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SITTING DAYS—2004

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>10, 11, 12</td>
</tr>
<tr>
<td>March</td>
<td>1, 2, 3, 4, 8, 9, 10, 11, 22, 23, 24, 25, 29, 30, 31</td>
</tr>
<tr>
<td>April</td>
<td>1</td>
</tr>
<tr>
<td>May</td>
<td>11, 12, 13</td>
</tr>
<tr>
<td>June</td>
<td>15, 16, 17, 18, 21, 22, 23, 24</td>
</tr>
<tr>
<td>August</td>
<td>3, 4, 5, 9, 10, 11, 12, 30, 31</td>
</tr>
<tr>
<td>September</td>
<td>1, 2, 6, 7, 8, 9, 27, 28, 29, 30</td>
</tr>
<tr>
<td>October</td>
<td>5, 6, 7, 25, 26, 27, 28</td>
</tr>
<tr>
<td>November</td>
<td>22, 23, 24, 25, 29, 30</td>
</tr>
<tr>
<td>December</td>
<td>1, 2</td>
</tr>
</tbody>
</table>

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- **ADELAIDE** 972 AM
- **PERTH** 585 AM
- **HOBART** 747 AM
- **NORTHERN TASMANIA** 92.5 FM
- **DARWIN** 102.5 FM
CONTENTS

WEDNESDAY, 4 AUGUST

Privilege ........................................................................................................................................ 25559
Notices ........................................................................................................................................ 25559

US Free Trade Agreement Implementation Bill 2004 and
US Free Trade Agreement Implementation (Customs Tariff) Bill 2004—
Second Reading .......................................................................................................................... 25559

Matters of Public Interest—
  Queensland: Electricity Supply .......................................................................................... 25604
  Environment: Murray-Darling River System ...................................................................... 25608
  Women: Reproductive Rights .............................................................................................. 25610
  Women: Sexual Discrimination ............................................................................................ 25610
  Health: Mental Illness ............................................................................................................ 25614
  Science: Assisted Reproductive Technology ...................................................................... 25617
  Veterans’ Affairs: Australian War Graves ........................................................................... 25617
  Women: Reproductive Rights .............................................................................................. 25621
  Women: Sexual Discrimination ............................................................................................ 25621

Questions Without Notice—
  Health: PET Scans ............................................................................................................... 25622
  Trade: Free Trade Agreement ............................................................................................... 25623
  Australian Broadcasting Corporation .................................................................................... 25624
  Health: Pharmaceutical Benefits Scheme ........................................................................... 25625
  Telstra: Privatisation ............................................................................................................ 25626
  Immigration: Baxter Detention Centre .............................................................................. 25628
  Taxation: Family Payments .................................................................................................. 25630
  Education: Higher Education ............................................................................................... 25631
  Australian Customs Service .................................................................................................. 25632
  Trade: Free Trade Agreement ............................................................................................... 25634
  Sport: Drug Testing ............................................................................................................... 25635
  Defence: Shoalwater Bay ...................................................................................................... 25636

Questions Without Notice: Take Note of Answers—
  Australian Broadcasting Corporation .................................................................................... 25637
  Telstra: Privatisation ............................................................................................................ 25637
  Defence: Shoalwater Bay ...................................................................................................... 25643

Petitions—
  Military Detention: Australian Citizens ............................................................................. 25644
  Health: Pharmaceutical Benefits Scheme ............................................................................ 25644
  Indigenous Affairs: Government Policy ............................................................................. 25645
  Trade: Live Animal Exports ................................................................................................. 25645
  Constitutional Reform: Senate Powers ................................................................................ 25645
  Human Rights: Child Abuse ................................................................................................ 25645
  Defence: Involvement in Overseas Conflict Legislation ...................................................... 25646
  Terrorism: Suicide Bombings ............................................................................................... 25646
  Immigration: Asylum Seekers ............................................................................................. 25646

Notices—
  Presentation ............................................................................................................................. 25646
CONTENTS—continued

Committees—
  Selection of Bills Committee—Report ................................................................. 25648
Committees—
  Legal and Constitutional References Committee—Meeting ............................. 25655
Notices—
  Postponement ........................................................................................................ 25655
Senate Temporary Orders ......................................................................................... 25655
Committees—
  Economics Legislation Committee—Meeting ...................................................... 25656
  Foreign Affairs, Defence and Trade References Committee—Meeting ................ 25656
  Foreign Affairs, Defence and Trade References Committee—Meeting ................ 25656
  Foreign Affairs, Defence and Trade References Committee—Extension of Time ... 25656
  Environment, Communications, Information Technology and the Arts References
  Committee—Extension of Time ................................................................................ 25656
  Environment, Communications, Information Technology and the Arts References
  Committee—Meeting ............................................................................................... 25656
National Aboriginal And Islander Children’s Day..................................................... 25657
Colombia: Human Rights ........................................................................................ 25657
National Aboriginal And Islander Day Observance Committee ............................... 25658
Trade: Wheat exports .............................................................................................. 25658
Defence: Missile Defence System ............................................................................ 25659
Members of Parliament: Travel ............................................................................... 25659
Health: Nursing ...................................................................................................... 25660
Criminal Code Amendment (Workplace Death and Serious Injury) Bill 2004—
  First Reading ........................................................................................................ 25660
  Second Reading ..................................................................................................... 25660
Matters of Public Importance—
  Health: Pharmaceutical Benefits Scheme ........................................................... 25663
Committees—
  Scrutiny of Bills Committee—Report ................................................................. 25676
Documents—
  Auditor-General’s Reports—Report No. 5 of 2004-05 ......................................... 25676
  Indirect Tax Legislation Amendment (Small Business Measures) Bill 2004—
    First Reading .................................................................................................... 25676
    Second Reading ............................................................................................... 25676
  Australian Passports Bill 2004,
  Australian Passports (Application Fees) Bill 2004,
  Australian Passports (Transitionals and Consequentials) Bill 2004,
  Family and Community Services and Veterans’ Affairs Legislation Amendment (2004
    Budget Measures) Bill 2004 and
  Anti-terrorism Bill (No. 3) 2004—
    First Reading .................................................................................................. 25677
    Second Reading ............................................................................................... 25677
US Free Trade Agreement Implementation Bill 2004 and
US Free Trade Agreement Implementation (Customs Tariff) Bill 2004—
  Second Reading ............................................................................................... 25681
Notices—
  Presentation ......................................................................................................... 25697
Adjournment—
  Veterans: Korean War.......................................................... 25698
  Human Rights: Child Abuse .................................................. 25700
Documents—
  Tabling.............................................................................. 25702
The President (Senator the Hon. Paul Calvert) took the chair at 9.30 a.m. and read prayers.

Privilege

The President (9.31 a.m.)—Senator Ridgeway, by letter dated 3 August 2004, has raised a matter of privilege under standing order 81. The matter concerns unauthorised disclosures of the deliberations and the draft report of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America. Senator Ridgeway has drawn attention to several press items which are unambiguous reports of proceedings of the committee at a private meeting by telephone on 30 July 2004, and, in one case, of the content of the committee’s draft report. Senator Ridgeway has also drawn attention to a document distributed at a press conference on 2 August 2004, which appears to be part of a draft report of the committee and which also contains several unambiguous references to the content of other parts of the draft report of the committee. Senator Ridgeway, who is a member of the committee, states that, at the time of the appearance of the press items and of the press conference, the committee had not authorised any disclosure of its deliberations or of the content of its draft report.

Normally, the appropriate course would be for the committee to investigate these unauthorised disclosures under the Senate’s resolution of 20 June 1996. The select committee, however, will cease to exist when it presents its final report in the Senate, which is expected within days. There will, therefore, not be an opportunity for the committee to investigate the unauthorised disclosures and formulate its conclusions in accordance with the Senate’s resolution. The matter clearly meets the criteria which I am required to consider under standing order 81. The appropriate course, therefore, is for me to determine that a motion to refer the matter to the Privileges Committee may have precedence under that standing order. I table the correspondence from Senator Ridgeway and attachments. Senator Ridgeway may now give notice of a motion to refer the matter to the Privileges Committee.

Senator Ridgeway (New South Wales) (9.33 a.m.)—I give notice that on the next day of sitting I shall move:

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

Having regard to the material provided to the President by Senator Ridgeway, whether there was any unauthorised disclosure of the private deliberations or the draft report of the Select Committee on the Free Trade Agreement between Australia and the United States of America, and, if so, whether any contempt was committed in that regard.

Notices

Postponement

Senator Ian Campbell (Western Australia—Manager of Government Business in the Senate) (9.33 a.m.)—I move:

That government business notice of motion no. 1 standing in my name for today, relating to proposed temporary orders of the Senate, be postponed till a later hour.

Question agreed to.

US Free Trade Agreement Implementation Bill 2004

US Free Trade Agreement Implementation (Customs Tariff) Bill 2004

Second Reading

Debate resumed from 3 August, on motion by Senator Hill:

That these bills be now read a second time.

Senator McGauran (Victoria) (9.34 a.m.)—I rise to continue the contribution I
made last night to the debate on the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004. What a difference 24 hours has made. The Labor Party have already found a new way to deadlock the free trade agreement—indeed they are attempting to scuttle this agreement. Having announced that they will support the free trade agreement, they have put forward an amendment that this government finds unacceptable—in fact it is unnecessary and unworkable. So we now have a deadlock situation.

The Labor Party are trying to find a way to get out of the free trade agreement—something they have wanted to do from the very start. This debate has taken on new tension and a new dimension. They can rest assured that the government’s support for the free trade agreement is uncompromising. The Labor Party are trying to reach the point they have always wanted—that is, to scuttle this agreement under the cloud of the protection of the PBS. Behind that cloud, we all know there is a deep-rooted anti-Americanism within the Labor Party, particularly their left wing.

When I was speaking last night I was coming to the benefits of this agreement to the primary industry sector which need to be spelt out yet again to the opposition and to those listening to the broadcast of these proceedings. Probably no sector will benefit more from the free trade agreement with the United States, the largest economy in the world, than the primary industry sector. It is obvious. Australia’s primary industry sector exports 80 per cent of its product. It lives or dies on its export markets. So it is quite obvious to the rural sector that this new access to the largest economy in the world can only be of benefit. It is basic farm economics. It is about the livelihoods of those in the farming sector. That is why all parts of the primary industry sector—not just the farm gate but all the industries that rely on the farm gate product—support the free trade agreement.

Enough material has been disseminated and put out by the National Party Minister for Trade, Mark Vaile. The rural sector know only too well the benefits that will come from this agreement for the beef industry. They have stated clearly that they support this agreement. The market will open up over an 18-year period. Of course we would have liked a shorter period, but the market will open up in stages over an 18-year period until we have full access to the largest market in the world. The dairy industry will benefit. Every single industry will benefit, including industries that have never had access to the United States, such as the horticultural industry, including citrus.

I could read out in detail how every industry will benefit from this agreement, but I do not have the time. All the material is there. It has been there for the opposition to read. Take a small but growing industry like the avocado industry. It has been growing by 10 per cent annually over the last few years. Because of the tariffs imposed on that industry, it has never been cost-effective to export to the United States. With this free trade agreement, those tariffs will be abolished completely and the industry will have access to the market of the United States. So for just one industry, the avocado industry, it is absolute boom time. That is an example of the benefits of this free trade agreement for the primary industry sector.

As I say, it is basic farm economics: export or perish. What could be better for the rural sector than to have access to the largest economy in the world? The primary industry sector has been hanging around waiting for the World Trade Organisation to come to some free trade agreement itself, to drop the barriers of Europe. If you waited for Europe
to do this, you would be waiting a very long time. The rural sector has been knocking on the door of Europe since the fifties, with very little success. In the last couple of days there has been an announcement to the effect that the World Trade Organisation has taken yet another step—always small steps—in freeing up Europe and other major markets for primary industry. But the point is that we cannot hang around. The primary industry sector cannot hang around for multilateral or World Trade Organisation agreements. We have to make our own one-on-one agreements. This is the best and most advantageous free trade agreement yet to come before Australia, and we would be fools—and every other country would think we were too—to forgo this once in a lifetime opportunity.

It is not just the primary industry sector that will benefit from the agreement. All industries have come out to support this free trade agreement. There has not been one industry that has not supported it. The pharmaceutical industry issued a statement on 26 July supporting the free trade agreement. The Chief Executive Officer of Medicines Australia said, 'It is a mechanism that will strengthen and enhance the transparency and accountability of the operations of the Pharmaceutical Benefits Scheme.' We put those mechanisms in place in regard to the free trade agreement. They welcomed the release of the independent review of applications to list medicines. They have no concerns at all.

The automobile industry also support the free trade agreement. Contrary to what the union tell you, the automobile industry think they will have open access and will be able to trade one-on-one with the United States, to export cars to the United States at a greater cost benefit than they can now. It might surprise some on the other side that the automobile industry in Australia are very competitive and already export cars to the United States. This agreement gives them greater access, greater freedom, greater ability and greater cost-effectiveness to export to the United States.

Another beneficiary of the free trade agreement is one of Australia’s biggest exporters and one that has brought great wealth to this country over the years—that is, the metals and minerals industry. We will see tariffs drop for the steel industry and the aluminium industry. They have always had difficulty in the past in entering the largest market in the world. Under this agreement they will have greater access than they have ever had.

There are very few industries that do not support the free trade agreement—on balance. That is a term used by those opposite. The agreement has pluses and minuses. We wish we could have achieved more, but on balance every single industry will benefit from the free trade agreement and none will be worse off—not even the sugar industry for that matter. We regret being unable to write them into this agreement; the reasons were so politically obvious. But we were not going to sacrifice the whole agreement for the sugar industry. Make no mistake: the sugar industry will be no worse off with this agreement, as is so often painted by those on the other side.

With all the evidence in for the opposition to read on the advantages available to industries, with all the generational opportunities before us, why wouldn’t you sign this agreement? Yet we read in the papers today that the Labor Party are digging their toes in, looking for yet another reason not to support the free trade agreement. When this government first decided to start negotiations, to start talks, with the United States—before this agreement was negotiated or detail was put on the table—the Labor Party were against it. The Labor Party were even against the initial talks on this agreement. That has
been their original stance. Let us not kid ourselves or dress it up in any other way: they are seeking not to support the enabling legislation today. Let us not forget that from the very beginning they were against this free trade agreement and were looking for ways to scuttle it.

The reality of politics and economics came crushing down on them and they had to change that stance. For the last five months they have said, 'We’re thinking about it, but we’re going to wait for a Senate committee to advise us on what our policy should be.' What a joke. Everyone in this chamber knew that that was a joke—a deferring tactic, a dithering tactic—and for five months we have watched the opposition split, fight and dither about this once-in-a-generation free trade agreement that is before us. It could have been signed months ago, and we could have got on with business, but it is still on the agenda. But it is coming to a head now.

Now we have this new twist: this flaky idea of an amendment to protect the PBS. I am not a lawyer—I am a trained economist—but I have done some work in copyright and patent law. I know that this amendment is unnecessary, as the Prime Minister said, and it is unworkable. What is more, the safeguards for such ‘dodgy practices’, as the Labor Party would have us believe they are, are already in place. An article in today’s *Australian* put it more succinctly: Freehills partner Paul Jones said that deciding whether a claimed patent was of substance already came before the courts. “I would consider any attempt to codify patents as spurious or dodgy as completely impractical,” he said.

The article continued:

Mr Jones said it was hard to see how a court might impose penalties on a company for defending an approved patent.

In other words, the Labor Party are putting up this amendment as an excuse to not support the free trade agreement. It must stupefy Senator Conroy and those who have always supported the agreement but have never really had the courage to say it that they are now in this position. The free trade agreement is back on the agenda. It is possibly an election issue and one that they know they will lose. The free trade agreement is in the national interest. *(Time expired)*

**Senator NETTLE** (New South Wales) *(9.47 a.m.)*—I rise to speak on the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004. Young artists who are looking to a career in new media have had opportunities taken away from them by the government and the opposition in this deal. The livelihood of farmers, particularly citrus, pork and stone fruit producers, who rely on our strong quarantine laws to protect their product from diseases, will have their livelihoods threatened by this deal. Cancer patients, kids with asthma and Australians with diabetes, who rely on access to affordable medicines, will have to look closely at their future financial prospects, thanks to this trade deal.

Australians who are from a non-English-speaking background, who live in regional communities and who work in industries such as the manufacturing industry or in textile factories will worry about their jobs because of this agreement. Suburban and school libraries will have to decide whether they can pay more money to Walt Disney for the increased copyright charges, thanks to this agreement. Sugar farmers have been completely left out. These Australians lose out because the government and the opposition think that Australia’s trade policies should be dictated from Washington rather than coming from the Australian parliament. Despite two Senate reports and countless academic studies and concerns from community and industry groups, the Labor and
Liberal parties have decided to go ahead with a bad trade deal. The PBS patents amendment that is being debated by the government and the opposition does not change the fact that this entire trade deal is a bad one. Government senators this morning have pointed out the flaws in the trade agreement, but they and the opposition are prepared to blindly forge ahead with this agreement whilst admitting that they do not know all the consequences.

One amendment about a new offence for patenting drugs does not constitute a safeguard for our Pharmaceutical Benefits Scheme. The safeguard that our Pharmaceutical Benefits Scheme needed was to be exempted from the US-Australia free trade agreement. I was part of a Senate committee that proposed this at the end of last year. At that time the Labor Party agreed with it, but now they seem to have changed their minds. The ultimate safeguard not just for our PBS but for the government’s right to make laws that are in our public interest in the future is to oppose this US-Australia free trade agreement and to ensure that trade agreements are negotiated in multilateral fora and are based on the principles of ecological sustainability, international labour standards and human rights standards.

There are three substantial measures in this free trade agreement that will lead to increased medicine prices for Australians: the appeal mechanism for companies whose application for a drug to be listed on the PBS has been rejected; allowing drug companies to delay the release of low-cost generic medicines; and establishing a committee to look at making Australians pay more to US drug companies, supposedly for their research and development. A submission by academic and former PBAC members predicted that these measures would increase the price of the pharmaceuticals bill by at least $1.5 billion.

Australia’s Pharmaceutical Benefits Scheme is promoted by the World Health Organisation as a model for ensuring that affordable medicines are available. Several state governments in the United States are trying to create their own pharmaceutical benefits scheme, but US pharmaceutical companies keep taking them to court to prevent them from being able to create a pharmaceutical benefits scheme like the one that we have in this country. The US drug companies are keen to destroy our Pharmaceutical Benefits Scheme not only because it will get them more profits but, more importantly, because they do not want such a model scheme being out there in the international arena so that other countries can point to our Pharmaceutical Benefits Scheme and say, ‘We want that.’ Professor Kevin Outterson, from West Virginia University, told the Four Corners program on Monday:

Look at who you are dealing with: a multibillion-dollar, very sophisticated international industry with specific experience in the US beating us over the issue. Will they prevail over Australia and effectively raise prices over the next five years? Absolutely.

The review process that is proposed in this legislation gives US drug companies the right to a review if their drug is rejected for listing on our Pharmaceutical Benefits Scheme. New patented drugs are often rejected because they do not offer value for money compared with equally effective and cheaper generic drugs. The review process will create measures for listing the higher priced drugs by the PBAC. A side letter to the free trade agreement stated that Australia will provide opportunities for an adjustment to prices—that is, increased profits going to US pharmaceutical companies. These companies have made it clear that they expect such changes from a review process, and they have a history of the aggressive use of trade law to achieve their objectives. If they
do not get results from the review process, they can ask the US government to use the FTA disputes process to challenge the adequacy of the review process.

The dispute is then heard by trade lawyers who can recommend changes to law or policy, allowing the United States to impose trade sanctions if such changes are not made. These trade lawyers can make these changes and decisions without considering the impacts on health, culture or the environment and whether it is in the public interest. This is the danger of including any aspect of the Pharmaceutical Benefits Scheme in a trade agreement. The Greens will not support any trade agreement that undermines our Pharmaceutical Benefits Scheme, so we will be voting against this trade agreement.

Generic drugs are an important component of controlling the cost of the Pharmaceutical Benefits Scheme. But, under this agreement, the Australian government has agreed to measures that will allow US drug companies to delay the introduction of generic drugs to Australia. Patents on five groups of current PBS drugs are due to expire next year, allowing cheaper generic versions to become available. The Australia Institute has estimated that, by delaying these five generic drugs by 24 months, it would cost an extra $1.1 billion to the PBS. That is the same amount of money that the government and the opposition thought they were saving by increasing the price of pharmaceutical benefits by the recent backflip on the copayment rise to the PBS. Australian National University academics found that state public hospital drug costs will rise by 12 per cent by 2008, or around $134 million by 2008, as a result of the patent changes proposed in this free trade agreement. Dr Tom Faunce from ANU stated:

The word ‘pharmaceuticals’ appears in the text of the FTA 58 times, mainly in relation to commitments made by Australia … for the Howard government to say that the FTA will not increase drug prices is a complete lie.

The Greens will defend our Pharmaceutical Benefits Scheme. That means protecting our public health sector and voting against this trade agreement. The agreement binds or freezes federal, state and local government regulation of essential services at their existing levels, unless they are listed as exemptions. This means that it will prevent increased protection by governments in the future of important services like water, energy and public transport that are not listed as exemptions. We face the prospect of one of our most precious community resources—water—being controlled by US multinationals. The last time this happened in Australia, when an Adelaide company ran a sewerage system in Adelaide, it was an absolute disaster.

The agreement commits Australia to aligning our copyright laws with those of the United States. One of the worst aspects of this deal is that the government has agreed to extend copyright protection from 50 years to 70 years after an author’s death. This is the Disney clause, where local libraries in places such as Broken Hill, Redfern and Fitzroy will have to pay the Walt Disney corporation more money over the next 20 years for copyright on books, tapes and videos that exist in their libraries. How is that in Australia’s national interest?

This deal gives the United States greater access to Australian manufacturing markets than Australian access to US markets and prevents government purchasing policies from giving preference to Australian local firms, and that is at local council level as well. That will mean a significant loss of jobs in regional areas of high unemployment. Last month I was in Albury-Wodonga, talking with locals about their fears for an auto-parts manufacturer that exists in their community, how it will suffer as a result of this
trade agreement and whether local jobs will be lost. Stories from Canadian autoworkers about their experience with their free trade agreement with the United States provide no comfort to these autoworkers in Albury. Buzz Hargrove, President of Canadian Automatic Workers, was recently in Australia. He had this to say:

In Canada, prior to the free trade agreement being signed with the US in 1989, on a per capita basis, we were the best industry in the world for producing vehicles. We were fourth placed in the world overall. We were behind the United States, Germany and Japan. We’ve now slipped to eighth place. We’re way out of the ballpark from where we were. We’ve lost 9,000 jobs, but remember, it’s not just those 9,000 jobs we lost, we lost those in a growing market. The market has been incredibly strong. Had we not had the free trade agreement, instead of losing those amount of jobs, we believe we’ve added up to 20,000, 30,000 new jobs in Canada.

That was the experience of the Canadian autoworkers and their experience with the free trade agreement with the United States. The Labor Party has proposed no amendment to this free trade agreement to protect the 50,000 jobs that the AMWU predict will be lost as a result of this agreement. Mr Latham has said that the agreement is not a trade agreement but an investment agreement. Not all investment is good for Australia. Investment can often mean takeovers of Australian companies by American corporations. Therefore, decisions will be made on jobs and profits in places such as New York and Los Angeles.

The agreement, and the changes in this legislation, will mean that the government gives up the important watchdog powers of the Foreign Investment Review Board to scrutinise and advise on foreign investment. The FIRB will now only review foreign investment in industries that total $800 million, rather than the $50 million threshold that existed before this trade agreement. Large Australian companies could now be bought up by the US and the government will not even know about it. It would not have had to look at these issues through the Foreign Investment Review Board.

On the issue of procurement, the government claims we will have access to the US procurement market but in fact access will be severely limited. One major barrier is that the US government has retained the right to give preference to its small firms—that is, firms which employ up to 1,500 people. They are hardly small firms by Australian standards. Australia has no such right, no such exemption for so-called ‘small’ firms of 1,500 workers. Certainly, Australian IT companies with fewer than 1,500 people—I would suggest that is a significant number of Australian IT companies—will be competing with hundreds of other much larger US firms in the American marketplace, firms that the US government supports with what it calls ‘aggressive advocacy’. We should read this for what it is—subsidies.

I turn now to the textiles industry. US trade barriers in the textiles industry that are untouched by this deal, such as the ‘yarn forward’ rule, allow for the make-up of garments in overseas countries as long as the home country made the fabric or yarn that is used. Australian textile manufacturers make extensive use of imported fabric or yarn, making it difficult for Australian textile businesses to meet the US trade barriers that will remain in place after the trade agreement. Singapore thought it was getting a bargain under its free trade deal with the US, but it found that the US textile trade barriers were so hard to meet that now it does not even bother applying for tariff reductions; it just pays the tariff. It cannot meet the tariff-free status with the ‘yarn forward’ rule that exists in the US. The powers that are given to the US in this legislation are incredible. In the textiles industry, US customs officers are
allowed to accompany Australia-US free trade agreement verification officers while they search textile factories in Australia to ensure that the free trade agreement is being abided by.

This deal has not come close to delivering the promised wins for agriculture. Sugar is completely outside this agreement. The government promised it would not sign a deal that locked sugar out, and Mark Latham’s ‘no sugar, no deal’ promise will fade into insignificance now. Tariffs remain in place for wool, for 10 years; for wine, for 11 years; for steel; and for beef, dairy, horticulture and cotton, for 18 years. Beef and dairy producers have to wait almost a generation—18 years—for the elimination of US quotas and tariffs. Also, if our exports to the US rise too quickly or our prices are too competitive against the exchange rate, the US can slap its tariffs back on—no questions asked.

The government claims that this deal is a win for avocado farmers. But Australians who are growing avocados—for example, in northern New South Wales—are not allowed to sell to the United States during our peak production time. It is the same story for citrus. So much for the benefits to agriculture that the government promised under this deal. The Nationals’ representative negotiating this deal for the government has let down producers of Australian pork, avocados, stone fruit and citrus, to name a few.

This trade agreement is not in Australia’s interest. It will undermine other international trade agreements. The Greens do not support bilateral trade agreements. How can Australia expect to get a fair deal when negotiating with the US, the world’s largest economy? How can we expect to get a fairer deal in a bilateral agreement with the United States than we can when we are negotiating with every country around the world? The Greens support trade agreements in which all countries are involved. The charter of Greens parties from over 80 countries outlines how Greens parties around the world are working to support trade agreements that involve representatives from affected communities in transparent processes. Fair trade can only develop through cooperation amongst the developed world and countries like Australia to ensure that labour rights, essential services and environmental regulation do not get pushed aside by powerful countries like the United States. We can and should have trade agreements that ensure that generic medicines are available, not just to Australians but to all people, particularly African and Asian women who are suffering as a result of the growing epidemic of HIV. We should have trade agreements that ensure Australian farmers are not blocked from selling their produce in the US because of trade subsidies.

This trade agreement damages Australia’s chances of getting such a global, international agreement in place. It should be rejected now. The Greens wish that more political parties in our parliament were prepared to stand up to the bullyboy tactics of the United States in negotiating this trade agreement as well as in areas like defence. We will stand here and speak out about these agreements. They are not in our national interest and we cannot support them. I move:

Omit all words after “that”, insert “further consideration of the bills be deferred until after the Australia-United States free trade agreement has been subject to a review, with public input, of its environmental impacts, and a report on that review has been tabled in the Senate”.

This is a very similar recommendation to the one that was made by the first Senate committee that looked at this legislation—a Senate committee that I was part of. In that committee report, the Labor Party agreed to this amendment and they agreed to exempt from this agreement the PBS, our cultural industries, our Foreign Investment Review
Board, our single-desk export manufacturing boards like the Australian Wheat Board. But today we see the government and the opposition both prepared to support a trade deal that undermines our national interest in all of these areas. It is not good enough. The Greens are going to stand up for our national interest. So we will oppose this trade agreement and continue to campaign for fair trade agreements which provide us with the opportunity to regulate in our national interest and with human rights and labour standards across the globe that we can be proud of.

Senator SANTORO (Queensland) (10.07 a.m.)—I have already made a contribution in this place on the matter of the free trade agreement with the United States. In an adjournment speech at the end of the June sittings I set out in considerable detail the argument in favour of the FTA from my perspective—and that, I believe, of the majority of Australians. I will not repeat that detail today. But it would be useful, in light of some of the contributions we have heard from those opposite in this debate, to briefly canvass some of the major points again. The report of the Joint Standing Committee on Treaties into the proposed free trade agreement, tabled at the end of June, clearly defines the time line for negotiations—the time line that Labor has self-servingly suggested was too short or insufficient for proper consideration.

The proposed FTA was announced on 14 November 2002. That was when negotiations formally began, but both sides of politics in both countries had been considering the concept of an FTA for at least 12 years. Negotiations between the trade representatives of Australia and the United States took place in five rounds between March 2003 and February 2004 in Canberra, Honolulu and Washington DC. The proposed agreement—the outcome of the detailed negotiations—was agreed at Washington on 8 February 2004 and signed at Washington on 18 May 2004. The Australia-United States free trade agreement was tabled in the Australian parliament on 8 March 2004.

I believe that Senator Conroy was being a little disingenuous yesterday when he claimed that there was no rush because Congress had only recently passed the American bill and President Bush had not yet signed the agreement. President Bush has now signed it and he was on television this morning giving an ample demonstration of what real leadership is all about. This is a critical time in Australia’s trading history and Mr Latham wants to play politics instead. He is doing so because he cannot handle the Left of his party. If he cannot manage something that is so obviously in Australia’s national interest—and he believes the trade agreement is, apparently, since he wants to sign up for it—then what trust can the Australian people have in his capacity to fight a real battle for the country? The answer simply is: none. And that is a real worry for Australia and Australians.

But, in the spirit of consensus in great causes and in speaking on the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004, I say to the Leader of the Opposition and the Labor Party, or at any rate to those parts of it that have finally won the day on the agreement: welcome to the court of commonsense. Mr Latham’s was a very belated conversion. It must have been caused not so much by a blinding light as by a very dull ache. Perhaps the donkey was very unwilling or lost its way. It must have had some trouble following the signposts to this particular Damascus. It was very late but not, in the end, too late. It is a pity Mr Latham could only make it after making an ass of himself.
Now he appears to be determined to make a Kilkenny cat of himself as well. He says that Labor will fight like these animals to insist on and get passed into law the minor amendments it wants and which, in its wisdom, it has declared to be substantial and matters upon which it will not compromise. The Leader of the Opposition, I respectfully suggest, must be very careful. There were only ever two Kilkenny cats and they fought each other until there was nothing left of either of them. Is this what Mr Latham really wants to make of his leadership and his party?

Senator Conroy got it absolutely right yesterday morning. I am told he was looking a little harassed in one of the news grabs on breakfast television when he said in effect that a deal that is in some small respects less than perfect is better than no deal at all. I wonder how harassed he and his can’t-make-up-his-mind leader looked when they were in the caucus room yesterday morning, arguing that rational and sensible point. I am sure that Senator Conroy, if not his leader, knows that consensus is nine-tenths of any successful outcome. The issue for Australia is how to mesh ourselves into the world’s largest, most dynamic and freest economy. For Australia, the issue is what Australian business can value add to the FTA, and what business is saying is that it can add a great deal of value.

We need to remember too that it is not just the government that has promoted the free trade agreement and worked so hard to achieve it. Strong leadership has also consistently come from the business sector: from the Australian Chamber of Commerce and Industry, from the Business Council of Australia and from the Australian Industry Group. The ACCI said yesterday:

The Australian Chamber of Commerce and Industry (ACCI), Australia’s largest and most representative business organisation, has welcomed the news today that the ALP caucus has resolved to support enabling legislation to bring the Australia-US Free Trade Agreement into effect.

ACCI looks forward to its speedy passage through the Senate.

The AUSFTA is one of the most important bilateral commercial and economic agreements this country has seen. For Australian business, the AUSFTA represents the difference between a market for our human capital, agricultural and manufactured products of just 20 million and one of over 300 million people.

It is a free trade deal with the single largest economy in the world.

The Business Council of Australia released this statement:

BCA President, Mr Hugh Morgan, said business recognised it was a difficult issue on which to reach political agreement but the right decision had been made in the national interest.

“While progress had been made on WTO talks in recent days, the US FTA remained a critical part of Australia’s trade strategy,” Mr Morgan said.

“The implications of walking away from an Agreement that has already been negotiated with the world’s largest economy would have been immense.”

These are the bottom lines that really matter. Essentially, the Labor Party’s difficulty in coming to grips with reality simply does not matter, except to the extent that its own problems impact on the capacity of Australia to advance to the fullest and prosper to the maximum.

On that score, it is interesting that the Labor Party has offered to pass the legislation provided that two amendments it proposes and which Mr Latham has declared non-negotiable are made to it. The amendments, as most serious commentators have stated, are minor. They appear to be aimed at assuaging baseless fears in interest groups Labor is desperate to keep on side, and will have very little effect on the actual working of the agreement once it is in place. They are
essentially irrelevant to the arguments previously advanced by the unreconstructed wing of the union movement, which is not interested in patents or in keeping control of Homer Simpson’s appearances on Australian entertainment media. Those are side issues to the more sensible wing of the union movement, as represented by the Australian Workers Union, which wants the FTA.

It is a pity that Senator Ludwig is not in the chamber to convey my appreciation to his father, Joe Ludwig, who, on occasions, makes some very sensible statements on behalf of his union, the AWU—statements which, in this particular case, have pleased the business community.

The Labor Party wants to have its modified FTA and add layers of meddlesome, politically controlled bureaucracy to the process. It proposes to establish a commission of inquiry to look at the impact of the FTA on manufacturing, especially automotive components, clothing and footwear, and will be announcing terms of reference for such an inquiry. It says it will protect Australian media, film and television production, copyright, the PBS, blood and plasma products and a host of other things.

The question is: would Labor’s proposals deliver these protections in any form more substantial than provided for in the agreement now signed and awaiting parliamentary approval? That is a moot point. It is suggested by some commentators that Mr Latham is playing clever politics and by others that he is being too clever by half. I incline to the latter view. What we are seeing is some fairly clumsy grandstanding. It provides no reason for confidence that when we get into a real political campaign—the election campaign—Mr Latham will have the bottle for the fight. What we have seen over the FTA reveals the Labor leader to be without true commitment to principle and his party to be devoid of vision. That is the most pressing national danger.

It is interesting in this context that leadership has even come from the state Labor premiers—indeed all of the state Labor premiers. The only place leadership has been lacking, to the extent that it has often been invisible, is in the Labor Party and specifically in its own leader. It has been the Leader of the Opposition alone who until yesterday showed no leadership on this issue. It has been the Leader of the Opposition who has displayed throughout this saga the very antithesis of leadership. He had to wait for this report and that report. He had to wait for advice he was going to get from someone or other, who was somewhere or other. He was, as everyone knows, simply playing a delaying game for crass political purposes, even internal party purposes, and not considering the facts of the matter or the future of his country. We know why he did this. He did it because in the position he now holds, as the head of the fractured and dysfunctional federal Labor Party, he is a reed who bends before every little populist breeze. The Leader of the Opposition is not focused on Australia’s position. He is very focused on his own position.

Australia seeks to broaden and brighten our future as a trading nation and to increase by quantum sums our national prosperity. Against this, the left wing of the Labor Party decided that the issue was protection for industry and protection for unions. They wanted to rush back to the past, to the closed shop and the import barricade, not knowing, or perhaps not caring, that in the global age in which we live you have to value add, not value subtract. The Labor Left, along with the Greens and the Democrats, are the true primitives in this debate. They are unable to comprehend that time has marched on and that they are fighting a war that everyone else stopped fighting years ago. The Greens,
as we know from the evidence presented in this place by Senator Brown and only a few minutes ago by Senator Nettle, would like us all to go back to living in bark huts.

The Democrats seem to be having some considerable difficulty keeping themselves honest, let alone worrying about their perceptions of the level of honesty in other parties. On this issue, like the Greens, they are banging the drum for an Australia that does not exist and simply cannot exist these days. They appear to be arguing for Australia to become a curious little biosphere all on its own. In this they are apparently joined by Senator Lundy of the Labor Party, who says she fears rampaging Americanism will subsume if it does not submerge the true voice of Australia. Commonsense, Senator Lundy, tells us this will not occur.

Senator Lundy—Are you quoting me?

Senator SANTORO—The bill we are debating consists of nine schedules that amend relevant Australian legislation to fulfil Australia’s obligations under the FTA. Unless specifically noted, the provisions of the bill will take effect—

Senator Lundy—Mr Acting Deputy President, I raise a point of order. I think Senator Santoro was purporting to quote me and I am asking him to clarify whether he was quoting me or trying to imply that I had said something that in fact I had not.

The ACTING DEPUTY PRESIDENT (Senator Brandis)—There is no point of order. Interjections are disorderly. If you claim to have been misrepresented there is an appropriate procedure at the appropriate time.

Senator SANTORO—Thank you, Mr Acting Deputy President. I have just referred to some of the notes that I have made in relation to speeches and comments that have been made. If I can find the quotes that have led me to make the statements I have made about Senator Lundy I will read them out. Otherwise, I am sure that during another contribution I will become even more specific as to why I formed that particular opinion.

Senator Lundy—Oh, so it is an opinion.

Senator Crossin interjecting—

The ACTING DEPUTY PRESIDENT—Order! Senator Crossin and Senator Lundy, cease interjecting.

Senator SANTORO—They are very sensitive on the other side because they know that, if I can put it metaphorically, they have been caught with their pants down. They made statements prior to the cave-in of the Left yesterday. Senators opposite, including those who are interjecting, have obviously made statements that these days they regret. They simply do not like opinions, let alone facts, being shoved down their throats. If the hat fits, you should wear it, and I am sure we will be able to get you to wear it many more times before this debate, not just in this place but in the broader community, is finished.

Unless specifically noted, the provisions of the bill will take effect on 1 January 2005 or when, subsequent to that date, the Australia-United States free trade agreement comes into force. Briefly, schedule 1 amends the Customs Act, schedule 2 replaces the existing data protection regime for agricultural and veterinary chemicals, schedule 3 amends the Australian Wine and Brandy Corporation Act 1980 in relation Australian geographic indications for wine, and schedule 4 amends the Life Insurance Act 1995. Schedule 5 amends the Foreign Acquisitions and Takeovers Act 1975 to introduce an indexed screening threshold of $800 million for American acquisitions of Australian businesses except those in defined sensitive areas where the threshold will be $50 million, and schedule 6 amends the Commonwealth Authorities and Companies Act 1997. Schedule
7 amends the Therapeutic Goods Act 1989, primarily to provide that an applicant seeking to include therapeutic goods in the Australian register must supply a certificate protecting patent. Schedule 8 restricts the grounds on which a patent may be revoked and schedule 9 amends the Copyright Act 1968.

For the most part, objections to these proposed legislative changes are misplaced, along with the fears that we are told drive them. The wider interests of Australia today and, more importantly, tomorrow—given the capacity of business to add further value to operations in a freer environment—will be best served by swift passage of this legislation so that from 1 January 2005 we can all begin to benefit from AUSFTA.

I think the Minister for the Arts and Sport, Senator Kemp, made an excellent point yesterday that deserves repeating. Answering the colourful claims of the first two speakers, Senator O’Brien for the Labor Party and Senator Ridgeway for the Democrats, on these bills—the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004—he reminded us that the Howard government rigorously pursues the national interest. Senator Ridgeway in particular took an extremist position on national sovereignty but, as Senator Kemp pointed out, Labor in government up to 1996 signed treaty after treaty which impinged on the sovereignty of the nation and the Democrats never raised a squeak; they never raised an objection. Senator Kemp said that Labor had got itself into an absolutely hopeless mess. It had laboured mightily for five months and got absolutely nowhere in relation to what we are discussing today in this place. But I think that we should pay credit where credit is due, and I want to specifically mention in that context the contribution of Senator Kirk to this debate yesterday. I believe she captured the kernel of the real argument very neatly when she said:

In the past, Australia has directly benefited from trade liberalisation. Reducing trade barriers boosts our economic growth, creates a more competitive industry environment, provides benefits to consumers and builds stronger relationships with our trading partners. Labor has always fought strongly to ensure that the benefits of such economic growth are equally shared. The US-Australia free trade agreement promises all of this for Australia.

That is exactly the argument and those are exactly the reasons that the Senate should pass this legislation. They were put forward by a Labor senator opposite.

