being used against both Senator Nettle and me. There is pictorial evidence of that event. On both occasions an assault took place. Were it other senators, I believe the matter would have been taken further. But it happens on this occasion that it involved two senators from minor parties on the cross-bench. It is unforgivable that any senator going about her or his business—

Senator Ian Campbell—Mr Acting Deputy President, I rise on a point of order. I would guess that making an accusation of assault against another senator is a breach of standing orders.

The ACTING DEPUTY PRESIDENT (Senator Brandis)—Senator Brown, under standing order 193(3), you may not reflect upon the character of another senator.

Senator BROWN—I have not reflected upon the character, but let me say in no uncertain terms that the submission we put to the Privileges Committee was that this was in effect an assault and therefore a breach—

Senator Ian Campbell—Mr Acting Deputy President, I rise on a point of order. Making an accusation of an assault against a senator is clearly a breach of the standing order you referred to. You cannot do other than reflect on someone’s character by accusing them of assault. It is a very serious charge, and it is a reflection on that senator’s character. I ask you to insist that the senator withdraw that reference.

Senator Robert Ray—Further to the point of order, Mr Acting Deputy President: if Senator Brown wishes to make a direct accusation against a senator here, I concur with Senator Campbell’s objection, but if he is quoting from a submission to a committee that had invited him to make a submission on the whole range of activities, and it had not been disallowed by the committee—and it was not—I believe he is entitled to refer to that, because it is in the published documents of the report I have just presented. It is a trickier one than simply saying you cannot make an accusation. On the other hand, we do not want to set a precedent for putting in submissions that breach standing orders that you can then quote in here. I do think Senator Brown is within standing orders, albeit to be advised to be careful about what he says.
The ACTING DEPUTY PRESIDENT—Senator Brown, you may not reflect on the character of a senator. Therefore, you may not accuse a senator of committing a crime. I would ask you to be careful in the choice of your language. Proceed.

Senator BROWN—Thank you, Mr Acting Deputy President. I will. I refer senators to the submission that I made with Senator Nettle and Mr Organ to this committee, which outlined our point of view about the events that took place at the back of the chamber of the House of Representatives. We remain aggrieved, and we do not accept that the matter was not resolvable. We believe that, had this occurred to other members of parliament in other circumstances than the visit of President Bush, there would have been hell to pay. But, because of the concentration of the mind in deference to the President of the United States, the events that took place at the back of the chamber seem to be acceptable in some way or other. We do not accept that.

We remain aggrieved, and we believe the committee should have at least investigated this matter to discover the truth. There is ample footage of what occurred. There is ample evidence of what occurred. I remain aggrieved, as I am sure Senator Nettle does, that the matter has not been resolved. I believe that the committee has ducked on this matter, and I do not accept that. When it comes to the presence in the parliament of foreign service agents, who directed the Speaker’s attention to the presence of guests of the Greens in the gallery—Australians of Chinese background—and to the redirection of those guests to the glass enclosures above the galleries, I remain appalled. How can this parliament allow secret service agents from China or anywhere else to direct or to help conduct its affairs?

This was an egregious mistake by the Speaker. He has made it clear that he invited these agents into this parliament to help in the policing of the events of that day. This is an affront to the dignity of this parliament and to this country. It should never have occurred, and it should never occur again. Where is the remonstrance from the committee on this matter? It is not there, and it should be. The question as to whether there were armed secret service agents from the US or China has not been resolved here. We have submitted to the committee that that was the case. The committee should have and could well have discovered whether that was the case or not. You do not have to go to other governments to find that out. I believe the President knows the answer to that question. In our submission we say from the evidence and from the President’s own submission that armed guards were in the chamber as those meetings took place. That, in itself, threatened the security of members of parliament. It is not an acceptable practice for anybody from another country to come with guns into the chambers of this parliament. It is not acceptable, and the committee should have found so.

Before I get to the matter of future attendances of presidents or other heads of state, the matters of the Australian press being given equal rights to cover events like the visits of President Bush and President Hu to the Australian parliament and the presence of an American film crew in the gallery could have been resolved. It did not require a trip to Washington or to CNN to discover that. There is clear evidence that people acting on behalf of the news agencies and working with the Department of the Prime Minister and Cabinet were able to make that arrangement. Why was the matter not further looked into? It should have been, and a finding should have come out in the committee’s report. It is not acceptable that news agencies
from another country were given a privilege, I submit, through the Department of the Prime Minister and Cabinet that news agencies in this country were denied. It is simply not acceptable. The committee could have discovered the facts and made a finding on that but has failed to do so. In so doing, this report is not acceptable.

The final matter—that, in future, visiting heads of state should go to the House of Representatives and we should sit at the back and watch on—is also not acceptable to this senator. We are equal houses of parliament. The place for visiting heads of state is the Great Hall of this parliament. There is not constitutional provision—and that is in the submission—(Time expired)

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.16 a.m.)—This is an important report. Privileges Committee reports are always important in the sense that privileges is a very important matter, but this is probably one of the few privileges reports in which there is a matter of some significant public interest. I think that, as is often the case in trying to get a unanimous report—as is particularly desirable for the Privileges Committee—it highlights some of the issues that the committee was requested to address. There is no doubt that there have been attempts to exploit maximum publicity value out of the incident and everything that has happened since President Bush’s address to parliament, but that does not negate the fact that there are some serious issues to address. I think we need to focus on those. I would firstly say that there is no doubt that the treatment of the Australian media—not just the unequal treatment compared to foreign media but also the inappropriate and inadequate arrangements—was clearly unacceptable. I do not think there is any doubt about that, and that must be addressed.

The report highlights the problem of joint sittings. These are concerns the Democrats raised before we agreed to hear these addresses from the presidents of China and the US in the House of Representatives chamber. I moved a motion that those addresses be heard in the Great Hall, as it is a more appropriate location for ceremonial activities. That was not accepted by the Senate, and I think that is unfortunate. I remain of the view that the Great Hall is a more appropriate location for these types of addresses. We have many functions in that location for visiting heads of state—usually lunches—where they make speeches and there are speeches in reply. It all works fine, and I really do not see a problem with it. Indeed, the media arrangements for those functions seem to work fine as well. It is actually a much more egalitarian sort of arrangement because everybody that is invited is able to sit as equals there—not just members of parliament but diplomatic staff, spouses and media are all able to sit in the same space. I think it is a better arrangement all round, and it is very much one that I urge senators to consider again in future.

The Democrats put a submission into this inquiry. My colleague Senator Murray, on behalf of the parliamentary wing of the party, put in a submission. I reaffirm our recommendation that, except for events that are constitutionally determined—such as joint sittings under double dissolution powers—future assemblies of members and senators should not be held in the chamber of either house and there should be no attempt to constitute them as meetings of either house. That would enable the Great Hall arrangement. If we were going to go down the path of it being a meeting of either house, it would be on the basis that it is a meeting of one house at which members of the other house are guests. That would still cause problems, frankly, because that type of meeting, such as we had in the House of Representatives with
the addresses from the presidents of the US and China, would still have all of the appearances of a parliamentary sitting. Senators being there as guests is not an arrangement that I would be comfortable with. I think it undermines what might be symbolic but what to me is very important: the equality between the two houses. I think anything other than that would be a problem.

The other aspect, if we are invited as guests, is that it would leave open the prospect of individual senators being excluded, as happened on this occasion. If you are being invited as guests, I presume it is open to them to invite some of us and not others of us. If that is the context in which we put the meetings that happened with the presidents of the US and China then that is basically what happened—the Speaker decided not to invite two senators back the next day. We think it is far from ideal. The fact that the committee basically have said they are not able to come to a conclusion because of the unresolved questions about the constitutional status of such meetings simply shows that we should not have such meetings. It is a very, very bad idea to have meetings when it is uncertain what their status is and what the status of privileges is in relation to those things. I think that is an important point, particularly given that the committee cannot come to a conclusion on this. It highlights that we should not make the same mistakes—we should not go down this path again.

There were clearly some inappropriate activities and behaviour in the House of Representatives. I might say that inappropriate activity and behaviour happens in that chamber every day that they are sitting. Maybe it was just the atmosphere of being in the House of Representatives chamber that caused everybody to behave in a less dignified way than they normally do. Perhaps that is a better reason for us to stay in the Senate, where there are normally higher standards of behaviour. Going down to that place seems to have brought us down to their level.

I have said publicly that I thought the behaviour of Senators Brown and Nettle interjecting in the way that they did was not appropriate and I expressed it on one occasion in a way that was probably inappropriate in itself. As these submissions also show, there was certainly inappropriate behaviour by other parliamentarians and another senator and there were clear indications of offensive language being used as well as physical behaviour. Another senator perceived that behaviour to be inappropriate and confronting and the language to be inappropriate.

We all say things we should not say and lose our temper from time to time. The key thing is obviously to try and avoid that from happening too often but when it does happen to acknowledge it and apologise. That is appropriate for any other senators or members who used inappropriate language or behaved aggressively or in a threatening manner. It is a fairly simple and wise thing to do. I do not want to be seen to be preaching on this issue—I do not like to be seen to be preaching on any issue and certainly not on this one for fairly obvious reasons—but inappropriate behaviour wherever it is should be acknowledged and addressed.

There is also the separate issue, if you like, of what to do in relation to the formal proceedings of parliament. It highlights the problem: the status of the sittings was not clear. Who said what? Who did what? There is clear evidence of what people did, and people can make their own judgments about that. If people want to say what they said was fine and what they did was fine, that is up to them. The facts speak for themselves. It is good that this report has the actual submissions published in it. It is beneficial. With hindsight, after sitting through the Chinese
President’s speech, I probably should have followed Senator Harradine’s example and not attended at all. That would have resolved the problem of whether or not to attend.

Another issue this report highlights inadvertently, frankly, is the composition of the Privileges Committee. I do not cast any aspersions at all on the senators that are on it. It is a committee that has four government senators and three opposition senators. The fact that an opposition senator, Senator Robert Ray, is the chair gives an indication of the high esteem he is held in by the Senate on matters of privilege and the appropriateness of Senate related activities. A committee of four Liberal and three Labor members on matters as important as privileges with no member of the crossbench, which is now over one-sixth of the size of the Senate, is another matter we need to look at. I think it is time for broader representation on that committee. I acknowledge that it is a committee you do not want to politicise at all but I also think it is important to have the scope for input of a slightly wider range of views.

It is an important report. There are lessons for all of us in the whole incident. The key one for me is: don’t stuff the media around again in such an inappropriate and ridiculous way. The second one is: don’t have them pretend joint sittings in parliamentary chambers again. Let us have them in the Great Hall. It is a very good venue. It fits more people and it is a more appropriate location. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Publications Committee

Report

Senator EGGLESTON (Western Australia) (10.26 a.m.)—On behalf of Senator Colbeck, I present the 16th report of the Standing Committee on Publications.

Ordered that the report be adopted.

BUDGET

Consideration by Legislation Committees

Additional Information

Senator EGGLESTON (Western Australia) (10.27 a.m.)—On behalf of the Environment, Communications, Information Technology and the Arts Legislation Committee, I present additional information received by the committee relating to parliamentary hearings on the budget estimates for 2003-04.

COMMITTEES

Public Accounts and Audit Committee

Report

Senator LUNDY (Australian Capital Territory) (10.27 a.m.)—On behalf of the Joint Committee of Public Accounts and Audit, I present the 399th report of the committee, entitled Inquiry into the management and integrity of electronic information in the Commonwealth. I seek leave to move a motion in relation to the report.

Leave granted.

Senator LUNDY—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 inquiry had originally focused on the electronic protection of information held by Commonwealth agencies. However, it became apparent that a far more fundamental problem was the physical security of Commonwealth computing assets and the information held on them.

Towards the end of the inquiry, the Committee had been angered to learn about the theft of IT equipment from an Australian Customs Service facility at Sydney airport through the media, rather than from Customs officials—who had appeared before the Committee the previous day.

So concerned was the Committee at the approach by Customs and the nature of the security breach
at the airport that Members resolved to extend the inquiry—in part to take further evidence from Customs. The Committee accepts that agencies will make mistakes from time to time and need to improve their procedures. What is totally unacceptable, however, is any lack of openness before the Committee.

As a result of the security breach of Customs at Sydney airport the Committee re-commenced gathering evidence and discovered an array of problems associated with poor levels of physical security in the Commonwealth including the theft of electronic equipment from Commonwealth facilities, poor record keeping of lost or stolen IT equipment and a lack of knowledge of appropriate reporting mechanisms in the event of security breaches.

Besides addressing the physical security of electronic information, the Committee also has recommended the implementation of standards to protect electronic information against access by unauthorised persons or for unauthorised purposes.

In particular attention needs to be given to the making and management of contracts between Commonwealth agencies and outsourced service providers.

The Committee has also responded to complaints from both Commonwealth and private sector agencies that the Commonwealth’s public key infrastructure system—Gatekeeper—is too complex and too expensive to make agency accreditation practicable. The Committee has recommended that the effectiveness of Gatekeeper procedures be reviewed in light of other commercially available PKI technologies.

Finally, the Committee has recommended the implementation of adequate data storage practices to allow on-going access to data in the face of rapidly changing technology.

In conclusion, Mr President, I would like to express the Committee’s appreciation to those people who contributed to the inquiry by preparing submissions and giving evidence at public hearings.

I wish to thank the members of the Sectional Committee involved for their time and dedication in conducting this inquiry.

Mr President, I commend the Report to the Senate.

Senator LUNDY—I am pleased to table this report of the Joint Committee of Public Accounts and Audit: Inquiry into the management and integrity of electronic information in the Commonwealth in the Senate today. The inquiry into the management and integrity of electronic information in the Commonwealth—which is a long way of saying e-security in the public sector, so I will refer to it as e-security—is a comprehensive expose of the ignorance and neglect perpetrated by the Howard government in ensuring that the Commonwealth’s information systems are as secure as can be reasonably achieved.

By way of introduction, it is important to put the issue of e-security into the broader context of the security debate. The Howard government has spent a lot of time and energy purporting to be a government concerned about security. However, when tested, the Howard government has little credibility on the home front. The political strategy of John Howard has been to ride on the coat-tails of US President George W. Bush, using the rhetoric of fear—even to the point of distributing fridge magnets to remind everyone there is a reason to be fearful. Labor contends that, if the Howard government were serious about the war on terror and the potential threat facing Australia and Australians, it would have been more focused on genuine homeland security strategies and far less sycophantic in its eagerness to join the US in Iraq. It is not lost on anyone that Australia’s vulnerability to attack has been heightened as a result of this.

The Labor opposition has been able to expose this lack of commitment to security in Australia through its diligence. This has come to light in a number of areas, including insufficient customs and airport security. It is this lack of genuine commitment to security
generally, and e-security specifically, in Australia that is systematically laid out in the report that I am tabling on behalf of the Joint Committee of Public Accounts and Audit today. The terms of reference to this inquiry were focused and covered the privacy, confidentiality and integrity of Commonwealth information, the management and transmission of data and the security thereof, and the adequacy of the legislative and guidance framework.

Following many hearings and submissions, the committee has been able to agree to a series of recommendations that by their nature and urgency give light to the serious failings in this area under the Howard government. The committee was surprised by the lack of uniformity in e-security standards, the ad hoc adherence to what e-security guidelines there are and the inability for agencies anywhere in the Commonwealth to be able to report accurately on the collective state of e-security, including breaches thereof. This is perhaps the most concerning thing: the executive government of this country does not know what the e-security status of the Commonwealth is and has not cared enough to ask the question. It took this reference to the Joint Committee of Public Accounts and Audit to uncover this disgraceful hypocrisy.

This means that the lip-service paid previously to the Howard government’s e-security agenda, coordinated by the National Office for the Information Economy, has not been effective. There was a lot of talk and a very expensive public key scheme called Gatekeeper, but there was very little substance beyond the rhetoric. In fact where there has been any activity, given the lack of mandated regulatory requirements in this area, due credit can be given to public servants because they have had no policy leadership from the Howard government. It should also be noted that the activity generated by this inquiry has reached far beyond any effort by the Howard government to require agencies and departments to act.

This is also a bipartisan report, which underlines the seriousness of the unaddressed issues in e-security. The concern that e-security be addressed transcends the sharper wedge politics of security that the Howard government has been desperate to play. It is also a reflection on the integrity of the Joint Committee of Public Accounts and Audit members and their collective preparedness to say it how it is. The result is a report that does not seek to sensationalise the issues and problems. Nor do any committee members purport to be experts in the field; rather we have actively pursued facts as they relate to the terms of reference and then reflected on the evidence and submissions that came before us.

The recommendations, of which there are nine, carry a similar theme in that they recommend diligence, organisation, preparation, implementation and analysis of e-security risks and strategies across the Commonwealth. The committee identifies agencies to be responsible for certain functions. NOIE previously had a coordination role but, given that Labor announced we would be abolishing NOIE and the Howard government later concurred, various agencies have been nominated through the recommendations to handle the implementation of an e-security strategy. These include the Defence Signals Directorate, the Attorney-General’s Department, the Department of the Prime Minister and Cabinet and the Australian Government Information Management Office within the Department of Communications, Information Technology and the Arts.

Through both briefings and evidence, the committee traversed the sorts of breaches that can occur on information networks—such as viruses, denial of service attacks, and
identity fraud—as well as countermeasures to deal with these problems. A key area identified was the lack of a uniform reporting system for theft and loss and for breaches of information systems. Astoundingly, some approaches to e-security meant that some agencies did not report the theft of equipment to police and did not bother to report under the existing, albeit non-universally compulsory, reporting system—DSD’s Information Security Incident Detection, Reporting and Analysis Scheme or ISIDRAS. Recommendation 5 urges DSD to reiterate to agencies and departments their responsibility to comply with this reporting system.

The use of encryption to protect data and authenticate online exchanges was investigated, culminating in the committee’s recommendation 9:

The Department of the Prime Minister and Cabinet should review and report to the Committee on the cost effectiveness of Gatekeeper versus other commercially available public key infrastructure products and systems. It should be noted that Gatekeeper is a system as opposed to a product in this area. Complaints were received and acknowledged about the complexity and costs associated and potential conflicts of interest with gaining security product evaluation and approval under DSD’s Australasian Information Security Evaluation Program, or AISEP. The committee notes that this process could be improved remarkably in both efficiency and cost.

But as the inquiry proceeded it became clear that an even more fundamental area of security was being neglected. For example, evidence presented to the committee, relating to the disgraceful handling of a physical security breach at a Sydney airport involving the theft of a number of computers, exposed the fact that many agencies and departments do not have a physical security plan for information assets such as desktop computers and servers. Hence, recommendation 1 of the report is a ‘101’ of e-security: have a plan. One of the more disturbing breaches of physical security involved Telstra’s ‘loss’ of a whole month’s worth of electronic back-up tapes. These tapes were never recovered and are presumed to have been thrown out with the rubbish as they were, quite bizarrely, stored in a wheelie bin. The committee was dissatisfied by the vagueness of responses by Telstra on this matter. But recommendation 1 goes further—the committee has identified DSD to act as a watchdog to ensure that these plans are developed and to report back to the committee.

Recommendation 3 relates to the conditions by which portable IT devices should be distributed in an effort to minimise an extraordinary level of theft and loss across the Commonwealth. The committee found that over 1,000 laptop computers have been lost by Commonwealth agencies in the last five years.

Another area focused on was the impact of an IT outsourcer in relation to e-security. The committee found evidence that security was weaker where the functions were substantially outsourced in that obligations were the content of commercial-in-confidence contracts and sanctions for breaches were either nonexistent or unable to be applied—that is, it really meant the loss of the contract. There was also a risk of buck-passing and poor information sharing, and clear evidence of poor communication between IT outsourcers and agencies in relation to security incidents.

Given that so many outsourcers are foreign companies, and litigation is possibly the result of ultimately determining contractual disputes and liabilities, the Commonwealth’s vulnerability is enhanced overall by virtue of the vertically integrated model of IT outsourcing. Another issue relates to the poten-
tial for offshoring IT services in the context of e-security. The committee was assured that no Commonwealth data was kept offshore, therefore I expect that any disputes would fall under Australia’s jurisdiction. There are more recommendations that, importantly, relate to the issue of the use of open source and the committee believes that agencies should consider the benefits or otherwise of open source as a normal part of IT risk management processes.

I would like to conclude on the prospects of e-security. In the continued absence of policy in this area it is really up to the agencies and departments themselves to take the initiative, read this report and act on the recommendations. It is clear that the efforts the government has made in this matter to date have not been adequate. I would like to thank my fellow committee members and the committee secretariat, past and present, as well as the submitters and witnesses. Also in conclusion I would like to acknowledge the work of the Australian National Audit Office on reporting on these matters previously.

Question agreed to.

BUDGET

Consideration by Legislation Committees

Additional Information

Senator EGGLESTON (Western Australia) (10.38 a.m.)—On behalf of the Chair of the Foreign Affairs, Defence and Trade Legislation Committee, Senator Sandy Macdonald, I present the report of the committee on the 2003-04 additional estimates, together with the Hansard record of the committee’s proceedings.

Ordered that the report be printed.

COMMONWEALTH ELECTORAL AMENDMENT (REPRESENTATION IN THE HOUSE OF REPRESENTATIVES) BILL 2004

First Reading

Bill received from the House of Representatives.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (10.39 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (10.41 a.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—

COMMONWEALTH ELECTORAL AMENDMENT (REPRESENTATION IN THE HOUSE OF REPRESENTATIVES) BILL 2004

The Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004 will ensure the transparency and certainty of the process for calculating the representative entitlement for each of the States and Territories in the House of Representatives and will maintain at the next federal election the Northern Territory’s current representation of two members.

On 19 February 2003, the Electoral Commissioner determined the number of members of the House of Representatives to be chosen by the
States and Territories at a general election. The determination was made under section 48 of the Commonwealth Electoral Act 1918. The Electoral Commissioner determined that representation would change for Queensland, South Australia and the Northern Territory. Queensland gained an additional seat to have a total of 28 members, while South Australia and the Northern Territory each lost one seat. South Australia’s representation has fallen to 11 seats. Only one member would be chosen for the Northern Territory as its population fell short of the quota by 295 people in order to retain its existing two seats.

The Joint Standing Committee on Electoral Matters inquired into representation of the Territories in the House of Representatives following a request from the Special Minister of State, Senator the Hon Eric Abetz, in July 2003. The Committee’s report, entitled Territory Representation: Report of the Inquiry into Increasing the Minimum Representation for the Australian Capital Territory and the Northern Territory in the House of Representatives, was tabled on 1 December 2003.

This Bill gives effect to the Government response to the Committee’s report.

The Committee made two recommendations aimed at ensuring both the transparency and certainty of the process used for the making of determinations for representation in the House of Representatives and a third recommendation for the Government to set aside the Electoral Commissioner’s determination of February 2003 to the extent that it applied to the Northern Territory.

The Government agrees with the Committee’s findings that more transparency and certainty is required in the process of the Electoral Commissioner’s determinations, particularly the use of the latest published statistics used in his calculations. Confusion has surrounded the concept of the latest statistics of the Commonwealth and specifically what are the relevant statistics provided by the Australian Statistician to the Electoral Commissioner to make his determination.

The absence of a legislative definition of the ‘latest’ statistics of the Commonwealth has had the unintended consequence of providing the Australian Statistician, and to a lesser extent, the Electoral Commissioner, with a degree of discretion when deciding which statistics will be used to determine State and Territory representative entitlements in the House of Representatives.

The Government therefore supports the Committee’s findings in these areas and agrees that legislative amendments be made to clearly specify that:

- the statistics to be provided by the Australian Statistician for the purpose of the Electoral Commissioner’s determination are to be the most recent set of statistics compiled and published by the Australian Statistician in a regular series under the Census and Statistics Act 1905;
- the Australian Statistician should also provide the Electoral Commissioner information relating to the estimate of the net undercount for the ACT and the Northern Territory at the last Census. Where there is a shortfall in either of the Territories’ calculations for an additional seat within two standard errors of the estimate of the net undercount—or margin of error—then the Electoral Commissioner is required to re-calculate the Territories’ representative entitlements; and
- the Electoral Commissioner is to make and publish his calculations, and any necessary adjustments required under the Commonwealth Electoral Act 1918 used in those calculations, within a specified period—one month after the first 12 months of the first sitting of the House of Representatives of a new Parliament.

The Government agrees that, whilst the existing basic principle for determining the number of Members for the Territories should not be disturbed, the confusion surrounding the use of the statistics in the February 2003 determination warrants that the Northern Territory’s representation be maintained at its current level of two seats at the next election. It therefore supports the Committee’s recommendation to set aside the Electoral Commissioner’s determination of 19 February 2003. This Bill does this and provides that the most recent determination made before February 2003 is to apply to the Northern Territory.

This was a bipartisan report, and the Government thanks the Committee for the report.

I commend the Bill to the Senate.
Ordered that the resumption of the debate be made an order of the day for a later hour.

**LAW AND JUSTICE LEGISLATION AMENDMENT BILL 2004**

**First Reading**
Bill received from the House of Representatives.

**Senator IAN MACDONALD** (Queensland—Minister for Fisheries, Forestry and Conservation) (10.41 a.m.)—I move:
That this bill may proceed without formalities and be now read a first time.
Question agreed to.
Bill read a first time.

**Second Reading**

**Senator IAN MACDONALD** (Queensland—Minister for Fisheries, Forestry and Conservation) (10.41 a.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—*

**LAW AND JUSTICE LEGISLATION AMENDMENT BILL 2004**

The Law and Justice Legislation Amendment Bill 2004 amends a number of Acts relating to law and justice.

The amendments correct minor drafting errors, clarify the operation of certain provisions, update references to organisations and other Acts, and update legislation to increase efficiencies and reflect current practices.

The Bill removes minor drafting errors, such as incorrect cross-references in the Crimes Act 1914 and the Human Rights and Equal Opportunity Commission Act 1986.

It also removes redundant references to organisations that no longer exist, such as in the Administrative Decisions (Judicial Review) Act 1977, the Australian Crime Commission Act 2002, and the Freedom of Information Act 1982.

The Bill clarifies the operation of certain provisions, such as in the Legislative Instruments Act 2003 where the amendments clarify the operation of the exemption tables.

In the amendments to the Foreign Proceedings (Excess of Jurisdiction) Act 1984 the Bill removes a reference to the Privy Council, thus removing a reference to an outdated legal framework.

The Bill also improves efficiencies.

Amendments to the Bankruptcy Act 1966 and the Evidence Act 1995 would allow locally engaged staff at Australian diplomatic and consular missions overseas to undertake administrative functions thereby allowing consular and diplomatic officers to spend greater time on non-administrative matters.

The Federal Court of Australia Act 1976 and the Workplace Relations Act 1996 amendments improve efficiencies by ensuring that a single judge is able to deal with ancillary and interlocutory matters without the need to constitute a Full Court.

The Public Order (Protection of Persons and Property) Act 1971 improves efficiencies by more clearly defining the concept of 'court premises'.

The Bill updates legislation to reflect current practices; for example, the Statutory Declarations Act 1959 amendments reflect contemporary drafting practices by removing the schedule that sets out the statutory declaration form, and allows the form to be set out in the regulations and hence more frequently revised.

The amendment to the Aboriginal and Torres Strait Islander Commission Act 1989 means that certain fees will be prescribed by regulations, in accordance with usual Government practice, rather than by Federal Court judges.

Ordered that further consideration of this bill be adjourned to the first sitting day of the next period of sittings, in accordance with standing order 111.
BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

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

Energy Grants (Cleaner Fuels) Scheme Bill 2003

BUSINESS

Consideration of Legislation

Debate resumed from 31 March, on motion by Senator Coonan:

(1) That so much of the standing orders be suspended as would prevent the succeeding provisions of this resolution having effect.

(2) That the government business order of the day for the further consideration of the Customs Tariff Amendment Bill (No. 2) 2003 and the Excise Tariff Amendment Bill (No. 1) 2003 be called on immediately.

Senator IAN MACDONALD (Queensland)—Minister for Fisheries, Forestry and Conservation) (10.42 a.m.)—I wish to table some documents and outline to the Senate the background to this. The Senate requested access to documents related to ethanol through an order for the production of documents in October 2002. As senators would be aware, similar documents were sought under the Freedom of Information Act and a number of documents were released during 2003. Following discussions between the government and the Democrats, particularly Senator Allison, the government agrees to release to the Senate those documents previously released under the FOI act.

I table a schedule listing all documents provided by the Department of the Prime Minister and Cabinet, the Department of Industry, Tourism and Resources, the Department of the Treasury and the Department of Agriculture, Fisheries and Forestry pursuant to those FOI requests. I also table documents provided under the FOI act from the Department of the Prime Minister and Cabinet and the Prime Minister’s office. This goes some way towards meeting the Senate’s order for the production of documents. The remaining documents released under FOI will be collated and tabled by the next parliamentary session. I extend thanks to the Democrats for their assistance, which now allows us to debate the vital legislation before us.

Senator ALLISON (Victoria) (10.43 a.m.)—The Democrats will be supporting the government’s recision motion to bring on the Excise Tariff Amendment Bill (No. 1) 2003 and the Customs Tariff Amendment Bill (No. 2) 2003. Consideration of these bills was postponed on 10 September last year until the government complied with the order for the production of documents that was made on 16 October 2002. As the minister has indicated, the government has now tabled a number of those documents and responded to the ALP’s freedom of information request by providing documents on the list that I understand the minister will also table and which I have. As I understand it, the documents requested of the Department of the Prime Minister and Cabinet were provided in June 2003, and those that were requested of the Department of Agriculture, Fisheries and Forestry were provided in December last year.

The Democrats are keen to see the government take the matter of documents much more seriously than they do, and for this reason we supported the return to order and the adjournment of this debate. The delay in dealing with these bills and the energy grants bill has been very productive. The breathing space may have saved the alternative fuels industry. However, we do not support the motive behind the ALP’s interest in these documents and we do not think the ALP are sincere in wanting to know the ‘full informa-
tion’, to use their language, on the government’s consideration of policy on ethanol. I think the Prime Minister did make errors of judgment and his response to questions about meeting dates does not match the information in documents that were discovered under FOI. It is also obvious that the government have lurched from one knee-jerk reaction to another on this issue. This is not a sensible way to run the country.

The Democrats say it is appropriate for the government to take steps to protect the local industry from unreasonable competition from overseas. The Prime Minister set a target of 350 million litres of ethanol going into petrol by the year 2007, and ethanol imported from Brazil would wipe out any prospect of a viable ethanol fuel transport industry in this country to meet that target. The ALP managed to persuade the press that the imposition of a 38c a litre excise on ethanol, offset by a grant for the same amount to the local producers, was a massive subsidy. In fact, it cost taxpayers nothing. The decision did affect Trafigura Fuels and Neumann Petroleum—two fuel suppliers who were in the throes of importing Brazilian ethanol at the time—and in my view their costs should have been compensated. However, the arrangement will protect all ethanol producers and the future of the industry. This is a rare case of governments in this country putting Australia’s interests ahead of the ideologically driven level playing field, which we are so accustomed to seeing governments— including ALP governments—do.

It is the case that Manildra produces around 80 million litres of ethanol a year, which is 90 per cent of the ethanol used in transport fuel at present, as a by-product of wheat starch and waste material. With the passage of today’s legislation, there will hopefully be many more producers around Australia over the next few years producing ethanol from a wide range of feed stock. The ALP is not interested in the policy reasons for establishing a viable ethanol, biodiesel or other alternative fuel industry in this country; it is not interested in the environmental benefits of E10, CNG or LPG. If you look at the debate on this issue, you will not find much from ALP senators on the air quality benefits of ethanol, even though its blends reduce carbon monoxide, total hydrocarbons, one-to-three butadiene, benzine, toluene, xylene and, in some cases, nitrogen oxides and smog. You will not find much by way of debate from the ALP or the government on the advantages of ethanol as a renewable energy fuel or on the fact that its production costs are a lot higher than those of petrol.

Production costs are a lot higher for ethanol than for petrol, at least for now. I think new technology is going to make a difference to that in the future, as will economies of scale as production increases. Even large ethanol producers in Brazil, which in total produced 12 billion litres of ethanol a year—quite different from 350 million litres—and in the US, which produces seven billion litres a year, receive government assistance for this very reason. The ALP were quite happy to see excise imposed on alternative fuels in 2008 and made no complaints about it being set at the same rate as petrol for energy content. They are very happy to see LPG’s excise free status as a drain on revenue, even though we do not hear a word about the fact that the freeze on petrol excise indexation is costing this country billions in revenue for-gone.

The ALP says these documents would reveal special advantageous arrangements that apply to Manildra in return for political donations. It turns out that Manildra has received nothing that other ethanol producers are not also entitled to. The so-called subsidy and the capital grant of 16c a litre for new or expanded facilities to a maximum of $10 million until the total production reaches 350
megalitres or until 30 June 2007, whichever comes sooner, are available to the whole industry. We think it is important for us to deal with this legislation today. The ALP has scored its political points off the government. It is true that the key beneficiarY of the arrangements that are currently in place is Manildra, but that is because Manildra produces the most ethanol. There is not much we do not know about who met with whom and on what date, and there are good reasons to support all the ethanol and biofuel producers. A reasonable time frame is now in place, as of yesterday’s passage of legislation, for phasing out the grants that offset the excise. I think it is time for us to wrap up this debate, and we will be supporting the passage of the bills.

Question put:

That the motion (Senator Coonan’s) be agreed to.

The Senate divided. [10.54 a.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes.............. 35
Noes.............. 22
Majority......... 13

AYES
Abetz, E. Allison, L.F.
Barnett, G. Bartlett, A.J.J.
Boswell, R.L.D. Brandis, G.H.
Calvert, P.H. Campbell, I.G.
Chapman, H.G.P. Colbeck, R.
Eggleston, A. * Ellison, C.M.
Ferguson, A.B. Greig, B.
Harradine, B. Harris, L.
Heffernan, W. Humphries, G.
Kemp, C.R. Knowles, S.C.
Lees, M.H. Lightfoot, P.R.
Macdonald, I. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J.
Murray, A.J.M. Payne, M.A.
Ridgeway, A.D. Scullion, N.G.
Tchen, T. Tierney, J.W.

NOES
Bolkus, N. Brown, B.J.
Buckland, G. * Collins, J.M.A.
Conroy, S.M. Denman, K.J.
Evans, C.V. Forshaw, M.G.
Hogg, J.J. Hutchins, S.P.
Kirk, L. Lundy, K.A.
Mackay, S.M. Marshall, G.
McLuscas, J.E. Moore, C.
Murphy, S.M. Nettle, K.
Stephens, U. Wong, P.

PAIRS
Coonan, H.L. Campbell, G.
Ferris, J.M. Crossin, P.M.
Hill, R.M. Webber, R.
Johnston, D. Faulkner, J.P.
Minschin, N.H. Ludwig, J.W.
Patterson, K.C. Carr, K.J.
Stott Despoja, N. Bishop, T.M.

* denotes teller

Question agreed to.

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

CUSTOMS TARIFF AMENDMENT BILL (No. 2) 2003

EXCISE TARIFF AMENDMENT BILL (No. 1) 2003

Second Reading

Debate resumed from 12 August 2003, on motion by Senator Abetz:

That these bills be now read a second time.

Senator O’BRIEN (Tasmania) (10.58 a.m.)—The resolution just carried by the Senate permits the commencement of the debate on the Customs Tariff Amendment Bill (No. 2) 2003 and the Excise Tariff Amendment Bill (No. 1) 2003. It is significant, of course, that that was a result of an agreement between the Democrats and the government about a watering down of the Senate’s return to order and the partial com-
pliance with that return to order being accepted by the Democrats as justifying proceeding. I cannot say that I am amazed by that process. What I am surprised at and disappointed about is that Senator Allison personally and Senator Allison’s staff undertook to advise my office of the detail of the arrangement but no such advice was received. The first actual knowledge we had of the detail of the arrangement was Senator Allison speaking in the chamber. That is a matter for Senator Allison to reflect upon. I believe that where an undertaking is given it ought be honoured. I am disappointed that in this case it was not.

Our concern about the information base for proceeding with this legislation has been amplified by the evidence of what has been an arrangement put in place in an attempt to deal with freedom of information requests that I made when the government refused to comply with the return to order. The evidence I have uncovered reveals that officers of Mr Macfarlane’s department were directed to establish a special interdepartmental committee to coordinate the government’s response to my freedom of information applications. In fact, I believe an interdepartmental committee was formed and met on 11 March 2003 in the department’s Allara Street offices and that officers from the Department of the Prime Minister and Cabinet, Treasury, the Department of Agriculture, Fisheries and Forestry and the Department of Foreign Affairs and Trade were present. I also understand that Minister Macfarlane’s department was advised that the operation of this interdepartmental committee was improper and a clear breach of the Freedom of Information Act. That indicates the seriousness with which the government took the question of whether the information they held might reveal something that would embarrass them and was perhaps improper in their dealing with Manildra, hence their reluctance to provide the information.

Coincidental matters were raised by Mr McMullan in the other place. For example, the Australian Electoral Commission returns reveal that on 17 December 2002—a critical time in the timetable of commitments given to the opposition about complying with the original return to order—the National Party received a donation of $50,000 from Manildra. Our concern has been the intertwining of the interests of Manildra with the interests of the government and the ability to uncover just how much of the government’s policy framework was driven by the interests of the ethanol industry in a general sense and how much was driven by the interests of Manildra, in particular the relationship between the government and the company, which has, in part, been revealed—and only revealed—by the freedom of information process that I undertook. Senator Allison might not think that that is important, but I know that the public and certainly the media believe that it is an important matter and it has attracted a great deal of attention. I believe it will attract further attention as these matters are further revealed.

It is a matter of regret that the government has been able to engineer a deal with the Democrats and apparently some others to resume the second reading debate on these bills in these circumstances. The Senate originally took a principled decision on 12 August 2003 that we would not give further consideration to the government’s ethanol excise and tariff bills until it complied with the order for the production of documents, revealing the full details of, in my view, the government’s dirty deal with Manildra. The bills themselves are simple and Labor have never opposed them, but we have said that, if the government wanted us to consider them, we wanted the government to reveal the details of the deal with Austra-
lia’s largest ethanol producer—and one of the coalition’s largest political donors—which was, in our view, cooked up behind closed doors. Those closed doors are now known to include the Prime Minister’s—a matter revealed only through a document provided to me under the freedom of information process, which would never have seen the light of day had the opposition not pursued this matter properly.

Yesterday I outlined the undertakings which were given by Senator Ian Campbell, the Manager of Government Business, on a number of occasions to comply with the order of the Senate. It is a matter upon which we are entitled to remark that, notwithstanding those very clear and unequivocal commitments, the order for the production of documents has not been complied with in any way until today and only then by the production of some of the documents—apparently; I have not seen what has been tabled—which have been produced because of a series of freedom of information requests and a process which has involved pursuing those requests even to the extent of taking matters to the Ombudsman. Frankly, getting this information has been as difficult as pulling teeth.

Senator Allison said a number of things which I referred to in the previous debate on this matter. I am not going to repeat them. I refer to my contribution yesterday which details what the Democrats and Senator Allison were describing as a ‘get tough with the government’ position on returns to order in this place. That get tough position ends today. Not only did Senator Allison talk about getting tough; I also recall the words of Senator Bartlett, now the Leader of the Democrats, on 26 March last year, which further enhance previous contributions by Senator Allison. Senator Bartlett said:

I think that is an issue that the non-government parties need to look at a bit more closely in terms of whether we should take more specific action in response to those frequent contempt of the Senate ... It is an issue that is of growing concern to the Democrats, and certainly I would indicate an interest in discussing with the main opposition party whether there are prospects for taking some action that might indicate our displeasure in a more specific, clear-cut and concrete way that might more openly discourage the government from continuing along that line.

We gave Senator Bartlett and the other Democrats an opportunity to do that in August and they joined with us, but that unity of purpose has ended today. Is that relevant to this debate? Yes. The documents we have been requesting go to the very heart of the policy matter in the legislation before us. We will find it very hard to take the Democrats seriously in this regard in future. The next time the Democrats want to talk about the importance of the Senate or the need for this government to be more accountable, I will be urging senators to remember this cave-in. I am pretty sure that the government will not forget. They have had another victory today, another little win courtesy of the Democrats. I am sure that they will be quite happy and have a little chuckle. We will move on from this matter, having clearly recalled the sorts of comments the Democrats have made about their position in this matter.

As I indicated previously, the bills before the chamber are simple in nature. The Customs Tariff Amendment Bill (No. 2) 2003 contains amendments to the Customs Tariff Act 1995. The amendments impose an additional customs duty of 38.143c per litre on ethanol for use as fuel in an internal combustion engine. The rate of duty on fuel ethanol is the same as the rate currently applying to petrol. The Excise Tariff Amendment Bill (No. 1) 2003 amends the Excise Tariff Act 1921 to validate the changes made by Excise Tariff Proposal No. 4 (2002). This proposal removed the excise exemption from fuel ethanol from 18 September 2002 and im-
posed an excise duty rate equivalent to that applying to petrol, currently 38.143c per litre.

I do regret that Labor are considering these bills without the provision of the information that we need to fully consider the government’s consideration of ethanol policy, but we will not oppose the passage of these bills on that basis. However, we would be happier if we had that information.

Senator ALLISON (Victoria) (11.08 a.m.)—I was not planning on making a further contribution to this debate on the Customs Tariff Amendment Bill (No. 2) 2003 and the Excise Tariff Amendment Bill (No. 1) 2003. I said it all in the previous debate. But I will respond to Senator O’Brien very briefly to say that the Democrats are still keen to pursue the question of government responses to the return to order. I think it is a critical process of the Senate. We have been somewhat slow in pressing the government and using leverage in the way that we did on this bill, and I do acknowledge that, Senator O’Brien. I am sure it is not the death of returns to order as we know them. We will continue with those for good reason. As I have said, this one has gone on long enough. I think we have got enough documents out of the government to know what happened. You may disagree with that, Senator O’Brien, but we have come to this decision and I think it is an appropriate one.

Having said that, I also put on record that it is not the first position of the Democrats to see excise imposed at all on alternative fuels, at least not until we have an industry which is viable and one which is meeting the targets that the Prime Minister set. However, that is all water under the bridge now. We have a grants scheme in place that has been agreed to. We have a time frame that has been extended, which is a good thing. I think the scene is relatively rosy for those alternative fuels. Of course, we will hold our judgment on that position until a few more years down the track when we see what happens.

I am also looking forward to seeing a bit of leadership on the part of the government, but it would also be good for the ALP to come on board because the cane growers in Queensland will be pleased to see another industry that might assist with their income and help some of those regions with new jobs. We will all be looking forward to seeing progress on the important transport fuel sector. I will not prolong the debate. We do all want to get home at an early stage. I indicate that we will be supporting the bills.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.11 a.m.)—This is good legislation. The Customs Tariff Amendment Bill (No. 2) 2003 and the Excise Tariff Amendment Bill (No. 1) 2003 deal with the import of ethanol and the local use of ethanol, bringing it into line with petrol. The legislation has been adequately canvassed by other senators. The previous return to order has been dealt with, we believe, in a satisfactory manner. I would urge the Senate to pass the bill without delay.

Question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.

TEXTILE, CLOTHING AND FOOTWEAR STRATEGIC INVESTMENT PROGRAM AMENDMENT BILL 2004

Second Reading

Debate resumed from 31 March, on motion by Senator Ian Campbell:

That this bill be now read a second time, upon which Senator Carr had moved by way of amendment:
At the end of the motion, add: “but the Senate recognises the importance of innovation in the textile, clothing and footwear sector and the need for policies that stimulate long-term growth and economic prosperity”.

Senator BUCKLAND (South Australia) (11.13 a.m.)—The Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004 goes some way to assisting the textile, clothing and footwear industry. But we should not become complacent and think that this is all that is required to stabilise the whole industry or to protect workers in the industry. It is important to note that the leather and technical sector of the industry are the only beneficiaries of the bill. The whole of the industry remains in a precarious position in relation to its long-term future and, of course, it is an industry that offers only limited security for workers.

While in South Australia the industry is not a major employer of people—about 4,000 in total—it is important in that it adds to the diversity of job opportunities. The Productivity Commission and anecdotal accounts indicate that we have the available skills to become more competitive and to make a greater contribution to the overall state and national economies with very little notice should we be able to trigger an upturn in trade opportunities.

But the longer we go without addressing the problems facing the entire TCF industry the sooner we will lose the skill base. To address these problems we need to improve market access arrangements for TCF exporters, continue funding the strategic investment program for the sector and consider reversing the government’s planned reductions. If we are serious about staying in this competitive industry, we need to resource an effective textile, clothing and footwear industry council to focus on jobs in the industry and on high-value exports. In government Labor would do these things.

Labor’s position in relation to the textile, clothing and footwear industry is not a case of going back in time and it is not a matter of doing something for ideological reasons. It is a matter of doing something for sound policy reasons—good policy; policy aimed at encouraging greater innovation, exports and competitiveness. In government we would establish a review panel to get the policy and the industry right. The panel would include employer and employee representatives. That way everyone would get to have input. Labor used this method with the steel industry, under the Hawke government in 1983. Having been directly involved in that steel industry process, the framework of which is still in use today, we can be confident that the TCF industry would grow and thrive under Labor—grow and thrive with good policy.

This is in stark contrast to the Howard government’s approach to the textile, clothing and footwear industry. The government abolished Labor’s labour adjustment program in 1996 and it is important to consider the effects of that ill-conceived move. In South Australia alone we saw 1,015 jobs go between 1996 and 2001. That equates to a change in employment share of manufacturing jobs in the industry from 8.2 per cent to just 0.7 per cent—not a bad effort for a government that pretends to care about families and workers. So bad was this move that the government has now, somewhat belatedly, put up a ‘structural adjustment fund’—Labor’s labour adjustment program in disguise.

This new LAP is worth $50 million over 10 years. That is simply not enough for an industry as important as the textile, clothing and footwear industry. Labor would have a proper LAP with an appropriate funding level, not one that is plucked out of the air. This LAP would not be means tested and it would aim to assist TCF workers to improve their English language and vocational skills,
and to find new employment opportunities. I support the bill as a means of providing a degree of interim relief for the industry. I urge all senators to support Labor’s second reading amendment.

Senator HARRADINE (Tasmania) (11.18 a.m.)—by leave—Last night in my speech on the Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004 I talked about a number of things, including the importance of the textile, clothing and footwear industry to Australia and particularly to Tasmania, and the number of workers who are still in the industry, despite substantial cuts. I addressed the issue of outworkers and the concerns that people have about the type of sweated labour that is imposed upon a number of workers in the industry, particularly overseas.

I also talked about the government’s provision of assistance to TCF companies, mainly in the form of a strategic investment program. Obviously, this strategic investment program funding is vital to ensure that companies can invest in their equipment to become as competitive as possible. My concern is that the Australian government seems to be planning to further reduce tariffs in future years, with no reference to the tariff levels of our competitors. I do not think it is reasonable to risk the jobs and lifestyles of TCF workers for the sake of economic purity if our competitors are not matching the tariff reductions. The government should delay the planned 2005 tariff reductions to allow companies the maximum time to promote efficiencies and to ensure that Tasmanian workers are not forced to leave the state to look for work.

Over the past decade 36 per cent of jobs in the Australian TCF industry have been lost as part of the reduction in tariffs. At the same time, Australia’s competitors have not been reducing their tariffs at the same rate. Of course, most TCF imports to Australia come from China, a country not known for its commitment to workers’ rights or to human rights in general. For example, about 70 per cent of clothing imports to Australia come from China. It upsets me that we are seemingly all too willing to sacrifice Australian workers’ jobs to facilitate the export market of a country that pursues continual and blatant human rights abuses, including not permitting workers to organise themselves into independent unions. Chinese workers are only allowed to join government sanctioned unions. China also jails workers for organising demonstrations.

This bill facilitates $747 million to be provided over 10 years, most of which is for the strategic investment program to help the TCF industry to continue to develop efficiencies and become more competitive. It targets the SIP grants to those parts of the TCF industry facing the greatest challenge from tariff reductions. The $747 million is, unfortunately, an effective reduction in the annual SIP funding. The SIP scheme is a good program to help the survival of the TCF industry, but it needs to provide more investment funds to a stable industry that does not have to deal with tariff cuts. The industry has, for many years, been undergoing substantial changes and adjustments; it needs some time for consolidation. I appreciate that, following the Productivity Commission’s recommendation, tariff levels are now to be held at 2005 levels until 2010.

I am prepared to support the bill, together with the second reading amendment proposed by the opposition, as it facilitates further—though inadequate—funding for the industry. But I call upon the government, in turn, to support the TCF industry and the thousands of individuals who work in it—each of whom is a real person with real concerns about losing their jobs—by halting all tariff reductions until 2010.
Senator MURPHY (Tasmania) (11.24 a.m.)—I want to say a few words about the Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004, as well as, more importantly, about the textile, clothing and footwear industry in this country. Of course, as we have seen over time, the process of tariff reductions has created a lot of difficulties for the industry. The further tariff reductions proposed in this bill will create even more difficulties, because we often experience international competition from countries with very low wage costs and, in the case of some manufacturers, countries with almost no wage costs. Those manufacturers who have exported their goods to this country have created serious difficulties for the Australian industry.

The proposal to reduce tariffs and to continue to reduce them is just one aspect of competition, but to throw money at the problem without any real strategic view is not a solution. Yes, the SIP program is a good one, but we are not helping the industry look at markets overseas—particularly the smaller manufacturers. Austrade has continually demonstrated that one of its greatest failings is its incapacity to really assist small and medium sized enterprises get into markets overseas. The markets do exist, even in countries like China. If you go to any of the department stores in Beijing, for instance, you will see that the great majority of clothes for sale in those department stores are more expensive than they are in Australia—and that is in Australian dollars. In some cases, name brands are far more expensive.

We have some opportunities for Australian products to be successful in what we would generally consider to be Third World developing countries. In some of those countries—India and China, for example—they have far more wealthy people than we have in this country. There would probably be in excess of 300 million millionaires in China. And those people, like many others elsewhere in the world, look for products that are not necessarily manufactured domestically. That is why we have to ensure that departments like Austrade, rather than just being interested in $25 billion gas deals, or oil deals or coal or iron ore deals, actually focus on small to medium sized enterprises and support our manufacturing industries in the future. It is difficult when you try, for instance, to break into the Chinese market; it is a difficult process. There are some serious opportunities that exist in all of those countries, but we do not seem to be taking those opportunities very seriously. Government departments, through their expenditure, are saying, ‘Here’s another assistance program; sort it out for yourselves.’ That is okay on the one hand, but it is really failing miserably on the other. If you look at a lot of these programs from an historical angle, you ultimately see the decline and loss of an industry. We really should take a different approach.

I will support the bill, and I will also support the opposition’s proposed amendment. Like Senator Harradine, I believe there ought to be a hold on further reductions in tariffs. I find it very disappointing that government departments like Austrade seem to be focused on issues well above the interests of businesses that make up the vast bulk of businesses in this country—that is, small to medium sized enterprises.

Senator NETTLE (New South Wales) (11.29 a.m.)—I begin the Greens’ contribution to the debate on the Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004 by putting the bill in its social and economic context and by outlining the current challenges facing the industry. The bill provides a support package for an industry whose workers have suffered significantly from rolling tariff reductions. Despite the growing evidence of the damage
rolling tariff reductions cause to individual workers, their families and their communities, federal governments since the Hawke Labor government seem determined to pursue an ideological market driven agenda that dictates tariffs must be slashed, regardless of the social costs. It is not surprising that, since 1986, a direct linkage has been made between lower tariff rates and lower rates of employment in the TCF industry. Given the nature of the industry, the impact on workers from regional areas, on women and on those from non-English speaking backgrounds has been devastating.

The government has relied heavily on the recommendations of the Productivity Commission review in designing the assistance package in the bill. However, as the Textile, Clothing and Footwear Union of Australia and others have pointed out, the Productivity Commission review was based on a number of flawed assumptions, not the least of which was the laughable assumption that all TCF workers who lose their job as a result of tariff cuts will find a new job. It is an assumption that is simply not borne out by the evidence or the experience of the workers in the industry. A University of Melbourne study has found that one-third of all sacked TCF workers will not find another job and that another third will gain only part-time or casual employment. Often the only work experience of these workers has been in the TCF sector, so their skill base outside the industry is minimal.

The Department of Employment and Workplace Relations acknowledges that much of the employment loss in the industry has been in occupations not requiring formal education, so these workers are not in a position to easily transfer to another job. A recent report on retrenched TCF workers prepared by Monash University’s Centre for Work and Society in the Global Era, known as the WAGE study, also bears this out. For nearly 25 per cent of those surveyed, the job from which they were retrenched was their first job and 36 per cent had worked in their last job for 10 years or more prior to retrenchment. It is entirely unrealistic to expect most TCF workers to move easily into another job, as the assumptions of the Productivity Commission review suggest.

Most TCF workers are older women, and many come from a non-English-speaking background. Full-time female TCF employment has been the worst affected by tariff reductions since the late 1980s, falling from 67,000 workers in 1985 to 30,000 workers in 2002. These workers will be most damaged by the impending tariff reductions. The WAGE study by Monash University reported that many TCF workers experienced physical ill-health, frustration, family tension and marriage breakdown post-retrenchment. It is not the regular pattern of this government to consider the social costs of massive retrenchment of workers, particularly when the social costs are difficult to quantify. However, the federal government would be expected to listen to the economic costs of not supporting these workers. The TCFU estimates that the cost to the federal government of providing unemployment benefits alone will be $750 million by 2020. The additional pressures on social services from these retrenchments and the effect that that will have on workers and their families need to be added to this $750 million.