We should not see this agreement with the United States in isolation. It is a crucial agreement—indeed, it is a vital agreement—but it is not a stand-alone agreement. It must be seen in the context of the increasing web of bilateral agreements on trade that Australia has entered into and our continued chief focus on the mechanisms available in the World Trade Organisation. Any agreement provides for ongoing review on a formal and an informal basis. Those particular safeguards for review are built into this agreement. This is an agreement to sign off on now so that there is a legislative base for Australian enterprise and entrepreneurship to add more and more value to their work and to our national prosperity.

**Senator HARRIS** (Queensland) (10.24 a.m.)—I rise in this debate on the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 to place on the record One Nation’s concerns about and opposition to the US free trade agreement. One Nation is opposed to the free trade agreement—opposed to its philosophy, opposed to the process and opposed to the policy of free trade. Let me state very clearly at the outset that our opposition does not
mean that we are anti-American or un-Australian. Rather, our opposition is based upon the fact that, through this agreement, Australia loses its economic sovereignty, the right to protect our own, the freedom to grow our own industries, the right to foster our own culture and the ability to help Australians first.

The FTA severely restricts and confines the role of our democratic government. In many cases, the final say is given to dispute resolution bodies—a panel of three people—not to our elected decision makers in this parliament. The final say is out of our control. The bills before us today are only a tiny part of the free trade agreement implementation and deal mainly with copyright and patent laws. After the election, when everybody has forgotten about the FTA, we will get the rest of the legislation. The bills before us today are only a tiny part of the free trade agreement implementation and deal mainly with copyright and patent laws. After the election, when everybody has forgotten about the FTA, we will get the rest of the legislation. When the song and dance is over, it can be argued that we have a precedent for supporting the FTA. We will hear the voices chiming, ‘We can’t stop it now because we’ve started it.’

Let me touch very briefly on NAFTA—the North American Free Trade Agreement between the US, Canada and Mexico. Key sections of the US-Australia FTA are exact word for word copies—plagiarised, if you like—from NAFTA. Under the US-Australia FTA, our people will be competing in the US with Canadians and Mexicans and everyone else that the US has a free trade deal with. NAFTA has been a huge success for large business but for the little blokes—the family farmer, the small manufacturer and the industries that cannot compete—it has been nothing more than a seven-year economic war. Have a look at the US Department of Labor NAFTA transitional adjustment assistance cases. The facts are on its web site in black and white. In thousands and thousands of cases across the United States and across many industries, the Department of Labor concludes that there has been a shift in production to Mexico or Canada. The effects are so bad that the US labor department even maintains a web page titled ‘Mass Layoff Statistics’.

I have here a list of companies certified by the US Department of Labor as NAFTA casualties, where workers have lost their jobs. This document is from the US government’s own web site. It is ironic that the web site’s address is www.doleta.gov. How appropriate, because all of the people listed there are now on the US dole queues! It is not a small document; it is 30 pages of companies which have shifted or shifted their work force to either Canada or Mexico. Here are just a few of them: Motorola, shift in production to Canada; Phelps Dodge, imports from Canada/Mexico; Samsonite, shift in production to Mexico; and Bunger Steel, shift in production to Mexico. And so the list goes on—30 pages of clear, identified cases where the North American Free Trade Agreement has moved jobs out of America. Our document, in some cases, takes the wording of NAFTA word for word. Those are only a few examples from Arizona and Florida; there are 30 pages of examples from two states.

The Australian government and the ALP have now endorsed the free trade process, after the NAFTA process has proven to have caused massive job losses in the US itself. Free trade is not the utopia its proponents claim. The history of free trade is not new. There are many historical examples to demonstrate that free trade, particularly in agriculture, does not work. The book Grain Through the Ages, published by the Quaker Oats Company, describes free trade in the Roman empire in the first and second century BC. It reads:

One reason for the decline of grain farming in Italy was the importation of grain into Rome from the rich grain lands of Sicily and Egypt. In Sicily these grain lands had been appropriated by rich
men and scheming politicians who farmed them with slave labor. As a result the markets of Rome were flooded with cheap grain. Grain became so cheap that the farmers who still owned small pieces of land could not get enough money for the grain to support their families and pay their taxes. They were forced to turn their farms over to rich landowners. On the land of Italy slave gangs working under overseers took the place of the old Roman farmers, the very backbone of the—

Roman empire. It continues:
The farmers, after their land had been lost, went into the city walls, leaving the scythe and the plough. They worked now and then at a small wage. They ate mostly bread made of wheat which was distributed to them by any politician who wanted their votes at an election. They lived in great lodging houses three or four stories high. The land ... became poor ... The use of slaves meant that the land was badly worked because usually the slaves did as little as they possibly could unless they were under the eye of the overseer.

In the end, the land itself was destroyed by the economic process.

Imports into Australia have just risen for the fourth consecutive month. The latest trade figures show that we are importing more than we are exporting. This is the worst financial year for trade in the 20-year history of the statistical record. The trade deficit is $24 billion, up from $18.6 billion last year. The ratio for export credits this year was minus 17. The only worse year in history was 1986, when it was minus 21, and that was the year that Paul Keating made his reference to a banana republic. Trade has little to do with Australia’s supposed robust economy. No member of the government can claim that the economy is doing gang busters due to free trade policies—not when we are importing more than we are exporting. Over the past 15 years, almost one-quarter of Australian family farmers have gone out of business. Official figures from the Australian Bureau of Statistics indicate that the number of farming families in Australia decreased by 22 per cent between 1986 and 2001. If this trend continues, more than half of Australia’s family farms will be lost in the next 15 years. With this FTA, the trend of small family farms to closure will only accelerate.

In the US 33,000 farms with annual incomes of less than $100,000 disappeared during the first seven years of NAFTA. This rate is six times higher than that of the pre-NAFTA period. While Canada’s NAFTA agricultural exports grew by $6 billion between 1993 and 1999, net farm income declined by $600 million over the same period instead of rising by $1.4 billion, as Agri-Food Canada had predicted. The rate of Canadian farm bankruptcies and delinquent loans in Canada is now five times what it was before NAFTA. Even as Canadian agricultural exports doubled, dropping prices meant that Canadian farms’ net incomes declined by 19 per cent between 1989 and 1999—that is, Canadian exports doubled but the income to the average farm dropped by 19 per cent.

On the Atherton Tableland in Far North Queensland, we have witnessed first-hand the destructive forces of free trade. Tobacco, sugar, dairy, prawn trawling, bananas, apples and pork are either going to the wall or under threat. Under this agreement, all US agricultural imports into Australia—many of them grown on corporate farms that are heavily subsidised by the US—will gain immediate, duty-free access to Australia. The US can automatically access our dairy and beef markets, but there is an 18-year gradual phasing in for us to access theirs. I put it to you that over the 18-year phase-in period our dairy and beef will be virtually annihilated. Dairy and beef farmers will not need to access the US because there will be none of them left.
It is likely that only a few large agribusiness companies will control the market between Australia and the US, with a few niche markets thrown in. Due to the likelihood of large agribusiness making large donations to political parties, it is not beyond the realms of possibility that we will see farm subsidies come into Australia, as they did into America. Our own local producers will be competing with increased imports of beef, dairy products, almonds, tomatoes, cherries, olives, grapes, corn, frozen strawberries and walnuts, just to name a few. Our cheese market, which is currently quite well protected via tariffs, will be opened up to US competitors. Other products, such as potatoes and raisins, will have their five per cent tariff removed.

This morning my office received petitions from nearly 1,000 workers in the manufacturing industries. They are pleading with us to stop this agreement. Under the FTA, more than 99 per cent of US manufactured exports to Australia will become duty-free immediately upon the agreement entering into force. The US manufacturers estimate that the elimination of tariffs could result in $US2 billion per year in increased US exports of manufactured goods to Australia. The FTA makes it extremely difficult, if not impossible, to implement the kinds of national economic and industrial development policies that are necessary to build up a strong national economic base.

One Nation is well aware of, and shares the concerns expressed by, the Australian Manufacturing Workers Union. They say that ‘our 15 per cent tariff will go down to zero when the free trade agreement takes effect, and this is likely to produce huge job losses in our industry as American auto parts will flood the Australian market’. With the stroke of a pen, we are going to destroy what is left of our manufacturing industries. If you have any doubt about this, look at the American Department of Labor’s statistics I gave you earlier. Sadly, we are playing one sector in the Australian economy off against another.

For small benefits to some sectors like the service industries, including government procurement, we agree to wipe out our manufacturing industry. At present the US has access to Australian government procurements, but Australia does not have access to the US market. That is because we did not sign up to it under the WTO in that section of GATS, which is on a reciprocal basis. The reason is that Australia was striving for most favoured nation status. In other words, under GATS we gave the US access to all of our government procurements and in return we got nothing. Finally, we get access to US government procurements, but at a great cost to other sectors of our economy.

One of the many problems with the FTA is the investment chapter which prohibits any imposition of terms and conditions on foreign investors. It requires our federal, state and local governments to treat domestic and foreign owned corporations on an equal basis, and to grant US companies most favoured nation status. We will now have to favour US multinationals as much as our own Australian companies at all levels of government procurements.

I note Senator Hill’s response yesterday to my question on the Pharmaceutical Benefits Scheme. I want to point out something in the US Trade Representative’s letter of exchange to Minister Vaile. Yesterday I used Minister Vaile’s letter to Mr Zoellick; today I have Mr Zoellick’s letter to Minister Vaile. In Minister Vaile’s letter, Australia agreed to provide opportunities to apply for an adjustment to the price of a pharmaceutical under our PBS. It would then be logical to expect that in Mr Zoellick’s letter back to Australia there would be an equal commitment by America to allow Australia to apply for an adjustment
in America—wrong. Mr Zoellick’s letter to Mr Vaile under section 4 carries the same commitment, so in our commitment to America, Australia says, ‘Yes, the Americans can apply for a price adjustment in Australia,’ yet in America’s commitments to Australia we find, again, the same wording—that we will agree to give them the opportunity for a price increase. How ridiculous! There is not even a reciprocal commitment from the Americans. The US can apply for adjustments in the prices of our prescription drugs, and that is it—cut and dried—it is in the agreement.

Last year a Senate committee released a report on the FTA, and I want to put on the record that senators on the committee at that time did not even have access to the FTA. The senators in the chamber today will remember the debacle going backwards and forwards about the agreement being legally scrubbed. One Nation has significant concerns about the committee that operates within the parameters of this treaty. The problems with the PBS committees are well documented—most recently on the ABC’s Four Corners.

Multinational companies and peak business bodies in Australia wanted the free trade agreement and lobbied for it. I have a document here from the Australia-United States Free Trade Agreement Business Group setting out the groups that have lobbied for it. It is most disconcerting that we actually find American firms in America lobbying the American government and those same firms, who own companies here in Australia, lobbying the Australian government. There is overlap between the companies lobbying for the FTA and political donations past and present. A search of corporate donations on the AEC’s web site shows very clearly that there is a linkage between the companies that make donations to political parties in Australia and the companies that are lobbying for this agreement. They are one and the same companies or part of the same companies.

We wonder why there has been little negative comment about the FTA from the commercial media. You have to wonder when you have got News Corporation lobbying for the FTA at both ends. The government has recently changed its vocabulary in relation to the FTA, and now answers by ministers and departments are prefaced with the phrase ‘to the best of my knowledge’. (Time expired)

Senator SANDY MACDONALD (New South Wales) (10.45 a.m.)—I am very pleased to have the opportunity to join in the debate on the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004. I note that we are on broadcast, so to those listening let me explain that this is the federal government’s discussion of the implementation bills necessary for the FTA with the United States to be agreed to. It is particularly timely: earlier this day, our time, President Bush signed off on the US counterpart agreement. Overnight we have had the opportunity to come to understand the attempt by the opposition, despite saying they will support the FTA, to scuttle it on a furphy of protecting the PBS. The PBS is protected, and that has been part of the fundamental good public policy of our government and our trade negotiator Mark Vaile from day one.

I take issue with almost everything that Senator Harris said. His economic outlook and views do nothing for my blood pressure. One thing he said that was wrong, amongst a lot of other things, is that free trade does not work. In agricultural product alone, Australia exports five times more food than we consume. In the case of the United States, we export about $3 billion worth of food product to them and take in return less than $1 billion worth of food into Australia. If there were no
commitment to a level of free trade between Australia and the United States, about $2 billion of Australian product would have nowhere to go, because that level of free trade already exists between the United States and Australia. If we were not able to sell that $2 billion worth of food to the United States, we would really be in deep strife.

I want to give a very brief record of the domestic approval process for the Australia-United States free trade agreement because I know that a lot of people who are listening will not understand what the record is. The negotiations on the free trade agreement were concluded in February 2004 by the Minister for Trade, Mark Vaile, and his US counterpart, Bob Zoellick. The draft text of the agreement was released publicly in Australia and the United States in March 2004. Such early publication was a departure from Australia’s normal practice, which has been to release the text of the treaty only after signature. That is how important we regard this agreement.

The final text of the agreement was signed by Mark Vaile and Bob Zoellick in Washington in May of this year. While the signature of a treaty establishes an obligation to refrain from acts which would defeat the object and purpose of that treaty, Australia only becomes bound by the particular and exact terms of the treaty upon entry into force of the agreement. The agreement will not enter into force until both parties have successfully concluded their respective domestic approval processes and passed any legislation necessary at federal and state levels for compliance with the agreement. Of course, that is what is going on now. The Americans have passed and signed off on their domestic approval process, and we are doing the same here. I might add that, at the state and territory level, the state Labor premiers are all 100 per cent behind this agreement. I would like to think that our political opponents would take on board the very strong and measured advice of people like Premier Beattie in support of the FTA.

Once the required domestic processes have been completed in both Australia and the United States, the two governments can agree via an exchange of diplomatic notes on the date for entry into force. The date for entry into force is 1 January 2005, and that will be a very exciting day for Australia. This has been one of the most exciting trade and economic developments for Australia during my time in the Senate, and I say that without any reservations at all. I think it is particularly exciting. It is good for Australia and its people.

This FTA builds on the outstanding trade performance of Australia and its trade minister, Mark Vaile, in the last few years. Last year, of course, President Bush visited here, as did President Hu, and they came on consecutive days. In the context of the US free trade agreement, I might say something about our other very important trade engagement—in North Asia. We already have a trade engagement with North Asia that is very strong, and President Hu’s visit raised the further potential of an FTA with China.

In 1957 Australia and Japan forged the North Asian relationship through a trade agreement that laid the foundation of Australia’s postwar trade expansion into Asia. I remind the Senate that the Australia-Japan trade agreement in 1957 was also opposed by the ALP. That relationship provides around 350,000 Australian jobs, at a minimum, and is a fantastically important relationship. It has improved the living standards of Australia and Japan. Japan became the principal partner in our relationship with North Asia. Japan, China, South Korea and Taiwan comprise about 70 per cent of our trade. Further trade opportunities in Asia have come with
FTAs with Singapore and Thailand. Apart from the potential of an FTA with China, other options include an FTA with Malaysia and perhaps even an FTA with APEC.

Now we have the opportunity for a free trade agreement that goes much further, with the world’s largest economy—the United States—comprising one-third of the world’s GDP. This agreement will become increasingly important as the balance of the world’s political and economic power moves inexorably across the Pacific. Australia with 20 million people and the 11th largest economy in the world now has the opportunity to plug into the US economy with our safeguards in place. They include the protection of the PBS and the protection of the single desk for wheat and a number of other agricultural commodities, which was particularly important for Australian farmers. As one commentator said, any other country offered this agreement would not be able to get to the signing table quickly enough—they could not get the pen quickly enough to sign on the dotted line—but not the Australian Labor Party.

There remains, sadly and regretfully, an unfortunate undercurrent of anti-Americanism in the ALP. That does not include everybody. I know my friend Senator Forshaw would not include himself in that list. There are some decent people on the other side and I would say he is one of them. Fortunately, this anti-American view is not held by the majority, but in true union fashion, the minority can cause a lot of harm along the way. This minority is causing a lot of harm along the way in the ALP. All the Labor premiers see the advantages of the free trade agreement. They signed off on it a long time ago. I do not know whether the state governments require any enabling legislation, but I am damn sure that, in the case of Queensland, New South Wales or Victoria, any enabling legislation has been signed off quick smart by those Labor premiers and Labor governments. They know what is right. They are not flaky about these issues, and that is what we are talking about here. We are talking about flaky, political opportunism which is pretty un-Australian.

If job losses were a real concern of the freeing up of trade, why did the opposition not speak up when the free trade agreements were negotiated with Singapore and Thailand? Surely these countries are a much greater challenge to the security of employment for our work force and offer a much smaller potential market than does the United States for manufactured goods and agricultural products. Arguably the opposition could have spoken up then, but we did not hear anything from the ALP and you have to ask why. It is because the ALP are taking this opportunity to seek some appeasement of the anti-American element within their ranks.

The signing of this agreement will bring huge benefit to Australian agricultural and manufacturing industries, as well as to Australian exporters. As I said, the United States is the world’s largest economy and topped the list of Australia’s two-way trading partners for 2003 and for a number of years before that. A study by the Centre for International Economics commissioned by the Australian Department of Foreign Affairs and Trade forecast that the FTA will stimulate strong growth in two-way trade with an expected $3 billion annual growth in Australian exports to the US. According to the modelling done by the centre, the FTA could result in Australia’s annual GDP increasing by around $6 billion within 10 years of the agreement coming into effect. This will lead to an increase over a 20-year period of around $60 billion, although that is probably being quite conservative. The potential realised from trade agreements in the past has been much greater than that.
The FTA will mean that many Australian exporting companies will now have free and open access to markets in the United States and agricultural producers will see the majority of tariffs reduced to zero immediately and the rest over time. These are just too good to miss. There are long-term benefits for the Australian economy which will boost agriculture, manufacturing and other Australian industries. New jobs will be created and our economy will continue to grow steadily.

I would like to focus on the benefits of the FTA for agriculture. The Free Trade Agreement between Australia and the United States of America will provide considerable potential for further growth of Australian agricultural exports to the United States—presently very much in our favour. Australia currently exports around $3 billion worth of agricultural products to the United States, while importing only $842 million worth of product from the US. The National Farmers Federation supports the Free Trade Agreement between Australia and the United States of America and believes that, on balance, the market access benefits to the bulk of Australian agricultural producers will be significant.

The tariffs placed on the bulk of Australian primary industry products, including most sheepmeat exports—the export lamb market has been highly successful—horticultural products, cut flowers and cottonseeds, will be reduced to zero as soon as this agreement comes into effect. Most remaining tariffs will be eliminated over succeeding years. Beef is Australia’s number one export to the United States. In time, the industry will achieve completely free trade with the United States. The in-quota tariff on the 378,000 tonnes presently exported will be eliminated immediately, saving around $16 million in tariff revenue from day one. This in itself is significant for beef producers because Australian beef is incredibly and increasingly highly regarded in the United States. Australia has become renowned for its disease-free status and our geographical isolation from the rest of the world has aided this. We are obviously determined that that remain the case.

In other areas, such as dairy, Australian producers will be able to send nearly three times as much of current tariff quota product to the United States from year one of this agreement. This will be worth around $60 million in the FTA’s first year. Very importantly, Australia’s single desk arrangement for wheat marketing will remain unchanged, as will the arrangements for single desk marketing of sugar, rice and barley. Sugar has certainly been one of the contentious issues of this agreement. Labor would have you believe that the sugar industry will be damaged by this agreement, but essentially the industry will be no worse off under the FTA and has had a generous package provided by the government in lieu of inclusion in the FTA—about $400 million. Australia already has limited access for sugar into the US. The US is also a large producer of sugar and also heavily subsidises its own sugar producers. We do not like that, but that is the United States’s decision and we respect it.

Delay or denial of this FTA legislation will not simply defer the opportunity. To think that a Labor government headed by Mr Latham could renegotiate this agreement is just fanciful. To imagine for one moment that the United States would wish to sit down with Mr Latham to talk about the niceties and refining of an FTA—

Senator Forshaw—John Kerry will—‘President John Kerry’.

Senator SANDY MACDONALD—John Kerry has to get there yet; he is not elected yet. John Kerry is about as persuasive and convincing as Mr Latham. By the time the election comes, people might see through Mr
Kerry as they see through Mr Latham. Put simply, today, the day President Bush signed this document, we are debating a delicately balanced set of undertakings between three extremely close strategic and economic allies that also happen to be among the world’s most sophisticated and open economies.

That is the case with Australia and the United States: we have a very sophisticated relationship with the United States in terms of both our economic relationship and our trade relationship. Much to the chagrin of our political opponents, we now have a strategic relationship that is closer than ever. It is in Australia’s interest to have that as we develop our trade relationships in northern Asia and given the problems that are occurring there. It is very important that we build on our relationship with the United States. We do not want to leave one stone unturned or leave one day standing when it comes to improving that relationship. Neither country achieved all that it might have wanted out of these negotiations—far from it. Certainly, on balance, we have a relationship and a trade arrangement that is very strong and potentially of great benefit to both countries.

Australia has not compromised the elements vital to the wellbeing of Australia or Australians. It was a fantastic effort by Mark Vaile. He was given the riding instructions by the government—I am sure by cabinet—to go in and fight for the best agreement he could win. He played his hand extremely well—much better than Mr Latham has played his hand over the FTA in the last little while. The government preserved our best-practice regime for Australian quarantine, which is so important to preserving our clean and green island nation status. We preserved the PBS. We also preserved the right to ensure local content in Australian broadcasting and audiovisual services. To not sign this FTA will damage Australia because it will erode Australia’s competitive position in the United States market over time—as our competitors in the US will obviously be able to negotiate trade access, which will impact adversely on us. To stand still is to go backwards.

This is an opportunity timed to perfection and too good to miss. It is good for Australia, it is good for the citizens of Australia and it builds on the opportunities available to us and our children. It is an exciting opportunity—the most exciting opportunity, as I have said, I have seen during my time in the Senate. We should seize that opportunity. It will not come again, and it certainly will not come with a Latham Labor government.

Senator MURRAY (Western Australia) (11.02 a.m.)—The US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 could have been given a number of titles. To paraphrase the Age’s Tim Colebatch in his 20 July article, it could have been called the ‘free trade one-way, restricted trade the other way’ bill, the ‘half free trade’ bill, the ‘rushed agreement’ bill or the ‘lopsided trade’ bill.

I think, when we are assessing these bills, we must recognise a point constantly made in the debate—that is, we are a small nation of 20 million people up against a very large nation with a very large market. Of course that reflects itself in their ability to negotiate. Americans include people with amazing energy and ability. There are some really nice people as well as really capable people, and you cannot judge the country by the way their leaders behave. When I look at the exaggerated caricatures of themselves that otherwise perfectly intelligent and capable leaders exhibit, I am astonished—for example, the picture of President George Bush swaggering on that boat and proclaiming ‘mission accomplished’. I would never see an Australian leader behaving like that. There was
John Kerry giving that extraordinary salute and saying he was reporting for duty. He just looked like a jerk. You cannot judge that kind of exaggerated caricature as being typical of the American people because, as I say, they have astonishing abilities and capabilities. That reflects itself in negotiations.

Americans at that level are very tough and skilled negotiators—and, if you are sitting opposite them as Australians, you had better count your fingers. We often hear Americans refer to God. They are very fond of referring to the Almighty at every occasion. But when you are dealing with their very top negotiators, you ought to remind yourself that the God they are referring to is the god of mammon and that they are in it for money. A trade deal is about money. When you are dealing in these matters, you have to be very sure that they have not got a better deal than you have or that you have one that you can live with. That is really the issue at stake here: there has to be something in a deal for both parties. There are good parts to this deal, there are bad parts to this deal and there are parts in between. You have to make a judgment as to whether, on balance, such a deal works out well.

As our trade portfolio holder, Senator Ridgeway, has indicated, the Democrats will not be supporting the legislation. Senator Ridgeway was charged with determining whether the benefits of this trade agreement were greater than the costs or vice versa. On carefully assessing the evidence through an intensive committee and consultation process, Senator Ridgeway came to the view that the costs were greater than the benefits—that Australia had been out-negotiated and that, on balance, the deal was not in the national interest. This does not reflect on our attitude to Americans, or anybody else’s attitude to Americans; it reflects on an assessment as to whether the deal is more in their interests than in ours. Our conclusion is that it is.

We are a party with a strong record of supporting international treaties and agreements—among others those on the environment, labour, human rights and justice matters, accounting standards, finance rules and tax treaties. We prefer multilateral agreements with wide application but have not hesitated to support bilateral agreements in the national interest. Judgments require decisions. Sometimes, as with the recent United Kingdom tax treaty, we have sided with the government against Labor. On this bill, we are against both.

Senator Conroy is the trade spokesperson who has persuaded Labor to this revised position. I have suspected right from the start that Labor intended to support this United States trade deal on political grounds rather than on trade grounds. I do not know, therefore, that you can call Labor’s position a backflip, a sell-out or a cave-in if that is what they always intended. What I do know is that Senator Conroy has been quick to use those words about other senators and parties in the past. I did a quick Hansard count on him condemning others 22 times for doing a ‘backflip’, five times for a ‘sell-out’ and 12 times for a ‘cave-in’. On this one he can tell me whether he has been consistent right throughout or whether we might make those assertions about him for a change.

We have significant concerns about the impact of the agreement on Australian culture, on the health system and on our national sovereignty. We are disappointed that Labor has not agreed with our view, although many obviously do, and we note how ably the Prime Minister has been using it to create trouble and division for the Labor Party.

The Democrats are not opposed to the trade agreement because it is with America. America is our ally and our friend, and the Democrats have a very long and strong attachment to America and its people. We op-
pose it because the evidence presented to the inquiry of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America brought us to the view that it was not in Australia’s best and national interests. We believe that it will impact on our health system. My colleague Senator Cherry will speak after me on how it will affect the agricultural issues, Senator Stott Despoja will speak on intellectual property issues and Senator Ridgeway will address Australian culture. There are non-trade issues as well as trade issues affected by this agreement.

Our concern is simply that we have been out-negotiated. This bill will pass—given what I have heard from both parties—and only time will tell whether our caution and concern are proven right or wrong. If we are proven right, it will be to Australia’s regret. In a way, I hope we are proven wrong because I would hate to see an agreement entered into which has as many negatives as its critics have outlined.

One of the arguments used to support the free trade agreement is attached to the outcomes of economic modelling. Many people in this place and many commentators have an understanding of economics. Those who do have an understanding recognise that economics is an art and not a science and that modellers disagree with each other as often as do economists generally. So it is very difficult to take as gospel a judgment. When you are dealing with modelling, many of the outcomes rely on extraneous and intangible factors which you cannot always account for in your assumptions.

The Howard government have relied on the Centre for International Economics to provide them with the answers they require. I do not seek to impugn or malign their professionalism or abilities. What I do say is that they are subject to the same likelihood of error as any modeller is because of the assumptions that you put into your calculations. Back in the early stages of discussions on the free trade agreement in 2001, as part of the 50th anniversary for the ANZUS treaty, a study by the Centre for International Economics claimed that an FTA could increase Australia’s real GDP by almost $2 billion by 2010. Two billion dollars is a lot of money, but in the scale of the Australian economy it is a relatively low figure. In fact the standard error applied just to our annual budget is far greater than $2 billion—never mind applied to any calculations about GDP.

That benefit was announced before the negotiations commenced. On 21 June 2001, Trade Minister Mark Vaile boasted—I think it could be classified as a boast—in a glowing press release:

The CIE analysis, commissioned by the Department of Foreign Affairs and Trade ... also found that an FTA would increase US real GDP by $US2.1 billion by 2006. The total stream of benefits over 20 years could be around $US10 billion for both Australia and the United States. Furthermore, an FTA would most likely create trade rather than divert trade.

The net present value of the free trade agreement was estimated to be a $16.9 billion gain for the United States and a $15.5 billion gain for Australia. There is a bit more for the United States than for Australia in that calculation, which is to be expected when you are up against their muscle and their ability. On page 5 of the 2001 report, it went on to say:

For the United States the main gain is in the manufacturing sector. Exports of motor vehicles and parts to Australia could rise by 46.6 per cent and exports of metal products could rise about 25.2 per cent.

When you have a look at those gains for foreign manufacturers, you will see that it is no wonder that Doug Cameron, who I think is a very principled and strongly opinionated
union leader—I mean that in the best sense, not the worst sense, because you certainly know where you stand with him—is concerned. The 2001 report went on to say:

For Australia the largest gains were in sugar and dairy. The price of sugar in Australia could rise by 13 per cent and the output of raw sugar could rise by 7.8 per cent. Exports of sugar to the United States could rise by 2 550 per cent, but that is off a very low base of just 85 000 tonnes. This represents an initial increase of US$442 million per annum. Even though Australian exports to the United States rise considerably, this still represents a small share of the United States market and has a small impact on US prices and output. Over time, the impact would be larger.

It sounds wonderful, except that sugar never made it into the final agreement. When the final agreement was announced earlier this year our trade spokesperson, Senator Ridgeway, criticised the appointment of the Centre for International Economics to analyse the economic benefits of the free trade agreement. He said:

The original work by the CIE has been slammed for using unrealistic assumptions and completely overstating the net gains to Australia arising out of the free trade agreement.

In question time Senator Hill had said that the process of appointing CIE was by a restricted tender. When a politician hears that, it always raises alarm bells in case it means that it has been steered towards someone who is favoured in a tender. Unfortunately, it does raise that sort of question for CIE. The government tried to assure the Senate that the process was above board, but when you are pushing somebody’s results you have to be sure that that person and that operation are seen to be independent and completely objective in the presentation of their material.

In April 2004, a revised DFAT-Centre for International Economics study was released. The 2004 report estimated that using a discounted present value approach, which means you take out the effects of inflation over time, Australia would receive a net benefit of $52.5 billion in gross national product or $57.5 billion if gross domestic product is used. The 2001 report found an Australian GDP gain worth $15.5 billion, and it stated that, for Australia, the largest gains were in sugar and dairy. So it is amazing that economists have come up with numbers as varied as these. That does not reflect that the economists are dumb but that the assumptions and the methodology they are using can result in widely and wildly varying outcomes, and you have to be very careful about trusting them. In 2001 the Centre for International Economics said that the US FTA, including sugar, would benefit Australia by $15.5 billion, and in 2004 it says that, without sugar, it will benefit Australia by $57.5 billion. That is just unbelievable. You cannot believe it.

According to the CIE, the largest contribution to economic growth and welfare is expected to come from investment liberalisation. Reduction of barriers to investment is expected to reduce equity risk premiums and to lower the cost of capital, leading to a rise in investment. So the majority of the gains will come from United States companies investing in Australia. It will take 10 years for trade liberalisation to provide benefits of $1 billion a year, which is not much. Because of the disagreements over methodology, the CIE did a sensitivity analysis and found there was a 95 per cent chance that, by 2024, the benefit for Australia would be between an amazing range of $1.1 billion and $7.4 billion a year. Of course, a sceptic or a critic could say that the benefit to Australia might even be negative if the benefits are all to the United States.

The Senate select committee thought that a second opinion would be useful, and they were very wise to do so. They commissioned
the highly experienced economist and modeller Dr Philippa Dee to evaluate the FTA and the modelling conducted by the CIE. She questioned, quite rightly, the assumption that Australian businesses would be able to take significant advantage of the opportunities for United States government procurement. The CIE estimated that Australia could achieve 30 per cent of the penetration that Canadian businesses achieved. Dr Dee’s estimate of four per cent was much more modest and was possibly a lot more realistic. What it does do, however you argue about those figures, is indicate that different people of capable, professional character have come up with wildly differing views of the benefits. So, when you look at this, do you take a cautious approach, or do you take an incautious approach? My instinct, if you are talking about the national interest and a fear that the United States will get the better outcome by far, is that you take a cautious approach.

After reassessing the results of the CIE study and making a number of adjustments to the assumptions on which the calculations were based, Dr Dee estimated that the likely overall gain to Australia from the FTA would be relatively small, at around $53 million annually. That is a tiny harvest for a major political and bureaucratic trade endeavour and negotiation, and it lends credence to the belief by many that the negotiations were truncated too early, that there was much more to be done and that our negotiators needed to stay at the table. The reason they withdrew and came back so early was the electoral cycle—the idea that, in political terms, this had to be a done deal well before George W. Bush went for re-election in November this year and well before our government itself went to an election. So my view is that, for political reasons, the negotiations were truncated and brought to an end and we have got a far smaller benefit than we otherwise might have achieved.

In the Senate select committee’s conclusion on the subject of economic modelling, it is noted that some results indicated substantial gains for Australia. Others found the gains to be minimal. One study concluded that the agreement would disadvantage Australia by weakening its sovereignty. The select committee concluded:

Due to the wide variation in the outcomes of these exercises, the results were too inconclusive to be used as a basis for solid conclusions.

I remind the chamber that those conclusions are the conclusions of the Labor and Liberal parties as well as the other parties, such as ours, represented on that committee. On the Department of Foreign Affairs and Trade’s web site, under frequently asked questions, this question is asked:

Has the government commissioned independent economic modelling of the benefits of the AUSFTA?

The response is, ‘Yes,’ and they go through that. But they do ignore the other studies and the modelling of Dr Dee. So the government, on its own web site, has failed to illustrate the varying modelling available on this issue. (Time expired)

Senator CHERRY (Queensland) (11.22 a.m.)—I speak today on two aspects of the free trade agreement: how it affects Australian agriculture and how it affects Australia’s media industry. There is no doubt that, when you look at the agricultural negotiations, there are some pluses and minuses. The dairy industry has certainly been lobbying the Democrats very intensely, arguing that there has been some significant opening up of markets with respect to the dairy industry. In other areas—such as peanuts and some horticultural products, and even some meat products—there have been some changes to quotas. I believe that the benefits to some of these industries have been massively overstated by the government. For example, the
phasing out of the quota on beef imports ignores the fact that we have exceeded the quota on beef imports only once in the last 10 years. But the big negative for Australian agriculture—other than the fact that the sugar industry was completely left out—has been the treatment of the quarantine service. That is what I want to talk about today.

The signing of the US free trade agreement is very bad news for Australia’s farmers, who want to see Australia’s rigorous science-based quarantine system protected. The agreement will increase pressure on Biosecurity Australia in the future to water down our tough stance against possible plant and animal diseases by allowing US trade officials to have a say in our import risk assessment processes. The Minister for Trade has emphatically denied that this will occur. But to deny it emphatically is to ignore the political reality. We are giving the US trade negotiators a place at the table in our determination of quarantine issues. With a place at the table, it is inevitable that that will lead to more pressure to water things down. What will the US trade negotiators, with their place at the table, be arguing for? It is very simple: more access to Australia’s markets for US products.

In the last two years we have had two very contentious IRAs involving the United States—one involving pig meat and one involving Californian table grapes. Certainly in the case of US table grapes, the US were very dissatisfied with the result. I have seen some reports from the US suggesting that they are expecting that result to be reviewed as a result of this agreement. The result of the pig meat IRA was more satisfactory to the US. What concerned me was that the result of the pig meat IRA was announced by the US pork council even before it was announced by Biosecurity Australia. Certainly in its submission to the Senate Rural and Regional Affairs and Transport Legislation Committee, Australian Pork Ltd was deeply concerned that the US pork council and other US farming organisations are giving very different interpretations of what the provisions on quarantine in the US free trade agreement mean, compared with what the Australian government is saying.

The free trade agreement will establish two committees in a series of procedures that are designed to provide a forum for the negotiated resolution of quarantine issues with ‘a view to facilitating trade’. Of greatest concern is a power for either party to initiate an investigation into the quarantine laws of the other party. Where this occurs, both parties have an obligation to try to reach a mutually agreeable resolution of the issue. Never before could the US force a review of our quarantine laws or decisions without going through the WTO dispute resolution procedures. Clearly, the new procedures could be easily abused for the purpose of removing or softening quarantine restrictions. If this happens, the cost could be enormous both in terms of effects on our primary industries and the impacts on the environment.

The minister has been very unconvincing in arguing that the technical working group—which will include trade representatives, in addition to scientists—will not water down Australia’s quarantine standards. If this working group will have no effect on our quarantine system then why is it there? Why is it being proposed? Why do the Americans say that the group will resolve specific bilateral animal and plant health matters, when Mr Vaile says that it is only about communication? If the Americans are now accepting the Australian quarantine system, will they be withdrawing their support for the challenges to our system at the World Trade Organisation in Geneva? In recent years Australia has had some very tough quarantine fights with the US about table grapes, beef, pork meat and so forth. These disputes will
only be resolved to the satisfaction of America and facilitate trade if we back down. That essentially is the Democrats’ concern. It is not necessarily about what is in this agreement; it is about the consequences of this agreement. It is about the next order of effects—the order of effects that occurs when you put trade negotiators into a process which is supposed to be science based.

I have been involved with the Senate Rural and Regional Affairs and Transport Legislation Committee investigating the IRAs on apples, pig meat, and bananas over the course of the last year. It is quite clear that, when you talk about a science based assessment, you rapidly come into an area about assumptions and uncertainty. In the case of uncertainty, you are often presented with conflicting scientific advice. That is the whole basis on which our quarantine decisions are made—conflicting, uncertain scientific advice. In those circumstances, you can still say the process is science based but still be making a political decision about what science you choose to use: the science presented by the importing country or the science presented by the Australian primary producers. That is the fundamental issue here. When you put trade negotiators into this facilitating arrangement of an overseeing technical working group, when you put in an appeal process to allow the process to be reviewed where there are problems, then you make it far more likely that the science that will be chosen to be relied on will be the science that benefits the importing country. That is the Democrats’ fundamental concern. It is not just a concern that we have; it is a concern shared by many primary producer groups.

Senator McGauran—That is already in place.

Senator CHERRY—That is the problem, Senator McGauran. If we look at the pig meat decision, we see that we caved in to the Americans. The US pork council announced our pig meat IRA decision before Biosecurity Australia did, and that is the fundamental problem. We were relying on their science, not our science. That is the fundamental problem. There were not only concerns that Australian Pork Ltd raised with the inquiry but also deep concerns from the chicken meat industry. In their submission they said:

The statements by the United States that Australia will work to resolve our quarantine barriers on poultry (and the fact that this is being counted as a benefit by the United States) is a very serious concern.

So let us add chicken meat to pig meat as well as table grapes and, potentially, apples and all these other areas where the US will be putting pressure on Biosecurity Australia, through this bilateral arrangement, to choose their science over the producers’ science. We can still say it is science based. We can say that until the cows come home. But science is science is science, and science is in the eye of the beholder. Having read through hundreds of pages of scientific analysis of the import risk assessments, I have come to the conclusion that the political pressure that can be brought to bear by these innocuous looking technical working groups will certainly compromise the work of Biosecurity Australia in the long run. Importantly, the US trade negotiators are saying they mean one thing in the US, when Mr Vaile is saying they mean something completely different in this country.

I am very disappointed that the government has allowed our quarantine system to be compromised in this way, and I am also very disappointed that the Labor Party has not included defence of the quarantine system in its list of non-negotiable amendments. It is worth noting a press release from Mr O’Connor, the Labor Party shadow minister for agriculture, from 20 May. He was com-
menting on evidence given at additional estimates hearings. He said:

It now seems the agriculture minister was wrong … At the very least the United States will now be able to input into Australia’s Import Risk Assessments from outside the formal process.

The Minister now owes the farmers, the parliament and the Australian people an explanation. I think Mr O’Connor now owes the Australian people an explanation as to why his party is signing off without making the quarantine system one of its non-negotiable positions. It is deeply disappointing from my point of view and from the point of view of rural Australia.

I turn to the issue of the Australian media industry and its deep concerns about the free trade agreement. The government and the ALP have agreed, at least, to put the current local content standard into legislation. But at the end of the day I agree with the Prime Minister—that that makes very little difference to the impact of this agreement. The fundamental problem of this agreement is that it does not allow the Australian government to regulate to increase local content standards into the future. In terms of new media, emerging media, digital TV and pay TV, it does not allow for anything other than the most minimal change.

Yesterday in question time we heard Senator Kemp, who is still in the chamber, defending the government’s wonderful outcomes by saying, ‘We are allowed to double the amount of Australian content on pay TV, from 10 per cent to 20 per cent.’ What if pay TV does start cannibalising free-to-air television? Does that not compromise the capacity of free-to-air television to provide very expensive Australian drama and documentary content? What happens then? The pressure will come from the media companies to bring down the local content quota for pay TV if they are being cannibalised by pay TV. Let us say local content is reduced from 55 per cent to 45 per cent because of commercial and economic pressure. What happens then? I can see it coming—it is absolutely inevitable. That then becomes the new standard.

If there is a change of government, as I said in question time yesterday, to a more pro-Australian government that want to increase the local content level in the future, they will not be allowed to. Once it goes down, it stays down. It cannot go up; it can only go down. The pressure in this agreement to reduce local content standards over the longer term and the economic pressure, by restricting the capacity of the Australian government to regulate new media and pay television, mean that it is inevitable that the TV standard will eventually come down. It is as inevitable as it is unfortunate.

I note the comments of a Melbourne television producer, Mr Tim Ferguson, reported in the Melbourne Age on Monday, on the issue of what will happen with the competition between pay TV and commercial free-to-air television in terms of local content. He noted:

The budget for one episode of Blue Heelers is around $300,000 an hour. One episode of CSI costs about $30,000 to broadcast. There is no way that an Australian producer could make a one-hour local drama for $30,000.

As the standard is reduced over time, as it will be because of the commercial pressures building up between free-to-air and pay TV and new media, then it is inevitable that local content will reduce. Mr Ferguson points out that that is very unfortunate for Australia in a social sense. He says:

... the “monopoly” that Australian content makers enjoy has in no way diminished the quality and relevance of their work. Let’s take Aussie soaps for example.

Over the past few months, Home and Away and Neighbours have each raised, believe it or
not, pressing social issues. For example, in the past three weeks the issues surrounding the party drug GHB have been confronted head-on by *Home and Away*. The episodes concerning the dangers of GHB were provocative and informative.

Domestic violence, racial discrimination, drug abuse, homelessness, teenage pregnancy and sexual harassment have all been covered by the two soaps this year.

Do we seriously expect the characters of the US soap *The Bold & the Beautiful* to discuss anything more important than the issue of gel versus hairspray? Would “Thorn” and “Ridge” engage in a debate about discrimination against Muslims or sexual bullying in high schools? Not while Solid Hold Fudge threatens Schwarzkopf, they won’t.

That is the sort of problem we are dealing with as we reduce the amount of local content shown on our television. What we are talking about in the longer term is fewer Australian voices, fewer Australian issues, less Australian culture, less diversity and fewer of our stories being told on our television. That is something which ultimately affects the Australian character. The Broadcasting Services Act, as I said in question time yesterday, has the objective of encouraging the presentation of the Australian cultural identity on television, yet what we have signed off in this free trade agreement is the capacity to defend that permanently into the future. We will see the inevitable commercial pressure of the reduced local content levels on pay television and the inability to properly regulate the levels of new and emerging media cannibalise, ultimately, the local content provision of free-to-air television. Ultimately, inevitably, it will mean loss of jobs in our cultural industries, fewer Australian stories being told and fewer Australian viewpoints being put.

I should also note in passing that the Senate committee heard evidence from the Australian Broadcasting Corporation, which was concerned about the definition of ‘public broadcaster’. We have been assured time and again by the government that there is no intention that this agreement will adversely affect the ABC. But the fundamental problem is the way the government negotiators have defined the issue of what is a public broadcaster. I note this because it is very important. Under the US free trade agreement, as I recall the text, a public broadcaster is defined as one which does not compete against commercial broadcasters. Yet the ABC and SBS arguably do compete. SBS, in particular, competes directly for advertising revenue. The ABC competes directly for audience share. At what stage do they ensure that they are carved out of the provisions of the FTA and at what stage do they become subject to the provisions of the FTA?

That is a matter which has not been adequately resolved by the government in its answers to the Senate select committee. It was raised as a concern by the Senate select committee. I do hope that the government, in its response in this debate, gives an absolute, iron-clad, black and white assurance—preferably in black letter law, because I do not trust what ministers say, based on experience—that the ABC and SBS will not be adversely affected in any way, now or in the future, by the US free trade agreement and that the agreement has no application whatsoever in any way to the provision of public broadcasting.

I will conclude with the evidence presented by the Australian film and television industry to the Senate committee. You may recall the assertions of the Minister for Trade, who concluded that the result for film and television was ‘excellent’. That was how he described his negotiating outcome. He went on to say:

The bottom line is that these commitments give Australia sufficient flexibility to not only maintain the current amounts of local content available
to Australian Services in new media services ... but to actually increase these amounts.

This assertion just is not supported. It is certainly not supported by industry, which does not trust this government at all in this key area. In fact, the film industry, in its evidence to the Senate committee, said:

The agreement will severely constrain the ability of this and future Australian governments to determine cultural policy, giving to the government of the United States a much stronger role in the determination of that policy. We will be moving from a position of being solely in charge of our own cultural policy to one where we must consult with the largest cultural producer in the world, and our dominant trade partner, on how we determine our future.

That is the saddest reflection of what we are talking about here: our culture, the presentation of the Australian identity in our media, is now a matter on which we must consult with the United States before proceeding to regulate it in any form. If we want to increase our local content to that 20 per cent level for pay TV that Senator Kemp was so excited about in question time yesterday, or increase it in the new media areas, which have been excised, then we have to consult with the US to ensure that any imposition we put on has minimal impact—‘the least burdensome’ I think was the term used in the agreement—on US interests.

Why on earth would a government agree to consult a foreign country, particularly the biggest cultural producer in the world, on the presentation of its own culture in its own media? That shows how un-Australian the Howard government has been, how un-Australian the US free trade agreement is and how un-Australian it is to say that the Americans should be determining what is and is not appropriate to present as Australian culture on our television. The government has not just let our cultural industries down; it has let our farming industries down.

That is why the Australian Democrats will not be supporting this agreement. Frankly, it is a dud deal and it should be rejected by the Senate.

Senator STOTT DESPOJA (South Australia) (11.39 a.m.)—I also rise with my Democrat colleagues to address the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004. I wish to discuss in particular the issue of patents. I do so from the perspective as the Democrats’ science and technology spokesperson. As some senators would know, I have had a long interest in the issue of patent law and intellectual property law, having initiated a least one inquiry recently into the patenting of stem cells and stem cell products, having introduced a private senator’s bill in relation to patents and having moved many amendments over the years in relation to this issue.

I recognise that the impact of the FTA on pharmaceuticals in Australia has been widely debated in this place and has recently become one of the two issues of contention. Monday night’s Four Corners program on the ABC, which I hear has been repeatedly referred to in this place, revealed the high and ever increasing cost of pharmaceuticals in the United States. According to that program, people in the United States can save $US10,000 a year by buying the majority of their drugs in Canada, although of course technically this is breaking US law. That program also reported that an American would pay more than $120 for a script that would cost an Australian concession card holder $3.80, with the government providing a subsidy of $60.

While the Prime Minister, John Howard, maintains that the FTA will not affect the price of pharmaceuticals, President George Bush does believe that Australia is paying too little for American drugs. Four Corners
revealed the intense pressure that exists within the United States from the pharmaceutical industry and indeed their extensive lobbying through the FTA negotiations. Senator Jon Kyl, one of the chief FTA lobbyists, was quoted as saying:

... there’s no such thing as a free lunch. Somebody has to pay for the research and development of these miracle drugs.

It is clear now that the US pharmaceutical companies see access to Australian markets through the free trade agreement as a great opportunity for their expansion.

The FTA will have several effects on Australian patent laws and the pharmaceutical industry. I will not delve into all of these, because they have been raised by other colleagues. I will, however, address the issue of changes to patent laws, which has been a minor consideration in the FTA debate until very recently—in fact, probably until yesterday, when it suddenly became an issue that the media considered worthy along with some others.

Under article 17.10.1(a) the FTA will require Australia to maintain a five-year data exclusivity period for pharmaceutical test data, meaning that this current practice will be locked in. Data exclusivity periods prevent the entry of generic drugs, as generic drug companies cannot rely on test data generated by a patent holder to register an equivalent product until the data exclusivity period has expired. The longer the data exclusivity period, the greater the delay in the introduction of generic drugs and the longer the originator company maintains its market monopoly.

The only real price competition in the pharmaceutical market comes from generic manufacturers, as we know. When generic versions of a drug become available, prices usually fall dramatically. PBS data shows that, on average, the price for a drug falls by 30 per cent when a generic enters the market. By locking in a five-year minimum, Australia is giving up the right to reduce this data exclusivity period and thereby facilitate faster entry of generics into the pharmaceutical marketplace. This goes well beyond our TRIPS obligations.

The FTA will also have the effect of permanently banning parallel imports of pharmaceuticals. The FTA provides patent owners with the exclusive rights to prevent importation of a patented product. I acknowledge that the parallel importation of drugs is currently not allowed in this country but, again, by locking this in we limit Australia’s ability to lift this ban should this be considered necessary to encourage competition in the pharmaceutical sector and maybe reduce costs in the future. Studies suggest that in the European Union, where parallel importation is allowed, competition from the parallel importation of certain drugs has helped to keep drug prices down. The Senate committee report explicitly states:

This committee agrees that a decision to permanently ban parallel imports of pharmaceuticals, or any other product, should only be taken by parliament if it decides it is in our national interest after due consideration. It should not be forced on us as part of a trade deal. It is ironic that a ‘Free Trade Agreement’ would contain an anti-competitive provision effectively limiting the free trade of certain goods. This is one provision the committee views as a negative for Australia.

And yet the Labor Party supports this legislation regardless. The examination of the broader issues surrounding patents has been rushed and it has not been thorough, despite the attention on the pharmaceutical debate. The JSCOT report on the free trade agreement dedicated just over one page to patents and referred to a DFAT comment on the issue in paragraph 16.78:

The Committee understands that the Article on patents generally reflects Australia’s current laws...
and it is not anticipated that major changes to the Patents Act 1990 will be needed to implement the FTA.

This is despite receiving a 98-page submission that solely addressed the patent related issues of the free trade agreement. Further to this, under the heading of ‘Business as usual’ the report stated in paragraph 16.83:

However, the Committee is satisfied that the use of the word ‘harmonisation’ in the DFAT fact sheet has led to some confusion in the general community and that the claims made by the various individuals and organisations will not eventuate.

The Senate report delved into the issue in a little more depth. It dedicated three pages to the issue of patents. Arising from the discussion of intellectual property, the report stated:

The US motive for the strong protection of IP rights is clear. The US has a disproportionately high share of IP rights and products that contain IP rights in its exports. It has therefore been proactive in promoting the rights of its own IP owners.

The committee, interestingly, reached this position after considering the concerns of Mr Henry Ergas, the former Chair of the Intellectual Property and Competition Committee. He states:

Australia is being obliged to adopt IP laws that can disproportionately favour producer interests.

In the article he explains how the US Federal Trade Commission—the US counterpart to the ACCC—recently examined the balance between competition and patent laws and identified that the US had been granting ‘excessively broad patents’ and ‘too many trivial patents’. However, the report concludes at paragraph 3.214:

The Committee is satisfied that fears about ‘harmonisation’ of Australian and United States patent law are probably unfounded. It bases this conclusion on DFAT’s assurances that the AUSFTA will not change the nature of what is patentable in Australia.

Broad patents prevent or delay research and innovation while numerous trivial patents have a stifling effect by complicating the patent landscape that researchers must negotiate when determining whether their project will breach an existing patent. Electronic Frontiers Australia also expressed concern in their submission, stating:

... the FTA would commit Australia to making patents available ‘in all fields of technology’, regardless of whether such monopolies are needed or are in our interests. Australia would only be permitted to exclude from patentability medical treatments and inventions that are against public order or morality.

Article 17.9.8 of the FTA provides for patent extensions where the use of a pharmaceutical patent has been shortened by the market approval process. The FTA does not specify a maximum period for the extension, only a minimum period of delay to qualify for the extension. This provision has got to be of some concern to people in this place. The FTA also states that when a generic manufacturer seeks approval to market its product before the patent’s expiration, the patent holder will be notified. This early notification of the patent holder to potential competition greatly increases their ability to enforce their patent and stifle competitors’ efforts to get their generic product to market.

The Senate committee has placed all its eggs into DFAT’s basket in its findings on the changes to patents. Some of these changes will affect not only pharmaceuticals but also the commercialisation of other research. At a time like this it would be incredibly useful to have an expert report in front us that discussed the whole issue of patents in the area of health research. In 2002 during debate over the Research Involving Human Embryos Bill, I won Senate support for an amendment to gain an ALRC and
AHEC investigation and report on the intellectual property and patent issues concerning stem cells and stem cell products. It is interesting to note that this report has been completed—and once again I acknowledge the hard work of those two organisations in this area—and we are awaiting its release. I wonder—and perhaps a minister can answer this for me during their comments in this debate—when it is going to be released. I was under the impression that it was due to be tabled in this place this week—in fact, yesterday. I am genuinely interested in knowing when that report will be available to the parliament. It was completed over a month ago; I am pretty confident it went to cabinet. It certainly would be an important and valuable report in the context of the current debate.

Discussion paper No. 68, ‘Gene patenting and human health’, which was released in March, covers some issues similar to those in the Senate committee report, such as the manner in which gene patents and monopoly rights are exploited in the marketplace; the ease with which patents over genetic materials and technologies are granted; and the compromising of public health through restrictive licensing practices. The industry and research sectors have been leading the government on patent law for some time and still the government does not appear to have a clear patent policy or a serious statement on what it believes the purpose of patents should be. ACIPA’s submission No. 191 to the JSCOT inquiry into the FTA stated:

In an attempt to assess the way the Australian Government makes and then implements its policy dealing with intellectual property a series of questions were directed to each of the ministries...

And:

... none of the responses specifically dealt with each question, instead providing either a general response, or referring the matter to another department for a response.

If the government does not have a clear policy and a clear direction on the issue of patents or intellectual property more broadly, it brings into question the basis on which it negotiated the intellectual property sections of the free trade agreement.

I am biased on this issue—people know my views on the patenting of things such as genes and gene sequences—but I do not think it is a view that is not shared by others in this place. In fact, despite having a private senator’s bill, moving many amendments on this issue and having them rejected by the two major parties, I sensed very strong support from individual senators on all sides of the chamber during the debate on the legislation on research involving embryos. I think there is a very strong view in this place that genes and gene sequences should not be patentable. That does not even go to the issue of the broader debates surrounding stem cells and stem cell products et cetera.

The Democrats have long argued—I have certainly long argued—against the granting of patents that unduly restrict the progress of research and constrain or delay public benefits. I have been doing this since 1995. I know that before me, Senator Coulter, when he had the science portfolio, and other Democrats before him have made clear our strong views on IP and patent law. In 1996 I introduced a private senator’s bill that proposed to amend the Patents Act so that genes or gene sequences could not be patented. However—and I make this very clear—it allowed the processes used in gene technology to remain patentable.

The Democrats are strongly committed to deepening an innovation culture in this country. We recognise that the development of human and intellectual capital is basic to the success of an innovation society in a global
knowledge economy. That means we need robust intellectual property systems that allow for incentives for investment in developing intellectual property and that enable the rapid diffusion of intellectual property while balancing the needs, of course, of both the community and consumers. We have opposed the direction in which Australia has been heading on its patent system. We oppose it because of the negative effects on research and innovation but, unfortunately, the government has shown little interest in engaging in this debate over the years. This was highlighted earlier this year when its science and innovation policy statement, Backing Australia’s Ability 2, contained no discussion of these important issues.

Minister Vaile told Four Corners on Monday night that the FTA does not extend any extra rights to drug patent holders. The Democrats—and, I believe, the Labor Party—disagree. This bill locks in the very patent system about which scientists have been expressing concern. It increases the level of protection available to pharmaceutical patent holders and removes policy options for future governments to reduce the price of pharmaceuticals in Australia. These changes inevitably will benefit the large biotech and pharmaceutical companies, among others, but the Democrats argue that this will be to the ultimate detriment—probably in the short term—of consumers and research. Many scientists think the patenting of genes and gene sequences has inhibited the free flow of information on which science and its advancement ultimately depend. They believe potential researchers have avoided or vacated work in their specific area for fear of falling foul of the patent laws. The results of the FTA on the Australian patent system will actually entrench such negative effects across all areas of research. When further efforts are made to reduce differences in law and practice between the Australian and US systems, these effects will escalate.

The final worrying aspect of the free trade agreement is the suspicious lack of amendments that are expected to achieve the stated outcomes of the FTA patents section. Dr Peter Drahos from the ANU—who, I note, was also on the Four Corners coverage on Monday night—believes that the text of the FTA will override this bill. So, once enacted, the bill that we are dealing with will be overridden by the broader text of the FTA anyway. I suspect that the government is relying on that possibility.

The Australian Democrats will not support this regressive legislation. We welcome the fact that the Labor Party have finally recognised the issue of patents and intellectual property within the context of the FTA, but we are saddened that they do not have the guts to oppose this law when they recognise that the effects are incredibly deleterious for intellectual property and patent law in Australia now and in the future.

Senator LEES (South Australia) (11.57 a.m.)—The Australia-US free trade agreement—the so-called free trade agreement—is an agreement that we cannot walk away from if we find that there are major problems a year or two down the track. It is something that we will have to live with on a daily basis. Therefore, it is something that I stress should have been looked at in much greater detail, and we certainly have time to do that. Almost 90 per cent of submissions to the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America oppose the free trade agreement in its current form.

Labor made some very worthwhile recommendations—some 43 of them—but are only going to stick with two of them. Those 41 recommendations would have made a difference and would have brought this
agreement towards a more balanced position than it is in now. We have to ask: why the rush? Why are both the ALP and the government very keen to get through this legislation—the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004—and to see it pass through parliament when we have another five months before it is due to be implemented? The answer is obviously a political one: with the election looming, the government wants to use this as a political football. It wants to put the ALP in a position where it can label them as anti-American. I stress here again that, by being pro-Australian, you are not being anti-American. Rather than having this rush now, the parliament should be taking some time to debate the legislation. We should have, for example, invited input from the Productivity Commission. We should have accepted the ALP senators’ recommendation of the establishment of a select committee on intellectual property.

Many submissions to the free trade agreement select committee detailed widespread implications for our intellectual property law and they should have been carefully gone through issue by issue. Let me briefly illustrate the problems with intellectual property rights, which cover copyrights, trademarks, patents and industrial design. Australia is a net importer of intellectual property, and the strengthening of these rights will have a negative economic effect on Australia. The FTA implementation bill obliges us to harmonise our patent, copyright and trademark protection with that of America. It affects pharmaceutical patents; the audio, video, DVD and software industries; and the education sector. I note that the Australian Vice-Chancellors Committee’s submission to the select committee was scathing in its criticism of the intellectual property changes in the agreement. It argued strongly that the proposed modifications of Australia’s copyright law to conform with the US law will significantly diminish our access to information in the public domain and that this in turn will diminish our academic innovation and increase costs of education.

There are strengthened protections against the circumvention of the technological measures used by authors to restrict access to their work. An example is the coding of CDs to restrict how and where these might be used, and this is biased in favour of producer interest in the US to the detriment of Australian consumers. For instance, the technological protection measures that are embedded in the agreement will put thousands of existing DVD and digital music player holders in contravention of the law if they own a multizone DVD or if they legally download compressed music from a different region. The implementation bill also narrows some exemptions which used to allow consumers to make copies of performances at home, solely for their own use. That will not be allowed anymore; it cannot be done. It makes it a copyright infringement to play an unauthorised copy of a DVD or even to unknowingly view it online. This shifts the onus onto the consumer, not the person making the unauthorised copy.

The increase in the duration of copyright protection would significantly diminish our access to information in the public domain. The extension of patents in the software inventions for established companies is bad news for Australian users. We will be paying monopoly prices for software, and that is bad news for Australian software innovators working with open source software. The restriction on parallel imports of copyright goods by Australia means that only the copyright holder can import or authorise the importation of copyright material. I think we will see far-reaching effects in this right across a whole raft of sectors, including our
health sector. It is reasonable to ask why the government’s implementation legislation ensures trade restrictions in the name of free trade. Why should we embrace the US model of intellectual property rights when we have a perfectly good model ourselves? Why should we not have insisted that they embrace ours?

I will move on to another of my key concerns, and that is the whole issue of quarantine. The free trade agreement will allow the US to pursue the reduction of our quarantine regulations as they impinge on exports of US product to Australia. This poses a very real and significant threat to our clean green agriculture, not just to our image. We have a very good image based on our quarantine restrictions that are based on good, scientific evidence. But if you read the material from the US you will see that US agricultural exporters in their huge pig industry are expecting and planning to export fresh pig meat into Australia, despite the fact that they have the devastating disease PMWS and we do not. The US farm lobbies have huge expectations that this agreement will break down our quarantine barriers. They see them simply as an impediment to trade.

Some additional material was presented to the Senate committee in response to some questions from Senator Boswell. After reading this material, I cannot understand why Senator Boswell remains so committed to this agreement. This material was prepared by Professor Linda Weiss of the University of Sydney and Dr Elizabeth Thurbon of the University of New South Wales. I do not have much time to go into it in great detail. One section reads:

**Most significant change under the deal:**
The inclusion of US Trade Representatives in Australia’s quarantine decision-making processes will now give foreign trade officials the power to intervene in policies of utmost national importance for economic security.

They go on to detail some of these changes:

A stated objective of Chapter 7 is to ‘provide a forum for addressing bilateral Sanitary and Phytosanitary (SPS) matters, resolve trade issues, and thereby expand trade opportunities (Article 7.1). As such, two quarantine-related discussion bodies will be established under the agreement:

(i) Australia-US Committee on Sanitary and Phytosanitary Matters (hereafter the SPS Committee),

and


Both of these bodies are intended to ‘facilitate trade between the parties’.

The SPS committee will compromise very much what Australia has been able to do in the past—that is, restrict access on the basis of the potential of diseases coming in when we do not have those diseases here. This will damage our status for export to other countries who will not want this disease and will not want our products in the future. Also, there will be benefits for big US chemical companies because we will have to have large volumes of chemicals and health companies will be able to sell more antibiotics to our farmers. That will mean more chemicals and more antibiotics coming into our food chain, and that in itself is a worry for the health of our community. We do not give large subsidies to our farmers, and I wonder about their ability to fight these diseases in their animals and plants. I suspect that we will not be able to compete in many industries, given the additional costs they will be facing. There is also the additional concern for our native flora and fauna. How will they be protected from exotic diseases?

I hope the ALP maintains its commitment to the two issues it has highlighted, particularly the issue that is still in contention. Most of the threats to Australia will remain even if these issues are fully supported by the gov-
ernment. Other issues that I believe we will still have to deal with are our ability to maintain our public services, our industrial relations conditions and—as I have just mentioned—our quarantine standards.

The FTA contains grievance procedures which could seriously undermine Australia's ability to protect social standards and environmental health. These grievance procedures open the door for US companies to receive compensation if future legislation limits their profit margins. This will mean that, for example, if Australia tries to protect environmentally sensitive areas from industries such as those that produce dioxins or other toxic material, to introduce restrictions on work force casualisation, to fund Australian film productions which are not commercially viable but culturally essential, to refuse to privatise national parks or to refuse to export dolphins and dugongs to the US for marine exhibits and shows, it may have to compensate US companies for unrealised profits. The agreement sets out that compensation is payable at 50 per cent of those unrealised or anticipated profits. This would be a huge deterrent to any government to stand up and protect us, the environment or cultural investment.

I know this may sound extreme, so I want to draw on a couple of examples to highlight it. The first one relates to the export of dolphins and dugongs. The Whale and Dolphin Conservation Society alerted us a couple of weeks ago to the inclusion of whales, dolphins, porpoises and dugongs in the tariff schedule under the FTA—they are actually there. They say in their press release:

The US not only allows some trade in whales and dolphins at present, it also allows whales and dolphins to be imported for its commercial marine theme parks which hold marine mammals in captivity for entertainment. With 46—of these species—

in Australian waters, and a trade agreement in place—

that names them—

Australia may become a logical source for such trade in the future.

At present we prohibit such trade, but there is a loophole. The minister has the discretion. The minister has the ability under the federal environment act to allow trade. I will conclude by quoting again from their press release:

If trade in—

these animals—

between the US and Australia is not intended, there should be no problem in taking whales, dolphins, porpoises and dugongs off the Tariff Schedule, in order to comprehensively rule out this risk.

I ask the government—and we can do this as we get into committee—why they are not making what are quite commonsense changes to this agreement before we see it passed.

Let us look at other examples of what has happened with the North American Free Trade Agreement, NAFTA, and the experiences of the US, Canada and Mexico. I quote again from a document that is looking at some of the problems with NAFTA. The first example says:

The U.S. Metalclad Corporation sued a local municipality in Mexico for US$16.7 million, because it was refused permission to build a 650,000-ton/annum hazardous waste facility on land already so contaminated by toxic wastes that local groundwater was compromised ...

I quote further:

The U.S.-based Sun Belt Water Inc. is suing Canada for US$10 billion because a Canadian province interfered with its plans to export water to California. Even though Sun Belt had never actually exported water, it claims that the ban reduced its future profits.
The model we are looking at here is the same model as we see in NAFTA. If that does not ring alarm bells for some members of the government and opposition, I am not sure what will.

There is a whole list of other issues. There is the exemption from the Foreign Investment Review Board review of takeovers of Australian companies by American companies—now up to 800 million. Then there is culture—our culture. Surely it is a public benefit that certain activities or industries are subsidised by government. For example, where would our film and TV industries be without government arts funding and content quotas? Where would films like Gallipoli; The Adventures of Priscilla, Queen of the Desert; Lantana; and Shine be? There is a long list of films that on the drawing board could not be argued were going to be economically viable. These films would not have passed a strictly commercial test but they have contributed, I would argue, immeasurably to our cultural heritage.

Already 85 per cent of box office takings in Australia are for US films, 70 per cent of our television dramas are from the US and 95 per cent of music played on Australian radio stations is from the US, but they still want more. The Australian Film Finance Corporation in 2002-03 financed 11 feature films, six adult television drama projects, five children’s TV drama projects and 31 documentaries. Then there is, of course, the ABC and SBS, about which questions have been raised in this place already this morning. There is a long list of issues that I believe we need to deal with before we pass this agreement.

Labor’s amendment insisting on Australian content being actually locked into legislation—that is, 55 per cent on TV actually locked in—will certainly help. And it does seem that this amendment has been agreed to by the government. I am very pleased to see that change; however, this agreement still does not allow for us to insist in the future on quotas—for example, for pay TV, radio and new media like datacasting. So I argue that the Labor Party should go a lot further with their protection of our culture.

This trade agreement includes our health system. When I first heard that I thought they were joking, but no. In the submissions—and we certainly had a lot of publicity about the impact on the PBS—the health industry were consistent in their condemnation of the treatment or indeed the inclusion of our health system as a trading commodity. Those who manufacture generic drugs call the intellectual property provisions in the FTA ‘unfair obstacles to generic manufacture in Australia’. Even with some changes, I still believe we will face substantial problems that will cost us billions of dollars for our PBS in the future. American pharmaceutical companies have very deep pockets, and I do not believe that they will walk away from the possibility of increasing those profits.

Our PBS is not popular, and that has been highlighted time and time again on programs on the ABC—I think there was a program on Monday night. Hopefully, while the Labor amendment will reduce some bogus claims, I do not believe that we have tackled this adequately and I think it is still far too great a risk to take. Generic production in Canada has almost halted under a similar regime, and it is not in Australian consumers’ interests to introduce barriers to generic manufacture. We should have a process to review and audit all of this as part of the agreement on our health system—a periodic examination at least, and I think a full analysis by the Productivity Commission—but we have got a very enthusiastic government determined to get this through parliament. I suggest we have a government that really does not want any more scrutiny.
Going further down the list, we see that our blood plasma regime will also be compromised by this agreement. The Red Cross warned in its submission to the Senate committee that pressure within the agreement to source blood from overseas where there are fewer controls is a major problem that puts at risk the integrity of our blood products and the Australian blood system. While Labor senators expressed concerns, they are not pursuing this issue. It seems to have slipped off the agenda, and I would argue it is far too important an issue for that to happen.

I want to stress that I am not simply opposed to any or all trade agreements with the USA. That is not the case. I am opposed to this agreement because it is far from a free trade agreement and it is heavily biased against us. The economic gains are minimal at best and, as you go through the agreement, I believe that the costs will far outweigh any short-term economic gains. It is a threat to our clean and green image and negates our long history of careful quarantine rules. It is a threat to our health system.

There are so many problems with this agreement, it simply should be sent back to the drawing board. I hope the ALP insists on both of its amendments, but even with them we are still a long way from an agreement that would be of benefit to this country. At risk is not only our agriculture, particularly our animal based industries, but also our wildlife and native species—our birds, our unique flora and fauna. Let me summarise by simply saying that the risks in this US-biased trade agreement are enormous. Put simply; we should not be prepared to take even half of them.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (12.16 p.m.)—The Democrat senators have addressed the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 in a range of different ways and from a range of perspectives because not only is it a large piece of legislation but it is an even larger agreement that this legislation in part implements. Of course, there are many other parts of the agreement that the Senate cannot even touch—they have been signed, sealed and delivered without the opportunity for the Senate to modify them in any way. This legislation simply addresses some components that are in the agreement that require changes to the law.

The reason we have had such an extensive debate on this legislation is that it is such a significant issue, so the Democrats have put in the time and have done the work to examine the agreement in detail, not only through the Senate select committee and Senator Ridgeway’s work there but also through the Joint Standing Committee on Treaties, of which I am a member. After examining all the evidence our view as a party is that it is quite clear that this agreement is not in Australia’s interests. It is not a good long-term or even medium-term agreement. There are significant problems contained within it. It is not 100 per cent bad; there are components that would be beneficial but there are clearly major flaws and problems.

In an overarching sense the agreement is dishonest, as is much of the political debate surrounding it. One of the important roles of the Senate is to try to expose the truth and to fight to ensure that we get an honest political debate at least. Even the title of the agreement—calling it a ‘free trade’ agreement—is dishonest because, as a number of economic commentators have pointed out, it is not a free trade agreement. In many respects it further restricts trade or locks in existing restrictions in significant ways.

The negotiation and the debate surrounding the Australia-US free trade agreement,
and this legislative component of it, expose the lies and hypocrisy of both the larger parties—how both Labor and Liberal are prepared to go on simply looking for political advantage and playing politics while selling out the Australian people. The agreement has been driven by politics and it is a political football that is all about the contest between the larger parties and between Mr Howard and Mr Latham. And we have seen that continue this week.

The tragedy alongside that is that, with the focus on the political opportunities and dangers for the two larger parties in the pre-election environment, the policy component—the aspects that are going to help or hinder the Australian community—have been left to one side. That is why we have had such dishonesty all the way through, stretching right back and up until now. Towards the end of last year, the Prime Minister said:

... if we can’t get something quite big on agriculture then we won’t have a free trade agreement, we won’t.

There are lots of things you could say about this agreement, but it certainly does not get ‘something quite big on agriculture’. And of course it was that area that was mentioned right from the start as being the one that needed reform—if they were really genuine about opening up trade opportunities. This year Mr Vaile, the Minister for Trade, said:

... sugar must be part of the deal and we’re not conceding that.

Senator Ian Campbell said in this place:

... the PBS is not on the table.

Then there was the overarching deceit—claiming that the deal is overwhelmingly in Australia’s interests. All you have to do is listen to the joyful crowing of the US commentators about the coup they believe they have scored with this deal—almost completely free access to everything, while compromising very little in the process. They use terms such as ‘unprecedented access’ and ‘slam dunk’ to describe the outcome from their perspective.

For instance, let me repeat some comments made by US Trade Representative Robert Zoellick, reported at the time the deal was concluded, which speak volumes about exactly what sort of deal we have here. Mr Zoellick spoke proudly about what a great deal this was for the US and how they had resisted Australia’s pleas for even just a little more access in many areas. He stated:

And we have an 18-year phase-out that Prime Minister Howard personally was pushing to get lowered, which we didn’t lower.

It actually should work well with our industry ...

An article in the Australian at the time also reported the following comments:

On dairy products, Mr Zoellick sounded especially pleased, using irony to call the Australian increase ‘huge’ and trumpeting the fact that Canberra had been unable to end the tariff protection for US dairy farmers. ‘And, frankly, in terms of dairy, I think we’ve increased our quota—didn’t touch the tariffs one bit—the huge amount of about maybe $30 or $40 million a year.’

These remarks are not only extraordinarily boastful; they are more than embarrassing. The fact that our Prime Minister made a personal appeal in this key area and was rejected categorically, 100 per cent, and the Americans feel they can boast about it, is particularly humiliating.

How good is the agreement? It is not just about how it is perceived and how people boast about it; it is about the actions as well as the words. It is about the facts, instead of just the spin. Ross Gittins, writing in the Sydney Morning Herald, argues that a free trade agreement is not in the national interests of the United States, that they would not agree to one and that that is why we do not have a free trade agreement. He says:
... a real FTA with Australia is the last thing the US wants. And the last thing the US wants for IP goods and services is free trade. The fact is, the US wants monopoly pricing for these goods and services, not competitive prices.

That is what this agreement delivers the US. Monopoly pricing is anticompetitive; it is certainly not freeing up trade. In the Sydney Morning Herald on 31 July 2004 Alan Ramsey urged us to consider reality rather than make-believe. He said:

The so-called FTA is not a trade agreement, free or otherwise. It is a political deal with George Bush. What the United States Congress, at Bush’s bidding, has given the Howard Government, in gratitude for embracing the lies and manipulation that took both countries into Iraq, is a signed piece of paper, no more and no less. Its immense value is that it enables Howard to spin an electoral illusion to seduce voters, as well as use as a cudgel should Labor challenge it. It is, Howard prays, the key piece in his election strategy to stay Prime Minister.

We are seeing that playing out in front of our eyes now this very week. Even with the tiniest fig leaf that the Labor Party are using to try to focus on a small part of the problems with the Pharmaceutical Benefits Scheme, already the government is coming out—it is typical; the same people are coming out—saying that the Labor Party are anti-American and they do not support the FTA because intrinsically they are anti-American. We all know that that is ridiculous, but that is the lie the government continues to push and it is willing to enter into an agreement that is not in Australia’s interests, which actually locks us out of freeing up trade, purely because of the political opportunity it provides to use ‘a cudgel’—to use Mr Ramsey’s words—against the Labor Party, should they challenge it. I am very disappointed that in most respects Labor have decided to support this agreement, despite all the arguments against it, because they are concerned about being hit with that cudgel.

Kenneth Davidson in the Age wrote about how the overwhelming vote in the US Congress for the free trade agreement was a reflection of the fact that it was a vote for protection and an extension of US interests, not opening up freer trade. He said that the arguments in favour of the agreement advanced by the Australian government are as dodgy as the so-called intelligence the public was fed to justify the Iraq invasion. Tim Colebatch spoke about the Prime Minister’s desperation for a deal, leading him to accept an agreement that would mean freer trade in one direction—from the US into Australia—but restricted trade the other way. He said it will not mean free trade for many Australian exports to the US—not ever.

A key area of concern—although certainly not the only one, but one which many Australians can immediately identify with and understand—is pharmaceutical benefits, because of the real prospect that the agreement will lead to more expensive medicines, drugs and medical services for Australians. Of course, we were going to get that anyway from the beginning of next year with the ALP’s extraordinary decision, after two years of opposing it, to suddenly support the government in enabling the price of medicines to increase quite substantially for many people. This agreement opens up the prospect of even further increases. As the report of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America suggests, the PBS is integral to Australia’s health care system. It is core social policy and should never have been included in any debate or negotiations on trade. It should never have been on the table, as government ministers said would be the case, but they lied to us. Trade Minister Vaile told parliament on many occasions last year that the US negotiators were ‘in no way going after the PBS’.
Senator Ian Campbell told the Senate at the end of last year that the Prime Minister and the Minister for Trade both made it very clear that ‘the PBS is not on the table’. Yet the chief negotiator, Mr Stephen Deady, told the Senate committee that, ‘discussions’ on the PBS commenced in the first round of negotiations back in March 2003. For all that time, even though it is clear that the PBS was on the table right from the start, we had government ministers saying, ‘It’s not on the table. It’s not a problem. Don’t worry about it.’ Of course, it is not only on the table but it is a central part of negotiations. Once it became clear that the PBS was indeed on the table, the government downplayed its importance, but we should look at the enthusiasm shown by the US negotiator, Mr Zoellick, who said in his response to questions from the US Congress that it was a ‘breakthrough’ for US pharmaceutical interests.

Looking again at the broader agreement, the Senate select committee interim report on the US free trade agreement is openly concerned about the legitimacy of governments entering into an agreement of this nature. The report, signed off by both Labor and Liberal senators, even went so far as to say:

... governments seldom, if ever, could be said to have a mandate to enter into trade agreements given that such agreements are rarely referred to or given coverage prior to elections ...

... Problems will always arise when citizens feel that the government is not apprising them adequately of the matters being placed on the negotiating table, or when they sense that a veil of secrecy is being drawn over agreements that may have far-reaching consequences for their economic, social, environmental or cultural futures.

... The collective commitment of Australian governments to advance the wellbeing of all Australians relies to a considerable degree on trust and confidence.

I want to repeat that sentence, because it is critical not only to this free trade agreement but to a key issue that must be acknowledged at the upcoming election. The free trade agreement will undoubtedly feature in statements from all sides of the debate during the election campaign. What has happened here—and I go back to the point I made at the start about the political opportunities and dangers—is that the political positioning of the larger parties has overridden public interest and a factual debate. That is very apparent. This occurs repeatedly and damages not only the result, in terms of what is best for the Australian community and our long-term interests, but also the overall credibility of our parliamentary system and our democracy. I think that, because Australia has been one of the miniscule number of countries to have had the incredible good fortune to have continuous democracy for over 100 years—and we have never had a significant war in our country—sometimes we do not realise how precious, and also how fragile, democracy is. We can never tell what the future will hold, but we certainly do not want to allow its integrity to deteriorate any more than is absolutely necessary. So that sentence I quoted earlier is critical to this issue and to the broader situation that we have to keep in mind in all political debate and in the exercise of democracy as we go through the lead-up to and as part of the election. The sentence says:

... The collective commitment of Australian governments to advance the wellbeing of all Australians relies to a considerable degree on trust and confidence.

Whatever else you could say, positive or negative, about this government, I do not think there is any doubt that it has overseen a continued and significant decline in public trust and confidence in the credibility and honesty of its statements.
What is most confounding is that—despite all the concerns and caveats with the agreement; despite the inability of the Senate committee to assess whether it really was in Australia’s best interests to sign this agreement, including in the area of pharmaceutical benefits; despite the poor process used in developing this treaty and others like it; and despite the clear indication that there is little public trust and little confidence in the abilities of the negotiators, let alone the agenda of the government—the committee have still recommended that the Senate pass the legislation anyway.

Parliamentary approval of treaties has been an important part of Democrat policy for some time. Former New South Wales senator Vicki Bourne introduced the Parliamentary Approval of Treaties Bill in 1995, and we continue to pursue that. Throughout this year, we have emphasised the importance of this issue, and have continually called for agreements such as this US free trade agreement to be brought before the parliament for scrutiny and debate prior to its being signed off and basically presented to us as a fait accompli. The Democrats will continue to support the need for parliamentary approval of all international agreements. Having said this, the recommendations of the Senate select committee report on the US free trade agreement—indeed, even some of the content of the government controlled Joint Standing Committee on Treaties—in relation to the parliamentary approval of trade agreements proposes a useful process to ensure that there is greater democratic legitimacy in seeking to bind Australia to major trade agreements.

The process set out in the report would ensure that the elected representatives of the people of Australia have an opportunity to have a voice in the process of entering into binding international commitments. The parliament would have a role in approving the government’s priorities for trade negotiations, which would give the government a greater democratic mandate in those negotiations. A concluded trade agreement that conformed to already agreed objectives would be far more likely to receive final parliamentary approval and be far more likely to meet the agreed cross-party mandated support for the policy objective. It would also be far less likely to be shaped by political opportunism rather than public interest.

This process is similar to the one that operates in the United States, where the congress has an opportunity to accept or reject any major agreement entered into by the executive government. It is time that Australia embraced a similar arrangement. The current system—where commitments are made by our executive without consultation, commitments which have a significant impact on every facet of Australia’s economic, social and environment structure and bind us long into the future—is inappropriate and lacks democratic legitimacy.

Even though we are all aware that a federal election is bearing down upon us, let us not forget that we must consider the longer term aspects. One of the many other perceptions surrounding the debate about this agreement is the repeated deceit that this is a once in a lifetime or a once in a generation opportunity. I do not believe that at all. I think it would be totally feasible for us as a nation, particularly if there were a change of government, to go back after the election and say: ‘There are significant components of this that need renegotiating. Having stepped back and examined it, let’s re-engage and fix it up. Let’s do it properly.’ There is no way that that is not a feasible prospect. To say: ‘This is the only chance we are going to get. We have to grab it now or it will be gone forever,’ is just another lie. It is just like calling it a free trade agreement when it is not a free trade agreement—it is just another lie.
We have to look at what the public will think about this agreement 10, 20 or 100 years down the track. The Democrats have always been about looking at the long term—looking years ahead, not just at what is in the short-term political cycle. Will people 50 or 100 years down the track look back and think of this as a positive or as a negative? That is the way we should be looking at it—even just in terms of a generation, 25 or 30 years ahead—not just whether it will help us get some extra votes in the next couple of months. I reinforce the point that the Democrats will not be supporting this legislation. (Time expired)

Senator LUNDY (Australian Capital Territory) (12.37 p.m.)—Throughout the debate on the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 I have been focusing primarily on two issues: culture, and intellectual property as it relates to the IT sector. I am very pleased to say that, as part of the Labor Party’s announcement to support the free trade agreement with the two amendments that we are insisting upon, we also announced a series of policy initiatives that we believe will mitigate some of the worst effects of the free trade agreement in the areas of both intellectual property and culture.