Regional communities have been hit particularly hard by tariff reductions. Often the closure of TCF factories in regional areas results in a loss of jobs for a significant proportion of the community. The effect of factory closures in these areas can not only devastate the workers and their families but lead to the breakdown of entire regional communities. A worker from Bendigo, who was quoted in the Monash University study, said:
... when I started, there were 6-7 textile factories in Bendigo. There’s only one left now. You think: where’s the job? What am I going to do? Where am I going to go?

This quote reflects the lack of options available to TCF workers in regional communities. A Melbourne University study found that 75 per of workers grew up in the communities in which they lived and worked. When they were retrenched, they were often forced to make a choice: travel 120 kilometres each way to work, move to another region or remain unemployed. The social dislocation faced by these workers is enormous.

Another ramification of TCF tariff cuts has been the fundamental shift in the mode of TCF manufacture away from factory based production to home based production by outworkers. It is estimated that more than 300,000 home based workers are now in the TCF industry and that most of these workers are female and many are migrants. The nature of outwork makes it extremely difficult to regulate, and the enforcement of minimum wages and standards is virtually impossible. The entitlements that all workers should expect—for example, sick pay and superannuation—are non-existent for outworkers.

In 2001 a study of Victorian home based workers, which was conducted by Christina Cregan of Melbourne University’s Department of Management, found that the average pay rate was $3.60 an hour, although some people were paid less than $1 an hour for piecework. The federal minimum hourly rate is $11.80. The women surveyed worked from three to 19 hours a day and 62 per cent of them worked seven days a week. In many cases, their families relied on their income to meet essential expenses and their partners and children helped complete the work. There continue to be reports of homeworkers being paid $3 for an item of clothing that later retails for $50 or even $100.

The federal government’s continued tariff cuts will only increase the use of outworkers in the industry and further undermine employment standards. I have stated before that the Greens do not assume that all companies in the clothing and textile industry are using outworkers or that they intend to exploit these employees. But there is no shortage of evidence of gross exploitation of many outworkers. This occurs because large corporations put a distance between themselves and the workers who produce the goods sold by the company. It is clear that the government does not deem it necessary to address the exploitation of outworkers in any meaningful fashion. Instead, this important task has been left to community groups, such as the Fair Wear Campaign.

The Fair Wear Campaign, which was launched in 1996, is a coalition of churches, community groups and unions that aims to address the exploitation of Australian outworkers. Fair Wear’s latest campaign is designed to encourage TCF employers to sign a home-workers code of practice that states that employers will provide outworkers with the same conditions as their factory worker counterparts. The work of Fair Wear and the union involved in supporting them means that it is no longer possible for corporations to claim ignorance of the poor working conditions, the unsafe hours of work and the appallingly low rates of pay that TCF workers, particularly outworkers, endure.

In addition to these challenges faced by TCF workers, it has now emerged that the TCF industry is yet another sector that will lose out in the fine print of the US-Australia free trade agreement. The government told us that this free trade agreement will be a win for the sector, as they have told us with so many sectors and have been proven to be wrong. The government told us that Australian made goods in this industry would receive tariff breaks from the United States.
The US definition of ‘country of origin’ will mean that the US will not define many of our TCF products as being Australian made, so our TCF manufacturers will lose out on any export benefits that may have eventuated from such an agreement. Yet again, the free trade agreement is letting Australian industry down and it is Australian workers who will suffer. The Greens will support this bill because it aims to bring relief to the TCF industry, an industry that has undergone massive structural change and will now suffer further under the US-Australia free trade agreement. But we have never supported, and we will never support, this government’s adherence to an ideology that dictates that tariffs should be slashed regardless of the impact on Australian workers, their families or the community at large.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.39 a.m.)—I thank senators who have contributed to the debate on the Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004. This debate has focused not so much on the bill itself but on the government’s post 2005 policy. The government has announced a long-term strategy for the industry, an industry that has undergone massive structural change and will now suffer further under the US-Australia free trade agreement. But we have never supported, and we will never support, this government’s adherence to an ideology that dictates that tariffs should be slashed regardless of the impact on Australian workers, their families or the community at large.

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to train its officers and agents to protect themselves and it will allow ASIS officers and agents to carry weapons for that purpose of self-defence. ASIS will be able to protect its own staff and the staff of other agencies, such as the Australian Federal Police or the Australian defence forces, and work with these other agencies to provide a coordinated approach to tackling terrorism and transnational crime.

The current prohibition on ASIS agents and officers carrying weapons, even for the purpose of self-defence, dates back to the recommendations of the 1983 Hope royal commission. I am sure that many senators will remember the Sheraton Hotel incident which formed part of the royal commission’s terms of reference. In that bungled training exercise in hostage rescue, ASIS trainees, armed with submachine guns, stormed the Sheraton Hotel, pointed guns at and man-handled hotel staff and members of the public—all of whom were unaware that this was in fact an exercise and that the masked desperados holding them at gunpoint were actually the good guys.

Justice Hope’s report on the Sheraton Hotel incident recommended that ASIS be excluded from carrying out covert action in the form of either special operations or special political action, and from undertaking training for such action, and that ASIS cease to use weapons and that their stocks of weapons and explosives be disposed of. In implementing the report, Prime Minister Hawke emphasised that ASIS would no longer hold weapons, nor would they have a capability for covert ‘special’ operations. At the time, that was considered by no means unreasonable. Twenty years ago, conflict was between nation states. It is not national governments but transnational terrorist organisations which pose a threat to Australian interests today. To detect and counter those threats, ASIS officers and agents often find themselves operating in insecure and unstable environments. Their targets are frequently extremely dangerous, not only to the population at large but to the agents collecting intelligence on those targets. In these circumstances, ASIS operatives need the ability to protect themselves.

The basic provisions of the Intelligence Services Amendment Bill 2003 enable ASIS officers and agents to be trained in the use of weapons only for self-defence purposes. There are a number of conditions attached to the provision of a weapon to an ASIS officer. It is important to remember that these provisions relate to the use of a weapon or a self-defence technique outside Australia. ASIS agents or officers will not be authorised to use a weapon inside Australia. A weapon can only be provided to an ASIS officer or agent for the purposes of self-protection, for the protection of other ASIS agents or officers, for the protection of individuals assisting ASIS operations or for training purposes. This extension of physical protection to individuals assisting ASIS operations covers individuals in other organisations acting in support of ASIS activities, such as the Australian Federal Police. I cannot make this clear enough. This provision of the legislation only covers members of an approved organisation, as defined in the bill, engaged in agreed cooperative operations. In addition, the Minister for Foreign Affairs must provide written notice to the director-general approving the provision of a weapon to an ASIS agent and authorising training in the use of that weapon. A copy of this approval must be provided to the Inspector-General of Intelligence and Security.

The bill also clarifies the position of ASIS agents as far as cooperation with other organisations is concerned. It is possible that ASIS agents will need to work together with other Australian organisations and approved foreign organisations to plan and undertake
joint operations. This primarily relates to the new challenges arising from terrorism. For example, if Australians were to be taken hostage in a foreign country, operational cooperation with other agencies would be essential. The current Intelligence Services Act 2001 does not make it clear whether ASIS can participate at all in such operations because of the constraints contained in the original act concerning the use of violence. The bill clarifies this by introducing the words:

This subsection does not prevent ASIS from being involved with the planning or undertaking of activities covered by paragraphs (a) to (c) by other organisations provided that staff members or agents of ASIS do not undertake those activities.

There has been some concern expressed that ASIS’s potential cooperation in joint operations may lead to ASIS’s involvement in operations that include assassination. We welcome the foreign minister’s commitment and assurances that ASIS’s involvement in joint operations that involve the assassination of an individual or individuals will not be allowed under any circumstances and that internal protocols will be issued proscribing any involvement by ASIS in any activities intended to lead to assassination. I also point out that the accountability mechanisms recommended by the Parliamentary Joint Committee on ASIO, ASIS and DSD and accepted by the government place secure boundaries on the approval of joint operations.

When we provide greater levels of security for our officers and agents deployed overseas, we must also make sure that these new powers have appropriate safeguards. It was for just that reason that Labor supported the referral of the Intelligence Services Amendment Bill to the Parliamentary Joint Committee on ASIO, ASIS and DSD. The committee’s report was tabled in the Senate on Thursday, 11 March and in the House of Representatives on 23 March this year. We usually find when legislation is referred to a committee that the processes of parliamentary scrutiny produce better legislation. That has been the case with this legislation.

The Parliamentary Joint Committee on ASIO, ASIS and DSD made a range of unanimous recommendations improving the safeguards on these additional ASIS powers and strengthening accountability without limiting the required operational flexibility of ASIS. A number of these recommendations dealt with explicit definition of the terms used and the regimes set up by the bill. The committee recommended that training and logistics guidelines be developed in consultation with the relevant departments and agencies, be agreed by the Inspector-General of Intelligence and Security, and be approved by the National Security Committee of cabinet. These guidelines, in the committee’s opinion, should make up a ‘detailed policy framework covering training, handling, use, storage and logistics’.

The committee recommended the guidelines include: a detailed protocol for the planning or conduct of activities with foreign organisations and which might involve the use of force; a detailed understanding of what ‘self-defence’ means in the context of the bill; and a definition of the range of weapons permitted under the bill. The committee recommended that weapons be limited to semiautomatic hand guns and pistols. The committee further recommended that the Minister for Foreign Affairs authorise the specific types of weapons to be used on each operation and, when the Director-General of ASIS designates an ASIS position as one requiring weapons and self-defence training, the Department of Foreign Affairs and Trade be consulted.
The committee also recommended development of a training and skills assessment regime to be approved by the Minister for Foreign Affairs and managed by the Director-General of ASIS, with a copy of the training program provided to the Inspector-General of Intelligence and Security. As well as recommending a clear and explicit regime surrounding training in the use of weapons and the authorisation for the use of weapons, the Parliamentary Joint Committee on ASIO, ASIS and DSD recommended a range of measures to increase accountability. The committee recommended that, when an operation with a foreign organisation that might involve force was under consideration, the approvals process include not only the foreign minister but also the Prime Minister and the Attorney-General. A request by ASIS to the Minister for Foreign Affairs for approval of an operation should, in the committee’s unanimous opinion, include a detailed assessment of the risks to ASIS staff members and agents involved and to Australia, as well as advice from DFAT on possible effects on bilateral relationships.

The committee recommended that the Minister for Foreign Affairs approve the deployment of an armed ASIS staff member overseas or the training and arming of an agent already overseas. Finally, the committee unanimously recommended that the Director-General of ASIS be required by the legislation to provide the Inspector-General of Intelligence and Security with a report on any operational incident with the potential to embarrass Australia.

The committee made nine unanimous recommendations in total, and the government has indicated that it is taking up seven of the nine recommendations. This will increase the accountability of ASIS in undertaking operations that may involve the use of force and will also put in place safeguards to make sure that ASIS agents and officers are fully trained and fully aware of their responsibilities under this new legislation.

Labor regrets that the government’s response to the joint committee’s recommendations gives the Inspector-General of Intelligence and Security a consultative role only in developing the guidelines for the use of weapons and participation in operations with foreign organisations. The parliamentary joint committee recommended that these guidelines be agreed by the Inspector-General of Intelligence and Security, and Labor believes that the inspector-general should have more than merely a consultative role.

With regard to the definition of the types of weapons provided to ASIS officers and agents under this legislation, the government has agreed that the definition will note that the provision of weapons will normally be limited to semiautomatic hand guns, pistols and lesser or non-lethal weapons. However, the government is reluctant to be restrictive as far as specific weapons are concerned. If weapons other than those normally provided are to be issued for particular operations, Labor strongly hopes that this variation will be scrutinised by the Director-General of ASIS, the Minister for Foreign Affairs and the Inspector-General of Intelligence and Security.

On balance, however, this bill provides a solution to a real problem confronting our intelligence and security services. Our security and intelligence agents operating overseas in dangerous and unstable situations need to be able to protect themselves. At times, they need to be able to participate in joint operations with other organisations. At the same time, we must be sure that all agents issued with weapons are properly trained and fully aware of their responsibilities and the expectations of the Australian community when it comes to using those...
weapons. In the view of the opposition, the Intelligence Services Amendment Bill 2003 strikes that balance. Labor will be supporting the bill.

Senator GREIG (Western Australia) (12.02 p.m.)—I rise to speak on the Intelligence Services Amendment Bill 2003 on behalf of the Australian Democrats. The bill will invest officers of the Australian Secret Intelligence Service, or ASIS, with the power to carry and use firearms for the purpose of self-defence and to participate in paramilitary operations in conjunction with other agencies. The express objective of ASIS is: … to protect and promote Australia’s vital interests through the provision of unique foreign intelligence services as directed by Government.

Under the current legislative regime, ASIS is expressly prohibited from planning or participating in paramilitary activities or activities involving violence or the use of weapons. This was a central feature of the original bill and one which was specifically highlighted by the Minister for Foreign Affairs, who said in his second reading speech:

... a significant change in policy regarding the use of force by the Government in less than three years.

Of course, one of the difficulties we Democrats have in assessing the merits of the bill is that we have only limited access to information concerning the operations of ASIS, yet such information is crucial to a proper consideration of the bill. How can we really know whether ASIS should have the power to participate in paramilitary operations if we do not know which organisations it is conducting joint operations with? Similarly, how can we determine whether ASIS officers should carry weapons if we are not aware of the kinds of security threats they face?

For obvious reasons, this is not information which can readily be made public but that does not mean it cannot be provided in confidence to elected members of parliament. As the parliament has demonstrated for some time, it is entirely possible to provide intelligence briefings to non-government members of parliament without compromising national security. Unfortunately, we have a situation where the government and the opposition collude to ensure that they have a monopoly over high-level intelligence briefings. Currently, the opposition is the only non-government party able to receive such briefings. The Democrats do not see any reason for that limitation. We believe intelligence briefings should be made available to other non-government parliamentary parties as well.

Once again we are dealing with legislation which has been scrutinised by the Parliamentary Joint Committee on ASIO, ASIS and DSD. The composition of the joint committee has been a concern of the Democrats for some time. The committee comprises only government and opposition members yet, in nominating members, the Leader of the Government in the Senate is required to give consideration to the desirability of ensuring
representation of various political parties. The point I am making is that the Democrats, and indeed the entire crossbench, are in a very difficult position in considering the proposals contained in the bill. Our role as legislators is compromised by the lack of information we have access to. It is impossible for us to properly assess the justifications for the bill, or its implications, in a vacuum of any contextual information. While the government may have provided briefings to the opposition on the reasons why these powers are necessary, and while the joint committee has had the benefit of speaking directly with ASIS officers, the Democrats have not had the benefit of such briefings, nor has the government offered any. So a comprehensive consideration of the bill has been difficult.

Giving ASIS the power to engage in paramilitary operations and to carry and use weapons for the purpose of self-defence represents a significant change of policy on the part of the government. And, let us be honest, these are serious powers that we are talking about. We Democrats believe that in these circumstances the government has an obligation to persuade the parliament of the need for change. It needs to demonstrate very clearly why these new powers are needed and, as far as we are concerned, it has not met that threshold.

While the Democrats remain unconvinced of the need for these new powers, we do acknowledge that the bill contains a range of important safeguards and limitations. For example, ASIS will still be prevented from planning or undertaking paramilitary activities, from activities involving the use of force against a person and from the use of weapons by staff members or agents of ASIS. What it does permit ASIS to do is plan or participate in such activities when they are conducted by other agencies.

The new provisions relating to the use of weapons also contain limitations. ASIS staff members and agents can only be provided with weapons and weapons training for the purposes of self-protection, the protection of other ASIS agents or the protection of a person who is cooperating with ASIS. The Minister for Foreign Affairs must approve the provision of weapons for particular staff and for particular purposes. Ministerial approvals relating to weapons must be provided to the Inspector-General of Intelligence and Security. The Director-General of ASIS must develop guidelines regarding the use of weapons by ASIS agents and these guidelines must also be provided to the IGIS.

The Democrats welcome these amendments recently introduced by the government in response to the recommendations of the joint committee. These amendments address a number of our concerns and have therefore negated the need for us to proceed with amendments which we may otherwise have intended to move. The Democrats do, however, have one outstanding amendment which we intend to move during the committee stage. The amendment seeks to enhance the accountability of ASIS in the exercise of its new powers and I will be advocating that shortly.

Senator ROBERT RAY (Victoria) (12.09 p.m.)—I listened to Senator Greig’s complaint that the Democrats are not open to briefing on this matter. I am entirely sympathetic to that point. I am not sympathetic to the point that at the moment the Democrats are not on the joint intelligence committee. That was carried by statute in this place—to which there may have been a Democrat amendment; I do not recall—that says until you are of such a size you do not warrant representation on that committee. That is an entirely different point to being properly briefed on legislation before this chamber. I am disappointed the Democrats were not
given a good briefing on this legislation and on why it is before us. I am sorry that did not occur. The minister may address that question in his response.

To understand this legislation you have to go back about 21 years, to the Sheraton Hotel incident in Spring Street, Melbourne. What clearly came out of that training fiasco and related matters was that ASIS was not under sufficient control and accountability as should have been observed. After a full inquiry into the activities it was decided to deprive ASIS of all capacity for paramilitary activity. That decision has basically stayed until today and will continue in many senses after today when this legislation is passed.

It was not the only inquiry into ASIS. There was another inquiry in the mid-nineties conducted by Samuels and Codd. This was mostly prompted by internal matters within ASIS—disaffected staff members. It is typical that this emerged after the discipline of the Cold War had evaporated. There would have been enormous pressure not to allow dissent, leaking or other matters in the Cold War climate. But once that went we had an outbreak of complaints from people about conditions, preferential treatment and a whole range of the normal internal tensions that exist in most organisations. Coming out of the Samuels-Codd review was a recommendation to put ASIS on a statutory basis. That was well under way in 1995. The biggest objections were to those elements applying to the media, because provisions in the legislation heavily penalised the media for disclosing certain activities and identities of ASIS employees and what they were up to.

We had tried to go through the D-notice route. By the mid-nineties, D-notices had virtually fallen into disrepute. I can remember getting all the leading publishers of TV, radio and newspapers to Canberra for a discussion on this. It became absolutely clear to me that they all wanted to sign up to D-notices—unless they got the big scoop themselves, when they would just blatantly ignore it. The worst offender, the most blatant offender, was Mr Johns from the ABC. He led the charge. I eventually reported back to the foreign minister: don't even bother with a D-notice system—the press in this country were not responsible enough to sign up to it. It is ironic that, six years later, under the legislation proposed by this government the penalties are equally severe and give no concessions whatsoever to the media. They had their chance and they blew it—but I digress.

The decision to set up ASIS on a statutory basis was made in 1995. It could not be completed before the election and then we went into a long interregnum of silence on it. Eventually, this government got around to doing something about it in 2001. Indeed, once the legislation was produced, a joint select committee was set up—it had 15 members on it, from memory—to consider this, and it went through it line by line. It was quite a good committee and produced a very positive unanimous report. During that inquiry one of the key issues was what immunity ASIS employees should have. At the time we were given the assurance of immunity from any Australian extraterritorial laws applying overseas that ASIS employees broke. We were hurriedly reassured that this did not include the use of violence, paramilitary activities or anything associated with that. Yet this legislation partly reintroduces—only in part—some of those activities. We really have to ask: why the change?

We have to recognise that we are facing a changed world. Nothing remains exactly the same. Principles and good practices that applied five, 10 or 20 years ago may have to be modified according to circumstances. One of the major features of ASIS activity now is the tracking down and anticipation of terrorism. Providing government with collect...
information on terrorism is absolutely crucial. International cooperation in this regard has become more and more important. We cannot just do it ourselves; we have to cooperate with a whole range of other intelligence agencies—not just with those in the old traditional club but on a much broader scale. In addition to that, the one thing that has developed at a fairly rapid rate is our commitment to tactical and operational intelligence. We all know that strategic intelligence has been a bit flawed of late, but there is no doubt that operational and tactical intelligence has improved. That means that the ASIS officers associated with collecting that intelligence often need to accompany others because only they know the geography, the personalities or the situation. They have become the experts who give advice to other agencies implementing government policy.

The joint intelligence committee report was a little late coming into parliament. We expected it to come into parliament in December last year. The reason for its delay was not indolence on the part of the committee; rather, ASIS badly misinterpreted one aspect of its own bill. It needed to go away, think about it and come back to us. Hence the delay. The second matter delaying the tabling of our report was a traditional one. We needed to submit our report to the minister so it could be cleared; we had to be sure that we had not inadvertently put into it any intelligence material that may have embarrassed Australia or this parliament. The report was promptly cleared by Foreign Minister Downer, and tabled in the Senate. The tabling of it in the Senate was quite out of order in that it would normally be tabled in the Reps, but we wanted to get it tabled as quickly as possible so everyone could assess it. It was eventually put down in the House of Representatives some days later. It was good to see no early preview of our report in the newspapers. Of course, the only time that has ever happened was when a copy was given to the Prime Minister’s office, but I cannot assert that that is where it got out from. On this occasion there was absolutely no mention of our report before it was tabled in parliament. For that I am eternally grateful.

In my view there are three key elements in this legislation. Firstly, it allows ASIS officers to accompany officers of other Australian agencies who are armed. Currently they cannot. Let me give a couple of generalised examples. ASIS officers may need to deploy in the field with the SAS or the Federal Police, who are armed. That would not mean the ASIS officers were armed, but currently under the legislation they are not permitted in a direct sense to accompany officers who are armed. This legislation will allow them to do so. That is absolute common sense. There may be circumstances in which ASIS has to go into the field and officers from either the Federal Police or the SAS would go with them to give them armed protection. Why would any reasonable legislator object to that? I do not think anyone will. It is good that that matter has been put to rest.

The second major aspect of this legislation is that it gives ASIS employees the capacity to be armed for self-defence purposes only. If we send people into harm’s way, we have a responsibility to make sure they are protected. You only have to read the references in this week’s Bulletin to the potential vulnerability to violence of those who serve us overseas on behalf of ASIS. It is always present. Giving those people the capacity to defend themselves is absolutely essential. Related to that, we have to give them the capacity to train themselves. The right people have to be trained in self-defence methods. That does not necessarily mean they have to be trained in the use of firearms, but that will be the major area. The committee was able to develop the necessary protocols associated
with that training, and the government has agreed to those. I think ASIS are going to rely very heavily on the AFP methods. They are consulting with Defence. They are making decisions about appropriate firearms that can be concealed. All those aspects of the legislation are in my view most appropriate.

The original legislation required the foreign minister to authorise each individual’s training. At the suggestion of the committee, we are now going to have a more general regime. That is absolute commonsense. We do not want to bog down the foreign minister in complying with requirements for what are really standard administrative practices. We want to reserve for the foreign minister the crucial decision as to when, if someone is deployed overseas, they should be armed.

The third and more controversial matter that came out of the joint intelligence committee report, and the committee’s view of the legislation, is that this legislation will authorise ASIS employees to either participate alongside officers of foreign agencies in the planning of potential paramilitary activity or accompany them and be armed for self-defence in those circumstances. This is quite a difficult area. I think the second reading speech on this legislation refers to ‘legitimate activities’. The key is that we are talking about legitimate activities by overseas agencies, not Australian agencies, and there are definitional problems associated with that.

ASIS’s understanding of their own proposed legislation was quite opaque. They did not seem to comprehend the full potential of some of the amendments to the existing legislation. However, when that potential was drawn to their attention by the committee, they fully cooperated with the committee. They sought solutions to the problems that were raised. It was refreshing to deal with an agency that did not just dig in and say, ‘This is our property and we’re going to defend it to the last.’ They cooperated with the committee when they ultimately realised the potentialities of the legislation. Why they did not understand the original legislation and all its implications is a mystery to me, and I hope they give that a bit of thought. This is not legislation initiated by a government that is trying to wedge anyone or anything like that. This is legislation that comes at the request of the agency, and there is no political taint to it whatsoever. Therefore, ASIS should give some thought to why they did not think through the full implications of the legislation.

One thing is for sure: you cannot legislate for every contingency. The critical change requested by the joint intelligence committee is now in the legislation—that is, when ASIS employees need to be armed and are operating overseas in armed circumstances the authorisation needs to be beyond just the foreign minister. Remember, there is no sunset clause in this legislation. I do not think there should be, but one always has to look to the future. You do not get an automatic review via a sunset clause. There is no implied criticism here of Mr Downer. I am sure he would exercise the powers under this legislation responsibly. That fits his track record with regard to ASIS. But what about the future? There could be a different foreign minister in future. I do not want to put these powers in the hands of Mr Abbott, or Senator Abetz at the table. Maybe I do not trust them enough. It could be someone from my side of politics that I do not trust—who knows? You have to be very careful.

You cannot legislate for every contingency. The authorisation previously was going to reside with the foreign minister; now it reflects that the Prime Minister, the foreign minister and the Attorney-General will be involved in the approval process. I think that is much wiser. It also means that we do not
have to be absolutely specific in trying to rule in and rule out every set of circumstances. Three people will take responsibility for this decision. In many ways we have assisted the foreign minister rather than restricted the foreign minister by that particular change.

Scrutiny of this legislation will be critical. The Inspector-General of Intelligence Security will have a major role here. We have asked—and the government has not included it in their legislation but has implied that it is right—that if there is an issue that is likely to embarrass Australia with regard to this then it will be brought to the attention of AGIS. There will also be supervision of this particular aspect of the legislation by the security committee of cabinet and I hope at times there will be proper briefing of the Leader of the Opposition, especially if a major incident occurs so that at least the Leader of the Opposition will be aware of it. I have expressed some concern that an incident in 1997 allegedly— and I say allegedly—concerning ASIS operations overseas was never reported to the then Leader of the Opposition. That should have been done. I have checked with him; he said that it was not. They are the very matters that should be drawn to the attention of the Leader of the Opposition. Perhaps the Director-General of ASIS could write a letter about that. He has had a bit of practice recently.

Once again the Senate is dealing with legislation dictated by the necessity to deal with terrorism. It does reflect a degree of constructive bipartisanship. The approach to this particular legislation was to refer it to the joint intelligence committee, which was sensible. It had a full examination there and the committee gave a report recommending a variety of changes, nearly all of which have been incorporated in the legislation. This is regrettably not often reciprocated by the government.

We had the spectacle this week of the Minister for Justice and Customs coming in here talking about the next raft of legislation and trying to attack the Labor Party over it before we had even seen the legislation. We have already given a promise to give legislation coming out of the state attorneys-general and police ministers meeting full consideration. But what do we get? We get slagged off by this government trying to earn a few cheap political points. That is highly regrettable. We have heard the constant refrain from some opposite that the Labor Party is soft on terrorism. It is not argued out other than in an emotional way. We heard from Mr Slipper, from Mr Cameron and from Senator Knowles the other day that in some ways we are not loyally supporting the Australian Defence Forces. I find that highly offensive. I do not believe our track record in any way would sustain that. This is a form of modern-day McCarthyism and it is most unfortunate.

This piece of legislation is necessary for the good of our country and for ASIS as a whole. I think there are a variety of safeguards contained in it. I thank the foreign minister for accepting nearly all the recommendations coming out of the joint intelligence committee report. Where he has not he has given assurances, as I read his response, that these matters are already covered. These are necessary powers. We must protect our employees overseas. The scrutiny methods will ensure that whatever this parliament authorises will be carried out responsibly and with full probity.

Senator ABETZ (Tasmania—Special Minister of State) (12.29 p.m.)—I thank honourable senators for their contributions to this debate on the Intelligence Services Amendment Bill 2003. This is another example where the processes of the parliament have worked effectively, with the government introducing legislation, it then being considered by a joint committee, a number of
amendments being proposed and the government, after consultation, accepting those amendments to get broad support for legislation which seeks to allow the Australian Secret Intelligence Service to cooperate more effectively with other agencies and to better protect its people. The history and the need for this legislation have been gone through and reference has been made in contributions to the Parliamentary Joint Committee on ASIO, ASIS and DSD. The committee report that I refer to does have a government response. I table that response now.

I simply restate for the record that internal ASIS protocols outlining the conduct of cooperation with foreign agencies would specifically proscribe ASIS involvement in any activity of a foreign agency intended to lead to assassination. The other points have been covered. We have a very heavy legislative timetable, so I will curtail my comments. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator GREIG (Western Australia) (12.30 p.m.)—I move Democrat amendment (1) on sheet 4209:

(1) Page 6 (after line15), at the end of the bill, add:

Inspector-General of Intelligence and Security Act 1986

4 After subsection 35(2B)

Insert:

(2C) The Inspector-General must include in a report prepared under subsection (1) the Inspector-General’s comments on the extent of compliance by ASIS, during the year to which the report relates, with guidelines issued under subclause 1(6) of Schedule 2 of the Intelligence Services Act 2001.

This amendment seeks to increase the accountability of ASIS in the exercise of the new powers that will be provided with the successful passage of this bill. We believe it achieves this without compromising national security in any way. The amendment applies to the guidelines which will govern the use of weapons and self-defence techniques by ASIS officers. As we know, the bill requires the director-general to issue guidelines for this purpose. While these guidelines must be provided to the Inspector-General of Intelligence and Security, there is no requirement for them to be tabled in the parliament. As a consequence, they cannot be disallowed.

The government has argued that, because of the operational detail which will be included in the guidelines, it would be inappropriate to make them available as a public document. The Joint Committee on ASIO, ASIS and DSD agreed. Obviously, this precludes the tabling and potential disallowance of the guidelines. In those circumstances, we believe the Senate should be looking at other means of ensuring accountability in relation to these guidelines and we warmly welcome government amendment (4) in particular, which is directed at ensuring greater accountability. However, the Democrat amendment will require the IGIS to include comments in his annual report to the extent of the compliance by ASIS with those guidelines. We note that section 35 of the Inspector-General of Intelligence and Security Act already contains a similar provision in relation to the compliance by ASIS and DSD with the rules relating to the communication and retention of intelligence information.

While the Democrats accept that we are dealing with highly sensitive information, in this context we are confident that the IGIS could report on these matters without compromising national security. If the IGIS can currently report on compliance with rules regarding the management of highly sensitive
intelligence information, there is no reason why he cannot also report on compliance with the guidelines regarding the use of weapons. As those who have read previous annual reports will know, the IGIS does produce comprehensive annual reports which, while they may not include the same level of detail as other annual reports, do provide an important insight into the legislative framework in which our intelligence agencies operate and thereby enhance the accountability of those agencies. Despite a relative lack of information provided to the Democrats regarding the bill and the fact that we were unable to participate in the committee inquiry, we have nevertheless approached the bill, I believe, constructively and given careful consideration to the ways in which it might be improved. We believe this amendment is sensible and will enhance the accountability of ASIS in the exercise of its new powers, without compromising in any way Australia’s national security interests.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.33 p.m.)—I want to respond briefly to this proposed amendment for a new section 35(2C). The committee needs to understand that the bill we are debating deals with amendments to the Intelligence Services Act 2001; it does not deal with the Inspector-General of Intelligence and Security Act 1986. I note that the parliamentary Joint Committee on ASIO, ASIS and DSD did not recommend any amendments to the Inspector-General of Intelligence and Security Act 1986. I note that the parliamentary Joint Committee on ASIO, ASIS and DSD did not recommend any amendments to the Inspector-General of Intelligence and Security Act 1986. Under the particular act, I think it is fair to say to the committee, the inspector-general has extensive oversight of the legality and propriety of ASIS’s activities and compliance with ministerial directions. On this occasion, given the nature of the report to the parliament by the joint committee and for the other reasons I have outlined, I indicate to the committee—I do not want to hurt Senator Greig’s feelings, although he does not look too hurt over there—that on this occasion it would not be appropriate to pass this amendment and the opposition will not be supporting it.

Senator HILL (South Australia—Minister for Defence) (12.35 p.m.)—The government does not support the amendment, not because we think there is anything particularly wrong with the goal that is being sought but because we do not think it is necessary. Senator Greig is seeking to amend a provision of the Inspector-General of Intelligence and Security Act to include this obligation. It seems to us that under that legislation the inspector-general has oversight and does report in any event. So it is difficult for us to see that this amendment adds much to what is already the situation. On that basis, we do not see a reason to support it.

Question negatived.
Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator HILL (South Australia—Minister for Defence) (12.37 p.m.)—I move:
That this bill be now read a third time.
Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator HILL (South Australia—Leader of the Government in the Senate) (12.37 p.m.)—I move:
That intervening business be postponed till after consideration of government business order of the day no. 5 (Telecommunications (Interception) Amendment Bill 2004).
Question agreed to.
TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 2004

Second Reading

Debate resumed from 11 March, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator HOGG (Queensland) (12.38 p.m.)—As Senator Ludwig is not here, this is an honour bestowed upon me which I did not expect. Undoubtedly Senator Ludwig will be here in a couple of minutes. The Telecommunications (Interception) Amendment Bill 2004 is of course a bill which I understand.

Senator Abetz interjecting—

Senator HOGG—Please do not take any points of order on me at this stage. The bill will look into warrants for additional serious offences, extend the protections under the act in relation to text and image based communications, facilitate the recording of calls to publicly listed ASIO numbers and clarify the application of the act to have delayed access message services. As I understand the bill, it takes up new forms of technology that have not otherwise been available to date and it extends the legislation covering, as I say, different forms of technology. Now that Senator Ludwig has arrived, that great speech will go down in the annals of Senate history. I thank Acting Deputy President Lightfoot and the Senate for their indulgence.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—The Deputy President is more than welcome.

Senator LUDWIG (Queensland) (12.40 p.m.)—I thank Senator Hogg for his contribution in relation to the Telecommunications (Interception) Amendment Bill 2004. It is a very important bill. I am sure he is very familiar with the topic. I was a member of the Senate Legal and Constitutional Legislation Committee, which examined this bill and reported to the Senate only this week. The Senate has a very full program to get through, and I might be able to finish before quarter to one, but I wish to make a number of points about the bill. There has been a little bit of toing-and-froing this week about the problem relating to incorporation of speeches, so I would rather put my remarks on the record. I will not take the full 20 minutes. It will mean, though, that we will deal with the bill later this afternoon. In any event, we should be able to go through it quite quickly.

In summary, the bill does a number of things: it broadens the range of offences in relation to which telecommunications interception warrants can be sought; it broadens the definition of interception to encompass written words and images and addresses delayed access communications, such as SMS, MMS, voicemail and email; it enables ASIO to record telephone calls to its publicly listed numbers; it removes the requirement on ASIO to provide a warrant to a telecommunications carrier in emergency situations; and, it enables certifying officers in an agency to terminate an interception while a warrant remains current.

The majority of the committee agreed with the need for most of these measures. The committee was satisfied that the new terrorism, cybercrime and firearms offences were sufficiently serious to justify their inclusion in the telecommunications interception regime. The committee also acknowledged that there could be serious matters of national security which might require ASIO to perform interceptions under a telecommunications interception warrant without notifying a carrier.

The committee was not overly persuaded by the need to enable ASIO to record incoming calls to publicly listed numbers without a
warning, but noted the limited privacy impact of such a measure and the current practice of recording 000 emergency calls. The committee did not recommend any change to this provision. The key concern of the committee was the provisions governing delayed access communications. The committee had previously examined equivalent provisions in the 2002 package of antiterrorism legislation and concluded that they were unclear and needed redrafting. In fact, I was on the committee at that time. It seems that, after something short of two years, we are still in the same position, which is a little bit unfortunate.

After hearing evidence from several organisations, including the Australian Federal Police, the committee found that the redrafted provisions still leave some important questions unanswered. These concerns include access by law enforcement agencies to copies of read emails on an ISP server, the interaction between the bill and the powers of law enforcement agencies under section 3L of the Crimes Act, and the access by an organisation to emails passing through its firewall for the purpose of internal integrity measures.

We welcome the government’s agreement to split the bill so that they can rectify these problems over the recess and that parliament can consider the remainder of the bill before it rises today. Effectively, they have agreed not to proceed with the issues on which the committee asked for greater clarity from the government. It is encouraging and I think it is helpful for the government to do that. In 2002 we did not think that the government got it right and the bill required redrafting. Unfortunately, we still think they have not got it right and it still needs a little more redrafting. It is helpful to find that they are going to rise to the challenge, especially after the evidence given by the AFP at the committee hearing. On a personal note it did leave me a little bit confused about what the position was in relation to the legislation, let alone our understanding of it. But I can indicate that, apart from the measures that will be split from the bill and held over until the next sittings, the opposition will be supporting the remainder of the bill.

Debate interrupted.

COMMONWEALTH ELECTORAL AMENDMENT (REPRESENTATION IN THE HOUSE OF REPRESENTATIVES) BILL 2004

Second Reading

Debate resumed.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.45 p.m.)—The trigger for the Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004 was the Electoral Commissioner’s February 2003 determination that the Northern Territory was just 295 people short of the population needed to retain its second House of Representatives seat. A number of reasonable concerns were raised about the determination, including that population estimates for the Northern Territory included a larger margin of error than those for other parts of Australia and that the 2003 determination was based on unpublished September quarter 2002 population estimates. The bill is the government’s third attempt to sort out problems arising from the redistribution of the Northern Territory’s House of Representatives seats. I think it is appropriate to use the slogan ‘third time lucky’ here because, after two botched attempts, the government has finally seen the sense of the position of the Labor Party and the Joint Standing Committee on Electoral Matters and has done more than just go for a quick political fix on this issue.

The bill before us is a sensible one. It deals in a fair way with the three recommen-
I think the right course of action was to send this to the Joint Standing Committee on Electoral Matters. I think that they have treated this matter very seriously. I am also pleased that we now have a bill that effectively picks up the three recommendations of the Joint Standing Committee on Electoral Matters.

First of all, we had Mr Tollner’s private member’s bill. Then the minister introduced the first territory representation bill, which only picked up one of the recommendations of the Joint Standing Committee on Electoral Matters. I am pleased that the minister has withdrawn that bill. Now we have a third attempt: the piece of legislation that we are debating today. I think it is significant that we are debating this particular legislation at a time made available in the Senate for dealing with noncontroversial legislation. As the recommendations of the Joint Standing Committee on Electoral Matters have been picked up, we now have a bill that can properly be described, at least within the House of Representatives and the Senate, as non-controversial.

The bill we are debating now has much more credibility because it deals with the real cause of the problem; it goes to the root of the problem and it provides a solution. It fixes the problem without the very important principles that underlie electoral redistributions in Australia—those important principles contained within the Commonwealth Electoral Act—being distorted in any way. We have a situation where, through a fulsome committee process and after three attempts, we have a third bill before us and I think we have got it right. I am not critical about that, by the way; if these things can be improved, we ought to acknowledge it. The opposition, for its part, found the previous bill unacceptable because it did not pick up on all the recommendations of the Joint Standing Committee on Electoral Matters.
This bill does, and as a result it is trying to fix the weaknesses that have been identified by the Joint Standing Committee on Electoral Matters that have led to this circumstance in the Northern Territory. Because those issues are addressed in this particular legislation it will be supported by the opposition.

Senator MURRAY (Western Australia) (12.53 p.m.)—As Senator Faulkner said, the Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004 finally gets it right. As a member of the Joint Standing Committee on Electoral Matters, I am pleased that the government has accepted all three unanimous recommendations of the committee which has four political parties sitting on it. It is welcome and reflects well on the positive contribution of our committee processes.

The initial proposal put to the committee was to examine whether or not there should be an automatic guarantee of two seats in the House of Representatives for both the Australian Capital Territory and the Northern Territory. The committee did not accept that proposal, and chose instead to look at the statistical issues with respect to the tried, tested and accepted distribution formula that is already in place in the Electoral Act and which has widespread support. The committee wished to test whether or not the vagaries of statistical measurements, their timing, the closeness of the figures, the margin of error and the problems of estimating the population in the Northern Territory in particular should be given more consideration and more weight than they had been. In effect, that is what happened. The consequence will be that the second Northern Territory House of Representatives seat will be retained. That is the consequence; it was not the necessary effect of the changes being made, because those changes do not guarantee a seat to the Northern Territory. It should be recognised that a seat could be lost in the Northern Territory in the future.

The committee was wise not to adopt the view that the Northern Territory should be guaranteed two seats. It was also wise not to be trapped in the parallel argument that the ACT was entitled, therefore, to be guaranteed three seats. It is clear that the population estimates for the Northern Territory and the ACT are less reliable than the estimates for the states, principally because of the difficulty associated with deriving an accurate estimate from a smaller population. This is an important issue when considering cases such as the Northern Territory, as it lost a seat on an estimated shortfall of 295 people. This is well within the margin of error surrounding its population estimate. The report recommendations do not disturb the basis on which state and territory redistributions are assessed, but they do require certainty as to the periodic ABS figures to be used and the error of margin.

To save committee time, I will now talk briefly about the issue of political donations in respect of the Democrats amendment that I will be moving in the committee stage on the voices. I signal that if the chamber accepts it, I propose to simply move it and not debate it, unless people wish to do so. In our supplementary remarks in the Joint Standing Committee on Electoral Matters’ report into the 2001 federal election, we recommended, amongst other things, that donations from overseas entities should be banned outright. One of the main reasons for banning foreign donations is the fact that donations to political parties and candidates by foreign individuals and organisations can be used as a means of avoiding disclosure requirements. While the recipients of such donations must still disclose details of the donor if the donation exceeds the disclosure threshold, the donor is not under such an obligation and
there is no way to ensure that the donor was the real source of the money.

The committee report responded to Labor concerns on donations to political parties from overseas. In its submission, Labor said it may be a mechanism to hide the source of donations and that the law was difficult to enforce because of foreign domicile. Unlike a number of other countries, foreign donations are not banned in any Australian jurisdiction. The committee, in my view, essentially fudged the issue by asking the AEC only to keep a watching brief. While the issue of foreign donations has been less contentious in Australia than in some other countries, there is real concern over the issue. In its 1996 election report, the AEC found that federal disclosure laws were inadequate to ensure full disclosure of the true source of donations received from overseas—the problem being that if the overseas based person or organisation who makes a donation to a political party was not the original source of those funds, there would be neither a legally enforceable trail of disclosure back to the true donor nor would there be any penalty provisions enforceable against persons or organisations who are domiciled overseas.

The AEC then recommended that donations received from outside Australia be prohibited altogether, but recognised that it still did nothing to resolve the problem of trying to track down and prosecute donors who are overseas. In our supplementary remarks, we were at pains to stress that it is neither necessary nor desirable to prevent individual Australians who are living overseas from donating to Australian political parties or candidates. Just a note: the word ‘foreign’ in our amendment is not to be found in the Commonwealth Electoral Act 1918. The definition we have used is taken from the statute book under the Antarctic Treaty Act.

The Democrats have a considerable agenda of changes we are seeking to the Commonwealth Electoral Act 1918. The opportunity to move some or all of our proposed amendments could be presented when bills to amend the act are before the Senate. On Monday, I tested the knowledge of the Joint Standing Committee on Electoral Matters as to whether these bills were due to come in. They did not know. However, I was pleased to discover that two bills have been listed in the House of Representatives today: the Electoral and Referendum Amendment (Access to Electoral Roll and Other Measures) Bill 2004 and the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004. The reason this is before you now is that the Democrats are concerned that, even with the prospect of the bills being introduced into the House, they may not make the legislative list for debate this financial year. There is a view that the June sittings may be the last before an election is called and so, because we think this is a discrete and urgent and relatively simple issue to make a determination on, we have sought to amend the act prior to the election. However, we recognise the importance of acknowledging the way in which this particular format is developed, so we will be happy to take the amendment vote on the voices.

Senator SCULLION (Northern Territory) (1.00 p.m.)—I recognise and acknowledge the time constraints in the Senate today, but it would be remiss of me as a senator for the Northern Territory not to speak on the Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004 to briefly and wholeheartedly support it. Adequate representation for Territorians has been an issue throughout history, as Territorians have a slightly different view from other people around Australia about the nature of their representation in parliament.
The constitutional history of the Territory since we became a body politic subject to the rule of the Commonwealth government has not always ensured respect for the democratic rights of Territorians in terms of equity. Even 103 years after Federation, the democratically elected parliament of the Northern Territory can still be overruled by this place. Territorians do not count as full voting Australians in a referendum. Given that background, I hope that members of this place can understand why Territorians may have a slightly different view on the determination of the committee.

This bill has, temporarily, fixed a very important dilemma. The Northern Territory faced a cut of 50 per cent in our House of Representatives seats but a loss of only a few per cent in terms of representation of our population. As the Joint Standing Committee on Electoral Matters established, the margin of error was around plus or minus 2,600 people and there was a shortfall of 295 people to obtain another seat. It was not equitable and the committee very rightly pointed out that we should change the way we approach our interpretation of those statistics to ensure that this shift in the population—because it fell within the standard deviation—will not have this effect again. This bill will ensure that any change in circumstances is at least tied in with the process used by the Australian Bureau of Statistics.

I would like to take this opportunity to thank the committee for its support and my colleague Northern Territory Senator Trish Crossin for her support. I would also like to acknowledge the tremendous work of the member for Solomon, Dave Tollner. He shouted long and hard about this issue and introduced a private member’s bill when there were several others saying that nothing could be done. The bill has solved the problem for now. I would have to agree with my colleague in the other place that the Territory should be guaranteed two seats in the House of Representatives and that changes in the statistical process made by the Australian Bureau of Statistics at whom should not interfere with our democratic rights in terms of equity for this percentage of the population. I will continue to fight in every forum for equity for the Northern Territory, both for statehood and for a guarantee that the minimum number of seats in the House of Representatives will be two.

Senator ROBERT RAY (Victoria) (1.03 p.m.)—I rise to speak on the Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004. One thing Senator Scullion has got right is that Territorians are treated differently. In the case of an error margin, they will have a benefit that no other Australian has, other than those who reside in the ACT. That is of course dictated by the Constitution. We do not want to see the High Court tip over the redivision of seats Australia wide as they apply to states. The Northern Territory is now being treated more generously—and properly so—than the states, because we are constrained constitutionally with the states. Senator Scullion uses the word ‘equity’. What equity means is self-interest and nothing more than that, so we will dismiss that as a bit of hyperbole that will go down well in the Territory but will not necessarily sway many votes here.

Senator Murray has proposed tacking on an amendment to the bill. The substance of it does not offend me but the method does. This bill has absolutely nothing to do with parliamentary funding and disclosure, and just to tack such an amendment on to a bill is passing strange. I understand his point, however. Who knows when he will get opportunities with the other two bills? My amendment which will allow Democrats to be elected to the Senate with just one per cent of
the vote will also have to wait, Senator Murray. I cannot help you out today.

Senator Murray—It is your doing and you enjoy it enormously.

Senator ROBERT RAY—If I can get the quota down to one per cent, I will be doing you a really big favour, but do not let me divert to that. Let me say that in my view the crucial part of this legislation is that it reflects what the parliament meant in the 1980s and early 1990s. The electoral bills that came into this place in the 1980s and 1990s not only contained initial and immediate remedies to problems but anticipated a variety of problems and tried to solve them in advance. I think it was quite far-sighted of this parliament to do so. For instance, it allowed the Electoral Commissioner to count, after a double dissolution, to determine seniority as it was in fact a half Senate election. It is up to this chamber to decide whether it wants to use this provision or not but it put it there. It also made provision for what happens if a Senate candidate dies. The Senate covered off all the contingencies that might emerge.

The other contingency we tried to head off or deal with was territorial representation. We tried to make sure that in future it would be very difficult to stack it out, to suddenly give a territory 10 seats when it only deserved two. The formula was put there and the formula was ‘where the chips fall, that is where they fall’. There was no manipulation or retrospective reconsideration et cetera. On the surface this bill may be thought to be a retrospective consideration of the Territory’s entitlement, but I am probably the only one left here with a corporate memory of the events, and I remember the debate. I chaired the committee as it then was, the Joint Committee on Electoral Reform, between 1984 and 1987, when we discussed all this. We did not necessarily record it in every report. The intention was to take the latest available statistics as they were published normally. This did not happen on this occasion. Maybe with the best of motives, the Electoral Commission got an advance copy of the next quarter. The reason we went for the latest published figures was that they could not be manipulated. On one occasion the Electoral Commission could call for an advance copy of figures; on the next occasion it might not. It may have the unintentional effect of manipulating either a Senate or indeed a state’s entitlement to a number of seats. We do not want that.

We knew at the time that there would be a six- to nine-month lag in the calculations and we were willing to accept that. If the calculations in the case of the Northern Territory had been made on the June figures, they were entitled to two seats—no question of that—and that is the way it should have been. But of course corporate memory is lost in the Australian Electoral Commission: there is hardly anyone there who was there 15 or 20 years ago, especially in the head office area. That is not surprising, but that memory is lost and it has never really affected the Australian Bureau of Statistics so it all gets lost in the mists of time. What the parliament today is really doing is reaffirming what in the eighties and nineties it intended to apply, and I think it is a very good thing that we are doing that.

Sure, there is a case in terms of statistical aberrations, which has been made out, but that cannot be applied retrospectively and should not be applied retrospectively. I am glad this legislation can apply into the future because then everyone will know where they stand. The old saying of letting the chips fall where they fall is a very good idea when it comes to these sorts of decisions. It takes partisanship out, it takes manipulation out and it means we can have a very fair electoral system. Reinterpreting the section of the act that says the ‘latest available pub-
lished figures’ will be a great guide into the future. I wish the bill a speedy passage.

**Senator CROSSIN** (Northern Territory) (1.08 p.m.)—I rise to provide a few comments on the Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004. We have spoken about the issue behind this bill a number of times in this chamber to date, so I will not hold up the passage of this legislation any longer than it needs to be. There are many people, not only in this parliament but also in the Northern Territory, who are waiting for us to ensure that this legislation is passed today and retains the Territory’s representation of two seats. There are a number of comments that I want to make. I have noticed that yesterday in the House of Representatives my colleague Warren Snowdon went to some lengths in outlining some of the detail as to how we got to the situation of looking at only having one House of Representatives seat at the last election. I can say that the determination by the Australian Electoral Commission for the Northern Territory to revert to one seat gave us a very good opportunity to have a very close look at the way in which the Australian Bureau of Statistics conduct their census. It forced us to look at the way in which data is collected in places like the Northern Territory during census time, and of course we now know the implications of what happens when that data is not collected accurately. Not only does it have a flow-on effect on the representation of places like the Northern Territory but of course it affects the money that is provided through the Grants Commission, because that is based on per head of population.

I, along with a number of colleagues in the Northern Territory, presented a submission to the Joint Standing Committee on Electoral Matters last year when the first bill relating to this was sent to that committee for inquiry. As we know, on 20 February 2003 the Australian Electoral Commission determined that, due to a population decline, the extra seat would be lost. On the basis of the figures provided by the Australian Bureau of Statistics, the Northern Territory missed out on retaining its two federal seats by 0.0022 of a quota, or 295 people. Through a lot of work that I and my office undertook during the estimates process—questions we asked of the Australian Bureau of Statistics—we were able to finally, at the end of the day, obtain from the Australian Electoral Commission evidence that what the Australian Bureau of Statistics had provided to the Electoral Commission was not in fact the latest available public statistics at the time they were requested. I will quote from a letter that was sent to Mr Trewin of the Australian Bureau of Statistics by Mr Andrew Becker of the Australian Electoral Commission. He says:

Mr Berger—
of the Australian Bureau of Statistics—
... indicated ... that the ABS may prepare a special version of the September Quarter ERP—
estimated resident population—
figures in a separate publication, which could be made available to the AEC—
Australian Electoral Commission—
in advance of the programmed release of the September Quarter 2002 Australian Demographic Statistics.

My understanding is that that is exactly what happened. I suppose if you want to be cute about this you could say that the ABS cobbled together some statistics that they believed would satisfy the requirements of the Australian Electoral Commission and put together a special version of the December quarter figures, as opposed to using the latest available statistics. It was in fact the statistics that were somehow put together by the Australian Bureau of Statistics that were used by the Australian Electoral Commission. Sena-
tor Ray is right: if the latest available statistics had been used, they would have been the June 2002 quarter figures and they would have clearly entitled the Northern Territory to retain its second seat.

For the Hansard, I also want to say to the Australian Bureau of Statistics that I hope they have listened to and looked long and hard at the debate about the reasons why the Northern Territory was going to lose its second representative in the House of Representatives. I hope it has read the transcripts of comments by people like Elliot McAdam, the member for Barkly, who said on 27 March 2003, in an interview on the ABC when he was questioned about the collection of the statistics:

Very clearly a lot of people were not included— he is talking about Tennant Creek in his area of Barkly—

and ... I got information as far as Port Keats/Wadeye indicated that there were probably about 20 forms that was not picked up. Now I don’t know how many people that would be but I would imagine it would be probably, you know, around ... the hundred mark.

He goes on to say:

I’ve got reports out of Borroloola, same sort of thing. You know, forms were not picked up by ABS and ... at least one community in the region was not visited.

Clearly, there were some very severe problems with the way in which the census was conducted in 2001 in respect of the Northern Territory. Work was done by Taylor and Bell, academics at the ANU who produced a report for the Queensland Centre for Population Research. They had this to say about their study in the Cape York Peninsula:

One conclusion of this study was that the enumeration strategy adopted by the ABS for use in remote Indigenous communities was structured in such a way as to increase the likelihood of omitting young people, the more mobile and the more socially marginal.

They go on to say:

Concerns have been expressed for some time by Indigenous community leaders, government agencies, and local service providers about the accuracy of demographic data for those Aboriginal and Torres Strait Islander communities in Queensland ...

It would seem that that is a concern that is replicated in the Northern Territory. I hope this leads to the Australian Bureau of Statistics taking a very careful look at the way in which people in remote Indigenous communities are counted in the census. I hope they will undertake an evaluation of the way in which that work is conducted. I hope that we see significant improvements in that by the time of the next census in 2005.