Turning to the question of local content, the government’s forced acquiescence to one of Labor’s amendments relating to protecting local content quotas via legislation and permitting the parliament to have a say in any changes to those local content quotas means that the Howard government was absolutely vulnerable on this issue. Throughout this debate, Senator Kemp, on behalf of the Howard government, has stood up in this chamber and given bland and shallow assurances. If that were the case, they would not be supporting the amendment. They know that the local content quotas are vulnerable to being ratcheted down by the Australian Broadcasting Authority in the absence of any check and balance in the parliament.

The Howard government’s announcement yesterday that they are prepared to accept Labor’s amendment to the Australia-United States free trade agreement demonstrates just how vulnerable they were on retaining their ability to protect Australia’s local content on free-to-air television, pay television and radio. Labor is committed to ensuring that Australians continue to see and hear Australian faces and voices through their popular media. Labor will insist on the amendment to the enabling legislation in the Senate to ensure that the free trade agreement does not undermine our existing local content rules.

It is particularly pertinent to be discussing this issue in this place today because figures released today indicate that Australia’s film and television industry is in crisis. They show a dramatic decline in the number of local feature productions, which have dropped from an average of 28 per year in the second half of the 1990s to just 15 in 2003-04. Investment in Australian features from the local film and TV industry and private sources has been falling for the past three years—from $45.5 million in 2001-02 to just $17.2 million this year.

Without the production of just one high budget feature this year, Happy Feet, the total production value of Australian features would have been similar to the 2002-03 eight-year low of $49 million. Also disturbing is the decrease in TV drama production spending. It is down to its lowest level in 10 years with local TV drama hours having fallen from an average of 718 per year in the late 1990s to 574 hours in 2003-04. These figures are vindication of why Labor has insisted on an amendment to the FTA enabling legislation to enshrine the local content quotas to ensure that they cannot be ratch-
eted down under the agreement with the United States. Some time before the next election Labor will also be announcing a policy package to encourage further investment in Australia’s film and television industry.

I think it is important for the Senate to remember the crucial role that these local content quotas have played in keeping Australian stories before Australian people. The fact is that the economics of production these days determine that it is cheaper for networks to just buy overseas content. So, without these laws being firm and clear, we would not have as much Australian content on our TV screens or in our theatres.

For many people contemplating this free trade agreement, it is ironic that Australia has the most open market. It is not as though Australia blocks content from anywhere else. We have the most open market and, to that degree, it is not surprising that only 27 per cent of new content on Australian television is actually made here. Whereas in the UK and the US respectively, new TV content is in the 90 percentile area. That is a big difference and that tells us why we have to keep fighting to maintain those content quotas. We want to hear Australian stories; we want to reflect upon ourselves through our art and through our creativity. That is why Labor is putting such a high focus on these issues.

The other area I would like to address in my comments is that of intellectual property. A great deal of concern has been expressed through the Senate inquiry and in the public domain about the impact on the information technology sector in Australia and, more broadly in relation to chapter 17 of the free trade agreement, intellectual property. I refer to the Senate select committee report’s reference to intellectual property because it expresses some very disturbing facts about the way in which the whole issue of intellectual property was handled. At paragraph 3.124 of the Senate select committee’s summary report it states:

The Committee is also concerned about the general ability of DFAT, DoCITA and Attorney-General’s department officials to answer questions on the IP issues at the Committee’s public hearings. The officials had to take on notice many questions that the Committee believes they should have been able to answer on the day, and took significant amounts of time to provide answers. When answers were eventually provided, they frequently lacked sufficient detail, were dismissive and opaque, and often did not appropriately correspond to the questions asked.

It continues:

3.125 With IP law emerging as an important area of public policy, as well as being a key aspect of the AUSFTA, the Committee considers that greater technical expertise should have been demonstrated. Whether the difficulties answering questions result from lack of departmental cooperation and coordination or from insufficient expertise within relevant departments, the Committee is of the view that the Commonwealth Government must upgrade its IP expertise and ensure that any future changes to IP laws are based on a whole-of-government approach. The Committee considers that the performance of the relevant departments at hearings throughout the inquiry invites speculation that proper technical expertise may not have been brought to bear in the negotiation of the IP Chapter.

Those are serious words indeed, but the buck stops with the Howard government on this. The Howard government did not treat the intellectual property provisions of this agreement with the due respect they deserve. They will have a significant impact on Australia’s future economic and innovation prospects and will impact directly on our ability to ensure that we have appropriate protections against anticompetitive behaviour in Australia. It is worth looking at the big picture of the inclusion of intellectual property in a bilateral trade agreement of this type. It is unusual—the committee reflected upon
that—to see such a strong emphasis. I have no doubt that it was at the insistence of the US.

The IP provisions are obviously the focus of Labor’s concern in relation to the patent system for pharmaceuticals and to the potential for shonky patents and patent applications preventing generic drugs from entering Australia—hence, our amendment relating to protecting Australia’s PBS that we will insist upon. Specific concerns which I would like to address include software patents, copyright of digital products, the treatment of circumvention devices and the impact generally on Australia’s open source environment.

Debate interrupted.

MATTERS OF PUBLIC INTEREST

The ACTING DEPUTY PRESIDENT (Senator Cherry)—Order! It being 12.45 p.m., I call on matters of public interest.

Queensland: Electricity Supply

Senator SANTORO (Queensland) (12.45 p.m.)—The Queensland Labor government has the best financial position of any of the states. It is the recipient of the best proportional return from the GST revenue that the Commonwealth collects and distributes to the states and territories under the Grants Commission formula. In the financial year just ended, Queensland got a windfall of well over $600 million in additional GST revenue distributed by the Commonwealth. It has growing revenues from its own sources through Beattie Labor’s tax-by-stealth policy and through windfall gains from property transfers and gambling tax. Labor presides over a state with a rapidly expanding consumer economy, fuelled by interstate migration. Every indicator is positive—every indicator except government performance.

In recent days Queenslanders have learned that their electricity supplies are not secure. The lights may go out at any time. They may do this, it seems, because the power utility corporations have not maintained essential delivery and distribution infrastructure. Yet, when we consider why this might be so, we cross into X-file territory. According to Premier Beattie, something is out there, but he just cannot quite work out exactly what. However, he does know that it is not something he is directly responsible for. He is only the Premier of the state, after all. He is only the person Queenslanders have now elected three times to run their state and make sure things work. He has only been in the job six years—I suspect he wants us to believe that he is still trying to find out where the washroom is, for goodness sake. Nevertheless, last week Queenslanders heard again that the Premier would step up to the crease and score runs for the people. They heard that it was not his fault that the lights might go out and the food in their fridges may go off but that the buck stopped with him and he would insist that things were put right.

It is the same old story that Queenslanders are forever hearing from Mr Beattie and that sad little non-performing collective which forms the cabinet he leads. Every Queenslander recognises the pattern. Firstly, there is no problem and anyone who says there is one is wrong and motivated by malice. Then—and how astounding this is—there is a problem and it has come as a complete surprise to the Premier, who up to now had been advised that everything was fine. Next, the Premier insists that the problem must be fixed, or he will want to know why it has not been fixed. And finally, we get to the end-game in every one of Mr Beattie’s pathetic little sagas of maladministration—find a culprit, preferably one he can persuade to keep quiet, and make them pay the political price that actually accrues to the Premier’s account.
Last week there was another high farce in Queensland reminiscent of the celebrated Winegate affair. This time we had a very novel interpretation of the Dance of the Whirling Dervishes—spin around fast enough and all your problems will disappear. Last week, minutes after his Minister for Energy—and what a non sequitur that title is—said he was not to blame, the Premier told a press conference that the buck stopped in his own office. There was a caveat, however—there always is with Mr Beattie, the doyen of the plausible excuse. This time we find that the cherry tree has been cruelly cut down by someone else who, completely out of the blue, had just that moment rushed past and thrust the axe into the Premier’s hand.

So, said the Premier of Queensland, he would take responsibility—as long as everyone understood very clearly that it really was not his fault at all; it was the fault of the utility corporations paying huge bonuses to top executives.

The issue of executive bonuses is essentially a separate issue. In this context they are a premier diversionary tactic. I would simply say bonuses of any sort, executive or otherwise, and regardless of the number of zeroes that follow the dollar sign and the primary number, should reflect actual output and performance. I have to say the performance of the electricity utilities has not been good, but the problem with paying bonuses in public power utilities is that these decisions are made at board level and the voting pattern of these bodies, in Queensland at least, is determined by the number of Labor mates on the board concerned. It is very interesting that the Premier did not utter a word about the capital stripping raids he and his acquisitive treasurers have regularly mounted not only against Ergon and Energex in the power sector but also against the port corporations.

I warned in my very first matter of public interest speech in this place, on 11 December 2002, that this practice was ruinous. I have returned to that theme in three other major economic speeches and alluded to this general problem in many more. Stripping away millions in potential reinvestment money is, in my view, a far more effective way of collapsing the capacity of an organisation to run its business properly than is the corporate stupidity of paying undeserved bonuses. Mr Beattie should tell Queenslanders where in his policy for the last election they can find the bit about ruining Energex and Ergon and turning out the lights.

In the past, the Premier has tried to justify the policy of bailing up the public utilities to hand over capital the government decides it wants, but only by arguing that successive governments have done this. That may be true but, apart from a period of just short of two years in 1996-98, those successive governments have been Labor ones for the past 14½ years. It will be 15 years at the end of this year. So actually the buck does stop with Mr Beattie and the Labor Party. They are out of excuses. If there is a mess in Queensland, it is the mess that they have made.

As state Liberal leader Bob Quinn said just the other day, the Premier is playing fast and loose with the truth when he claims his government did not know the full extent of the problems with Queensland’s ramshackle electricity network. In June last year, the Beattie government was provided with the Energex-Powerlink emerging network limitations report, which warned of drastic measures such as emergency load shedding if corrective action was not taken urgently to replace ageing infrastructure. At that time, both the Premier and his then energy minister—the same Mr Lucas who is now working up the fogging machine to hide Labor’s transport infrastructure failures in Queensland—publicly dismissed the report. At that time, Mr Lucas told Queenslanders that only acts of God would cause blackouts. In the
days immediately before the February state election he said Brisbane CBD and suburbs were extremely well placed in terms of electricity supply.

That was an act of electoral fraud in the circumstances. The reality is the Beattie government was desperate to hush up and discredit the report prior to the election. What is needed now is for the Premier to come clean with the people of Queensland, rid himself of non-performing ministers and purge the energy boards of the Labor stooges who have helped him create this crisis. That particular call was made last week in the wake of news that the Beattie government would like people to generate their own power. Yes, Mr Acting Deputy President, you have heard correctly: he suggested that people now generate their own power. That call to come clean was made by the deputy leader of the state Liberals in parliament, Dr Bruce Flegg. As Dr Flegg rightly said, we urgently need independent industry experts on the boards of Energex and Ergon, not ALP lackeys.

The state Liberals are also calling on the Beattie government to quickly adopt the key recommendation from last year’s report to develop electricity tariff structures for major customers in order to increase energy efficiency and reduce total loads at times of peak demand. It is not only Queensland’s electricity system, however, that has fallen apart under Mr Beattie and Labor. We all know about the problems of the public hospital system—a topic for another time. We all know about the tragic difficulties in the child protection system—also a topic for another time soon.

We all know that the Queensland Premier cannot resist an easy stunt as an alternative to the hard work of producing a viable policy, putting it into effect, and making sure it works. A case in point is the state’s transport infrastructure. It has fallen well beneath the capacity that it needs to cope with the rapid growth of population and consequent travel needs for both people and goods. The Pacific Motorway linking Brisbane and the Gold Coast is there, in the form it is and working as well as it is, because of the decisions taken and the work which commenced during the 1996-98 state coalition government’s term—a government that I had the privilege to serve in.

Most recently, Queenslanders have had their intelligence insulted by the Premier and his government over the AusLink national transport infrastructure plan, specifically the measures designed to fix the problems of the Ipswich Motorway. It is a national highway. It is infrastructure for which the Commonwealth government is appropriately responsible. But the Ipswich Motorway suffers horribly from the inadequate state road network that services the area through which the motorway passes. Mr Beattie and his government consistently avoid this issue and this reality. They say that the Commonwealth is not spending enough money on the national road system in Queensland, including the Ipswich Motorway. They do this with a straight face, while consistently failing to outlay sufficient funding to provide south-east Queensland with a state road transport network able to meet today’s demands and tomorrow’s forecast demands. This phenomenon is not confined to the south-east of the state.

Only last week the new Minister for Local Government, Territories and Roads, the Hon. Jim Lloyd, was forced to tell Mr Lucas, the Queensland Minister for Transport and Main Roads, to do his homework on flood works on the Bruce Highway at Tully in North Queensland. Mr Lloyd found it necessary to remind Mr Lucas that the construction of works that will eliminate the flooding problem on the Bruce Highway north of Tully cannot start for another three years on the
most optimistic estimates provided by the Queensland government. On 29 July 2004 Mr Lloyd approved a $1.5 million grant to the Queensland government for a round of surveys, studies, traffic investigations and other preconstruction measures that will take three years, even for a bypass route or flood-proof road to be designed. Mr Lucas claimed that the Commonwealth was delaying consideration of the project.

My Queensland colleague the Hon. Warren Entsch, the member for Leichhardt—who welcomed the funding—quickly and effectively put Mr Lucas right. He pointed out that Mr Lucas’s department had not researched the project, did not know the flooding, cultural, heritage and economic impacts and could not produce a plan showing what works are required. Preliminary work in seven key areas, including science and engineering and, crucially, public consultation, still has to be done.

Mr Lloyd’s predecessor as roads minister, Senator Ian Campbell, wrote to Mr Lucas on 12 July 2004 calling on the Queensland government to bring forward studies of the flooding problem, justifying priority funding for roadworks to relieve flood closures on the Bruce Highway between Corduroy and Banyan creeks. Mr Lucas sent him some old flood studies—but not a road plan or anything else that the Commonwealth could consider as a solution—and a request for $1.5 million to do the necessary preliminary work. The Queensland authorities propose to spend $1.5 million at a rate of $500,000 over three financial years. So if Mr Lucas is a man in a hurry, as he would like people to think, he certainly must be walking on a very slow speedometer.

Mr Lloyd properly says he will not immediately hand over $80 million—which of course is precisely what Mr Lucas wants him to do—for a road project that has not been researched, has not been designed, and cannot realistically be available to road users for another five years. But Mr Lucas says: ‘I would like $80 million. Why don’t you just hand it over, despite the fact that we haven’t got a clue what to do with it?’

There is one other area of non-performance by Mr Beattie’s government that deserves a special mention today—that is, the matter of ambulance response times. Despite the ambulance tax raking in $92 million in 2003-04, through a levy on electricity accounts designed to fund the improvement to the ambulance service, response times for ambulances in Townsville and other places in North Queensland have failed to lift emergency response times. In July 2003, on the Queensland government’s own figures, Townsville ambulances responded to emergency calls within 10 minutes—the benchmark—in 73.37 per cent of cases. By mid-June this year, according to the state minister responsible—who, by the way, caught the lift into cabinet after the February state election and who represents the Sunshine Coast seat of Kawana—that figure was down to 67.31 per cent. How quickly can you go downhill? You shake your head and say, ‘There’s just no explanation.’ But there is an explanation.

Senator George Campbell—You put up a better show of opposition in Queensland than the Queensland Liberals did and you’re not even in the parliament!

Senator SANTORO—I will take the interjection from Senator George Campbell. The reason why I talk about these matters is that the Howard government gives an enormous amount of funds to a state government that is hopelessly—probably maliciously—incompetent. It goes about its social engineering priorities and projects and it ignores its most essential responsibility. As I said in my first speech in this place, state governments these days are there to deliver ser-
services, to deliver them efficiently and to look after those people in our society who are weak and who need help, particularly elderly people and young kids. Your Labor mates in Queensland are failing those people day after day. You will continue to be embarrassed by what I have to say about your mates in Queensland week after week when this place sits, because I am going to keep on pointing out their deficiencies. If that contributes in a small way to their eventual downfall, I will be pleased to have made that contribution. In the meanwhile, no smirking, no pathetic interjections from you good senators across the chamber will be able to justify the neglect of the essentials of good government in a state like Queensland and the poor service delivery in looking after those in its care, particularly young children. Recently, the Queensland government closed the file on 700-plus cases of child abuse. It closed it down because, again, it is indulging in mismanagement practices.

I have spoken today, again, about non-performance. The learning curve for the new Queensland Minister for Emergency Services has clearly stalled, and it is precisely this sort of performance that shines a much needed light—power distribution capacity permitting, of course—on the charlatans and the poor performers who populate the Beattie Labor cabinet and whom senators opposite constantly seek to defend, despite the fact that they are defending the indefensible.

**Environment: Murray-Darling River System**

*Senator Wong (South Australia)* (1.00 p.m.)—The last matter that Senator Santoro was raising is interesting; he comes in here talking about the interests of children but defending the decisions of a government that continues to retain children in detention for long periods of time and refuses to let them out from behind the razor wire.

*Senator Santoro*—Are you going to defend them, too?

*Senator Wong*—Try to defend that decision, Senator Santoro. I rise today to speak on a matter that is of great public interest to South Australians, and that is the state of the River Murray. Now that South Australians have successfully resisted the campaign by the Howard government to impose a nuclear dump on South Australia, the River Murray will be the primary environmental issue for South Australians at the forthcoming election. An important public meeting was held last week, organised by the Conservation Council of South Australia and by the Australian Conservation Foundation and attended by candidates and representatives of all the major political parties. That meeting told us what South Australians already know and what parliamentarians in this place should know, and that is that the River Murray is in dire straits.

The River Murray is in serious trouble. The Murray mouth closed for the first time in 8,000 years in the 1980s and has only been kept open in recent years through dredging. We know that Adelaide drinking water, which is dependent on the Murray, is becoming increasingly saline and that, if present trends continue, by 2020 Adelaide’s drinking water will be unfit for drinking, according to World Health Organization standards, for two days out of five. That is within 16 years, so time is running out for the River Murray.

Unfortunately, what we have had from the Howard government on this front is a lot of talk and a lot of fancy announcements but very little action. This government has not delivered one litre of additional environmental flows since it has been elected. It has had many high-profile announcements but, unfortunately, on the ground we are not seeing the urgent action which is required. Ear-
lier this year, we had a COAG announcement committing to an additional 500 gigalitres of additional environmental flows down the River Murray. It is a welcome announcement but it is far too little. We know from scientists that the River Murray requires 1,500 gigalitres of additional environmental flows just to give it a moderate chance of being restored to health. We have no commitment from this government to that level of environmental flow. In fact, we have even had members of this government in the other place signing off on a report disputing that science, when no-one else who has any knowledge of this debate in any way disputes the need for 1,500 gigalitres.

The forum that was held last week was attended by hundreds of South Australians and they heard from a range of speakers. We heard from scientist David Paton, an ecologist who has done quite a number of studies, particularly around the Coorong. People should be aware that the Coorong is protected under the Ramsar Convention on Wetlands. Unfortunately, the Coorong, which is dependent on River Murray flows and on the river’s mouth being kept open, has suffered serious decline in recent years. Dr Paton told us of the dramatic population crash in waterbirds in the area, which is a demonstration of the environmental problems experienced by the Murray. One example is that there are now fewer than 2,000 curlew sandpipers, which is less than five per cent of the 40,000 which were found there in the 1980s. In 20 years, 95 per cent of that particular species has disappeared from the River Murray, which is obviously an enormous cause for concern.

We also heard from Henry Jones, a commercial fisherman, who gave a wonderful presentation. This is a man who has been working in or around the River Murray for a period spanning three generations. He spoke of his experience of the dramatic decline in native fish in the Murray. He spoke of the fact that his grandson can now only look in books for certain species of native fish which, when Henry was a young person, he could readily find when fishing in the river. Within two generations those species have all but disappeared from the river. We also heard from Keith Walker, a river ecologist who has been heavily involved in looking at what is required to restore the Murray to health, and from Professor Mike Young, who is a CSIRO scientist and member of the eminent scientific group, the Wentworth Group, that really managed to kick-start a lot of the national discussion about what was needed to fix up the river. Those scientists emphasise what we already know—that the minimum that is required from the federal government is a commitment to restoring the river and putting back into the river 1,500 gigalitres of additional environmental flows.

The only party that is committed to that and is able to deliver it in government is Labor. We have indicated clearly that our commitment is 1,500 gigalitres over 10 years, 450 of which we would seek to deliver in the first term of a Latham Labor government. The reason 450 gigalitres is important is that that is what scientists tell us is required to keep the Murray mouth open. Of course, keeping the mouth open is particularly important for the ecology of the Coorong. This is a bold plan by Labor. In this debate, people throw a lot of numbers around fairly easily. Fifteen hundred gigalitres is three times the entirety of the water that is in Sydney Harbour. It is an enormous commitment. A lot of work and a lot of leadership from the national government will be required in order to achieve it, but it is something that must be done. In terms of funding, Labor have not only matched the government’s commitment to $200 million but also indicated that we will put in an additional $150
million, making a total of $350 million as an initial investment into restoring the river.

When Labor’s policy on this was announced last year it was so good that we even had Senator Brown coming out and saying that Australians would back Labor on this issue. He made this comment:

Many people who see Canberra as obsessed with short term management but unable to manage the nation’s long term problems will be relieved to hear something with dinkum vision.

‘Dinkum vision’—it is unusual for the Greens to give that kind of support to the Labor Party but, frankly, I think this policy is worthy of it. Obviously, as the election approaches the Greens have a need to differentiate themselves more clearly from the Labor Party on this issue and Senator Brown, having come out in support of the 1,500 gigalitres, has now doubled his ask to 3,000 gigalitres. It is interesting to note that the Greens have taken this position when even the environmental groups, as well as the scientists, have lobbied for 1,500 gigalitres. I suppose the Greens need to make themselves a bit different from Labor on this issue.

The motion that was passed at the public meeting by the members of the South Australian public called for all political parties to commit to saving the Murray River and, in particular, for the commitment of an additional $500 million in Commonwealth funds and 1,500 gigalitres in extra annual flows over 10 years. I look forward to the Howard government actually coming to the party on this issue. At the moment their commitment is one-third of what is required to restore the Murray to health.

South Australians see this as a very important issue. It is an issue that affects us in a very short period of time. Not only does it affect the ecology of the river, given the environmental issues at the mouth of the river and in the Coorong, but also it affects our drinking water. It is an issue that we feel very strongly about and it is an issue on which the government can do far better. I am encouraged by the commitment by the environmental groups to make this a campaign issue. It should be a campaign issue that South Australians think about when they are voting in the next election and it should also be an issue on which they pressure this federal government to do more than they are currently doing to save our river.

**Women: Reproductive Rights**

**Women: Sexual Discrimination**

**Senator STOTT DESPOJA** (South Australia) (1.09 p.m.)—As a South Australian similarly concerned about the issue of the Murray-Darling river system, I acknowledge that the public meeting Senator Wong mentioned took place, thank the Australian Conservation Foundation for organising it and commend our candidate for the Senate, John McLaren, who represented the Australian Democrats at that public meeting.

Today in the Senate I would like to speak firstly about the issue of abortion and abortion services in Australia. On this coming Sunday night, 8 August, ABC Television will show a UK documentary on abortion called ‘My Foetus’. It will be part of the *Compass* program. I want to make it clear that I have no qualms at all about our national broadcaster showing programs of any sort without fear or favour. I am not asking in any way for the program to be censored, as I trust the ABC’s charter to air programs without any form of interference. However, I am looking for some reassurance that this documentary will not give misleading impressions about abortion in this country. I am not talking about the UK, but about Australia.

Some of the notions that could be received as a consequence of this program—and I acknowledge I am basing my comments on news reports to date—could be misleading
ones such as second- and third-trimester abortions being fairly common or easy to access in Australia. To, hopefully, try to avoid this misrepresentation or misperception, I wrote to the ABC last month, urging them to publicise each state’s and each territory’s precise laws and practices surrounding abortion before they aired the documentary. I was concerned that many viewers may not realise how the Australian laws differed from the United Kingdom’s laws, and I encouraged the ABC to make these details known in the interests of an informed, educated and balanced debate. For the record, in this country it is not actually that easy to find out details about each state’s and each territory’s laws and practices regarding abortion, particularly because those laws and practices can be quite different from each other. I am pleased to say that I did receive a response from the ABC to my letter. I note that the ABC have claimed that they will appropriately deal with this ‘in Geraldine Doogue’s introduction to the program’. Mr Acting Deputy President, I seek leave to table the response that was provided to me by the ABC. I have drawn it to the attention of other honourable senators and parties.

Leave granted.

Senator STOTT DESPOJA—I thank the Senate. I thank the ABC for responding and partially agreeing to my request or at least partially doing what I was asking them to do. However, the letter does concede that these laws and practices will not be spelt out in detail on Sunday night. How they vary among the states and territories, for example, will not be made clear, so I am still concerned that viewers of the documentary may come away with a dangerous misunderstanding of abortion laws and practices in this country.

Recent comments by some government members have not helped the situation. In Monday’s Australian newspaper, the Minister for Health and Ageing, Tony Abbott, was quoted as saying that ‘a political constituency may even be starting to emerge to ban abortions after 20 weeks’. The minister’s comments give the impression that abortions after 20 weeks may be common or even easy to access. That is not the case in this country. In fact, for the record, 95 per cent of abortions performed in this country take place during the first trimester of the pregnancy. This is partly because the accessibility of termination services is significantly reduced after that first trimester. Only Western Australia, South Australia and the Northern Territory have specific, explicit legal gestational age limitations in relation to terminations. However, in practice in all states and the Australian Capital Territory, terminations at up to 14 weeks gestation are generally available in a few specialist private day surgeries in the capital cities and services at between 14 and 20 weeks gestation are available on a more limited basis, if at all. In the Northern Territory, the law allows for termination services to be performed during the first trimester on the basis of maternal health and/or serious foetal disability. At between 14 and 23 weeks gestation the availability of termination services is limited further. In practice, however, availability is even more limited for all termination services in the Northern Territory as an obstetrician and gynaecologist must perform the service, two doctors’ signatures are required and services are available only in hospitals.

Regardless of the number of weeks at which a pregnancy is terminated within the legal limit, women should not be demonised, attacked or vilified for exercising what is their reproductive right. I suspect that the government should be providing more objective, impartial pregnancy counselling services—or at least support for those services. It was recently brought to my attention that
Pregnancy Counselling Australia, which is listed on the emergency page and the community help page of the White Pages, is a pro-life organisation—despite its White Pages listing which innocuously states that it provides ‘pregnancy termination alternatives & post termination counselling’.

Clearly, this listing is misleading. The provisions of the Trade Practices Act in relation to ‘conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services’ is unlikely to apply to Pregnancy Counselling Australia as an organisation that offers free counselling services. However, it could well apply to the company that produces the White Pages, Sensis Pty Ltd, as Sensis publishes and distributes the White Pages with a view to encouraging the use of telephone services to the end of making a profit for it and its parent company, Telstra.

I urge Sensis to remove Pregnancy Counselling Australia from its emergency page and engage in corrective advertising to advise the public of the true nature of this service. Unfortunately, Pregnancy Counselling Australia is not the only organisation that provides biased advice in this regard. I understand there is only one dedicated pro-choice counselling service in Australia—Children by Choice, in Queensland—compared to many pro-life counselling services. I do not deny the right of these services to exist, but misleading representations and advertising are not appropriate. For that reason, I call on Sensis today to rectify this misleading advertisement in their White Pages, including the emergency page.

I believe in a woman’s right to choose and I abhor recent comments by some legislators that attempt to interfere in women’s reproductive rights. In the last couple of months alone, the government has put forward proposals to again make the morning after pill available only by prescription and has drafted legislation—which I acknowledge is now on hold—to allow parents to access medical files of their teenage children.

In 2003, during the debate on the Prohibition of Human Cloning Bill, the government introduced regulations to ban the export of embryos—and I can see good reason as to why. When these regulations were first tabled, they were so wide ranging that they actually prevented Australian women from taking their own embryos overseas for IVF treatment. Pregnant women or women who had an embryo that they were taking overseas for IVF were actually criminals under that legislation. It meant that pregnant women could not travel overseas without possibly being guilty of a criminal offence. So no overseas trips for me—although the thought of someone trying to police that particular regulation is interesting. I acknowledge that this regulation was withdrawn after I threatened, on behalf of the Democrats, to disallow it, but it is a prime example of shabby law-making in this country which fails to take into account the impact of certain laws and regulations on women in particular.

The replacement regulations are equally questionable. Now, if a woman needs to travel overseas with her own embryos for the purposes of IVF treatment, she requires ministerial permission. Just imagine sitting down with the minister and having a chat about that: ‘Can I take my own embryos overseas for the purposes of IVF treatment?’—ministerial discretion; extraordinary interference in terms of the rights of women, reproductive rights in particular.

However, this not the only area of women’s policy in which I think this government is performing dismally. Mr Acting Deputy President Cherry, as you would know
and as I hope many other honourable colleagues would be aware, last Sunday represented the 20th anniversary of the Sex Discrimination Act, yet women’s progress in Australia since 1984 has been shamefully slow. Yes, there has been steady but slow progress. But women continue to face the threat of violence, discrimination, cultural stereotypes and even decisions about how they balance their work and family life—many decisions on issues that men are not confronted with, or not to the same extent.

There are now 49.1 per cent of Australian companies with no female executive managers, compared to 52.6 per cent in 2002—so not a big increase—and women hold only 3.2 per cent of the top executive positions in Australia. Women who are in senior management positions, despite being equally or possibly more qualified than their male counterparts, are paid 90 per cent of what their male counterparts are paid. Across the board, women now earn two-thirds of men’s total earnings, and on average they work fewer years in paid employment than men. Consequently, the average superannuation payout for a woman in 2020 will be $100,000, compared to $200,000 for a man. This means that women retiring in 2020 effectively will have the same amount of superannuation accumulated as men did 20 years earlier. Recently we have had celebratory headlines in the newspapers commending this government on the fact that it has a record number of women in executive power, a record number of women in the cabinet—three. That is dismal for the 21st century.

A recent work and family survey found that most respondents would prefer an obligation for employers to provide flexible family working hours to help them better manage their balance between work and family—26.7 per cent of respondents—or the right to time off work for family emergencies—24.8 per cent of respondents—to other options such as an increase in the government’s family payments and more government help for child care. We in this place have discussed the suite of reforms that are required for a better work and family balance—child care, conversion of part-time hours, conversion of overtime into jobs, paid maternity leave. All of these things should be on the agenda for the next election. I fear, however, that they will not be. I fear partially that the paid maternity leave debate is on hold again, thanks to Australian working women being fobbed off by a token maternity payment provided by this government—and, unfortunately, endorsed by the Australian Labor Party—when they should have been developing a comprehensive, sophisticated model in relation to paid maternity leave.

On this 20th anniversary of the Sex Discrimination Act—and there has been progress, but we as women in this country have a long way to go, particularly in relation to access to power in our most powerful institutions, such as media, church, the corporate and business world and indeed parliament, let alone leadership positions and executive power—I call on this government to provide an audit of the position of women in Australian society, an audit against the Sex Discrimination Act in terms of not only how that act has supported, progressed and advanced us but also how much we have got left to go. When this government came to power it was not anxious to provide the same levels of research and analysis that were previously supplied, not only under previous governments but even with the government’s dismal attempt to provide a women’s portfolio budget statement. We have seen a lack of precise, detailed, objective, independent information in relation to where women stand in society. I call on this government to finally audit the position of women in Australia. Be devils: set some benchmarks, set some tar-
gets and do not just talk about women’s positions of power, women in management or business and addressing the incredible gender wage gap, which has expanded 35 per cent in the past eight years since this government came to power. Why not do something about it? I call on the government to do that and look forward—

Senator Ian Macdonald—A quota.

Senator STOTT DESPOJA—Sorry?

Senator Ian Macdonald—Like a quota for a number of women in the parliament?

Senator STOTT DESPOJA—We should not need a quota. But anything that will advance women’s representation at this stage I am prepared to support. But let us start with a realistic assessment of where we are at.

Health: Mental Illness

Senator TIERNEY (New South Wales) (1.24 p.m.)—I rise today in this matter of public interest debate to draw to the attention of the Senate the plight of the mentally ill. Over time, society has taken very different approaches to people living with mental illness. It was not long ago that the most vulnerable people were locked up in asylums, never to be seen again by their friends and family. We have come a long way in the area of mental health, and we have seen far-reaching reforms over the last two decades. Yet we still see many people living with mental illness who are not receiving the care and the support that they need. Nationally we are now in the early stage of the third mental health plan, which will run from 2003 to 2008. It is a fine plan and it has been agreed to by all the federal, state and territory governments. This plan has received favourable international recognition. The World Health Organization’s 2001 report Mental health: new understanding, new hope noted that our national health strategy:

... has demonstrated the changes that can be achieved in national mental health reform.

It is a great plan, but does the reality match up?

The problem is that, like its two predecessors, it is unlikely to substantially improve the disgraceful state of mental health care, because its funding by the responsible state governments is uneven and grossly inadequate. The worst offender is my own state of New South Wales, which is at the bottom of the mental health funding league across all the states. Overall, mental health takes up 14 per cent of the disease burden in Australia but accounts for only 9.6 per cent of the funding. Like many other nations, Australia’s mental health strategy has deliberately shifted our focus from institutional care to community based care. Resources previously targeted towards maintaining centralised mental health facilities have been redirected to provide services delivered through a spectrum of service models, which include the use of general practitioners, community centres, day centres, specialist general hospital wards and small specialist hospitals. But the funding has not followed.

The progress of Australia’s reform agenda has been documented in a series of national mental health reports which provide information that helps consumers, their families and service providers to continue to monitor the progress against the plan’s defined objectives. However, as noted in the latest national mental health report, while Australia made significant progress against the national reform agenda, there are many challenges still to be addressed. The number of mentally ill people who are committing suicide is rising, families do not have access to the services that they so desperately need, and the state governments simply are not allocating the funds necessary to help people suffering from mental illness and to help the service providers on the front line.
David Richmond, the author of the Richmond report that began the process of de-institutionalisation across the country in the 1980s, told Channel 9’s Sunday program last weekend that when he made the recommendations to move patients from institutions to the community his preference was that the states would allocate the resources no longer being used by institutions to the community. Over the past 18 years, the state government’s program of de-institutionalisation was supposed to move people out of institutional care into community homes with supervision and care. The reality is grim. What we see in New South Wales is a shadow of the original Richmond scheme. The state government treasuries have grabbed back the lion’s share of the savings from de-institutionalisation, with only 10 per cent of the money going back to supporting people with mental illness.

Brian Burdekin, former commissioner for human rights, has acknowledged that de-institutionalisation has largely failed because not enough resources have been allocated to front-line services by state governments. State government spending on mental health is appalling, with my state of New South Wales having the lowest rate of expenditure. This means that, despite applauding mental health plans, families are struggling to get access to services quickly when they need the support most. In my state of New South Wales the Richmond report vision, of community care groups supported by case managers and community based mental health teams, has been lost as a result of a lack of funding by the state government. Our mental health system in New South Wales is at breaking point. David Richmond himself has called for more targeted and transparent funding of mental health. The states have the constitutional responsibility and the resources to implement the original aims of the Richmond scheme—case managing and rehabilitating people with mental illness in a group home setting. The Carr government in New South Wales obviously does not see mental illness as a priority, and it is our most vulnerable that are suffering.

Some people have put to me that mental health is not receiving the funding it deserves because it is not an issue that affects votes. I find this difficult to understand as the prevalence of mental illness in our community is staggering, with many people suffering from mental illnesses such as depression. Many more Australians know someone who is living with a mental illness, and families often bear the burden of caring for loved ones who are suffering. It is thought that up to 23 per cent of Australians will suffer from a diagnosable mental illness each year. It is an issue that is relevant to voters, and state governments need to step up to the plate and provide the services that are so desperately needed.

Former Victorian Premier Jeff Kennett, who is now chair of beyondblue, said that he believed that mental health was an issue that people cared about and that access to emergency services and good training for GPs were important to people and their families. In 2002 the New South Wales Legislative Council Select Committee on Mental Illness conducted an inquiry into mental health services in the state. The inquiry was the first parliamentary inquiry specifically into mental health since 1846—more than 150 years ago. Clearly, the tides are turning and the public is becoming more literate regarding the challenges and needs of those who live with a mental illness.

I believe that there is a solution. The national health plans have been a world leading initiative and we have across all levels of government an agreed basis on which to move forward. We need to convert our mental health plans into action. There is no glory
in having an internationally renowned plan that is not being implemented. There is too much at stake, including so many people’s lives. The states are clearly not delivering when it comes to allocating resources to those who are in need and those who support people, such as the GPs, nurses, social workers and other health care practitioners who are on the front line. Over the next eight years, from 2005 to 2013, they need to bring into line the proportion of the health budget to match the proportion of the total disease burden that mental health represents. In particular, we need to rebalance these resources. This imbalance will be made up when 14 per cent of the disease burden is matched by 14 per cent of the expenditure instead of the current 9.6 per cent. We clearly need increased resources in mental health so that by the end of the fourth national health plan in 2013 these will be in balance.

We need also to increase other support services as part of this plan, particularly counselling support. The only 24-hour crisis counselling in Australia is run by Lifeline, and there is a high turnover of the volunteers who man this program. The average length of service is only 2½ years. Pressure has increased on this service in recent years because of the decline in after hours mobile crisis care mental health teams as the state governments have failed to contribute adequate resources to the area. Governments should fund the training of Lifeline counselors and dedicate the Lifeline 24-hour crisis counselling line as a telecommunications universal service obligation by adding the 131114 number to the USO schedule.

We need also to expand resources to help GPs as primary health carers. Two-thirds of all patients who present with mental health issues do so to a GP. The general practitioner often does not have the counselling skills, the time or the financial incentives to provide the level of treatment necessary. We need to improve the quantity and quality of the time that the GP spends with patients by increasing access to in-service training, expanding further the excellent psychiatric help line consultation service that is now being brought in for GPs, and we may need to look at higher payment for extended consultation times.

We need also to re-establish after hours mobile crisis care teams. On-the-spot assistance for people who have their first mental health episode is now often in the hands of police. This should be the last resort, not the first. Health issues should be dealt with by the health system. Why are state governments withdrawing services from such a critical service? We actually need to double the number of acute care beds. The deinstitutionalisation of mental patient care by state governments over the last 40 years has reduced the number of acute care beds to 10 per cent of their earlier establishment, and that is approximately half of what is actually needed. In accordance with the trend to mainstream, mental health services closed wards in general hospitals—and I think that the Carr government in my state has closed 8,000 beds over the last nine years. These wards should be reopened and some of them dedicated by state governments as acute care mental health wards. The number of acute care beds should be doubled between 2004 and 2013. We need to develop and extend community based residential care. The deinstitutionalisation of mental health care by the state governments has never been matched by sufficient community care places with appropriate support. Many people who in former times would have been institutionalised are inappropriately accommodated, or homeless, with little or no support.

We need to establish also appropriate forensic facilities in all states. The management of forensic patients is very patchy across the state jurisdiction. Under Premier
Jeff Kennett in Victoria best practice was developed with the Thomas Embling unit. Other state governments should shut down their jail based forensic units and establish facilities based on the Thomas Embling model. Jails should not be de facto mental health institutions.

Mental health has a stigma due to a lack of public understanding of the nature and the causes of mental illness. We need a series of media campaigns to explain the nature of various mental health problems and illnesses. We need to focus our clinical services and the school curriculum on youth mental health. Seventy-five per cent of mental health illness begins with youth aged 15 to 25. We need to focus on the mental health problems of our younger Australians by providing specific programs and facilities for them. We need to place a greater emphasis on the understanding of mental health illness in the school curriculum. Elective studies in psychology should also be available in the senior years.