Thanks to the work of the Joint Standing Committee on Electoral Matters we now have an outcome that we can all live with. This does not give the Northern Territory two seats forever; it does not mandate a minimum representation in the parliament forever. This bill recognises that a mistake was made in 2003 and that the latest available statistics should have been used. That would have given the Territory two seats; therefore the 2003 determination needs to be set aside. But the legislation also ensures that the error of margin that is normally used by the ABS will be picked up and used by the Australian Electoral Commission and it puts in place a good foundation for the way in which these figures can be utilised in the future.

That is not to say that at some time in the future we will not go back to one seat. That may well happen but at least we now have a process that is much more thorough, takes much more account of the reality of the way these figures are used and, hopefully, will stop any recurrence of errors such as that which occurred last year. I commend this bill to the Senate. I again thank the Joint Standing Committee on Electoral Matters for its
work, and I am sure that the people of Solomon in particular will be pleased to know that their representation in this chamber will continue at least into the term of the next parliament.

Senator ABETZ (Tasmania—Special Minister of State) (1.17 p.m.)—The integrity and robustness of the Commonwealth Electoral Act and its processes lie at the very heart of our democratic system and the Australian people’s acceptance of the outcomes of our elections. The speakers who have involved themselves in today’s debate have, with slightly different slants, indicated the history and background of the Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004. Put very simply, the member for Solomon, David Tollner, raised the issue publicly and, as Senator Scullion indicated, when other people raised their hands in despair and said nothing could be done, Mr Tollner championed the cause. He introduced a private member’s bill. Confronted with that and, as the responsible minister, having tried to work through the process as to what an appropriate outcome ought be, I came to the view that the Joint Standing Committee on Electoral Matters should be seized of the matter, look at it and come up with a proposal.

I commend the committee and the representatives on that committee from four different political parties for coming up with a robust, transparent solution, which the government were willing to adopt. One of the committee’s three recommendations was to give, for the short term at least, the Northern Territory its second seat back. That was something which we as a government thought was important. As a result of that we were prepared to move on that recommendation alone, on the strict understanding and promise that we would be legislating in relation to the other two recommendations as well. The opposition took a view, which I fully accept, that one bill should include all matters so we got our skates on and put all three recommendations into the one bill. That bill is before us today and I thank honourable senators for their cooperation in assisting us in getting the bill through.

I refer to Senator Murray’s amendments and indicate that there are substantial technological problems with his amendments. I will not seek to delay the Senate today—time is at a premium—but simply indicate that there are problems. I would be happy to discuss them further with Senator Murray some time in the future.

Senator Murray—How about the principle?

Senator ABETZ—The principle is interesting because the concept of foreign donations was somewhat foreign to me until I had a look at the Australian Electoral Commission website and found out who the major beneficiary of foreign donations was. The major beneficiary is a political party that is not represented in the chamber by its two representatives at the moment. It is interesting that those who have ‘Australian’ as a prefix to the title of their party are the major beneficiaries of overseas contributions. I will not traverse that path too far because we are debating non-controversial legislation. I thank honourable senators for their contributions and indicate to the Acting Deputy President, Senator Lightfoot, who is looking at his clock, that I will finish after speaking for four minutes—as opposed to Senator Crossin, who took about eight minutes to repeat one sentence a hundred times. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.
Senator MURRAY (Western Australia)  
(1.22 p.m.)—I move Democrat amendment
(1) Page 9 (after line 9), at the end of the bill, add:

16 After section 306B

Insert:

306C Foreign donations, gifts etc. prohibited

(1) It is unlawful for a political party or a State branch of a political party or a person acting on behalf of a political party or a State branch of a political party to receive a gift, or disposition of property originating by whatever means from a foreign source.

(2) For the purposes of section 306C, 306D, 306E and 306F, foreign means of or pertaining to a country other than Australia.

306D Forfeiture of foreign donations, gifts etc.

(1) For the avoidance of doubt, where a foreign gift, or disposition of property is made to a political party or a State branch of a political party or a person acting on behalf of a political party or a State branch of a political party, the foreign gift is presumed to be contrary to section 306C and is to be dealt with in accordance with subsection (2).

Note: For strict liability, see section 6.1 of the Criminal Code.

(2) Where a person receives a foreign gift or disposition of property that, by virtue of this section, it is unlawful for the person to receive, an amount equal to the amount or value of the foreign gift or disposition of property is payable by that person to the Commonwealth and may be recovered by the Commonwealth as a debt due to the Commonwealth by action, in a court of competent jurisdiction, against:

(a) in the case of a foreign gift or disposition of property to or for the benefit of a political party or a State branch of a political party:

(i) if the party or branch, as the case may be is a body corporate—the party or branch, as the case may be; or

(ii) in any other case—the agent of the party or branch, as the case may be; or

(b) in any other case—the candidate or a member of the group or the agent of the candidate or of the group, as the case may be.

306E Donations by non-citizens resident in Australia lawful

A gift or disposition of property in Australia to a political party by a person who is a non-citizen resident in Australia is not a foreign donation for the purposes of section 306C or 306D.

Note: non-citizen is defined in section 5 of the Migration Act 1958 as a person who is not an Australian citizen.

306F Donations by Australians living abroad lawful

A gift or disposition of property by a person registered on the Roll living overseas is not a foreign donation for the purposes of section 306C or 306D.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (1.23 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
TAXATION LAWS (CLEARING AND SETTLEMENT FACILITY SUPPORT) BILL 2003

Second Reading

Debate resumed from 11 February, on motion by Senator Vanstone:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (1.23 p.m.)—I indicate our support for the bill.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.23 p.m.)—The Taxation Laws (Clearing and Settlement Facility Support) Bill 2003 ensures that no taxation consequences will arise as a result of a payment out of the National Guarantee Fund under section 891A of the Corporations Act 2001. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

SUPERANNUATION LEGISLATION AMENDMENT (FAMILY LAW) BILL 2002

Second Reading

Debate resumed from 15 May 2003, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (1.25 p.m.)—In relation to the Superannuation Legislation Amendment (Family Law) Bill 2002, the representative who normally deals with it could not be here today. He has another engagement. On behalf of Senator Sherry, I seek leave to have his speech incorporated into Hansard. I have shown it to the Government Whip.

Leave granted.

The speech read as follows—

Before I deal with the detail of this bill, I wish to draw attention to the fact that we are now debating this Bill in the Senate well over a year after the commencement of the new arrangements for including superannuation in family law property settlements 28 December 2002.

Time and time again this bill has been listed for debate in the Senate yet with regular monotony the government withdraws the Bill despite the distress and hardship the delay is causing to couples affected by it.

This delay in the necessary changes to the Commonwealth schemes is unacceptable. It is in fact a form a discrimination against those members of the Commonwealth Superannuation schemes to which it applies.

It leaves fund members currently engaged in property settlements in an uncertain position, delaying property settlements or the implementation of property settlements, causing further angst to those already suffering the unavoidable stress of marriage breakdown.

And there was no reason to justify the delay. The bill is has the full support of the opposition despite the fact that Labor would have preferred to amend the legislation to deal with an anomaly in the legislation which I will deal with later. In the interest of all those people waiting for this Bill to become Law Labor has withdrawn that amendment.

What the delay demonstrates is the Liberal government’s insensitivity to those individuals facing the consequence of marriage breakdown and illustrates its inability to draft effective legislation that deals adequately, and in a timely manner, with the matter in hand.

The government should have had the foresight to ensure that this legislation was prepared and passed in conjunction with the Family Law Legislation Amendment (Superannuation) Bill which passed in June 2001. The government had eighteen months before the provisions in this Bill became operative on 28 December 2002—ample time to get this very necessary complementary legislation in place.

The Bill the Superannuation Legislation Amendment (Family Law) Bill 2002, amends several
Acts governing the Commonwealth’s military and civilian superannuation schemes, to accommodate changes made to the Family Law Act 1975 in relation to superannuation benefits and marriage breakdown.

The new family law superannuation regime came into effect on 28 December 2002 following the passage of the Family Law Legislation Amendment (Superannuation) Bill, in June 2001. This legislation was passed with Labor’s full support. The new regime is intended to provide a more equitable and flexible system for the division of property under the Family Law Act.

The rules are designed to ensure that superannuation interests form part of the property of married couples and provide for those interests to be split between the parties in a property settlement following a marriage breakdown. Bringing superannuation entitlements into the property of the marriage is an extremely important change as in many cases superannuation is the only major asset, aside from the family home, for many couples.

The new regime provides rules to assist in the determination of the manner in which an interest in a fund can be dealt with in the event of marriage breakdown by the Family Court or by the parties to the marriage breakdown.

The rules we are considering today deal with the determinations of interests on marriage breakdown where the fund concerned is one of a number Commonwealth superannuation funds, and the extent of the benefits and those to whom they may be paid, are determined in the legislation governing each particular fund.

The new family superannuation regime allows three alternative methods for determining the separate entitlements of the fund member and the non-member spouse. These three alternative approaches have been considered for applying the new family law regime to the Commonwealth schemes. These were the default option, a percentage only split and a separate interest approach.

Allowing the difficulties inherent in the Commonwealth Schemes which provide a number of different possible benefit outcomes, this Bill opts for the separate interest approach whereby a separate interest is created for the non-member at the time of the split equal to a base amount determined by the agreement of the parties or order of the court. A non-member spouse’s benefits will be indexed in a similar way to a member’s benefits.

Where the separate interest is created during the growth phase of the member’s benefit, the benefit to the non-member will become payable when the non-member satisfies a relevant condition of release (such as age retirement, death or permanent disability).

Where the separate interest is created when the member is in receipt of a pension benefit, the non-member benefit can become payable immediately.

These provisions are to ensure that the retirement income objectives of superannuation are met. The immediate splitting of pension payments is appropriate because had the couple remained married they could have shared the pension payment. Given the uncertain nature of benefits under the Commonwealth scheme this could result in some separated couples receiving a combined benefit of more or less than what they would have received had they not separated, but despite the potential for this, it is preferable to the alternative prospect of one spouse receiving little or no benefits at all. More importantly this approach, by allowing a clean break between the parties, reduces the dependence of the non-member spouse on the payment of benefits to the member spouse.

Labor will support this Bill because the separate interest approach it applies is most likely the alternative options to provide fairness, flexibility and certainty for all parties.

One important feature of this is that where the non member spouse has an entitlement to a share of a pension, that entitlement belongs to the non-member spouse and is not contingent on the survival of the former spouse.

Unfortunately this is not then situation for all couples who have entered into agreements or sought orders since the introduction of the new family law regime.

The totally unnecessary delay in passing this legislation through the Senate has resulted in serious consequences for some couples. Because this bill
will not apply to any family law agreement or order relating to a superannuation asset that, although made after 28 December 2002, but implemented prior to the date of assent of this Bill, those non-member spouses who are receiving part of their former spouses pension will lose their pension on the death of the former spouse. This is clearly unjust—it may only apply to a small number of widows and widowers—but it is a serious problem which will result in a serious financial loss for them.

Yet the government will not accept an amendment to change this situation because according to the government if they accept this there is a risk that previous calculations will not accord with the provisions of this Bill and some individuals will be forced to return money to a fund and others might have a claim to compensation.

Surely the government should have thought of this when they drafted this legislation. Or at least the government should have expedited the legislation through both houses so that there was little opportunity for couples to fall into this hole—the gap between 28 December 2002 and the date of assent to this Bill.

Labor has adopted a bipartisan approach to the complex task of ensuring this new family law regime operates in a fair and efficient manner and will continue to do so, supporting the provisions of this Bill despite its inequities.

But Labor calls on the government to review this legislation once it is in place with a view to alleviating the position of those unfortunate widows and widowers who will lose their pension payments on the death of the former spouse.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.25 p.m.)—The Superannuation Legislation Amendment (Family Law) Bill 2002 proposes amendments to a number of acts that deal with superannuation arrangements for members of the Commonwealth civilian schemes and for members of the Australian Defence Force schemes. The bill will provide a framework within the relevant schemes for dealing with a superannuation agreement or Family Court order in relation to the division of the member’s superannuation following marriage breakdown. It will enable a separate superannuation benefit account to be created in the relevant superannuation arrangement for a member’s former spouse in these circumstances. This will allow for a clean break of superannuation entitlements between the parties at the time of marriage breakdown and also provide both parties with control over their respective individual benefits. I thank members for their contributions to the debate. I foreshadow I will be moving some government amendments in the committee stage.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.27
— I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 1 April 2004. I seek leave to move government amendments (1) to (11) on sheet VW222 together.

Leave granted.

Senator TROETH—I move:

(1) Clause 1, page 1 (line 6), after “Family Law”, insert “and Other Matters”.

(2) Clause 2, page 2 (table item 1, column 1), omit “4”, substitute “5”.

(3) Clause 2, page 2 (at the end of the table), add:

| 3. Schedule 2 | The day on which this Act receives the Royal Assent |

(4) Clause 4, page 2 (line 12), omit “amendments”, substitute “family law interest-splitting amendments”.

(5) Page 2 (after line 23), after clause 4, insert:

5 Application of indexation amendments

The amendments made by Schedule 2 apply:

(a) for the purpose of working out an increase in the rate of a pension benefit that is payable immediately before:

(i) the prescribed half-year beginning on 1 January 2004; and

(ii) each subsequent prescribed half-year; and

(b) for any other purpose related to the purpose mentioned in paragraph (a).

(6) Schedule 1, heading, page 3 (line 2), omit “Amendments”, substitute “Family law superannuation splitting and other matters”.

(7) Schedule 1, item 3, page 6 (line 6), omit “Board”, substitute “Authority”.

(8) Schedule 1, item 3, page 7 (lines 2 to 22), omit section 49D, substitute:

49D Operative time during growth phase—reduction of later standard pension or lump sum amount

(1) If:

(a) at the operative time, standard pension is not payable in respect of the original interest; and

(b) after the operative time, standard pension becomes payable to the member spouse in respect of the original interest;

then the annual rate of that standard pension is reduced to the amount calculated under the Orders.

Note: If the member spouse dies before becoming entitled to standard pension, then subsection (1) will nevertheless result in an indirect reduction of any widow’s pension that becomes payable. This happens because the amount of the widow’s pension is based on the amount of invalidity pay (a standard pension) that would have become payable to the member spouse at the time of death.

(2) A reduction under subsection (1) is to be disregarded in calculating the amount of any non-standard pension that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of pension under section 42 payable to a child of the member spouse after the member spouse’s death.

(3) If:

(a) at the operative time, standard pension is not payable in respect of the original interest; and

(b) after the operative time, a lump sum amount becomes payable, in respect
of the original interest, under section
32, 48, 48A, 56, 57 or 77;
then that lump sum amount is
reduced to the amount calculated
under the Orders.

(9) Schedule 1, page 14 (after line 26), after
item 11, insert:

Parliamentary Contributory Superannu-
ation Act 1948

11A Subsection 4(1) (at the end of the
definition of annuity)
Add “, including an associate annuity under
section 22CD or 22CE”.

11B At the end of section 4E
Add:
(4) Reductions under Division 3 of Part
VAA are to be disregarded in applying
subsection (3).

11C After subsection 18(8A)
Insert:
(8AAA) Any reduction under section 22CH
is to be disregarded in applying the
definition of basic rate in
subsection (8A) of this section.

11D After subsection 18(8AC)
Insert:
(8ACA) Any reduction under section 22CH
is to be disregarded in applying the
definition of basic rate in
subsection (8AC) of this section.

11E After subsection 18B(15)
Insert:
(15A) Any reduction under section 22CH
is to be disregarded in applying the
definition of basic rate in
subsection (15) of this section.

11F After Part V
Insert:
PART VAA—FAMILY LAW SUPER-
ANNUATION SPLITTING
Division 1—Preliminary
22CA Definitions
In this Part, unless the contrary
intention appears:

additional service factor at the
operative time has the meaning given
by section 22CC.
additional service factor at the
payment time has the meaning given
by section 22CC.
affected benefit means the affected
benefit referred to in section 22CH.
applicable additional percentage
means the percentage that is applied to
the rate of salary, or allowance by way
of salary, payable in respect of an
office in order to calculate:
(a) the annual rate of an additional
retiring allowance; or
(b) the annual rate of an annuity.
applicable basic percentage means the
percentage that is applied to the rate of
parliamentary allowance in order to
calculate:
(a) the annual rate of a retiring
allowance (other than additional
retiring allowance); or
(b) the annual rate of an annuity.
associate annuity means an annuity
under section 22CD or 22CE.
associate deferred annuity means an
associate deferred annuity under
section 22CE.
associate immediate annuity means an
associate immediate annuity under
section 22CD.
base amount means:
(a) for a splitting agreement—the base
amount specified in, or calculated
under, the agreement; or
(b) for a splitting order—the amount
allocated under subsection 90MT(4)

basic service factor at the operative
time has the meaning given by section
22CB.

basic service factor at the payment
time has the meaning given by section
22CB.
family law value means the amount determined in accordance with regulations under the Family Law Act 1975 that apply for the purposes of paragraph 90MT(2)(a) of the Family Law Act 1975. In applying those regulations, the relevant date is taken to be the date on which the operative time occurs.

Note: This amount is determined by applying those regulations, whether or not an order has been made under subsection 90MT(1) of the Family Law Act 1975.

member spouse has the same meaning as in Part VIIIB of the Family Law Act 1975.

non-member spouse has the same meaning as in Part VIIIB of the Family Law Act 1975.

non-standard annuity means an annuity other than a standard allowance or annuity.

operative time, in relation to a splitting agreement or splitting order, means the time that is the operative time for the purposes of Part VIIIB of the Family Law Act 1975 in relation to a payment split under the agreement or order.

Orders means Orders under section 22CK.

original interest means a superannuation interest to which section 22CD applies.

payment split has the same meaning as in Part VIIIB of the Family Law Act 1975.

payment time, in relation to the affected benefit, means the time when the benefit becomes payable.

scheme value means the amount determined under the Orders.

Secretary means the Secretary of the Department.

section 16A amount means the total referred to in paragraph 16A(1)(c).

section 22Q amount means the employer component, or the sum of the employer components, referred to in paragraph 22Q(5)(c).

splitting agreement means:
(a) a superannuation agreement (within the meaning of Part VIIIB of the Family Law Act 1975); or
(b) a flag lifting agreement (within the meaning of Part VIIIB of the Family Law Act 1975) that provides for a payment split.

splitting order has the same meaning as in Part VIIIB of the Family Law Act 1975.

splitting percentage means:
(a) for a splitting agreement—the percentage specified in the agreement under subparagraph 90MJ(1)(c)(iii) of the Family Law Act 1975; or
(b) for a splitting order—the percentage specified in the order under subparagraph 90MT(1)(b)(i) of the Family Law Act 1975.

standard allowance or annuity means:
(a) a retiring allowance; or
(b) an annuity, other than an annuity under section 19AA.

superannuation interest has the same meaning as in Part VIIIB of the Family Law Act 1975.

transfer amount means:
(a) if a splitting percentage applies—the amount calculated by multiplying the splitting percentage by the greater of:
(i) the family law value; and
(ii) the scheme value; or
(b) if a base amount applies and the scheme value is not more than the family law value—the base amount; or
(c) if a base amount applies and the scheme value is more than the
family law value—the amount calculated using the formula:

\[
\text{Scheme value} \times \frac{\text{Whole dollars in base amount}}{\text{Whole dollars in family law value}}
\]

**transfer factor** means the number calculated by dividing the number of whole dollars in the transfer amount by the number of whole dollars in the scheme value.

**22CB Basic service factor**

(1) In calculating the annual rate of the affected benefit in accordance with section 22CH, the **basic service factor at the payment time** and the **basic service factor at the operative time** are worked out under this section.

**Period of service at least 8 years**

(2) If the period of service is at least 8 years, then:

(a) the **basic service factor at the payment time** is the number calculated, by reference to the member spouse’s period of service before the payment time, by adding:

(i) for service that occurred within the first 8 years—0.0625 for each full year; and

(ii) for service that occurred within the next 10 years:

(A) 0.025 for each full year; and

(B) 0.025/365 for each left-over day.

(b) the **basic service factor at the operative time** is the number calculated, by reference to the member spouse’s period of service before the operative time, by adding:

(i) 0.0625 for each full year; and

(ii) for service that occurred within the next 10 years:

(A) 0.025 for each full year; and

(B) 0.025/365 for each left-over day.

**Period of service less than 8 years—retiring allowance (not under subsection 18(2AA))**

(3) If the period of service is less than 8 years and the affected benefit is a retiring allowance (other than an allowance under subsection 18(2AA)), then:

(a) the **basic service factor at the payment time** is 0.5; and

(b) the **basic service factor at the operative time** is the number calculated using the formula:

\[
0.5 \times \frac{\text{Days in period of service before operative time}}{\text{Days in period of service}}
\]

**Period of service less than 8 years—retiring allowance under paragraph 18(2AA)(b) or (c) or annuity under paragraph 19(1)(a)**

(4) If the period of service is less than 8 years and the affected benefit is a retiring allowance under paragraph 18(2AA)(b) or (c) or an annuity under paragraph 19(1)(a), then:

(a) the **basic service factor at the payment time** is 0.5; and

(b) the **basic service factor at the operative time** is the number calculated, by reference to the member spouse’s period of service before the operative time, by adding:

(i) 0.0625 for each full year; and

(ii) 0.0625/365 for each left-over day.
Period of service less than 8 years—retiring allowance under paragraph 18(2AA)(d)

(5) If the period of service is less than 8 years and the affected benefit is a retiring allowance under paragraph 18(2AA)(d), then:
   (a) the basic service factor at the payment time is 0.3; and
   (b) the basic service factor at the operative time is the number calculated, by reference to the member spouse’s period of service before the operative time, by adding:
      (i) 0.0375 for each full year; and
      (ii) 0.0375/365 for each left-over day.

22CC Additional service factor

(1) In calculating the annual rate of the affected benefit in accordance with section 22CH, the additional service factor at the payment time and the additional service factor at the operative time are worked out under this section.

Where subsection 18(10B) does not apply

(2) If subsection 18(10B) does not apply, then:
   (a) for each office, the additional service factor at the payment time is the number calculated, by reference to the member spouse’s period of service in the office before the payment time, by adding:
      (i) 0.0625 for each full year; and
      (ii) 0.0625/365 for each left-over day; and
   (b) for each office, the additional service factor at the operative time is the number calculated, by reference to the member spouse’s period of service in the office before the operative time, by adding:
      (i) 0.0625 for each full year; and
      (ii) 0.0625/365 for each left-over day.

Where paragraph 18(10B)(a) applies (one office)

(3) If paragraph 18(10B)(a) applies, then:
   (a) the additional service factor at the payment time is 0.75; and
   (b) the additional service factor at the operative time is:
      (i) if the period of service in the office is at least 12 years—0.75; or
      (ii) otherwise—the number calculated, by reference to the member spouse’s period of service in the office before the operative time, by adding:
         (A) 0.0625 for each full year; and
         (B) 0.0625/365 for each left-over day.

Where paragraph 18(10B)(b) applies (highest-paid office)

(4) If paragraph 18(10B)(b) applies, then:
   (a) the additional service factor at the payment time is 0.75; and
   (b) if, at the operative time, the member spouse is not entitled to parliamentary allowance, then the additional service factor at the operative time for the highest-paid office to which paragraph 18(10B)(b) applies is 0.75; and
   (c) if, at the operative time, the member spouse is entitled to parliamentary allowance, then the additional service factor at the operative time for the highest-paid office to which paragraph 18(10B)(b) applies is worked out as follows:
      (i) calculate a factor under paragraph (2)(b) of this section for each office referred to in paragraph 18(10B)(b), other than an office for which the period of service began after the operative time;
(ii) for each such factor, calculate a weighted factor under subsection (6) of this section;
(iii) add together the weighted factors calculated under subparagraph (ii) of this paragraph.

(5) If the additional service factor at the operative time, worked out under paragraph (4)(c), would be more than 0.75, then it is taken to be 0.75.

(6) The weighted factor is calculated using the formula:

\[
\text{Factor} \times \frac{\text{Salary for the office}}{\text{Salary for highest office}}
\]

where:

salary for highest office means the number of whole dollars in the salary applicable at the payment time to the office referred to in paragraph 18(10B)(b) that had the highest rate of salary, or allowance by way of salary, at the payment time.

salary for the office means the number of whole dollars in the salary, or allowance by way of salary, applicable to the office at the payment time.

Division 2—Benefits for non-member spouse

22CD Associate annuity for non-member spouse

(1) This section applies to a superannuation interest under this Act (the original interest) if:

(a) the Secretary receives a splitting agreement or splitting order in respect of the original interest; and
(b) the original interest is not an entitlement to an annuity under section 19AA; and
(c) the member spouse and the non-member spouse are both alive at the operative time; and
(d) if a base amount applies—the base amount at the operative time is not more than the family law value or the scheme value.

Immediate annuity if operative time in payment phase

(2) If, at the operative time, standard allowance or annuity is payable in respect of the original interest, then the non-member spouse is entitled to an associate immediate annuity from the operative time, at the rate calculated under the Orders by reference to the transfer amount.

Deferred annuity if operative time in growth phase

(3) If, at the operative time, standard allowance or annuity is not payable in respect of the original interest, then the non-member spouse is entitled to an associate deferred annuity in accordance with section 22CE.

22CE Associate deferred annuity

(1) The associate deferred annuity is payable at an annual rate calculated under the Orders by reference to the transfer amount.

(2) The annuity is payable from the later of:

(a) the operative time; and
(b) the earliest of the following dates:

(i) if the Trust is satisfied that the non-member spouse has become permanently incapacitated—the date that the Trust considers to have been the date on which the person became permanently incapacitated;
(ii) a date notified to the Secretary under subsection (3);
(iii) the 65th anniversary of the non-member spouse's birth.

(3) The non-member spouse may give a written notice to the Secretary specifying a date that is not earlier than the 55th anniversary of the non-member spouse's birth. However, the notice has no effect if section 26B
would prevent the annuity being paid to
the non-member spouse from the
specified date.

Note: Section 26B applies the
preservation requirements of
the Superannuation Industry
(Supervision) Regulations.

(4) The annuity is not payable unless:
(a) a written application has been made
requesting payment of the benefit; and
(b) the applicant has provided any
information that is necessary to
determine whether the benefit is
payable.

(5) An application for payment on the
ground of incapacity must be
accompanied by the following:
(a) a certificate given by a medical
practitioner nominated by the Trust;
(b) a certificate given by a medical
practitioner nominated by, or on
behalf of, the non-member spouse;
(c) such additional information or
documents as the Trust requires.

(6) The certificates mentioned in
paragraphs (5)(a) and (b) must include
a statement to the effect that, in the
opinion of the medical practitioner
concerned, the non-member spouse is
permanently incapacitated, as defined
in this section.

(7) If the non-member spouse dies before
the annuity becomes payable, an
amount calculated under the Orders
must be paid to the legal personal
representative or, if no legal personal
representative can be found, to any
individual or individuals that the Trust
determines.

(8) For the purposes of this section, a
person is **permanently incapacitated** if,
and only if, the person suffers from
**permanent incapacity** within the
meaning of the *Superannuation
Industry (Supervision) Regulations
1994*.

---

**22CF Commutation of small associate annuity**

(1) If:
(a) the annual rate of associate immediate annuity that becomes payable to the non-member spouse is less than the amount determined under the Orders; or
(b) the annual rate of associate deferred annuity that becomes payable to the non-member spouse is less than the amount determined under the Orders;

then the non-member spouse may elect to commute the annuity.

(2) The election must be made in writing
to the Secretary not later than 3 months
after the annuity becomes payable.

(3) If the non-member spouse makes the
election, then the non-member spouse
is entitled instead to:
(a) if paragraph (1)(a) applies—a lump
sum equal to the transfer amount; or
(b) if paragraph (1)(b) applies—a lump
sum calculated under the Orders.

---

**Division 3—Reduction of benefits for member spouse**

**22CG Operative time during growth phase—reduction of lump sum**

(1) This section applies if:
(a) at the operative time, standard
allowance or annuity is not payable
in respect of the original interest; and
(b) the original interest is not an
entitlement to an associate annuity.

(2) The contributions in respect of the
original interest are reduced, with
effect from the operative time, by the
amount calculated using the formula:

\[
\text{Contributions at OT} \times \text{Transfer factor}
\]

where:
**contributions at OT** means the amount of the contributions, ascertained at the operative time.

Note: Under subsections 20A(2) and 22Q(3), certain amounts are deemed to be contributions (in addition to contributions under Part IV).

(3) Any section 16A amount in respect of the original interest is reduced, with effect from the operative time, by the amount calculated using the formula:

\[
\text{Section 16A amount at OT} \times \text{Transfer factor}
\]

where:

- **section 16A amount at OT** means the section 16A amount, ascertained at the operative time.

(4) Any section 22Q amount in respect of the original interest is reduced, with effect from the operative time, by the amount calculated using the formula:

\[
\text{Section 22Q amount at OT} \times \text{Transfer factor}
\]

where:

- **section 22Q amount at OT** means the section 22Q amount, ascertained at the operative time.

**22CH Operative time during growth phase—reduction of retiring allowance**

(1) This section applies if:

(a) at the operative time, standard allowance or annuity is not payable in respect of the original interest; and

(b) after the operative time, a retiring allowance (the affected benefit) becomes payable to the member spouse in respect of the original interest.

Note: If the member spouse dies before becoming entitled to a retiring allowance, then subsection (1) will nevertheless result in an indirect reduction of any annuity under paragraph 19(1)(a) to a surviving spouse. This happens because the amount of that annuity is based on the amount of retiring allowance that would have become payable to the member spouse if he or she had not died.

**Reduction of basic percentage**

(2) In calculating the annual rate of the affected benefit, the applicable basic percentage is replaced by the percentage calculated using the formula:

\[
\left( \frac{\text{BSF at PT} \times \text{Transfer factor} - \text{BSF at OT} \times \text{Transfer factor}}{\text{BSF at OT} \times \text{Transfer factor}} \right) \times 100
\]

where:

- **BSF at OT** means the basic service factor at the operative time.
- **BSF at PT** means the basic service factor at the payment time.

**Reduction of additional percentage**

(3) In calculating the annual rate of the affected benefit, each applicable additional percentage is replaced by the percentage calculated using the formula:

\[
\left( \frac{\text{ASF at PT} \times \text{Transfer factor} - \text{ASF at OT} \times \text{Transfer factor}}{\text{ASF at OT} \times \text{Transfer factor}} \right) \times 100
\]

where:

- **ASF at OT** means the additional service factor at the operative time for the office concerned.
- **ASF at PT** means the additional service factor at the payment time for the office concerned.

(4) Subsection (3) does not apply to an applicable additional percentage for an office if:
(a) the period of service in the office began after the operative time; and

(b) paragraph 18(10B)(b) does not apply.

Multiple interest splits for same original interest

(5) If, before the affected benefit becomes payable, the original interest has been split more than once (that is to say, section 22CD has applied more than once), then the calculations under subsections (2) and (3) are modified as set out in subsections (6) and (7).

Note: If the same superannuation interest is subject to 2 or more payment splits, then section 22CD applies separately in relation to each of those splits.

(6) In applying the formula in subsection (2), the component (BSF at OT x Transfer factor) is to be replaced by the number calculated using the following steps, based on the chronological order of the operative times (starting with the earliest):

(a) calculate a factor (the *interim factor*) for the first split using the formula:

\[
\text{BSF at OT for first split} \times \frac{\text{Transfer factor for first split}}{1}
\]

(b) calculate a factor (the *interim factor*) for the next split (the *current split*), using the formula:

\[
\text{BSF at OT for current split} \times \frac{\text{Interim factor for previous split}}{\text{Transfer factor for current split}} - \frac{\text{Interim factor for previous split}}{\text{Transfer factor for current split}}
\]

(c) calculate a factor for each remaining split (if any), using the formula in paragraph (b);

(d) add together the factors calculated under paragraphs (a) to (c).

Example: Assume 2 splits, with the first split having a basic service factor (BSF) of 0.4 and a transfer factor of 0.5 and the second split having a basic service factor of 0.6 and a transfer factor of 0.5. Applying the above steps, the replacement number for the formula is 0.4, that is:

\[
(0.4 \times 0.5) + ((0.6 - 0.2) \times 0.5)
\]

(7) In applying the formula in subsection (3), the component (ASF at OT x Transfer factor) is to be replaced by the number calculated using the following steps, based on the chronological order of the operative times (starting with the earliest):

(a) calculate a factor (the *interim factor*) for the first split using the formula:

\[
\text{ASF at OT for first split} \times \frac{\text{Transfer factor for first split}}{1}
\]

(b) calculate a factor (the *interim factor*) for the next split (the *current split*), using the formula:

\[
\text{ASF at OT for current split} \times \frac{\text{Interim factor for previous split}}{\text{Transfer factor for current split}} - \frac{\text{Interim factor for previous split}}{\text{Transfer factor for current split}}
\]

(c) calculate a factor for each remaining split (if any), using the formula in paragraph (b);

(d) add together the factors calculated under paragraphs (a) to (c).

Reduction not to affect later non-standard annuity

(8) A reduction under this section is to be disregarded in calculating the amount of any non-standard annuity that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of annuity payable under section 19AA in respect of a child of the member spouse.
after the member spouse’s death.

22C1 Operative time during growth phase—reduction where original interest is entitlement to associate deferred annuity

(1) This section applies if:

(a) at the operative time, standard allowance or annuity is not payable in respect of the original interest; and

(b) the original interest is an entitlement to an associate deferred annuity.

(2) The annual rate of that associate annuity (when it becomes payable) is reduced to the amount calculated under the Orders.

Note: Although an associate immediate annuity becomes payable at the operative time, an associate deferred annuity will often not become payable until some time after the operative time.

22CJ Operative time during payment phase—reduction of standard allowance or annuity

(1) If, at the operative time, standard allowance or annuity is payable in respect of the original interest, then the annual rate of that allowance or annuity is reduced to the amount calculated under the Orders.

Note: Although an associate immediate annuity becomes payable at the operative time, an associate deferred annuity will often not become payable until some time after the operative time.

Division 4—Miscellaneous

22CK Ministerial Orders

(1) The Minister may make Orders prescribing matters required or permitted by this Part to be prescribed.

(2) An Order is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(3) An Order is taken to be a statutory rule for the purposes of the Statutory Rules Publication Act 1903.

(10) Schedule 1, item 27, page 31 (line 5), after “Family Law”, insert “and Other Matters”.

(11) Page 33 (after line 9), at the end of the Bill, add:

Schedule 2—Indexation under the Defence Forces Retirement Benefits Act

Defence Forces Retirement Benefits Act 1948

1 Subsection 83(1)

Insert:

first quarter, in relation to a half-year, means:

(a) for a half-year beginning on 1 January in a year—the March quarter of the year; and

(b) for a half-year beginning on 1 July in a year—the September quarter of the year.

2 Subsection 83(1)

Insert:

half-year means a period of 6 months beginning on 1 January or 1 July in any year.

3 Subsection 83(1)

Insert:

prescribed half-year means the half-year commencing on 1 January 2002 or a subsequent half-year.

4 Subsection 83(1) (definition of prescribed year)

Insert:

Repeal the definition.
5 Subsection 83(2)
Omit “March quarter”, substitute “first quarter in a half-year”.

6 Subsection 84(1)
Omit “March quarter” (wherever occurring), substitute “first quarter”.

7 Subsection 84(1)
Omit “year” (wherever occurring), substitute “half-year”.

8 Subsection 84(2)
Omit “year”, substitute “half-year”.

9 Subsection 84(3)
Omit “year” (wherever occurring), substitute “half-year”.

10 Subsection 84(3)
Omit “year” (wherever occurring), substitute “half-year”.

11 Subsection 84(4)
Omit “year” (wherever occurring), substitute “half-year”.

12 Subsection 84(4)
Omit “30 June” (wherever occurring), substitute “30 June or 31 December (as the case requires)”.

13 Section 84A
Omit “year” (wherever occurring), substitute “half-year”.

14 Subsection 84B(1)
Omit “year” (wherever occurring), substitute “half-year”.

15 Subsection 84B(2)
Omit “16 June in the preceding year”, substitute “16 June or 16 December (as the case requires) in the preceding half-year”.

16 Subsection 84B(3)
Omit “16 June in the preceding year”, substitute “16 June or 16 December (as the case requires) in the preceding half-year”.

17 Subsection 84B(3)
Omit “30 June in the preceding year bears to 12”, substitute “30 June or 31 December (as the case requires) in the preceding half-year bears to 6”.

18 Subsection 84C(2)
Omit “March quarter” (wherever occurring), substitute “first quarter”.

19 Subsection 84C(2)
Omit “year” (wherever occurring), substitute “half-year”.

20 Paragraph 84C(3)(a)
Repeal the paragraph, substitute:
(a) in relation to the prescribed half-year that commenced on 1 January 2002—the amount that was the existing amount in relation to that provision, as calculated under this section immediately before the commencement of Schedule 2 to the Superannuation Legislation Amendment (Family Law and Other Matters) Act 2003; and

21 Paragraph 84C(3)(b)
Omit “year”, substitute “half-year”.

22 Section 84D
Omit “30 June in a year”, substitute “30 June or 31 December (as the case requires) in a half-year”.

23 Subsection 84E(1)
Omit “year” (wherever occurring), substitute “half-year”.

Note: The heading to section 84E is altered by omitting “year” and substituting “half-year”.

24 Subsection 84E(2)
Repeal the subsection.

25 Subsection 84E(3)
Omit “year” (wherever occurring), substitute “half-year”.

26 Subsection 84F(2)
Omit “year” (wherever occurring), substitute “half-year”.

Note: The heading to section 84F is altered by omitting “year” and substituting “half-year”.
Note: The heading to section 84F is altered by omitting “year” and substituting “half-year”.

27 Subsection 84F(3)
Repeal the subsection.

28 Sections 84G and 84GA
Repeal the sections.

Senator LUDWIG (Queensland) (1.28 p.m.)—On behalf of the opposition I can indicate support for those amendments.

Question agreed to.

Senator LUDWIG (Queensland) (1.28 p.m.)—I advise the Senate that the opposition will not be proceeding with its amendments.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.29 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Sitting suspended from 1.33 p.m. to 2.00 p.m.

REPRESENTATION OF VICTORIA

The PRESIDENT (2.00 p.m.)—I have received, through the Governor-General, from the Governor of Victoria a facsimile copy of the certificate of the choice by the houses of parliament of Victoria of Mitchell Peter Fifield to fill the vacancy caused by the resignation of Senator Richard Alston. I table the document.

SENATORS SWORN

Senator Mitchell Peter Fifield made and subscribed the oath of allegiance.
QUESTIONS WITHOUT NOTICE
Taxation: Family Payments

Senator JACINTA COLLINS (2.03 p.m.)—My question is to Senator Patterson, the Minister for Family and Community Services.

Honourable senators interjecting—

The PRESIDENT—Order! Are we going to start our last question time for these sittings with that sort of noise? I am not going to accept it today. We will have some peace and quiet.

Senator JACINTA COLLINS—Does the minister recall the leaked cabinet minute of 17 December 2002 which states that cabinet had noted:

... that pressures remain on families in the transition to parenthood ... including: a particularly sharp fall in income against which families receive varying levels of government assistance.

Why has the government still not acted on this 2002 cabinet minute note, which recommended improving financial assistance at the time of the birth of a child? Will the government now deliver on its three-year-old promise to help families balance their work and family responsibilities by developing an alternative policy which would deliver timely assistance on the birth of a child?

Senator PATTERSON—The question gives me the opportunity to remind honourable senators and the community of what the government have done for families in assisting them to balance work and family. We have given families $19 billion a year in assistance. That is almost $2 billion a year more in family assistance since the introduction of the new family tax system. We have given families assistance—particularly where one member of the family chooses to stay at home—through family tax benefit B, by providing almost $2,900 for each child under five. We have also given families assistance with child care by doubling the amount of funding that has been spent on child care from $4 billion to $8 billion since we came to government.

Senator Jacinta Collins interjecting—

Senator PATTERSON—Senator Collins does not want to hear this, but she is going to have to listen to the facts. She does not like to hear that we have actually doubled spending on child care. We have increased the number of child-care places by 210,000, to 530,000. We have also assisted families to balance work and family by introducing much more flexible workplaces. Labor are so inflexible in their slavery to unions that families do not have the opportunity to have flexible workplaces that deal with balancing their work and family. Labor have always failed to cost and fund their policies. When they were in government, they racked up $60 billion worth of debt, on which we were paying almost $5 billion a year in interest. You would think they would have learnt that when you borrow you have to pay interest—in this case, $5 billion in interest. That is money we can now spend on assisting families through the Stronger Families and Communities program. We can assist them in caring for their families.

But Labor did not care. They borrowed from the next generation of children. They did not build for the future. Senator Collins shrugs her shoulders and closes her eyes because she does not want to hear that we have increased assistance to families by almost $2 billion a year since the introduction of the new family tax system. We have doubled the spending on child care, we have increased the number of child-care places by 210,000 and we have increased flexibility in the workplace to assist families to balance work and family.

Senator JACINTA COLLINS—Mr President, I ask a supplementary question. Is the minister aware that there are no budget
papers or portfolio statements in existence that can verify the Treasurer’s extraordinary claim that the baby bonus spending has been revised down by $347 million in the forward estimates? Has the government hidden these budget numbers because there is a secret plan to scrap the baby bonus, or is it just that Mr Costello cannot admit that a policy that he once described as ‘the centrepiece of the government’s election platform’ is a massive flop?

**Senator PATTERSON**—I always say that as soon as Labor have a policy with a problem, and their child-care payment policy has a problem, they concoct a conspiracy or they scaremonger—one or the other. What you ought to be worried about, Senator Collins, is that you got rolled. Your side have been talking about a paid maternity leave scheme, and it has gone off the agenda. Where is the Labor Party’s paid maternity leave scheme? Surreptitiously they got rid of that and substituted it with this baby care payment which is not fully funded.

**Australian Defence Force: Deployment**

**Senator FERGUSON** (2.09 p.m.)—My question is to the Leader of the Government in the Senate and Minister for Defence, Senator Hill. Is the minister aware of claims today by the Leader of the Opposition that the immediate withdrawal of Australian troops from Iraq would have no consequences? Will the minister outline the consequences that such a reckless action would have for Australian diplomats and officials in Iraq and for the people of Iraq? I further ask: is the minister aware of any information provided by the defence department officials which may have led the opposition leader to make such a foolish remark?

**Senator HILL**—Thank you, Senator Ferguson. Let me answer the last question first. There have been no operational briefings on Iraq to Mr Latham from Defence officials. None. In fact, as far as our record shows, Mr Latham has never even asked for an operational briefing on Iraq, let alone received one. In light of that, Mr Latham’s verbalising of Mr Bonighton yesterday was disgraceful. Following a request made through the Prime Minister’s office, my office arranged for Mr Latham to receive the standard briefing that all new opposition leaders receive on the general roles and responsibilities of DSD and Pine Gap. That briefing was done by Mr Bonighton, a senior and respected public servant. Mr Bonighton gave the briefing and, on returning to Canberra, wrote and signed a note outlining the areas that were covered in detail in the briefing. Not surprisingly, they were the areas which are covered in all such standard briefings. Current operations in Iraq were not mentioned in that note. This is not a politically convenient reconstruction done months later; it was written and signed while the meeting was still fresh in Mr Bonighton’s mind.

The Prime Minister has offered to show Mr Latham that note. Not surprisingly, Mr Latham has not taken up the offer. In contrast with Mr Bonighton’s recollection of the briefing, which was backed up by the contemporaneous note, we have an opposition leader making wild unsubstantiated claims. In doing so, what he basically said was that Mr Bonighton briefed against the government of the day—shocking allegations against a highly respected and professional public servant and, I might say in passing, a public servant that still has the full confidence of this government.

This was an invention by Mr Latham for his short-term political objective of trying to get himself out of the mess he created. We know that he could not have been briefed on operational matters. If he had, how could he have made the statement this morning that the immediate withdrawal of troops would have no consequences? The immediate with-
The immediate withdrawal of our troops would leave Australian diplomats, Australian officials and Australian businessmen completely without protection. The immediate withdrawal of our troops would leave the new Iraqi army short of professional trainers. The immediate withdrawal of Australian troops would punch holes in the provisional authority, the coalition headquarters in Baghdad and the UK headquarters in Basra.

Mr Latham told the parliament yesterday that he relies on Senator Evans for regular updates on defence. Last week, it was Mr Beazley. I have been advised by Defence that, according to their records, the last operational briefings given to Senator Evans on Iraq by the head of strategic operations were on 14 April 2003—almost 12 months ago. Mr Latham told the parliament that he relies on Mr Rudd, because Mr Rudd has travelled to Baghdad and he was briefed there. The only problem with that is that, after those briefings, Mr Rudd did not call for an immediate withdrawal of the troops; he called for more military trainers to go to Iraq. He called for police trainers to go to Iraq. He called for Electoral Commission workers to go to Iraq. Today the government has announced the appointment of Major-General Jim Molan as the Deputy Chief of Operations within the multilateral force headquarters in Baghdad, to be established as part of the transition to Iraqi governance. I congratulate him. It is an important position.

(Time expired)

Senator FERGUSON—Mr President, I ask a supplementary question. Can the minister inform the Senate of any further new contributions that the ADF is making in Iraq? How would an ill-conceived policy of the immediate withdrawal of all troops negate the benefits of this contribution?

Senator HILL—As I was just saying, the appointment of Major-General Molan to such a highly important position in the new military headquarters that we established after the transition demonstrates how importantly Australia is regarded as part of the coalition that is helping rebuild Iraq for the Iraqi people. The opposition is arguing that that contribution should be withdrawn—that we should cut and run, we should turn our backs on the Iraqi people in their time of need and we should fail to make a contribution that has the hope of creating a stable and democratic country in the Middle East, an area that is of such strategic importance to the whole global community. Why would you turn your back and fail to meet that responsibility when Australia is being recognised as doing such a good job? Mr Latham should think again about this ill-conceived policy.

Australian Defence Force: Deployment

Senator CHRIS EVANS (2.15 p.m.)—I have a question for Senator Hill, the Minister for Defence. It follows on from his selective misquoting of Mr Latham in his previous answer. I also remind him that we had a long discussion about Iraq at the estimates meeting on 18 February, at which we discussed the deployment of the troops, their role and when they would be coming home. Putting that to one side for the moment, can the minister confirm that he requested the Secretary of the Department of Defence, Mr Ric Smith, to provide him with advice on briefings of the Leader of the Opposition by members of the ADF or officials of the Department of Defence? Were Mr Smith or his deputy secretary, Mr Bonighton, given any directions about the contents of the letters? Were they provided with draft letters?

Senator HILL—I do not remember Mr Latham saying yesterday that he got his information from the Hansard; he said he got it from Senator Chris Evans. The whole world had the opportunity to know what happened in the estimates committee. I suspect Mr
Latham did not read the *Hansard*. I suspect he is ignorant of these matters. I suspect that until very recently he had no interest in these matters. If he had an interest, why would he have made this silly policy—this dangerous policy—on the run—

**Senator Chris Evans**—Mr President, I rise on a point of order on the question of relevance. The minister did his dorothy dixer and his rave. I asked him a specific question about whether he gave the instructions of the request to the Secretary of the Department of Defence.

**Senator Ian Campbell**—What’s the point of order?

**Senator Chris Evans**—Will you ask the minister to refer to the question—

**Senator Ian Campbell interjecting**—

**The PRESIDENT**—Order! Senator Campbell!

**Senator Chris Evans**—and ask Senator Campbell to sit down and pipe down—

**Senator Ian Campbell interjecting**—

**The PRESIDENT**—Senator Campbell, come to order!

**Senator Chris Evans**—He has to come to order too.

**The PRESIDENT**—Senator Campbell, are you reflecting on the chair?

**Senator Ian Campbell**—I am reflecting on him.

**The PRESIDENT**—I ask you to remain silent. Senator Evans, your point of order was regarding relevance.

**Senator Chris Evans**—As I stated, the minister has not attempted to answer the question at all. He has continued with his dorothy dixer. I would ask you to bring his attention to the question.

**The PRESIDENT**—The minister has 3½ minutes left to answer the question. I remind him of the question.

**Senator HILL**—I actually thought that Senator Evans raised the issue of the estimates committee. He was trying to provide wriggle room for Mr Latham because Mr Latham said he took advice from Senator Evans, and Senator Evans had not had a briefing for a year. So Senator Evans on the run says, ‘Oh, yes, it must’ve come out of the estimates committee.’ But that is not a briefing; that is advice to the world.

**Senator Chris Evans**—We get more there than we get out of the briefings.

**Senator HILL**—Don’t smile, Senator Evans. The point I was making is that this opposition leader is not interested in facts. He made this policy on the run. He thought there was some short-term political advantage, some popular position and some popular gain he could get from this policy and, without thinking about the consequences to Australian forces and without thinking about the consequences to Iraq, he let this policy go and since then he has been trying to wriggle out of it.

**Senator Chris Evans**—Mr President, on the point of order: the minister has now had another 1½ minutes. I draw your attention to the question of relevance. I asked him a specific question about a request made to the defence secretary, whether he made it and whether he gave instructions about what the letter should contain. I ask you to draw his attention to the question.

**The PRESIDENT**—I have ruled and other presidents have ruled that I cannot instruct the minister as to how he is to answer the question. All I can do is remind him of the question and remind him that he has 2½ minutes left.

**Senator Cook**—Don’t duck and weave, face up to your responsibility and answer the question.

**The PRESIDENT**—Order, Senator Cook!
Senator HILL—Mr Latham claimed to have been briefed by defence officials—

Senator Carr—Did you ask the secretary of the department? Did you monster the secretary?

Senator HILL—on operational matters in Iraq. I, through my office, asked the secretary of my department whether that is correct. He asked around the department and said no—no evidence of any briefings for Mr Latham. Similarly, Mr Bonighton is on the public record as indicating through the letter that has been tabled that there was no operational briefing from him. So yesterday Mr Latham just totally invented this story and, in doing so, did serious damage to a highly respected and professional public servant.

Senator Faulkner—The only person he did damage to was John Howard—that’s who he did damage to.

Senator HILL—This is the Labor Party that was telling us how important it was to protect the integrity of public servants only a week or so ago!

Senator Faulkner interjecting—

The PRESIDENT—Order! Senator Faulkner!


Senator Faulkner interjecting—

The PRESIDENT—Order! Senator Faulkner, continually shouting across the chamber while the minister is trying to answer the question does not help.

Senator Bolkus—You guys got a drubbing yesterday; you’re getting one today too and you deserve it.

Senator HILL—It is one thing for Mr Latham to invent an explanation to try and get himself out of this mess, but what right has he got to undermine the credibility of a highly respected public servant? How many on the other side went to Mr Latham and said, ‘How dare you do this?’ Did Senator Ray? Did Senator Faulkner? All of those who are demanding high standards—

Senator Cook interjecting—

Senator Chris Evans—You dragged him into this.

Senator HILL—in relation to the treatment of public servants—

The PRESIDENT—Order! Senator Evans, Senator Cook and Senator Bolkus, continually shouting across the chamber is disorderly. It has been ruled so on many occasions. I have asked you to come to order—and, Senator Ian Campbell, interjections by you do not help either.

Senator HILL—The interjection was that we dragged him into it. We did not; he claimed he got the briefings. He did not tell the truth; he invented it. No-one gave him the briefings. He dragged the public servants into this debate, and he was prepared to kick the public servants in the guts to try and make a political point—

Senator Chris Evans—Mr President, I rise on a point of order. It is now 4½ minutes since the question was asked, and the minister still has not brought himself to answer the question. You keep bringing us to order in terms of interjections. We would like an answer to the question; otherwise there is no point to question time.

The PRESIDENT—There is no point of order.

Senator Cook—You’re gutless, Hill. Face up to your responsibilities.

The PRESIDENT—Withdraw that! Senator Cook, I ask you to withdraw.

Senator Cook—What?

The PRESIDENT—What you just said. It was unparliamentary.

Senator Cook—I’m telling the truth.
The PRESIDENT—Senator Cook, I ask you to withdraw that unparliamentary language.

Senator Cook—If you want me to withdraw the truth, I withdraw.

The PRESIDENT—I ask you to withdraw that unconditionally.

Senator Faulkner—He has withdrawn.

The PRESIDENT—I do not need your advice, Senator Faulkner.

Senator Cook—I’ve withdrawn my statement, Mr President.

Senator HILL—It reminds me of the truth he told about the size of the deficit. We all remember that—Senator Cook, economics minister for the Labor government. ‘The budget is in surplus,’ he said, when it was $10 billion in deficit.

Senator Cook—Mr President, on a point of order: ask him to withdraw that line.

The PRESIDENT—Senator, there is no point of order. You know that.

Senator HILL—I said that my office—me—asked the secretary to clarify the matter. My office—me—asked Mr Bonighton to clarify the matter.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. At the end, the minister finally addressed the question. I would like him to confirm that his office asked Mr Smith to respond on 30 March and that again yesterday his office went back to Mr Bonighton and asked him to provide more details or asked him to specifically reply. Can he also confirm whether or not any specific instruction was given to Mr Bonighton in terms of how the letter should be provided and what form it should take? Will the minister ensure that both Mr Smith and Mr Bonighton are at the next budget estimates round in order to provide evidence to the budget estimates committee?

Senator HILL—They will both be at the estimates committee hearing, and I bet they are terrified at the thought of an interrogation by Senator Chris Evans. They are quite big enough to write their own letters. And why were they dragged into it? Because the Labor Party claimed, through Mr Latham, to have received briefings, which was never the case—invented.