We need to increase the supply of mental health staff. There is a shortage of professionals working in this field, particularly psychiatrists and psychiatric nurses. This is particularly the case in rural and regional Australia. We need to introduce bonded scholarships for psychiatric doctors and nurses, with a requirement for country service. We also need to increase research funding for mental health, and this should take a higher priority in our research budget. We need to fund best practice in mental health care. In recent years many pilot and clinical trial projects with promising results for improving mental health have not been implemented widely, despite their demonstrated effectiveness, because of a lack of ongoing funding. We need to establish a best practice fund for the implementation of wide-scale, evidence based best practice pilot projects and clinical trials. We need to also expand access to mental health care using e-technology.

Consumers and professionals requiring mental health expertise in remote locations often find services difficult to access. We need to implement on a wider scale successful e-technology trials and we also need to expand access to respite care. Carers of people with mental health illness often lack access to respite care and we need to expand these facilities. In our rapidly changing society the mental health disease burden is likely to rise. The states have shown that they are unlikely to have the interest in or commitment to putting the resources towards this challenge. Intervention by Australian governments since 1992 has established a firm framework for tackling this disgraceful situation. We must improve the amount of resources allocated and we must try to catch up the backlog created by state governments over many years, because the mark of how civilised our society is can be measured by the way in which we treat those who are unable to help themselves, and surely the most vulnerable are those with a mental illness.

Science: Assisted Reproductive Technology

Veterans’ Affairs: Australian War Graves

Senator HOGG (Queensland) (1.39 p.m.)—I rise today to speak about my recent study tour to the United Kingdom and to Belgium. In the report I filed with the Special Minister of State, in relation to the confirmation of purpose, I said that the purpose of my visit was as follows:

1. To further study issues surrounding Assisted Reproductive Technology, cloning and stem cell technology with a focus being placed on:
   The legal rights/status of those conceived and/or born by Donor Insemination.
   The psychological and physiological implications for those conceived in this way.
How legislators, community groups and government departments are addressing any emerging issues.

A secondary part of my visit was to look at the war graves in Belgium, as I happened to be there. The background to this study tour is that on a previous study tour to the United States in 2001 I looked at assisted reproductive technology, cloning and stem cell technology, with a focus on the range of social, moral and political dilemmas confronting the community and legislators both now and in the future as a result of these technologies. In 2001 I participated as a member of the Senate Legal and Constitutional Legislation Committee’s inquiry into the Sex Discrimination Amendment Bill (No. 1) 2001. I believe that the inquiry did not address a wide range of issues in the ART area. Further, I have been involved in discussions with people about issues concerning those conceived and/or born through donor insemination. These circumstances combined to prompt me to undertake further research as outlined in the confirmation of purpose which I have just read out.

The place where most activity is occurring is in Britain, and there is interest in what might emerge in the European Union, particularly in Belgium. When I advised them of my intention to travel to Belgium, the post there suggested that it might be an excellent opportunity to visit the war graves near Ieper. At the outset, I must acknowledge the cooperation afforded by the DFAT desk in Canberra, the officers at the Australian High Commission in London and at the embassy in Belgium who helped to compile my program. I thank them and record that those involved said that the issues raised were challenging and had afforded them a different experience, causing them to think inquiringly about the issues for which they had been asked to set up appointments. The program was well balanced as it canvassed views from all sides of the debate.

The issues I flagged in advance with most of the people I had appointments with were along the following lines, as contained in my report: (a) on the legal issues, I asked questions as to whether there should be laws or regulations governing ART et cetera and, if so, who should make or determine them. I asked whether it should be governments, judiciary, government quangos or agencies. At point (b) on the issue of the embryo I asked whether it has legal status or legal rights and, if it does not have a status currently, whether it should be afforded one if embryo adoption becomes available; (c) in relation to sperm and egg donors I asked whether they should be able to be identified. I asked whether there should be a register of donors kept and whether donors should be counselled, what screening of sperm should take place and what auditing should be done to ensure the good health of donated sperm. At point (d) in relation to birth certificates I asked whether there should be an indication on the birth certificate that the person is DI conceived and also whether the social parents’ names should appear on the certificate; (e) on counselling, I asked whether there should be counselling for the donor of the sperm or the egg, whether counselling for the parent or parents should be done only in the lead-up to the procedure and whether there should be further access to counselling post the birth of the child. I also asked whether counselling should be done by the clinic or by those associated with the clinic or by counsellors who are independent and at arm’s length to the clinic providing the procedure. Last but not least in relation to counselling, I asked whether there should be counselling services available at the expense of the state to those who discover that they are DI conceived.
The next issue I raised in my report is at (f) and relates to support for DIs. I asked what support groups or government services are available to DIs when they discover that they are donor conceived. I also asked whether any assistance should be available to these people. At (g) in relation to international conventions I asked how international conventions such as UN conventions should apply in the area of ART. At (h) on access to ART, I asked whether ART should be made available at public expense to those people for whom it is no longer a treatment for infertility but a matter of social convenience. Finally, at (i) on the issue of auditing, I asked what auditing of screening or counselling there is to ensure that the whole process is transparent and accountable. So there were a range of issues that I flagged well and truly in advance.

Finding a number of DIs to talk with was not easy, but those that I spoke with spoke openly and I did appreciate the lengthy periods of time that they gave me to pursue their personal circumstances. I will go through a few of the notes that I have made in my report on the comments that were made to me. These are not totally inclusive of everything that transpired at the meetings, but they do reflect some of the concerns that these people have later on in life.

The first person found out at the age of 31 that they were conceived by donor insemination. That person is now 39. The person told me that she felt devastated when she found out that she was DI conceived. She said that she felt angry with the state for overseeing a system that allowed her to be conceived this way, for denying her the basic right to know who she was and for allowing her birth certificate to be falsified. She also said to me that she could not find any community based support to turn to when she discovered that she was DI conceived. She also said, and it is included in my report, that she could not get any support from the government or any of its agencies—her discovery was not their problem. She of course has struggled with that for the last eight years—and ‘struggle’ is the correct word.

The second person I spoke with was actually conceived in 1952 and had been told at the age of 12 that they were DI conceived. He told me that part of his experience was that his mother transferred her affections to the hidden, invisible and unreachable character that donated the sperm for his conception. He said it was a pretty disastrous experience and that his parents did not cope. He did not understand why doctors should be regarded as experts on ethics, as they had no special claim—they simply administer the process.

The third person I spoke with told me that she had found out at the age of 41 that she was DI conceived. She expressed to me that she felt anger and bitterness when she found out that she was DI conceived. She also noted that her own children had always had a milk allergy. There was always a missing piece in their family, because no-one knew why. She said she had tried to trace her genetic father and she also told me that she has had a bizarre conversation with HFEA, the Human Fertilisation and Embryology Authority in the United Kingdom, because they had never spoken to a donor offspring. She said that the day she found out that she was DI conceived she felt like ‘a complete freak’. She also commented to me that she did not know whether she was ‘fresh or frozen’ before she started life. She said that she thinks of her ancestral home as a glass jar.

So they were quite open and frank about what they had to tell me. They were bitter not so much towards their parents but towards the system that allowed them to be conceived without any real knowledge or understanding as to why they were there. I also spoke—this is listed in my report and
because of time constraints I am not going to go through it—to parliamentarians in Great Britain and Belgium; to interest groups on both sides of the debate; to government departments and agencies, who were very cooperative; and to academics. The academics supplied me with a number of research papers on the issue, which I have put as appendices to my report. They make very interesting reading on the subject. I also spoke to health groups. So I got a fairly broad coverage of the various interest groups and sectors involved in this particular area.

Last but not least I want to turn to the conclusions that I put in my report. I said:
1. There was unquestioned recognition of the sensitivity, depth of emotion, and widely diverse range of views/values held on the ART issue.
2. In the political arena, there was never doubt expressed of the right of individual to a conscience vote on ART and related matters.
3. Clearly, the area is poorly governed as the pace of developments in science and technology has outstripped the capacity of legislatures to pass appropriate laws and regulations. The laws should have pre-empted the situations that may arise as a result of technology rather than to try to make laws that cannot help people retrospectively.
4. I am convinced that the embryo should be afforded a legal status with rights so that the situation of embryo adoption can be confronted in a responsible manner when it becomes an issue.
5. DIs must be told of the way they were conceived by their parents no later than the age of majority.

Of course, one of the things that came very much to the fore was that most people are never, ever told that they are DI conceived. Whilst I was in England attending their parliament there was an inquiry proceeding which would see anonymity removed from sperm donors in the very near future. My other conclusions were as follows:
6. DIs must have this fact—that is, the fact that they are DI conceived—indicated on their birth certificate or any certificate issued within 12 months of achieving their age of majority.
7. A register of donors must be kept centrally to allow the identity of the donor to be gained.
That does raise some conjecture with those who have a different view to mine, of course. My conclusions continued:
8. All donor sperm should be screened for ‘good health’.
9. Audit processes must be undertaken to ensure the validity of screening results.
10. Counselling must be made available independently of the clinic providing the procedure to the donor of the sperm/egg, to the parents, and to any DI child/adult upon discovering they were donor conceived.
11. Counselling must be audited to see that it is delivering the desired goals.
12. There seems to be an almost complete lack of research on the impact of donating sperm/eggs on donors on a longitudinal basis and no research on those who discover later in life that they are DI as to what their needs (including support) might be.
13. Attention must be given to those United Nations conventions that have application in this area, particularly the Convention on the Rights of the Child, the Universal Declaration on Human Rights, and the International Covenant on Civil and Political Rights.
14. I was surprised that a number of the people that I met with had not considered some of the issues that were raised and were now provoked to go away and look at those issues in a different light.
15. The issue of access to ART and associated consequences cannot simply be labelled as a matter of discrimination and treated in ‘cocoon like’ fashion as it was in the Bill before the Australian parliament in 2001.

And in my 16th conclusion I recommended that it would be appropriate in my view:
... for a broad-based inquiry to be conducted by the Human Rights sub-committee of the Joint Foreign Affairs Defence and Trade committee to look at the human rights issues raised as well as
the question—Are our international obligations to the offspring and people involved in ART being met by Australia? Failing this, then there should at least be an inquiry conducted by the Senate Legal and Constitutional References committee into the broad legal issues arising from ART and associated human genetic technologies.

I thought it was an interesting experience to say the least and the report is available if anyone wants a copy.

Women: Reproductive Rights

Women: Sexual Discrimination

Senator McGauran (Victoria) (1.54 p.m.)—I would like to address some comments that Senator Stott Despoja made during this lunchtime debate when she was referring to an upcoming documentary on the ABC called My Foetus, which has caused some interest of late. The point that Senator Stott Despoja made in a letter to the ABC, which she tabled, was that it should be made clear at the beginning of this documentary that it relates to the British experience. She made the point that what is and what is not easy, in particular in this case, is in the eye of the beholder. But I think on any reasonable person’s analysis, 44 late-term abortions in one high-profile, well-known, reputable hospital in Melbourne—44 per year at least for the past 10 years on average—is indeed a regular practice and no doubt an easy practice to obtain. That hospital is the Royal Women’s Hospital in Melbourne and I am able to verify those figures on the grounds that some time ago I was able to access them through freedom of information, so I am at liberty to talk with knowledge in regard to the late-term abortions undertaken at that particular hospital. Sadly and tragically, it is a regular event.

Opposition senators interjecting—

The Acting Deputy President (Senator Brandis)—Order! Senators on my left, stop interjecting!

Senator McGauran—I have spoken twice in this chamber on that particular matter. Currently there is one particular incident—

Senator Carr—Mr Acting Deputy President, on a point of order: I draw your attention to the sub judice provisions of the standing orders and remind Senator McGauran of those provisions. I understand he is canvassing issues that are currently before judicial proceedings in Melbourne.

The Acting Deputy President—Senator Carr, there is no point of order. Senator McGauran has not identified any proceeding or otherwise trespassed beyond the rules.

Senator McGauran—What Senator Carr is speaking about is a court challenge at the moment between the Royal Women’s Hospital and the Medical Practitioners Board. The Medical Practitioners Board is seeking the records of one particular stand-out case involving an abortion at 32 weeks.

Senator Carr—Mr Acting Deputy President, on a point of order: I have just raised the provisions of the standing orders in regard to matters that are sub judice. You have indicated that Senator McGauran had yet to mention it. No sooner had you finished your sentence than he did, in fact, mention the case. I would draw to your attention once again the standing orders on this matter.

The Acting Deputy President—Senator Carr, notwithstanding that, Senator McGauran has not said anything that in my view, or indeed the Clerk’s, would prejudice
those proceedings. The operation of the rule is not attracted.

Senator McGauran—The case is of public knowledge. The point that I wanted to make in regard to Senator Stott Despoja’s speech was that in Victoria, in fact, we do have under the criminal law that termination of a child after 28 weeks is a criminal act. Unfortunately, Senator Stott Despoja, the particular case that we are referring to and many others like it are in breach of that law. So while you may think that our laws are tougher than the British laws, on paper—indeed, in black-and-white law—they are not being enforced. I only wish that section 10 of the criminal act was being enforced. As I said at the beginning, ‘easy’ is in the eye of the beholder, but you should not be ignorant of the fact that, in one particular hospital, 44 late-term abortions occur per year and have done so for the past 10 years. I think, as I said, under any reasonable person’s analysis, that is regular. Sadly and tragically, it is common and, obviously, it is easy to access.

QUESTIONS WITHOUT NOTICE

Health: PET Scans

Senator McLucas (2.00 p.m.)—My question is directed to the Minister representing the Minister for Health and Ageing. Is the minister aware of the recent assessment report on positron emission tomography from the Medical Services Advisory Committee, which concluded that PET scans are clinically effective in diagnosing cancer? Minister, why did the Department of Health and Ageing water down the conclusions of this expert scientific group in an attempt to limit the roll-out of this technology? Will the minister now ensure that an accurate, comprehensive and independent evaluation of the cost-effectiveness of PET scans is developed to ensure that all Australians with cancer are able to access this valuable diagnostic tool?

Senator Patterson—The senator’s question is a detailed, technical one about the roll-out of PET scan machines. This government has committed more to health than the previous government in real terms. We have seen in the last budget a roll-out of magnetic resonance imaging machines to ensure that people have access to appropriate MRI insofar as it is possible. It is enormously difficult to ensure that Australians across the board get equal access to PET scans and to MRI scans. They are very expensive. The machine is very expensive. Tony Abbott is working assiduously with the radiographers and radiologists on negotiations to reduce the price of MRI scans to ensure that we can have as many around the country as possible. PET scans are very expensive.

What we want to know is what Labor are going to do and how they are going to cost it. They have already overspent their budget. They have spent more than they have been able to make in savings. We want to see their policy. Mr Abbott is ensuring that as many people as possible have access to radiography, to MRI and to PET scans throughout Australia.

Senator McLucas—Mr President, I ask a supplementary question. The minister’s answer went nowhere near MSAC and had nothing at all to do with the question. Can the minister explain why the Secretary of the Department of Health and Ageing has been forced to defend the manipulation of the findings of this scientific report? Who instructed the department to engage in the manipulation of the findings of this scientific report? Who instigated the department to engage in the manipulation of the report on this lifesaving technology when Australian experts agree that there is a large body of evidence showing the cost-effectiveness of PET in treating cancer, including the avoidance of unnecessary biopsies and the prevention of unnecessary surgery and hospitalisation? Why would
the department want to play politics with such an important issue?

**Senator PATTERSON**—I always take with a grain of salt allegations made by the Labor Party because I often find that there is not a skerrick of truth in them. I will ask Mr Abbott if he has any more to add to the answer I have given and, if he does, I will present it to this chamber as soon as possible.

**Australia-US Free Trade Agreement**

**Senator FERGUSON** (2.03 p.m.)—My question is to the Minister for Finance and Administration. I ask: will the minister inform the Senate of the benefits to the Australian economy from the liberalisation of trade and investment? Is the minister aware of any alternative approaches?

**Senator MINCHIN**—I thank Senator Ferguson for his appropriate question and note how hard our government has worked to liberalise trade and investment flows through both multilateral and bilateral arrangements. This week we have seen good news on the multilateral front, from Geneva, in relation to agriculture and trade barriers through the Doha Round. We acknowledge Mark Vaile’s tremendous work in that area.

On the bilateral front, increasingly Australians are recognising the enormous potential benefits that we are likely to get from the US free trade agreement. Even the opposition has acknowledged that one of the great benefits to flow from the US FTA is in relation to foreign investment, which has been critical to the creation of jobs and economic growth in this country for 200 years. Indeed, Queensland Labor Premier Peter Beattie told *Late line* on 30 July that that was one of the key reasons he was very strongly supportive of this FTA. He said:

In Queensland we’ve got major projects I would like to see get up and can’t because there is not enough capital.

A free trade agreement, in his view, would encourage more capital into the country. In the *Australian Financial Review* he said:

Many business opportunities either don’t progress or are lost overseas because our pool of investment funds in Australia is too small. So having more US equity directly investing in Queensland and Australia will help our economy grow.

Sound advice, sound words from the Queensland Premier. The Centre of International Economics study which showed the very substantial gains to GDP from this agreement focused on the benefits in relation to foreign investment and the decrease in the cost of capital in the economy. I note that the US is already the biggest foreign investor in Australia, and that will only grow under this great agreement.

The state Labor premiers are supporting this agreement through action. All eight of the state and territory governments have implemented the government procurement chapter in their respective jurisdictions. On the other side of the Pacific, 28 American states have opened access to their government procurement arrangements to Australian firms, and that is in addition to the US federal government. That includes California, New York, Texas, Pennsylvania and Florida. The really big states have come on board to open up government procurement to Australian businesses. Premiers Beattie and Bracks are pointing to the benefits to business, in particular, from this outstanding agreement. This is in stark contrast to the position taken by the federal Labor leader, Mark Latham—

**Senator Faulkner**—Mr President, I raise a point of order. I have been listening carefully to Senator Minchin’s answer to the question that was directed to him, and I assume that you would have been too.
Senator Ian Campbell—You did say it was a point of order, so where is the standing order—

Senator Faulkner—The standing order I am referring to is 73(2). Get out the standing order book and have a look. If you learn them like I have, you will know them. Standing order 73(2), Mr President, goes to anticipating debate, as you would be aware. I have listened very carefully to the question. I have listened to Senator Minchin’s answer. I believe he is in breach of that standing order. This is typical of the contemptuous standards of this government. I would ask you, Mr President, to rule him out of order or ensure that he conforms with the standing orders in the answer to the question that has been directed to him.

The PRESIDENT—I believe that the minister is conforming with the standing orders.

Senator MINCHIN—The Leader of the Opposition in the Senate is merely displaying the internecine warfare in the Labor Party, with the Left bitterly divided on this issue. The Labor Party is bitterly divided on this critical issue for Australia.

Senator Faulkner—Mr President, I rise on a point of order. Under standing order 73(2), how is it competent for such a question to anticipate discussion of a matter on the Notice Paper? I do not mind Senator Minchin answering a question broadly about trade, but the terms of this answer are now clearly in breach of the standing orders. Mr President, it is your responsibility to ensure the standing orders are adhered to. I ask you to address standing order 73(2) and to rule that part of this answer out of order—it is not competent.

The PRESIDENT—The matter is being debated in the chamber in a moment and it is being debated widely in the community. Therefore, I do not believe that the minister is out of order.

Senator MINCHIN—I am talking about a very important free trade agreement for Australia, the great benefits that will flow to Australia from that agreement and the great support being given to that agreement—unconditionally and unequivocally—by the state Labor premiers. I am surprised that the Left of the Labor Party, in the form of Senator Faulkner, is showing such sensitivity to it. Clearly, peace does not reign within the Labor Party on this matter. But what I want to draw attention to is the incredible contrast between the positions Mr Latham has adopted on this issue. He has dithered and equivocated for five months on this issue. Now he is putting up all sorts of red herrings that are neither here nor there. He says he is prepared to destroy the free trade agreement on the basis of a couple of red herrings that are sops to the likes of Senator Faulkner and the rest of the Left, who are exposing their chronic anti-American attitude to this issue. Mr Latham cannot make up his mind on issues like that. Either he makes decisions on the run, as he did on troops, or he cannot make a decision at all, which is bringing into great disrepute his and his party’s relationship with our most important partner: the United States of America.

Australian Broadcasting Corporation

Senator MACKAY (2.09 p.m.)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer the minister to the Media Watch program of 26 July, which exposed the ABC’s new policy of further restricting the licensing of archival footage of politicians’ media statements to certain documentary makers. Can the minister advise whether she intends to request the ABC to provide its archival news footage to all film and documentary makers, including ad-
cacy or cause programs, or will she be further limiting the provision of this material?

**Senator COONAN**—I thank Senator Mackay for the question. No, I will not be trying to limit anything that the ABC may be doing by way of its operational mandate. The ABC will no doubt decide what is appropriate in terms of how it may or may not make available its archival footage. It is not something that the government would seek to be imposing one way or the other on the ABC. There seems to be some misunderstanding, certainly on the part of the Labor Party and perhaps in the community more broadly, about this government’s role with the ABC. I think it is very important that there is public confidence in the ABC. There is obviously a role for government to ensure that public confidence is maintained for fair and balanced reporting but, when it comes to matters of the way in which the ABC wishes to operate and to make available its archival footage, that is a matter for it. When I have an opportunity I will seek an explanation from the board as to the basis for that decision, but it is not something that the government has any right or obligation to impose on the ABC.

**Senator MACKAY**—Mr President, I ask a supplementary question. I thank the minister for that answer. Under the ABC’s new policy, would the minister agree or disagree to a documentary maker’s request to use audio of her misguided and discredited statements on ABC radio in 2002 that people who have anxiety or depression are ‘maligners’? Is that one example of a foolish political statement that she would now like to have prevented from public exposure?

**Senator COONAN**—The supplementary does not arise from the question and I do not propose to deal with it.

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**Health: Pharmaceutical Benefits Scheme**

**Senator KNOWLES** (2.12 p.m.)—My question is to the Minister representing the Minister for Health and Ageing, Senator Patterson. Can the minister inform the Senate how the Australian government has acted to protect and strengthen the Pharmaceutical Benefits Scheme and what the effect of any alternative scheme on government policy would be?

**Senator PATTERSON**—I thank Senator Knowles for her question and for her long and abiding interest in health and in the Pharmaceutical Benefits Scheme. When we came to government we found a $96 billion debt and a $10 billion rack-up of debt in the last year Labor were in government. They were spending beyond their means. While we have been balancing the budget, reducing debt by $70 billion and putting more money into health than ever before, we have also been ensuring that the PBS is affordable and sustainable.

We are also ensuring that new pharmaceuticals can come onto the PBS. We have had a range of initiatives, including the swiping of the Medicare card, to make sure that people who are entitled to the PBS get their PBS and to reduce the risk of fraud from people getting more than they are entitled to. We have had the home medicines review, where people can have a pharmacist come to their home and go through their medications with them to ensure that they are using their medications wisely and that they are not ending up with the results of polypharmacy from taking medications that are contraindicative.

We have also put the true cost of medicines on the bottles or packages. That has been a real eye-opener for many people. Every Australian who has a PBS medication is highly subsidised by the taxpayer. The most commonly prescribed medication on the PBS costs $80 per person per month. We
put one medication on the PBS this year, because we have been able to manage the economy and the PBS, which costs $25,000 per person for 9,000 people. You cannot keep doing that if you do not have a system that is sustainable.

When we were in opposition we were as concerned about the PBS as we are now. When the Labor Party introduced copayments for pensioners and veterans, what did we do as an opposition? We believed it was fiscally responsible as an opposition to support those measures. What happened when Labor got the opportunity to show their commitment to the PBS 25 months ago when we suggested an increase to the copayment? They failed the test to ensure that the PBS was sustainable and affordable. When did they crumble? They crumbled when Mr Latham had gone out making a range of promises he could not keep and they had to agree, for crass political reasons, to the increase in the Pharmaceutical Benefits Scheme. You have been found out for what you are. With the free trade agreement you have been found out again for what you are. We believe that in opposition and in government—

The PRESIDENT—Minister, I ask you to address your remarks through the chair.

Senator PATTERSON—Labor have been found out for what they are. We in opposition supported measures that were responsible to maintain the sustainability of the PBS. Labor are just an opportunistic party. We will continue to commit to maintain affordable access to prescription medicines for all Australians through a sustainable PBS. Nothing—and I repeat nothing—in the free trade agreement will facilitate or promote the issue or evergreening of a patent and therefore stop a generic coming onto the market. We have demonstrated our commitment. We have said over and over again that we would do nothing to affect or put at risk the Pharmaceutical Benefits Scheme. The generic industry today said that they are satisfied ‘the free trade agreement would not let drug firms delay generics coming onto the market’. Mr Montgomery, the head of Alphapharm, said that he was ‘satisfied the trade deal would not encourage evergreening’. Dr Ruth Lopert said, ‘The legislation neither encourages nor prevents it; it does not affect it.’

Mr Latham has brought in these amendments to buy off the Left that he bought for their vote. That is what he has done, Senator Lundy and Senator Campbell. That was the price we paid. Mr Latham sits on the fence.

Telstra: Privatisation

Senator MARK BISHOP (2.17 p.m.)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer to the minister’s comments on the day the new ministry was sworn in that she might refine the Telstra sale legislation to ensure its passage through the Senate. I also refer to the minister’s comments one week later in the Financial Review that the chances of revisiting the Telstra sale legislation before the election were remote. Finally, I refer to the minister’s statement late yesterday ruling out the structural separation of Telstra which followed her comments in the Age yesterday supporting the structural separation of Telstra. Given that the minister has now espoused three different policies on Telstra in just two weeks, can the minister outline for us today’s position on the government’s plans for Telstra? Can the minister also outline the reasons for these two spectacular backflips just two weeks into the job?

Senator COONAN—I am very grateful to Senator Bishop for raising this question. There are no inconsistent positions with anything I have said about the government’s policy in relation to the intention to sell Tel-
stra. That is what I said in the very first interview I ever gave, and it is what I have said consistently since. The government’s policy on the sale of Telstra has not changed. As I said yesterday and as I have said consistently, the timing as to when this is achievable will depend on a number of matters. Of course, it depends on shareholder value. That is a matter for my colleague Senator Minchin and gives rise to the ridiculous conflict that this government is placed in because of the intransigence of the Labor Party to pass the legislation for the sale of Telstra. The second thing it depends on is that rural and regional services to the bush and to other areas where there are some difficulties with telecommunications are up to speed. Thirdly, it depends on enabling legislation.

I have never said that that is achievable before an election, and it is probably not achievable for some considerable time because of the need to ensure shareholder value. There is nothing inconsistent with any of those positions. I also said in about the first interview I ever gave, or certainly in the second, that I do not support the divestiture of Telstra. I said that then, I said that yesterday, and I will say it tomorrow if anybody asks me about it. The only thing I said was that I understand that people talk about it.

I do understand that that was what the Labor Party espoused until, through the shadow minister Mr Tanner, there was the most spectacular backflip. The only party that has been interested in slicing and dicing Telstra is in fact the Labor Party. It certainly is the case that this government has never suggested that there be any cutting up of Telstra, any vertical cut-up, any horizontal spin-offs or any hollowing out of Telstra. The best thing for the sale of Telstra is that Telstra be strong enough to ensure shareholder value so that it can be sold and this government can get on with its core business, which is to regulate and to ensure competition in the sector.

That is what I have said consistently. No matter what you do to try to misrepresent what I say, it does not alter the fact that the government’s policy has not changed. It is absolutely shameful that the Labor Party wants to bring up this issue in the face of intransigence—just refusing to pass a bill that is going to deliver better outcomes not only for rural and regional Australia but also for the whole country.

Senator MARK BISHOP—Mr President, I ask a supplementary question arising from that response. Why did the minister say in her press release yesterday, ‘The Government does not support structural separation of Telstra in any ... form’ when, on the same day in the Age, she stated that she could see that structural separation ‘has appeal’ and that ‘splitting Telstra in two could appease rural concerns’ over the government’s Telstra sale plans? Minister, why did you make two completely different statements on the government’s policy on Telstra in the space of a few days? For the benefit of Telstra shareholders and Australians generally, can you outline your thoughts today on the structure of Telstra?

Senator COONAN—Thank you for the supplementary question, Senator Bishop. I have outlined, I think, in fairly considerable detail both yesterday and today the government’s policy in relation to the sale of Telstra. I have never suggested that there should be some structural separation of Telstra. You can ask me the question again, if you like—
the government’s policy has not changed, and that has been what I have said. I have nothing further to add to how you might otherwise package the sale of Telstra. Obviously it is a matter where I hope that some light will dawn on some of the people sitting opposite so that the great benefits of selling Telstra will be apparent.

Immigration: Baxter Detention Centre

Senator STOTT DESPOJA (2.23 p.m.)—My question is addressed to the Minister for Immigration and Multicultural and Indigenous Affairs. Is the minister aware that the private company running Baxter detention centre, Global Solutions, has established a new Red 1 compound for a punishment program it calls the ‘four-phase behaviour regime’? Is the minister aware that this program apparently includes 20 hours of isolation per day and can last up to six weeks? Given that immigration detention is only lawful under our Constitution for administrative reasons, and by law only the courts can punish people, will the minister investigate the treatment being inflicted upon these people—people who are being detained for administrative purposes?

Senator VANSTONE—Senator Stott Despoja, I saw the article that you wrote for the Advertiser—I think it was published this morning—and I will have something more to say about it at another time. It is perhaps appropriate to point out here, because it relates to Senator Stott Despoja’s question, that her article is riddled with what I will be generous and refer to as inaccuracies—although I find it difficult to understand why someone of Senator Stott Despoja’s intellect, in a job such as hers where she has the capacity to get the facts right, could so comprehensively get it wrong in relation to immigration issues and in that process, I would argue, quite seriously mislead the public. The article did of course refer to her visit recently to Baxter detention centre with Merlin Luck of—

Senator Mason—Big Brother.

Senator VANSTONE—Big Brother fame. I did read an article in the paper saying that, of the two people who visited, one was a sort of five-day wonder and the other was Merlin Luck—which I thought was a bit harsh on the senator, actually. I did ask myself, ‘Why does Senator Stott Despoja want to go there with Merlin Luck? Would it be that she is hoping to get some publicity for herself out of doing so?’ And cruelly, in one of my deeper, darker moments, I thought, ‘Yes, that is probably why she did it.’

There is a process in Baxter detention centre for dealing with people who understandably, under these conditions, are anxious about whether they are ever going to get a visa—of course, these people are not refugees; these are the people who it has been decided are not to be refugees. But the senator, along with others, has done a pretty good job of convincing Australians that, when you think of the word ‘refugee’, you think of Baxter detention centre when you should think of people out in the community on protection visas. You should think of the 12,000 to 13,000 refugee and humanitarian people coming in every year to this country and getting permanent protection. But, no, the senator wants to focus on people who it has been decided are not to be refugees and are lawfully pursuing those claims.

It does happen sometimes that people in these circumstances threaten to harm—and sometimes do—Commonwealth property. Sometimes they threaten to harm, and sometimes do harm, themselves. There is a process for handling that and a process for handling their reintegration into the normal compounds in Baxter. I will make inquiries to see if there has been any change in respect of that, but I make the point that this is one
of the most publicly scrutinised areas of government. It should be, and I am unaware of any recent change. If there is one, Senator, I will get back to you and you can rush up there with Merlin Luck again.

Senator STOTT DESPOJA—Mr President, I ask a supplementary question. I am glad that the minister found this so amusing. I ask her again: does she confirm—because she did not mention the words—that a new Red 1 compound has been established with the ‘four-phase behaviour regime’? I thank her for her undertaking to see if any changes have taken place in recent times. From the minister’s answer, can I assume that she is only talking about people being placed in isolation for the purposes of prevention of self harm, as opposed to reasons to do with punishment—for example, if a detained person has allegedly spat on the ground in front of a nurse? I ask the minister whether she will investigate these complaints and also, in relation to her comment on scrutiny, whether she will make public the documentation that relates to those detained people who have been punished.

The PRESIDENT—Senator, that is a very long supplementary question.

Senator VANSTONE—Senator, I did not find your question funny. I thought the prospect of you carting up there with Merlin Luck was amusing, not your question. I certainly did not think your misleading of the South Australian community was amusing at all. As to the question of releasing any information to you, I will give that consideration but, if you are unable to get the facts right on all of the information that is currently available to you, I cannot see that adding more information to the pile will assist you. You have not waded your way through what information is publicly available to get that right. So I will do you a favour and perhaps limit the information to you so that you can get on top of what you have already got. I will see if I can help you out there! You might do the Australian public a favour, Senator, and every time you open your mouth, mention the $2 billion in a budgetary period—$500 million every year—this government spends on refugee and humanitarian intakes into this country and give us a gold star.

Senator Bartlett—That’s torture!

Senator Abetz interjecting—

Senator Kemp interjecting—

The PRESIDENT—Order! Senator Abetz and Senator Kemp, come to order!

Senator Abetz—Mr President, I rise on a point of order. Is it in order for one senator to accuse another senator of wanting to torture people? If not, it ought to be withdrawn.

The PRESIDENT—Senator, of course unparliamentary language and accusations are unparliamentary but unfortunately I cannot hear anything up here for the noise down your end of the chamber. I was trying to bring people to order.

Senator Bartlett—Mr President, on the point of order: to assist you—

The PRESIDENT—I have already ruled that there is no point of order because I could not hear what was being said.

Senator Bartlett—Mr President, I raise a further point of order. There are interjections being made demanding that I withdraw. To assist you in your job of ensuring we have order as well as honesty, there should be an opportunity for the facts to be put on the record about the statement that has been made. It is a simple fact that this government tortures people in detention, but if the minister wants to make statements—

Government senators interjecting—

The PRESIDENT—Order! Senator Bartlett, there is no point of order.
Taxation: Family Payments

Senator JACINTA COLLINS (2.31 p.m.)—My question is to Senator Patterson, the Minister for Family and Community Services. I ask the minister: is she aware of a minute sent by the secretary of her department shortly before question time today to the community affairs committee? Is the minister aware that her secretary has admitted that the department provided wrong information to the community affairs committee about changes to the indexation of family tax benefits as a result of the budget? Is the minister aware that her secretary has admitted that the department provided wrong information to the community affairs committee about changes to the indexation of family tax benefits as a result of the budget? Is the minister aware that her secretary has admitted that the department provided wrong information to the community affairs committee about changes to the indexation of family tax benefits as a result of the budget?

Senator PATTERSON—That was a very dramatic performance by Senator Collins. It gives me yet another opportunity to say—and I know people will be tired of hearing it, but I am going to keep saying it—that as a result of good economic management we were able to give people a $600 bonus per child before the end of the financial year to support families supporting children. We ran the economy in such a way that we were able to give them a social dividend. We were able to increase the family tax benefit last financial year and every financial year after that by $600 per child. Labor has failed to commit to that $600 increase beyond this financial year. When this question was raised in estimates in June and a query was put over the indexation of the family tax benefit, I issued a press release saying I would guarantee that the $600 would be maintained in real terms. The secretary wrote to the committee this morning. The letter states:

At estimates hearings there was a discussion in relation to the effect of the CPC—that is, the combined pensioner couple benchmark—over the forward estimates period. The information provided by departmental officials was believed to be correct at the time but subsequent analysis has shown that it is possible under current assumptions on CPI and wages growth that family tax benefit A rates for children under 13 and for 13- to 15-year-olds may increase under clause 7 of the CPC benchmark within the forward estimates period.

It is quite obvious that there was no intention that the legislation would affect the safety net. We are giving families a $600 increase in the family tax benefit. Labor were running around and scaremongering, and they did not get it correct. One person said it was going to be effective in three years, another said it was going to be effective in five years and Mr McMullan sent out a letter to his colleagues saying that it was going to erode gradually. There was no factual information; there was just scaremongering. Maybe they were covering up because, as I have said, they have failed to guarantee the $600 beyond this financial year. Mr McMullan said he could not do it. Mr Latham was asked on the 7.30 Report, ‘Will you guarantee that families will not be worse off under you?’ and do you know what? He would not guarantee it. Of course he would not guarantee it. You know what will happen if Labor ever get their hands on the levers: interest rates will go up, unemployment will go up—

Senator Jacinta Collins—You’re a fraud!

The PRESIDENT—Order! I would ask you to withdraw that.

Senator Jacinta Collins—Mr President, I withdraw.

Senator PATTERSON—You know you are getting at them when they go down into the gutter and make those sorts of statements. Senator Collins knows that they have not guaranteed the $600 per child to families
beyond this financial year. We have guaranteed that that will be maintained in real terms. There will be a legislative change which ensures that the position is reinstated. It was quite obvious from what the secretary said that the department and I were not aware of the implications.

Senator Jacinta Collins—Mr President, I ask a supplementary question. The minister refers to the gutter, yet we still do not have answers to the last round of estimates and the government this round has refused to provide forward estimates for the whole portfolio. So let us not refer to gutters. The minister has refused to define what she means by ‘real terms’. Contrary to the Treasurer’s assurance that this extra $600 would be enduring, we now know that this is not the case. Minister, isn’t it the case that without action from the government the full value of the $600 payment will be clawed back within five to seven years by cutting future increases to the family tax benefit? Minister, doesn’t this confirm that the government’s budget package for families was always about a short-term political gain rather than providing any long-term financial relief for families?

Senator Patterson—They get their question, they get their supplementary and they cannot then redesign the supplementary to fit the answer they have been given. Senator Collins gets up and gives a supplementary that is absolute nonsense. I have indicated that we were not aware of the impact of the forward estimates in the legislation.

Senator Jacinta Collins—So you are going to fix it now?

Senator Patterson—Senator Collins is screaming out: are we going to fix it?

The President—Order! Senator Collins, you have asked a question.

Senator Patterson—Of course we are going to correct what was obviously not the intent of the legislation. What the Australian public want to know is: will the Labor Party guarantee the $600 beyond this financial year? And the answer at the moment is no—no family policy; no tax policy. We are guaranteeing the $600. We are maintaining it in real terms. You have no guarantee for families. On average a family with two children will lose $1,200.

Education: Higher Education

Senator Nettle (2.37 p.m.)—My question is to Senator Vanstone, the Minister representing the Minister for Education, Science and Training. It relates to the opening of the new Sydney campus of Notre Dame University, a private university that is subsidised by the federal government and will train medical students. I refer to the Prime Minister’s statement on Sunday welcoming the university as an ‘expansion of the church into tertiary level education’. Is the minister concerned by the report in the Australian that said:

... the medical faculty would include major ethical and philosophical components, focusing on Catholic approaches to euthanasia, abortion and genetics technologies.

What steps is the government taking to ensure that Notre Dame medical students receive the same medical training as students in public universities?

Senator Vanstone—I thank the senator for the question. I did see some coverage of that and, again, I noticed a strong commitment from this government to choice in education, not just everything designed by the government but what is best for you. I thought it was a great move—you may not agree. I did not see the remarks with respect to ethics training that might be targeted towards particular values held by Roman Catholics, but I have to say that does not worry me. It may not have occurred to you yet, Senator, but this is a free country where
you can practise any religion you want. You can learn about any religion you want, including what their ethics and values are. We should celebrate that diversity. It is one of our greatest strengths that you can say what you like however ridiculous I might think it is, and I can say what I like however ridiculous you might think it is. That is the essence of freedom. So if there is a Catholic university that wants to teach some of their ethics—good. Am I confident that the doctors who come out of there will be as well trained to practise medicine? Yes.

Senator NETTLE—Mr President, I ask a supplementary question. The minister may not therefore be aware of comments in the same article by the vice-chancellor of the university. He was asked by the Australian whether the faculty would teach students how to perform abortions, to which he replied: ‘I certainly hope not.’ Given that Sunday is National Abortion Rights Day, will the government contact the vice-chancellor of the university to ensure that Notre Dame medical students at the university are trained and are equipped to provide women with a full range of comprehensive reproductive choices, including access and the right to a termination?

Senator VANSTONE—A lot lies in that question. You would be familiar with the fact that there are some procedures that are used in effect for an abortion, which are not always used for an abortion. You cannot tell from what is written down that someone has received a certain procedure or what in fact the purpose of that procedure was, so they may be trained in those other procedures. I come back to the point about it being a free country: if a doctor does not want to practise abortions, they do not have to. You might not like that. My views in relation to abortion are very clear, Senator—they may in fact be quite similar to yours—but I also have the commonsense to say that other people are entitled to a different view in a free country, and I am glad I live in one.

Australian Customs Service

Senator FAULKNER (2.41 p.m.)—My question is directed to Senator Ellison, the Minister for Justice and Customs. Can the minister confirm that changes to the Customs regulations introduced in August 1999 removed all impediments to Customs notifying the Australian Sports Commission and the Australian Sports Drug Agency of anyone caught importing performance-enhancing drugs? Can the minister now explain why this process has not been followed and why the Australian Customs Service has not notified the ASC and ASDA in all cases as expected under Customs law? Minister, on how many occasions since 1999 has Customs intercepted suspected prohibited performance-enhancing drugs and not passed the information to the relevant Commonwealth authorities? On how many occasions has Customs intercepted importations of these materials and no follow-up action has occurred—either legal action by Customs or breach action by the Australian Sports Commission?

Senator ELLISON—Senator Faulkner asked about the changes in 1999. I can say that, as a result of legislative changes in late 1999, Customs is now able to share information on performance-enhancing drugs importations by competitors and/or officials with the Australian Sports Commission and the Australian Sports Drug Agency. Prior to this, Customs did not have any legislative power to notify the ASC about any alleged importation of performance-enhancing drugs by sporting competitors or officials. Customs is not involved in any subsequent process once the relevant information is provided. The imposition of sporting sanctions against the offender, of course, is a matter for the relevant sporting body.
With regard to the request recently by the Australian Olympic Committee for assistance, Customs completed checks against its records in relation to a group of athletes and officials nominated by the Australian Sports Commission as potential members of the Australian Olympic team for 2004. The checks involved more than 850 individuals, and it is a credit to Customs that this task was completed on 15 July, only three days after the request from Mr Coates was made. Customs has provided results to the ASC in accordance with the requirements of the Customs Administration Act 1985 and legislation covering the ASC and the Australian Sports Drug Administration. Customs, I might add, is in the process of reviewing holdings on the names provided in relation to the 2004 and 2000 Olympic teams.

What you have to remember in relation to this question from Senator Faulkner is that we intercept mail coming into this country— at the moment, it is 100 per cent. In days gone by that level of scrutiny was not there. In relation to intercepted PEDs, performance-enhancing drugs, what Customs has in some cases is not the person who sent it but the addressee. What we have to go by is the information that we have and if any comment is made by the person concerned. If there is no other evidence to back that up then it is very difficult for Customs to pursue the issue.

In relation to sporting matters it is even more difficult because Customs is not in a position to know who is likely to be, or who has been, in an Olympic team. One would have to know the names of the individuals concerned. In the case I have mentioned recently, 850 individuals have been checked and information has been provided expeditiously to the relevant body. I will take on notice the number of interceptions of performance-enhancing drugs and I will advise the Senate accordingly.

What I say to people is that it is extremely difficult for Customs to assess in each case whether or not a person may be involved in an Olympic team or is a professional sportsman. In fact, some of the people who have been mentioned—and this goes back some years—may not have been as well known as they are now, and that is one of the issues that Customs faces. In any event, upon the detection of a performance-enhancing drug, it is seized and action is taken so that it is not allowed to go any further than that. In relation to the subsequent follow-up of the seizures that are made, I will provide that to the Senate as well. This is an important issue, one which Customs takes very seriously. But you have to remember that in the circumstances I have outlined, it is often difficult to pursue. (Time expired)

Senator FAULKNER—Mr President, I ask a supplementary question. Is the minister aware of a recent case regarding an Olympian where breach action was initiated more than five years after the interception by Customs? Is he also aware that this action could not progress in the Court of Arbitration for Sport because proper analysis and identification could not be undertaken on the suspect material as Customs had destroyed the material shortly after the interception? Is the Minister for Justice and Customs satisfied with these actions of the Customs Service in the fight against drugs in sport? If not, what actions has he ordered Customs to take?

Senator ELLISON—Senator Faulkner is referring to a matter that took place five years ago. In relation to that case, he is touching on evidence that was given recently—if I understand that correctly. I will look at that aspect and advise the Senate further if I have anything to add. But I can say this: I am totally satisfied the Australian Customs Service carries out a very professional job in relation to the intercept of perform-
ance-enhancing drugs and that it will continue to do so.

As I mentioned earlier, in 1999 there was a change in the legislation to the circumstances in which Customs can operate. You have to be very careful in relation to catching perpetrators that you also guard against innocent people being set up in these sorts of circumstances. That is why we take a very measured approach to this, albeit a very strong one.

**Trade: Free Trade Agreement**

**Senator CHAPMAN** (2.48 p.m.)—My question is directed to the Minister for Fisheries, Forestry and Conservation, Senator Ian Macdonald. Will the minister inform the Senate how the Howard government’s effort to secure greater access to foreign markets will benefit Australia’s seafood industry, which is an especially important industry in my home state of South Australia?

**Senator IAN MACDONALD**—Senator Chapman, coming as he does from South Australia, has a real interest in the free trade agreement and how it impacts upon the seafood industry. It is an appropriate question today because today we are all invited to experience the seafood industry’s wares in Parliament House. I know many senators will be there, and it is great to see a lot of the leaders of the seafood industry in the gallery today. Those leaders of the seafood industry will understand how very important the free trade agreement is to Australia.

Our seafood industry is export focused and dependent, so any effort to secure greater access to foreign markets must benefit the fisheries industry. The US seafood industry is worth some $34 billion annually. The free trade agreement will offer enormous opportunities to the Australian industry for closer integration with what is really the world’s largest seafood industry and the world’s largest economy—an integration that will offer Australian primary producers hundreds of new jobs and hundreds of new opportunities.

The Australian seafood industry currently exports about $140 million worth of product. All of that will enter the United States from the commencement of the free trade agreement absolutely duty free. But there is no need for me to tell senators this: all senators have to do is ask the seafood industry about it. They have indicated that the free trade agreement is very important to their industry and that it should be adopted by Australia at the very earliest opportunity. Indeed, Mr Russ Neal, the CEO of the Australian Seafood Industry Council, said:

With the support of the US Congress in place, it is hoped the Australian legislation will clear its final hurdle quickly, enabling seafood exporters to plan into the next year with new confidence.

Mr Brian Jeffriess, the CEO of the Australian Tuna Boat Owners Association, said that this is a chance that comes along once every 30 to 40 years and the industry has been fighting for the lifting of tariffs on tunas for over 20 years. Of course, why wouldn’t it have been? Effective immediately, the 35 per cent tariff on canned tuna will be removed, adding up to $20 million to the Port Lincoln Tuna Processors’ bottom line. As Senator Chapman knows, the cannery in Port Lincoln is the largest employer on the Eyre Peninsula, and perhaps in regional South Australia. I have also spoken with the Queensland industry. They are very supportive of it.

I have been asked whether I know of alternative policies that might affect the seafood industry. I know of a number. The industrial relations policy of the opposition is such that it would destroy the seafood industry with their proposals to re-regulate the labour market. Their proposal to remove a portion of the diesel fuel rebate from the mining industry is important because, if they would do that to a big industry, what would
they do to the seafood industry and what impact would that have on the industry?

The uncertainty to the seafood industry—indeed, to all Australian industries—created from the fact that the Labor Party cannot make up their mind on the free trade agreement is simply appalling. The Labor Party do not know what they are doing. They are all over the shop. Senator McLucas and Senator George Campbell were totally opposed to it—unlike the Queensland Labor Premier—but now they are half and half. Who knows where they are? (Time expired)

Sport: Drug Testing

Senator LUNDY (2.52 p.m.)—My question is to Senator Kemp, the Minister for the Arts and Sport. In light of all the circumstances regarding doping and injection practices on AIS premises, can the minister now inform the Senate whether he has full and unqualified confidence in all actions undertaken by the Australian Institute of Sport and the Australian Sports Commission since the discoveries made at Del Monte in December last year? Has the Anderson report given the minister any cause for concern about how these matters have been handled by Commonwealth agencies under the minister’s responsibility?

Senator KEMP—Senator Lundy will of course be referring to a case which has received very substantial press coverage in recent times. I have indicated to this chamber on a number of occasions that this is a difficult issue which has not been made easier by the leaking of confidential material that may have appeared before courts and because of the allegations that have been made. I have a lack of confidence, Senator Lundy, in the way you and some of your colleagues have handled this and because of the willingness to air material which sometimes is not appropriate.

The assurance I have received from the Sports Commission is that these investigations have been carried out in an entirely appropriate fashion. Senator Lundy, you will take some comfort from that fact because, of course, you are entirely critical of anything that the Australian Sports Commission does. You have a particular set against the Australian Sports Commission, in part because it opposed your plan to put a four-lane highway through the front of the Australian Sports Commission, which would have ruined it. You have a particular grudge against the Sports Commission. I have received assurances that the Sports Commission has carried out its particular role as it should have, but this matter will be the subject of an inquiry.

You would be aware that recently I asked former justice of the Supreme Court of Western Australia Robert Anderson to have an inquiry into this matter. There were three parts to the inquiry. The first part has been dealt with and the report has been tabled in this parliament. The second part of the inquiry—

Senator Faulkner—Is it concluded? Own up!

Senator KEMP—Senator Faulkner, you too are entitled to ask a question, but you should stand up and follow proper procedure.

The PRESIDENT—Minister, ignore the interjections and address your remarks to the chair. Senator Faulkner, come to order.

Senator KEMP—The second part of the inquiry relates to duty of care issues at the AIS, and Robert Anderson will report on that matter. The third matter to be inquired into is how this matter was in fact handled. Senator Lundy, you will have the satisfaction of knowing that a very distinguished juror in this country is examining these issues, not in the light of trying to damage people or make political points but in seeking to ensure that
these matters are handled in an appropriate fashion. He will be reporting at the end of October and then, on the basis of that report, we will see whether or not the allegations you have made have any substance.

Senator LUNDY—Mr President, I ask a supplementary question. I hope the minister is able to answer this question. Is the minister satisfied that the Sports Commission took all appropriate actions at the proper time in relation to the appropriate handling of evidence from Del Monte, in particular the DNA testing of material in the sharps bucket? Given the effects of delay in the DNA testing, what action has the minister ordered regarding the proper securing and analysis of other evidence, including payment and ordering records contained on Del Monte’s computers?

Senator KEMP—There has been an independent inquiry into these matters, initially under Mr Stanwix. Following the allegations made at the end of May about naming five athletes, a further inquiry was instituted under Robert Anderson, who was charged to investigate and report on these matters. Further, these matters will be considered in relation to the other two terms of reference that have been given to Robert Anderson. Frankly, before we make accusations about people and attempt to damage institutions and traduce the reputations of people, which you are so happy to do, let us see what Robert Anderson produces. He is investigating these very matters which Senator Lundy has raised in this parliament. Let us wait for his report. (Time expired)

Defence: Shoalwater Bay

Senator CHERRY (2.58 p.m.)—My question is to the Minister for Defence. Last month the minister announced that the Shoalwater Bay facility would be upgraded to establish a state-of-the-art Australia-United States joint combined training centre, a proposal which has caused some concern in Central Queensland. Will the minister release the full text of what has been agreed with the US on joint training at Shoalwater Bay? Given the environmental sensitivity of Shoalwater Bay, will he guarantee that environmentally harmful devices such as weapons using depleted uranium and marine sonar technology will not be used? Will he guarantee no nuclear powered vessels will use our waters during exercises and that there will be no permanent closure of maritime military boundaries affecting safe access and anchorage? And will the minister meet with the Livingstone Shire Council to discuss funding for roads, infrastructure and services affected by the joint exercises?

Senator HILL—The joint combined training centre initiative will establish a network of state-of-the-art facilities where Australian and US forces can undertake joint training supported by improved instrumentation and simulation. This was agreed at the recent AUSMIN talks in Washington. Under the concept, the Shoalwater Bay training area in Queensland, the Bradshaw Field training area and the Delamere Range facilities in the Northern Territory will be upgraded and subsequently linked with compatible US training facilities. The specific projects in relation to the upgrades still need to be approved by both governments in the coming months.

The initial priority is being given to the upgrade of the Shoalwater Bay training facilities in order to better support Exercise Talisman Sabre in 2007. As all senators will know, the Shoalwater Bay military facility is well established and utilised extensively by Australian forces and our friends and allies—for example, Singapore, which not only utilises the facilities but retains equipment in Queensland to facilitate its training exercises—and is also utilised in joint training activities. The upgrading of those facilities to use modern-day instrumentation and
simulation will be a major asset for the ADF, providing improved training and therefore improved operational capability. Training jointly with the United States will, in turn, facilitate improved interoperability—which is extremely important these days.

The safeguards on the environment at Shoalwater Bay are well understood and respected by Defence. In fact Defence is very proud of its environmental record in relation to Shoalwater Bay. In relation to military vessels, we do not prohibit any specific military vessels but there are well-established rules under which they have to operate—again in part to ensure the highest possible environmental standards. In relation to the Livingston Shire Council’s interests in roads, Defence has, for many years, made financial contributions to the upkeep of roads in Shoalwater Bay. It is currently consulting with the Livingston shire on the level of Defence contributions for the 2004-05 financial year. In conclusion, the government appreciates the cooperation and support of the community in that region of Queensland. They are very supportive of the ADF’s training opportunities. We respect the interests of the people of that region as we seek to continue to improve the capability of Australia’s forces in the national interest.

Senator CHERRY—Mr President, I ask a supplementary question. What does the minister envisage the upgrades at Shoalwater Bay to accommodate the Talisman Sabre training exercise in 2007 will entail? I acknowledge that the projects have not yet been approved by both governments, but what does he envisage those projects will be? Can he assure the local residents that no permanent base or permanent rotation of US military forces will occur in the Shoalwater Bay region of Central Queensland?

Senator HILL—The US has not sought permanent bases in Australia—that is not what this concept is about; this concept is about providing improved training facilities, primarily for Australia but also for our allies when we consider that it is in our national interest. In relation to what type of upgrade this will be, as I said in answer to the primary question, instrumentation is the key way in which we can enhance the value of the facility in order that our training can be taken to the highest possible contemporary standards. If the US is going to support us in such an upgrade, obviously that is, again, in the Australian national interest. Mr President, I ask that further questions be placed on the Notice Paper.
plans for selling Telstra. He said, ‘The basic policy will remain the same.’ So, one week after her new Telstra policy, the minister was forced into retreat. In the Financial Review on Monday last week the minister said, ‘The chances of revisiting the Telstra sale legislation were remote.’ They were entrenched views, she said.

The minister’s initial optimism had turned to deep pessimism in no less than seven days. The minister had been squashed on this issue by the Prime Minister. He wanted to kill off the Telstra sale debate prior to the election. But the minister could not help herself. Just yesterday in the Age, the minister announced that she was favourably disposed to the structural separation of Telstra. She said:

“I can see how that has appeal ... addressing resistance to the privatisation of Telstra in rural and regional Australia, by more or less saying the Government is putting its arms around the infrastructure part of the business and providing the necessary assurances” ...

How original. But, at the same time as she was making this comment to the press, it was a complete and utter reversal of government policy on Telstra. Some time ago when Labor carefully considered the structural separation issue, the government of the day, through the then minister, Richard Alston, said it was a lunatic proposal that would cripple the industry. Labor was condemned repeatedly for even considering the issue. Now it is Minister Coonan’s own home-grown idea. Telstra shareholders were stunned at the minister’s new brainwave. But, again, the minister backflipped. The minister turned around on the very same day that she made that announcement and recanted. Again the Howard policy line on this issue prevailed. The minister was forced to publicly restate that the government does not support structural separation in any shape or form, and again today the minister confirmed that. Two flip-flops in two weeks. ‘What next?’ one might legitimately ask.

The minister has now said that there is no reason for a fourth television network in Australia. Yet the minister’s own portfolio is currently reviewing this very issue. So that is a waste of time. The minister has made the government’s decision in advance and thoughtfully announced it to us so that we all know. Bad luck if the review says that it is a good idea. But, wait, there is more: the minister has happily ruled out separating Telstra from Foxtel. Yet the ACCC, the government’s own watchdog, says that Telstra’s involvement in Foxtel stifles competition. Just two weeks into the job and the minister has made four blunders. It looks as though the elevation to playing in the first grade has been a bit rough, a bit tough. But it has been an absolute disaster for the portfolio and for those who have interests in this area. It shows how the slightest imagination or initiative in this area is squashed by the dead hand of conservative ideology.

The exercise of control from the top, from the office of the Prime Minister, in all of these matters is absolutely and totally ruthless. The minister has been caned and there is now a huge question mark over the management of this complex and hugely important portfolio. We wonder what might be next. The minister has been in the portfolio for no less than three or four weeks and every week there is an announcement, every week there is a change in policy and every week the Prime Minister is forced to intervene, correct the minister and restate the policy that has been the subject of public knowledge for years and years, as far as the government is concerned, and pull the minister into line. (Time expired)

Senator EGGLESTON (Western Australia) (3.09 p.m.)—There is no confusion about what the government policy is in the tele-
communications area. The government support the sale of Telstra. That has been a very clear and certain policy of this government for a very long time. It is also a clear and certain policy of the opposition that they oppose the sale of Telstra, notwithstanding the fact that the sale of Telstra would have many benefits for the Australian public. We believe, as I said yesterday, that you do not need to own a telecommunications company when you can regulate it and ensure that the public receive good service.

We believe in competition: that is the big difference between the Labor Party and the government in telecommunications. We deregulated the telecommunications industry and, as a result, over 100 telecommunications companies in Australia are now providing a wide variety of services. Prices for telephone calls and other services have dropped dramatically since deregulation was introduced. The ALP, on the other hand, hold the old 1930s socialist concept of state ownership of enterprises. That policy has been discredited around the world, but here in Australia the dinosaurs on the opposite side of the chamber are hoping to preserve the concept of state ownership. Long may they do so because it is a policy that is moribund, going nowhere and it will keep them out of office for a very long time until they change their tune.

We are very proud of our record in telecommunications. The introduction of competition, as I have said, has led to lower prices. Competition from Optus, which is planning to provide satellite-delivered Internet, broadband and fast fax services to regional areas, has led to Telstra setting up Telstra Country Wide, which has produced many benefits for regional people and greatly improved the standards of regional telecommunications. We have a very clear position on telecommunications. Senator Coonan, as the new minister, is very clearly supporting government policy. We are running in a straight line from Richard Alston, through Daryl Williams to Helen Coonan. There is no confusion whatsoever. We know where we are going. Our course has been set for a long time.

But that is not quite the story with the ALP, I am afraid. Senator Bishop has been talking about government policy on structural separation of Telstra. The Senate might find it very interesting to recall the position that the shadow spokesman on communications, Lindsay Tanner, has taken on the issue of structural separation. Labor’s ‘Reforming Telstra’ paper released in 2002 proposed to structurally separate Telstra into an infrastructure and a service company. The government knew at that time that this was a very silly policy. In fact, we thought that it would lead to all sorts of complications—and the unions supported the government’s view.

Unfortunately, it took Mr Tanner and the people who were concerned with the development of communications policy in the opposition—including Senator Lundy, the spokesman on IT—nine months to work out what was plain to not only the government but also the unions who, after all, are the bosses of the ALP. It took nine months for the ALP to realise that structural separation was not possible, that it was on a no-goer. In a humiliating backflip, Mr Tanner was forced to accept that any benefits of structural separation of Telstra would be outweighed by the costs. If there is confusion, it is on the ALP’s side; it is certainly not on the government’s side. We have very clear, firm policy directions on telecommunications. Senator Coonan is doing a good job.

Senator LUNDY (Australian Capital Territory) (3.15 p.m.)—What an amazing contribution. Nothing could be further from reality when, under the Howard government, we
have seen the state of telecommunications get worse and worse. Senator Eggleston pointed out that I am the Labor spokesperson for information technology, and I have had a very close focus—

**Senator Faulkner**—And I pointed out you were a good one—a very good one.

**Senator LUNDY**—Thank you, Senator Faulkner. The issue here is the state of affairs in telecommunications for Internet users and the state of the network for data services. We now know that, under the Howard government, not only are we falling backwards at a rate of knots on the global OECD scale for performance in broadband but also that competition is declining. Over the years, under the Howard government’s watch on telecommunications, we have found ourselves slipping behind the pace on a global scale. This does have economic implications for Australia and particularly in regional and rural areas because it affects their capacity to maintain their own vibrant economies and to contribute in the way they would like.

It is true that Senator Coonan is the third telecommunications minister in a very short space of time. Since the departure of Senator Alston, not much has happened. I think it is fair to reflect on Senator Coonan—as my colleague Mr Tanner, in the House, has done—and to say that there is some confusion. From the various statements made by Senator Coonan about communications policy, it is clear that she is largely influenced by the last person or organisation that she has spoken to. Hence, when Senator Coonan gets a briefing from the department, she comes to a conference and says everything is just fine in communications—competition is ticking along nicely and services are getting better in the bush. But everyone knows that is not true. I think Senator Coonan must have had a briefing from the ACCC, which has formed a very strong view that structural separation and structural reform in telecommunications should be on the agenda—so much so that it has recommended the divestiture of Telstra’s interest in Foxtel, and so much so that it has recommended further investigations into the divestiture of Telstra’s interest in the cable network. Senator Coonan made a public statement about how structural reform is somehow back on the agenda but now, as my colleague Senator Bishop pointed out, the story has changed once again.

Perhaps of most interest to me today was one of the more profound statements on communications policy that has been uttered by a minister, because today the Howard government’s strategy behind their treatment of Telstra was let out of the bag. I tried to write it down, but I think I will need to paraphrase. It will be worth checking the *Hansard*. Senator Coonan said, ‘The real issue for the Howard government is how to maintain shareholder value so the Howard government can maintain value of Telstra and it can be sold.’ Senate colleagues, this is what I have identified for many years now as the ultimate conflict of interest of the Howard government in pursuit of their privatisation agenda. They have allowed competition to decline. They have allowed Telstra to increase its foothold into and domination of the market. They have allowed Telstra to neglect its network—to not maintain its network—and to let water seep into the cables, as well as all those issues that were raised throughout the inquiry. The government have allowed that to happen because they have an interest in maintaining Telstra’s bottom line price, and that is what Senator Coonan told this chamber today. She said that the reason they have allowed Telstra to do those things is that the government want to keep the bottom line fat enough and impressive enough so they can sell the rest off. There it is: the ultimate conflict of interest.
The minister, perhaps thankfully, is so naive in her new job that she did not know she was not supposed to let that little treasure out of the bag. Well, there it is and I think that sums up once and for all the ultimate conflict of interest—the privatisation agenda and how that has negatively impacted upon the services that are being provided throughout Australia. I note that the Senate inquiry into the declining level of services and the undermaintenance and undercapitalisation of Telstra’s network is due to report soon. The minister does not know about these issues and seems to change her story at every turn. Therefore, Australians and Australian telecommunications policy are not being well served once again by a Howard government minister.

Senator JOHNSTON (Western Australia) (3.19 p.m.)—I do not know which information, books or articles Senator Bishop and Senator Lundy have been reading recently to inform themselves on this subject, but one thing I am certain of is that they are matters of fiction. Senator Bishop and Senator Lundy bring no facts whatsoever to this debate. It is very interesting that, with the nature of public policy issues that are abroad today, the opposition has come into the chamber not to take up issues on performance or to address the quality of the service but to appraise the performance of the minister in a very personal and nasty way. I will pause to address the way in which Senator Lundy has gone about taking note of Senator Coonan’s answers today. If Senator Lundy were to achieve in her career in this place Senator Coonan’s level of performance and the integrity that she brings to her portfolio and to this chamber, she would have reason to be proud.

For the benefit of Senator Bishop and Senator Lundy, the government is committed to the sale of Telstra because it believes it is in the best interests of Telstra and its 1.8 million shareholders, it is in the best interests of the wider telecommunications industry in this country, and it is in the best interests of all Australians. Selling the remainder of Telstra will provide the government with flexibility to retire debt and to provide more of the good government that the public of this country have become quite used to in the last six years. That does irk the opposition. The government will retire debt that was created by the profligate and incompetent economic policies of some 13 years of a Labor government that was used to provide Australians with everything but good government—namely, bad government.

The sale of Telstra will enable the realisation of that company’s full potential as one of this nation’s most important corporate entities. It will enable it to participate properly in the information age and give it the flexibility to develop, innovate and keep pace with the rapidly changing global industry. Most importantly—and this is something which the opposition in this place have absolutely no understanding of—the sale of Telstra will remove the conflict of interest inherent in the government’s position of setting the rules and being part of the player to those rules. I say again that the ALP simply have no understanding of that. In fact, they have no understanding, because what they wish to do is to continue to be a player and continue to have their hand in the till while they are setting the rules. That is abhorrent to good government in this country. You cannot set up a regime where you administer, set the rules and regulate whilst you are also a player. It is simply not possible and not proper.

The Labor Party’s position, as I say, is interesting. They want to take advantage of the conflict of interest that is inherent in their position. Time and again they example their intention to be interventionist, particularly with the handling of telecommunications in Australia. What Labor would do to Telstra—
were they to be elected, heaven forbid—is grossly irresponsible and quite utterly im-
proper: to continue to maintain a share of a commercial entity whilst they are charged
with the responsibility of regulating that industry. Labor wants to tell Telstra where it
can invest, whom it should purchase its equipment from and what assets it can di-
vest. It wants to dictate to Telstra the number of people it should employ. What about the sharehold-
ers? The Labor Party in government would have absolutely scant regard for
shareholders. (Time expired)

Senator MACKAY (Tasmania) (3.24
p.m.)—I rise to take note of the answers pro-
vided by Senator Coonan on communica-
tions issues. Initially, I have a couple of comments on the debate on Telstra before I
move on to the ABC. If Australians were unlucky enough to end up with a Costello
government after the next election, I am not
sure who would be the minister for commu-
nications. I am not sure that it would be
Senator Coonan. I guess it would be a case of
‘would the real communications minister
please stand up?’ The reality is that the gov-
ernment is all over the place with respect to
this matter.

Minister Coonan indicated today that she
was not in favour of ‘vertical cut-ups and
horizontal spin-offs’. I know that we are
close to the Olympics but that is about as
close as I can get to any particular telecom-
munications terminology that fits there. She
also said that the issue of structural separa-
tion was abhorrent to the government. Sena-
tor Bishop quoted correctly—Labor did not
make this up; we read it in the papers—
saying that she had said that she could see
how it had appeal; she described it as ‘put-
ting her arms around the infrastructure busi-
ness’. I think we have an attempt by a minis-
ter to do something in the portfolio which a
former minister—former Senator Alston—

had described as ‘not on’. She was pulled
into gear pretty quickly.

It is true—Senator Johnston is correct—
Labor will be far more interventionist with
respect to Telstra than this government is. We
do not regard a company which is 50 per
cent owned by the people of Australia as
something that we should not be involved in.
It is interesting that the government chooses
to involve itself in Telstra when it suits the
government to do so. For example, yesterday
we highlighted the fact that the Prime Minis-
ter, John Howard, had indicated that he was
not intending to micromanage the company,
but it is this very government that instituted
the regime whereby the cost of line rentals
has tripled in the last four years. Yes, we will
be interventionist and we will be interven-
tionist in the interest of the majority share-
holder as we see it: the 20 million people
who live in Australia, especially in regional
Australia.

Briefly moving on to the ABC in the short


time remaining—and I would like to come
back to this matter at another stage if I get
the opportunity—I did happen to catch the
Media Watch program on 26 July. I was as-
tounded by the revelation that the ABC are
considering not providing archival news
footage that they hold to film and documen-
tary makers, including those who are making
documentaries for advocacy or cause pur-
poses. They had indicated that they would
need to go back and ask people’s permission
as to whether this footage should be pro-
vided. That is absolutely extraordinary.

If you want to look at what type of cul-
tural fascism is being promoted in Australia
with respect to the unrelenting campaign that
this government has in attempting to nobble
the ABC, you can go no further than that
program. We on this side of the chamber are
strong supporters of an independent ABC.
We always have been and we always will be.
We think it is incumbent on the ABC—and I said this to Russell Balding—to resist these sorts of attempts. An independent broadcaster is critical in a nation such as Australia, and the ABC has been independent. This sort of activity—bullying and so on by members of the coalition and this type of cultural fascism and McCarthyism—is not on and ABC management should resist it.

I know that most ABC journalists and most ABC staff are not happy with the fact that the government is dabbling in this matter by saying, ‘You cannot be interventionist on the issue of Telstra, but you certainly can be interventionist with respect to the international broadcaster, the ABC.’ We have here a prime example of the sort of thing that I do not think Senator Coonan would give permission for. In 2002, she called people with depression ‘malingers’. Do you think that, if a documentary maker wished to use that archival footage, he or she would get permission from the minister? Given the furore at the time, I doubt it. (Time expired)

Question agreed to.

**Defence: Shoalwater Bay**

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

That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Cherry today relating to the military training facility in Shoalwater Bay, Queensland.

I have to say at the outset that I was somewhat disappointed by the answer given by the minister. I was genuinely hoping to get some more information to give to the Central Queensland community. The minister might be aware that over 500 people rallied at the foreshore at Yeppoon on the weekend. They were not necessarily opposed to a joint military training exercise in Shoalwater Bay, but they were deeply concerned that they had not been told exactly what is involved. The minister might be interested to know that the person who organised the rally is a recently resigned member of the Liberal Party who quit the party over this issue and continues to raise concerns about what may or may not be happening in that area.

I note that the minister’s original press release on 8 July announcing this upgrade said that the initial priority would be to upgrade the Shoalwater Bay facility to support the first in the Talisman Sabre series of biennial joint training exercises that would be undertaken in 2007 and that Talisman Sabre will see tens of thousands of Australians and US military personnel undertake land, sea and air training and operations such as full-scale amphibious landing and air strike bombing runs, using live ammunitions as well as high-tech computer simulated scenarios.

It is very difficult to see how an exercise of that size cannot have significant and profound environmental, social and economic impacts on the local community, and I believe that consultation needs to occur. I was deeply concerned that the Mayor of Livingstone Shire is yet to receive a response from the minister to the correspondence he has written about the economic and social impacts in terms of the roads, infrastructure and services in the area. I am also concerned that we still have not yet been told—the minister failed to give guarantees in his comments today—about the issue of the environmental impacts. We are particularly worried, for example, about the use of sonar technology in the waters off Shoalwater Bay, which have very substantial seagrass beds which are the home to dugongs and dolphins, which would be particularly impacted by the use of sonar technology. I hope that the minister will be able to give a guarantee to the community sooner rather than later to ensure that these concerns are put to bed. If they are not real concerns, then let us put them to bed. If they are real concerns, then let us deal with them.
That is what the community of Yeppoon in Central Queensland is trying to get from the government—some real answers.

I was pleased to see that the minister did at least put out a press release on Friday outlining a little more detail about what was planned. It is time for the government to meet with the community in Yeppoon and the Livingston Shire Council and sit down and work through these issues line by line. It must address the questions which have been raised and ensure that the environmental, social and economic impacts of a substantially upgraded training facility are properly dealt with in the local area.

I also note my concern, looking at the press release of 8 July which came out of the AUSMIN meetings in Washington, that appearing almost as an afterthought from that meeting was the latest attempt to make the US alliance the key election issue. I would hate to think that the people of Yeppoon and Central Queensland were being used as political pawns in this process of trying to show that the government is the most pro-US government in Australian history. I hope that when this election is out of the way—preferably the government meets with the people of the Central Queensland community and works through the issues that are raised.

I am pleased to see Senator Ian Campbell here in the Senate at the moment, because there are key environmental issues associated with this area. There are key concerns about what will happen if there is enhanced use of sonar technology on the seagrass beds, there are key concerns about what might occur if weapons using depleted uranium do end up on that site, and there are key concerns about whether this upgraded facility will involve more intensive use of an environmentally sensitive site. I do note that the Army does have a good reputation as a land manager at Shoalwater Bay—except for Townsend Island, which is bombed regularly. I want to see that reputation continue and be enhanced. That is what the community expects. I do hope the government responds to those legitimate community concerns.

Question agreed to.

PETITIONS

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

Military Detention: Australian Citizens

To the Honourable the President and Members of the Senate in Parliament assembled: The Petition of the undersigned shows:

• that the treatment of Mamdouh Habib is contrary to longstanding international conventions on the treatment of prisoners

Your petitioners ask that the Senate should:

• ensure that Australian citizen, Mamdouh Habib’s legal and humanitarian rights are acknowledged, especially following the United States Supreme Court decision that all prisoners have immediate access to their families and lawyers

• immediately send an official deputation to George W. Bush asking that Mamdouh Habib be returned to Australia

• ensure that if Mamdouh Habib is charged with a crime he has a civil trial in Australia

by The President (from 16 citizens.)

Health: Pharmaceutical Benefits Scheme

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

The Petition of the undersigned recognises the Pharmaceutical Benefits Scheme has been extremely successful in ensuring affordable medicines for Australians. It has also supported companies involved in research, and many overseas countries look to it as a best practice model.

Your petitioners request that the Senate:

1. Protects Australians’ access to medicines by ensuring that pharmaceutical purchasing by the Australian Government be explicitly exempted from the Free Trade Agreement.
2. Calls on the Federal Government to bring any Free Trade Agreement to Parliament to be ratified.

by Senator Allison (from 19 citizens).

Indigenous Affairs: Government Policy

To the Honourable President and members of the Senate in parliament assembled.

The petition of the undersigned shows:

That the current intention of the Government to abolish the rights of Aboriginal and Torres Strait Islander people to exercise their right of self determination and self-management, will severely disadvantage Aboriginal and Torres Strait Islander people.

Your petitioners request that the Senate:

1. oppose any legislation for the abolition of ATSIC unless and until an alternative elected representative structure, developed and approved by Aboriginal and Torres Strait Islander peoples is put in place and which would, at the same time assume the function of ATSIC.

2. oppose any move to appoint an advisory committee as contrary to the rights of Aboriginal and Torres Strait Islander people to elect their own representatives.

3. oppose any move to diminish, dismantle, destroy and/or erode the principles of self-determination and self-management since any such action would turn back the clock on hard won rights of Aboriginal and Torres Strait Islander people.

4. strongly defend these rights of self-determination and self-management of Aboriginal and Torres Strait Islander people previously supported by the Australian Parliament.

5. oppose any move to main-stream services for Aboriginal and Torres Strait Islander people as this too would severely disadvantage Aboriginal and Torres Strait Islander people.

by Senator Allison (from three citizens).

Trade: Live Animal Exports

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

The Petition of the undersigned notes the inadequate numbers of livestock available for Australian slaughter, food consumption and hides; the increase in Australian abattoir closures; the growing negative economic, employment and social impacts on rural Australia; and the unnecessary suffering endured by Australian livestock because of this nation’s pursuit of trade and financial benefits at any cost. Your petitioners call on the members of the Senate to end the live export trade now in favour of developing an Australian chilled and frozen halal and kosher carcass trade using humane slaughtering practices.

by Senator Bartlett (from 69 citizens).

Constitutional Reform: Senate Powers

From the citizens of Australia to the President of the Senate of the Parliament of Australia.

We the undersigned believe that the Prime Minister’s call for Senate Reform is an attempt to dilute the powers of the Senate and to enable the Executive to have absolute control over parliament.

We urge all Senators to ensure the powers and responsibilities, of the Senate are protected in the interests of ensuring good governance on behalf of the Australian people and to oppose any moves by the current, or future, Governments to weaken the ability of the Senate to be a check and balance on the Government of the day.

by Senator Bartlett (from 52 citizens).

Human Rights: Child Abuse

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

The Petition of the undersigned draws attention to the damaging long-term effects to Australian society caused by the sexual assault and abuse of children and the concealment of these crimes within churches, government bodies and other institutions.

Your petitioners ask the Senate, in Parliament to call on the Federal Government to initiate a Royal Commission into the sexual assault and abuse of children in Australia and the ongoing cover-ups of these matters.

by Senator Bartlett (from 103 citizens).
Defence: Involvement in Overseas Conflict Legislation

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

The Petition of the undersigned calls on the members of the Senate to support the Defence Amendment (Parliamentary Approval for Australian Involvement in Overseas conflict) Bill introduced by the Leader of the Australian Democrats, Senator Andrew Bartlett and the Democrats' Foreign Affairs spokesperson, Senator Natasha Stott Despoja.

Presently, the Prime Minister, through a Cabinet decision and the authority of the Defence Act, has the power to send Australian troops to an overseas conflict without the support of the United Nations, the Australian Parliament or the Australian people.

The Howard Government has been the first Government in our history to go to war without majority Parliament support. It is time to take the decision to commit troops to overseas conflict out of the hands of the Prime Minister and Cabinet, and place it with the Parliament.

by Senator Bartlett (from 191 citizens).

Immigration: Asylum Seekers

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

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

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

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

We, therefore, the individual, undersigned attendees at the St Mathew's Anglican Church, East Geelong, Victoria 3219 petition the Senate in support of the abovementioned Motion.

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

by Senator Marshall (from 59 citizens).

Petitions received.

NOTICES

Presentation

Senator Knowles to move on the next day of sitting:

That the Community Affairs Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 12 August 2004, from 4 pm, to take evidence for the committee’s inquiry into the provisions of the Commonwealth Electoral Amendment (Preventing Smoking Related Deaths) Bill 2004, the exposure draft of the Tobacco Advertising Prohibition (Film, Internet and Misleading Promotion) Amendment Bill 2004 and the adequacy of the ACCC response to date on issues concerning tobacco.

Senator Heffernan to move on the next day of sitting:
That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the administration of AusSAR in relation to the search for the Margaret J be extended to 12 August 2004.

Senator Lundy to move on the next day of sitting:

That the Senate recognise the importance of maintaining local content quotas for free-to-air television, pay television and radio at their current levels and the role that these quotas play in ensuring that Australians continue to see and hear Australian faces and voices through their popular media.

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

That the Senate—
(a) acknowledges that 1 August to 7 August 2004 is World Breast Feeding Week which is celebrated in over 120 countries; and
(b) notes that:
(i) Breastfest 2004 will be celebrated simultaneously across the nation on Friday, 6 August 2004,
(ii) the theme for World Breastfeeding Week this year is ‘Exclusive Breastfeeding: The Gold Standard: safe, sound and sustainable’,
(iii) breastfeeding is the natural and normal way to provide optimal nutrition, immunological and emotional nurturing for the growth and development of infants, and
(iv) every woman has the right to be supported to breastfeed and not be discriminated against.

Senator Faulkner to move on the next day of sitting:

That the Senate—
(a) notes that:
(i) the Government has signed a Memorandum of Understanding with the United States of America on national missile defence, and
(ii) the Government’s participation in national missile defence research has generated regional disquiet and concerns over the potential for the proliferation of weapons of mass destruction in our neighbourhood; and
(b) supports the development of capability for in-theatre defence of Australian Defence Force personnel and key strategic interests from ballistic missile attack.

Senator Hutchins to move on the next day of sitting:

That the time for the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on the current health preparation arrangements for the deployment of Australian Defence Forces overseas be extended to 12 August 2004.

Senator Brown to move on the next day of sitting:

That the Senate—
(a) notes that:
(i) the Government has signed a Memorandum of Understanding with the United States of America on national missile defence, and
(ii) the Government’s participation in national missile defence research has generated regional disquiet and concerns over the potential for the proliferation of weapons of mass destruction in our neighbourhood; and
(b) supports the development of capability for in-theatre defence of Australian Defence Force personnel and key strategic interests from ballistic missile attack.

Senator Brown to move on Tuesday, 10 August:

That the Senate—
(a) notes that the Council of Australian Governments (COAG) inquiry on bushfire mitigation and management was provided to COAG members on 2 April 2004; and
(b) requires the Minister representing the Prime Minister to table in the Senate, no later than 5 pm on Monday, 9 August 2004, the report of the inquiry.
(ii) submit binding agreements of COAG and ministerial councils to parliament for ratification before implementation.

Senator Nettle to move on the next day of sitting:
That the Senate—
(a) notes:
(i) that James Hardie Industries was a significant producer of asbestos products in Australia, and
(ii) preliminary reports that James Hardie Industries may have deliberately underfunded its compensation scheme and moved its headquarters offshore to avoid or minimise its future compensation liabilities;
(b) calls on the Government to:
(i) take all possible steps to ensure that James Hardie Industries pays full and fair compensation to the victims or the families of victims injured or killed by the asbestos products that James Hardie Industries produced, and
(ii) join local councils in boycotting all James Hardie Industries products and services until it is satisfied that all of James Hardie Industries’ current and future compensation liabilities are met; and
(c) calls on all political parties to redirect any donations they have received from James Hardie Industries into a trust fund for these victims and their families.

Senator Nettle to move on the next day of sitting:
That the Senate—
(a) notes the recent Government decision to award an $18 million Airservices Australia contract for the manufacture and supply of fire engines to an Austrian firm, Rosenbauer, in preference to a Hunter Valley company, the Varley Group;
(b) condemns this decision for:
(i) failing to promote regional industrial development, and
(ii) missing an opportunity to create 60 direct jobs and up to 180 indirect jobs in the Hunter region, including 10 to 15 apprenticeships;
(c) notes the Government procurement guidelines which require that government contracts must take account of:
(i) the development of long-term, internationally competitive industry in Australia,
(ii) enhancement of Australia’s export potential and import replacement, and
(iii) employment, training and skills development, and initiatives in regional areas;
(d) condemns the Government for breaching its own procurement guidelines in awarding this contract;
(e) congratulates the Australian Manufacturing Workers Union for leading a campaign to overturn this misguided Government decision; and
(f) calls on the Government to reopen the tender and reconsider the bid in light of the breach of the procurement guidelines and the need to create sustainable long-term manufacturing jobs in the Hunter region.