Senator Chris Evans—Which he had.

The PRESIDENT—Senator Evans, continually shouting across the chamber is disorderly, and you know it is. If the Senate does not come to order on both sides of the chamber and cut down the noise, I will very seriously consider suspending question time.

Senator Faulkner—Mr President, on a point of order: you have called opposition senators to order continually during question time today. In my view—and I think in the view of any reasonable person—there has been as much interjection and disorderly conduct on the government side as there has been on the opposition side. Sure, opposition senators have been interjecting. Fine, I do not mind opposition senators being called to order when that happens, but I expect you to apply the standing orders equally to senators from the government side.

Senator Conroy—I cannot hear him for the interjections.

The PRESIDENT—are you reflecting on the chair, Senator Conroy?

Senator Conroy—No, not at all. I am just pointing out that I cannot hear him because of the interjections.

The PRESIDENT—you are interjecting yourself.

Senator Faulkner—I would ask you, Mr President, to ensure that you apply the standing orders equally to both sides of the chamber. It is a reasonable request. It is a reasonable expectation and it is certainly mine.
The PRESIDENT—Thank you for the lecture, Senator.

Senator Faulkner—I ask you to rule on my point of order.

The PRESIDENT—I will continually rule the way the interjections are called. If you recall, I have called Senator Campbell to order a dozen times today.

Senator George Campbell—Ian Campbell.

The PRESIDENT—Are we going to continue with this racket across the chamber or do you want me to suspend question time? It is up to you.

Taxation: Family Payments

Senator KNOWLES (2.25 p.m.)—My question is to the Minister for Family and Community Services. I ask the minister if she would update the Senate as to what the Howard government is doing to assist Australian families and what effect other options would have on government policy.

Senator PATTERSON—Thank you very much, Senator Knowles. I appreciate the opportunity to reiterate what this government has done for Australian families. As I said earlier, each year we are giving families $19 billion in assistance—around $2 billion more each year since the introduction of the new tax system. That means that on average a family gets about $6,000 a year assistance tax free to rear their family. It means that through family tax benefit B up to $2,900 goes each year to eligible families, for each child under five, if a second income earner chooses to stay at home. It is about giving families choice. We have doubled child-care funding to around $1.5 billion a year and increased child-care places by around 210,000.

At the ALP conference in January, Mr Latham said a Labor government would introduce paid maternity leave. On 15 February, when asked on the Sunday program by Laurie Oakes if he would introduce paid maternity leave, Wayne Swan said, ‘Absolutely. That is why Labor has committed itself to a scheme of paid maternity leave.’ Yet yesterday we had Mark Latham announcing a baby care payment. What has happened in three months? We have Labor claiming a leaked report from the government’s work and family task force. That report proposed a baby care payment. It could not even get a new name for its program. So what we have had in three years is no policy, a commitment to a paid maternity leave scheme in January at the Labor conference, a recommitment in February by Mr Swan on a national television program to a paid maternity leave scheme, and the next thing we know is we have the Labor Party doing a backflip. I am sure there were a few people on the other side taken off guard. We have no paid maternity leave and a copycat baby payment policy.

We have had Mr Swan and the Labor Party bragging for the last six months that they were going to introduce a national paid maternity leave scheme, but they got rolled by their leader. We have Kevin Rudd being rolled on Iraq. We have Bob McMullan rolled on taxation. We have Swan—

The PRESIDENT—Senator, address senators and members by their correct titles.

Senator PATTERSON—it gives me the opportunity to say it again: Mr Kevin Rudd was rolled on Iraq, Mr Bob McMullan was rolled on taxation and now Mr Swan is being rolled on maternity leave. Yesterday, at exactly the same time as Mr Latham was out in Queanbeyan, yet again sitting down with kids, Senator Collins was in here bagging the family tax benefits scheme. What do we find when we read the fine detail of the so-called policy that Mr Latham put out? It uses the family tax benefit as the framework, the
same family tax benefit that Senator Collins—I was going to say Joan Collins—was in here bagging yesterday.

Senator Jacinta Collins interjecting—

Senator PATTERSON—It must hurt Senator Collins because she was bagging that policy and her leader was out there using it as a framework for their new so-called policy—no paid maternity leave and FTB as the cornerstone of Labor’s copycat policy. They have scrapped their commitment to maternity leave and are using the Medicare safety net as part of the funding for their baby scheme. With families, they are taking money out of one pocket and putting it into the other—a pea and thimble trick. This will mean that, in particular, low-income families will have greater out-of-pocket medical expenses. They will scrap the safety net for employee entitlements and that will also affect low-income earners. (Time expired)

Family and Community Services

Senator FAULKNER (2.30 p.m.)—My question follows on from the last one by Senator Knowles and is also addressed to Senator Patterson, the Minister for Family and Community Services. Can the minister confirm that the government has requested a wide-ranging Federal Police inquiry into the unauthorised disclosure of a number of sensitive cabinet-in-confidence documents relating to controversial issues in the Family and Community Services portfolio? Does the minister agree with the statement of the secretary of her portfolio, Mr Sullivan, in a departmental circular yesterday that ‘it would be very disappointing if the possible actions of an individual or individuals affected the reputation of us all’? Is the leaking of the contents of Mr Sullivan’s memo also an unauthorised disclosure of sensitive information from her department, which now has the reputation of leaking like a sieve under her stewardship?

Senator PATTERSON—I find it really interesting that when Labor do not have any policies or any questions they resort to that sort of question. Of course there will be an investigation. When cabinet-in-confidence documents are leaked there is an investigation. That does not necessarily mean that those documents would have come from my department. It is against the law to leak documents and it is inappropriate for shadow ministers to receive and use leaked documents. But do not worry about that; Mr Swan would not care about that.

I remember when Senator Vanstone got a wad of stuff from the Attorney-General’s Department—a whole series of disks which would have blown Labor apart. What did Senator Vanstone do? She had the decency to take them back. She took them back because she thought that was appropriate. Would Labor have done that? You bet your bottom dollar they would not have taken them back. They would have used them. They would have abused them. It is appropriate to have an investigation. It reflects on every single person who has had access to that document if it has been leaked. There is an ongoing investigation about a number of documents, and the latest one will be included in that. It is normal procedure for that to occur.

Senator FAULKNER—Mr President, I ask a supplementary question. Doesn’t the mounting flood of leaked cabinet-in-confidence documents within her ministerial responsibility actually reflect on the minister’s handling of sensitive policy issues, concerns which were exacerbated after her apologies last night for bullying a senator? Can the minister inform the Senate whether the Federal Police leak inquiry will extend to the possible leaking of her cabinet documents by ministers and other ministerial officers?
Senator PATTERSON—The AFP will determine who is questioned with regard to the leaking of documents. It is a process that is undertaken by the AFP. I am sure the AFP will investigate how far the documents have been circulated and will investigate the leaking of those documents. I am not going to comment or interfere with the process that the AFP will undertake.

Indigenous Affairs: Health

Senator RIDGEWAY (2.33 p.m.)—My question is to the Minister representing the Minister for Health and Ageing, Senator Ian Campbell. Is the minister aware that the Senate yesterday agreed that the national emergency in Indigenous health is a matter of urgent priority and called on the government to address the situation in the upcoming budget in May? Does the minister agree that the current approaches to Indigenous health care are clearly not working and that what is needed is an end to defensive politics and buck-passing and a new commitment to addressing this crisis immediately? How will the government respond to the Senate’s call in a practical way? Will the minister commit to providing extra emergency funding in this year’s budget to address the critical need for primary health care services for Indigenous communities?

Senator IAN CAMPBELL—I commend Senator Ridgeway for bringing on that motion yesterday. I think he did it in a true spirit of trying to raise the awareness of the parliament and the people of Australia about the plight of Indigenous people. It was a worthwhile debate. Sadly, as Senator Ridgeway will know, I was in the chamber at the time and heard an outrageous contribution to the debate by a Labor Party spokesman—I think, indeed, it was their spokesman on Indigenous affairs—which ensured that the first part of that debate turned into a nasty, partisan, cheap political debate that in fact, as I am sure Senator Ridgeway will agree, denigrated and detracted from his initiative.

Senator Ridgeway knows better than most senators in this place—because he and I worked together, before he was a senator, on improving the plight of Indigenous Australians in a range of areas through our engagement in the land fund debate—that the coalition has significantly improved the resources going into Indigenous health. For example, funding for the Aboriginal and Torres Strait Islander Health Program stands at more than $272 million this year, which is a growth of just under 100 per cent since 1996. I think the point that Senator Ridgeway makes is that, even with that nearly 100 per cent increase in funding directly spent on the Aboriginal and Torres Strait Islander Health Program, we are not getting the sorts of improvements that he and I would like to see for Indigenous Australians in their health outcomes and their mortality rates, which compare very badly internationally. On the question of whether we should look at policy options for improving the benefit that Aboriginal and Torres Strait Islanders receive from that substantial Commonwealth assistance for health, the answer of course is a resounding yes. I do not think anybody in this chamber would contradict that.

In the 1999-2000 budget the Commonwealth allocated $78.8 million over four years to specifically address Aboriginal and Torres Strait Islander people’s access to primary health care through the Primary Health Care Access Program. That is one specific program that was developed in consultation with Aboriginal and Torres Strait Islander people to ensure that they could get good access to primary health care. I think Senator Ridgeway would agree that that is the sort of program we need to put more policy energy into, and if necessary better resources, to ensure that we improve the outcomes.
In terms of the budget question, which Senator Ridgeway addresses quite properly in the lead-up to the budget in May, I think he would be surprised if I were to reveal what the budget outcome will be. In the next sitting week the Treasurer will bring down the budget. The budget outcomes for the Indigenous affairs portfolio will be announced, quite properly, by the Treasurer at that time.

Senator RIDGWAY—Mr President, I ask a supplementary question. I thank the minister for his answer. I was hoping that the resounding ‘yes’ was in anticipation of any budget announcement. Is the minister aware that Professor John Deeble has estimated for the Australian Medical Association that an additional $300 million per year is urgently needed to address the crisis in Indigenous health, and that this estimate comprises $250 million to provide adequate primary health care services as well as $50 million—or $12 per Indigenous person, per year—for public health and preventative programs such as health promotion, health education and screening? Does the minister agree that the cost of inaction now will blow out the virtually unsustainable expenses in the future? Will the minister give some undertaking or guarantee that $300 million for Indigenous primary health care can and will be provided in this year’s budget?

Senator IAN CAMPBELL—I clearly cannot give a commitment to what is in the budget. That would be extraordinary and would be a defiance of sound government process. You do need to ensure that you have a proper policy review, a review of the expenditures and a proper focus on improving policy outcomes and the budget outcome needs to effect that. There is one figure I would like to put on the record, since Senator Ridgeway has given me the chance: total Australian government funding is $1.15 per capita for Indigenous Australians for every $1 spent on non-Indigenous Australians. So we are putting in a significant effort to address the quite clear, demonstrable and well documented deficit in Indigenous outcomes. We welcome Senator Ridgeway’s encouragement and people like Professor Deeble drawing the government’s attention to that and proposing alternative policies. (Time expired)

National Security: Intelligence

Senator ROBERT RAY (2.40 p.m.)—My question is to Senator Hill representing the foreign minister. Minister, given that today you confirmed that you asked Mr Smith and Mr Bonighton for letters, can you tell us who asked the Director-General of ASIS for his letter regarding the briefing of the opposition leader? Was it the foreign minister, Mr Downer? Was it the Department of Foreign Affairs and Trade? Did he provide the letter of his own volition? When Mr David Irvine provided the letter, was he informed that it was going to become a public document—that is, released by the foreign minister? Was he at all apprised of the fact that it may be a matter of controversy once it was released?

Senator HILL—In view of the detail sought by the question, I will refer it to the foreign minister for an early response.

Senator ROBERT RAY—Mr President, I ask a supplementary question. On what is probably a related matter of briefings, I ask the minister: given that in representing himself today—and, I take it, the Prime Minister and the foreign minister—he has said there have not been enough requests for briefings by opposition members, in the future will opposition members be able to fully minute those briefings if disputation occurs? While we are on the subject of briefings, why are members of the Labor Party being barred by you from visiting Amberley in Queensland to try to get themselves briefed and across issues, when in the six years I was defence...
Sen. HILL—The first part of the supplementary raises interesting issues, because of course in future I guess Mr Bonighton would need to be accompanied by another party—an honest broker, in effect. Why did he go by himself? Because he did not dream that he would be verballed by Mr Latham in this way. Traditionally it has not been necessary to have somebody vouch for the public servant. Why didn’t we accompany Mr Bonighton? Because that has not been necessary in the past either. What has changed? What has changed is Mr Latham, who is prepared to verbal a public servant for short-term political gain. In relation to briefings, I would have thought that most in the opposition would say I have been open and helpful. I have always sought to be, because I believe that the opposition has a right to be briefed. In most instances, I have also thought it is unnecessary to have somebody else attend to vouch for the truth. (Time expired)

Resources: Renewable Energy

Sen. LEES (2.43 p.m.)—My question is to Senator Minchin, the Minister representing the Minister for Industry, Tourism and Resources. Does the minister agree that Australia’s needs for generating electricity is increasing and that as well as building new generating capacity we are going to need to replace old infrastructure? Does the minister agree that new wind turbines with no greenhouse gas emissions are cheaper than new coal fired power stations that will have to rely on gas sequestration to reduce emissions? Finally, will the government agree to increase the mandatory target for renewable energy, which will further reduce the cost of renewable energy?

Sen. MINCHIN—I thank Sen. Lees for that question and acknowledge her interest in renewable and alternative forms of energy. I think all Australians share some interest in that. Australia’s abundant and generous reserves of traditional sources of power—to wit, coal and gas—give us an extraordinarily competitive advantage in the world. Coal exports are a major source of income for Australia, and coal is a major source of cheap, reliable power for many other nations. I would not want to say anything that detracted from the importance of our traditional reliance on coal fired and gas fired power stations for the base load power Australia very much needs to provide Australians with relatively cheap and reliable power and to ensure that Australian industry is competitive in an increasingly competitive world. Nevertheless, we strongly believe that there is a proper place for supplementation of that base load capacity with alternative forms of energy. Indeed, I recently visited Innamincka in our state of South Australia to look at the geothermal project that is being developed and tested there. Its potential to be an alternative source of power is exciting.

The mandatory renewable energy target measure introduced by this government has been in place for over two years and is expected to produce a 60 per cent increase in electricity generation from renewable sources over a decade. It is estimated that $2 billion to $3 billion of additional investment in renewable energy will be stimulated over the life of the MRET, as it is known. The recent report of an independent review of the MRET legislation indicates that the measure is meeting its objective and that Australia is well on its way to achieving its renewable energy target. The government remain committed to the MRET scheme and are currently examining the recommendations of the report. When we come to conclusions on the basis of that report, they will be announced.

Sen. LEES—Mr President, I ask a supplementary question. I thank the minister for his interest in this area. Is it not the case
that Australia also has an abundant amount of sun and wind? Could we not lead the world in this new technology if the government were to increase the MRET? Does the minister agree that, if we further encouraged the use of renewable energy, by 2015 wind would be competitive with gas and shortly after with coal? Finally, is it not the case that we are well short of the two per cent target when you actually look at generating capacity, and that so far the amount generated by alternative sources is still nowhere near that two per cent?

**Senator MINCHIN**—I do not have before me the exact proportion of the target that has been reached to this point. I am not going to repeat what I said about the success of the program, but I think it has been successful. I will have to get confirmation on the question of whether the two per cent target has been achieved at this point. All Australians acknowledge the potential for solar and wind power, although both tend to be controversial. I have some solar heating at my place. In South Australia there is controversy over wind power—with respect to the wind turbines, the effects on the environment and the aesthetics of the regions they are in. Australians expect their governments—as we do and will continue to do—to put considerable emphasis on exploiting our abundant reserves of solar and wind power. That is something I am committed to.

**Indigenous Affairs: ATSIS**

**Senator O'BRIEN** (2.48 p.m.)—My question is to Senator Vanstone, the Minister for Immigration and Multicultural and Indigenous Affairs. Can the minister confirm that her Indigenous affairs agency, ATSIS, has withheld $640,000 of vital infrastructure funding to the homelands in the Anungu Pitjantjatjara lands during the current financial year? Can the minister confirm that this funding was withheld while a review of capital works projects was undertaken, denying homeland communities essential services during the hottest months of the year? Is it the case that the review was completed in January this year, and made favourable findings about the capital works program, yet that funding continues to be withheld? Minister, why do you continue to withhold funding for essential water and power works in the AP lands, thus denying some of the most disadvantaged people in Australia access to basic services?

**Senator VANSTONE**—I do not have advice with me on the $650,000 to which the shadow minister refers. I will take that on notice and get an answer. In relation to services in the Pit lands, a number of matters are important to bear in mind. The South Australian Deputy Premier has taken some very important steps in the Pit lands. He has, thankfully, at last, been able to deal with that problem without interference from the Commonwealth or political infighting. I would have thought the opposition at the Commonwealth level could learn a lesson from that. The Deputy Premier spoke to me about the steps he took in the Pit lands before he did so. I told him that I thought something had to be done and that—it is important that the Senate understands this too—the problems in the Pit lands today have not been helped by the South Australian government. You might ask yourself where the South Australian Indigenous affairs minister is. Where is Terry Roberts? He is the Indigenous affairs minister. We have not heard anything from him. There is a reason why the Deputy Premier has taken over this matter and Mr Roberts is no longer involved.

In 2001 the former South Australian government, in consultation with the Pit lands executive, appointed a change manager to tackle governance and administrative problems. There were, and still are, major problems there that prompted that intervention.
The change manager was appointed and was making real progress. However, things changed when the Rann government took office 18 months ago. My advice is that the minister, Mr Roberts—who is now nowhere to be seen—went with the department head, Mr Buckskin, who used to be a federal public servant and with whom I have worked, to support the people who were opposed to that new governance structure being developed. As a matter of interest, two gentlemen and the Premier’s former adviser, Mr Randall Ashbourne, went to the AP council AGM when the former executive was ousted. The executive of the Pit lands recognised change was needed and was working with the government to get a change manager. Then the new government minister went up there with the head of his department and someone from the Premier’s office to basically support the people who wanted to get rid of the executive, who were fixing the problem.

Days later, the newly appointed chair of the executive, appointed with the support of the Labor government, sacked the change manager. We can tell you a bit more about the change manager if you would like to go down that path. I would prefer not to make Aboriginal politics a cheap political issue. I hear scoffing from the other side. I have known about this for a long time but you raised it, Senator. I am just advising you that there is plenty more where this came from—plenty more. Days later the new change manager was sacked. The state government appointed a new consultant without consulting the Commonwealth and without consulting ATSIS. He was previously the CEO of the National Indigenous Development Association that shut down when it lost up to $6 million of ATSIC money. That is who the state government, in effect, helped get appointed to the Pit lands—by helping to change the executive of the Pit lands that recognised the problem. There is plenty more to say where this came from. (Time expired)

Senator O’BRIEN—Mr President, I ask a supplementary question. I note that the minister has an extensive brief of a political nature on this matter. Can the minister advise why she has not apparently been briefed by her agency about the withholding of $640,000 of very important infrastructure money for this particular region, where there are some of the most disadvantaged people in the country? The minister says that she does not have any information about the activities of her agency, but she wants to present to the Senate her spin on the political situation in the agency. Has the minister asked for information about the activities of her agency or is she simply interested in making political points?

Senator VANSTONE—I did not say that the information was not available. I simply said that I do not have it with me now. I certainly do not have information on every dollar the Commonwealth spends in every area. I have made it clear that the former executive of the Pit lands wanted to do something about it, and was in the process of doing something. That executive was removed with the support of the state government and then this man, who had been the National Indigenous Development Association CEO, was appointed. That association was shut down when it lost $6 million.

I mentioned Mr Buckskin. Mr Buckskin’s brother was appointed as a general manager. The South Australian government effectively dismantled a joint Commonwealth-state remedial package that was trying to do something sensible in the Pit lands. Mr Roberts has done nothing since then and that is why he is now out of the picture on this issue. Mr Foley has taken over, and more strength to his arm. We have a COAG trial there. We will work cooperatively with the state gov-
Immigration: Economic Impact

Senator SANTORO (2.55 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone. Will the minister inform the Senate of the government’s ongoing commitment to delivering economic benefits to Australia through its migration program?

Senator VANSTONE—I thank Senator Santoro for the question. Queensland, like all the states in Australia, is benefiting from a growing economy and would of course benefit from migration. I am pleased to say that the government has been able to announce today that we are increasing the skill level of migrants coming to Australia and the numbers that are coming, and that we will be able to focus that increase and those skills on regional Australia. We are doing this by increasing the skills pass mark for the general skilled independent visa categories for permanent residents from 115 to 120. Rising demand allows us to attract migrants with a higher level of skill. The pass mark was last increased in 2002. Rising demand allows us to do this. The message is that people around the world want to come to a country that is well run, that has its economy going well, where they can get a job and where they can have a more prosperous future. We will of course be protecting international students currently completing their studies in Australia.

Skilled migration brings benefits to us all: Our migrants with business skills have also fostered long-term links with international markets, generated jobs and exports, produced goods and services that would otherwise be imported into Australia, introduced new and better technology, and enhanced commercial activity and competition. All in all, it is a very positive story. It seems only logical that we would want to encourage this type of migration.

That was a quote from Peter Beattie, the Premier of Queensland. Equally, the Premier of my state, Mike Rann, yesterday announced that South Australia’s new population policy, he thinks, is terribly important. He points out:

Population growth holds the key to our state’s future prosperity and sustainability.

To which end the state is setting some aggressive and ambitious targets to at least double the intake of independent skilled migrants. I am pleased to see that the Labor states—and I trust the opposition—will welcome the fact that we are in a country now that can afford to increase its immigration intake, that we can have skilled migrants with even better skills than before.

This increase of 5,000 migrants will be targeted to where the states want them to go. It will operate through skills visas that will be sponsored by the states. Those states that want more people will be able to have them, and those states that do not choose to sponsor migrants will not in fact need to have them. It is important also to understand that we will have more doctors coming to Australia—another 1,000 places for doctors and their families in 2004-05. Modelling by Access Economics estimates that the migration program will contribute over $4 billion to the Commonwealth budget over the next four years. The 2004-05 program will deliver the largest skills stream in Australia’s history.

I conclude by quoting Mr Ross Garnaut, who wrote the monograph, Migration to Australia and Comparisons with the United States; who benefits? in May 2003. He said:

...immigration with a high skill component tends to raise employment and lower unemployment of low-skill established Australians.

That is everything this government is about—bringing here people who will generate jobs and who will help lower skilled Australians get more jobs. A well managed
economy can do that for you. That is why Labor should never, ever be re-elected.

**Family and Community Services**

Senators speaking:

**Senator JACINTA COLLINS** *(2.59 p.m.)*

— My question is to Senator Patterson, Minister for Family and Community Services. How does the minister respond to her colleagues’ expressed concerns about her serial incompetence as a minister, including her failure to protect families with disabled children from disability payment reviews; her failure to insist on the domestic violence advertising campaign being screened, especially in the face of the escalating number of footballer harassment and rape allegations; her failure to curtail family tax breaks for upper income and millionaire families; her failure to secure confidential documents within her department and office; her failure to come up with the barbecue stopping work and family package; her failure to fix the family tax debt bungle; and her failure, time and time again, to explain the government’s agenda in this parliament?

**Senator PATTERSON** — How desperate they must be!

Honourable senators interjecting—

**The PRESIDENT** — Order! I have said repeatedly this week that senators on both sides of the chamber should come to order when a minister or senator is asking or answering a question. That has not been the case again today. I ask senators to remain silent while the minister answers the question.

**Senator PATTERSON** — How desperate they must be! That did not constitute a question; it constituted sledging. I do not think it deserves an answer.

**Senator Ian Campbell** — Mr President, I rise on a point of order. Senator Collins has asked a question about when the minister, Senator Patterson, will accept responsibility for her own failures—

**Senator Faulkner** — Mr President, I think it is a good idea for you to review it. You might see that it contains an awful lot of facts.

The **PRESIDENT** — I will look at the question. Senator Collins, I believe you have a supplementary question.

**Senator JACINTA COLLINS** — Yes, I do have a supplementary question, Mr President. While we are on the subject of sledging, I remind the minister of her excuse yesterday that one of her staff was overzealous in dealing with a fellow senator. My supplementary question is: when will the minister accept responsibility for her own failures as a minister instead of blaming her staff, her predecessor, the Prime Minister, the media, the opposition—with sledging—her department and just about everybody else except herself?

The **PRESIDENT** — I do not believe that question is in order. It is just asking for an opinion, but I will have a look at that one as well.

**Senator Faulkner** — Mr President, I rise on a point of order. Senator Collins has asked a question about when the minister, Senator Patterson, will accept responsibility for her own actions—

**Senator Ian Campbell** — On a point of order, Mr President—

**Senator Faulkner** — I am on a point of order. Hold your tongue!
Senator Ian Campbell—You have ruled; he is now canvassing your ruling. It is not a point of order, Mr President.

The President—Order! Take your seat, Senator. Senator Faulkner, please continue.

Senator Faulkner—Thank you, Mr President. I submit to you that presidents have consistently ruled in such questions, certainly in the 15 years I have been here and I am sure before that. When you review the question—given that you have been asked to review it and you have indicated that you will—could I ask you to look at rulings of previous presidents in relation to very similar questions.

The President—Minister, do you wish to answer that question, which I have ruled out of order?

Senator Patterson—I do not accept that it is a question, Mr President.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

National Security: Intelligence

Senator Hill (South Australia—Minister for Defence) (3.04 p.m.)—Senator Robert Ray asked me a question which I said I would refer to the Minister for Foreign Affairs. His office has advised me that Mr Downer requested the letter from Mr Irvine and that Mr Irvine was aware that it might become public.

PARLIAMENTARY LANGUAGE

The President (3.04 p.m.)—Yesterday, the Deputy President, Senator Hogg, undertook to refer to me a ruling which he made on a point of order which was raised in relation to parts of a speech made by Senator O’Brien. There were two parts to the point of order: that Senator O’Brien was reading his speech and that remarks he made about the Prime Minister were unparliamentary. In regard to the question about reading speeches, the Deputy President ruled that the prohibition on reading of speeches was not applied rigidly and that senators were allowed to refer to notes in relation to technical matters. I think that the Deputy President’s ruling was correct. It is a longstanding practice in the Senate that senators may refer to notes in the course of their speeches and may refer closely to notes when dealing with detailed matters.

In regard to the question about whether unparliamentary language was used, on reading the Hansard I do believe that an imputation about a member in another place may have been made. Such imputations are out of order and all occupants of the chair are vigilant about that. In the circumstances, however, senators from both sides were freely interjecting across the chamber. In such situations, it is often difficult for the chair to hear each interjection—all of which, of course, are out of order.

It is also clear to me from reading the Hansard that remarks were made by other senators which, had they been brought to the attention of the chair, would certainly have been ruled as unparliamentary. I believe that the Deputy President correctly ruled that while remarks made by Senator O’Brien which were the subject of the point of order were skating close to the mark, and that Senator O’Brien should be careful in ascribing and attributing motives to other people, in his opinion he did not regard the language as unparliamentary.

With the benefit of the transcript, I do believe it is unparliamentary for a senator to link a member of the other place, or indeed another senator, to something that otherwise would be highly unparliamentary by suggest-
ing tacit support. This sort of implication is unacceptable.

I make two final points. It is unparliamentary to reflect on the chair during any debate, or to misrepresent a ruling made by the chair. If a senator wants to dissent in a ruling, that must be done in accordance with standing order 198. Also, I again remind senators that it is highly disorderly to shout remarks across the chamber and it is particularly disorderly to do so when the chair is endeavouring to consider a point of order. All senators should refrain from that behaviour.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Australian Defence Force: Deployment
National Security: Intelligence

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.07 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Defence (Senator Hill) to questions without notice asked by Senators Evans and Ray today relating to the briefing of the Leader of the Opposition (Mr Latham) on intelligence matters.

Mr Howard is the only Prime Minister of Australia ever to have embroiled our intelligence agencies in domestic political debate. No other Prime Minister has ever done that. No other Prime Minister in memory would even have considered that such a course of action would be appropriate. These private confidential briefings of the Leader of the Opposition by senior intelligence officials are a longstanding convention. In the case of ASIS and ASIO, they are underpinned by legislation. For example, section 19 of the Intelligence Services Act requires the Director-General of ASIS to consult regularly with the Leader of the Opposition for the purpose of keeping him or her informed of matters relating to ASIS. By bringing these briefings into the public domain the Prime Minister, Mr Howard, has compromised their value. Why would officials give full and frank briefings in future, knowing they may well be made public, whenever they might serve the supposedly partisan interests of the government?

Will leaders of the opposition continue to seek such briefings, knowing that their privacy and their confidentiality may not be respected by government? Is the public interest served by the politicisation and corruption of this very important convention that has, until now, stood the test of time? But does the Prime Minister, ostensibly in our system the guardian of these conventions, care about these matters? He does not care. He coerces public servants in this country into supporting the government line, and that is now a familiar tactic of Mr Howard and the government.

The Prime Minister has extracted a letter from the deputy secretary of the Department of Foreign Affairs and Trade. He has extracted a letter from the Secretary of the Department of Defence. He has extracted a letter from the Director-General of ASIS. He has another one from the Deputy Secretary of the Department of Defence. Poor Mr Bonighton. He is probably on the rack right now as we speak—on the rack again.

Senator Brandis interjecting—

Senator FAULKNER—No doubt the Prime Minister will get Mr Bonighton to sign up to an even more fulsome description of his briefing with Mr Latham. The last one did not quite do the trick. The Prime Minister today has run away, with his tail between his legs, licking his wounds, because he has been bested by Mr Latham in the parliament on this issue. The Prime Minister is wrong. Remember, this is the same Prime Minister who used classified intelligence to try to back up his claim that kids had been thrown overboard. He is the same Prime Minister
who used the Office of National Assessments to dig himself out of a hole on WMDs—we all know about that. It is the same Prime Minister who demanded retractions from Vice Admiral Shackleton. It is the same Prime Minister who stood over Police Commissioner Keelty. Of course, all these people departed from the government line, even though they told the truth to the Australian people. The modus operandi of the government is to use public servants and to use classified information for partisan political purposes. How low can you go?

That is the hallmark of the Howard government, and there is only one way to stop it: to remove John Howard from the prime ministership. He is a person who will not change his spots. This is a pattern of behaviour that is utterly despicable, utterly contemptible. He has indulged in this destructive behaviour far too often. Until John Howard is removed from office, he will continue to abuse these longstanding conventions. What this says, of course is that the sooner he is gone the better.

(Time expired)

_Senator Robert Ray_—Mr Deputy President, I rise on a point of order. I did not want to interrupt my leader when he was so destroying the government, but Senator Brandis on two occasions was deliberately and maliciously unparliamentary. Given the homily read out by the President, I think he should withdraw. He knows he should, and he should do it now.

_Senator Brandis_—I withdraw.

_Senator FERGUSON_ (South Australia) (3.13 p.m.)—One could be forgiven for thinking that this is the last taking note of answers on the very last day of a sitting session because Senator Faulkner asked: how low can you go? I would say about as low as Senator Faulkner got in taking note of the answers today. All Senator Faulkner could come up with was a whole range of criticisms of the Prime Minister based on some very loose facts. Of course, we need to remember that Mr Latham has put himself in this position because of his use of Mr Bonighton to justify some of the statements that Mr Latham has made in relation to withdrawing troops from Iraq. He used Mr Bonighton. He used a private briefing to justify every statement that he has made in his policy bungle—and he realises that it is a policy bungle—to bring our troops home immediately from Iraq.

Today we heard the Leader of the Government in the Senate say how important the work is that those people are doing in Iraq—in the reconstruction of Iraq and in making sure that the people of Iraq have a better life in the future. We heard Senator Faulkner talk about coercion of public servants. What rubbish! People have provided information to the government of their own free will—letters were freely given, not extracted—but it sounds good for Senator Faulkner to stand up and say that these people were coerced into doing these sorts of things.

Senator Faulkner says that Mr Bonighton is on the rack. If Mr Bonighton is on the rack, it is because of Mr Latham, not because of anything that this government has done. It is because of Mr Latham’s use of a private briefing that is normally given to leaders of the opposition when they assume that role—a briefing and an overview of the role of that department. Mr Latham says that he had an express briefing and, from the information gained from that meeting with Mr Bonighton, he says that he determined that our policy in Iraq was chaos. What rubbish! It was never said at that briefing, and Mr Bonighton has already said that that is not the substance of what was said during that briefing.

There is nothing sensitive about the identities or the positions held by Mr Irvine or Mr Bonighton, and the information that was...
provided to the House in no way compromises the identities of members of our intelligence agencies—another issue raised by Mr Latham today and one which nobody in this place believes. Mr Latham spent all of yesterday and all of today trying to get out of a policy position that he espoused—I guess without any consultation with his colleagues, because he has not consulted the caucus on any of his other major decisions in relation to defence and in relation to withdrawal from Iraq.

Senator Ludwig interjecting—

Senator FERGUSON—Plenty of your guys say so, Senator Ludwig, so we know that it must be true. The Leader of the Opposition’s claims—and the claims made here by Senator Faulkner today, when he stooped to the same old record and back we went to the history of this government because he could not find any other way to justify what Mr Latham has said—are completely unfounded. They only serve to confirm his ignorance about the operation of our intelligence agencies and the associated conventions that have been developed in this parliament. Those conventions have been recognised by governments for a long time now.

The Prime Minister provided the information to the House yesterday and the day before to clarify the contents of briefings, because Mr Latham used those briefings—his so-called briefings; the lengthy briefings, he said, although we know now that they were not lengthy briefings—to justify the policy position that he took in relation to our troops in Iraq. The troops in Iraq do not agree with his position. Scarce any public commentator in Australia agrees with the policy decision taken by Mr Latham. Certainly the people of Australia do not agree with Mr Latham. At least 61 per cent of them have said, ‘We want our troops to stay in Iraq because we want them to finish the job.’ Mr Latham’s policy on the run—this ridiculous policy of withdrawing our troops—should be refuted. (Time expired)

Senator ROBERT RAY (Victoria) (3.18 p.m.)—Let me first answer the question posed by Senator Ferguson to do with the 61 per cent. Any analyst knows that that was a ridiculous question to ask. The proposition that was put was, ‘Do you believe you should stay until the job is done or pull out immediately?’ It is not really a question posed by anyone in politics in Australia—other than maybe the Greens—so it was an absolute sham of a poll.

Senator Hill said in question time today that he was quite generous with briefings. I have no reason really to disagree with that statement that he has been generous. He might set an example, in fact, for some of his colleagues who are not so generous in terms of briefings and who will not allow newspaper clippings services to be delivered to shadow ministers, as I and many others ensured occurred when we were in government. I will accept Senator Hill’s basic point that he is generous. But I remember my colleagues saying in the first quarter of 2003 that the briefings they got on Iraq were shallow and next to useless. Quite properly, they did not tell me what was in the briefings, but they did say that they learnt a lot more from newspapers and television than they did from those briefings. Sometimes you get immune to those sorts of briefings if you think that they are not of enough value. That was a problem.

In 1991 I ensured that there was a daily brief of the opposition defence and foreign affairs spokesmen on events in that first Iraqi conflict. I ensured that a full briefing happened and I ensured that top-quality people gave the opposition that briefing. Of course, on some occasions oppositions do not want to be briefed. They do not want to be locked
into a confidential discussion, and that is fair enough, because that restricts their public comment. Therefore, briefings can be avoided. I made the point today that it is not always available to members of parliament to be briefed. I used one example: Senator Hill’s office vetoed a colleague of mine going to Amberley. I find that passing strange. I do not find it typical of Senator Hill’s behaviour. But he has complained to me, and I have no reason to disagree.

Over six years as defence minister I never once stopped an opposition member from going onto a base. On two occasions I got an urgent phone call from the gatehouse saying, ‘Opposition spokesmen have turned up with candidates in tow; can they have permission to go on base?’ and I automatically ticked it. That generosity, apparently, is not always reciprocated. But the real problem we are facing here is that, in order to get political advantage, we are seeing a tendency to politicise the Public Service, which may be an irreversible trend. But it should not happen with intelligence agencies. Those we exempt. We exempt them from a degree of scrutiny. We extend to them a much greater degree of trust in their behaviour than we do to any other government department. In return we expect them to behave in an independent manner.

The reason I asked the question today about who asked the Director-General of ASIS to provide the letter was because I wanted to know whether he did it of his own volition or whether he was asked by a minister. The answer given today was that it was Minister Downer—fair enough—and also that Mr Irvine was made aware that his letter may be made public. I doubt that; I frankly doubt that. Was he given a choice in those circumstances not to provide the letter if he knew it was going to become a matter of partisan political dispute? Therein lies part of the difficulty here. We want to trust the people put in charge of the intelligence agencies in Australia; we do not want them involved in partisan politics. I think that is true of most people on most sides of politics. It is not true of our current Prime Minister, who would do anything to get the political advantage.

This confusion between his own persona and political self-interest and the national interest is indivisible in his own mind, and as a result the whole process of politics is being debased by him and his actions—by ringing up the police commissioner and slapping him around; by standing over public servants to produce letters for their own partisan requirements. None of this is healthy for the body politic; most of it denigrates the great work done by our intelligence agencies over the last two decades. I find it very sad that it has slipped into this scene. We will now need to have note takers and minute takers at every briefing in future so we will not have our views distorted by government. We are going to have to either tape record them or take notes. (Time expired)

Senator BRANDIS (Queensland) (3.23 p.m.)—Let us ask ourselves this question: who is politicising the role of the intelligence agencies and the chiefs of the intelligence agencies? The person who gave a briefing? No. The person who accurately and faithfully corrected the public record, the Prime Minister, or the person who misrepresented to the parliament and to the public what the content of that briefing was? I think that most sensible people would think that the actor in that sequence, who dragged the intelligence chiefs into political controversy, was the person who misrepresented what had been said in a confidential briefing. It was not the intelligence chiefs and it was not the Prime Minister, who put the public record straight.

Let me take the Senate through it. The Leader of the Opposition, Mr Latham, made
a claim that the Deputy Secretary of Intelligence and Security at the Department of Defence, Mr Bonighton—a respected senior nonpartisan public servant—had, in the course of a briefing, attacked the government’s policy on Iraq. That claim was made by Mr Latham—I cannot say it was a lie because that would be unparliamentary, but it was at variance with the truth. Mr Bonighton prepared a memorandum shortly after that briefing was given last year—not in the heat of this political controversy of the past few days, but last year.

Senator Hill—It was in January, I think.

Senator BRANDIS—It was shortly after the briefing was given in January this year—thank you, Senator Hill—well before the heat of this political controversy. The memorandum of the briefing—the content of which, because of its security classification, cannot be put into the public domain but the substance of which the Prime Minister summarised in the House of Representatives yesterday and offered to show to the Leader of the Opposition, consistent with document-handling procedures for documents of such security classification—confirms there was no discussion of any operational matters in relation to the Australian military forces in Iraq during that briefing. That is what Mr Bonighton said: not this week when it had become controversial, but two months ago before there was any suggestion of controversy about this, before the fact of the briefing was even public knowledge. That is the evidence, the best evidence, of what Mr Bonighton said and, more importantly, what he did not say. That has now been confirmed by Mr Bonighton, whose integrity in this matter is beyond question and is beyond a shadow of a doubt, in a letter which was put into the public domain by the Prime Minister yesterday and corroborated by Mr Irvine, the Director-General of ASIS.

Mr Deputy President, ask yourself who is more likely to be telling the truth—Mr Latham or Mr Bonighton. Ask yourself what is more likely to be the reliable record of the meeting that happened in January—a near contemporaneous memorandum prepared in the absence of any political heat or the wild claims of the Leader of the Opposition, lately made in order to get himself off the hook. Which do you think would be the more reliable evidence of what was said by Mr Bonighton to Mr Latham and, more importantly, of what was not said by Mr Bonighton to Mr Latham? I believe we can trust Mr Bonighton. He has no motive; his reputation for integrity is unimpeachable. He prepared the note at a time in which there was no political heat generated by this meeting whatsoever, and the note speaks for itself. I would trust Mr Bonighton, and I think most Australians would prefer his version of events over those of the Leader of the Opposition, who is trying to get himself out of a political hole.

Senator CHRIS EVANS (Western Australia) (3.28 p.m.)—It was a good lawyer’s argument produced by the previous speaker, Senator Brandis, but like most of the government’s argument it was very selective in its use of the evidence. We had another example today when Senator Ferguson verbally Mr Latham by not correctly quoting the whole transcript of Mr Latham’s interview on the AM program this morning. That was used as a device by the minister, Senator Hill, in order to launch a pre-emptive strike. He is very much into pre-emptive strike policies, but this was a pre-emptive strike on the debate that he knew he would have to face today. We finish this fortnight of the parliamentary sittings as we began it: embroiled in a debate about the government’s abuse of the traditions of the Public Service and its politicisation.

As Mr Latham said yesterday, Mr Howard will use anything to try to hang on to power.
Last week it was Commissioner Keelty, the head of the Australian Federal Police. He was used as part of a defence of the Prime Minister’s position and was pressured to retract his honestly held opinions about the influence of government policy on the risk to Australia from terrorist attack. We went through that terrible episode where Mr Keelty was publicly humiliated because he had a view contrary to the government’s. He was pressured by the government as part of its defence and was pressured in a very unfortunate way.

In the last couple of days we have seen the government again attempting to abuse Public Service processes, to hide behind public servants in order to launch an attack on Mr Latham. I know they are scared of Mr Latham. I know they are terribly off-balance as a result of the way Mr Latham is connecting with the Australian public. They are concerned about the polling figures. I understand all that. This week’s exercise was about trying to grubby Mr Latham, to dirty him and to mess him up a bit.

We have had false accusation after false accusation. The Prime Minister and Mr Downer began by claiming that there had been no briefings. But when it became clear that there had been briefings, Mr Howard said, ‘Mr Latham had briefings, but they were not really by Foreign Affairs and Defence.’ Mr Latham makes it clear that they were by officers of Foreign Affairs and Defence and puts that on the record. Then the government claim that the briefings were not really about Iraq. Mr Latham makes it clear that Iraq was discussed. The government then claim that the briefings were not enough about Iraq or did not contain enough information from the departments about the issues on which the government think Mr Latham should have had information before he announced the Australian Labor Party’s policy on the withdrawal of troops from Iraq. What absolute nonsense!

Mr Latham had two briefings. In addition to those, he had a range of advice provided to him about how best to implement long-standing Labor policy. He had advice from Kevin Rudd, the foreign affairs spokesman, who had visited Baghdad and had first-hand experience of the situation on the ground—the role of the troops in the Australian contingent and the functions that they are providing. He had advice from me, which went to the briefings I had had earlier in the year from Defence, and there was information on the public record of discussions with General Cosgrove and others about the deployment of troops, the dates for their planned withdrawal, their functions and their health issues. All of those things have been examined and discussed at length at estimates and in earlier briefings during the war period. Mr Latham had all that information.

As the Prime Minister gets more and more desperate, we are seeing, as I say, desperate attempts by the government to try to dirty up Mr Latham. The government have then dragged public servants into this issue, insisting that they provide letters. On the first day of the government’s defence, the Prime Minister presents a letter from the Secretary of the Department of Defence. That was not good enough; it did not really establish the Prime Minister’s case. So then they had to get Mr Bonighton to sign a personal letter, in which he was obviously requested to address a whole range of issues. Mr Bonighton is a good officer. I make no criticism of him. But we have seen the constant politicisation of the Public Service, and Defence has suffered very badly. Who can forget the instance involving Paul Barratt, the former Secretary of the Department of Defence, the misuse of intelligence over Timor and the DIO, the ‘children overboard’ affair, Andrew Wilkie and the concern by many former defence
chiefs and senior officers about the government’s misuse of intelligence in their public statements leading up to our involvement in Iraq? We have seen Defence constantly misused and constantly politicised as part of this government’s desperate attempt to hang on to power. It is not good enough. (Time expired)

Question agreed to.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Discrimination: Sexual Harassment

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.33 p.m.)—During question time on 31 March 2004, Senator Harradine asked me a question, in my capacity as the Minister representing the Attorney-General, concerning sexual harassment in the workplace and advertising. I undertook to provide further information in relation to certain advertisements and seek leave to incorporate in Hansard the answer which has been provided to me.

Leave granted.

The answer read as follows—

Overview of Advertising Standards Bureau (ASB)
The self-regulatory system, now managed by the Advertising Standards Bureau (ASB) and funded voluntarily by the industry through the Australian Advertising Standards Council, recognises that advertisers share a common interest in promoting consumer confidence in and respect for general standards of advertising.

The Advertising Standards Bureau administers this national voluntary system of advertising self regulation through the Advertising Standards Board and Advertising Claims Board.

The Advertising Standards Board provides a free public service in complaint resolution. It provides determinations on complaints about most forms of advertising in relation to issues including the use of language, the discriminatory portrayal of people, concern for children, portrayals of violence, sex, sexuality and nudity, and health and safety.

The Advertising Claims Board provides a competitive complaint resolution service. It is designed to determine complaints involving issues of truth, accuracy and legality of advertising on a user pays cost recovery basis. For more information about the Claims Board, see Industry Guide.

Both boards make their determinations under appropriate sections of the Advertiser Code of Ethics, as prescribed by the Australian Association of National Advertisers (AANA) following principles laid down by the Australian Parliament as reflective of community values.

This system of advertising self regulation came into operation following the 1996 decision of the Media Council of Australia to disband its system of advertising codes and regulation, including the Advertising Standards Council. Resulting from extensive consultation with industry, government and consumer representatives, it fulfils a longstanding AANA commitment to develop a more effective system of self regulation for the advertising industry.

Specific Advertisements Raised by Senator Harradine (Double A copy paper and Cougar series)

Double A copy paper advertisement will be considered by the ASB board in the coming weeks. There have been several consumer complaints lodged in response to this advertisement.

Complaints against the Cougar series advertisements have been dismissed. Please see the determinations for both Cougar ads as follows:

**Cougar ad 1:**

1. Complaint reference number 306/01
2. Advertiser Continental Spirits Co. (Cougar Bourbon)
3. Product Alcohol
4. Type of advertisement Television
5. Nature of complaint Portrayal of sex/sexuality/nudity Discrimination/ Vilification Health & Safety
6. Date of determination November 13 2001
7. DETERMINATION COMPLAINT DISMISSED
DESCRIPTION OF THE ADVERTISEMENT
The television advertisement opens on a dance party scene, where a young male queuing for service at the bar is repeating his intended order, saying: “Two gin and tonics, two vodkas, and a scotch.” When he eventually reaches the front of the queue, he is seen to stare at the barmaid and say: “Five Cougars thanks.” When the shot changes to show his point of view, the large-breasted barmaid is seen to be wearing a top with ‘Cougar Bourbon’ emblazoned across her chest. The male is shown to blink as he looks down to some change on the bar, alongside a coaster promoting the Cougar Bourbon and a jar of coins labelled “Tips.”

THE COMPLAINT
Comments which the complainants made regarding this advertisement included the following:
‘I feel this ad is sexist, offensive, demeaning, and sends a negative body image to young women. Cougars cross-media campaign centres around scantily clad, busty females...’
‘The ad was offensive as it blatantly used a woman’s breasts to advertise...’

THE DETERMINATION
The Advertising Standards Board (‘the Board’) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (‘the Code’).

The Board believed most television viewers would see humour in the commercial, and determined that it did not contravene the Code in relation to the portrayal of sex/sexuality/nudity.

It further found that the content of the advertisement did not constitute discrimination and/or vilification, and that it did not breach the health and safety provisions of the Code. Accordingly, the complaint was dismissed.

Cougar ad 2:
1. Complaint reference number 221/02
2. Advertiser Foster’s Group Ltd
   (Cougar Bourbon)
3. Product Alcohol
4. Type of advertisement TV
5. Nature of complaint Portrayal of sex/sexuality/nudity
6. Date of determination September 10 2002
7. DETERMINATION COMPLAINT DISMISSED

DESCRIPTION OF THE ADVERTISEMENT
‘This advertisement depicts a group of men in a bar. One of the men goes to the bar and asks for a ‘cougar’, as the female bar attendant reaches for the bottle her skirt raises slightly revealing the top of her legs and the man is looking. As she bends to get a slice of lemon, the man appears to be looking at her cleavage. He glances towards his friends who cheer and rise from their seats ahead of a final caption reading: “Cougar-real smooth Bourbon.” The advertisement ends with a smiling bar attendant handing the man his requested drink.

THE COMPLAINT
Comments which the complainant/s made regarding this advertisement :following included the following:
‘.... (the advertisement) is unacceptably due to its content which I find to be demeaning and offensive towards women. This insulting advertising campaign borders on soft porn..(it) is sexist and gender based ...I feel that they have underestimated the audience and isolated any potential consumers that do not fit into this mould...’

THE DETERMINATION
The Advertising Standards Board (‘the Board’) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (‘the Code’).

The Board found that the advertisement did not breach the Code on any grounds, and, accordingly dismissed the complaint.

In reaching its decision, the Board noted the advertiser’s explanation that the advertisement was intentionally light-hearted, was only aired in ‘adult-time,’ and was approved by FACTS and the alcohol pre-vetting system.
The DEPUTY PRESIDENT—I present a response to the recommendations which relate to the responsibilities of the Presiding Officers of the report of the Foreign Affairs, Defence and Trade References Committee on Australia's relations with Papua New Guinea. With the concurrence of the Senate, I ask that the response be incorporated in Hansard.

The document read as follows—

Report of the Senate Foreign Affairs, Defence and Trade References Committee

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

Response to the Recommendations which relate to the responsibilities of the Presiding Officers

1st April 2004

The report of the Senate Defence, Foreign Affairs and Trade References Committee entitled A Pacific engaged—Australia's relations with Papua New Guinea and the island states of the south-west Pacific makes four recommendations which relate, in whole or part, to matters within the responsibility of the Presiding Officers.

The recommendations concerned are numbers 22, 23, 28 and 31.

Recommendation 22

The Committee recommends that representatives of the Australian Division of the Inter-Parliamentary Union, the Commonwealth Parliamentary Association and the Centre for Democratic Institutions, along with relevant officials from the Department of Foreign Affairs and Trade and AusAID, develop a vehicle for the coordinated provision of training services aimed at the institutional strengthening of parliaments in the Pacific Region.

The Presiding Officers are Joint Presidents of the IPU National Group and the Commonwealth of Australia Branch of the CPA.

The Commonwealth of Australia Branch of the CPA each year provides financial assistance through its Trust Fund, and in collaboration with the state and territory CPA branches through another Trust Fund, which assists in the training of personnel and the provision of equipment to legislatures in Commonwealth countries in the Pacific. Some of this annual assistance consists of attachments of Pacific parliamentary officers to the Australian or a state or territory parliament for short tailored training programmes.

The Presiding Officers have endorsed action for the strengthening of parliaments in the Asia Pacific region, such as supporting CDI initiatives in Indonesia, extending IPU funding for attachments and participation (e.g., by East Timor) in the Inter-Parliamentary Study Program discussed in greater detail below.

The Clerk of the House of Representatives is the current President of the Association of Secretaries General of Parliaments. He has been requested by the IPU secretariat to represent the IPU at a conference on political culture, representation and electoral systems in the Pacific, being organised in July 2004 by the Foundation for Development Cooperation (FDC), the Pacific Institute of Advanced Studies in Governance and Development and the University of the South Pacific. Preliminary discussions with the FDC indicate that the conference will be the forerunner of a number of workshops involving Members of Parliament in the Pacific Region.

Recommendation 23

The Committee recommends that the Presiding Officers develop strategies for the closer involvement of officials and parliamentarians of the Australian Parliament to assist in the promotion of good governance in the Pacific Region.

Response

What is done at present?

There is an existing network of strategies involving the Australian Parliament in the training of officials and parliamentarians of the Pacific Region. These include:
Inter-Parliamentary Union activities
Commonwealth Parliamentary Association (CPA) activities
CPA Regional conferences and seminars
Annual Presiding Officers’ and Clerks’ Conferences of the Pacific and Australia Regions of the CPA
Study tours for new parliamentarians from the Pacific
CPA Trust Fund activities
The Inter Parliamentary Study Program
United Nations Development Program (UNDP) activities
Centre for Democratic Institutions (CDI) activities.

Together these existing arrangements provide an extensive array of training for staff and parliamentarians from the Pacific, and have been conducted on a continuous basis for many years. Furthermore, these programmes have continued to evolve to meet the changing requirements of Pacific parliaments. These programmes are aimed at both parliamentarians and parliamentary staff.

The involvement of parliamentarians is primarily through exchanges of delegations each year through the incoming and outgoing delegations programmes, CPA sponsored study tours to Australia and attendance at Australian and Pacific seminars, conferences and workshops. The Australian Parliament works closely with the New Zealand Parliament on many aspects of these activities.

With regard to staff training, as mentioned this is carried out primarily through the operation of a training and education trust fund jointly administered by the Australian, state and territory parliaments (CPA Trust Fund). Training is carried out by means of sending officers to parliaments in the region to conduct programmes there, and welcoming officers and parliamentarians from the region into programmes conducted at Parliament House, Canberra, and in the state and territory Parliaments. The activities carried out through the CPA Trust Fund are initiated by individual Pacific parliaments on an annual basis.

The provision of such training assistance to promote good governance requires coordination between:
- Australia and the country concerned
- The parliamentary departments, the Department of Foreign Affairs and Trade and AusAID, and other non-governmental agencies such as the United Nations Development Program and the Centre for Democratic Institutions.

There are natural sensitivities from nations of the region about interference and the imposition of external standards, which sometimes may be seen as patronising. Officers of the Departments of the Senate and the House of Representatives have addressed these sensitivities by always acting as advisers, responding to direct requests for assistance and advice and sharing expertise as equals.

Good governance covers a wide field, including all the institutions of government. Officers from the Chamber departments have restricted their activities to the training necessary to support the operation of a legislature and its committees.

In the past, staff from all of the three current parliamentary departments have been involved in training exercises. The support to Senators and Members of the Parliament of the Commonwealth of Australia is the primary focus of the staff, and the skilled training capacity of our departments is a finite resource. The most beneficial and successful training has been found to be that which is conducted by staff who share the experience and skills gained through their daily duties.

We welcome the committee’s recognition of the need for continued assistance in training and sharing of experience for parliamentary staff and we would welcome more active contributions from Senators and Members through participation in the development of training and related activities of the CPA in particular, which has a major focus on these issues.

It is also worth noting the increased use of the Internet and email in transferring knowledge and skills in a region in which transport infrastructure makes personal contact difficult and costly. The Australian Parliament has constantly sought to develop networks of contacts, including Parliamentary Library contacts, at the officer level and
the use of this medium to exchange information, advice and expertise is growing rapidly. This is particularly facilitated through contact between officers through CPA Trust Fund activities, participation by Pacific parliamentary staff in the annual Inter-Parliamentary Study Program and by regular contact between Pacific parliamentary staff and the CPA Regional Secretary based in the Parliamentary Relations Office. On occasion, Trust Fund moneys have been made available to assist parliamentary staff from smaller Commonwealth Pacific countries to participate in the Inter-Parliamentary Training Program and the Australian Branch of the IPU has also funded participation by East Timor in the programme.

Some Possibilities

The provision of a specific officer with the responsibility of identifying, coordinating, and promoting training for the Pacific region is an option which could be considered. This would be an additional staffing cost to one or both of the Chamber departments. Such an officer would maintain continuity and avoid duplication in the provision of training in the region, and coordinate with relevant agencies such as DFAT, AusAID, UNDP, CDI and the World Bank.

Recommendation 23 could be raised by delegates (Senators and Members) at both the IPU and CPA level, to test both its acceptance and means of implementation. The same approach could be taken with the matter being listed as an agenda item at the next Presiding Officers’ and Clerks’ conference.

The matter could also be raised at a meeting of the Association of Secretaries General (ASGP) and at the Australian and New Zealand Association of Clerks-at-the-Table. As mentioned, the Clerk of the House of Representatives, as current President of the ASGP, is participating in awareness-raising events within the region.

Recommendation 28

The Committee recommends that the Presiding Officers of the Commonwealth Parliament develop modified travel guidelines to facilitate the involvement of Australian parliamentarians in bona fide training and exchange programs with parliaments of the Pacific Island countries.

Response

The responsibility for travel guidelines for Senators and Members lies with the Prime Minister, Minister for Foreign Affairs and the Special Minister of State under the Parliamentary Entitlements Act 1994.

A major aim of the Australian Parliament’s official outgoing delegations programme is to build and strengthen the bilateral relationships between the Australian Parliament and parliaments within the region and, in particular, the Pacific region. The outgoing delegations programme traditionally includes an emphasis on the surrounding region. This contact is complimented by reciprocal visits to Australia by parliamentary delegations from Pacific parliaments. Most of these visits to Australia are organised by and paid for by the Australian Parliament.

Senators and Members have access to individual overseas travel entitlements which could be utilised for bona fide training and exchange programmes.

The Commonwealth Parliamentary Association sponsors conferences and seminars involving Australian and Pacific parliaments to which delegates from the Australian Parliament are invited. These seminars and conferences generally focus on governance issues and provide an ideal opportunity for interaction with our Pacific parliamentary colleagues.

While current arrangements may not fully allow for the flexibility for Senators and Members to travel to the Pacific to the extent envisaged by the committee, such flexibility would come at a cost, and proposals for international travel outside of the official programme can be approved as additional delegations under current arrangements. An example is the visit undertaken by the committee which made these recommendations.

Any change to existing arrangements and entitlements is not a matter for the Presiding Officers, but is a matter for consideration by the Government of the day.

If it is considered that the involvement of Australian Parliamentarians in “bona fide training and exchange programmes with parliaments of the Pacific” should occur outside the existing official parliamentary delegations programme, the pro-
gramme could be expanded to include a specified number of positions that would allow for individual senators or members to undertake training activities through programmes sponsored or endorsed by DFAT, AusAID, CPA, IPU or other organisations deemed relevant by the Presiding Officers. There would of course be financial implications and responsibility for such a change to existing arrangements lies with the Government of the day.

Recommendation 31—Operation Helpem Fren

The Committee recommends that as a discrete Parliamentary contribution to Operation Helpem Fren, officers of the Australian Parliament and the Parliamentary Education Office be made available for capacity building programs for the Solomon Islands Legislature.

Response

The Department of Foreign Affairs and Trade and AusAID are aware of the expertise and availability of parliamentary officers to assist with training of Solomon Islands parliamentary officers. There have been some initial discussions concerning the scope of future involvement by parliamentary staff from the Australian Parliament and state and territory parliaments.

Officers of the parliamentary departments are ready to provide whatever assistance might be requested to assist with the development of the parliament in the Solomon Islands. However, it is necessary to stress the finite nature of the expertise and staff resources that are available, although in the past the state and territory parliaments have been prepared to commit staff resources to assist, where appropriate.

* * * * * * * * *

The Presiding Officers intend to continue the existing high levels of interaction and training outlined above. For parliamentary departments to undertake any further activities in the way of additional training support for the Pacific region would require additional funding and staffing, for which no current appropriation exists.

The Presiding Officers support the encouragement of individual Senators and Members to monitor developments in the region and to act as advocates for continued and increased support for Pacific parliaments in terms of training and the provision of resources.

The Presiding Officers will explore whether Senators and Members may wish to take more active participation in the Commonwealth of Australia CPA Branch and the IPU National Group, to ensure that programmes focussing on the Pacific region are supported and expanded.

Senator FERRIS (South Australia) (3.33 p.m.)—I move:

That the Senate take note of the document.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

GENETICALLY MODIFIED ORGANISMS

Return to Order

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.34 p.m.)—by leave—This statement is on behalf of the Hon. Peter McGauran, the Minister for Science. This order arises from a motion moved by Senator John Cherry, as agreed by the Senate on 30 March 2004. It relates to genetically modified organisms produced as part of the 2002-03 Commonwealth Scientific and Industrial Research Organisation cross-divisional program entitled Ecological implications of GMOs [genetically-modified organisms]. CSIRO has advised the Minister for Science that it has interpreted the criteria as set out in the order to refer to the published documents and that it can produce 21 documents that meet these criteria. The Department of the Environment and Heritage advised the Minister for the Environment and Heritage, the Hon. David Kemp, that five documents held by the department meet the criteria set out in the motion. I table the documents.
Debate resumed.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.37 p.m.)—The Telecommunications (Interception) Amendment Bill 2004 is an important bill which will enhance the powers of the Australian Federal Police in the carrying out of its duties. There are counter-terrorism provisions in the bill that are vitally important to the national interests of this country. I thank senators for the work they did on the report of the Senate Legal and Constitutional Legislation Committee. The government is minded to accept the recommendations of that committee, which has recommended that sections 6(1), 6(5), 6(6) and 6(7) be deferred. The government has indicated that it will move amendments in the committee stage to reflect that recommendation. The Australian Federal Police have raised some issues. We are keen to work through those and bring back amendments that deal with them. In the meantime, we should not hold up this bill. It is important. I thank senators for their contributions. On the issues of intercepts of emails and the like, we are entering into a new age in Australia in law enforcement and technology. This deferral will allow us to examine some of these issues in a more detailed and appropriate fashion. I commend this bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator LUDWIG (Queensland) (3.39 p.m.)—I am not moving an amendment, but can I say something in committee?

The CHAIRMAN—Yes, you are most welcome to. We always enjoy your contributions.

Senator LUDWIG—I will be brief. As a member of the Senate Legal and Constitutional Legislation Committee, I thank the minister for taking on board the recommendations of the committee, and I appreciate the effort that the department has put into this bill. Hopefully the department can come back within a reasonably short time with amendments which clarify the position taken on the bill. I appreciate that it is a difficult issue to progress. We understand that it has been ongoing since 2002. In this latest attempt the legislation is being split. However, I am sure the government will be able to come back within a short while to clarify the amendments, and we can proceed again to have another close examination of the telecommunications issue. I have no doubt that it will go back to the Senate Legal and Constitutional Legislation Committee for examination again, and I do appreciate the minister’s cooperation in this process.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.41 p.m.)—The government opposes schedule 1 in the following terms:

(1) Schedule 1, items 5 to 9, page 3 (line 32) to page 4 (line 10), to be opposed.

This amendment puts into effect the recommendation made by the Senate Legal and Constitutional Legislation Committee. In fact, all of the government amendments do that. It is rather strange, though, that in moving this amendment I will then vote against it. As I understand it, the motion is that items 5 to 9 stand as printed. We will oppose that so that it will give effect to what the Senate committee has recommended. That is what we will be doing in relation to this amendment.
The remaining amendments all go to the same recommendation. Basically, the situation is that, in relation to the issue of viewing and reading emails and the like, the Australian Federal Police raised some concerns about what they could and could not do. There have been discussions between the department and the Australian Federal Police. Advice was obtained and has been put to the Senate Legal and Constitutional Legislation Committee, but there are some operational aspects. It is not a question of their disagreeing with each other; it is a question of improving the situation so that operational matters can be accommodated. I think that the Senate committee’s recommendation is an appropriate one.

I will expand on my previous comments. In subsequent government amendments I will keep my comments very brief and I will make my overall submission at this stage. We are entering an age when information technology is used frequently and by more and more people. The question arises when you send an email as to whether that email can be treated as a letter or a telephone call. Of course, as an electronic transfer comes under the telecommunications power of the Commonwealth, one would think it is obviously a telecommunications matter.

Telephone intercepts have operated on the basis of a telephone call. We are now entering the stage where emails can be stored and where they can be rejected by filters. The question of whether you should be able to access those emails, how you do it and whether you can access emails on your own system is one of corporate governance which was raised during the hearing. Of course, there is a plausible argument made by the private sector and organisations such as the Australian Federal Police that they need to keep certain standards and, in doing that, they need to be able to review emails that are being received by members of their organisation—and do so without having to obtain a warrant.

In the general circumstances of a search warrant you may have a situation where the warrant allows the police to have access to a computer. If in the course of examining and operating a computer they come across an email which could be of probative value in relation to prosecution, at present they would be unable to access that email without having obtained another warrant—an intercept warrant, on the basis of a telephone intercept. I think there are some issues there which we need to address. We will be doing that over the break, and we hope to return to parliament at the budget sittings with amendments which will deal with these and other issues. I think it is sensible that we do not hold up this bill—a very important bill—by including these provisions. That is what we are seeking to do today. I thank the opposition for its cooperation on this matter.

Senator LUDWIG (Queensland) (3.46 p.m.)—In preceding the debate with my comments, I was not sure whether the minister was going to go to some of the detail of the amendments. I thank the minister for going to the detail of this issue and for joining the opposition in the unusual step, at least for the government, of voting against their own amendment. It is one of those areas which do require certainty. With this session coming to a close, I am sure that by the May sitting the government will have had sufficient time to provide certainty and ensure that the AFP have the tools available to undertake the range of tasks that they do. We appreciate the government’s cooperation and the minister taking on board the comments made in the Senate Legal and Constitutional Legislation Committee report.

I think it is worth while saying that the legislation committee, which have been criticised by both sides sometimes, have in this
instance demonstrated the worth of a legisla-
tion committee to look at legislation, to have
a hearing, to be able to call witnesses and to
examine clauses. I am sure Senator Greig
recalls the Monday night when we had wit-
nesses from the AFP and the Attorney-
General’s Department before us. I think it
did provide a worthwhile forum to examine
the bill in more detail and to provide a clear
picture as to what was intended by the legis-
lation. We are waiting for the government to
clarify whether the words of the amendment
actually reflect the government’s intention.
Clearly the position is that now there will be
sufficient time for that to happen. As to the
other parts of the bill, the government has
taken a particularly good approach in split-ting
those amendments to allow the other
areas to proceed because, I am told, they are
required by the AFP in this environment. The
opposition accepts these amendments to the
Telecommunications (Interception) Amend-
ment Bill 2004.

Senator GREIG (Western Australia)
(3.48 p.m.)—I will make some generic
comments in terms of how we Democrats are
approaching the broad range of government
amendments we have before us today. We
remain concerned in terms of the current
situation regarding access to email, SMS and
voice mail by intelligence and law enforce-
ment agencies. We are particularly concerned
by the government’s previous indications
that it believes that, under the current regime,
it does have the power to access stored
communications without a warrant. The most
contentious provisions of the bill have been
described by the government as clarification
clauses—in other words, they clarify the
government’s current interpretation of the
legislation.

We Democrats are deeply concerned that
the status quo, in which the government can
access and probably is accessing SMS, email
and voice mail communications between
individual Australians, has applied since this
issue was first raised and in the context of
the government’s original package of antiter-
ror legislation from 2002. At that time there
was considerable community concern and
outrage at the government’s proposal to per-
mit law enforcement and intelligence agen-
cies to access electronic communications
without a warrant. The government put those
provisions aside and only very recently rein-
troduced them, despite the fact that the gov-
ernment had had the opportunity to clarify
the issue last year when it introduced a num-
ber of other amendments to the Telecommu-
nications (Interception) Amendment Bill
2004. Yet, once again, the government is
putting these provisions aside. On this occa-
sion, it is because of issues that have been
raised by the AFP regarding their current
practices. That remains unresolved.

The Democrats agree with the government
that their provisions do need to be clarified.
However, we are arguing for an entirely dif-
ferent clarification—one in which intelli-
gence and law enforcement agencies are not
entitled to access private communications
between individual Australians without a
warrant. We call on the government to re-
solve those issues as soon as practicable with
the AFP so that the parliament can finally
achieve some real certainty on the use of
these invasive powers.

The CHAIRMAN—The question is that
items 5 to 9 in schedule 1 stand as printed.
Question negatived.

Senator ELLISON (Western Australia—
Minister for Justice and Customs) (3.51
p.m.)—by leave—I move government
amendments (2) and (3) on sheet QS255:
(2) Schedule 1, item 10, page 4 (line 26), omit
“listens to, records, reads or views”,
substitute “listens to or records”.
(3) Schedule 1, item 10, page 4 (line 28), omit “listening, recording, reading or viewing”, substitute “listening or recording”.

These amendments relate to the reading or viewing that I mentioned earlier. They add reading or viewing to recording and give effect to the Senate committee’s recommendation. I commend the amendments to the chamber.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.52 p.m.)—I move government amendment (4) on sheet QS255:

(4) Schedule 1, item 10, page 5 (line 1) to page 6 (line 9), omit subsections (5), (6) and (7).

This amendment deals with stored communications, which I mentioned earlier—the example being a stored email. Again, it gives effect to the Senate committee’s recommendation.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.52 p.m.)—The government opposes item 11 in schedule 1 in the following terms:

(5) Schedule 1, item 11, page 6 (lines 11 to 17), to be opposed.

Again this is one of those unusual circumstances where the government will oppose the item in order to give effect to the Senate committee’s recommendation.

The CHAIRMAN—The question is that item 11 in schedule 1 stand as printed.

Question negatived.

Senator GREIG (Western Australia) (3.53 p.m.)—I move Democrat amendment (3) on sheet 4028:

(3) Schedule 1, page 6 (after line 29), after item 15, insert:

15A After section 17
Insert:

17A Annual report by Minister about warrants

(1) The Minister shall, as soon as practicable after each 30 June, cause to be prepared a written report that relates to the year ending on that 30 June and complies with section 17B.

(2) The Minister must table a copy of a report under subsection (1) before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

17B Report to contain information about requests made and warrants issued

The report required in accordance with section 17A shall set out:

(a) the number of requests for warrants that the Organisation has made pursuant to section 9 during that year; and

(b) the number of warrants that the Minister has issued pursuant to section 9 during that year; and

(c) the number of requests for warrants that the Organisation has made pursuant to section 9A during that year; and

(d) the number of warrants that the Minister has issued pursuant to section 9A during that year; and

(e) the number of requests for further warrants that the Organisation has made pursuant to subsection 9B(4) during that year; and

(f) the number of further warrants that the Minister has issued pursuant to subsection 9B(4) during that year; and

(g) the number of warrants issued by the Director-General of Security pursuant to section 10 during that year; and

(h) the number of requests for warrants that the Organisation has made pursuant to section 11A during that year; and
(i) the number of warrants that the Minister has issued pursuant to section 11A during that year; and
(j) the number of requests for warrants that the Organisation has made pursuant to section 11B during that year; and
(k) the number of warrants that the Minister has issued pursuant to section 11B during that year; and
(l) the number of requests for warrants that the Organisation has made pursuant to section 11C during that year;
(m) the number of warrants that the Minister has issued pursuant to section 11C during that year; and
(n) the number of requests for further warrants that the Organisation has made pursuant to subsection 11D(4) during that year; and
(o) the total expenditure (including expenditure of a capital nature) incurred by the Organisation in connection with the execution of warrants during the year to which the report relates.

Under the current telecommunications interception regime, ASIO exercises its interception powers in a virtual accountability vacuum and that concerns us. ASIO’s entire accountability in this context is limited to scrutiny by the Attorney-General. This creates the disturbing situation in which the power to authorise the extensive bugging of private conversations of individual Australians rests with the same minister who presided over the ‘truth overboard’ scandal. We Democrats believe that there is a desperate need for greater accountability in relation to the exercise of telecommunications interception powers by ASIO.

At present the Australian community has no idea of the extent to which ASIO is exercising these powers. Given the massive violation of privacy associated with the powers, we believe very strongly that some degree of accountability is vital to safeguard against their abuse. In advocating this, I am not naively suggesting that ASIO should be treated in the same way as any other government department; clearly, as an intelligence agency, ASIO cannot achieve the same level of public scrutiny, accountability or transparency as we would hope or expect from other government departments. That is not to say that it should be free from accountability in relation to its interception powers. We Democrats firmly believe that ASIO should be required to provide the parliament with basic information about its use of interception powers—for example, the number of warrants issued to it by the Attorney-General. We do not believe this would impinge in any way on ASIO’s ability to promote or protect Australia’s national security.

Senator LUDWIG (Queensland) (3.55 p.m.)—The opposition will not be supporting this Democrat amendment. It is a significant amendment to the telecommunications interception legislation, and I think Senator Greig knows that. It significantly changes the reporting regime required by ASIO to use its telecommunications interception warrants. It is fair to say we all agree that ASIO should be accountable to the parliament, and we recognise the spirit in which the amendment has been put forward. In these instances you have to be careful about the type of requirement you may impose on ASIO, particularly where it might have the potential to reveal information about ASIO’s operations, which could prejudice those operations. When you look at that, the opposition is not in a position to support this amendment.

On the other hand, we have noticed the Prime Minister in recent days making public confidential intelligence briefings and information about operations and the like, particularly about our intelligence agencies in Iraq, which could only be described as base politics to score cheap political points against the
opposition leader. Putting that aside, we hope this parliament will exercise greater caution than the Howard government has on this issue, but it is not enough to persuade us. We take the principle as being more important in this instance. We think that you have to be very careful about the potential that I outlined earlier, which is why we will not vote for this amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.57 p.m.)—The government oppose this Democrat amendment for the reasons outlined by Senator Ludwig and also on the basis that Mr Tom Sherman conducted an independent review of parts of the telecommunications interception regime in June last year. He recommended that ASIO publish in the public version of its annual report the total number of warrants applied for, refused and issued in the relevant reporting year. The government have not yet made any decisions in relation to whether and in what form Mr Sherman’s recommendations are to be implemented, and we believe that to do so on the run would be inappropriate.

I understand the concerns that Senator Greig has. We do think this is a sweeping amendment to the act. We believe a considered approach to Mr Sherman’s report is the way to go. We also note that the Senate Legal and Constitutional Legislation Committee did not recommend that ASIO be required to report publicly on the number of telecommunications interception warrants it obtains. Perhaps this is better left for a considered approach for another day. The government will be voting against this amendment.

Question negatived.

Senator GREIG (Western Australia) (3.59 p.m.)—Before we leave the committee stage of this bill, as I take it there are no further amendments, I wonder if I could ask a question. When we resumed on this bill only a short while ago, I was not aware—my office was not aware—that Senator Ludwig was not going to continue with his speech on the second reading, which he began earlier in the day. As a consequence, I was not here for the call to give my speech on the second reading of this bill; then we went straight to the minister’s wrapping-up and into committee.

The CHAIRMAN—So you would like leave for your speech to be incorporated?

Senator GREIG—Yes. I have not had an opportunity to confer with the whips, but if they are comfortable I would like to seek leave to have my speech on the second reading incorporated in Hansard.

Senator LUDWIG (Queensland) (4.00 p.m.)—What actually happened was that I had finished my speech right on the dot of 12.45 p.m., so I was not in continuation. I noted you were not in the chamber, Senator Greig, at the resumption and I thought you might have been unavailable.

Leave granted.

Senator GREIG (Western Australia) (4.00 p.m.)—The incorporated speech read as follows—

This is a truly scary Bill which has the potential to violate the privacy of thousands of Australians. This Bill will allow ASIO and a range of law enforcement agencies to access the SMS, email and voicemail messages of individual Australians without the need for an interception warrant.

These proposals were originally introduced by the Government as part of its package of anti-terrorism legislation in 2002 and attracted strong criticism from many groups and individuals within the Australian community.

While the Government has made some improvements to the legislation since that time, the provisions relating to SMS, email and voicemail remain unacceptable.

I want to begin my remarks today by emphasising that the interception of private communications...
between individual Australians is an incredibly intrusive practice.

Individual Australians have the right to communicate privately with their friends, their families and their loved ones. Similarly, in a business context, Australian workers have the right to communicate privately with their employers, employees, colleagues and clients.

Human beings are continually developing new and innovative ways of communicating with each other and it is important that Australians have the freedom and the confidence to embrace these new technologies, without fear of Government surveillance.

The right to privacy imposes a vital limitation on Executive power. When that right is eroded, we are left with an Orwellian state with the power to control the lives of those it governs.

In the absence of a Bill of Rights, there is no constitutionally or legislatively enshrined right to privacy in Australia, however a number of important protections do exist. Not surprisingly, most of these are contained in the Federal Privacy Act. The Telecommunications (Interception) Act also contains an essential protection—it prohibits the interception, listening to, or recording of telecommunications between individuals.

Of course, the Act also sets out a number of circumstances in which this prohibition does not apply. In particular, it enables ASIO to intercept telecommunications in the interests of national security and it enables law enforcement agencies to intercept telecommunications for the purpose of investigating and prosecuting criminal offences. In each of these cases, an interception warrant is required before any interception is permitted.

Under this Bill, however, Australian intelligence and law enforcement agencies will, for the first time, be able to access certain forms of telecommunications—namely SMS, email and voicemail—without an interception warrant.

The Bills Digest on this Bill argues that:

“Parliament needs to consider whether access by ASIO or law enforcement authorities to stored communications (emails, voicemail and text messages) without the knowledge of the recipient or sender should be allowed without adhering to protocols for intercepting private communications of the type laid down in the Telecommunications (Interception) Act”.

It goes on to say:

“The fundamental issue, however, is what privacy regime should apply for emails, text messages and voicemail, as well as for similar forms of electronic communication that may be developed in the future. Should official access to private communications using new forms of electronic technology be allowed outside the type of protocols in the Telecommunications (Interception) Act simply because the communications have reached a point in their transmission where they are deemed by the Bill to be no longer passing over a telecommunications system?”

The Democrats believe that the answer to this question is an emphatic “no”.

We see no reason why electronic communications, such as SMS, email and voicemail should be treated any differently from telephone calls, simply because they can be stored and accessed at a later time.

The use of SMS, email and voicemail as means of communication is increasing rapidly and the Australian community should be able to reap the benefits of this technology without fearing Government access to their private communications.

The Democrats believe these proposed changes will undermine the fundamental purpose and intent of the Telecommunications (Interception) Act and will enable unjustifiable infringements of personal privacy.

One of the fundamental points that needs to be made about interception warrants is that they provide some degree of accountability in the exercise of such an invasive powers. For example, law enforcement agencies must satisfy a judge or member of the AAT that the warrant is required for the investigation of a particular offence.

The Act limits the range of offences in relation to which a warrant may be issued and the Attorney-General is required to present an Annual Report to the Parliament on the number of warrants issued, the cost of implementing those warrants and their usefulness in terms of whether they yield information relevant to the prosecution of an offence.
Under the new provisions, law enforcement agencies will be able to access stored SMS, email and voicemail messages after their receipt without the need for an interception warrant. What this means in practical terms is, firstly, that there will be no scrutiny of the proposed use of these powers before they are exercised by law enforcement agencies. This is because it will not be necessary to satisfy a judicial officer that accessing private communications is necessary for the investigation or prosecution of an offence.

Secondly, law enforcement agencies will now be able to access private communications between individuals for the purpose of investigating even the most minor offences.

Thirdly, there will be no parliamentary or public scrutiny of the exercise of these powers because the Attorney-General will have no obligation to report to the Parliament on their use. What this means is that both the Parliament and the community will be kept in the dark about the extent to which law enforcement agencies are accessing private SMS, email and voicemail messages. This is totally unacceptable.

Even when there are strict reporting requirements in place—as with the existing interception powers—we are seeing a massive increase in spying by law enforcement agencies. The introduction of new powers without any associated reporting requirements, will only exacerbate this situation.

The recent tabled Annual Report on the Telecommunications (Interception) Act for 2002-2003 demonstrates that our law enforcement agencies are undertaking more interceptions than ever before. The report indicates that a total of 3058 warrants were issued to law enforcement agencies in the previous reporting year, representing an increase of 41% over the past two years.

The extent of phone-tapping documented in the previous Annual Report, prompted a reporter for the Sunday Tasmanian to remark, on 29 June last year, that:

“Australians are fast becoming the most spied-on people in the Western world.... The 2514 court warrants for phone taps last financial year—almost double the number issued in the US—represent a tenfold increase in the past decade.”

The most important point to make about these figures is that they represent only the number of warrants issued, not the number of interceptions made pursuant to those warrants. What this means in practical terms is that the warrants actually authorise the interception of tens of thousands of individual phone calls.

While the Annual Report argues that “interception continues to be an extremely valuable investigative tool”, the figures reveal that many interceptions do not in fact result in conviction, prosecution or even arrest. Not only was there a decrease in the number of arrests per warrant, but also in the proportion of warrants which yielded information used in the prosecution of an offence.

What is clear is that hundreds of warrants have been issued, and thousands of interceptions undertaken, which have ultimately not had any forensic value. For example, more than 1500 of the warrants issued last year did not result in any arrest.

The report also highlights the enormous cost associated with interception warrants, with more than $25 million being spent in connection with the execution of warrants during the past year. So the picture which the Annual Report paints is one in which Australian law enforcement agencies are undertaking more interceptions, spending more money on them, yet not necessarily yielding more information relevant to criminal offences.

It is against this backdrop that the Government is now seeking to give these law enforcement agencies unrestricted and unaccountable powers to access SMS, email and voicemail messages. This is not only unacceptable. But the most fundamental point I want to make is that these powers are not only being given to law enforcement agencies they are also being given to ASIO, to be used in the performance of its national security functions.

Under the current telecommunications interception regime, ASIO exercises its interception powers in a virtual accountability vacuum. ASIO’s entire accountability in this context is limited to scrutiny by the Attorney-General.
The disturbing situation that this creates is one in which the power to authorise the extensive bugging of private conversations between individual Australians rests with the same Minister who presided over the “Truth Overboard” scandal.

The Democrats believe there is a desperate need for greater accountability in relation to the exercise of telecommunications interception powers by ASIO. At present, the Australian community has no idea of the extent to which ASIO is exercising these powers. Given the massive violation of privacy associated with these powers, we firmly believe that some degree of accountability is vital to guard against their abuse.

In advocating this, I am not naively suggesting that ASIO should be treated in the same way as any other Government Department. Clearly, as an intelligence agency, ASIO cannot achieve the same level of public accountability and transparency as we would hope other Government Departments would exhibit. But that is not to say that it should be free from any accountability in relation to its interception powers.

The Democrats firmly believe that ASIO should be required to provide to the Parliament basic information about its use of interception powers, for example, the number of warrants issued to it by the Attorney-General. We do not believe that this would impinge on ASIO’s ability to promote and protect Australia’s national security.

It is for these reasons that I will be moving amendments to this Bill to introduce annual reporting requirements in relation to ASIO’s interception powers.

While the Democrats strongly oppose the provisions of this Bill which will facilitate access to stored SMS, email and voicemail communications without a warrant, we know that Labor supports them and that therefore they will soon be law. Given the controversial and very intrusive nature of these powers, the Democrats believe they should be subject to a three-year sunset clause.

We believe the Government should come back in three years and justify the continued operation of these powers and, as part of that justification, it should provide evidence on how the powers have been exercised over the intervening period.

I would like to close by making the observation that the vast majority of Australians are almost certain to object to their private SMS, email and voicemail communications being accessed by ASIO and law enforcement agencies, yet, unfortunately, the vast majority of Australians remain oblivious to this legislation.

This is partly because, in the Democrats’ view, this legislation has not been subjected to appropriate community consultation. It is true that the Bill has been the subject of an Inquiry by the Senate Legal and Constitutional Legislation Committee; however, the inquiry was conducted within an incredibly short time frame, which we are convinced prevented many concerned groups and individuals from participating in that process.

Everyone in this place will acknowledge that accessing private communications without the knowledge of the individuals involved is an incredibly intrusive practice. The Democrats believe that this practice is unjustifiable other than in the most exceptional circumstances.

Where the Government does engage in this practice, it must be clearly accountable to the Parliament. This Bill reduces accountability and radically extends the circumstances in which the Government can lawfully access private communications between individuals.

The Democrats do not support these moves and, while we will seek to address some of our more serious concerns by way of amendments during the Committee stage, we will ultimately be voting against this Bill.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.01 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
**AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (No. 2) 2003**

Consideration of House of Representatives Message

Consideration resumed from 31 March.

*House of Representatives message—*

1. Clause 2, page 2 (table item 5), omit the table item, substitute:
   
   5. Schedule 1, Part 2
      The day after the day on which this Act receives the Royal Assent.

2. Schedule 1, item 156, page 34 (lines 3 to 6), omit the item, substitute:
   
   156 Subsection 5(1)
   Insert:
   protective *service officer* means a protective service officer within the meaning of the Australian Protective Service Act 1987.

3. Schedule 1, item 157, page 34 (lines 7 to 10), omit the item, substitute:
   
   157 Subsection 5(1) (definition of protective service officer)
   Repeal the definition, substitute:
   protective *service officer* means a protective service officer within the meaning of the *Australian Federal Police Act 1979*.

4. Schedule 1, item 158, page 34 (lines 11 to 16), omit the item.

5. Schedule 1, item 160, page 34 (line 25), after “authority of a State or Territory”, insert “(including a member of the police force or police service of a State or Territory)”.

6. Schedule 1, item 162, page 35 (line 19), omit paragraph (c), substitute:
   
   (c) a police officer; or
   (d) a protective service officer; or
   (e) an employee of a body corporate established or continued in existence for a public purpose by or under a Commonwealth law.

7. Schedule 1, item 164, page 35 (line 29), omit paragraph (c), substitute:
   
   (c) a police officer; or
   (ca) a protective service officer; or
   (cb) an employee of a body corporate established or continued in existence for a public purpose by or under a Commonwealth law;

8. Schedule 1, item 166, page 36 (after line 10), after paragraph (b), insert:
   
   or (c) a police officer; or
   (d) a protective service officer; or
   (e) an employee of a body corporate established or continued in existence
for a public purpose by or under a Commonwealth law;

(9) Schedule 1, item 168, page 36 (line 17) to page 37 (line 17), omit the item.

(10) Schedule 1, items 171 to 178, page 37 (line 28) to page 39 (line 12), omit the items.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.01 p.m.)—I move:

That the committee does not insist on its amendments to which the House of Representatives has disagreed and agrees to the amendments made by the House in place of those amendments.

Senator FORSHAW (New South Wales) (4.02 p.m.)—by leave—I move opposition amendments (1), (2) and (3) on sheet 4213, which have been circulated in the name of Senator O’Brien:

(1) Amendment (6), at the end of paragraph (e), add “, if the body corporate is prescribed for the purposes of this paragraph”.

(2) Amendment (7), at the end of paragraph (cb), add “, if the body corporate is prescribed for the purposes of this paragraph”.

(3) Amendment (8), at the end of paragraph (e), add “, if the body corporate is prescribed for the purposes of this paragraph”.

The Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2003 is an important piece of legislation because it goes to the heart of the integrity of Australia’s quarantine regime. It is for that reason that Labor sought to amend this bill when it was first before the Senate, to ensure that we continue to enjoy the highest level of protection from the threat of imported pests and diseases. When this bill was last considered by the Senate, the government proposed two changes to our quarantine regime. The first change was to make provision to allow for the appointment of state quarantine officers to perform functions within the meaning of the Quarantine Act. Labor were very happy to support that first change. The second proposal was to extend quarantine powers to contract pool staff. We opposed that proposal and our opposition was supported by the Senate by virtue of the amendment that we moved. The government have chosen to reject the Senate’s amendment. They have chosen to do that in the other place and they have moved a number of new amendments which have now come before us.

What the government are proposing to do with these new amendments is add three new categories of persons able to perform quarantine functions within the meaning of the act. The first category is police officers, including members of a police force or police service of a state or territory. The second category to be given these powers to perform quarantine functions within the meaning of the act is protective service officers as defined under the Australian Protective Service Act. The third category is employees of a body corporate established or continued in existence for a public purpose by or under a Commonwealth law. We are happy to accept the first two categories but we do have grave reservations about the third category of employees identified in the government’s amendments. It is a very general category and it is certainly not clear to us just what the implications of such a provision might be.

We have been provided with a draft schedule of organisations that may fall under this clause but we have not had sufficient time to consider how appropriate those organisations might be as providers of quarantine services. Let me give a couple of examples. Firstly, the minister’s draft schedule of organisations that may fall into this category includes the Wheat Export Authority. That organisation is based in Canberra and has around 12 staff with skills that relate to the monitoring of the single export desk for wheat. Therefore I am not sure, frankly, just what role the Wheat Export Authority would be expected to play in terms of, for instance,
being given powers to search property and seize material in enforcing our quarantine laws. Similarly, another authority that is on the minister’s list is the Australian Fisheries Management Authority. That organisation already draws on state police forces for much of its compliance work, so one can conclude that logically AFMA may well be an organisation on the list that would largely be redundant when it came to actually implementing what the government seeks to do.

We would also be interested to hear from the minister what level of consultation has taken place with these organisations prior to the government putting forward these proposals through the amendments that were moved and carried in the other place. I suspect, given the time frame, that there has probably been very little, if any, consultation. The minister has argued that he needs flexibility in the quarantine system in order for it to do its job properly. We believe that there is already considerable flexibility under the existing arrangements. That flexibility is extended by adding police officers and protective service officers to the groups which can use quarantine powers. We are quite willing to support the government in relation to those categories, but no case has been made out, at this stage, for putting in place an almost open-ended arrangement where, I suspect, tens of thousands of people would be given specific powers under the Quarantine Act.

The opposition amendments require the government to bring to the parliament a regulation that lists those bodies that it proposes to give the quarantine powers to under the third category. Of course we support any improvement in our quarantine arrangements but we cannot support splashing those powers around willy-nilly to all sorts of groups and organisations simply for the sake of it. We must be more rigid and certain in ensuring that those persons or bodies that enforce quarantine laws and powers, and utilise the powers of search and seizure under them, are appropriately qualified and are appropriate organisations to use those enforcement powers. Requiring the government to bring forward a regulation will allow this place, in future, to consider in detail what is being proposed and if necessary use its power to disallow any such regulation.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (4.09 p.m.)—I wish to indicate that the government will be agreeing to the opposition amendments.

Senator GREIG (Western Australia) (4.10 p.m.)—Likewise, the Democrats will be agreeing to the opposition amendments.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that the motion to accept the amendments of the House of Representatives, as amended, be agreed to.

Question agreed to.

Resolution reported with amendments; report adopted.

COMMUNICATIONS LEGISLATION AMENDMENT BILL (No. 2) 2003

Second Reading

Debate resumed from 19 August 2003, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator MARK BISHOP (Western Australia) (4.12 p.m.)—The Communications Legislation Amendment Bill (No. 2) 2003 makes amendments to the Telecommunications Act 1997, the Australian Security Intelligence Organisation Act 1979 and the Administrative Decisions (Judicial Review) Act 1977. It strengthens the national security arrangements for Australia’s telecommunica-
tions industry. This bill increases the power of the executive to exert control over Australia’s telecommunications infrastructure.

Labor accepts that in our heightened security environment stronger national security provisions are required over these telecommunications facilities. While broadly supporting the bill we had some concerns with the fact that the bill applied to individuals. We were concerned that individuals’ phones could be cut off under the bill. This week the government has responded to Labor’s concerns. The government will now move amendments to remove those provisions. We are advised that the Democrats are also moving an amendment taking into account Labor’s concerns in this regard. Labor will consider that amendment. Labor welcomes the change of heart—the change of approach—by the government. We will support amendments removing individuals from the ambit of the bill. We will also support most of the bill.

The bill has two main components. First, the bill amends the Telecommunications Act 1997 to require the ACA, the Australian Communications Authority, to consult with the Attorney-General’s Department before issuing a carrier licence. The Attorney-General, in consultation with the Prime Minister and the minister administering the Telecommunications Act, can direct the ACA to refuse a carrier licence on national security grounds. The grounds for refusing carrier licences are not limited under the Telecommunications Act but the ability to refuse to grant a licence on national security grounds is not provided for expressly. Labor supports these provisions as a sensible tightening of the national security arrangements applying to our carriers.

Second, the bill allows the Attorney-General to direct a person to prevent or cease the supply of a service for itself or any other person on national security grounds. This direction may be issued to individuals, groups or industry participants, where their activities are deemed to pose a risk. It is this reference to individuals that is now to be removed. The bill amends the ASIO Act to provide for appeal to the AAT against any adverse or qualified security assessment ASIO has provided to the Attorney-General. The Attorney-General, in turn, will be required to notify a person of an adverse security finding, except where such notification would be contrary to the interests of national security. However, the bill also amends the Administrative Decisions (Judicial Review) Act 1977 to exclude the same decision from judicial review under the act. Such national security decisions are not usually open to judicial review under the AD(JR) Act.

Certainly this is the case with the ASIO Act, the Intelligence Services Act, and the Telecommunications (Interception) Act. However, judicial review will also be available in both the Federal Court and the High Court. Given the government’s proposed amendment to remove the reference to individuals, Labor no longer objects strongly to this provision. The bill clarifies the existing obligations of carriers and carriage service providers or CSPs. It introduces new obligations on carriers and CSPs, on data disclosure and on interception arrangements. Carriers and CSPs must provide all relevant information associated with interception warrants. This includes call durations and the time, date and location of calls, along with call content. This amendment further clarifies existing obligations and Labor supports it fully.

The bill updates and arguably loosens the definition of ‘senior officers’ who can certify the disclosure by carriers and CSPs of call data. This will accommodate current law enforcement agency structures and classifications. The commissioners, deputy commis-
sioners or CEOs of relevant agencies will be able to nominate most categories of senior officers. Labor has concerns with these amendments, which I will come back to later. The Telecommunications Act will be amended to ensure that all carriers and CSPs have an interception capability. Applications for exemptions from this requirement will be considered within 60 days, with a further interim extension facility if needed. Labor supports these amendments.

The current requirement for carriers and nominated CSPs to provide annual interception capability plans will be amended. These will now require statements about current and continued compliance with their interception obligations. This will ensure such plans are signed by or on behalf of the carrier or the CEO of the nominated CSP. The date for the lodgment of such plans will be changed from 1 January to 1 July to ensure compliance with lodgment dates. Labor also supports these technical amendments.

Having made those supportive comments on the bill, I will now speak to Labor’s main concern. Labor’s key concern with the bill now centres on the definition of senior officers who will have the power to certify call data. The widespread access to call data by inappropriate persons acting under the guise of law enforcement has recently been exposed in the media. In June this year it was reported that Australia’s police forces are using telephone taps at 27 times the rate of their US counterparts. It was reported that in Australia 2,514 court warrants were issued for telephone taps last financial year. It is suggested therefore that the need for this measure may be overstated.

We need to ensure that relatively junior officers do not inappropriately access call data. There have already been various media reports saying that relatively junior officers have sought to obtain such information for non law enforcement related purposes. Labor therefore does not support clauses 17 and 18 which widen the definition of senior officer for the purposes of certifying the disclosure of call data. The other amendment Labor will move at the committee stage is for the provision of a five-year sunset clause in the bill. This will also provide for a review of the legislation four years after assent. While the bill’s general provisions are justified under the current security environment, a sunset clause would allow the bill’s continued relevance to be reviewed. It is important that the bill be considered in the light of experience.

May I assure the Senate that Labor wants to improve the national security arrangements in our telecommunications industries. We have no desire to obstruct the great majority of the important amendments contained in this bill. We want our national security environment to be robust and responsive to the terrible threat of global terrorism against innocent civilians. But we need to balance the need to strengthen our national security with the need to preserve our traditional rights. Labor supports absolutely the government’s moves to tighten the national security checks against telecommunications carriers but we also consider telecommunications services as essential services. That is why we are pleased that the government has relented on the extension of this bill to the rights of individuals, who are without adequate appeal rights. If left intact, this would have contradicted the government’s own majority report and the evidence given to the committee by the Attorney-General’s Department.

Labor is pleased the government has seen the light and has supported our original position. We welcome the fact that the bill no longer applies to individuals. We give credit to the government for conceding in the interests of good public policy. In conclusion, Labor supports the government’s initiatives...
to improve national security arrangements in our telecommunications sector. We will not ultimately seek to defeat this bill, but we ask that the government give our amendments due and careful consideration.

Senator GREIG (Western Australia) (4.21 p.m.)—The Communications Legislation Amendment Bill (No. 2) 2003 is the latest in a series of legislative measures the government has proposed in order to protect Australia’s security. We Democrats are committed to keeping Australians safe from terrorism, and for this reason we have given careful consideration to each of the government’s proposals to combat terrorism. Some of these proposals we have supported and some we have not. In each case we have considered whether there is any justification for the new powers being proposed by the government. This has involved looking at, firstly, whether there is a demonstrated deficiency in existing law; secondly, whether there is any evidence to suggest that the new powers will be effective in addressing threats to security; thirdly, whether any infringement of rights and liberties associated with the proposal is vital and necessary in order to protect the safety of Australians; and finally, whether the government has considered alternative measures that might be more effective or appropriate in the circumstances.

Unfortunately, the vast bulk of the government antiterrorism proposals have failed these tests even after extensive amendment by the Senate. Accordingly, the Democrats have voted against them although there have been a number of worthy proposals which the Democrats have been willing to support. The threat of terrorism is real and has serious implications for Australia’s security. However, national security is also a vague concept which can be relied upon as a blanket justification for increasing powers and winding back the rights and freedoms of individuals. As parliamentarians we are charged with the responsibility of making laws for the peace, order and good government of the Commonwealth. Clearly, this includes a responsibility to ensure that the government has the legislative capacity to protect Australia’s national security, but it also includes a responsibility to ensure that the fundamental rights and freedoms of Australians are not violated.

Today I want to take a look at how this bill fits in with the current legislative framework for protecting Australian security. It is important that we do not simply consider this bill in isolation but that we look at it in the context of the government’s existing powers. Since the terrorist attacks in the United States on September 11, 2001, this parliament has passed at least 15 new bills specifically relating to terrorism. We have legislation which enables ASIO to monitor our telephone conversations and our SMS, email and voicemail messages without proper accountability measures. We have legislation that enables ASIO to lock up and interrogate any innocent Australian who might have information. We have legislation that enables the government to proscribe organisations as terrorist organisations whether or not they have been listed as such by the United Nations. We have legislation that enables APS officers to stop individuals and subject them to a search or require them to provide their personal details. We have a range of new strict liability offences where individuals can be prosecuted for an offence and imprisoned for many years regardless of whether they intended to commit the offence or not. We have nondisclosure offences which impede the freedom of the press and the ability of human rights organisations to ensure that the government does not violate human rights in the exercise of powers.

Now, on top of all these measures, the government wants to invest the Attorney-General with wide-ranging powers to control
access to telecommunications services. Moreover, it is seeking this power via a poorly drafted bill characterised by ambiguities and broad definitions. One of our major concerns with this bill is that it will, in its current form, allow the Attorney-General to issue a direction that telecommunications services can no longer be supplied to an individual. However, at the Senate inquiry into this bill a senior departmental official informed the committee that the legislation was not intended to target individuals. The official, nevertheless, confirmed that it would be used to do so.

The Attorney-General’s Department explained that the intention behind the bill was to address the risk to the telecommunications industry in executing warrants and was not about individuals, and we are pleased to see that the government has taken on board the concerns of the Senate committee and will be seeking to amend the bill to address those concerns. Despite the government amendments we believe that the bill still lacks certainty and clarity, and in particular we are concerned that the grounds upon which the Attorney-General can exercise his or her powers under the bill are not adequately defined. The definition of ‘security’ is too broad for the purposes of the bill and creates the potential for telecommunications services to be cut off for reasons that extend well beyond the threat of terrorism. There is little scope for a meaningful review of an adverse decision and the bill does not provide full statutory immunity for carriers, carriage service providers and their officers, and employees and their agents in relation to compliance with some provisions.

With respect to the Attorney-General’s powers, the bill provides that the Attorney-General may exercise his or her power under proposed section 581(3) if ‘after consulting the Prime Minister and the minister administering this act’ the Attorney-General considers that the proposed use or supply of a service would be ‘prejudicial to security’. Given the significant and intrusive nature of the Attorney-General’s powers under this section, we Democrats believe that the grounds for their exercise need to be much more clearly defined. Firstly, the Attorney-General is only required to consider that the proposed use or supply would be prejudicial to security. Secondly, the bill does not require a security assessment to be prepared before the Attorney-General uses the power. An example of demonstrated grounds could be a security assessment from ASIO. Given the intrusive nature of the powers contained in the legislation, we Democrats firmly believe that the threshold for exercising them should be set sufficiently high.

Obtaining a security assessment from ASIO is rendered even more imperative given the severely limited rights of review. In the bill’s present form the only right to review under the Administrative Decisions (Judicial Review) Act is in relation to the ASIO security assessment itself. No such opportunity for review exists in relation to the decision of the Attorney-General although it will still be possible to seek a review of that decision in the Federal Court under section 39B of the Judiciary Act and in the High Court under section 75 of the Constitution. Given that the more accessible and cheaper version for review under the AD(JR) Act is restricted to the ASIO security as-
assessment, we Democrats believe that such an assessment should be a prerequisite condition for the exercise of the Attorney-General’s power. I will be moving amendments in the committee stage to address those issues. Regarding the definition of ‘security’, proposed section 581(3) of the bill states that security has the same meaning as in the ASIO Act. The ASIO Act defines ‘security’ as including:

(a) the protection of, and of the people of, the Commonwealth and the several States and Territories from:

(i) espionage;
(ii) sabotage;
(iii) politically motivated violence;
(iv) promotion of communal violence;
(v) attacks on Australia’s defence system; or
(vi) acts of foreign interference;

whether directed from, or committed within, Australia or not ...

On the basis of that information, we Democrats share the concern of the New South Wales Council for Civil Liberties that the Attorney-General could exercise his or her powers in relation to political protests, industrial action and consumer boycotts. We note that section 17A of the ASIO Act provides:

This Act shall not limit the right of persons to engage in lawful advocacy, protest or dissent and the exercise of that right shall not, by itself, be regarded as prejudicial to security, and the functions of the Organisation shall be construed accordingly.

Accordingly, ASIO would be constrained by this provision in preparing security assessments for the Attorney-General. However, this constraint would not extend to the actual decision of the Attorney-General, which is particularly concerning, given that security assessments are not currently a mandatory prerequisite to that decision. We believe that the bill should be amended to incorporate an express exemption for such activities and we will be moving an amendment to deal with that during the committee stage. With respect to a lack of review mechanisms in the bill, the Democrats share the concerns of the Senate Scrutiny of Bills Committee, which observed:

Decisions by the Attorney-General to refuse to grant a carrier license or to direct a carrier not to supply telecommunications services can only be made if the Attorney-General considers that the grant of the licences or the use of telecommunications services would be prejudicial to security. However, there is no means by which that decision can be tested before any independent body. The fact that the Attorney-General’s decision is not reviewable coupled with the ambiguous grounds on which that decision can be made leaves the Attorney-General with a broad discretion and no accountability. Therefore, we will be opposing the government’s amendment to exclude judicial review.

Our final concern is that the bill does not provide statutory immunity for carriers, carriage service providers and their officers, employees and agents in respect of acts done or omitted in good faith in relation to a direction under 581(3). Vodafone argues that this is unjustified and inconsistent as the current legislation grants immunity for acts done in good faith in relation to sections 313 and 315. In its submission, Vodafone argued:

Carriers and carriage service providers could potentially be exposed to very significant claims in damages and on other bases for ceasing or refusing to supply telecommunications services to their customers in compliance with a direction under section 581(3). It is clearly essential to afford them such bare minimum statutory protection against such claims.

In response, the department argued that compliance with a direction under proposed section 581(3) would frustrate the contracts of carriers and carriage service providers so that they would not attract any liability.
While that might be the case, we Democrats believe that immunity from liability should be expressly included in the bill in order to avoid doubt. This is a matter that should be determined by the parliament and not left to the courts. Accordingly, we will be moving an amendment in the committee stage to address that issue.

Senator KEMP (Victoria—Minister for the Arts and Sport) (4.33 p.m.)—I thank Senators Bishop and Greig for their contributions. It now falls to me to sum up and end the second reading debate of this legislation. The Communications Legislation Amendment Bill (No. 2) 2003 amends the Telecommunications Act 1997, the Australian Security Intelligence Organisation Act 1979 and the Administrative Decisions (Judicial Review) Act 1977 to enhance the security of Australia’s telecommunications services and networks and to improve existing arrangements relating to call data disclosure and telecommunications interception services.

The Telecommunications Act provides the legislative base for Australia’s open and competitive telecommunications industry. The telecommunications industry is attracting significant new investment, which increases the potential for national security and law enforcement issues to arise. The objectives of the bill are to: (1) improve national security by allowing national security issues to be considered before the granting of a carrier licence; (2) provide the Attorney-General with the discretionary powers to prevent carrier or carriage service provider services from being used for purposes against the national interest; (3) improve the efficiency and effectiveness of current call data disclosure and interception arrangements under the Telecommunications Act; (4) update relevant definitions to accommodate current law enforcement management structures; and (5) improve arrangements related to interception capability plans.

The bill was drafted primarily in response to the government’s consideration of a number of recommendations of the review of the long-term cost-effectiveness of telecommunications interception, the Boucher review, and concerns of law enforcement agencies about the potential ownership of telecommunications companies by entities whose activities may pose a risk to national security. The bill seeks to address heightened concerns about the need to enhance the security of Australia’s telecommunications services while still preserving the balance provided for in the existing legislative framework between the need to protect an individual’s privacy and confidentiality and the public and national interest in having protected information disclosed in limited authorised circumstances.

I would like to thank members of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee for their report on the bill. After carefully considering the Senate legislation committee’s report, the government—as befits a consultative government, which this government is—proposes to move amendments that will clarify that the bill intends to address potential security risks to the Australian telecommunications industry and not risks that may be posed by individual users of the telecommunications system. The package of amendments contained in the bill will lead to more secure telecommunications networks and services and, we believe, improved arrangements for the provision of assistance to law enforcement agencies by telecommunications carriers and carriage service providers.

I note that both the opposition and the Democrats are proposing amendments to the bill. To hopefully save some time, I will flag that the government will not be supporting these amendments. We believe they are unnecessary changes to the legislation that
would not improve its operation. In summary, the bill contains a range of measures which will enhance the security of Australia’s telecommunications services and networks and improve arrangements for the provision of assistance to law enforcement agencies by telecommunications carriers and carriage service providers. The government consider that it is important for the bill to be passed as soon as possible to ensure the security of Australia’s telecommunications services and networks. I look forward to the cooperation of the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator GREIG (Western Australia) (4.38 p.m.)—The Democrats oppose item 1 in schedule 1 in the following terms:

(1) Schedule 1, item 1, page 3 (lines 4 to 8), TO BE OPPOSED.

As I said in my speech in the second reading debate, the fact that the Attorney-General’s decision is not reviewable coupled with the ambiguous grounds on which that decision can be made leaves the A-G with broad discretion and no accountability. The lack of review mechanisms in the bill was also raised as a concern by the Senate Scrutiny of Bills Committee in its deliberations and was published in Alert Digest No. 8 of 2003. The Democrats remain concerned that there is no easy review process and will therefore be opposing the government’s amendment to exclude the Attorney-General’s actions under sections 58A and 581(3) from judicial review. It is our contention that the item be opposed.