COMMITTEES
Selection of Bills Committee
Report
Senator FERRIS (South Australia) (3.38 p.m.)—I present the 10th report of 2004 of the Selection of Bills Committee and move:
That the report be adopted.
I seek leave to have the report incorporated in Hansard.
Leave granted.
The report read as follows—
SELECTION OF BILLS COMMITTEE
REPORT NO. 10 OF 2004
1. The committee met on Tuesday, 3 August 2004.
2. The committee resolved to recommend—
That—

(a) the provisions of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004 be referred immediately to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 2 September 2004 (see appendix 1 for statement of reasons for referral);

(b) the provisions of the Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004 be referred immediately to the Economics Legislation Committee for inquiry and report by 11 August 2004 (see appendix 2 for statement of reasons for referral); and

(c) the following bills not be referred to committees:
Aboriginal and Torres Strait Islander Commission Amendment Bill 2004
Anti-terrorism Bill (No. 3) 2004
Broadcasting Services Amendment (Anti-Siphoning) Bill 2004
Customs Tariff Amendment (Oil, Gas and Other Measures) Bill 2004
Family and Community Services and Veterans' Affairs Legislation Amendment (2004 Budget Measures) Bill 2004
Indigenous Education (Targeted Assistance) Amendment Bill 2004
Indirect Tax Legislation Amendment (Small Business Measures) Bill 2004
New International Tax Arrangements (Managed Funds and Other Measures) Bill 2004
Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004
States Grants (Primary and Secondary Education Assistance) Legislation Amendment Bill 2004
Surveillance Devices Bill (No. 2) 2004
Tax Laws Amendment (2004 Measures No. 4) Bill 2004
US Free Trade Agreement Implementation Bill 2004
US Free Trade Agreement Implementation (Customs Tariff) Bill 2004
Vocational Education and Training Funding Amendment Bill 2004

The committee recommends accordingly.

3. The committee deferred consideration of the following bills to the next meeting:
Bill deferred from meeting of 10 February 2004
Racial and Religious Hatred Bill 2003 [No. 2].
Bill deferred from meeting of 23 March 2004
Bill deferred from meeting of 30 March 2004
Flags Amendment (Eureka Flag) Bill 2004.
Bill deferred from meeting of 22 June 2004
Bills deferred from meeting of 3 August 2004
Australian Passports Bill 2004
Australian Passports (Application Fees) Bill 2004
Australian Passports (Transitionals and Consequentials) Bill 2004
Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill 2004
Parliamentary Service Amendment Bill 2004

Jeannie Ferris
Chair
4 August 2004.

Appendix 1
Proposal to refer a bill to a committee
Name of bill(s):
Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004
Reasons for referral/principal issues for consideration

The bill will establish a regime that will provide LiveCorp with funding from an industry levy and consolidated revenue for marketing and research and development. An inquiry is required to ensure that accountability arrangements imposed on LiveCorp in relation to these funds is adequate.

Possible submissions or evidence from:

AFFA, LiveCorp, Meat and Livestock Australia, Cattle Council of Australia.

Committee to which bill is referred:

Rural and Regional Affairs and Transport Legislation Committee

Possible hearing date: Week commencing 16 August 2004

Possible reporting date(s): 2 September 2004

Senator J. Ludwig
Whip/Selection of Bills Committee Member

Appendix 2

Proposal to refer a bill to a committee

Name of bill(s):

Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004

Reasons for referral/principal issues for consideration

To examine the government’s costing of the rebate.

Possible submissions or evidence from:

Treasury, South Australian Treasury Department

Committee to which bill is referred:

Economics Legislation Committee

Possible hearing date: 9 August 2004

Possible reporting date(s): 11 August 2004

Senator Sue Mackay
Whip/Selection of Bills Committee Member

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (3.39 p.m.)—by leave—I move:

At the end of the motion, add “and, in respect of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004, the bill not be referred to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report”.

This particular bill is one of those rare ones over which there is some disagreement in the Selection of Bills Committee and between the parties in relation to a reference. We have had a couple of these lately, where it seems to be Labor’s wish to refer bills to committees. The marriage bill is a recent example, where the Labor Party made the point that they would support the bill and then referred it off for some months. I think the reporting date is well out into October.

This bill is one that we are very keen to ensure is enacted. Labor seem to want to yet again delay the implementation of what is very good policy by referring it to a committee. They seem hell-bent on referring as many bills as possible to this committee. Virtually every agricultural bill that has come before this place seems to meet the fate of being referred down this path. Usually, where there is a clear need for a reference, the government do not stand in the way. We encourage scrutiny. In fact, you will see under this government that there has been more committee scrutiny of more bills than in any parliament in the history of Australia. However, on occasions the committee process is abused as a mechanism for delaying legislation.

The FTA bill is an example of that. It was sent off to a committee for over five months. Finally, when the political heat comes on, Labor do one of their classic backflips—often with a pike. Labor were absolutely divided over the marriage bill. They said they would support it on one hand and then, a couple of days later, quietly sent it off to a Senate committee and hoped it would disappear. When a bit of pressure comes on, they do another backflip.
As I have said, the Labor Party seem hell-bent on frustrating the government from implementing reforms that are needed to secure the future of the live export trade and to secure improvements in animal welfare that the industry and the wider population expect. They supported referring the previous bill, which dealt with improving the live trade, to the same committee. Why would they do this if it were not just to frustrate these important initiatives? They actually agreed with the bill and yet still wanted it to go to a committee. They cannot have it both ways. It is another example of Labor trying to play to two different constituencies at the same time. People need to understand that they cannot have it both ways. Either they support the legislation and get on with it, enact it and get the benefits from the legislation; or they make it clear what their true intentions are.

This industry does need the R&D promotion organisation. The industry that this levy covers wants this levy and has agreed to it. The industry body has indicated that they will have to curtail their activities if this legislation is not passed and it is further frustrated by Labor Party delaying tactics. Why do the Labor Party wish to further frustrate improvements in the live animal trade? Is it simply that they wish to drag up old incidents and attempt to curry favour with their union mates in the meat industry?

Senator LUDWIG (Queensland) (3.43 p.m.)—I am extremely disappointed by the Minister for the Environment and Heritage in relation to this matter. The Selection of Bills Committee, as he well knows, has operated in a bipartisan way for quite some time. In respect of amending, or seeking to amend, a committee report, one might say going as far as to amend the date may be a reasonable position to adopt in some instances, although I might disagree. In this instance, he sought not to amend a date but in fact to prevent a bill going to a committee: the Rural and Regional Affairs and Transport Legislation Committee. That is a legislation committee, a proper committee for a bill with controversy to be sent to for a proper inquiry and report. In this instance, the Manager of Government Business in the Senate has not been able to argue—and nor did I hear him argue—that it was an unreasonable date at all. The reference has a possible report date of as early as 2 September 2004.

The opposition is not seeking a long reference to a legislation committee in respect of this bill. It is an important issue within the bill that requires scrutiny and comment by the relevant committees, persons and bodies that may have an interest, such as Meat and Livestock Australia and the Cattle Council. This bill will establish a regime that will provide the livestock industry with funding from an industry levy and consolidated revenue for marketing and research and development. An inquiry is required to ensure that accountability arrangements imposed on live sheep exports in relation to these funds is adequate, appropriate and adapted to the purpose.

The government is now saying that it does not want scrutiny or a legislation committee to ensure that there are adequate accountability mechanisms for this bill. It would prefer to try to slip the bill through and say, ‘We think it is appropriate and proper ourselves not to ensure that the legislation committee scrutinise this bill.’ The committee has dealt with many references of this kind and been able to examine them carefully, report on them and allow second reading debates in this place to be informed by the information that is presented during the legislation committee hearings.

In the normal course of events a bill would go by reference to a legislation committee and a report would be finalised. In this
instance a quite short report date has been sought so there is no attempt to delay this bill. In the reference they have proposed a possible hearing date as early as 16 August to allow the hearing to be advertised and the parties notified, and the report on the bill to be made by 2 September so that it is available from that date for debate within this parliament. The benefit is that during the second reading debate the parties are informed by the report and able to contribute to the debate. The government is on about not allowing any scrutiny of their dealings with live sheep exports. That is what it seems to be. It does not want scrutiny of the way it intends to use the issue—

Senator Knowles—That is not true.

Senator LUDWIG—If it is not true, let it go to the committee and be examined. As I have said, this bill will establish a regime. The government is saying that it does not want it examined. We say that it should be examined and be clearly able to be examined. Otherwise, you leave us with the only possible conclusion that you are hiding it and you do not want it examined.

Senator MACKAY (Tasmania) (3.48 p.m.)—I seek leave to make a short statement.

The DEPUTY PRESIDENT—You can just speak. You are entitled to speak.

Senator Knowles—How long have you been here?

Senator MACKAY—Thank you, Mr Deputy President. I apologise for the very rude people on the other side of the chamber. The point I want to make is that this is the first I have heard of this. We were not advised. Apparently the Manager of Government Business in the Senate was told by the PLO yesterday that this may happen. This is the first that I have heard that the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004 would not be—

Senator Ian Campbell—It was raised at the meeting, Sue.

Senator MACKAY—It was raised as a possibility that it may be opposed but we have not been formally advised that this opposition and this amendment were going to occur. We are pretty generous as an opposition to the government. Our patience gets tested time and time again.

Senator Ian Campbell—I told Joe this morning at 9 o’clock.

Senator MACKAY—Let us try to keep up, Senator Campbell. We were not advised formally. Let us try to get some decent processes in place for the management of this chamber. If you do not, we will deny leave in future. You know you are going to lose this vote so why are you doing it?

Senator MACKAY—Joe was told at 9.31 this morning, during prayers.

Senator MACKAY—You do not just go and whisper to the manager in the morning. You formally advise the opposition, including the Opposition Whip.

Senator Ian Campbell—who is the manager of opposition business if it is not the Manager of Opposition Business?

Senator MACKAY—The Selection of Bills Committee is run by the whips. We have not been formally advised. I have spoken to you about this. You either want to run this place properly or you do not. If you do not want to run this place properly we will start—

Senator Knowles—Miao, miao, miao.

Senator MACKAY—You can talk! Look at her! For the benefit of those listening, Senator Knowles is squawking in her seat.
The DEPUTY PRESIDENT—Senator Mackay, address your remarks through the chair.

Senator MACKAY—The opposition may start getting very cranky. I know Senator Knowles is on the way out but we do attempt to run this place cooperatively. You are not helping, Senator Knowles, but I think your party has made a judgment about you. I point out to the people who manage this place that if this sort of behaviour continues and if we are not formally advised then we will start becoming incredibly uncooperative.

Senator Ian Campbell—Can you tell me how I should formally advise you in future? Do you want me to post it on the Internet?

Senator MACKAY—What you can do, Senator Campbell, is send us an email like you normally do. That might be a good way to do it—advise us of what you intend to do. The second point I want to make is that the government refusing to refer a bill to a committee is extremely rare. This very rarely happens. How dare the opposition refer legislation to a committee for scrutiny! How dare we! We wish to—

Senator Ian Campbell interjecting—

The DEPUTY PRESIDENT—Senator Campbell, you have had your go. I know you say you were interjected upon—

Senator Ian Campbell—I was interjected on continually.

The DEPUTY PRESIDENT—No, you were not. Give Senator Mackay a go. If you want further leave, I am sure that that will be considered by the chamber.

Senator MACKAY—I will be brief because I know there are number of people on this side of the chamber—

Senator Knowles—Mr Deputy President, I raise a point of order. There are certain courtesies that should be extended in this chamber and one is that the person who is standing when you speak should immediately resume their seat. I make the point that Senator Mackay never observes that courtesy and I would ask you to ask her to do so.

The DEPUTY PRESIDENT—Senator Knowles, I am sure that all senators are aware of the courtesies in this place and will abide by them.

Senator MACKAY—There is another courtesy, and it is not the appallingly stupid behaviour and continual interjections from the other side of the chamber. That may assist. How dare the opposition request that a bill go to a committee for a very short period, as the Manager of Government Business has indicated. I think that was pretty reasonable. The other thing is, if one were the government—and we may well be one day—why waste the time of the chamber with this sort of stuff? You are not going to get this through. Why waste the time of the chamber with making a stupid political point? I believe we have been extremely cooperative, and many on the other side of the chamber regard us as having been too cooperative, in fact, with this government. How dare we request scrutiny! How dare we do that!

Yet again, Senator Ian Campbell comes in here and takes up his own party’s and the government’s time with what I regard as stupid points and stupid issues on matters that he knows he is going to lose. I would like to hear a bit more from the government as to why they—

Opposition senator interjecting—No!

Senator MACKAY—Senator Knowles has expressed an extremely intense interest in this bill, so I am sure she is prepared to get up and speak on it. I will just make the point—because I think this has probably gone on a bit long and I know Senator Forshaw might want to make a few points—that we do need to try to get our processes more
in place, so please advise us and give us a little more notice. The second point I would like to make is that it is very rare for a bill not to be referred to a legislation committee. Senator Ian Campbell is right: legislation has been referred more times under this government. That is because we have referred it and because we have insisted upon the level of scrutiny that has occurred under this opposition. Having made that point, I invite any of my colleagues who wish to contribute to the debate to do so.

Senator FORSHAW (New South Wales) (3.54 p.m.)—I will not take up too much time, unless I am constantly interjected on by the rabble on the other side.

Senator Jacinta Collins—There is only one rabble.

Senator FORSHAW—‘Rabble’ is singular—

The DEPUTY PRESIDENT—Senator Forshaw, address your comments through the chair.

Senator FORSHAW—If former Senator Winston Crane, a former colleague of Senator Ian Campbell from his state of Western Australia, were still here he would have made sure the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004 was referred to the committee, because he was a person who took a deep interest in these issues. When he was chair of the relevant committee, he ensured that the various interest groups and the public were given an opportunity to put forward their views on legislation such as this. He took it damn seriously. It is a pity that his legacy has not been followed. We are constantly hearing from the government this mantra that, if you refer a bill to a committee of the Senate, you are dithering or delaying. I do not know what this government thinks this Senate is here for but clearly, as we all know, one of its primary tasks is to review legislation that has been referred or sent to us from the House of Representatives. The Senate has for many years—

Senator Knowles—Like the FTA.

Senator FORSHAW—I will come to the FTA, Senator Knowles. Ever since the time of Senator Murphy, the Senate has carried out the role of, firstly, giving proper scrutiny to legislation and, secondly, enabling the public and those interested in particular legislation to come before the parliamentary committee and put their views. We are constantly seeing this elitist view from this government. They think they know best on everything and that the Senate should not waste its time. According to them, it is a waste of time; according to us and the public, it is not—it is time well spent. The government’s view is that we should not spend our time even bothering to consider legislation in a committee process. This is happening more and more. Maybe Senator Ian Campbell and Senator Knowles think that the Senate is just like some takeaway drive-through where you put your piece of legislation in one window and you pick it up, stamped and approved, at the other, with no detailed consideration given to it. Just as with a lot of fast food, with that sort of process you would probably get a rather unhealthy product.

The FTA has been mentioned. I have never understood why it is that when this government—this government that has invested so much time, energy and expense trying to negotiate all of the detail of this free trade agreement, with officials and ministers in Washington and out here—finalised that deal, it said, ‘You shouldn’t look at it; just trust us. Don’t let the parliament of Australia, and don’t let the Senate, have the temerity to examine this agreement. God forbid! What sort of an outrage is that?’ That is the government’s view. The Senate stood its ground and referred the legislation to the committee.
I think any reasonable person, whether or not they support the free trade agreement, would recognise that it was a job well done. I pay tribute to all the senators on the committee, irrespective of their views, because they took on the task of doing a detailed examination of such a complex and lengthy agreement.

The government says it is the most famous agreement in the history of this country. If you cannot devote a bit of time to properly considering it in the parliament before you pass the enabling legislation, there is something wrong with our democracy. Fortunately, here in the Senate we insisted upon it. That was the Senate doing its job, and it should continue to be allowed to do its job in a bipartisan way. Senator Ian Campbell should sit down and get on with the job that he is paid to do, and that is not to frustrate the Senate.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (3.59 p.m.)—by leave—All of those points made by Senator Forshaw would normally be quite accurate. My old friend Senator Winston Crane indeed had a superb record for ensuring that agriculture bills were scrutinised by the stakeholders in the industry. But, for the record, can I say, firstly, that the Manager of Opposition Business was informed this morning that we would not be agreeing with this reference, and I would have presumed that he would have told his whip. Secondly, this issue of the structure of the live export trade in Australia and the levy system for funding it was comprehensively dealt with by this very same committee. Of course, Senator Forshaw very conveniently decided to ignore that entirely. The fact is that these issues—the live sheep trade, the live animal trade, the structure of the industry post the Cormo Express incident and the public concern about the welfare of the animals—have been comprehensively dealt with by a Senate committee, so the Senate committee has performed its duty. To then take this issue back and yet again delay it shows that my assertion that this is a delaying tactic that will hurt the industry is, in fact, correct.

Question negatived.

Original question agreed to.

COMMITTEES

Legal and Constitutional References Committee

Meeting

Senator MACKAY (Tasmania) (4.02 p.m.)—by leave—At the request of Senator Bolkus, I move:

That the Legal and Constitutional References Committee be authorised to hold a public meeting during the sitting of the Senate today from 5.30 pm to 7.30 pm, to take evidence for the committee’s inquiry into the needs of expatriate Australians.

Question agreed to.

NOTICES

Postponement

Items of business were postponed as follows:

General business notice of motion no. 935 standing in the name of Senator Allison for today, relating to the proposed missile defence agreement, postponed till 5 August 2004.

SENATE TEMPORARY ORDERS

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (4.03 p.m.)—by leave—I move the motion as amended:

If a division is called for on Thursday after 4.30 pm, the matter before the Senate shall be adjourned until the next day of sitting at a time fixed by the Senate.

Question agreed to.
Senator Brown—by leave—Mr Acting Deputy President, I ask that you record the Greens’ opposition to that motion.

COMMITTEES

Economics Legislation Committee
Meeting

Senator FERRIS (South Australia) (4.04 p.m.)—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I move:

That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Monday, 9 August 2004, from 3.30 pm, to take evidence for the committee’s inquiry into the Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 2) [Statutory Rules No. 84].

Question agreed to.

Foreign Affairs, Defence and Trade References Committee
Meeting

Senator FERRIS (South Australia) (4.04 p.m.)—At the request of the Chair of the Foreign Affairs, Defence and Trade References Committee, Senator Hutchins, I move:

That the Foreign Affairs, Defence and Trade References Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 5 August 2004, from 9.30 am to 11.30 am, to take evidence for the committee’s inquiry into the performance of government agencies in the assessment and dissemination of security threats in South East Asia in the period 11 September 2001 to 12 October 2002.

Question agreed to.

Environment, Communications, Information Technology and the Arts References Committee
Extension of Time

Senator FERRIS (South Australia) (4.04 p.m.)—At the request of the Chair of the Communications, Information Technology and the Arts References Committee, Senator Cherry, I move:

That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts References Committee on competition in broadband services be extended to 12 August 2004.

Question agreed to.
and the Arts References Committee, Senator Cherry, I move:

That the Environment, Communications, Information Technology and the Arts References Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 5 August 2004, from 4.30 pm, to take evidence for the committee’s inquiry into budgetary and environmental implications of the Government’s Energy White Paper.

Question agreed to.

NATIONAL ABORIGINAL AND ISLANDER CHILDREN’S DAY

Senator JACINTA COLLINS (Victoria) (4.04 p.m.)—I, and also on behalf of Senator O’Brien, move:

That the Senate—

(a) notes that:

(i) 4 August is National Aboriginal and Islander Children’s Day,

(ii) the National Aboriginal and Islander Children’s Day is an initiative of the Secretariat of National Aboriginal and Islander Child Care,

(iii) National Aboriginal and Islander Children’s Day draws attention to the needs of Aboriginal and Torres Strait Islander children,

(iv) the theme of National Aboriginal and Islander Children’s Day 2004 is ‘One Childhood—One Chance’, and

(v) Aboriginal and Torres Strait Islander children are less likely than other Australian children to have access to early childhood programs and services; and

(b) urges the Government to ensure that all Australian children have equitable access to early childhood programs and services.

Question agreed to.

COLOMBIA: HUMAN RIGHTS

Senator STOTT DESPOJA (South Australia) (4.05 p.m.)—I move:

That the Senate, recalling its resolution of 14 October 2003 relating to human rights in Colombia:

(a) notes again with regret the long and continuing history of violence directed towards human rights defenders in Colombia;

(b) reiterates its recognition of the important role performed by both local and international human rights organisations in Colombia and the positive contribution made by international observers including the United Nations Human Rights Commission, the Inter-American Commission on Human Rights, Peace Brigades International, Amnesty International and Human Rights Watch;

(c) expresses its concern that:

(i) rural communities, and in particular the Peace Community of San José de Apartadó, as well as local human rights defenders, and international observers that accompany this community, such as Peace Brigades International and the International Fellowship of Reconciliation, have recently been subjected to increased intimidation in the Urabá region of North-West Colombia, and

(ii) the safety of members of the above-mentioned community, their leaders, and the international human rights organisations present in the area, is at risk following recent adverse statements made by members of the Colombian Government, who have in the past equated human rights organisations with agents of terrorism;

(d) notes:

(i) that the Peace Community of San José de Apartadó has been granted provisional precautionary measures by the Inter-American Court of Human Rights, because of the high level of risk suffered by community members, which has claimed the lives of many within the community in recent years, and
(ii) that these provisional measures were also re-affirmed by the Constitutional Court of Colombia, which ordered that the safety of the community and the fundamental human rights of its people be guaranteed; and

(e) expresses its hope that the Colombian Government will guarantee the safety of the people of San José de Apartadó, and of the international observers who accompany them.

Question agreed to.

NATIONAL ABORIGINAL AND ISLANDER DAY OBSERVANCE COMMITTEE

Senator STOTT DESPOJA (South Australia) (4.05 p.m.)—At the request of the Leader of the Australian Democrats, Senator Bartlett, I move:

That the Senate—

(a) notes that 4 July to 11 July 2004 was NAIDOC (National Aboriginal and Islander Day Observance Committee) Week and that this year’s theme was, ‘Self-Determination—Our Community—Our Future—Our Responsibility’;

(b) acknowledges that services to Indigenous people are most effective when controlled and run by Indigenous people and that the Government’s proposed abolition of the Aboriginal and Torres Strait Islander Commission and mainstreaming of Indigenous services will further obstruct Indigenous peoples’ access to basic rights such as health, education, employment, housing and justice;

(c) recognises the significance of NAIDOC Week in celebrating Indigenous culture and the individual achievements of Indigenous people throughout the country;

(d) congratulates the 2004 National NAIDOC award winners including:

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<tr>
<th>Category</th>
<th>Winner</th>
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<tr>
<td>Person of the Year</td>
<td>Aden Ridgeway</td>
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<tr>
<td>Apprentice of the Year</td>
<td>Neil Joseph</td>
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<td>Scholar of the Year</td>
<td>Kaye Price</td>
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<td>Female Elder of the Year</td>
<td>Merlene Mead</td>
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<tr>
<td>Male Elder of the Year</td>
<td>Steve Mam</td>
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<td>Youth of the Year</td>
<td>Michael Hayden</td>
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<td>Sportsperson of the Year</td>
<td>Adam Goodes</td>
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<td>Artist of the Year</td>
<td>Jirra Lulla Harvey</td>
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(c) calls on the Government to ensure that NAIDOC funding is not affected by the mainstreaming of Indigenous services and programs.

Question agreed to.

TRADE: WHEAT EXPORTS

Senator BROWN (Tasmania) (4.06 p.m.)—I move:

That the Senate calls on the Australian Government to pay the remaining debt owed to Australia’s wheat farmers resulting from sales of wheat to Iraq between 1987 and 1990.

Question put:

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

The Senate divided. [4.10 p.m.]

(The Acting Deputy President—Senator P.R. Lightfoot)

Ayes……….. 10
Noes……….. 42
Majority…… 32

AYES

Allison, L.F. *  Bartlett, A.I.J.
Brown, B.J.  Cherry, J.C.
Geig, B.  Harris, L.
Murray, A.J.M.  Nettle, K.
Ridgeway, A.D.  Stott Despoja, N.

NOES

Barnett, G.  Bishop, T.M.
Brandis, G.H.  Campbell, G.
Carr, K.J.  Chapman, H.G.P.
Collins, J.M.A.  Conroy, S.M.
Crossin, P.M.  Denman, K.J.
Eggleston, A. Ferris, J.M. *
Fifield, M.P. Forshaw, M.G.
Humphries, G. Hutchins, S.P.
Johnston, D. Kirk, L.
Knowles, S.C. Lundy, K.A.
Ludwig, J.W. Marshall, G.
Mackay, S.M. McGauran, J.J.
Mason, B.J. Moore, C.
O’Brien, K.W.K. Patterson, K.C.
Payne, M.A. Ray, R.F.
Santoro, S. Scullion, N.G.
Stephens, U. Tchen, T.
Troeth, J.M. Watson, J.O.W.
Webber, R. Wong, P.

* denotes teller

Question negatived.

DEFENCE: MISSILE DEFENCE SYSTEM

Senator BROWN (Tasmania) (4.15 p.m.)—I move:

That there be laid on the table by the Minister for Defence, no later than 4 pm on Thursday, 5 August 2004, the Memorandum of Understanding between the Governments of Australia and the United States of America, signed in Washington in July 2004, concerning the program of cooperation on missile defence.

Question agreed to.

MEMBERS OF PARLIAMENT: TRAVEL

Senator BROWN (Tasmania) (4.15 p.m.)—I move:

(1) That the Senate is of the view that only serving senators or members of the House of Representatives may travel overseas for study purposes using their study leave entitlements and that people who are not Members of Parliament may not access the study leave entitlements of Members of Parliament.

(2) That the Senate requires the Special Minister of State to table in the Senate within 15 sitting days of receipt any report of an overseas study tour by a senator presented to him or her”.

I believe this amendment is explicit on the face of it.

Question negatived.

The ACTING DEPUTY PRESIDENT—The question now is that Senator Brown’s motion be agreed to.

The Senate divided. [4.27 p.m.]

(The Acting Deputy President—Senator P.R. Lightfoot)

Ayes………… 2
Noes………… 42
Majority…….. 40

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

NOES
Allison, L.F. Barnett, G.
Bartlett, A.J.J. Bishop, T.M.
HEALTH: NURSING

Senator NETTLE (New South Wales) (4.30 p.m.)—I move:
That the Senate—
(a) notes:
(i) the decision by the University of Sydney to close its nursing faculty and its Orange campus,
(ii) that there is currently a shortage of nurses in New South Wales and Australia-wide,
(iii) that in the Bachelor of Nursing (Indigenous Australian Health), which makes an invaluable contribution to improving Indigenous health, outcomes have not been picked up by another university and may be lost as a result of this closure, and
(iv) that there is no indication that the jobs lost through this closure at the University of Sydney will be picked up by other universities; and
(b) urges the Government to:
(i) reverse its decision to allow the University of Sydney to close the nursing faculty and sever ties with the Orange campus,
(ii) ensure that the Bachelor of Nursing (Indigenous Australian Health) continued to be available to public nursing students, and
(iii) address the shortage of nurses by significantly increasing direct public funding to public universities to:
(A) enable an expansion of the number of nursing places available, and
(B) offer more opportunities for professional development for the existing nursing workforce.

Question agreed to.

CRIMINAL CODE AMENDMENT
(WORKPLACE DEATH AND SERIOUS INJURY) BILL 2004

First Reading

Senator NETTLE (New South Wales) (4.31 p.m.)—I move:
That the following bill be introduced: A Bill for an Act to amend the Criminal Code Act 1995 to create new offences in relation to industrial manslaughter and causing serious harm, and for related purposes.

Question agreed to.

Senator NETTLE (New South Wales) (4.31 p.m.)—I move:
That this bill may proceed without formalities and be now read a first time.

Question agreed to.

Bill read a first time.

Second Reading

Senator NETTLE (New South Wales) (4.32 p.m.)—I move:
That this bill be now read a second time.
I seek leave to have the second reading speech incorporated in Hansard.

Leave granted
The speech read as follows—
I rise to speak to The Greens’ Bill Criminal Code (Workplace Death and Serious Injury) Bill 2004. Three more young men have died in Australian workplaces in the last week. These tragic deaths add to the hundreds of deaths and thousands of serious injuries suffered this year by workers particularly in the building, manufacturing and transport industries. Of course not all these tragedies are the result of criminal negligence on behalf of employers, but some of them are. What that means is that some of these deaths and injuries were easily preventable—a fact which deepens the tragedy all the more.

More people in Australia die at or because of their work than they do on the roads, but still the government refuses to support the introduction of the kind of legislation The Greens are introducing. This government could help reduce the carnage that costs lives and causes trauma, but it chooses not to. Instead, it fiddles around the edges with OH&S legislation—which, to be brutally frank, is not working.

The government is of course much more interested in throwing millions of dollars in union witch hunts than forcing unscrupulous employers to make safety a priority. If the government wanted industrial peace in the building and construction industry surely the first step that is needed is the insistence on and promotion of safety. The way forward—which has existed in Great Britain since the early 1990s—is to criminalise industrial manslaughter and serious injury in circumstances of neglect. A person who negligently drives a car and causes the death or grievous bodily harm of another will face jail. It is patently ridiculous that employers have immunity from imprisonment when they negligently kill workers at work but face the full wrath of the law if they negligently kill that same person at home or on the street. Criminalising industrial manslaughter is one of the keys to industrial peace and goodwill, because it will reduce the instances of death and serious injury in the Australian building and construction industry. But this government does not see it that way. It prefers to sit back and let the carnage continue.

And carnage is not an overstatement: in 1997-98, 48 construction workers were killed; in the following year, 1998-99, 58 were killed; in 1999-2000, 48 were killed; in 2000-01, 44 were killed; and, in 2001-02, 39 were killed. In addition, 37 manufacturing workers were killed and 50 transport and storage workers were killed. At the very least, a significant proportion of those deaths were entirely preventable. We should be putting more effort and resources into bringing these numbers down, as we do in attempting to lower the death toll on our roads. The federal government has a responsibility to act.

The Greens welcome the initiative taken by the ACT government to introduce an industrial manslaughter offence in that jurisdiction and indeed were happy to support the passage of that bill in the ACT assembly. We hope that the federal ALP will return the favour and facilitate the speedy consideration and support of this bill in the Senate.

This Bill amends the Criminal Code Act 1995 to create new offences in relation to industrial manslaughter and causing serious harm, and for related purposes.

The constitutional head of power that this bill relies upon is the Commonwealth’s clear authority to legislate over trading corporations under section 51 XX of the Australian Constitution, which reads,

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;

This Bill also relies upon the Federal Parliament's power to legislate for the prevention of industrial disputes contained in section 51, XXXV.

This bill establishes a legal framework that surrounds employers and in doing so guards employees by making negligent employers responsible for the death or serious injury of workers. This framework I have referred to applies to Commonwealth entities, constitutional corporations and organisations engaged in constitutional trade or commerce, excludes or limits the concur-
rent operation of any law of a State or Territory and binds the Crown in all of its capacities.

Under this Bill an employer commits an offence if a worker of the employer

- dies in the course of employment by, or providing services to, or in relation to, the employer; or
- is harmed in the course of employment by, or providing services to, or in relation to, the employer and later dies; and
- the employer’s conduct causes the death of the worker; and
- the employer is negligent in relation to causing the death of the worker, or any other worker of the employer, by the conduct.

As for penalties, if the offender is a natural person they can incur a fine of up to $5 million, or imprisonment for 25 years; or if the offender is a body corporate a fine of up to $50 million.

Alternatively, if an employer negligently causes serious harm to an employee they also commit an offence if

- a worker of the employer suffers serious harm in the course of employment by, or providing services to, or in relation to, the employer; and
- the employer’s conduct causes the serious harm to the worker; and
- the employer is negligent in relation to causing the serious harm to the worker, or any other worker of the employer, by the conduct.

If the offender is a natural person fines of up to $5 million can be laid or terms of imprisonment can be ordered for up to 10 years;

Or, if the offender is a body corporate—a fine of $50 million can be incurred.

In determining whether an employer is negligent, the court may have regard to:

- the conduct of the employer’s organisation as a whole; and
- the aggregate of the conduct of any number of the employees, agents or senior officers; and
- the negligence of any agent in the provision of services—but that negligence must not be attributed to the employer; and
- any failure of the employer to:
  - adequately manage, control or supervise the conduct of one or more of its employees, agents or senior officers; or
  - engage as an agent a person reasonably capable of providing the contracted services; or
  - provide adequate systems for conveying relevant information to relevant persons in the employer’s organisation; or
  - take reasonable action to remedy a dangerous situation of which a senior officer has actual knowledge; or
  - take reasonable action to remedy a dangerous situation identified in a written notice served on the employer by or under an Act.

If a court finds a natural person, including a senior officer, guilty of an offence under this Bill a custodial sentence must not be imposed unless the court considers that the degree of negligence involved in the conduct was extreme or the person has a prior conviction for an offence under this Part.

In addition to, or instead of any other penalty a court may impose on the person, a court may make one or more of the following orders:

- that the person undertake voluntary service for the public benefit in any capacity or for any period which the court thinks fit;
- that the person undergo specified training or educational activities;
- prohibiting the person from acting as an officer of a corporation for a specified period of time;
- any other order the court thinks fit, including that the person make reparation to any person, by way of payment of money or otherwise, in respect of any loss suffered or any expense incurred by that person as direct result of the commission of the offence.

If a court finds a corporation guilty under this Bill including one or more of the following including the:
• publication of the offence; and
• the deaths or serious harm or other consequences resulting from or related to the conduct from which the offence arose; and
• any penalties imposed, or other orders made, because of the offence;
• or to carry out a specified project for the public benefit even if the project is unrelated to the offence;
• and to make reparation to any person, by way of payment of money or otherwise, in respect of any loss suffered or any expense incurred by that person as a direct result of the commission of the offence.

This Bill shows a flexible yet highly effective approach to workplace safety.

As long as this parliament continues to do nothing about the murderous negligence of the cowboy operators the needless deaths of Australian workers will continue. As long as excuses are found to protect the big end of town from the threat of becoming responsible for their actions then the roll call of tragedy will go on.

This bill gives the parliament the opportunity to stem the tide of death and injury in our workplaces.

I commend the bill to the Senate.

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

Leave granted; debate adjourned.

MATTERS OF PUBLIC IMPORTANCE
Health: Pharmaceutical Benefits Scheme

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

The Government’s refusal to protect Australians’ access to affordable quality medicines via the Pharmaceutical Benefits Scheme.

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

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

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

Senator FORSHAW (New South Wales) (4.33 p.m.)—Thank you, Mr Acting Deputy President. It is very pleasing to see the degree of strong support for this matter of public importance being debated here today in the Senate. I am certainly pleased to bring this matter forward. We are discussing the government’s refusal to protect Australians’ access to affordable quality medicines via the Pharmaceutical Benefits Scheme. The Pharmaceutical Benefits Scheme is of fundamental importance to the health of all Australians, so this is a matter of vital public importance. The PBS must be protected. We are aware—and I will come to this a little bit later—that there is a great deal of concern out there in the community and in the professions regarding the impact of the proposed free trade agreement on the Pharmaceutical Benefits Scheme.

The Pharmaceutical Benefits Scheme, the PBS, is the guarantee that all Australians have access to affordable prescription medicines. It is a universal scheme. It is one of the three pillars of our health system, which is indisputably the best health system in the world. The three pillars of our Australian health system are: Medicare, the PBS and our public hospital system. It was of course Labor that established Medicare and its predecessor, Medibank. It was of course the Liberal-National Party coalition that destroyed Medibank. The Fraser government abolished Medibank when it came to office in 1975. It was of course the Hawke Labor
Government that re-established the universal system of health care, called Medicare, when it came to office in 1983.

If they had had the chance prior to 1996 the Liberals would have destroyed Medicare as well. Indeed, that was the policy of the Liberal Party led, as it is today, by the declared arch enemy of Medicare, now the Prime Minister, John Howard. He is on the record as saying that they would destroy Medicare and that ‘bulk-billing is a rort’. They were his words. Indeed, they attempted to do it in their campaign in the 1993 election under John Hewson. Whilst they failed to destroy Medicare then, they are today, now that they are in government, strangling bulk-billing and heavily promoting the private health sector at the expense of public hospitals.

Who established the second pillar of our health system, the PBS, which is the matter we are discussing today? It was the Chifley Labor government that, 56 years ago, established a scheme to supply drugs and medicines free of charge to the community. It was the creation of that scheme that led to the Pharmaceutical Benefits Scheme as we know it today. Indeed, in 1944 the Labor government attempted to establish a universal scheme to provide free or subsidised medicines to all Australians, but the legislation was challenged in the High Court. It is an interesting aspect of history that it was challenged by what was then the Australian branch of the British Medical Association. The court ruled that the proposed scheme was unconstitutional. But Labor persisted between 1944 and 1948 and eventually reached an agreement to establish, as I said, a scheme to supply drugs and medicines free of charge which became the Pharmaceutical Benefits Scheme.

So when it comes to the great advances and to protecting the health of our citizens, it is Labor that has the record of achievement. In contrast it is the coalition parties that have through their neglect, and on occasions by design, weakened the health system and reduced the effectiveness of the PBS, just as they have done and are doing with Medicare and our public hospital system. I recall that in 1997, not long after this government came to office, they removed a number of important drugs from the Pharmaceutical Benefits Scheme list. These were drugs for depression and for the treatment of cholesterol and blood pressure. This caused a large community reaction because, whilst the government did backflip on a couple of the delistings, a number of important drugs were delisted, which made those drugs more expensive and particularly impacted upon the elderly and others on pensions who have chronic illnesses. Today we find that the government is refusing to guarantee important parts of the PBS, in particular those parts that guarantee the ability of patients to access generic medicines.

The free trade agreement that this Prime Minister and his government have negotiated with the US is, as we know, a second-best deal. It is of benefit in some areas, but overall it is of marginal benefit to the Australian economy. The government could have and should have done a lot better. We know that there is widespread concern in the community and in the medical profession that the free trade agreement could threaten aspects of the Pharmaceutical Benefits Scheme. That is why it was so important for the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America to examine the free trade agreement in detail, despite the objections of the government. I congratulate the members of the committee on the job they did. Of course, the government and the Prime Minister just wanted the agreement rubber-stamped.
The Senate committee received many submissions and heard much evidence on the impact of the free trade agreement on the PBS. Two key issues were identified, but I would like to deal with one in particular—that is, the concern that the free trade agreement may delay the introduction of generic drugs onto the market through drug companies seeking to evergreen their patents. For those members of the public who are listening I will explain the term ‘evergreening’, which has been used quite extensively. Evergreening occurs when the innovator company that has actually obtained the patent for the brand name drug seeks to extend the life of that patent over that drug, preventing similar generic drugs coming onto the market. Of course, the concern is that those applications for a further patent to evergreen the patent can be made in a spurious way—for instance, by seeking a patent for the same drug, the same chemical compound, but in a slightly different form. They may seek to further patent the drug as a capsule rather than as a tablet, or as a powder rather than as a tablet, or as a different coloured capsule containing the same chemical compound.

The important issue is that, under the free trade agreement, a company seeking to introduce a generic drug onto the market is required to notify the company that holds the patent over that drug before the patent expires. The concern, which is real and not fictitious, is that the innovator company might lodge a spurious patent application simply to delay the generic and therefore cheaper drug entering the market. We know, and this government has itself said in the past, that it is important to ensure that generic drugs get onto the market because they do provide an alternative—the same drug compound but an alternative, generically produced drug—to the brand name product, invariably at a cheaper price. That is important because, firstly, it is of benefit to consumers, particularly those on lower incomes; and, secondly, it helps to keep down the growing cost of the Pharmaceutical Benefits Scheme. That cost is at the moment in excess of $4 billion a year.

We have endeavoured to make sure that the process of ensuring that generic drugs can get onto the market without delay will continue unimpeded in the future. We have proposed an amendment to the free trade agreement legislation that defines clearly and precisely the terminology with respect to patents to ensure that evergreen patents, these spurious patents, cannot be applied for. The Prime Minister will not agree to this simple but vitally important amendment that will protect and strengthen the PBS.