Senator MARK BISHOP (Western Australia) (4.39 p.m.)—Democrat amendment (1) opposes schedule 1, item 1, which excludes decisions made under this act from the scope of the Administrative Decisions (Judicial Review) Act. Labor was to move a similar amendment before being informed that the government would remove individuals from the ambit of this bill. Given the bill no longer applies to individuals, we are less concerned about the exclusion of the AD(JR) Act from decisions made by the A-G under this act. Nonetheless, there is still merit in the Democrat amendment and on balance we will support it.

Senator KEMP (Victoria—Minister for the Arts and Sport) (4.39 p.m.)—Let me just make a couple of points. We do not believe judicial review under the Administrative Decisions (Judicial Review) Act is appropriate for decisions made on national security grounds. The provisions in the bill are consistent with existing policy that decisions made on grounds of security or which have security implications are excluded from judicial review under the AD(JR) Act. For example, decisions under the following acts are currently exempt: the Australian Security Intelligence Organisation Act 1979, the Intelligence Services Act 2001 and the Foreign Acquisitions and Takeovers Act 1975.

The AD(JR) Act provides a streamlined and expedited form of judicial review that is not designed to deal effectively with the review of sensitive material. The Security Appeals Division of the AAT provides a more appropriate mechanism for review of decisions based on security matters. The AAT Act contains a range of specific mechanisms to quarantine and effectively protect security-sensitive information. The amendments contained in the bill ensure that security assessments forming the basis of a direction will be reviewable on their merits by the AAT. As I said, we will not be supporting the amendment moved by the Democrats. We note some wavering on the Labor Party’s position, as stated by Senator Mark Bishop.
On balance, Senator Bishop, you came down on the wrong side.

Question negatived.

Senator KEMP (Victoria—Minister for the Arts and Sport) (4.41 p.m.)—by leave—I move government amendments (1), (2) and (3) on sheet VW226:

(1) Schedule 1, item 4, page 3 (line 27) to page 4 (line 16), omit subsections (2) to (4), substitute:

(2) Within 14 days after receiving the assessment, the Attorney-General must give to the assessed person a notice in writing, to which a copy of the assessment is attached, informing the assessed person of the making of the assessment and containing information, in the form prescribed for the purposes of subsection 38(1), concerning his or her right to apply to the Tribunal under this Part.

(3) If the Attorney-General is satisfied that the assessment contains any matter the disclosure of which would be prejudicial to the interests of security, then the Attorney-General must exclude that matter from the copy provided under subsection (2).

(2) Schedule 1, item 27, page 15 (lines 19 and 20), omit “, either generally or to a particular person or particular persons”.

(3) Schedule 1, item 27, page 15 (after line 20), after subsection (3), insert:

(3A) A direction under subsection (3) must relate to a carriage service generally and cannot be expressed to apply to the supply of a carriage service to a particular person, particular persons or a particular class of persons.

I will table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 30 March 2004. On 20 August 2003, the Senate referred the bill to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report. The committee reported on 15 September 2003. The committee supported the bill. However, the committee suggested that the government consider clarifying whether or not the bill is intended to apply to carriers and carriage service providers as well as individuals or only to carriers and carriage service providers and not individuals. The government proposes amendments to the bill that address the concerns raised by the committee and by the opposition during the debate in the House of Representatives. The amendments clarify that the bill is intended to address potential security risks related to the Australian telecommunications industry and not risks that may be posed by individual users of the telecommunications system.

Amendment (3), in combination with amendment (2), requires that a direction given under proposed section 581(3) relates to a carriage service generally and would preclude the Attorney-General from issuing a direction to a carrier or carriage service provider to cease supplying a carriage service to a particular person. Amendment (1) makes consequential amendments and also omits an unnecessary provision.

Senator MARK BISHOP (Western Australia) (4.43 p.m.)—Labor supports government amendments (1), (2) and (3). These amendments address Labor’s key concerns with the original bill. Under the original bill, the government could have cut off an individual’s telecommunications services. Labor identified this weakness in the bill during the Senate inquiry into the bill. We called for the bill to be amended to remove references to individuals. The government has responded to our call through these amendments, which we are now supporting.

Government amendments (2) and (3) amend item 27 to ensure that the Attorney-
General cannot give a direction to a carriage or carriage service provider not to supply, or to cease supplying, a carriage service to a particular person, particular persons or a particular class of persons. Rather, the Attorney may only issue a direction in relation to the use or supply of carriage services generally.

Government amendment (1) is a consequential amendment that removes provisions of the bill no longer necessary following other amendments. Again, Labor welcomes this acknowledgement from the government that the bill should not apply to individuals. Accordingly, we support these amendments.

Senator GREIG (Western Australia)  (4.45 p.m.)—The Democrats agree with the government’s argument in relation to these amendments and we will be supporting them.

Question agreed to.

Senator GREIG (Western Australia)  (4.45 p.m.)—by leave—I move Democrat amendments (2) and (4) on sheet 4212:

(2) Schedule 1, item 10, page 6 (lines 17 to 21), omit subsection (1), substitute:

(1) Subject to subsection (1A), the Attorney-General may give a written direction to the ACA not to grant a carrier licence to a particular person.

(1A) The Attorney-General may only give a written direction under subsection (1) if:

(a) the Attorney-General has consulted with the Prime Minister and the Minister administering this Act;

(b) the Attorney-General has consulted with the Prime Minister and the Minister administering this Act; and

(c) there are demonstrated grounds to show that the proposed use or supply involves, or would involve, a risk to national security; and

(d) the Attorney-General believes on reasonable grounds that the risk to national security cannot be managed effectively through other mechanisms;

As I said in my speech on the second reading a little earlier, we Democrats are concerned about the significant and intrusive nature of the Attorney-General’s powers under this section. We feel that the grounds for their exercise need to be much more clearly defined. The Attorney is only required to consider that the proposed use or supply would be prejudicial to security; there is no requirement that the Attorney-General’s view be based on reasonable grounds or demonstrated grounds.

Secondly, we feel that the phrase ‘prejudicial to security’ is ambiguous. We believe that this phrase should be replaced with an alternative form of words which implies a more specific threshold. For example, the requirement could be that the Attorney believes on reasonable grounds that the proposed use or supply would seriously threaten Australia’s security.

Democrat amendment (2) redrafts proposed provision 58A(1) to ensure that the Attorney-General’s decision is based on demonstrated grounds—ideally that would be an ASIO security assessment—and that the Attorney-General believes on reasonable grounds that the proposed use or supply would seriously threaten Australia’s security.

Senator MARK BISHOP (Western Australia)  (4.46 p.m.)—Democrat amendments (2) and (4) require, amongst other things, that the Attorney-General show that there are
demonstrated grounds to protect national security when exercising directions under the act. Labor supports these amendments.

Senator KEMP (Victoria—Minister for the Arts and Sport) (4.47 p.m.)—The government, as I flagged in the second reading debate, do not support the amendments proposed by the Democrats. We believe an amendment in these terms is unnecessary. In our view, the bill as currently drafted would ensure that a direction may only be given where the issue of a licence or the supply of a service would be prejudicial to security. In addition, I point out that the bill includes a range of measures through which security considerations may be addressed during the licensing process. The issue of a direction will therefore only arise in cases where those measures have been unsuccessful in resolving security issues. I point out that the Attorney-General would also be required to consult with both the Prime Minister and the minister administering the Telecommunications Act before directing the ACA to refuse to grant a licence or directing a carrier or carriage service provider not to use or supply, or to cease using or supplying, a carriage service or carriage services.

Senator Greig raised the issue of the meaning of the term ‘prejudicial to security’. The bill adopts the definition of security in section 4 of the ASIO Act, which includes the protection of Australia and its people from espionage, politically motivated violence and other dangerous activities. It is not appropriate, however, to develop a specific set of criteria that could be used by the Attorney-General to determine what is prejudicial to security. An inflexible set of criteria would limit the government in responding to specific and generalised security issues that may arise from time to time. We will not be supporting these amendments moved by the Democrats.

Question agreed to.

Senator GREIG (Western Australia) (4.49 p.m.)—by leave—I move Democrat amendments (3) and (5) on sheet 4212:

(3) Schedule 1, item 10, page 6 (after line 32), after subsection (4), insert:

(4A) Nothing in this section limits the right of persons to engage in lawful advocacy, protest or dissent and the exercise of that right shall not, by itself, be regarded as a risk to national security, and the power of the Attorney-General to issue a written direction under subsection (1) shall be construed accordingly.

(5) Schedule 1, item 27, page 15 (after line 22), after subsection (4), insert:

(4A) Nothing in this section limits the right of persons to engage in lawful advocacy, protest or dissent and the exercise of that right shall not, by itself, be regarded as a risk to national security, and the power of the Attorney-General to issue a written direction under subsection (3) shall be construed accordingly.

As I said in my speech on the second reading, we Democrats share the concerns raised during the Senate inquiry, particularly by the New South Wales Council for Civil Liberties, that the Attorney-General could exercise her or his powers in relation to political protests, industrial action and consumer boycotts. Democrat amendment (3) goes to the heart of that and seeks to ensure that the rights of persons to engage in lawful advocacy, protest or dissent shall not be regarded as a risk to national security.

Senator MARK BISHOP (Western Australia) (4.50 p.m.)—Democrat amendments (3) and (5) place strict limits on the definition of national security so that ‘lawful advocacy, protest or dissent’ is not included in that definition. Labor is comfortable with these provisions, which clarify when the At-
Senator KEMP (Victoria—Minister for the Arts and Sport) (4.50 p.m.)—The coalition do not support these amendments, for the reason that we believe they are unnecessary. As currently drafted, the bill makes it clear that a direction may only be given where the issue of a licence or the supply of a service would be prejudicial to security. Security is clearly defined by item 9 of the bill to have the meaning given in the ASIO Act. The act separately specifies that it does not limit the right of a person to engage in lawful advocacy, protest or dissent and the exercise of that right shall not by itself be regarded as prejudicial to security. That is the advice I have received, and I think it is significant. The functions of the organisation, including those in relation to the preparation of security assessments, are construed accordingly.

Question agreed to.

Senator GREIG (Western Australia) (4.51 p.m.)—I move Democrat amendment (6) on sheet 4212:

(6) Schedule 1, item 27, page 15 (after line 22), after subsection (4), insert:

(4B) A carrier or carriage service provider to which a written direction has been given under subsection (3) is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in compliance with the request.

(4C) An officer, employee or agent of a carrier or carriage service provider to which a written direction has been given under subsection (3) is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the provider as mentioned in subsection (4B).

As I outlined in my speech in the second reading debate, it is our view that the bill does not provide statutory immunity for carriers and carriage service providers and their officers, employees and agents in respect of acts done or omitted in good faith in relation to a direction under section 581(3), despite the fact that such immunity attaches to sections 31(3) and 31(5) of the act. As I also said in my contribution, carriers and carriage service providers could potentially be exposed to very significant claims in damages and on other bases for ceasing or refusing to supply telecommunications services to their customers in compliance with the direction under section 581(3). The Democrats believe that immunity from liability should be expressly included in the bill and Democrat amendment (6) goes to the heart of doing just that.

Senator MARK BISHOP (Western Australia) (4.52 p.m.)—Labor is comfortable with Democrat amendment (6), which limits the legal liability for carriers and carriage service providers who comply with requests under the bill. Labor supports this amendment.

Senator KEMP (Victoria—Minister for the Arts and Sport) (4.53 p.m.)—The coalition do not believe that this amendment is necessary. In the event that a direction is issued, the carrier or carriage service provider would be compelled to act in accordance with that direction. In doing so the carrier would comply with a lawful order and could not be liable for damages for such action. The common law principle of the doctrine of frustration, I am advised, would provide a defence to any action for damages in contract as a result of a failure to provide a service due to compliance with a lawful direction.

Question agreed to.
Senator MARK BISHOP (Western Australia) (4.54 p.m.)—Labor opposes schedule 1 in the following terms:

(3) Schedule 1, item 17, page 10 (lines 17 to 20), **TO BE OPPOSED**.

(4) Schedule 1, item 18, page 10 (line 21) to page (12 (line 17), **TO BE OPPOSED**.

Labor opposes the provisions in the bill regarding the definition of an officer who may certify disclosure by carriers and carriage service providers of call data. The bill updates and, arguably, loosens the definition of senior officers who can certify the disclosure by carriers and CSPs of call data, purportedly to accommodate current law enforcement agency structures and classifications. The commissioners, deputy commissioners and CEOs of relevant agencies will be able to nominate most categories of senior officers. As stated in my contribution to the second reading debate, Labor has problems with the extension of the definition of ‘senior officer’ for the purposes of certifying disclosure of call data. The widespread accessing of call data in Australia by inappropriate persons acting under the guise of law enforcement has been exposed in the media. We need to ensure that relatively junior officers do not inappropriately access call data.

Again drawing on my second reading contribution, there have been various media reports about relatively junior officers who have sought to obtain such information for non law enforcement related purposes. Item 17 of the bill widens the definition of ‘senior officer’ to include people who may not even work for an enforcement agency but who may be on secondment, for instance. This widens the definition of ‘officer’ considerably. Labor is uncomfortable with this provision and opposes it.

Item 18 allows for greater flexibility in the range of persons who may be specified as a senior officer. Currently, only senior officers authorised in writing by the head of an agency are allowed to issue disclosure certificates for the enforcement of the criminal law. These certificates authorise the release of otherwise confidential communications. Item 18 widens the definition of ‘senior officer’ and allows most categories of senior officers to be authorised or nominated in writing by the commissioner, deputy commissioner and CEOs of particular agencies. Labor believes that confidential communications should not be able to be disclosed by relatively junior officers. These provisions as they stand may allow for this scenario. Labor is uncomfortable with this widening of the definition of ‘senior officer’ and does not believe it is warranted as it currently stands. Accordingly, Labor opposes item 18.

Senator GREIG (Western Australia) (4.56 p.m.)—We Democrats always take the view in dealing with legislation that broadens powers and goes to fundamental questions of civil liberties and human rights that definitions are critical. So we take the view that better proscribing the definitions in the way that Labor is proposing here enhances the bill, and we will therefore be supporting them.

Senator KEMP (Victoria—Minister for the Arts and Sport) (4.57 p.m.)—The changes to the definition of ‘senior officer’ better align the Telecommunications Act definition to current law enforcement agency management structures. The proposed changes do not relax the authorisation process or expand the ability of officers to authorise disclosures. The Telecommunications Act contains a number of strong provisions to protect the personal privacy of people using telecommunications services while recognising the needs of law enforcement agencies to obtain protected information—for example, to conduct criminal investigations.
The bill does not water down these provisions and all existing protective mechanisms will be maintained. The government does not support these amendments, as it believes it would frustrate the ability of law enforcement agencies in the performance of their functions. The existing definitions of ‘senior officer’ and ‘officer’ present significant difficulties for some enforcement agencies in the efficient processing of certificates, due to changes that have occurred in law enforcement agency structures and officer classifications. Those changes have effectively reduced the number of officers who can certify a call data request than was the case when the definition was enacted. The bill makes essential updates to the classifications in the Telecommunications Act to reflect current law enforcement management and operational structures. The bill also requires most categories of senior officers to be authorised or nominated in writing by the commissioner of police, the deputy commissioner of police or the chief executive officer of the relevant agency. This ensures senior consideration of whether a person is appropriate to undertake the responsibilities involved. We will not be supporting these measures.

**The TEMPORARY CHAIRMAN (Senator Chapman)**—The question is that items 17 and 18 stand as printed.

Question negatived.

**Senator MARK BISHOP (Western Australia) (4.59 p.m.)**—by leave—I move Labor amendments (1) and (2) on sheet 3219:

(1) Page 1 (after line 9), after clause 2, insert:

2A Review of operation etc. of this Act

(1) Within 4 years of the day on which this Act receives the Royal Assent, the Minister, in consultation with the Attorney-General, must:

(a) cause a review to be conducted to assess the operation, effectiveness and implications of amendments made by this Act; and

(b) prepare a written report on the review.

(2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the report is made.

(2) Page 2 (after line 2), after clause 3, insert:

4 Cessation of operation of Act

This Act, unless sooner repealed, ceases to be in force at the end of 5 years after the Royal Assent.

These amendments relate to a review of the operation of the act and a provision for a five-year sunset clause for the bill. Amendment (1) allows for a review of the legislation four years after assent. This will allow the minister in consultation with the A-G to review the operation, effectiveness and implications of the act. It will allow for any unseen outcomes of the bill to be reconsidered after four years. It will allow for the bill to be reconsidered in the light of experience and amended if appropriate.

Amendment (2) allows for a five-year sunset clause for the bill following that review. While the bill’s general provisions are justified under the current security environment, a sunset clause would allow the possible repeal or amendment of the bill should the security environment improve over the next five years. Again, it is important that this bill is considered in the light of experience.

**Senator GREIG (Western Australia) (5.00 p.m.)**—Given the concerns that we Democrats have raised about the bill in the Senate committee report and again here in the chamber today, we do think it is appropriate that the bill be reviewed and therefore have no difficulty in supporting Labor’s amendments (1) and (2).
Senator KEMP (Victoria—Minister for the Arts and Sport) (5.01 p.m.)—The government opposes these amendments. This bill will enhance the security of Australia’s telecommunications services and networks and improve arrangements for the provision of assistance to law enforcement agencies by telecommunications carriers and carriage service providers. The security of Australia telecommunications systems is not a short-term issue. The bill appropriately provides longer term measures to limit the risk to security within the Australian telecommunications network and enhances the effective operations of law enforcement agencies. These measures include extensive consultation to ensure that security issues are appropriately considered in telecommunications licensing issues. These measures will assist in ensuring that all relevant considerations are taken into account at an early stage in the licensing process.

In terms of review, there is no need to add further review requirements, given that most of this bill is itself the outcome of extensive review procedures. Much of the bill responds to recommendations of the review of the longer term effectiveness of telecommunications interception.

Question agreed to.

Bill, as amended, agreed to.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

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

Military Rehabilitation and Compensation Bill 2003
Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003

MIGRATION LEGISLATION AMENDMENT BILL (No. 1) 2002

Consideration of House of Representatives Message

Message received from the House of Representatives acquainting the Senate that the House has disagreed to the amendments made by the Senate and requesting the reconsideration of the amendments.

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

FAMILY ASSISTANCE LEGISLATION AMENDMENT (EXTENSION OF TIME LIMITS) BILL 2003

Consideration of House of Representatives Message

Message received from the House of Representatives acquainting the Senate that the House has disagreed to the amendments made by the Senate and requesting the reconsideration of the amendments.

Ordered that the message be considered in Committee of the Whole immediately.

Senator KEMP (Victoria—Minister for the Arts and Sport) (5.05 p.m.)—I move:

That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Question agreed to.

Resolution agreed to; report adopted.
BUSINESS

Rearrangement

Senator KEMP (Victoria—Minister for the Arts and Sport) (5.06 p.m.)—I move:

That intervening business be postponed till after consideration of general business order of the day no. 71 (Kyoto Protocol Ratification Bill 2003 [No. 2]).

Question agreed to.

KYOTO PROTOCOL RATIFICATION BILL 2003 [No. 2]

Second Reading

Debate resumed from 30 October 2003, on motion by Senator Lundy:

That this bill be now read a second time.

Senator LUNDY (Australian Capital Territory) (5.06 p.m.)—I rise today on behalf of the opposition to once again call on the Howard government to finally fulfil its obligation to act as a responsible international environmental citizen and pass the Kyoto Protocol Ratification Bill 2003 [No. 2]. Climate change due to global warming is, without question, one of the most serious environmental issues that are currently facing the planet. A major contributing factor to global warming is greenhouse gas emissions. Both developed and developing countries have acknowledged the need to dramatically cut greenhouse gas emissions as part of a coordinated international response to limit global warming.

To their credit, many countries, including developing countries, have adopted the Kyoto protocol and are making significant headway in reducing greenhouse gas emissions. This makes the Howard government’s ongoing refusal to ratify, when we have secured such a good deal from the Kyoto negotiations and now have so much to lose, an international embarrassment. Why, when the Howard government have committed Australia to meeting its Kyoto target of an eight per cent increase, they still refuse to ratify Kyoto and bring into force a protocol that will benefit this country in so many ways defies logic. For too long the Howard government have rolled out the abysmal excuse that we do not need to ratify Kyoto because we have the Greenhouse Office and we are giving them millions of dollars to deliver emission reduction programs.

The problem for the government, as a recent Australian National Audit Office report showed, is that the Australian Greenhouse Office’s emission reduction programs are totally ineffectual. The ANAO report levelled some sharp and very accurate criticisms at the performance of the Australian Greenhouse Office. In a key criticism, the ANAO questioned whether the greenhouse gas abatement claimed from the Greenhouse Challenge was an accurate reflection of what had been achieved as a direct result of Australian Greenhouse Office programs. In short, the Audit Office said, ‘We can’t tell if the AGO’s programs are really getting the emission reductions they claim they are or not.’

The Audit Office also showed that the government’s claims about spending $1 billion on greenhouse programs are entirely misleading. The Australian National Audit Office showed that the original budget for the seven key programs it investigated was $873.7 million to 30 June 2003. But the actual amount spent since 30 June was just $204.4 million, less than a quarter of the original total. At this rate of spending—$200 million over four years—it will take 20 years to spend the $1 billion the Howard government talks about. By then it will be too late for the Great Barrier Reef, for our alpine ecosystems and for our farmlands. Enough time has already been wasted. While the Howard government has continued to shirk its international responsibilities, greenhouse gas emissions have continued to grow. It is
time that Australia joined the world effort to tackle climate change and its damaging consequences; in fact, it is way past time.

Labor is committed to tackling global warming, an issue that is so serious it was recently described as a threat to global security in a Pentagon commissioned report. Labor has made the commitment to act as a responsible environmental citizen. Labor now calls once again on the Howard government to finally do what is right and ratify the Kyoto protocol, which it will be required to do upon the successful passage of this bill in both houses. We are on the brink of seeing this matter dealt with in this chamber, but I understand that its future will be contingent upon the Howard government’s approach to this in the lower house. I commend the bill to you. It is the only way forward if Australia is going to be treated with any respect and credibility on the global stage when it comes to protecting our environment.

Senator BROWN (Tasmania) (5.10 p.m.)—I rise to speak on the Kyoto Protocol Ratification Bill 2003 [No. 2] and to support this important piece of legislation. I note there are no government speakers on the speaking list. Perhaps it is because of the time constraints upon the chamber, but I note that all the speakers are cutting their contributions short for the purpose of truncating this debate. Frankly, perhaps it is also indicative of the government’s complete lack of interest in the pending environmental disaster of global warming.

It is an opportune time for this legislation to come again before the chamber. This week we have had some very important information, which received a fair bit of publicity in the Australian media, about the massive increase in greenhouse gas emissions over the last two years. CSIRO figures have been released which show that the rate of emissions contributing to global warming worsened in 2002, despite a myriad of programs attempting to curb them. CSIRO warned that a continued rise in these temperatures could devastate the Great Barrier Reef by 2030 and flood Kakadu National Park. Around 18.7 billion tonnes of carbon dioxide were released into the atmosphere in 2002 and another 17.1 billion tonnes were released last year. The average over the last decade has been 13.3 billion tonnes, so we have seen a
substantial increase, despite the Kyoto protocol and despite programs which were designed to curb emissions.

But what have this government done on this issue? Very little. They often trumpet the fact that they have allocated spending measures to greenhouse gas abatement programs. The Prime Minister has trumpeted his supposed billion-dollar commitment. But, as an Australian National Audit Office report which Senator Lundy referred to shows, there has been a massive underspend in those programs. As at the end of last financial year the actual amount spent was just over $204 million, which I think is only about 22 per cent—certainly less than a quarter—of the actual spending proposed. The Audit Office also found a number of problems, particularly with the Greenhouse Challenge program, where it was clear that abatement targets were not properly part of the framework for allocating funding. There was also a rather bizarre case study, where the Australian Greenhouse Office actually allocated funding to assist a company in purchasing a new fleet of buses and it was determined after the project finished that in fact it had delivered no greenhouse gas abatement. So this is the state of the government’s agenda. Their programs are not delivering sufficiently.

It is extraordinary that the government are in the position of saying, ‘We will try and meet the Kyoto target but we won’t ratify it.’ The Kyoto protocol is the agreed international framework for proceeding on what is an extraordinarily important issue that will be important in the lifetimes of people in this place. This is not something just for future generations; this is something that will confront us in our lifetimes. Unless the government change their position I think we will look back on this period in history as a time when government failed to take up the challenge, failed to confront the task and failed to achieve any effective reform in this area.

Senator EGGLESTON (Western Australia) (5.16 p.m.)—The Kyoto Protocol Ratification Bill 2003 [No. 2] has received a lot of interest. There is quite a lot of misunderstanding in the community about the Kyoto protocol. We in the Environment, Communication, Information Technology and the Arts Legislation Committee conducted an inquiry into this private member’s bill. We received 39 submissions and saw 18 witnesses from 15 organisations. The committee received no truly persuasive evidence that Australia should ratify the Kyoto protocol.

Senator Lundy—That’s your opinion.

Senator EGGLESTON—that was the majority opinion. To the contrary, the evidence received was persuasive the other way: there is no case in Australia’s interest to ratify the Kyoto protocol. I would like to go into the reasons for that, but not at great length, considering the time and the need to conclude. All parties agreed, on a positive note, that there is a problem in this day and age with greenhouse gases and global warming. We have no argument about that, and we believe that it is necessary that countries around the world take actions to do what they can to abate greenhouse gas emissions and to prevent, as far as is possible, climate change. That is not something that anyone argues about. What is argued about is whether or not the Kyoto protocol provides a useful mechanism to ensure that greenhouse gas emissions are reduced and climate change is thereby ameliorated. It is the opinion of the government that the Kyoto protocol—while it is, no doubt, a genuine attempt to seek to control greenhouse gas emissions—is a flawed treaty, a flawed protocol, which really will do very little to ameliorate greenhouse gas emissions and prevent climate change.
The fact of the matter is that most of the world’s large emitters are not signatories to the Kyoto protocol. The United States and Russia, who are the large emitters in the world, are not signatories to this protocol. The impact of Australia signing on to the protocol would only be about a one per cent reduction of world greenhouse gas emissions. The protocol will not come into operation unless either the United States or Russia sign on and bring the number of signing-on nations up to 55 per cent. The European Union is very critical of Australia and likes to portray itself as something of a paragon of moral virtue in terms of concern about the environment and greenhouse gas emissions. Of the 15 members of the European Union as it stands now, 12 are not meeting their greenhouse targets under the Kyoto protocol. Of those that do, they are very largely doing it by use of nuclear energy—which one might say is a rather flawed way to achieve an environmental outcome, given the problems with nuclear waste disposal.

Australia and this Australian government have an outstanding record in controlling greenhouse gas emissions. Without signing on to the protocol we are going to meet our targets. We acknowledge the need to reduce greenhouse gas emissions, but we also feel that the Kyoto protocol will do little to enhance the process whereby greenhouse gas emissions can be controlled. More specifically in Australia’s case there is concern, as was expressed to the inquiry by a number of industries, that signing on to Kyoto will mean an unnecessary shackling of major industries which employ a lot of people in Australia. That would result in a loss of employment and, very probably, the loss of industries as they move offshore to other places. So signing on to this flawed treaty not only will not produce any significant reduction in greenhouse gas emission levels on a worldwide basis; it will also do positive economic damage to Australia, because it will put a shackle around the economic legs of this country which does not have to be there and which will have a very negative effect on our economy.

We believe that the world needs some sort of agreement which covers not only the developed nations of the world but also the developing nations, so that large emitters like India and China—and, indeed, the group of developing countries called the G77—actually sign on to something which is legally binding to constrain their greenhouse gas emissions and which will do something to reduce those emissions. As it stands at the moment, countries like India and China, although they are signatories, I believe, to the protocol, have made it quite clear that they are not willing to accept or discuss anything that looks like a legally binding obligation to constrain their greenhouse gas emissions. For the Senate’s information, China is the second largest global emitter—and its emissions are continuing to grow in line with its rapid economic growth—and India is the fifth largest global emitter, and they have refused to sign any legally binding obligations to control their emissions.

The model we look at is the Montreal protocol, which was signed by a large number of countries around the world, including developed countries and developing countries. It has had a very significant impact on controlling gas emissions. The Montreal protocol is significant because it is an international treaty that does cover most of the world. Kyoto is only signed on to by a very small group of nations, it does not offer any real promise of reducing greenhouse gas emissions and it will have an adverse impact on Australia’s economy were Australia to sign on. Against that background, we have a situation in Australia where the Australian government, the Howard government, has a very outstanding record in doing what it can...
to control greenhouse gases through the establishment of the world’s first greenhouse office and a wide number of other measures that it has taken.

The government believe that greenhouse gases are damaging to the world’s climate, we believe that it is necessary that something should be done to control greenhouse gas emissions around the world, but we do no believe that the Kyoto protocol and treaty are the answer to that problem. As I have said, we look forward to the day when a treaty is developed, through the United Nations process hopefully, which most of the world’s emitters—the United States, the South American countries, the eastern European countries and the great emitters of Asia—will sign on to.

When that kind of treaty is developed, then Australia will be more than happy to be a part of it. We are not happy to sign on to Kyoto because the treaty is flawed, and it is wrong to sign a treaty which is not going to meet, and has no hope of ever meeting, the objectives which it has set out to do. That is why the government have opposed this bill put forward by Senator Brown, who is without any doubt a very sincere proponent of care for the environment and is certainly fully aware of the dangers of greenhouse gas emissions in terms of climate change. But I leave the Senate with the message and the thought that, regardless of the fact that the Howard government are declining to sign on to the Kyoto protocol, we are meeting our targets. This country, more than most in the world, is quite genuinely concerned about greenhouse gas emissions.

Finally, I simply repeat the point I made earlier: the Europeans, particularly the Germans, who are so critical of us for failing to sign on to the Kyoto protocol, are extremely hypocritical. As I said, only 12 of the 15 member nations of the European Union are actually meeting their Kyoto protocol targets and, for the very large part, those that are are using nuclear energy to meet those targets. This is why the Howard government have no sense of regret in not signing the Kyoto protocol. We are meeting our targets and protecting the interests of Australia, and that is why we will oppose this bill.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (5.28 p.m.)—The Howard government may have no sense of regret about not supporting and ratifying the Kyoto protocol, but I can tell you that future generations sure as hell will have regrets. In fact, the current generation already has a lot of regret. This matter may be at the fag end of a sitting session and people may be thinking about when they are going to be able to pack up and leave the parliament for five or six weeks, but for the Democrats it is a serious, major and urgent matter.

The Democrats, the Greens and others have been pressing this parliament and this government about the broader issue of climate change and greenhouse gas emissions for many years, with great frustration at the lack of action or even a recognition of the seriousness and the immediacy of the problem. That is the real tragedy: the lack of response from the Howard government in relation to ratification of the Kyoto protocol. Nobody pretends that ratifying the Kyoto protocol or getting it in place and operational is going to solve the issue. But, as I think Senator Brown pointed out, certainly this government has not come up with another approach that is going to have a better impact and it is certainly not going out there and playing a role as an international leader in getting a stronger approach from other nations towards the issues of climate change, global warming and greenhouse emissions.
The Democrats strongly support ratifying the Kyoto protocol. That has been our position for some time. In August 1999, nearly five years ago, the Australian Democrats initiated a Senate inquiry into the adequacy of Australia’s response to the challenges posed by climate change. The inquiry took 15 months to complete; the final report is over 500 pages long and contains some 106 recommendations. Not surprisingly, they cover a wide range of issues related to this government’s response to climate change, including the ratification of the Kyoto protocol. As Senator Brown just pointed out to me, despite what Senator Eggleston repeatedly said—that this government is not going to sign the Kyoto protocol—it actually signed the protocol quite some time ago. It is the failure to ratify, the failure to promote and the failure to endorse moving forward in this area that is the problem. The Democrat initiated Senate inquiry recommended, among other things, that:

... the Commonwealth Government take a leadership role in international negotiations on climate change, with a view to moving through Australia’s treaty-making process in a timely manner to achieve ratification of the Kyoto Protocol, including:

- urging other countries to ratify the Protocol;
- starting to work constructively with developing countries to encourage them to adopt binding targets as soon as possible and to ensure global emissions constraints; and
- ensuring adequate targets are in place beyond the first commitment period to stabilise atmospheric concentrations of greenhouse gases.

It has been nearly four years since that recommendation was made, particularly in relation to timely ratification, urging other countries to ratify and taking a leadership role. Not only has the Commonwealth government not acted on that; if anything, it has gone in the other direction. That is something for which this government must stand condemned.

The committee also recommended that a comprehensive domestic emissions trading system be incorporated as soon as possible and that a greenhouse trigger be incorporated into the Environment Protection and Biodiversity Conservation Act. That was an area where there was a quite clear commitment from the then environment minister, Senator Hill, to move down the path of incorporating a greenhouse trigger. It is another area of broken promises—one on a list that is too long to keep track of. I notice Senator Kemp coming into the chamber; he repeatedly urges the Democrats to assist the government in keeping its promises. This is a promise that the government has not kept: to incorporate a greenhouse trigger in the EPBC Act.

Senator Kemp—But you make us break so many promises in this chamber, Senator.

Senator BARTLETT—I am being focused here, Senator Kemp: I am being focused, on your urging. You could hardly complain when we make a specific offer to you. It is not just the Democrats keeping you honest; it is the entire Senate providing you with an opportunity to keep a promise, but it continues to be ignored. It is an area where, despite going through some initial motions, the government backed away from a simple measure. The government has ignored and backed away from every possible measure in a range of different actions that it could have taken, including ratifying the Kyoto protocol.

The only effective action this government has taken—and the thing that it likes to point to—is its greenhouse gas abatement program, which the Australian Democrats forced on it. I say ‘this government’ because other people in the community have certainly taken action, including those in the business
sector. This government not only does not show leadership but drags the chain behind everybody else. Even in the area of the greenhouse gas abatement program, the amount of money that was provided and pledged by this government has clearly not been spent as effectively as it could have been and should have been. Frankly, that is another broken promise to add to the list that I will keep reminding Senator Kemp about.

The mandatory renewable energy target is another initiative worthy of mention that sounds good in principle and, on the surface, makes some approaches that sound good. But the way it has been structured is such that it is little more than a PR initiative. It does not actually have the effect of being a positive impact on moving to renewable energy. So there are the failures in terms of renewable energy, the failure to ratify the Kyoto protocol, the failure to introduce an emissions trading scheme—indeed not only not introducing it but going as far as dismantling the emissions trading research section of the Australian Greenhouse Office—the failure to introduce a greenhouse trigger under the EPBC Act and the failure to introduce mandatory emissions reduction targets for coal-fired power stations. There is the withdrawal of funding to the CRC for Renewable Energy and, as has already been mentioned by Senator Wong, a gross under spending of the money originally allocated to the MBE and Safeguarding the Future packages, and an absolutely disgraceful failure to ensure the halting of land clearing in Queensland, an action that would have resulted in the abatement of about 25 million tonnes of CO$_2$, saving an enormous amount of biodiversity and assisting in a whole lot of other environmental gains. Even from an emissions point of view, it would have been a major gain but it was continually halted and prevented by the Howard government.

It is a huge list of failures and it has made us not an international leader but an international pariah on climate change issues. It has placed us behind the rest of the developed world on the implementation of effective measures and behind the developed world in terms of trying to develop a momentum for positive change. The European Commission’s environment director, Timo Makela, recently specifically criticised the Howard government for its failure to engage with Europe on climate change issues and its decision to abandon research into emissions trading. This is going to leave Australia behind the pack economically as well. This is a government that likes to talk about engaging internationally; it likes to talk about the value of trade and the jobs in trade internationally, but in a key area of staying up with the game we have fallen behind.

The European Union has an emissions trading system that is going to commence from 1 January next year. Paper pulp, cement, ferrous metals, electricity generation and oil refinery industries will progressively require emissions reductions of 50 per cent of current levels by 2012. Industries that exceed their annual targets will pay a set penalty per tonne of CO$_2$ over those targets or can buy tradeable credits or invest in renewable energy. Linking legislation means that companies such as those from Japan and Canada can comply by investing in annex B countries provided they have ratified the Kyoto protocols, but Australian companies will miss out on this opportunity.

This government is not only condemning Australia and the world to a higher risk of damage from climate change; it is leaving Australian companies out of investment opportunities and out of business and economic opportunities. It is absolutely grotesque short-sightedness on all levels. It is hard not to think that it is in part driven by this government’s absolute obsession with toeing the
line of the US agenda on any foreign policy issue of concern. It is not just the Democrats who are saying this; the evidence is enormous. Even the coal industry recognises that emission reduction has to occur. This government is happy to let all those industries do the running on this in a way that suits their own interests. The government will not do anything to take leadership on a simple thing like ratifying the protocol.

Just yesterday, the ACT State of the environment report indicated that effects of climate change were already being felt. That could include effects such as putting significant pressure on Canberra’s water supply. All of us—even those of us who are only in Canberra as regular visitors to Parliament House—know of the water problems in Canberra. In my own state of Queensland, a major economic and environmental asset of Queensland, the Great Barrier Reef, is under significant threat from climate change.

On 30 March the rainforest CRC released a report showing that climate change would wipe out the vast majority of our rainforest species and increase the prevalence of drought and the risk of bushfires and tropical diseases. On 29 March the CSIRO released figures showing 18.7 billion tonnes of carbon dioxide were released into the atmosphere in 2002, and 17.1 billion tonnes were released into the atmosphere in 2003. That compares to the average in the last 10 years of only 13.3 billion tonnes; it represents a huge jump. On 28 March the Sunday Age reported that Australia, along with several other developed nations, agreed to delay the phase-out of methyl bromide, which is not only a poisonous fertiliser that destroys the ozone layer but a substance that contributes to the greenhouse effect.

On 22 March the US National Oceanic and Atmospheric Administration released a report showing that the concentration of CO₂ in the atmosphere had reached record high levels and was increasing at an accelerated rate. Another report on 22 March indicated that Australia has the second highest per capita rate of greenhouse emissions in the world. On 19 February several insurance companies released figures showing an alarming increase in the costs associated with natural disasters and identified climate change as a key threat.

On 12 March a report was released that indicated that the increase in CO₂ in the atmosphere was resulting in measurable changes in the Amazon rainforest. On 11 March a CSIRO scientist indicated that climate change could disrupt oceanic currents. And 11 March also saw the introduction of the binding Kyoto emission reduction targets in the European Union; I highlighted that earlier. I could go on—and I have a strong wish to go on—but I realise what the time is and I shall not go on. I urge people who are interested to look at all the other questions, speeches and motions that have been put in this place by many senators who are urging action in this area. I urge people to look at all the committee reports, not just the large report entitled The heat is on: Australia’s greenhouse future that was released in 2000. There is overwhelming evidence. Endless amounts of effort have been put in by senators from a range of parties and a range of states trying to get more action on this issue.

This legislation is a simple step that can nonetheless make a significant difference. I believe that historically this government will be shown to have had one of their greatest failures in not taking the simple step of ratifying the protocol. This is to the Howard government’s great discredit, partly because of the benefit it would have had in itself and partly because of the hard to measure but very clearly significant benefit it would have had in showing international leadership—by
showing that we are taking this issue seriously and that we are going to do everything we can to prevent the massive economic and environmental damage that will come from inaction. The economic and environmental damage will come in clear ways that all of us here will see. It is not something that we do not have to worry about because it is a couple of lifetimes away. It will not happen in our grandchildren’s or children’s lifetimes; we will see the impacts in our own lifetimes. And history will condemn us for ignoring the blatant warnings that we have had for quite a number of years now.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (No. 2) 2003-2004

APPROPRIATION BILL (No. 3) 2003-2004

APPROPRIATION BILL (No. 4) 2003-2004

Second Reading

Debate resumed from 8 March, on motion by Senator Ellison:

That these bills be now read a second time.

Senator CARR (Victoria) (5.44 p.m.)—I would like to talk about the report of the Australian Parliamentary Delegation to Syria, Lebanon and Israel during 9 to 21 November 2003, which was tabled last week in the last 47 seconds of proceedings, giving no opportunity to speak to this report. I would like to begin by acknowledging the gracious and generous remarks that the delegation leader, Sandy Macdonald, has put in the report concerning me. This is the second Australian parliamentary delegation to the Middle East that I have had the privilege of participating in. It has given me an opportunity to observe the developments in that region and the relationships between the nations of the region during 1999 to 2003.

This most recent delegation visited three countries—Syria, Lebanon and Israel—plus the Palestinian Authority areas. Despite their geographical proximity, I found that they were four very different societies. Such visits on behalf of the Australian parliament are important. They provide an opportunity to build and maintain relationships which, in my opinion, should be given greater attention. Many Australians were born in this region; many have relatives who still live there. These Australians and many more besides maintain a keen interest in the welfare and the development of Syria, Lebanon and Israel and, of course, of the Palestinian people. The world at large maintains a keen interest in the relationships between these nations which remain tense and very complex. Australia has much to offer all three nations and much to gain from the relationships with them as well.

There are valuable trade, research and infrastructure development relationships that already exist between Australia and each of these three nations but there is ample scope for further development. Syria is a particular example. The delegation has recommended that the Australian government consider reopening its embassy in Damascus, after having closed it in 1999. I am pleased to see that this recommendation is indeed under active consideration by the foreign minister, according to last weekend’s newspapers. Last Saturday’s Australian reported that Syria is appealing to Australia to assist in repairing its relationship with the United States. This is certainly consistent with the position put to our delegation some four months ago.

The United States has imposed a diplomatic freeze on Syria and is systematically
isolating that nation as part of what it sees as its campaign against ‘rogue nations’. Those nations are asserted to be harbours of terrorism. However, if Australia wishes to encourage the development of a modern and open society in nations such as Syria, we have an important role to play in assisting rather than isolating such countries. Syria is a secular state and, by my observations, has undertaken tentative steps towards greater political freedoms and human rights improvements. Certainly, Syria’s treatment of its Palestinian community is probably the most compassionate of any nation in the region.

Syria’s secular government places a great deal of emphasis on religious tolerance and social harmony. Although the constitution requires that the president be a Muslim, it does not make Islam the state religion, and religious freedom is provided for. There is a flourishing Christian community operating within the country, which is unusual in many other parts of that region. In the context of the government’s response to current developments, in our discussions they continually emphasised the need to avoid extremism. The Syrian government has emphasised socialism and secular Arabism, and has sought to build national rather than religious or ethnic allegiances.

Syria is—I must emphasise this—in desperate need of investment and trade to help modernise its heavily run-down infrastructure. This is partly due to an overinvestment in the machinery of war. Anything Australia can do to help Syria and Israel reach a peaceful solution to the dispute over the Golan Heights would assist both nations in this regard. We could certainly do more to assist Syria through greater trade relations and by upgrading our diplomatic contact. With trade between Australia and Syria running at only $24 million in 2002-03, we have a mutual interest in developing deeper ties, particularly in the export of Australian educational services and other goods and expertise.

A second recommendation in our report is that Australia send a trade delegation to Syria to expand these ties. I am encouraged by the bipartisan interest in Syria’s appeal to Australia for assistance, especially amongst members of our delegation. I note that the delegation leader, Sandy Macdonald, was misquoted in the Australian report last Saturday. He did not actually call Syria ‘a bastard state for nearly 40 years’; he said ‘a Ba’ath state’. He was making the point, as I have, that Syria is a secular Arab nation and thus one which deserves support in its bid to modernise and play a role in the region and in the international community.

As I mentioned a few moments ago, we should acknowledge that Syria has treated its Palestinian population with a degree of respect and dignity, something which some of its neighbours could take heed of. The Palestinian refugees have the right to own property and to work—in short, to do all that full citizens can, except vote. Syria and Lebanon differ significantly in the way they have dealt with their Palestinian refugee populations, although the two nations share a similar geography, history and language.

In Lebanon we saw further evidence of the extensive rebuilding of Beirut. Infrastructure development in the regional areas outside the capital is, however, not progressing at quite the same rate as is occurring within the Beirut area. The Syrian influence on Lebanon remains strong, and Syria continues to maintain a considerable security and intelligence presence in the country. Despite its modernity and vibrancy, Lebanon still faces a struggle to rebuild its infrastructure and services. It faces the double burden of a large public debt and high unemployment. Like its neighbours, Lebanon would benefit from lasting regional security. Its particular con-
fessional system makes politics in Lebanon particularly interesting and, given that the census on which Syrian confessional divisions occur was in fact based on the census taken in 1932—and even at that time was said to have been not a strictly accurate reflection of the population at that time—it is little wonder that the political divide within Lebanon remains so delicate.

There is no doubt, on the other hand, that the economy of Israel has suffered because of the security situation. Tourism has dropped by 90 per cent as a result of the intifada. Building and construction have suffered a major downturn, and an increase in defence and security spending has put a huge strain on the public sector. In 2002 Israel spent some 16 per cent of its GDP on defence. This has a serious impact on the state’s ability to pay its own public servants—its teachers and its health care workers, for example—and with economic activity severely curtailed by the security situation unemployment is growing rapidly.

War weariness is not just about people fearing for their lives and their safety, although this is a very real fear for many people in Israel; it is also about having to deal with the terrible impact on economic activity, on jobs, on services and on the very basis of daily life for many Israelis. Living standards have fallen dramatically. Average income has fallen from something like $18,000 per annum to $14,000 per annum. This compares with an average annual income for the Palestinians of $800. One can only begin to describe the extraordinarily difficult economic position of the Palestinians in the context of recent activities there.

It is clear, however, in my judgment that there must be a just resolution to the Israeli-Palestinian conflict. It is clearer than ever that such a resolution will never be found through military means. This is a view that was shared by some of the most experienced strategists within Israel itself. In the month before our delegation’s visit, the army chief of staff, Lieutenant General Moshe Yaalon, was quoted in the press as saying that the network of restrictions placed on the Palestinian population in the occupied territories had proven to be counterproductive and was breeding greater militancy. Just prior to our arrival in Israel, four former heads of the Shin Bet security service also spoke out, saying that a political rather than a military solution was needed urgently. Avraham Shalom, who headed the security service from 1980 to 1996, told Israel’s largest circulation Hebrew daily newspaper:

We must once and for all admit that there is another side, that it has feelings and is suffering, and that we are behaving disgracefully ... We have turned into a people of petty fighters using the wrong tools.

Carmi Gillon, who ran Shin Bet between 1995 and 1996, said that he and his colleagues had agreed to an interview with the newspaper ‘out of serious concern for the condition of the state of Israel’. Major General Ami Ayalon, who headed the agency from 1996 to 2000, is a co-author of a peace petition signed by tens of thousands of Israelis and Palestinians. Yaakov Perry, whose term as security chief was between 1988 and 1995, the period covering the first Palestinian intifada, said:

If something doesn’t happen here, we will continue to live by the sword, we will continue to wallow in the mud and we will continue to destroy ourselves.

These four men said that Israel should be prepared to initiate a peace process unilaterally rather than wait for the Palestinians to bring a halt to terrorism, which, of course, is current Prime Minister Sharon’s overriding prerequisite for negotiations. The former security chiefs were critical of the Sharon government’s efforts to sideline Yasser
Arafat and called the Jewish settlements that have proliferated across the West Bank and the Gaza Strip among the greatest obstacles to peace. They have also condemned the 400-mile fence, wall, barrier or complex—whatever name you choose—that Israel is erecting around the heart of the West Bank.

Mr Shalom said:
It creates hatred. It expropriates land and annexes hundreds of thousands of Palestinians to the state of Israel. The result is that the fence achieves the exact opposite of what was intended. Terror is not thwarted with bombs or helicopters ...

Mr Gillon said:
The problem is that the political agenda has become solely a security agenda. It only deals with the question of how to prevent the next terror attack, not the question of how it is at all possible to pull ourselves out of the mess that we are in today.

I quote these people to demonstrate that it is not just starry-eyed idealists who say such things. These are hard-headed, hardened professionals. These are all very proud Israelis. I quote these people to show that criticising the approach to security of the current Sharon government is not by any means the same as opposing the right of Israel to exist or indeed to defend itself. Rather, it is a serious matter for those who care deeply and passionately about the welfare of the state of Israel and the Israeli people. To care about the rights and dignity of the Palestinian people is also not inconsistent with support for a safe and healthy Israeli nation.

I count myself as one who supports both a political solution and the right of the Israeli and Palestinian people to coexist peacefully in their own neighbouring states. I was disappointed, therefore, that the Australian parliamentary delegation had little opportunity to exchange views with our Israeli government hosts. I felt that our capacity to understand the complexities of the situation and our right to a differing viewpoint were somewhat underestimated at a number of our meetings.

We were, however, also privileged to meet with a number of very impressive, courageous and articulate political leaders who are indeed committed to pursuing a political solution to the conflict. There are many senior political figures in Israel who are pushing ahead with trying to find a political solution. I point in particular to the Geneva peace accords, a brave attempt by Israelis and Palestinians to keep the path to peaceful negotiations open. Some people call them naive but, judging by the calibre of people on both sides, this is a serious and realistic attempt to find a way through the impasse. To strive for a peaceful settlement, for a circuit-breaker in the ever-escalating cycle of violence, and to want settlement rather than more blood is to me the epitome of realism, not idealism. Our delegation met some of the key people involved in the Geneva discussions, including former Labour member of the Knesset Yossi Beilin; former minister Professor Yuli Tamir, also a member of the Knesset; Mr Qadoura Fares, Minister for State and member of the Palestinian Legislative Council, the PLC; and Mr Mohammad Hourani, another member of the PLC.

The Geneva initiative addresses several of the most vexed issues including the status of Jerusalem and the fate of the Palestinian refugees. A political solution must acknowledge the inevitability of Palestinian and Israeli interdependence. It must be based on building a viable two-state solution founded upon mutual respect. Only when serious efforts to find that political solution are under way will there be an opportunity to take away the excuse for yet another cycle of violence.

With that, I welcome the statement made yesterday by the Palestinian Prime Minister, Ahmed Qurei, condemning the suicide
bombers as an obstacle to the peace process. He, in fact, said that there ought not to be a campaign of bombing to avenge the assassination of Sheikh Yassin. I look forward to the change in attitude, however, from the Israeli government on the question of resuming the peace process. Others note that from time to time in my speeches I refer to the Bible. While I am not a great proponent of such a document, I do think it has a lot to offer. I will quote an old biblical verse which also very much reflects Jewish philosophy:

To everything there is a season, and a time to every purpose. A time to cast away stones, a time to gather stones together, a time to embrace and a time to refrain from embracing, a time to love and a time to hate, a time of war and a time of peace. The time to hate and the time for war are surely over. The time has come for the cycle of violence to be broken and the Australian government should be doing all that it can to lend its assistance. I hope our brief visit can contribute in some way to informing those efforts.

I wish to conclude by thanking the Parliamentary Relations Office for coordinating arrangements for the delegation, especially those undertaken by Joan Towner, the staff of the Australian embassies in Egypt and Syria, Lebanon and Israel and those accredited to the Palestinian Authority. I would also like to thank the Australian Federal Police for the invaluable close protection work which was provided to us on this occasion. I might just say, though, that I think it is appalling that officers of the Australian Federal Police can be sent out to the Middle East to guard parliamentarians and asked to travel on an economy ticket. All other Public Service officers, as I understand it, are entitled over that distance to at least travel with a little degree of comfort. I think that is something that the government should look at. If people are asked to guard members of this parliament on international trips to the other side of the world then I think they are entitled to at least travel with a little degree of comfort. I also acknowledge the host parliaments for the generous hospitality that was extended to the delegation and I thank the parliamentarians, political leaders, local businesses, community leaders and academics who so generously shared their time, their ideas and their insights with us.

Senator MURRAY (Western Australia) (6.02 p.m.)—Before I commence, I might make the remark, having some experience in matters of war and security, that it strikes me as a bit odd that the person guarding you would be 50 metres away from you in the aeroplane, which I think adds a point to what Senator Carr was saying. Aeroplanes are not always safe these days. If you are to be guarded, then the person guarding you needs to be a lot closer than I hear that they were. With that remark stimulated by Senator Carr’s thoughts, I will turn to the bills before us, the Appropriation Bill (No. 3) 2003-2004, the Appropriation Bill (No. 4) 2003-2004 and the Appropriation (Parliamentary Departments) Bill (No. 1) 2003-2004.

These bills are largely uncontroversial as they approve a range of government commitments made since the budget in May last year. As hopefully all my Senate colleagues will be aware, the Democrats were founded with a principle that we will not block government supply for the ordinary services of government and we pledge ourselves not to do so. I fear that one day a Labor government will be faced with a combination of Liberals and Greens that will share only one thing in common: they will vote together to block supply of the ordinary services of government. Recently there was a vote in this chamber to indicate where people stood on
that and it was notable that it was one of the few occasions the Australian Greens sat with the government. They sat together on the principle that they would vote together to block supply. The Democrats will not do that.

I turn to the appropriations bills. The Appropriation Bill (No. 3) 2003-2004 appropriates $945 million for government functions including $236 million for peacekeeping in the Solomon Islands, $86 million for drought assistance, $75 million of indexation adjustments for the Department of Defence, $65 million for the Australian Federal Police in Papua New Guinea, $39 million for the MedicarePlus package and $19 million for Australia’s contribution payments to various international organisations.

The Appropriation Bill (No. 4) 2003-2004 is primarily directed towards payments for states and territories. It includes a further $188 million for drought assistance and $37 million for the Tough on Drugs initiative. It also includes equity injections of $47 million and $37 million for the Australian Federal Police and the Australian Customs Service respectively.

As it is the last sitting day before the budget, I thought it might be worth while for me briefly to tell you the Democrat view with respect to some of the various tax loopholes that we would like closed. We will be releasing some detailed budget suggestions later this month. As always, we will try to be economically, socially and environmentally responsible. All our spending measures are fully costed, but with our resources we do lack the modelling capabilities of the government.

In developing our policies we listen to numerous business organisations, community groups and, of course, pre-eminently the Australian people. Last night I was otherwise engaged and unfortunately was unable to attend a function held by the Institute of Chartered Accountants. Contrary to their general reputation, I understand they had a lot of fun. However, I did obtain some polling statistics that the accountants and the Roy Morgan organisation provided last night. In response to the question of whether more public funds should be spent on health, 94 per cent responded with either ‘agree’ or ‘strongly agree’. Similarly, when asked whether more public funds should be spent on education, 94 per cent of respondents said ‘agree’.

Does this mean that Australians want to pay more tax for health and education? I have never seen a survey saying that the majority of Australians want to pay more tax. In fact, 55 per cent of those surveyed thought that the top tax rate of 47 per cent for those earning over $62,500 was too high. Only 23 per cent of respondents wanted the top tax rate to be higher. So 94 per cent of Australians want more public funds for health and education but only 23 per cent want the top tax rate increased. Is this an irreconcilable inconsistency? I would say no, because the government can raise much more revenue and cut income tax rates if it chooses to close some loopholes and end some tax concessions.

Just dealing with a few, the Democrats have long advocated broadening the tax base. Like John Ralph, we would like to remove the excessive tax concessions for company cars. This would raise up to $1 billion a year and would have as a by-product the promotion of cleaner, more sustainable transport systems for our major cities. We would like the government to implement the Ralph Review of Business Taxation recommendation that trusts be taxed as companies—that all business activity be taxed equivalently regardless of the entity structure. This would improve the integrity of Australia’s tax sys-
tem and be a positive first step in tackling the prevalent culture of tax avoidance.

Another $1.2 billion or thereabouts could be raised by reforming negative gearing. We have advocated this position for a decade—increasingly stridently over the last five years. At first we were ignored. Now there is a deluge of support. It is not only the Democrats that are advocating this reform; groups as diverse as ACOSS, the Reserve Bank and the Centre for Independent Studies have all pointed out that negative gearing, the generous depreciation rules and the capital gains tax concessions have combined to create an investment-driven housing bubble, distorted the economy and minimised tax unfairly.

The Economist recently described the Australian economy as being similar to that of America before the dotcom bubble burst, largely because of the terrible mistake the government made in not following international precedents by ensuring that negative gearing was properly restrained. This issue needs to be addressed. Reforms to the tax treatment of negative gearing and other property concessions would be economically responsible. This is important but, even more importantly, by proposing changes such as these, the Democrats are giving the Australian people what they really want. That brings me full circle to those polling figures. We can increase funding for health and education without increasing taxes if the government will attack waste in expenditure and drastically reduce unnecessary, unwarranted and unfair tax concessions. To use the Treasurer’s mantra at the time of the new business tax system: we need to broaden the base so that we can lower the rates.

Senator MARSHALL (Victoria) (6.11 p.m.)—I rise to speak on the Appropriation (Parliamentary Departments) Bill (No. 2) 2003-2004 and Appropriation Bill (No. 4) 2003-2004 to bring to the Senate’s attention the fiscal impact of the casualisation of the Australian work force on the Australian economy. The permanent casual may be a contradiction in terms. However, over the last two decades it has become an entrenched part of Australian culture, a sort of Australianism. It is an Australianism that is not an attractive part of our culture. It requires a progressive and proactive response from the Australian parliament.

Currently in Australia there are 2.2 million casual workers. Of those, about 60 per cent or 1.3 million are employed on a regular basis—many for years, not months—as opposed to those casuals who are employed in what would be regarded as true casual employment, which is on a seasonal or irregular basis. Since the election of the Howard government we have witnessed growth of half a million casual jobs in the Australian economy. That is one of the fastest growth rates of casualisation in the Western world. Whilst the Treasurer and Prime Minister would have us believe that the rich are getting richer but the poor are not getting poorer, statistics tell a different story when we consider that 90 per cent of the net new jobs created during the 1990s paid less than $26,000 per annum and 48 per cent of jobs created paid less than $15,600 per annum. During this time the Australian economy has witnessed a 30 per cent growth in casual employment with only a 10 per cent growth in full-time employment.

One in four Australians are currently employed as casuals in the work force. In various regional centres across Australia there is evidence to suggest that casual employment has accounted for virtually all the growth in wage and salary employment over the last decade. Advocates of casual employment will suggest that demand and supply are important factors to consider when evaluating
the reason for this rapid rise in casualisation within the Australian work force, but of equal importance are institutional factors such as the regulatory regime that governs workplace relations. Conservative governments at federal and state levels in recent years have taken an axe to workers’ rights within the regulatory regime that governs workplace relations. They claim to have deregulated industrial relations policy. However, I would argue that, rather than deregulate industrial relations, conservative governments have regulated it in favour of one party—that being the employer.

The conservatives have stripped away many awards and with them many rights. Until recently, many Victorians had to endure working in a system where there was no award coverage for almost a decade, following Jeff Kennett’s decision to abolish Victorian state awards in 1993. With the election of the Howard government in 1996, Kennett very quickly referred industrial relations powers to the Commonwealth but with the exclusion that these workers could not have coverage under federal awards. Predominately these workers were non-unionised and suffered significantly under the industrial relations regime. Due to the actions of the Bracks government and its ability to utilise leverage over the federal government, Victorian workers previously not covered by an award will once again be covered following the passage of the Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill.

It is this government’s policy of stripping away awards and workers’ rights that has led to an environment conducive to a rapid growth in casualisation in recent years. The Howard government has not finished, with government policy being to prohibit the ability of the Australian Industrial Relations Commission to classify casuals in an industry award. Coalition government policy seeks to prohibit decisions by the Australian Industrial Relations Commission such as that taken in the metals industry casual award case. In that case, the Australian Industrial Relations Commission determined that the award would be varied such that an employee employed on a regular and systematic basis for a sequence of periods of six months should thereafter have the right to elect to have his or her ongoing contract of employment converted to full-time or part-time employment, thereby achieving the rights and conditions that come along with that classification. The Howard government does not hide its displeasure at decisions determined by the Australian Industrial Relations Commission and will once again seek to muzzle the commission, prevent progressive decisions such as that reached in the metals award case and continue to force workers to remain in long-term casual employment.

The concern of the Labor Party about the explosive growth in casualisation in the Australian work force is that workers employed as long-term or permanent casuals are denied basic working conditions which they would normally receive—conditions such as sick pay, holiday pay and overtime loadings. Most casuals have worked for at least a year with the one employer but are not entitled to a single day’s paid holiday. The government’s acceptance of permanent casuals in the work force represents a conservative ideal that the contribution of one worker is worth less to the final outcome of production than that of another worker contributing equal effort towards that production. We reject that ideal. We recommit to the principle the Labor Party have always believed in that an equal day’s work means an equal day’s pay and we are developing progressive policy that will institute rights such as holiday pay, sick leave and other entitlements for casual workers.
Under the platform developed at the recent ALP national conference, the Labor Party will implement policy that will allow many of Australia’s 2.2 million casual workers to convert to permanent part-time work and ensure that they are entitled to rights, such as holiday leave and sick leave, currently not available to casuals within the work force. Labor is concerned that the massive growth of the casual work force is due to a policy used by employers to avoid paying proper entitlements and undervalue the contribution casual employees make towards the production of goods and services. Labor understands that a lot of casual workers would appreciate the ability to convert to permanent part-time work but are fearful that the employer will sack them. Labor’s proposed changes would allow the Industrial Relations Commission to alter awards in a manner that would enable casual employees to convert to permanent part-time work without losing their employment as a consequence.

Labor believes that casual, full-time and part-time work needs to be more clearly defined to help casuals who are, in effect, full-time or part-time workers obtain their entitlements to permanent employment if they so desire. Labor’s proposed policy towards casual employees is in addition to other industrial relations changes Labor would implement, such as restoring the powers of the Industrial Relations Commission to arbitrate in disputes where access to conciliation is currently restricted, abolishing Australian workplace agreements, abolishing the Office of the Employment Advocate, enshrining a minimum standard of 14 weeks paid maternity leave and ensuring that a mother is entitled to return to work on a part-time basis after having a baby.

The progressive and proactive industrial relations policy that Labor will promote at the forthcoming election represents a broader concern about the impact which the conservatives’ industrial relations policy is having on the social fabric of our society, particularly in relation to casualties in the work force. A recently tabled report by the Senate Community Affairs References Committee inquiry into the causes of poverty and financial hardship, A hand up not a hand out: renewing the fight against poverty, found that 3.5 million people in Australia were living in poverty. The dramatic increase in casual work has been blamed for much of the growth in poverty. The Senate committee’s report demonstrated that in Australia a new class of the work force is developing—the working poor—and that a contribution towards the development of the working poor is the growth of casualisation. The report stated:

The prevalence of working poor households in poverty is due simply to low-wage employment. Driving this change has been a casualisation of the workforce in the last two decades and a more recent weakening of the industrial relations systems. The report went on to note that, between August 1988 and 2002, total employment of casual workers in Australia increased by 87.4 per cent. The proportion of the population working full time in Australia is about the same as it was in the depths of the early 1990s recession.

An increasing reliance on casual employment to receive a wage is increasing the gap between the house of haves and the house of have-nots, despite claims by the Prime Minister that the poor are not getting poorer. Evidence from the report demonstrates that casual workers struggle to get home loans, rarely have any savings, get no sick leave and find it nearly impossible to prepare for retirement and old age. Of the two million people currently employed as casuals, one million are being paid less than $15 per hour. Casual workers fortunate enough to be of-
fered a housing loan are often forced into low-documentation loans, which are offered at higher interest rates or for smaller amounts. If a loan is available it often restricts casuals to low-cost housing, confining people to poorer suburbs and creating two sets of Australians: the haves and the have-nots.

A paradox exists in Australia that, whilst the economy has been experiencing substantial growth and progress, poverty is becoming more entrenched. The paradox of progress and poverty was observed by Henry George at the turn of the 20th century, and it is remarkable how his observations still ring true today. Henry George observed:

...just as closer settlement and a more intimate connection with the rest of the world, and greater utilisation of labour-saving machinery, make possible greater economies in production and exchange, and wealth in consequence increases, not merely in the aggregate, but in proportion to population—so does poverty take a darker aspect. Some get an infinitely better and easier living, but others find it hard to get a living at all.

George went on to state that this association of poverty with progress is the great enigma of our times. I suggest that this enigma still holds true today, a century on. The Labor Party understands the need to formulate and promote policy that is targeted at eliminating the cause of poverty in our society and seeing an increase in the rights of casual workers. The report of the Senate inquiry confirmed what Labor suspected: that there is a link between casualisation and poverty. Labor has initiated policy, which I have outlined today, aimed at breaking this link.

Senator EGGLESTON (Western Australia) (6.22 p.m.)—I rise to speak on the Appropriation (Parliamentary Departments) Bill (No. 2) 2003-2004, Appropriation Bill (No. 3) 2003-2004 and Appropriation Bill (No. 4) 2003-2004. One thing I am sure will certainly benefit the Australian economy in a major way across the board is the Australia-United States free trade agreement, which will offer wide benefits to this country in many ways.

Senator Carr—You will need a lot of time to prove that proposition.

Senator EGGLESTON—We probably do need time, but I am sure time will show—with the increased access that Australian goods will have to the United States market in agriculture, access to the procurement programs of the American government and access of Australian goods in general to the United States market, which is the biggest market in the world—a great boom in the Australian economy, riding on the back of the signing of the free trade agreement.

There is no doubt at all in my mind that the free trade agreement between Australia and the United States, which is the first time the United States has signed a free trade agreement with a major First World country, will set a standard that the rest of the world will follow. It offers the achievement of an objective that most of the countries in the Western world have been following in economic terms for many years—that is, the liberalisation of the international market. The liberalisation of the international market will mean that countries around the world will benefit from freer trade and access to markets that otherwise they might have been unable to get into.

One of the most protected markets is that of the European Union. After its formation it built a tariff wall around itself, and countries like Australia, which under the old system of the British Empire preferences had access to the British market, found they no longer had the same kind of access to the UK once the UK had joined the then Common Market. It is said that the Europeans heavily subsidised their agricultural produce because they have had the experience of going through two
world wars in the last century and they needed to ensure that Europe was able to feed itself and did not have to depend upon the arrival of food from overseas countries to feed the European population. For that reason, the Europeans developed a protectionist barrier and very heavily subsidised their own farmers. So farmers, especially in countries like Germany and France, found that their properties became very valuable because they were paid so much for their produce—in some cases they were paid exorbitant amounts, which really distorted patterns of world trade.

Unfortunately, the Europeans in developing their agricultural sector found that the subsidies produced such an abundance of produce that they had a problem: the ‘mountain of butter’ as it was called. The Europeans rather irresponsibly began dumping their excess produce in other countries around the world and they cut out the markets of many smaller developing countries, so that the economies of these smaller developing countries were disadvantaged because the Europeans undercut them at every opportunity. That caused great economic hardship and the loss of agricultural sectors in many Third World countries.

One of the objects of Australian policy in agriculture for a very long time has been to get better access to the European Union and to generally support the idea of freer international trade. To that end, the Australian government called a conference in Cairns of largely agriculture producing countries. That group formed a lobby group that became known as the Cairns Group, and it sought to achieve a lowering of European tariffs in particular and to gain better access for produce from countries like Australia and some of the South American countries to the European Union, or the Common Market as it was at that stage.

There is a natural synergy, no doubt, between the highly developed and sophisticated Continent of Europe and its market and the countries that are largely resource and agricultural producers. It makes more sense to have a balance between the countries in the world that produce manufacturing goods and the countries that produce commodity outputs and to have a freer level of trade between them. Australia in its relationships with China in recent years has developed that sort of balance, a synergistic relationship whereby we sell commodities into the Chinese market. We sell not only iron ore but also coal and, increasingly, large amounts of gas, which produce energy for the growing industrial base of the Chinese economy. Of course, we sell agricultural products as well. In return, the Chinese export manufactured goods to us. They are successful in doing this because labour costs in China tend to be lower than in Australia and because a lot of the manufacturing plants being developed in China have modern technology, which means computerisation, and their production costs overall are quite low.

The idea of locating production and manufacturing facilities for industrial products in Third World countries, where labour costs are low, has been around for some time and is described as the new international division of labour. It suits some of the great multinational companies to manufacture their goods and components and have those components assembled in countries like Indonesia and Malaysia, where labour costs are lower. Malaysia is an interesting example because, as the Malaysian economy has developed, wages have gone up and there has been less component production there than there was in the past. It is now done more in countries like Indonesia and Vietnam, where costs continue to be low. Manufactured goods are exported from these Third World countries to developed countries such as Australia, Can-
ada and the United States, and the European countries, where they sell well. The total cost of production—even including the cost of transporting what are often whitegoods, radios and other electronic goods—ends up being lower than it would have been if the products had been manufactured in those highly industrialised countries. Australia has pursued its role as a commodity producer really since first settlement, but it has sought in more recent years to shift away from exporting minerals and agricultural products to being a clever economy and developing and exporting financial services, information technology services, management services and governance services.

About this time last year I went to eastern Europe with the trade subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. It was very interesting to find that the banking system in countries like Poland and Czechoslovakia used software and computer programs produced by Australian industry. While under communist regimes these countries effectively stood still from the late 1940s. Their banking services, for example, were very far behind those in the West, and they did not have sophisticated services such as ATMs, which we have now become very accustomed to. Since then Australian technology has enabled services like ATMs and has facilitated the availability of computerised records at any branch at any bank. Going to the bank five or 10 years ago in Poland was like what it must have been like in Australia in the 1940s or 1950s. Accounts were only kept on paper, there was no means of accessing records from other branches or from distant places other than post, which took a long time, cheques were cleared by post and so on. Australian computer software and technology has established in eastern Europe the kinds of banking facilities we in Australia have long taken for granted. You can look up your account balance and exchange money electronically by pressing a few computer keys.

The Australian economy is evolving away from being commodity based to being a clever economy and providing services. I was in Vietnam 18 or so months ago, and one of the most interesting examples of Australian aid I saw was the provision of governance services to Vietnamese governments from the top level down to local government level. AusAID provided schools for local officials involved in the provision and delivery of local government services to teach the Vietnamese people the principles of good governance. That is another example of Australia becoming a more clever economy. We are exporting aid and services other than commodities.

The Cairns Group, which I was talking about some minutes ago, has over its history been very effective at ensuring that the Europeans were aware of the case being put by the South American countries and Australia of the need for a more liberalised trade environment, especially for agricultural produce. That is a very important thing to have achieved, because the Europeans tend to be somewhat isolationist. Diplomats from Australia and other countries like Brazil have presented arguments for freer trade in the interests of the world and the global economy, sending a very useful message to Brussels. Progress has been very slow. The Europeans, no doubt because of their history—because of the devastating impact of the wars of the last century—have been very slow to bring down their tariff barriers and to allow increased access to their market. The European Union will be one of the biggest markets in the world after the addition of 10 countries, due to occur in May. The European Union will expand from 15 to 25 nations and will have a market approaching 400 million people, which will offer enor-
mous opportunities for countries like Australia to service in a wide variety of ways.

Unfortunately, one of the features of recent international trade meetings and negotiations—the World Trade Organisation meeting at Cancun was an example—is that they are not progressing as well as was hoped in terms of achieving their objective of reducing tariffs and liberalising world trade. There have been a lot of opinions put forward about the reasons for this. One of the views is that organisations like the World Trade Organisation are now so big that there are just too many interests to serve and that many of the African countries in particular who have now joined the World Trade Organisation are not necessarily interested in trade liberalisation in a general sense because they have preferential trade arrangements with many of their previous colonial owner countries. Rather than see those preferential access agreements compromised by allowing a broad liberalisation of trade, there is a view that the African countries in particular are not interested in a multilateral approach to the liberalisation of world trade. That has led Australia to give some consideration to its approach to multilateral agreements.

Australia has begun to develop bilateral free trade agreements. The United States free trade agreement—which has recently had its negotiations concluded, but the details of which still need to be endorsed by both the United States Congress and the Australian federal parliament—is but the latest of these bilateral agreements which Australia has entered into. In the last 18 months or so Australia has entered into a free trade agreement with Singapore, which is, of course, one of our closest neighbours and a very dynamic economy. In many ways the Singaporean systems of government, the systems in their professions and their general legal approach are very similar to ours because Singapore was a British possession and so its systems are British. That is one of the great legacies that the British have left to the world: long after their colonial empire has gone and the Commonwealth has been established, consisting of independent countries, one finds that the systems in these countries—from the Caribbean through the South Pacific, Australia, New Zealand to the African countries—is much the same. They have the same legal system, the same professional system, the same university and educational system, and very similar systems of government with bicameral parliaments. For example, Nigeria has a House of Representatives and a Senate. In that country there are state governments. Nigeria has many states and a very big population, but fundamentally its system is similar to that in Australia.

We have a situation, as I said, in the World Trade Organisation where it may be that that multilateral approach is not going to produce the results that were hoped for. So Australia is turning to bilateralism. The Singapore free trade agreement was a landmark agreement because it gave access to Singapore for Australian services, such as finance. It meant that Australian lawyers from some of the law schools in Australia—not all of them, but most of the well-established ones—were able to be admitted to the bar in Singapore. Also, it allowed Australian doctors to practice there. The Australian government has also sought to establish a free trade agreement with Thailand. Thailand is a country which does have very high tariff barriers. While we have a free trade agreement in the making there, the timelines are very long so it will be a long time before there is free and open trade between our two countries. Free trade agreements are all part of the economic mix in Australia. Australia has proceeded a long way down the road of trade liberalisation.

Senator BARNETT (Tasmania) (6.42 p.m.)—I rise tonight to speak on the Appro-
priation (Parliamentary Departments) Bill (No. 2) 2003-2004, Appropriation Bill (No. 3) 2003-2004 and Appropriation Bill (No. 4) 2003-2004. I want to highlight the cost to the health budget of the impact of obesity on the health system and talk about obesity as an epidemic in Australia today. This is very serious indeed. All the trends are heading in the wrong direction for this country. We cannot just put our heads in the sand and pretend that this will go away. In fact there is an imperative now more than ever for us to address this problem and to address it with all our might. This is something that is the responsibility of each of us as individuals to address. Parents must also take on this issue to look after the interests of their children. It is also an issue for all levels of government—the first, second and third tiers of government—and for all the key stakeholders.

I want to speak tonight about the importance of the role of those key stakeholders and urge them to be part of the solution and not just part of the problem. It is interesting that I speak about this tonight because yesterday in this parliament federal politicians and the community in general were given a wake-up call on childhood obesity. McDonald’s Australia joined with health experts to put this issue on the national agenda at a forum on obesity and fast food reform, which I hosted, in the Australian parliament. We had McDonald’s Australia chief executive Guy Russo, marathon Olympian and Commonwealth Games and world record holder Robert de Castella and Dr Jonathan Shaw of the International Diabetes Institute give presentations. They are all experts in their field and they gave excellent presentations.

The message is that obesity is an epidemic. Childhood obesity has more than doubled in the past 10 years and about half of our obese children, sadly, will carry that extra weight through to adulthood. As parents we all have a duty of care. If we do not get to our obese children now, they will be prone to heart attacks, cancer and diabetes and all the consequences that flow from that and other serious illnesses in later life. Yesterday we heard that depression is one of the serious consequences that flow from obesity. But if we do reach our children then they have an opportunity of living a wonderful and more healthy life—a long and vibrant life into the future. The results of yesterday’s forum will be compiled and forwarded to the key decision makers in the government, specifically the Prime Minister, the Minister for Health and Ageing, the Minister for Education, Science and Training, the Minister for the Arts and Sport and the Minister for Children and Youth Affairs, Larry Anthony. No doubt they will be very interested in the outcome of those presentations that have been made.

It was interesting because yesterday a number of announcements were made, specifically by McDonald’s. Before I mention those, I want to say that in the winter of 2002 I had the privilege of attending a health forum in the United States where the key topic was obesity and the obesity epidemic. I learnt a number of things, including the fact that 50 per cent of all deaths in that country can be postponed or prevented. That is not dissimilar to the situation in Australia. So what are we doing about it? On my return from that conference, on 20 June 2002 I made a call for the need for reform of the fast food industry, specifically the labelling of the nutritional value of these products. Interestingly, the response from the fast food industry at the time was that it was too hard and it could not be done. I have my statement of 20 June 2002 here where I said that today’s fast food companies in Australia could become the tobacco industry defendants of tomorrow. In that statement I said that health warnings on fast food packaging:
... highlighting the medical and lifestyle risks, will no doubt become a requirement in future years unless the industry acts now ... the trend towards raising awareness of fast food dangers, as reported in the Weekend Australian (June 15, 2002), had already hit the United States and was headed Down Under.

In the United States 50 per cent of all deaths each year are preventable or could have been postponed by effective public health practices.

So that call for nutritional information on fast food packaging was made. Then yesterday, nearly two years later, McDonald’s announced that they would put that nutritional information on the packaging of their fast food products. I congratulate them for that. I am proud to say that they made those announcements and their plan is to go ahead on their packaging this month. Indeed, they announced a number of other reforms. A media release was put out yesterday from Guy Russo in which he announced that the most significant initiative would be the introduction of industry-first nutritional labelling on regular menu items. He made the comment that this was not only an Australian first but a world first. In the media release Mr Russo said:

Research carried out by Sensory Solutions, Australia’s specialist food research agency, indicated 92 per cent of people surveyed thought nutrition information on packaging was a good idea while 73 per cent would see McDonald’s as being more open and honest.

He also said:

From mid-April, McDonalds will be progressively introducing nutrition information panels on our regular menu food packaging, which will be carried out in two phases. The first round of nutrition labelling will include Big Mac, Quarter Pounder, Cheeseburger, Junior Burger, McOz and Sausage and Egg McMuffin.

There you go. He also announced that there would be a lower sugar content in the buns and a reduction in sugar and total kilojoules in some of their other products, including the muffins, and the introduction of canola cooking oil. Basically, this says that there is reform afoot in this country of fast food and in offering more healthy options. I congratulate and commend McDonald’s for the work that they are doing.

I invited all the key stakeholders in the fast food industry to that forum yesterday. I am happy to put on the public record that they were either unwilling or unable to attend. I have had correspondence with them and they have offered one-on-one meetings, but the bottom line is whether they are willing to commit to reform and to offering more healthy options for the Australian customer. McDonald’s is leading on this issue and it is now for their competitors to come up to the mark and put their views, policies and initiatives for offering more healthy options. As I said earlier, they have to be part of the solution, not just part of the problem.

We have learnt that Australians are getting fatter—67 per cent of Australian men and now 57 per cent of Australian women are obese or overweight—and that childhood obesity has more than doubled in the last 10 years. We have learned that there are 8,000 deaths in Australia each year which are related to weight problems and that obese people are six times more likely to get heart disease and 10 times more likely to get diabetes. We in Australia, sadly, have seriously unhealthy habits and we refuse to change. We need to not put our heads in the sand but do something about it. It is up to each one of us to be part of the solution. I hope that yesterday’s forum will be part of that wake-up call on the obesity epidemic. We need preemptive action and we need it fast.

In the 21st century, children have been sucked into this vortex where they have this incredible peer group pressure. They have television, videos, video games and the Internet, so you cannot blame them for living
a sedentary lifestyle. As leaders in the community, what are we doing to address this epidemic, this problem? One hundred years ago it was totally different: we were far more physically active and living was perhaps more tough and more challenging. Particularly in the Western world, in the industrialised nations and in countries such as the US, Australia and the UK the obesity epidemic is getting worse. We need to change our lifestyle and change the way we do things such as walking to school. As a kid I rode my bike to school. I also got on the bus. But I did a lot more walking then than the kids do now. How are we helping our children to change the way they live their lives? These are very important issues. There are a number of initiatives that are under way to address these problems. I congratulate and compliment the Australian government on the leadership they have taken with the National Obesity Task Force and on the work that that task force has been doing. It has made a number of recommendations.

I have hosted two forums on childhood obesity and healthy lifestyle to raise community awareness in Tasmania. Larry Anthony, the Minister for Children and Youth Affairs, launched one of those forums. We have had great support from the Australian government for this. In fact, Guy Russo attended the one in Hobart on 8 May and Dr Paul Zimmet and a number of keynote guest speakers appeared in November 2002 in Launceston.

I am delighted to have been involved with the Australian Association of National Advertisers, which has done a lot of hard work behind the scenes. A lot of people do not know of the work that it has done in developing an advertising campaign which will be targeting young people. I commend and congratulate them on their work—in particular Ian Alwill, who heads the AANA, and all his colleagues in that group. It has been a pleasure working with them, and I look forward to the launch of that campaign in due course at an appropriate time. That campaign will help raise awareness of the importance of being active. There are two simple key messages, and they are to have a balanced diet and to have regular exercise. They are quite simple messages, but they are hard to implement. As I say, we have unhealthy habits and we need to change. Before we can fix a problem we must acknowledge the problem. That is the first step. We must acknowledge the problem of this obesity epidemic. We need to raise the concerns and the consequences of obesity so that we can then address those and tackle them head-on. Yes, fast food reform is necessary and needs to happen, but simply having that reform will not solve the problem in and of itself.

I have worked hand in glove with the AANA on the national education and advertising campaign and also have encouraged them to prepare and implement a code of practice for advertising to children. Part of the solution is in the marketing and advertising of the problem to children. That code has now been prepared. Perhaps it is not as tough as some people would like it to be, but it is a good first step. It has been accepted by the AANA and its members. I now hope that the other key stakeholders—the fast food industry, the food industry, the food and grocery manufacturers and suppliers—will sign up to this code, which will encourage appropriate and sensible advertising to children. They are some key initiatives.

What are some of the other key initiatives—and I guess these are personal views—which I think will help address the obesity epidemic, the health consequences and the terrible consequences that flow from it? Firstly, compulsory physical education in schools. Some states do have that, particularly in primary schools. I congratulate those states. Sadly, my home state of Tasmania
does not. It has a belligerent attitude to this issue, and it is not adequately addressing the problem. Another area where we can act on this is in school canteens, again particularly in primary schools. There has been some good work, some progress, there in offering more healthy options for children, but a lot more can be done. As you, Mr Acting Deputy President, and other senators would know, this is primarily a responsibility for the state governments around this country and I urge them to be far more proactive in this area.

I have been advocating for a long time GP lifestyle prescriptions—that is, prescriptions by your doctor relating to how you live your life, changing your lifestyle through more regular exercise and a more balanced diet rather than just through a prescription of a drug or a pill that will address a particular health problem. If we can think more laterally and be more creative in the way we address this epidemic, then we have a chance to fix it and to turn around the trends that are all headed in the wrong direction at the moment.

Another area, which is just a one-off thing—communities, families and individuals can come on board with this—is TV-free and Internet-free weekends or days. Just pick a day and see how you go. And guess what happens: when you are not watching the box, the television, you are doing something else and the chances are that you will be exercising—walking, walking the dog or gardening—or doing something productive, something active. It is not so much what you are doing when you are watching television; it is more what you are not doing. That point was made very clearly yesterday in an excellent presentation by Dr Jonathan Shaw of the International Diabetes Institute.

My hope and dream is that within a few decades we will look back—hopefully, it will not take a few decades, but it will take a good amount of time—and say that fixing the obesity epidemic by living healthier lifestyles was as vital as changing attitudes and behaviour towards smoking. We know the impact and implications of smoking. The tragic news recently in Tasmania that our state Premier is suffering from cancer as a result of smoking is very sad indeed, but it has certainly stirred many towards living a healthier lifestyle by stopping smoking and avoiding the consequences.

I would like to commend the work of the Parliamentary Diabetes Support Group. Obesity does lead to diabetes; it is one of the key outcomes. The support group is chaired by Judy Moylan MHR, from Western Australia, who does an impeccable job for the group. It is a bipartisan group comprising Dick Adams MHR, me, Cameron Thompson from Queensland and Mal Washer. We work well together to help and support people with diabetes and to tackle the problems associated with it. We work with Diabetes Australia and with the Juvenile Diabetes Research Foundation. We have an excellent relationship with both those organisations, including Dr Peter Little and Brian Conway from Diabetes Australia and Sheila Royles from the Juvenile Diabetes Research Foundation as well as many others involved in those groups.

Before I close, I want to commend Greg Hunt for his initiative of walking 500 kilometres around his electorate of Flinders, just south of Melbourne, to address diabetes and to raise money for research for people with type 1 diabetes. Greg is going to be walking for a cure for a number of weeks—I think it is three weeks from the end of April to early May. What a great initiative. I commend him for that. There are a number of things we can do to tackle the obesity epidemic. A lot is being done, but there is a lot more to be done. I urge everyone to play our part in tackling this epidemic.
Senator BRANDIS (Queensland) (7.02 p.m.)—As you know, Mr Acting Deputy President, relevance is not an issue in debating the appropriation bills. I just want to take a moment to place on the record something that occurred in the chamber during question time yesterday. You may recall that Senator Nettle asked a question of Senator Hill, as Minister for Defence, concerning the deployment of troops in Iraq.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Senator Brandis, given what you have just said, are you actually speaking to the appropriation bills?

Senator BRANDIS—Yes, I am. In the course of Senator Hill’s answer to Senator Nettle’s question, a number of government senators, including to the best of my recollection Senator McGauran—but he was not the only one—interjected across the chamber in the general direction of the opposition, and particularly towards Senator Nettle, words to the effect, ‘If you had your way, Saddam Hussein would still be in control,’ which is the kind of disorderly badinage which occurs in the chamber, to which there responded in a clear and strong voice, not once but twice, from Senator George Campbell the words, ‘Saddam Hussein is better than Donald Rumsfeld.’ That provoked a degree of outrage in this part of the chamber, so Senator George Campbell repeated that statement: ‘Saddam Hussein is better than Donald Rumsfeld.’ I just wanted to make sure the public record recorded that. (Quorum formed)

Senator HUMPHRIES (Australian Capital Territory) (7.05 p.m.)—These appropriation bills present an opportunity to discuss a number of matters tonight. First of all, I want to talk about a few matters concerning the ACT and some real concerns I have about developments in the provision of services to people in the ACT. I spoke yesterday in another debate about the baby care payment announcement made by the Leader of the Opposition, Mark Latham. I said that the concern I had about this, and indeed a number of other Labor policies that have been announced recently, is that they bear the hallmark of having been put together with some haste and not having been well thought through. The particular issue I drew attention to with respect to that policy announcement was that one of the ways Labor had cobbled together the money to be able to fund this so-called baby care payment was by significantly reducing spending on the National Capital Authority, to the tune of approximately $11.9 million a year.

I want to come back to that issue and explain to honourable senators what that would mean to the role that the NCA plays in protecting and enhancing the planned national capital, which is the ACT. The budget of the National Capital Authority is just under $30 million a year, so a reduction in that budget of about $12 million represents a cut of something like 40 per cent in the operations of the NCA. Members opposite have characterised this announcement with just a little bit of ex post facto rationalisation as an acknowledgment of the NCA having too extensive a role in the planning of the city, suggesting that its functions should be withdrawn from many areas that it currently operates in and be reduced, essentially, to the parliamentary triangle. There are a number of issues about that and I do not want to debate that aspect of the announcement tonight. I do want to point out that the suggestion, by reducing the areas of planning responsibility of the NCA to just the parliamentary triangle and a few other areas of ceremonial significance, such as Anzac Parade, the Australian War Memorial and so on, you can somehow achieve a saving of 40 per cent of the outlays of the National Capital Authority is simply nonsense.
The National Capital Authority does have responsibility for administering the National Capital Plan. That covers essentially the whole of the ACT. But its responsibilities for the areas of the National Capital Plan outside the parliamentary triangle and the areas in question are not as extensive as they are within the parliamentary triangle. In other words, it has a responsibility to designate broad land uses that might be made in, for example, rural areas of the ACT, but its responsibility does not extend to, for example, approving particular works that go on within those areas. At the present time, for example, I understand the NCA is considering issues to do with the rebuilding of rural villages that were destroyed in the bushfires in January last year and it will decide whether it is appropriate to have nonurban settlements in those areas or not—a fairly simple decision to make, in one sense. But it will not make decisions about the size of buildings in those villages, the configuration of landscapes and issues that are appropriately the responsibility of the ACT Planning Authority.

When you consider that across all of the areas that the NCA is responsible for, you realise that a relatively small part of its operations is covered by those areas outside the parliamentary triangle—a relatively small proportion of its responsibilities. It follows from that that a relatively small proportion of its budget is spent outside the parliamentary triangle. The fact is that, when you exclude the parliamentary triangle, you are excluding a very small part of the responsibility of the NCA in a day-to-day sense. If you cut 40 per cent of the NCA’s budget, you are cutting jobs and essential functions that fall within the parliamentary triangle—functions to do with the maintenance of national areas, such as Commonwealth Place, Reconciliation Place and the avenues that define the parliamentary triangle. You are cutting programs like Summer in the Capital, Celebrate Australia Day, Tropfest and a range of other things that the NCA conducts to promote the national capital in a way which behoves its role as the chief promoter of this city. You have to cut its building program—things like the enhancing of the Commonwealth Place foreshore, which is currently under way, the National Emergency Services Memorial, the project to relandscape and reconstruct the Old Parliament House gardens, and the monument to the centenary of women’s suffrage. Those are the sorts of things the NCA does, and those are the sorts of things which inevitably, with a cut of 40 per cent—a cut of almost $50 million over the next four years—you will have to see significantly compromised or go by the board altogether. You simply do not make a saving of that order and preserve those essential functions of the National Capital Authority.

In making comments about this matter yesterday, the shadow finance minister, Bob McMullan, took a different approach as to why the opposition would be able to save 40 per cent by cutting the NCA’s functions back to, essentially, the parliamentary triangle. He talked about the elimination of duplication and said that the NCA would save a large amount of money by not having to duplicate the planning functions that are conducted presently by the ACT Planning Authority. Firstly, given that its responsibility outside the parliamentary triangle in a planning sense is much less onerous than its responsibilities inside the parliamentary triangle, that argument falls down almost at the first hurdle. Secondly, there is not a great deal of duplication, although there are areas where duplications do occur and, when they do occur, they cause significant problems. I think we should accept that there is some need to do something about that problem, but achieving it with a saving of nearly $50 million is not the way to deal with it.
Thirdly, let us suppose that there is a duplication and that it is better to have those particular planning functions conducted by the ACT government rather than the Commonwealth government through the NCA. Let us make that assumption for one moment. Would you not then logically be required to transfer some of that budget currently operated by the NCA to the ACT Planning Authority for it to be able to perform those functions in the areas being vacated by the NCA? Isn’t that logical? Of course, Labor will not do that because they do not get their saving. They do not get their $50 million to throw into Mark Latham’s latest shoot-from-the-hip idea—the baby payment. They want that money. They have to find the money, so any old saving will do. The saving in this case is ill-thought through, bears the hallmarks of having been discovered in a fairly short space of time—there is not really a thought-through policy on this—and frankly betrays an attitude on the part of the Australian Labor Party which says: ‘Cutting Canberra really doesn’t matter. Cutting Canberra is okay, because we have three safe seats sitting in the ACT, and we can treat you with contempt because it just doesn’t matter. In other parts of Australia a cut to the ACT will probably win us a few votes and a few plaudits.’ Okay, you can run that line in Western Sydney and in the suburbs of Melbourne and places like that, but you cannot also come back and parade yourselves as the party that cares about Canberra, because you do not care about Canberra.

Your announcement about abolishing the budget and the programs in the former National Office for the Information Economy would sacrifice 160 jobs in the city—160 jobs will go by the board because you think Canberra is dispensable; you think the votes in Canberra are not seriously at risk. With this NCA announcement, the Australian Labor Party will save another 40 jobs—another $12 million. That adds up to 200 jobs in the ACT lost under this proposed alternative government and not a blush among them in making those announcements. I hope that some of the members opposite appreciate that this decision has been made without due thought to the implications for the ACT. I hope in particular that my fellow ACT senator, Senator Lundy, will stand up for the ACT in the internal organs of her party and say: ‘This is not acceptable. The people of the ACT are not to be disregarded so lightly. The ACT and its essential functions are not a milch cow to pay for Labor promises generally in other parts of Australia.’ I hope that these sorts of announcements will stop and that Senator Lundy and her colleagues will ensure that these reprehensible decisions will be wound back, because we do need to maintain functions in enhancing Australia’s e-security, we do need to talk about broadbanding our nation and about making Australian government agencies and departments capable of facing the new IT environment. For those reasons, we do need that spending on the Office for the Information Economy and we do need those jobs in Canberra. We also need to have a well-planned, well-maintained and well-promoted national capital, particularly in the parliamentary triangle. Cutting 40 per cent of the budget—40 or 50 jobs—out of the NCA does not achieve those objectives and you should reconsider.

I want also to talk about other services in the ACT which, although they are not going to be cut, unfortunately will not be able to be enhanced because of a decision made in the last week or so by the ACT government. Honourable senators will be aware that the Australian government promoted in the 2001 budget the concept of greatly expanding access to concessions and benefits by Australia’s low-income, self-funded retirees, who constitute a growing and very important part of our community. People who have taken
the trouble to make preparations for their retirement, who are now living on those arrangements prepared during their working lives and who find that it is difficult to make ends meet for a variety of reasons, deserve our sympathy and our support. The government in its 2001 budget made the very sensible decision to put money on the table to encourage state and territory governments to get out there and put concessions in place for those sorts of self-funded retirees.

Recently the minister announced that that offer was being sweetened. From memory the offer is something in the order of $75 million on the table to get Australian states and territories to come to the party and offer concessions to self-funded retirees. In the case of the ACT, the offer of the federal government is $2.27 million and they have said that the total cost of making those concessions available to self-funded retirees in the ACT is being met 60 per cent by the Commonwealth government and 40 per cent by the ACT government.

That seemed like a very sensible and very fair offer. To my horror, I discovered that the ACT government has refused the Commonwealth offer of assistance. The $2.27 million will be returned to the Commonwealth government because, in the ACT government’s view, its contribution of something like $2 million would be better spent on providing services to other sorts of people than Canberra’s low-income, self-funded retirees. That is a truly disgraceful attitude.

Self-funded retirees deserve to be taken into account in government policy at both the federal and the state and territory level. They deserve to get a better deal than they have had in the past. They deserve to be able to access something in the order of $965 a year in concessions that this package presented them with. It begsars belief to think that the ACT government would hand back such a generous Commonwealth offer because they think they have higher priorities for their spending. I can assure honourable senators that I will be doing my best in the coming few months to draw to the attention of the ACT community the very mean-spirited approach being taken by the ACT government.

Finally, without pre-empting debate on a matter that will no doubt come to this place in due course, I want to commend the Australian government for its decision to introduce the Occupational Health and Safety (Commonwealth Employment) Amendment (Promoting Safer Workplaces) Bill 2004 into the House of Representatives this morning. That bill has the intention of removing employers and employees within the Commonwealth’s ambit, within Commonwealth employment, from the operation of the recently passed ACT industrial manslaughter legislation. It is a matter of great concern to the business community of the ACT that the ACT has been the first, and hopefully the only, jurisdiction to legislate in this way for industrial manslaughter. They are laws which are quite unnecessary, given that there are already clear occupational health and safety laws that outlaw reckless and inappropriate behaviour by employers which could lead to the injury or death of their employees.

Given the existence of those laws, the imposition of a law outlawing industrial manslaughter and imposing extremely heavy, criminal penalties on employers in this territory is a matter of great concern and, in my opinion, will have the effect of reducing or retarding the growth in employment in the ACT. People will factor that into the equation when they come to consider whether they should be making the ACT a place for them to employ other people. That is a matter of great regret. The Commonwealth has wisely decided to exclude from the operation of this bill employees within the Commonwealth orbit, and that is a very sensible deci-
sion. I hope that this parliament will speedily pass the legislation to protect those employers and employees within that definition. That will then leave the ACT community to pass judgment on those industrial manslaughter laws when the ACT goes to the polls in October this year.

These are matters which touch on the ACT. The niggardly approach of the ACT government in respect of concessions for older people is a matter of concern. Also of great concern is the attitude of the opposition in promoting an attitude which says that the ACT may be cut freely because the votes here just do not matter. We should all be concerned about the degradation of the national areas, the parliamentary triangle, inherent in the decision that Labor has announced this week.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (7.25 p.m.)—I rise to speak on Appropriation Bill (No. 3) 2003-2004, Appropriation Bill (No. 4) 2003-2004 and Appropriation (Parliamentary Departments) Bill (No. 1) 2003-2004. In speaking to this legislation, it is particularly appropriate to note the amount of money that goes towards defence. I think it is an area that in some respects has not had the focus it deserves in previous years, but it is certainly much higher on the public agenda these days—that is, defence and security issues and getting value for money and effectiveness for the money that is spent.

I draw attention to a report by Ian McPhedran which appeared in the Daily Telegraph on 27 March regarding plans for a joint Australia-US military training facility, which, according to Mr Hugh White from the Australian Strategic Policy Institute, would probably leave no change out of $1 billion. This is at a time when Australia’s defence budget is already fairly stretched. The Democrats are certainly not suggesting we should not spend money on defence, but it should be spent wisely in order to get value for money and in areas where it is going to be of maximum effect to suit Australia’s defence and security needs. We have always been of the view that our own region is where the main focus of our resources needs to be, and that means that the use of our resources and the focus of our defence activities have to take into account regional sensitivities and regional issues.

The report by Mr McPhedran, who has a degree of expertise in defence issues, states that the Howard government has been pushing for an American training base in the Northern Territory since 1996, but the US has resisted for cost and operational reasons. The plan involves a high-tech, fully instrumented range outside Darwin that would be paid for by the US and Australia and used by both nations. According to the article, it is Australia that is pushing the concept as the US reviews its global military basing strategy. According to a senior Defence official named in the article, Shane Carmody, so-called ‘scoping options’ for the project should be ready by June and officials met with US Pacific Command officers in Hawaii just a few days ago to push the plan forward. According to the report, Mr Carmody told a joint parliamentary committee that the training facility would have no role as a nation-building or peacekeeping facility. It is that aspect as much as anything that concerns me.

I want to make it clear that the Democrats support the US-Australia alliance. We support the ANZUS Treaty, which many people on the progressive side of politics do not. And we do support appropriate defence cooperation and intelligence cooperation. Frankly, I do not believe we have much alternative, particularly in terms of intelligence cooperation, in relation to dealing with some of the threats to our security, particularly the threats of terrorism and other instability, in-
cluding—in fact, particularly—in our own region.

But it needs to be appropriate cooperation—and it needs to be cooperation, not subservience. The real concern that the Democrats have voiced many times is that our defence policy and our defence spending—which is limited, like all taxpayer spending—is being directed too much towards ensuring that we fit in with the US’s military and foreign policy objectives, rather than giving primacy to our own but taking into account other nations in our region as well as other nations that we have historical and current alliances with. We are concerned about putting forward a proposal for a base—whatever you want to call it, in effect it is a base—that has no nation-building role or peacekeeping facility and that will not play a positive role in the major likely future needs for much of our defence activity in our region, such as the sort of activity that has occurred in the Solomon Islands recently.

The use of our defence forces—and our Federal Police, I might add—in the Solomon Islands met very wide approval in Australia. So it is not as though there is a massive group of Australians who oppose any sort of defence activity, any sort of overseas involvement of our troops. They will always be a part of the community, but obviously there is no comparison between the Australian community’s reaction to the use of our troops in the Solomons and their reaction to the use of our troops in Iraq. That is because many Australians—the majority of Australians, at certain periods—did not believe that it was appropriate to use our defence personnel for the activity that occurred in Iraq, but they did believe it was appropriate to use them in the Solomons. Of course there is an ongoing activity in the Solomons.

The other key point about the Solomons is that it involved cooperation from a whole range of other nations in our region. One of the overriding concerns the Democrats have about a joint Australia-US military facility or a US base—whatever name you want to call it—is the impact on the perception of and relations with other countries in our region. I am not saying they are all going to turn hostile and attack us or anything ridiculous like that. What I am saying is that if we are seen to reinforce the perception, and clearly to some extent the reality, that we are being deputy sheriff to the US then it will develop and enhance an unhelpful perception and impede effective cooperation with other nations. We do have a role in our region in showing leadership and providing support with intelligence, security and improving social stability for countries in the region. But that should not be in connection with, at the behest of or overly reliant on the aims and desires of the US. That is the problem and that is the concern.

There have been a number of attempts to disguise the setting up of military bases, using the names ‘defence staging posts’, ‘logistic hubs’ or ‘logistics and training facilities’. But forward positioning of US equipment and weapons storage in Australia for this purpose cannot be disguised as just the establishment of a training facility—it will be a US base. We have to be absolutely clear that this rose by another name would amount to a military base which would house equipment—including tanks, aircraft, fuel and ammunition—and allow the rapid deployment of US troops into theatres of war. The primary benefit would be about giving the US a new string of facilities and weapons stores in Australia which could be used to refresh forces and launch attacks as needed.

So the statements by a senior Australian defence official that any training facility would have no role as a nation-building or peacekeeping facility, that it would cost at least $1 billion and that it is Australia that is
actually pushing this onto the US and encouraging them all give the Democrats great cause for concern. There is clearly a real problem at the moment with the military agenda of the United States administration. It is not being anti-American to say that. It is obviously being anti the current US administration’s policy, but that is a very different thing. In the same way as we can be, as we are and as we should be critical of aspects of the Australian government’s policy, we can certainly be critical of the US government’s policy without being anti-American. That US military agenda at the moment supports first strike, pre-emptive strike, unilateral action and aggressive activities in other parts of the world. The Australian defence policy at the moment supports increasing interoperability with the US. That is not the best use of Australia’s defence and intelligence resources, in the Democrats’ view.

The reshaping of America’s very large global military footprint in reality offers the potential of being a very big boot firmly stamped in areas where we really do not need it. That is in terms of security for Australia. There is a lot of very legitimate debate between people across the political spectrum. It is not a Left versus Right or progressive versus conservative debate. It is between people in different parts of the political spectrum who recognise the danger of an aggressive, pre-emptive military agenda and who recognise—as many people have stated—that that can increase the risks of terrorism, increase instability and increase the likelihood that we will be less secure rather than more secure. Australia is already, in our view, being tied too much to US foreign and military policy. If that were a policy that clearly and genuinely looked after the interests of the Australian people then our concerns would be a bit lower. The trouble is that we are backing a US government that has stated that it will make pre-emptive strikes and has shown it will make pre-emptive strikes, and we are spending taxpayers’ money—a lot of money already—to increase our defence forces’ interoperability with that military agenda.

So the provision of US bases in Australia, in our view, has the potential in such a climate to undermine Australian relations with many countries in our region—South-East Asian and, to some extent, the Pacific island countries—which already see Australia as being too closely aligned with the US. That is not in the interests of Australia. Equally importantly, if not more so, it is not in the interests of world peace and disarmament. We do not believe money should be spent to increase that problem.

Senator GEORGE CAMPBELL (New South Wales) (7.37 p.m.)—Mr Acting Deputy President, I seek leave to make a personal explanation.

Leave granted.

Senator GEORGE CAMPBELL—I understand in an earlier contribution to this debate tonight Senator Brandis made comments to the effect that I had said across the chamber yesterday that I preferred Saddam Hussein to Donald Rumsfeld. That is an absolute lie. What I did say—

Senator Brandis—Mr Acting Deputy President, I rise on a point of order. That is unparliamentary, as you well know, Mr Acting Deputy President.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—You are correct, Senator Brandis. I ask you to withdraw that, Senator George Campbell.

Senator GEORGE CAMPBELL—I will withdraw the word ‘lie’, but that is a total distortion of the truth. What I did say across the chamber—and it was in the middle of question time when there was a lot of noise in the chamber, so people’s hearing on that
side must be substantially better than mine—were words to the effect that in the 1990s Donald Rumsfeld and Saddam Hussein were the best of friends, and there is plenty of evidence around on tape to demonstrate that, of Donald Rumsfeld sitting in Saddam’s office or in the palace shaking hands with the leader of Iraq. They were the words that were said across the chamber. I did not say at any stage that I preferred Saddam Hussein to Donald Rumsfeld. If Senator Brandis has any moral courage, he will apologise; if he has any courage, he will walk outside those doors and make the statement in public.

Senator Tchen—Mr Acting Deputy President, I rise on a point of order. I understand Senator George Campbell was giving the Senate his version of the interjection.

The ACTING DEPUTY PRESIDENT—He is making a personal explanation, Senator Tchen.

Senator Tchen—Is he seriously saying that that was his interjection, because if he was not then he should not be making an explanation.

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

Senator Tchen—I think Senator George Campbell is taking advantage and making a speech.

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

Senator Hill—Mr Acting Deputy President, I rise on a point of order. In a personal explanation you can explain your position, as Senator George Campbell has done. Within that personal explanation, you have no right to demand anything. If you want to demand something then you have to move a substantive motion.

The ACTING DEPUTY PRESIDENT—Senator George Campbell, have you finished your personal explanation?

Senator GEORGE CAMPBELL—Yes, Mr Acting Deputy President—but it is still only 50 yards to courage.

The ACTING DEPUTY PRESIDENT—Thank you, Senator George Campbell.

Question agreed to.

Third Reading

Bills passed through their remaining stages without amendment or debate.

ADVANCE TO THE FINANCE MINISTER

In Committee

Consideration resumed from 11 February.

Senator KEMP (Victoria—Minister for the Arts and Sport) (7.42 p.m.)—I move:

That the committee approves the statement of Issues from the Advance to the Finance Minister as a final charge for the year ended 30 June 2003.

Question agreed to.

Resolution reported; report adopted.

COMMITTEES

Membership

The DEPUTY PRESIDENT—The President has received letters from party leaders seeking variations to the membership of certain committees.

Senator KEMP (Victoria—Minister for the Arts and Sport) (7.43 p.m.)—by leave—I move:

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

Select Committee on the Lindeberg Grievance—

Appointed: Senators Bartlett, Eggleston, Harris, Kirk, Moore, Santoro and Watson

Economics Legislation Committee—

Appointed: Senator Ridgeway, as a substitute member to replace Senator Murray for the committee’s inquiry into
the provisions of the Tourism Australia Bill 2004

Employment, Workplace Relations and Education Legislation Committee—

Appointed: Senator Marshall, as a substitute member, to replace Senator Carr on 15 and 16 April 2004

Appointed, as a participating member:
Senator Carr on 15 and 16 April 2004

Joint Committee of Public Accounts and Audit—

Appointed: Senator Moore
Discharged: Senator Lundy

Question agreed to.

NOTICES
Withdrawal

Senator Kemp (Victoria—Minister for the Arts and Sport) (7.43 p.m.)—At the request of the respective senators, I withdraw general business notices of motion as set out in the list circulated in the chamber.

The list read as follows—

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<tr>
<th>Senator</th>
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<td>Ridgeway</td>
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<td>Tierney</td>
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HUMAN RIGHTS: KURDS

Senator Lightfoot (Western Australia) (7.44 p.m.)—Mr Deputy President, I seek leave to make my adjournment speech as a 10-minute statement.

Leave granted.

Senator Mackay (Tasmania) (7.44 p.m.)—by leave—I think that is a very reasonable proposition. I just want to clarify: would this mean that there would be 10 minutes less on the adjournment, not 10 minutes more?

Senator Lightfoot—Yes, Senator Mackay.

The DEPUTY PRESIDENT—Senator Lightfoot, that is a most welcome move on your part. I call you to make your statement.

Senator Lightfoot (Western Australia) (7.45 p.m.)—I thank the opposition for their assistance in this matter. My contribution tonight in my 10-minute statement begins with the quotation of a couple of paragraphs by the authors of *Saddam Hussein: A Political Biography*, Efraim Karsh and Inari Rautsi:

For Iraq is a land of rival ambitions and contradictions. It is a country with a glorious imperial past, stretching back thousands of years, and far-reaching dreams for the future, and yet, geopolitically handicapped: virtually landlocked and surrounded by six neighbours ...

It is a country that aspires to champion the cause of Arab nationalism while at the same time being, in the words of its first modern ruler, King Faisal 1, no more than “unimaginable masses of human beings, devoid of any patriotic idea, imbued with religious traditions and absurdities ... and prone to anarchy: It is a land torn by ethnic and religious divisions, a land where the main non-Arab community, the Kurds, has been constantly suppressed ...”

It is not only the Kurds who have suffered, although it is upon this ethnic group that I intend to focus my attention tonight. In 1933, the Iraqi army committed atrocities against 3,000 members of an ethnic minority community in northern Iraq in retaliation for their demands for ethnic and religious recognition. Following this mass murder, celebrations were held throughout the country, the perpetrators were lauded by the masses and their acts were treated as heroic. The victims in this instance happened to be Assyrian but they may well have been any one of the other minorities that have been the targets of a succession of genocidal dictators. It is against this environment of ethnic cleansing
that minorities in Iraq have been struggling for decades and from which our forces of the coalition of the willing hope to free them.

Who are the Kurds? Kurds represent the largest minority group in the Middle East. Despite this, they are without their own homeland. Disenfranchised due to their ethnicity, the traditionally demarcated lines of their country, Kurdistan, have been violated and the people left homeless. Even in their countries of residence they have been disenfranchised due to their being different. The Kurds are the descendents of Indo-European tribes who settled amongst the aboriginal inhabitants of the Zagros mountains around 2000 BC. The earliest reference to ‘Kurds’ occurred in the sixth century at the time of the Arab conquests; it was used to denote nomadic people and at that time was thought to denote socioeconomic status rather than race. Tribes became Kurdish by culture and language, and their ethnic identity does not imply a singular racial origin.

I turn to the Kurdish population. The question of the Kurdish population is a controversial issue that is virtually impossible to answer accurately due to regional government practices with regard to Kurds. In Iraq, however, Kurds account for more than 20 per cent of the population of 23.5 million, of which 97 per cent are Muslim. The greatest concentration of Kurds live where they have always traditionally lived: in the mountainous regions where Iran, Iraq, Turkey and Syria meet, an area that has been called Kurdistan since the 13th century. Kurdistan borders cannot be drawn without contention, excepting a demographic map that reflects where the greatest concentrations of Kurds are distributed. It is an area that covers approximately 230,000 square kilometres, or a quarter of the size of Western Australia. The area where Kurds predominate in northern Iraq is a region of about 83,000 square kilometres, roughly the same size as Austria. The significance of Kurdistan has always been mainly strategic; powers have sought to co-opt tribal chiefs to secure three things: troops for the Muslim armies; relatively secure trade routes across Kurdistan, notably the silk road from Central Asia; and the repulsion of any external challengers to the then government’s nominal sovereignty. The Kurds of today have a good command of Arabic, with some of the local population being more fluent in Arabic than in their own Kurdish dialect. Many are multilingual.

I turn to the Kurdish religion. Although Kurds embraced Islam following the Arab conquests in the seventh century AD, religious belief plays no part in Kurdish distinctiveness. The current leader of the Patriotic Union of Kurdistan, or PUK, His Excellency Jalal Talabani—a man whom I have met and admire greatly—has done much for the minority Christian community and the Christians in northern Iraq. As a result, they enjoy freedom of religion and worship.

I turn to the peace settlement of 1918 and after. The demise of the Ottoman Empire in 1918 saw foreign armies in its former territories, the British occupying almost all of present-day Iraq and foreign powers involved in the drafting of plans for that region. The then United States President, Woodrow Wilson, in point 12 of his 14-point programme for world peace, stated his idealistic principle that non-Turkish minorities of the Ottoman Empire should be ‘assured of an absolute unmolested opportunity for autonomous development’. The Treaty of Sevres was signed on 20 August 1920 and it promised the Kurds a state of their own, conditional however on their presenting themselves to the League of Nations, within one year from the date of signing, as unified in desiring independence from Turkey. Unfortunately, the authors of the treaty failed to recognise that Kurds were ill placed to take advantage of an opportunity couched in that way, due to their
social structure, which was rural, highly de-centralised and largely tribal, making cohesive leadership virtually impossible. Kurdish society was split between secessionists, autonomists and those content with assimilation into Turkish society. Lacking at that time a cogent nationalistic policy, they were unable to make use of the provisions of that treaty. The offer was then rescinded under the 1923 Treaty of Lausanne.

I turn to human rights atrocities against the Kurds, the Kurds in Turkey and the regime of Kemal Ataturk. At the peace conference in Lausanne in 1923, Musal Kemal managed to re-establish complete and undivided sovereignty over what is now modern-day Turkey and won the support of the Kurds by appealing to Muslim unity. It later became clear that he was to dismantle the Muslim state and create a Turkish state under European and authoritarian lines, alienating the Kurds by dissolving all public vestiges of Kurdish identity. A short-lived revolt, led by Naqshbandi Sheikh Said and mainly confined to the Sunni tribes, broke out in February of 1925 and was a catalyst for the beginning of a tradition of human rights atrocities against the Kurds by the Turks. Kemal Ataturk aimed to suppress any opposition to his ideology of a one-party state and he combined this with a view that the Kurds were dispensable. The revolt opened the way for a wholesale suppression of Kurdistan. Thousands were killed and hundreds of villages razed with the ‘pacification’ process itself provoking other tribes into rebellion until 1927. Laws were introduced to give security forces a free hand to commit massacres and other atrocities throughout the second half of 1930 without fear of persecution.

Numerous acts of human rights abuse have been committed in Turkey since the 1920s and I believe that there is serious cause for concern with Turkey being a member of the Council of Europe. Turkey has signed and ratified the European Convention on Human Rights, which has been incorporated into its domestic law and should, in theory, be applicable in Turkish courts of law. Still, Turkey continues to deny freedom of expression, a free press and freedom of assembly. Turkey denies its widespread use of extrajudicial killings by security forces, its methods and practice of village evacuation, and the coercion of people into its village militia force. All these denials are violations of the convention to which they are a willing signatory.

I now turn to human rights atrocities against Kurds in Iraq. The conflict with the Kurds in Iraq stems largely from the strategic position that its people occupy in mountainous areas where Syria, Iraq, Iran and Turkey converge. This is particularly so today. The Kurds are well established in the northern regions of Iraq—the oil and resource rich northern regions of that country. In 1968 when the Ba’ath Party seized power it saw that there was little use in fighting the Kurds unless it had the power to defeat them. That regime preferred to deal with the Kurdish Party rather than Mulla Mustafa of the Kurdish Democratic Party—the KDP. Since the KDP’s ideologies were more closely aligned, Saddam Hussein chose to deal with Mulla Mustafa. Each stage of failed negotiations with the Kurdish leaders resulted in fresh attacks and atrocities on the Kurdish people.

I would now like to speak about human rights atrocities committed against Kurds in Iraq. By 1987 the Kurds, with the support of Iran, controlled most of Iraqi Kurdistan. Saddam Hussein appointed his cousin General Ali Hasan al-Majid to take charge of northern Iraq, with full authority and powers to eliminate the Kurdish rebellion. Destruction of villages, pollution of water supplies, detonations and mass murders using chemical weapons were some of the methods that General Hasan al-Majid used to put down the
rebellion. It was due to his barbarous methods of annihilation that Saddam’s notorious cousin became better known to us as Chemical Ali. A committed terrorist, he was captured by US forces last August.

Chemical Ali oversaw, on behalf of his cousin, two of the worst episodes in Saddam Hussein’s already unforgettable vicious dictatorship. They were codenamed Anfal and Halabja. The broad purpose of the Anfal campaign was to eliminate resistance by the Kurds by any means necessary—and many that were not necessary. Its specific aim was to cleanse the region of ‘saboteurs’, who included all males between the ages of 15 and 70. Mass executions were carried out in the targeted villages and surrounding plains.

(Time expired)

Senator LIGHTFOOT—I seek leave to incorporate the balance of my speech.

Leave granted.

The speech read as follows—

It was a carefully planned campaign, targeting villages in rebel areas, declaring the villages around it “prohibited” and authorising the killing of any person or animal found in these areas. Economic blockades were often instituted to cut them off from support and relocations were also planned by the army to reservation-like collective towns. Those who refused to leave were shot and in some cases men and women were separated and many of the men executed.

During Anfal thousands of villages were destroyed.

Approximately 200,000 Kurds died during Anfal—many killed in the attacks and others transported to execution grounds in Ramadi and Hatra, and buried in mass graves

60,000 Kurds escaped into Turkey and another 100,000 into Iran to join another 100,000 who had fled prior to the attacks.

Halabja

Perhaps the most notorious chemical attack occurred in Halabja in March 1988—led by Saddam’s cousin, “Chemical Ali”.

In a town located in the mountains about 11 kilometres from the Iranian border and traditionally occupied by Kurds. Where, at the time, between 40,000 and 50,000 people were living.

Iranian forces had pushed Iraqi forces out of the area but Iraqi forces attacked the town with conventional artillery, bombs, gun fire, and chemicals including mustard gas and nerve agents (Sarin, Tabun, and VX)

Weapons of Mass Destruction! There was not one iota of doubt that it was WMD’s that were responsible for many of the deaths at Halabja in March 1988.

Sarin, VX, nerve agents—all Weapons of Mass Destruction.

It is believed that approximately 5,000 people died immediately and up to 12,000 people died in Halabja in the following days.

While these heinous actions were first thought to be motivated by Kurdish alliances with the Iranians during the Iran-Iraq War, evidence has since revealed that this was part of a larger campaign by Saddam throughout his period in power.

Anfal and Halabja are undoubted proof of genocide against Iraqi Kurds, by Saddam Hussein’s forces, using weapons of mass destruction.

From the time the Ba’ath Party seized power in 1963 and the three phases that culminated with Anfal, it is estimated that 4,000 villages were destroyed and hundreds of thousands of men, women and children of all ages perished.

During his visit to Canberra, last year, Mr Jalal Talabani spoke, with great sadness, about the discovery of mass graves—the contents of which had been estimated at six hundred thousand lives.

And it was these attacks with biological weapons of mass destruction that prompted the Kurds to request protection from the international community.

Despite the awareness in the international community of the atrocities facing the Kurds, despite the evidence that was before them, there was a great reluctance by everyone to intervene—including the important United Nations whose duty it was to offer and ensure protection

Following one attack on the town of Raniya, occupied by Kurds, 1.5 million Kurds attempted to
flee Iraq. Iran accepted one million. Turkey refused to open their borders—and Turkish soldiers beat families back with rifle butts.

It was only media coverage of this episode of Kurdish suffering that eventually forced the Coalition and the United Nations to act.

On the 5th April 1991 the UN Security Council passed Resolution 688 condemning “the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas”. The UN demanded that Iraq allow immediate access to international aid agencies for all those in need.

Later that same month, a safe-haven for Kurds was established and a no-fly zone prohibited Iraqi warplanes north of the 36° parallel.

So, many years and countless lives after the Kurds asked for the United Nations assistance, their plight was finally acknowledged.

Chronology of Kurds in Iraq

1918
President Woodrow Wilson’s Fourteen Points
Woodrow Wilson was committed to the ideal of self-determination for all peoples. The Twelfth Point stated that non-Turkish nationalities living under Ottoman control “should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development.”

1920 Treaty of Sevres
At the end of World War I, the Allied Powers met to determine the political future of lands and peoples in the defeated Ottoman Empire. The Treaty provided for independence from Turkey in those parts of Anatolia where Kurds were in the majority and set forth a political mechanism for the establishment of a Kurdish state that was to have encompassed the vilayet of Mosul. The Treaty of Sevres was signed but never ratified

1923 The Treaty of Lausanne
The Treaty of Lausanne superseded the Treaty of Sevres. The Kurds were not given autonomy and the areas where they lived were distributed between Turkey, Iran, Iraq and Syria and the Soviet Union. The League of Nations delegation to Mosul in 1923 to determine the wishes of the Kurds there reported they wanted an independent state.

1924 The British View
The British High Commission issued a statement on Dec 24, 1924, “Recognising the right of the Kurds living within the frontiers of Iraq to establish a Kurdish government inside these frontiers.”

1932 Iraqi Independence
In 1932, Iraq was granted full independence by the British and the Kurdish problem was left unresolved.

1946 Republic of Mahabad
In Iran, Kurds established the short-lived Republic of Mahabad, which survived from January 1946 until December 1946.

1946 Creation of the Kurdish Democratic Party of Iraq
This party changed its name to the Kurdistan Democratic Party of Iraq in 1953 to emphasize the inclusion of the non-Kurdish communities of Iraqi Kurdistan.

1958 Iraq under Abd al Karim Qasim
After the monarchy was overthrown, Qasim encouraged the participation of Kurds in the new government until his new power was consolidated. In 1959, the new government began to clamp down on all dissident groups including the Kurds. In 1961, a Kurdish rebellion broke out which continues intermittently for the next fourteen years.

1963 Phase 1 of the Ethnic Cleansing and Arabisation Campaign
The ethnic cleansing and Arabisation campaign began when the Ba’ath ‘Party first came to power in 1963 and lasted until the temporary removal of the Ba’ath leadership in February 1964. During this time, the Iraqi regime began destroying most of the Shorgha, Azadi, and Akhur Hussein neighbourhoods inside the city of Kirkuk. Hundreds of houses were flattened using bulldozers. The inhabitants of some forty villages in the Kirkuk governate were forcibly evicted and Arabs from the south and centre of Iraq resettled there.

1970 Autonomy Agreement between the Kurdistan Democratic Party (KDP) and the Government of Iraq
On March 11, 1970, an autonomy agreement was worked out between the KDP and the central
government which acknowledged the existence of Kurds and granted certain rights, but included only three of five Kurdish provinces. It excluded provinces like Kirkuk which contain oil.

1974 Creation of the Patriotic Union of Kurdistan (PUK)

It was established in June 1975 in Damascus, Syria, after the collapse of the Kurdish rebellion that same year.

1980 The Iran-Iraq War

While many Kurds fought against the Iranians during this war, others continued the rebellion against the central government, often with Iranian support. This diverted Iraqi troops from the battlefield to the Kurdish areas.

1984 Phase III of the Arabisation Campaign

After another failed attempt at negotiation in 1984, the regime began systematic destruction of villages, homes, churches and mosques in the Kurdish areas. Its operation reached a final stage in the Anfal campaign of 1988. Some 1,200 villages were destroyed during this one year alone. It is estimated that 182,000 people died as a result of the Anfal Campaign. The number of persons unaccounted for or killed during the three phases of the ethnic cleansing and Arabisation campaign is estimated at 300,000. The total number of villages destroyed during all phases is estimated to be more than 4,000.

1988 Halabja

In March 1988, Iraq attacked the town of Halabja over three days using a mix of chemicals that resulted in the deaths of around 5,000 civilians immediately and many more over the next few years.

1990 Sanctions

Under UN SCR-661 passed in August 1990, sanctions were imposed on Iraq with the intention of forcing Iraq to withdraw from Kuwait.

1991 The Gulf War

Kurds were encouraged by the United States to rise up against the government and overthrow Saddam Hussein. The uprising began in March 1991, but coalition forces did not help the Kurds. At first, the Kurds were successful in driving out the Iraqi army from their territory but the Iraqi Army regrouped and crushed the rebellion. In the north, almost two million people fled Saddam’s forces, seeking refuge in Iran and Turkey. International outrage forced the coalition and the UN to take action. The Kurdistan National Front was formed to organise an administration of public services in the area.

1992 Elections

In May 1992, elections were held in the newly established Kurdish safe haven with international observers in attendance. The Kurdistan Regional Government (KRG) was formed and 105 members of the Kurdistan national Assembly (Parliament) were elected.

2002 Reconvening of the Kurdistan National Assembly. For the first time since 1994, the full Kurdistan National Assembly convened in Erbil on October 4th 2002.

TODAY IN IRAQ

The Iraqi Governing Council. This 25 member council is the principal body of the interim administration of Iraq called for in UN Security Council Resolution 1483. The Council will exercise specific powers in addition to representing the interests of the Iraqi people to the Coalition Provisional Authority and to the international community.

The Council has two Kurdish Leaders. One is Massoud Barzani, current leader and son of the founder of the Kurdistan Democratic Party whose 3 brothers disappeared during a massacre by the Baghdad regime.

The other is Jalal Talabani.

I spoke earlier of Mr Jalal Talabani who visited Australia last August as, the then, President of the Iraqi Governing Council—the interim Iraqi Government.

An advocate for his Kurdish people for more than 50 years, at only 13 years of age he formed a secret Kurdish student association. At 14 he became a member of the Kurdish Democratic Party and at 18 he was elected to their central committee. Denied admission to medical school by the Hashemite monarchy due to his political activities he entered law school in 1953 but went into hiding three years later to escape arrest. He was unable to return to his studies until the overthrow of the Hashemite monarchy in 1958. Graduating one
year later and served his military duty in the Iraqi army in artillery and armour and tank units.

When the Kurdish people revolted against the Baghdad government in 1961, Mr Talabani took charge of the Kirkuk and Sulaimaniya battle fronts, organised and led the resistance in the northern regions. In 1962 he led a coordinated offensive that brought about the liberation of the district of Sharbazher from Iraqi government forces. When he was not engaged in the physical defence of his people, Talabani undertook diplomatic missions, representing Kurds in Europe and the Middle East.

In 1975, following a disastrous attempted revolt by the Kurds, Jalal Talabani, with a group of Kurdish intellectuals and activists, founded the Patriotic Union of Kurdistan or PUK. Since then he had taken an active part in the Kurds struggle to free themselves from the brutal reign of Saddam Hussein’s dictatorship.

During his visit last August, Mr Talabani explained his proximity to the terrorist activities in Iraq; the activities of Iraq’s fundamentalist Muslims, how they are against the new democratic climate and environment which is growing in the wake of the collapse of Saddam Hussein’s dictatorship.

He said “we are in need to rebuild Iraq and to reshape it on democratic principle. We are determined to have a democratic parliamentarian, federal and independent Iraq with full sovereignty. For that of course, one day we want to see the coalition forces going back home”.

“But when?” he asked.

“We think now if they leave there will be chaos and even civil war and the possibility for our neighbours interfering.”

“When the democratic Iraq has been established, when we have our government freely elected and our parliament and when we rebuild our security forces—then I think there will be the day that we ask coalition forces to go home”

Those words from Jalal Talabani, the man known to many as “The Leader of the Kurds”

COMMUNICATIONS LEGISLATION AMENDMENT BILL (No. 2) 2003

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Communications Legislation Amendment Bill (No. 2) 2003, acquainting the Senate that the House has disagreed to amendments (1) to (3), (5) to (9), (12) and (13) made by the Senate, and requesting the reconsideration of the amendments.

Ordered that the message be considered in Committee of the Whole immediately.

Senator KEMP (Victoria—Minister for the Arts and Sport) (7.55 p.m.)—I move:

That the committee does not insist on its amendments nos 1 to 3, 5 to 9, 12 and 13 to which the House of Representatives has disagreed.

Senator MACKAY (Tasmania) (7.56 p.m.)—I assure the Senate that Labor wants to improve the national security arrangements in our telecommunications industry. As stated in the second reading speeches on the Communications Legislation Amendment Bill (No. 2) 2003, we have no desire to obstruct what we regard as an important bill which will strengthen national security arrangements in our telecommunications industry. We want our national security environment to be robust and responsive to the terrible threat of global terrorism against innocent civilians.

Labor initially sought to improve this bill by ensuring that it did not apply to individuals. The government agreed to this amendment and Labor congratulates the government for that. Whilst we would have preferred the government to support our amendments and some of the Democrat amendments, it is now clear that the government will not do so. Our approach has been consistent with respect to national secu-
rity legislation. We have attempted to strike a balance between strong measures to fight terrorism and protecting the values and freedoms that Australians cherish.

Whilst we have not got all the improvements we wanted to this bill, we have, I believe, extracted a key, significant concession from the government, and that is the removal of individuals from the ambit of the bill. We do not have the desire to block the government’s moves to tighten the national security checks against telecommunications carriers. Whilst we would have preferred that our amendments to the bill be made law, it is clear that this is not possible. The choice is between a somewhat improved bill and no bill at all. In the interests of enacting this legislation as soon as possible and strengthening our national security arrangements with respect to telecommunications, Labor will support the bill as insisted on by the government.

Senator GREIG (Western Australia) (7.58 p.m.)—The Democrat amendments introduced important safeguards into the Communications Legislation Amendment Bill (No. 2) 2003. Given the wide-reaching nature of these powers we firmly believe that such safeguards are imperative to protect against the abuse of these powers. The amendments ensured that those affected by the exercise of these powers could seek judicial review of a decision made by the Attorney-General. They also clarified the grounds on which the Attorney-General could exercise the substantial powers under the legislation. One of the most important safeguards introduced by the amendments was to ensure that individuals and groups who engage in lawful protest are not restricted by these laws. This is fundamental to ensuring that the powers created by this legislation are used appropriately for the purpose of combating terrorism and not for preventing people from choosing to exercise their freedom of expression.

These amendments also ensured that telecommunications companies could not be sued for complying with the direction of the Attorney-General. While the government argued that the doctrine of frustration of contract would apply in these circumstances and would therefore prevent liability for acts done in compliance with the legislation, we Democrats believe this should be made very clear in the legislation and not left to the courts to determine. Setting this out clearly in the body of the bill would serve to prevent litigation against telecommunications companies. While the government has argued this is an unnecessary measure, the minister failed to provide any reason as to why this should not be expressly provided for in the legislation.

The opposition’s amendment to require a review of these new provisions in four years time is also, we believe, crucial. The express objective of the government in introducing this bill is to respond to the current threat of terrorism. We Democrats believe that it is imperative for the parliament to reconsider the effectiveness of the government’s legislative response to the threat of terrorism in four years time and the impact these laws have had on telecommunications carriers and on the Australian community. The Democrats will insist on these amendments and we are unprepared to support the bill in their absence.

Question agreed to.
Resolution reported; report adopted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Order! I propose the question:
That the Senate do now adjourn.
Senator LUNDY (Australian Capital Territory) (8.01 p.m.)—I rise tonight to talk about the allegations of sexual misconduct in our football codes that have recently come to light. They have uncovered what seems to be a culture of accepting unacceptable behaviours, which it would be irresponsible to ignore at a political level. It is important to note with regard to many of the current reports that are in the media—particularly those regarding the allegations of rape against members of the NRL’s Canterbury Bulldogs team and allegations of sexual misconduct against members of the AFL’s St Kilda team—that no-one has as yet been charged. At this time these allegations are just that: allegations that are under investigation within the criminal justice system. We trust that the legal system will deal with the players against whom these charges have been brought in the same way as any other member of society charged with these offences would be dealt with.

Regardless, however, of whether these alleged crimes are proven or not, what they bring to light is the existence in some sports of a very distasteful and disturbing sexist subculture that marginalises, silences and disrespects women. That a sexist culture exists, particularly within the football codes, is beyond question. In fact officials have admitted that serious misbehaviours have been covered up for decades. John Elliott, for example, has admitted that a ‘fair bit’ of misconduct was covered up during his 20-year presidency of the AFL’s Carlton club—in fact, Elliott went so far as to make the incredible statement, ‘Run it under the carpet; that’s what we tried to do’. A former first-grade super league player reported that in the past, if players went too far, there were minders who would make the incident go away. He stated that if a girl brought charges or threatened to, someone—a lawyer or club official—would quietly take her aside and remind her that her reputation would be destroyed in the witness box, and then she would be offered a sum of money to take a long holiday. Such actions taken by administrators must be considered at best immoral, at worst illegal.

The fact that not only do players engage in such behaviours but that administrators are willing to cover them up either points to total administrative ineptitude or an entrenched subculture of an acceptance of behaviours that are so far below the societal norm they defy belief. While it is in no way suggested that all football players engage in acts of rape or sexual abuse, reports of Canterbury Bulldogs players urinating in front of the media and levelling crass comments at female reporters, attending police interviews in casual attire with pre-prepared statements and Australian league captain Darren Lockyer’s crass joke all show that there is a systemic problem in some sports. Actions like these indicate an absolute failure by some players to comprehend just what is acceptable behaviour. It suggests that players believe they are able, by decree of their sports hero status, to live outside the rules that govern the rest of society.

The continual excusing of these behaviours by administrators and covering up by team mates only serves to perpetuate this misguided belief. As a case in point, in response to Lockyer’s joke, ARL Chief Executive, Geoff Carr, put forward the excuse that ‘young sportsmen cannot be expected to always be diplomats’. What a poor excuse! We are not asking for diplomats or cultural icons; we are simply asking that players do not behave in a way that is so far below societal standards that they shame us all. We merely want to be reassured that any member of this society, sportsperson or not, knows that rape is not a joke. Sexism in any form is denigrating, and the fact is there is a problem
in some sports. The question is: how do we change these misogynistic attitudes and instead promote a culture that accepts and respects women?

Many believe that a greater involvement of women in sports, particularly in decision making bodies and management roles, is a key. In fact, a lack of female role models has been seen as a major inhibitor to stamping out sexist attitudes in football codes. Some may argue that this is a concept being pushed forward by women; however, this is not the case. The AFL has said that they believe its success in dealing with ethical issues around racism was largely due to the greater involvement of women in their sport than in other football codes. The AFL also believes that, although far from perfect, it has the capacity to work through the issue of sexism in the same way they worked through the issue of racism because of the role women play in their sporting structure.

Labor has always fostered a culture of equal opportunity and acceptance of women as equals. Labor believes that, if there were a greater involvement of women in decision making and management roles in sport, particularly at the elite level, there would be little tolerance of a sexist culture. Already Labor is leading the way forward to change the male dominated culture of sport, with Victoria’s Minister for Sport and Recreation, Justin Madden, and Minister for Women’s Affairs, Mary Delahunty, this week announcing $78,000 in funding for a program to encourage more women to join club and league boards and committees. It is envisaged that initiatives such as this will help to specifically build the views of women into the decision making processes.

Parents and players also play a key role in raising their concerns and fears with sports clubs, both nationally and locally. What mother would want her son to become part of a sports organisation that covers up and condones behaviours including the abuse and sexual degradation of women? Can you tell me that a player who has engaged in the abuse of females, as a father in later life would not feel outraged if it were his daughter who was treated so shamefully? Players themselves should also be at the forefront of this community campaign. One of the most disappointing aspects of the current scandal is the lack of male sports role models who have come forward and publicly condemned the assault or harassment of women.

Many players are angry themselves because they realise that their reputation as players has been tarnished by the acts of others. These players must be encouraged to stand up against this behaviour. They must show both the public and other players that they do not condone this behaviour, that they will not be involved and that they will not cover up for their team-mates.

While there is a mounting body of evidence that suggests there is a specific problem within sport, it would be naive to think that the abuse of women is a problem within sport only. ABS statistics show that one in six women are sexually assaulted at some time in their lives. The Australian Institute of Criminology, however, shows that charges of sexual assault and prosecution are successful in less than 10 per cent of cases. Clearly, the fear of reporting a sex crime is still strong in some women. It is a sad reflection on our society that not only do women not feel able to report cases of violence against them, sexual or otherwise, but that rape is the only crime in which the victim is required to prove their innocence.

If a store owner is beaten and robbed, they are not expected to prove that they did not invite the thief into their shop. A rape victim, stripped of their dignity and self-confidence, is required, however, to sit in front of a jury
and prove that she was not asking for it because of what she wore out. In fact it seems that many men still fail to understand that rape is a serious business, that it is a serious crime. The results of a recent Australian survey showed that one in six men thought it was acceptable to force a woman to have sex if he felt she had ‘led him on’. They justify their actions by saying that she was ‘asking for it’. The message to all members of society and particularly to sportsmen who are revered and idolised must be made very clear: sex without informed consent is rape. No really does mean no.

Change will only come about through policy changes and re-education and Labor knows that it takes a cultural shift to successfully change the behaviour of individuals. Labor is committed to stamping out sexism in all its forms, to promoting a civil society and an equal opportunity and a fair go for all. A concerted effort to promote this awareness and acceptance throughout sport and the broader community is an essential step towards confronting and removing the sexist attitudes that do exist and, of course, towards preventing crimes taking place.

Everyone has a role to play to ensure a safe, healthy and happy life for all associated with sport. For a future federal Labor government, that is the public policy goal. Every child and adult should feel that sport is a positive and exciting thing to be involved with, whether you are a volunteer, a coach, a player or an administrator—whatever role you take on. That sexist attitudes and behaviours are an accepted and, in many cases, a celebrated part of some sporting cultures gives rise to grave concerns within the community and certainly within my party. Media reports such as those we are currently regarding make us collectively hang our heads in shame. The focus on football at the moment is sensational, and rightly so. It is not a better outcome for sport or for society as a whole for this issue to remain behind closed doors and out of the limelight. People must speak out, be proud and defend the right of every woman to have an equal place in society in order to stamp out crimes of this nature and move towards an environment in sport where the culture is indeed celebrated across both genders.

Sport: Drug Testing

Senator KEMP (Victoria—Minister for the Arts and Sport) (8.10 p.m.)—I will make a brief a comment on Senator Lundy’s speech this evening. All of us deplore the reports in newspapers about what are alleged to be cultural attitudes in some of our sports and, clearly, they have got to be stamped out. Our political leaders have all made statements on this particular issue. It is important, as Senator Lundy said, for people, particularly sportsmen, to speak out about this, and I refer Senator Lundy to an article by Jim Stynes today in the Herald Sun headed up ‘Footy’s silent victims’.

This evening I want to turn to other comments that Senator Lundy has made in recent times which I believe are very unfair to large numbers of Australians. They are unfair to the AIS and I think they should be countered. Senator Lundy will be forever remembered as the shadow sports minister who tried to put a four-lane highway through the Australian Institute of Sport. That was defeated, and very sensibly so. But, to this very day, Senator Lundy has refused to acknowledge the absurdity of that policy and has taken no steps to explain.

Another thing Senator Lundy has done in recent times is denigrate the research which has been done by Australian scientists into antidoping in sport. I have cautioned Senator Lundy before that sometimes her research lacks the required depth. I regret to say that Senator Lundy sometimes reads speeches which have been written for her on these
matters without carefully weighing up the facts. This evening I want to point out to those who believe what Senator Lundy has said that she denigrates not only the activities of this government—which, of course, Senator Lundy is quite entitled to do—but also the very important work that Australian scientists are carrying out into antidoping in sport.

A number of specific claims were made by Senator Lundy. Let me just deal with one of them first. Senator Lundy made a broad, sweeping comment that when it comes to antidoping research the government has ‘effectively relegated Australia to the position of disciple rather than Messiah’. Someone wrote those lines for her but, to my mind, it is very unfair. Nothing could be further from the truth, Senator Lundy. Indeed this government has a very proud track record in the fight against drugs in sport and remains a world leader in antidoping research. Within Australia significant antidoping research of international acclaim has been carried out over the past five years and continues to be carried out. This is a direct result of the government’s significant commitment to the fight against drugs. Senator Lundy, I believe, has become aware—but it would be hard to judge this from her public comments—that funding for antidoping research in Australia is at record levels. Senator Lundy can see no achievements, but I am advised by ASDA that this research has resulted in significant advances in such areas as detection methods for haemoglobin based oxygen carriers, so-called HBOCs, a new group of substances with a similar performance effect to EPO; certified reference materials for all WADA accredited laboratories to underpin testing for banned substances, including the development of materials for THG detection; and, very importantly, significant advances in the detection of human growth hormone.

You can contrast this with what was happening prior to 1996 when Labor was in office. Activity in this area was minimal, even though I am advised that human growth hormone and EPO were known substances of abuse in sport at that time. In 1998-99 the government commenced funding for antidoping research in the lead-up to the Sydney Games. We did this because we knew that the integrity of the games could be threatened by the use of banned substances and we recognised that we had an opportunity to progress the world effort in this area.

Over $3 million is being invested in research that is being conducted in Australia by Australian scientists from Australian institutions such as the Australian Government Analytical Laboratory, the Garvan Institute of Medical Research, the Kolling Institute of Medical Research and the Anzac Research Institute, to name but a few. These are internationally acclaimed institutions conducting world-class antidoping research. Over the years, Australian researchers have undertaken published research into improved detection and confirmation of stimulants, diuretics, narcotics, steroids, peptide hormones and oxygen delivery systems. The Australian government also continues to support the World Anti-Doping Agency which funds antidoping research.

Australian researchers have competed against tough international competition and successfully won over $US2 million in WADA grants to conduct antidoping research. This is a very different picture from that which Senator Lundy has painted. It is a picture of increased funds, increased activity and increased achievement. None of this was recognised by Senator Lundy, all in the attempt to make some cheap political point. As I said, it is okay for Senator Lundy to attack this government but she should not denigrate the work of Australian scientists.
I believe the government record speaks for itself and puts to rest Senator Lundy’s astonishing claim in the media a few weeks ago that she has seen no evidence of research being started or completed in Australia. How could Senator Lundy make such an utterly absurd statement? Senator Lundy also said yesterday that the Australian government had chosen to enforce a ban on world leading research. I can only assume Senator Lundy is basing her claim on some absurd press reports, but Senator Lundy’s claim is not true. The Australian Institute of Sport is a world-class centre of excellence in the training and the development of elite athletes and coaches. The government did not want there to be any risk of actual or perceived conflict of interest occurring by conducting antidoping research in facilities such as the AIS whose primary charter is to foster and develop the talents of elite athletes.

I would like to make it perfectly clear that this government has not banned AIS scientists from undertaking antidoping research. What scientists cannot do is undertake antidoping research in-house at the AIS. The government’s policy enables AIS scientists to contribute their expertise and collaborate with external institutions conducting antidoping research. Senator Lundy describes this move, which we believe was a principled move, as ‘totally inexplicable and unjustified’. I say to Senator Lundy that when Labor was in government the ALP recognised that the reputation of the AIS was paramount and, to protect it and Australian sport generally from allegations about conflict of interest in drug testing, an independent authority the Australian Sports Drug Agency was established.

Let me deal with a number of other points in the brief time I have available. Senator Lundy said yesterday:

Under a directive issued in April 2001 by the then Minister for Sport and Tourism, the AIS scientists were ordered to cease any further work on blood doping research and to confine their participation in antidoping research to intellectual property.

I believe Senator Lundy is again wrong and she has chosen quite deliberately to ignore a response I gave in Senate estimates hearings when this issue arose. What I said at this time was:

The previous minister said that antidoping research programs should not be conducted within the AIS. That was her view. However, she did make the point that individuals with expertise from within the commission may contribute to the work of or collaborate with external research institutions in relation to antidoping research programs.

Senator Lundy also said that the government should play an integral role in providing support for the work of those fighting to develop detection tests to stay ahead of drug cheats. If Senator Lundy had done her homework, she would know that this government is playing an integral role in supporting the work of those who are fighting to develop detection tests to stay ahead of drug cheats. There has been no diminution in the Australian government’s commitment to antidoping research or in our commitment to achieving a sporting environment free from performance enhancing substances and doping methods.

It is most unfortunate to have misleading comments and slurs against Australia’s antidoping efforts in the lead-up to the Athens Olympic Games. The government has a proud record in promoting and funding antidoping research. The evidence is there for all to see on the departmental web site. Senator Lundy has launched a most unjustified attack based on no proper research of her own. She has obviously taken information from others and not bothered to check this information out. If she had bothered to do so, she would have seen that funding of antidoping research is at record levels—I believe—in this...
country, she would have been able to note the significant achievements which have been made and she would have avoided making a slur against Australia’s significant efforts in this regard.

The PRESIDENT—I wish all those people here tonight a happy and holy Easter.

Senate adjourned at 8.21 p.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:


QUESTIONS ON NOTICE

The following answers to questions were circulated:

Immigration: Detainees

(Question No. 2171)

Senator Lees asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 24 September 2003:

(1) Will the Minister act on unanimous advice from a range of health and social welfare agencies, including the Royal Australasian College of Physicians (RACP), Paediatrics and Child Health Division; the Royal Australian and New Zealand College of Psychiatrists, Faculty of Child and Adolescent Psychiatry; and the Professional Alliance for the Health of Asylum Seekers and their Children that 'prolonged detention is causing harm to the mental health and development of children and adolescents' and that the Minister should 'undertake an independent, expert review' into the mental health of children held in detention in Australia’s immigration detention centres.

(2) Will the Minister take any further action to examine and evaluate the performance of Australasian Correctional Management (ACM), with regard to the mental health and welfare of children in detention; if so, what action will the Minister take; if not, under what conditions would the Minister be prepared to conduct such an evaluation of ACM’s performance.

(3) With reference to the Minister’s response to the May 2003 Four Corners program on the former Woomera Detention Centre, that ‘there is no contractual requirement for ACM to provide staffing numbers to DIMIA’ for the achievement of contracted outcomes by ACM: Given this lack of detailed accountability by ACM and the consistent reporting by social welfare and medical practitioners about the institutional barriers to the mental health and wellbeing of detainees: What steps is the Minister currently taking to ensure that ACM is now upholding Australian immigration detention standards

Senator Vanstone—The answer to the honourable senator’s question is as follows:

(1) Many factors impact on mental health and the Government does not accept that it automatically follows that immigration detention will lead to mental health problems. Previous trauma, personal genealogy, family violence and war are significant factors that influence detainee mental health.

The detention services provider coordinates the delivery of mental health services for detainees who experience difficulties for whatever reason that are broadly commensurate with those available to the Australian community. Fully qualified mental health nurses, general practitioners, counsellors, psychologists and/or psychiatrists provide these services, as appropriate. At the same time, the department and services provider have sought to ensure that wherever possible, the effects of risk factors to mental health are minimised and protective factors are enhanced. These protective factors include ensuring that children have good school environments and good physical health.

The Government has been prepared to take innovative approaches to alternative detention arrangements for children. For example, women and children expected to be in detention for not a short period of time are routinely offered places in Residential Housing Projects but participation is voluntary. In addition, a number of unaccompanied minors are now in alternative places of detention, including home-based arrangements in the community.

The Immigration Detention Advisory Group, whose members include persons with expertise in torture and trauma counselling and psychiatry, regularly provide advice on the appropriateness and adequacy of services. An Expert Panel, which includes health professionals with extensive and diverse health experience, supports my department in its monitoring of detention health services.

QUESTIONS ON NOTICE
(2) My Department takes advice from qualified medical staff in all aspects of general and mental health issues of detainees. Appropriate action is taken for individual detainees where necessary. ACM’s performance under the contract was subject to continual assessment in accordance with the contract. Similarly, the new detention services provider, GSL (Australia) Pty Ltd, will be subject to continual assessment in accordance with the contract. 

My Department has an extensive ongoing program to monitor the provision of the full range of immigration detention services including health care of detainees through a range of means. For example:

- All incident reports, including those relating to health care, are reviewed in the Centre by Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) staff and in Central Office. They are the subject of regular discussion with the service provider. Each report is analysed and any potential failures of service provision are followed up. Follow up ranges from clarification of facts by contact with the detention facility, through to the commissioning of an expert panel member investigation or audit where the seriousness of the incident warrants.

- Regular on-site audits of operations focus on key security and duty of care issues.

- Ongoing monitoring also occurs through a range of formal and informal processes undertaken by departmental staff on site and in central office and technical experts or consultants from an Expert Panel. For example, departmental on-site staff discuss health care and other matters with detainees during routine visits to their accommodation, through Detainee Consultative Committee meetings where appropriate, as well as reviewing feedback received through the Detainee Complaint Process.

- The results of these monitoring exercises and audits are conveyed to detention centre management and matters of concern relating to service provision are followed up. Where there are concerns about the quality or appropriateness of the service delivered, DIMIA uses the provisions in the contract to address such matters. This includes a range of contractual incentives and sanctions as a means of ensuring service provision meets the Immigration Detention Standards, which clearly link payment to performance standards.

(3) As outlined in answer to part (2), my Department has in place an extensive ongoing program to monitor the full range of immigration detention services to ensure that the Australian Immigration Detention Standards are satisfied.

**Immigration: Detainees**

(Question No. 2360)

**Senator Allison** asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 5 November 2003:

(1) As at 1 October 2003: (a) how many children and young people aged less than 18 years were being held in each of the mainland and offshore detention centres; (b) how long has each of these children been in detention; and (c) how many of these children, by detention centre, are currently proposed or being considered for moving to alternative places of detention in accordance with Migration Series Instruction No. 371: (i) during November 2003, (ii) during November and December 2003, and (iii) at any other time.

(2) In each case, why are those children currently being held in mainland detention centres not already placed in alternative detention arrangements in accordance with the Migration Series Instruction No. 371.

(3) Does the Minister acknowledge the long term mental and emotional damage these children are suffering as a result of being held in detention centres.
(4) Given that the Royal Australian and New Zealand College of Psychiatrists, the Royal Australian College of Physicians, the Committee of Presidents of Combined Medical Colleges, the Australian Medical Association and the Australian Psychological Society all oppose the policy of indefinite mandatory detention, will the Government change its policy; if not, why not.

(5) Does the Government agree with the National Rural Health Alliance argument, as reported in the Alliance’s newsletter of September 2003, that in relation to Australasian Correctional Management, which run immigration detention centres, ‘A culture of profit, lack of transparent accountability, conflict of interest (the source of the distress provides the service that purports to treat it) and resulting compromises of professional ethics, affect all health treatment decision’; if not, why not.

(6) Does the Government agree that the creation of temporary protection visas appears to compound pre-existing psychological trauma; if not, what evidence does the Government have to demonstrate otherwise.

**Senator Vanstone**—The answer to the honourable senator’s question is as follows:

(1) Offshore asylum seekers are not held in detention, but rather are accommodated in processing facilities, administered by the International Organisation for Migration (IOM), and they hold special purpose visas. Details relating to minors located at Offshore Processing Centres (OPCs) are included below with details relating to minors located in detention centres.

(a) As at 3 October 2003, there were 113 minors in immigration detention, including alternative detention arrangements. As at 3 October 2003, there were 93 minors in the Nauru OPC. There were no minors at the Manus Island processing facility.

(b) As at 3 October 2003, the minors in immigration detention, both in centres and in alternative arrangements, had been in detention for the following periods:

<table>
<thead>
<tr>
<th>Period</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 6 months</td>
<td>34</td>
</tr>
<tr>
<td>Between 6-12 months</td>
<td>10</td>
</tr>
<tr>
<td>Between 12-36 months</td>
<td>56</td>
</tr>
<tr>
<td>Over 36 Months</td>
<td>13</td>
</tr>
<tr>
<td>Total</td>
<td>113</td>
</tr>
</tbody>
</table>

Of the 93 minors in the Nauru OPC, 14 of these minors were born to offshore asylum seekers after their arrival at the OPCs on Nauru and Manus Island in late 2001. The remaining 79 have been in residence in these facilities since late 2001.

(c) (i)-(iii) My Department continues to actively promote alternative detention models to eligible detainees, specifically the Residential Housing Projects (RHPs), foster care placements for unaccompanied minors and community based arrangements for people with special needs.

All women and children have been, and continue to be, considered for an alternative place of detention, such as a RHP, in line with the guidelines set out in Migration Series Instruction No. 371 (MSI - 371). Participation in a RHP is voluntary. The offer to transfer to a RHP remains open at all times.

In October 2003, 5 children transferred from a detention centre to an alternative place of detention, such as a RHP, foster care with a State Welfare Agency, and for short-term stays in motels where IDCs do not cater for children. In November 2003, a further 15 children transferred into alternative detention. In December 2003, 4 children were transferred into alternative detention. As at 22 February 2004, a further 4 children have been transferred into alternative detention in the 2004 calendar year.

It is noteworthy that in the period since July 2003 there has been an overall increase in the proportion of women and children held in alternative detention arrangements. Of the total number of women and children in immigration detention on 31 July 2003, 16% of children detained were...
in alternative detention arrangements, including in RHPs. As at 26 February 2004, 38% of children detained are in alternative detention arrangements including RHPs. This includes the placement of a family in suburban Melbourne under the supervision of a community organisation.

Arrangements continue to be pursued to place additional detainees with special needs into community based alternative detention arrangements under the supervision of community organisations.

(2) Participation in the RHPs is voluntary, and although many women and children are eligible for this form of alternative detention, offers to participate are often refused by detainees. Reasons given include a desire to keep all family members, including males, together; a reluctance to disturb children’s schooling arrangements; and the convenience of meals being prepared for detainees in centres rather than undertaking their own cooking arrangements.

Consistent with the International Convention on the Rights of the Child (CROC), the Australian Government believes it will usually be in the best interests of the child to remain with their parents. However, where a child welfare agency recommends separation from parents, to the extent possible within the legal framework, this advice will be accepted. The children remaining in detention centres either do not meet the guidelines outlined in MSI - 371 or are part of a family group who have declined the voluntary offer to relocate to alternative detention. The offer of voluntary relocation to a RHP remains open at all times for eligible detainees.

(3) My Department takes very seriously its responsibilities to meet the fundamental needs of detainees, especially with regard to children who are in immigration detention.

Detention services are provided in accordance with the Immigration Detention Standards (IDS), which underpin both the provision of the detention function and the standard of care to be provided. The IDS help to ensure that the individual care needs of detainees, including children, are met.

My Department and the Detention Services Provider (DSP) are also aware of their responsibilities under the UN Convention on the Rights of the Child (UNCROC) and do their utmost to ensure that children are treated in accordance with the provisions of the Convention.

(4) Australia does not have a policy of indefinite mandatory detention.

For those in immigration detention, their time in detention is governed by their progress through the legal and administrative determination processes that they engage which may include seeking asylum. A number of factors can contribute to extended detention periods, including difficulty in establishing identity, litigation, difficulties in obtaining travel documentation and non-cooperation by the detainee. Applications for protection from people in detention receive priority processing. Those people found to be refugees who engage Australia’s international protection obligations are granted visas and released into the community.

People can leave immigration detention by agreeing to leave Australia. Many people in detention who have been found not to satisfy the requirements for the grant of a Protection Visa choose to pursue several avenues of appeal. As a consequence, their period of immigration detention can be extended.

(5) The ‘National Rural Health Alliance argument’ reported in the National Rural Health Alliance newsletter is a statement of opinion made by an advocacy group.

Service delivery by the DSP in all detention centres must meet the quality levels established in the IDS. These standards set out the contractors’ obligations to meet the individual care needs of detainees in a culturally appropriate way while at the same time providing safe and secure detention. The standards were developed in consultation with the Commonwealth Ombudsman’s office and ensure consistency with Australia’s international treaty obligations. The contract
includes a range of incentives and sanctions as a means of ensuring high quality service provision, which clearly links payment to performance standards.

(6) No. The conditions afforded to refugees on temporary protection visas (TPVs) in Australia compare very favourably with those available to the millions of refugees in countries of first asylum throughout the world, and with the conditions provided in some other countries comparable to Australia. All TPV holders in Australia receive the benefits required by the Refugees Convention and are guaranteed protection for as long as it is needed. TPV holders receive an array of benefits including full work rights, access to Special Benefit payments and Medicare. The majority will have access to permanent residence after three years if still owed protection. By obtaining permanent residence they are eligible to sponsor family members to join them and concurrently qualifying for citizenship, on conditions which are amongst the most generous in the world.

Not surprisingly, many TPV holders are doing very well in Australia. For example, I am aware of a high school student in Adelaide who was made dux of his high school. TPV holders are working in our cities and in rural areas such as Dubbo, Griffith and Murray Bridge.

Customs: Advance Passenger Processing System

(Question No. 2636)

Senator Ludwig asked the Minister for Justice and Customs, upon notice, on 2 March 2004:

(1) What percentage of passengers is now processed before arrival in Australia using the Advance Passenger Processing system.

(2) Is this figure in line with expectations for the system’s performance.

(3) Are any full-time Australian Customs Service (ACS) personnel exclusively employed on Advance Passenger Processing; if so, at what Australian Public Service (APS) levels are these personnel employed.

(4) Are any part-time ACS personnel exclusively employed on Advance Passenger Processing; if so, at what APS levels are these personnel employed.

(5) Are any aspects of the maintenance and/or utilisation of the system contracted out to other government agencies, or to the private sector; if so, what is the cost of this.

(6) How many airlines’ passenger information databases are currently available to ACS for passenger analysis.

(7) What percentage of the total number of airlines that fly to Australia does this represent.

(8) When is the linking of airline passenger information databases with the ACS expected to be completed.

(9) Does this linking form a component of the system; if not: (a) are any full-time ACS personnel employed on accessing airline passenger information; and (b) at what APS levels are these personnel employed.

(10) Are any part-time ACS personnel employed on accessing airline passenger information; if so, at what APS levels are these personnel employed.

(11) Is access to airline passenger information free of charge from the airlines concerned; if not, what is the total cost to ACS of accessing this information.

Senator Ellison—The answer to the honourable senator’s question is as follows:

(1) The Advance Passenger Processing (APP) system is operated by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and is used to identify - at the time of check-in -
that a passenger has a valid authority for travel to Australia and to provide the carrying airline with authority for the passenger to board the aircraft. I am advised by DIMIA that approximately 96% of passengers arriving in Australia by air are processed through the APP system before boarding.

(2) I am advised by DIMIA that the proportion of passengers processed via APP is consistent with expectations.

(3) No.

(4) No.

(5) Customs has no role in the management or administration of APP and is not aware of contractual or other arrangements for this. This responsibility rests with DIMIA.

(6) Customs is presently connected to 12 airline reservation systems with 6 available for passenger analysis and 6 available for software development and testing.

(7) The 12 airlines represent 28% of airlines that operate scheduled passenger flights into Australia. The 6 airlines being analysed represent approximately 64% of passenger arrivals. This will increase to approximately 80% when analysis commences on a further 4 in June/July 2004.

(8) Customs expects to be connected to all passenger airlines reservation systems by the end of 2004.

(9) Yes. Linking to an airline reservation system is the first stage of the process. This is followed by development of analysis software for each specific airline system.

There are eight full-time Customs staff employed in connecting to the airline systems and 27 full-time Customs staff employed on accessing passenger information. These total 1 x Customs Level 5 (EL 2), 2 x Customs Level 4 (EL 1), 6 x Customs Level 3 (APS 6), 6 x Customs Level 2 (APS 4-5) and 20 x Customs level 1 (APS 1-3).

(10) No.

(11) Yes.

**Australian Customs Service: Personnel**

(Question No. 2652)

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 at international airports around Australia; and (b) at what Australian Public Service (APS) levels are these personnel employed.

(2) (a) How many part-time ACS personnel are employed at international airports around Australia; and (b) at what APS levels are these personnel employed.

(3) What duties are assigned to these personnel.

(4) Is there any overlap with the duties of the Australian Protective Service personnel at international airports.

Senator Ellison—The answer to the honourable senator’s question is as follows:

Customs staffing figures can be counted in different ways. The numbers below are in terms of Full Time Equivalent staff (FTE). FTE indicates the number of people employed as at 29 February 2004 and paid through payroll including staff on paid leave, higher duties and excludes Acting Officers and employees on unpaid leave for greater than three months.

(1) (a) and (b) As at 29 February 2004 the numbers and APS level of full time personnel employed at international airports around Australia was as follows:
(2) (a) and (b) As at 29 February 2004 the numbers and APS level of part time personnel employed at international airports around Australia was as follows:

<table>
<thead>
<tr>
<th>APS Classification</th>
<th>Customs Classification</th>
<th>Number of staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>APS Level 1 - 3</td>
<td>Customs Level 1</td>
<td>801</td>
</tr>
<tr>
<td>APS Level 4 – 5</td>
<td>Customs Level 2</td>
<td>143</td>
</tr>
<tr>
<td>APS Level 6</td>
<td>Customs Level 3</td>
<td>46</td>
</tr>
<tr>
<td>Executive Level 1</td>
<td>Customs Level 4</td>
<td>14</td>
</tr>
<tr>
<td>Executive Level 2</td>
<td>Customs Level 5</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>1007</strong></td>
</tr>
</tbody>
</table>

(3) Officers identified above are attached to the passenger processing function. Within this function Custom officers Level 1 and 2 are flexibly deployed across a range of activities including:
- Immigration clearance processing
- Baggage examination
- Air border security
- Processing of Tourist Refund claims
- Clearance of goods and collection of duty
- Alert response to persons of interest to both Customs and other agencies
- Risk assessment of travellers through behavioural analysis
- Administrative tasks
- Custom officers Level 3 have management and supervisory responsibility for some or all of the functions listed above depending on the size of the airport.
- Custom officers Level 4 and 5 are managerial positions.
- Other Customs staff may also perform some of their duties at international airports. These staff have not been included in the above staffing numbers. Their functions include:
  - Detector dog handling
  - Mobile x-ray and technology support
  - Air Cargo screening and examination
  - Mail screening and examination
  - Investigations
  - Intelligence gathering
  - Surveillance activities

(4) No.
Aviation: Tasmania
(Question No. 2738)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 25 March 2004:

(1) Is the Minister aware of any plans by Qantas, after the launch of its subsidiary company Jetstar, to withdraw all Qantas services from Tasmanian routes within the next 3 years; if so, when did he become aware of the plans.

(2) Was the Minister advised of these plans by correspondence; if so, can a copy of the correspondence be provided; if not, why not.

(3) If he was advised other than by correspondence, can copies of relevant minutes or other records of conversation be provided; if not, why not.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

The Government is not aware of any plans by Qantas, after the launch of its subsidiary company Jetstar, to withdraw all Qantas services from Tasmanian routes within the next 3 years.