Our proposal is supported by the Australian Medical Association. The AMA vice president, Dr Mukesh Haikerwal, has said:

The benefits of the current scheme are that we do have a review process that is independent and that there is some transparency ... Increasing the transparency and by enshrining the situation of access and generic drugs being allowed on [the market] quicker will actually make the situation better.

The AMA supports our proposal. The Prime Minister is running around the country saying that the generic medicines industry believes that the current situation is okay and that no amendment is necessary. Interestingly, the Prime Minister, in a doorstop this morning where he was asked one question, said that the current arrangements provide full protection—I paraphrase there. He said:

It’s the view, so I understand it, of the generic medicines industry.

He did not quote them directly, because he cannot quote them directly. He is saying he understands that is the generic medicines industry’s view. I understand that the generic medicines industry’s view is that it would not object to Labor’s amendment. In fact, it
would accept that it provides that guarantee. I also draw attention to the fact that the report of the Joint Standing Committee on Treaties, whilst acknowledging that the current arrangements are ones which would ordinarily prevent evergreen patents, nevertheless said this:

The Committee recognises the concerns expressed by the community in respect of this important matter and are mindful of the impact that it may have on our world class health system.

The treaties committee report, which is a unanimous report, recognises that there is a concern out there and recognises the potential impact. What we are seeking to do is guarantee that evergreening of patents cannot occur such that they would delay and thereby effectively prevent cheaper generic medicines coming onto the market for consumers.

What is the government’s real objection to the Labor Party’s considered, practical and responsible amendments? Of course, their real agenda is to try to drum up some phoney election issue by painting the Australian Labor Party as anti-American. When Minister Tony Abbott, the minister for health, was asked repeatedly on *Lateline* last night why the government would not accept Labor’s amendments that would guarantee the passage of the FTA, he did not deal with the issues; he went on a diatribe about Labor’s anti-Americanism. The fact is that the Labor Party are not anti-American; we are pro-Australian. We are about protecting the PBS. It is the right thing to do and the government and Mr Howard should start doing it.

In my closing remarks I would like to draw the attention of honourable senators and the public to the crikey.com web site. There they will see a list of former staffers of Liberal ministers who now work for the large, foreign owned pharmaceutical companies. Have a look at that list and then you may also start to understand some of the other reasons that are behind the government’s refusal to accept what is a sensible, logical, practical and also necessary amendment to guarantee the future of the PBS.

(Time expired)

**Senator KNOWLES (Western Australia)**

(4.48 p.m.)—It is interesting that Senator Forshaw is the one who has brought this matter of public importance to the chamber today, given that Senator Forshaw still opposes the FTA. He is supposedly the only one in the right-wing faction who still opposes the FTA. Here he is coming in and saying that he wants these amendments. He does not want these amendments at all; he wants the FTA to go down. It is interesting. What we are seeing here today is a plot by the Labor Party and particularly by the leader to reintroduce the word ‘bodgie’ into the Australian lexicon. If I have heard him say ‘bodgie’ once in the last 24 to 48 hours I have heard him say it about 48 times. You would think he would have the intellect to think up another description besides ‘bodgie’. Nonetheless, here we have the Labor Party making claims about evergreening. The Labor Party simply do not get it. They do not understand it. They do not understand that Australian courts already ensure that big drug companies do not abuse the patents system. They simply do not understand it. Labor say that there is no evidence that the pharmaceutical companies are using the tactic in Australia. Senator Conroy admitted it with his leader the other day.

Yet here they are saying, ‘This is a make or break. Let’s make sure that we put up some stupid amendments that are going to be knocked off so that we have our cause to vote against the FTA, so that we have our cause to vote against the interests of the Australian people.’ That is what Senator Forshaw is on about—game, set and match. He does not want the FTA; he has never wanted the FTA. There is nothing at all in the commit-
tee’s report that says anything about making sure that the courts that already have the jurisdiction will not have it in the future under the FTA. Why on earth have the Labor Party now dreamt this up other than to throw this thing out? As part of the negotiations, Australia fought hard and long—and, I might say, very successfully—to protect the generic manufacturers. They are in agreement with the FTA. Senator Conroy was the one who admitted that this was so. Senator Conroy, I might add for those who might be listening to this, is a Labor Party senator. He is the one who has said that there has been no evidence that the drug companies have ever done what they do in the United States. He is also the one who has said that it is against the law. He is also the one who has said that there is no evidence that companies are using that tactic in Australia.

Yet the other interesting thing that Senator Conroy said is that they would put this up as a furphy but they would have to get legal advice to make sure that it was workable. Have we yet seen that legal advice? No, we have not. We just have this notion of saying, ‘We’ll throw up these couple of amendments, we’ll let the government disagree with them and then we’ve got our cause to vote against the national interest.’

My colleague and friend Senator Brandis will go through some of these legal implications in his contribution a little later on. It is interesting because there are people on the Labor Party side who agree with Senator Brandis, with the Prime Minister and with the other commentators that what the Labor Party is doing is not acting in Australia’s best interest because there is currently no evidence presented to anybody that anything will change under the FTA that is currently illegal now. What is illegal now, according to the Labor Party, is somehow going to be legal in the future unless this amendment is passed.

Where is the evidence? Give us the evidence. This is a government that has increased and protected the PBS. This is a government which, under the care of Senator Patterson and Mr Abbott, has ensured that more and more drugs are available at a reasonable cost to the Australian public. The only way that they have been able to ensure it is through sheer doggedness. Why? It is because the Labor Party has consistently, for 25 months, opposed the proposition of making more and more drugs available to the population at a reasonable cost. These are the really expensive drugs—that those that would send people broke or see them die if they did not have access to them. Senator Patterson and Mr Abbott have ensured that those drugs are available. What the Labor Party has done until five weeks ago is oppose the measure. Now it is trying to run another scare campaign on the same issue. This is absolutely hypocritical.

We heard Senator Forshaw a little while ago talk about the merits of the Labor Party. Huh? The merits of the Labor Party with regard to health care? Give us a break. It has taken this government to double the amount of spending on health care. It is the Howard government that has taken the initiatives to double the spending on health care. Where were the Labor Party for 13 years on health expenditure? They were hiding behind the bushes, carping, criticising, doing exactly what they are doing today. They at no stage ever reinvigorated Medicare; they never reinvigorated the PBS and here they are coming in and fibbing today about the implications of the FTA.

Truly, it is getting beyond a joke when we have Mr Latham not understanding the basic principles. This morning he was asked on radio, ‘Do you understand how the Patents Act works in Australia at the moment with regard to generics?’ The short answer was no. His answer was, ‘Well, um, er, I under-
stand how this issue works; I understand the findings of the Senate report that has made this recommendation. In other words, he does not understand and never has, in the same way that he does not understand the tax legislation. He was asked a couple of weeks ago about people’s winnings through some reality TV show: ‘Will they be taxed, Mr Latham?’ He said, ‘Yes, I think they are currently taxed now.’ The truth of the matter is that they are not.

This guy wants to be in charge of the country. He cannot understand the basic principles and this is just a further excuse to deny the Australian people the best benefit that they can get with the biggest trading nation in the world bar none. What happens? Labor put up two stingy little amendments that will do nothing except give them the opportunity to vote down the free trade agreement. That, in anyone’s language, should be seen for what it is, and it is absolutely and utterly a disgrace that the Labor Party would take that role in this day and age.

The concern that has been expressed by members of the Australian Labor Party—the only outstanding issue standing between them and the passage of the bill through this chamber—is concern about the effects of the FTA and implementing legislation on the capacity of generic drugs to be placed on the Australian market. The argument runs like this. They say that in America there is a practice known as evergreening. What that means is that when a drug—over which, during the life of the patent, American pharmaceutical companies enjoy a monopoly of supply and can therefore obtain monopoly profits—comes off patent the American companies have the practice of lodging a fresh patent application on insubstantial grounds. That prevents the generic medicine coming on to the market because an injunction will be issued to stop that happening.

They say that that could happen in Australia because of the effect of the FTA. That is wrong. Let me tell you why. Under the American law, the Hatch-Waxman act, when a patent holder seeks to challenge the entitlement of a generic drug manufacturer to market that drug, an injunction automatically issues. It is a 30-month injunction. During that time, the original producer—the patentee—is entitled to continue to enjoy the benefits of its monopoly over the particular pharmaceutical, whether or not the new patent is validly claimed. Even if at the end of that period or some extended period after the litigation is finished it suffers a defeat in the litigation and it has to pay a lot of costs, nevertheless the amount by which the American pharmaceutical company will have enriched itself because of the profits it will have enjoyed in those three years or so will make the costs of the litigation seem minute by comparison. It is a kind of abuse of process.

But that cannot happen here, because that is not the way the FTA works. Firstly, we do not have the Hatch-Waxman act in Australia.
We do not have the automatic 30-month injunction. That set of considerations, which so exercised people like Dr Faunce when he appeared before the Senate committee, is simply irrelevant to the Australian position. Secondly, they say that there is an additional step in the registration proceedings before the Therapeutic Goods Administration which imperils the PBS by acting as a trigger mechanism for injunctions like that to be sought. Those who say that are ignorant of the language of the legislation found at schedule 7 of the implementing bill.

Schedule 7 proposes the insertion of a new section, section 26B, into the Therapeutic Goods Act. This provides for a new step. It is a certification requirement. But all it amounts to is that if the producer of a generic pharmaceutical wants that generic pharmaceutical registered and approved for sale by the TGA then, in addition to all the medical and scientific tests it has to satisfy under the existing law, it must do one thing: it must provide the TGA with a certificate. That certificate can do one of two things. Proposed section 26B says:

(1) The certificate required by this subsection is either:

(a) a certificate to the effect that the applicant is not marketing, and does not propose to market, the therapeutic goods in a manner, or in circumstances, that would infringe a patent that has been granted in relation to the therapeutic goods ... 

In other words, if there is no patent infringement issue, the certificate under proposed section 26B(1)(a) has no impact at all. The alternative in the proposed section is as follows:

(b) a certificate to the effect that:

(i) a patent has been granted in relation to the therapeutic goods; and

(ii) the applicant proposes to market the therapeutic goods before the end of the term of the patent; and

(iii) the applicant has given the patentee notice of the application for registration or listing of the therapeutic goods under section 23.

So that notice provision can only become relevant if there is an existing patent that the producer of the generic goods proposes to infringe. The only additional step is the requirement of a certification that notice has been given to the patent holder.

The patent holder can then look to its rights under the existing law, just as any patent holder whose patent is being infringed can seek an injunction to restrain the infringement of that patent. The only difference is that the notification procedure under proposed section 26B(1)(b)(iii) brings at an earlier point in time the notice to the patentee of an apprehended infringement of its patent. So if the patentee decides to sue to protect its patent it will no doubt go to court when it gets the notice—at an earlier point in time, before the proposed producer of the generic good has invested its capital in the manufacture, distribution, advertising and marketing of the drug.

Far from being a device that will delay the process through which generic drugs come onto the market, what the proposed section does is the very opposite, which the opposition would see if they took the trouble to read it. It will bring forward to an earlier point in time the stage at which a patent holder claiming that its patent is about to be infringed can test the matter in court by seeking an injunction to restrain the infringement. If there is no patent infringement issue arising, you go under section 26B(1)(a) and the argument becomes irrelevant. If there is a patent infringement issue arising, you certify under proposed section 26B(1)(b) and you give a notice under 26B(1)(b)(iii) to the patentee earlier so that any legal dispute can happen at an earlier time, before the producer of the proposed generic drug has sunk its capital into the manufacture, distribution, advertis-
ing and marketing of the drug. If the opposition took the trouble to read the statute, they would see that that gives lie to the suggestion this will delay the introduction of a generic pharmaceutical on the market. Under the existing law, any company whose patent is being infringed can sue for an injunction to prevent that infringement, but the mechanism of this means that any dispute will come to a head sooner than it otherwise would have.

Senator ALLISON (Victoria) (5.07 p.m.)—The Democrats welcome any opportunity to talk about the PBS, but I must say that I am rather puzzled as to why we are doing so at this point in time. As everyone in this place knows, we are midway through the second reading debate on the free trade legislation. We agree that this is a matter of great public importance. But, as I said, we are already debating the free trade agreement and everybody knows that that agreement will reduce access to affordable quality medicines, with or without the ALP’s mooted amendment. I suggest that, instead of talking about the government’s refusal to protect Australia’s access to affordable quality medicines via the PBS—which we all know about—we ought to be talking about the ALP’s refusal. Senator Forshaw could have started with the 30 per cent increase in copayments that the ALP agreed to last month. Did that protect the affordability of quality medicines via the PBS? I certainly do not think so. Will the copayment be increased to cover the increased costs of medicines that will result from the passage of the FTA? Will the copayment have to be cranked up another 30 per cent? Maybe it will be even more than that.

The report of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America, authored by its ALP chair, identified numerous ways in which the FTA has the potential to increase the costs of drugs, increase pressure on the PBS and close off future avenues for the government to constrain rising costs. That was a puzzle too. Why write a report that is full of evidence that says, ‘Don’t pass this legislation,’ and then turn around and say, ‘Actually, as long as a minor amendment is agreed to, we will pass it’? It is good to see that Labor have started to focus attention on the real concerns that exist about the future of pharmaceutical prices in Australia, but they have chosen to focus their efforts on one very small element of the FTA—and, as Senator Brandis says, there is some doubt about whether it will be of any use at all, in any case. Of course, we do not know. We have not seen the amendments, so we cannot comment on them and their effect; and we certainly will not have time to give them proper consideration even when we do see them.

Labor’s amendments will not do anything much, from what we know, to lessen the power of the large US pharmaceutical companies to control the price of our drugs. Labor’s amendment will not address the fact that the FTA does not take into account the rights of consumers to equitable access to affordable drugs. Three of the four principles contained within annex 2-C—the section of the FTA that explicitly relates to pharmaceuticals—emphasise the value of innovative pharmaceuticals, whilst the fourth is concerned with the importance of research and development. These are the principles that will be used to guide changes to the PBS. However, annex 2-C contains no corresponding commitment to the importance and value of protecting public health and of protecting universal and affordable access to necessary medicines. The rights of the pharmaceutical companies are explicitly documented, yet the rights of the Australian public are not. Our PBS and our national medicines policy are founded on those principles—those rights of
equitable and affordable access to necessary drugs—yet that does not get a mention in this agreement.

When disagreements arise in relation to the FTA and pharmaceuticals policy, as they will, a three-member panel appointed to adjudicate will use the principles set out in annex 2-C to interpret the agreement and resolve those disputes. These principles, which emphasise innovation and research and development, will be used to decide whether Australia is meeting its obligations in relation to the FTA. So, when there are disputes under the terms of the agreement, the rights of the drug company will be favoured over the rights of Australians to access drugs. In fact, the Labor committee report sets that out in some detail. Pfizer have already taken an unfavourable decision made by the PBAC to the Australian High Court. They were unsuccessful in getting the decision overturned at that time, but the review mechanism and the dispute resolution provisions provided in the FTA will give them more opportunities to get such decisions overturned. That is based on the best advice that has been available to the committee. As we know, the FTA allows pharmaceutical companies to request a review of negative decisions to list their products. That introduces another layer of complexity into the listing process and, at the very least, provides another opportunity to put pressure on the PBAC to reward innovation and research and development.

The ALP could have fixed up the one-sided transparency arrangements in the agreement. The government has opened up the listing process to full transparency, giving pharmaceutical companies access to all the reasons for not listing and making them very much easier to challenge. However, there is no corresponding requirement for transparency on the part of pharmaceutical companies on clinical trials, for instance. Pharmaceutical companies have been very reluctant for this to be publicly released. The commercial-in-confidence rights of pharmaceutical companies are guaranteed within the FTA; yet the public are denied access to drug company data, despite evidence that drug companies withhold information that could impact on decisions about the use of drugs.

The medicines working group has health officials from the United States as well as Australia but no consumers or public health organisations. Why not move to say that this is not acceptable to the ALP? Senator Kyl from the US Senate said:

During our meetings in Australia we suggested such a working group as a way to guarantee that, if our pricing concerns could not be resolved in the FTA, we could continue to discuss the issue. The subject matters that the group might consider are not limited by the agreement, and therefore can be expected to include the importance of market-based pricing.

We all know what ‘market based’—as opposed to the kind of basis we use for pricing pharmaceuticals—means. The ALP could have said that their agreement to the FTA would be conditional on no advertising on the Internet. Direct-to-consumer advertising is not currently allowed in Australia and, in our view, Internet advertising would be an important first step for the United States in getting here the sort of advertising that is allowed there. Experience there is that advertising increases the use of more expensive—but not necessarily therapeutically superior—brand name medicines. Advertising increases patient demand for, and use of, products that are often at odds with clinical practice. Relaxation of advertising restrictions in the United States resulted in a 41.7 per cent increase in sales of heavily promoted medicines compared with a 14.4 per cent increase for other medicines.

The FTA increases barriers to generic drugs entering the market. The generic versions of drugs play a vital role in keeping...
drug prices—and consequently the costs to the PBS—down through providing greater competition. If these changes delay the market entry of generic versions of just the top five PBS expenditure drugs due to come off patent soon, the cost of the PBS could be increased by $1.5 billion over 2006-09, according to estimations put forward to the inquiry.

The US pharmaceutical industry does not like the success of the PBS in controlling the prices that are paid by government, because this places limits on the enormous profits that pharmaceutical companies make. Of course they are not happy with that. Prices here are much lower than in the United States, but we do not force pharmaceutical companies to sell their products here under the PBS. They do so because, despite the PBS process and the lower prices, they still make profits in this country—and they would soon withdraw if they did not. The good thing about Australia is that we heavily subsidise medicines, meaning that pretty much anyone who needs them receives them—unlike the situation in the United States—so drug use here is high.

The pharmaceutical industry says that the PBS reduces the total amount that would otherwise be paid for pharmaceutical products in Australia by around $1 billion. So, instead of costing the Commonwealth $4.5 billion a year, they could cost $5.5 billion. I ask: if this agreement is successful and the prices are bumped up by $1 billion, who exactly is going to pay? I think the Democrats can guarantee that Defence will not pay and that taxes will not rise, at least for high-income earners. The subsidies for wealthy schools will not be cut. I ask just how the government and the Labor Party plan to pay for this failure to protect the PBS. Are the increases in copayments that we saw passed in June by both the major parties the start of ever-increasing up-front costs for the sick?

As a result of the FTA, Australia will be paying more for the same medicines. This will simply mean more profits going to US drug companies. I suggest that if Senator Forshaw is interested in protecting the affordability of the PBS then the Labor Party should reject the whole agreement, send it back to the government and tell them to renegotiate it and come back to the parliament when all of the questions can be answered and we can make an informed decision on whether this agreement is about protecting the PBS or about something completely different.

Senator McLUCAS (Queensland) (5.17 p.m.)—I rise today in defence of the Pharmaceutical Benefits Scheme and in defence of those Australians—particularly low-income earners, families, pensioners and the chronically ill—whose quality of life relies on affordable quality medicines. Labor’s decision to protect the PBS reflects Labor’s determination to defend the health of all Australians—a position that has been strongly supported by the AMA. In my view, the Prime Minister needs to accept the advice of the AMA. The doctors who actually prescribe medicines to patients in this country last night came out resoundingly in favour of Labor’s leadership on the PBS with respect to the free trade agreement.

Let us look at the issue of leadership. The Prime Minister is on the public record stating that Mr Mark Latham and Labor have in some way acted to stall the free trade agreement process; yet it is the Prime Minister who is now standing behind giant US pharmaceutical corporations and playing brinkmanship with an agreement that was signed by the US President only in the past 24 hours. The Senate Select Committee on the Free Trade Agreement between Australia and the United States of America, established as a result of Labor’s leadership, has uncovered a range of issues associated with the FTA’s
supposedly intended commitment to increase transparency when it comes to the PBS listing process.

These issues are now the subject of important community debate at an appropriate time. There has been no delay. There has been no obfuscation. There has been measured consideration in the public interest. Issues of real public concern have been identified with respect to Australian content and with respect to pharmaceuticals. Labor has proposed sensible conditional amendments which will protect our community. For, as the interim report of the Senate select committee spells out, the sustainability of the PBS and the future of drug prices in Australia is an issue of interest not just to one sector of the Australian economy or community; it is an issue that directly impacts on all Australians. Should the AUSFTA result in higher prices for pharmaceuticals, Australians would bear the cost either indirectly as increasing tax revenue is needed to support the PBS or directly through higher out-of-pocket expenses for non-listed drugs.

Responsible leadership has been demonstrated—but not by the Howard government. The Howard government are playing political brinkmanship with the free trade agreement and the PBS. By contrast, Mr Latham and Labor have shown the capacity appropriately to define our trading relationship with the largest economy in the world. Mr Latham made a very salient point on John Laws’s radio program this morning. He said: ...

And let us not forget that the Minister for Health and Ageing, Mr Abbott, went on the record on the Sunday Sunrise program on 2 November last year saying that the PBS was non-negotiable as far as he was concerned. Mr Abbott said:

I think there’s no doubt that the American drug companies don’t like the PBS because the government uses its position as a massive purchaser of drugs to keep prices down, and that’s the way it should be.

And I agree with him. He went on, though:

But the PBS is not a trade instrument. It doesn’t discriminate between drugs produced in America by American companies, produced in Australia by American companies or produced in Australia by Australian companies. It doesn’t discriminate on that basis. It’s simply a way of trying to ensure that Australians have access to affordable and necessary drugs.

He concluded:

There will be no changes to the PBS that hurt Australian consumers—none whatsoever.

So now we have a situation that cuts to the heart of whether Mr Howard and Mr Abbott have, in fact, been honest with the Australian community. What Labor is calling for in terms of protecting the sustainability of the PBS and preventing rises in the costs of medicines is a stop to what is known as evergreening—drug companies taking legal action to prolong the term of their patent and thus avoid the introduction of cheaper generics onto the market.

The AMA, like the Labor Party, sees risks for the PBS in the FTA agreement as it currently stands. Dr Mukesh Haikerwal said yesterday:

... the right of generic pharmaceuticals to be marketed as soon as the originator patent expires must be guaranteed.

The AMA has also unequivocally backed Labor’s other proposals to protect the PBS: the publication of most information on the Internet, requiring each successful use of the
independent review mechanism to be reported to parliament in a ministerial statement, annual Productivity Commission reports on the impact of the free trade agreement on pharmaceutical prices, and a commitment to the principle of universal access to affordable medicines in the terms of reference for the medicines working group.

Dr Haikerwal knows Labor’s proposed changes are sensible ones which will give effect to the government’s assurances that the FTA will not harm Australia’s internationally admired PBS. In fact, he asserts:

These safeguards must be in place before Australia signs off on the FTA.

Little wonder, when we examine just how powerful and how profitable US drug companies are. On July 15 this year, the influential New York Review of Books published an article by Marcia Angell called ‘The Truth About the Drug Companies’. It clearly shows that big pharma is not only profitable; it is really profitable. In 2002, the combined profits for the 10 drug companies on the Fortune 500 list—which were $35.9 billion—were more than the profits for all the other 490 businesses put together, which were $33.7 billion. I should point out that this data was drawn from the Fortune 500 list of April 7, 2003 and the drug companies’ own annual reports. We are not talking about an industry short of change which they can use to take matters through any court and to prolong applications—as we know occurs very regularly in the United States.

Australia is no match for the lobbying and legal efforts of the drug corporations. When our doctors believe we need to safeguard the PBS, we in this chamber—and those in the other one—are obliged to believe them. The pharmaceutical companies spend over twice as much on marketing as they do on research and development. It is financially in their interests, and in their shareholders’ interests, to delay the introduction of generics into the community. The greed and aggression of the pharmaceutical manufacturers is not limited to American firms; it applies just as much to the Swiss and German ones. Anyone who follows the proceedings of the World Health Organisation would know that. Firms such as Bayer have not covered themselves with glory in their dealings with the Third World. Greed knows no nationality, and profiteering deserves no protection.

Mr Abbott, on Lateline last night, could not confirm the cost to taxpayers of the current PBS arrangements. He therefore cannot guarantee the sustainability of the PBS, despite his past assurances that the PBS is both ‘non-negotiable’ and ‘not a trade instrument’. The Prime Minister, Mr Abbott and the Howard government are determined to play political brinkmanship with the PBS, the FTA and—by implication—the health of our community. I say to the government: the PBS is too important to be used in an election context as a political football. I remind senators that access to affordable quality medicine is often, in fact, a matter of life and death. The government stands condemned for refusing to provide the Australian people and the medical profession with a guarantee of the protection of the PBS through Labor’s amendment to the FTA-enabling legislation.

Senator HUMPHRIES (Australian Capital Territory) (5.26 p.m.)—Australia stands today on the threshold of a major step forward for the health of our economy and for the strength of our trading position in the world. That step forward comes about because of our intention to sign a landmark agreement with the United States which will open up the US market to access by Australian goods and services as well, of course, as allowing access for US goods and services to the Australian market. I say we are on the threshold because we have not yet crossed it. Why? Because we are involved in a diver-
sion from the task of putting that extremely important US free trade agreement in place.

At a time when the national parliament, arguably, should be fully preoccupied with focusing on the national interest, we are instead focusing on the Labor Party’s internal needs and factional game-playing. The Labor Party’s 11th hour focus on an amendment concerning the Pharmaceutical Benefits Scheme is not about improving the free trade agreement. As Senator Brandis pointed out, their point on the Pharmaceutical Benefits Scheme is a tiny, narrow point. It is about the opposition leader appeasing his left wing and trade union critics. It is about saving face. It is also about trying to be all things to all people. The opposition leader supports the free trade agreement but also supports the critics of the free trade agreement. Just where does he stand?

Let us put a fact squarely on the table: the Australian Pharmaceutical Benefits Scheme is not under threat from the free trade agreement. Under the PBS, Australians determine which drugs will be listed, what subsidies listed drugs will enjoy and what price Australians will pay for the drugs on the PBS list. That will not change under the free trade agreement. So we know that prices of drugs will not increase as a result of the FTA. The legislation by which the listing and pricing of drugs is undertaken will not change, the Pharmaceutical Benefits Advisory Committee will continue as the gatekeeper for which drugs are listed and which drugs are not, and the PBAC will continue to use cost-effectiveness as the criterion for judging which drugs are listed and which are not.

But the opposition leader thinks he has found a problem with the free trade agreement. He believes it will open the door for drug companies to lodge dodgy patent claims to stymie cheaper, generic drugs from entering the market and being sold to Australian customers. He wants to create barriers to those companies lodging unmeritorious patent claims and he wants to penalise them if they even try to do it, apparently. Of course, he is painting himself as the man who is in favour of cheaper drugs for Australians.

Senator Marshall—That is exactly right.

Senator HUMPHRIES—That might work, Senator, for the six-second sound bite, but is it good policy? In this latest policy position adopted by Mark Latham we are seeing the very recognisable hallmarks of the ‘shoot first, ask questions later’ approach that so typifies your leader. What we are seeing here is an amendment which at best is unnecessary and at worst is unworkable. It will damage the integrity of the patent system.

Senator Marshall—How?

Senator HUMPHRIES—I will tell you if you care to listen. First of all, it is already possible under Australian law to block unmeritorious patent applications or extensions of applications. It is already clearly the case in Australian law. The practice of evergreening, which as we have heard is certainly a practice carried out by pharmaceutical companies in the United States, is not a problem in Australia and has not been a problem in Australia. If it is potentially an issue in this country, the terms of the free trade agreement and the legislation before the house today make that much less likely, if not impossible, to occur in the future. We do not see any basis for the claim that it is going to happen in this country, and certainly under the terms of this agreement it will not happen.

The second problem is that it is, frankly, an unworkable set of amendments. In the media today, a partner with Freehills who specialises in this area, Mr Paul Jones, said that deciding whether a claimed patent was of substance was a matter that already came before Australian courts. He said, ‘I would
consider any attempts to codify patents as spurious or dodgy as completely impractical. He was quoted as saying that it was hard to see how a court might impose penalties on a company for defending an approved patent. Indeed, it is hard to see how that is going to work, and I have no doubt that people in the back rooms of the Labor Party offices are scratching their heads trying to work out how these propositions put forward by the opposition leader are going to work in practice. Let us just see what sort of half-baked proposition comes forward from the opposition leader.

The fact is that we in this chamber have got a very little basis for trusting the Labor Party on the question of the PBS. This same party told us for 25 months that there was no way they were going to approve any increase in copayments costs to Australian consumers under the PBS. Then a couple of months ago, having worked out that they could not afford the suite of promises already made on the table to the Australian community for the next election, they decided they were going to backflip on the question of Pharmaceutical Benefits Scheme copayments and support the government legislation. On the FTA, we have heard: ‘If there’s no sugar, there’s no deal,’ and then, ‘We’re onboard,’ and then, ‘There are some of us who do not support the deal,’ and now, ‘We’re in favour of it but we won’t pass it unless we get our conditions met.’ We cannot trust the Labor Party on the FTA. (Time expired)

COMMITTEES

Scrutiny of Bills Committee

Report

Senator MARSHALL (Victoria) (5.34 p.m.)—I present the ninth report of 2004 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills Alert Digest No. 9 of 2004, dated 4 August 2004.

Ordered that the report be printed.

DOCUMENTS

Auditor-General's Reports

Report No. 5 of 2004-05

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 5 of 2004-05—Performance Audit—Management of the Standard Defence Supply System Upgrade.

INDIRECT TAX LEGISLATION AMENDMENT (SMALL BUSINESS MEASURES) BILL 2004

First Reading

Bill received from the House of Representatives.

Senator ABETZ (Tasmania—Special Minister of State) (5.36 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator ABETZ (Tasmania—Special Minister of State) (5.36 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

INDIRECT TAX LEGISLATION AMENDMENT (SMALL BUSINESS MEASURES) BILL 2004

The Treasurer announced in the budget a package of taxation measures aimed at reducing compliance costs for small business and providing greater flexibility to taxpayers in managing their affairs. The package included three initiatives that will significantly reduce GST compliance costs for small businesses.
This bill amends the GST Act to give effect to these measures.

The first of the initiatives provides small businesses and non-profit bodies that are voluntarily registered for the GST the option to report and pay GST on an annual basis. Businesses that take up this option will be able to prepare and lodge an annual GST return at the same time as they prepare their annual income tax return. The business will make a single payment of any GST at the time they lodge their returns with the Commissioner of Taxation.

The second initiative provides businesses that have an annual turnover of $2 million or less the option to undertake annual apportionment of input tax credits for acquisitions used partly for non-business purposes. Those businesses will disregard for most acquisitions or importations their non-business use in determining the amount of input tax credit they can claim in their monthly or quarterly GST return. The business will then make a single adjustment after the end of the financial year in which they made the claim for the credit to account for the non-business use. Businesses that are also required to determine the extent of non-business use of acquisitions or importations for income tax return purposes will be able to use the same determination for GST purposes.

The third initiative further reduces compliance costs for small businesses by simplifying the election rules relating to the option to pay GST by instalments and to lodge an annual GST return. An eligible business will no longer be required to make and lodge an annual election with the Commissioner of Taxation. Once a valid election has been made it will remain in force until the business chooses to leave the instalment system or it is no longer eligible to apply the option.

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

I commend this bill.

Debate (on motion by Senator Mackay) adjourned.

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

AUSTRALIAN PASSPORTS BILL 2004
AUSTRALIAN PASSPORTS (APPLICATION FEES) BILL 2004
AUSTRALIAN PASSPORTS (TRANSITIONALS AND CONSEQUENTIALS) BILL 2004
FAMILY AND COMMUNITY SERVICES AND VETERANS’ AFFAIRS LEGISLATION AMENDMENT (2004 BUDGET MEASURES) BILL 2004
ANTI-TERRORISM BILL (No. 3) 2004

First Reading

Bills received from the House of Representatives.

Senator ABETZ (Tasmania—Special Minister of State) (5.37 p.m.)—These bills are being introduced together. After debate on the motion for the second reading has been adjourned, I shall move a motion to have two of the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator ABETZ (Tasmania—Special Minister of State) (5.37 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

AUSTRALIAN PASSPORTS BILL 2004

The Australian Passports Bill will provide a modern legal structure to underpin our world-class passports system.

The Government wants to ensure that Australians can continue to rely on a travel document of the highest integrity, which clearly establishes their identity and citizenship.

CHAMBER
The Australian Passport Bill would replace the existing 65 year old Act. New elements include increased penalties for fraud, measures to reduce the number of lost and stolen passports, and an improved mechanism to prevent terrorists and other criminals from using passports.

Identity fraud is a major security problem—it has been estimated to cost A$1.1 billion annually.

The bill would increase the penalties for fraud up to A$110,000 or a 10 year jail term from $5,000 or 2 years jail in the current Act.

These penalties are the same as for comparable offences for people smuggling.

These penalties will apply across all indictable offences, such as false statements in applications and illegal use of a passport, including sale.

This will ensure that the Australian passport is not targeted by those seeking to commit identity fraud.

The new Act would enable us to combat identity fraud through the use of emerging technologies, such as biometrics.

The bill also contains a package of measures aimed at reducing the number of lost and stolen passports. The government’s policy approach is twofold—to emphasise the importance of protecting passports and to stop the misuse of lost or stolen passports.

The bill contains important new measures to support national security and law enforcement objectives.

The new Act will explicitly allow for refusal or cancellation of a passport if an Australian is likely to engage in, is charged with—or has been sentenced for—specified serious crimes.

These crimes will include child sex tourism, child abduction, sexual slavery, drug trafficking, people smuggling and terrorism.

In these circumstances, the bill makes clear that it is the responsibility of law enforcement agencies to assess that a person should be prevented from travelling. The person’s passport would then be refused or cancelled to complement the law enforcement objectives.

Existing powers to cancel a passport if a person could prejudice national security are retained in the bill.

These strong measures are necessary, particularly, to stop the misuse of lost or stolen passports and to stop terrorists and other criminals from travelling on Australian passports.

However, these powers must be administered fairly. Natural justice under the new Act will be maintained in a number of ways.

Firstly, the bill clearly states the entitlement of Australians to a passport. This provides a sound legal footing for any subsequent proceedings.

Secondly, the bill retains the comprehensive administrative review regime of the existing Act.

In this context, the Government’s policy is that Australian passports law should not be used as an extension of the judicial system and should not be expected to impose any more restraint on an individual than a court would be prepared to impose.

In short, the refusal or cancellation of a passport should not be used as a substitute for arresting and charging a suspect. Such administrative action should complement the law enforcement action.

In addition, as some travellers can lose multiple passports through no fault of their own, the specific categories of circumstances in which action may be taken against them will be set out clearly. These categories will be subject to Parliamentary approval.

Another priority for the Government is that the new Act set out a clear statutory framework to protect privacy.

I consider that high standards of privacy protection are important to maintain community confidence in a system which holds the information of about 8 million Australians.

A key element is a transparent mechanism for obtaining information to verify identity and citizenship. The bill also proposes to regulate the disclosure of information for other limited purposes.

The bill retains the basic requirements for the issue of passports for children. These requirements are in place to protect children from abduction and to protect the rights of parents.

In some circumstances, where there is a dispute between parents about whether their child can travel internationally, officers of my Department
are required under the current Act to make decisions to resolve the dispute. These decisions are made, with the best intentions, but outside the formal policy and legislative framework established under the family law system.

The bill proposes that, in such cases, a declaration may be made that the matter should be dealt with by a court.

In the short time available, I have set out the basic new elements of the Australian Passports Bill. I look forward to debate on this bill.

AUSTRALIAN PASSPORTS (APPLICATION FEES) BILL 2004

This bill will establish a simpler structure to deal with changes in costs and validity of passports. This structure will enable the Government to respond rapidly to demands by Australian travellers for different types of passports and to increase fees and shorten validity periods for those who lose multiple passports.

This structure will also resolve the longstanding technical constitutional debate over whether passport fees were a tax or cost recovery.

Each year the Australian passports system provides 1 million Australians with passports at a cost of $100 million. It is important that this substantial operation is put on the soundest legal footing.

AUSTRALIAN PASSPORTS (TRANSITIONALS AND CONSEQUENTIALS) BILL 2004

An important element of the Australian Passports (Transitionals and Consequentials) Bill will be the final stage of the introduction of the Foreign Passports (Law Enforcement and Security) Act. The Anti-Terrorism Bill (No. 2) 2004, introduced last week, seeks to amend the existing Passports Act to include offences and surrender provisions for foreign passports to parallel the offences and refusal and cancellation provisions in the Australian Passports Bill.

This Consequentials Bill, repeals all provisions relating to Australian passports from the Passports Act 1938 and renaming it the Foreign Passports (Law Enforcement and Security) Act.

On a practical note, I should make clear that passports issued under the old Act remain valid.

Finally, I would like to say a word about consultation. 8 million Australians hold passports and it is important that the system reflects their needs. Officials in my department have engaged in extensive consultation with travel, banking and technology industries; with the Privacy Commission and the Family Court; with State Governments; and with privacy, human rights and consumer advocates. Key details of the bill directly reflect their input.

I thank them for their contribution to the development of this legislation, which will strengthen the capacity and integrity of the passports system.

FAMILY AND COMMUNITY SERVICES AND VETERANS’ AFFAIRS LEGISLATION AMENDMENT (2004 BUDGET MEASURES) BILL 2004

This Bill gives effect to two beneficial Family and Community Services and Veterans’ Affairs 2004 Budget measures that require legislation.

Firstly, the Bill will exempt all scholarships (or such components of any scholarships) that pay tuition fees or any student contribution amount on a student’s behalf, or waive all or part of a student’s tuition fee or any student contribution amount, from the social security and veterans’ affairs income tests. This extends the exemptions announced in December 2003 in which Commonwealth Learning Scholarships and full fee-waiver scholarships provided by higher education institutions were made exempt from the social security and veterans’ affairs income tests. This will apply to scholarships offered in the secondary, vocational education and training and higher education sectors, and will assist approximately 1,550 students at the present time. However, this number is expected to increase by up to 2,200 students per year by 2008.

Secondly, the Bill expands the eligibility criteria for carer allowance by allowing a carer to be qualified for carer allowance if they provide certain care for an adult with a disability, even if they do not live with that adult. This measure recognises that it may not always be possible or appropriate for the carer to live with the person.
for whom they are providing care, and yet these carers still make a valuable and significant contribution to the community. In many cases this care allows the person with a disability to continue to live in their own home, instead of going into alternative care. This measure recognises that people have different living arrangements, and allows them the flexibility to choose the arrangements that best suit their particular circumstances, without precluding them from receiving carer allowance.

The Bill also makes one technical amendment to correct an unintended minor drafting error.

ANTI-TERRORISM BILL (No. 3) 2004
These provisions were originally contained in the Anti-Terrorism Bill (No. 2) which is currently before the Parliament.

However, since the introduction of that Bill, the Attorney-General has received correspondence from the Opposition offering to facilitate passage of Schedule 5 of the Anti-Terrorism Bill (No. 2) which deals with disaster victim identification and criminal investigation following a domestic mass casualty incident.

In the spirit of cooperation the Attorney-General agreed to excise Schedule 5 from the Anti-Terrorism Bill (No. 2) and progress it in a separate Bill, the Anti-Terrorism Bill (No. 3), in recognition both of the importance of this measure and its relatively non-controversial status.

This approach recognises the importance of our ability to respond if a terrorist attack or other mass-casualty disaster were to occur within Australia.

This Bill will amend the forensic procedure laws in Part 1D of the Crimes Act 1914 to ensure that, if a terrorist attack or other mass-casualty disaster were to occur within Australia, forensic services from all jurisdictions in Australia can work together, using the national DNA database system, to identify the victims of the disaster and conduct a criminal investigation.

The Government has moved amendments excising Schedules 1 and 2 from Anti-Terrorism Bill (No. 2) and included those provisions in this Bill. Schedules 1 and 2 dealt with the need to ensure that a person who carries both an Australian passport and foreign passport cannot leave Australia on a foreign passport after the person’s Australian passport has been cancelled by Australian authorities.

This Bill contains amendments to the Passports Act 1938 that will, among other things, give competent Australian authorities the power to request an order for the surrender of a person’s foreign passport.

The amendments to the Australian Security Intelligence Organisation Act 1979 will give the Australian Security Intelligence Organisation the power to demand a person surrender their Australian and foreign passports if the person is subject to a request for consent to apply for a questioning warrant.

This will prevent a person who may have vital information about a planned terrorist attack from fleeing Australia before ASIO has the opportunity to question the person.

The Government takes advice on what is in the national interest from our intelligence and law enforcement agencies.

I am advised that both the passport and victim identification measures are important and urgent and should not be delayed because the Bill in which they are contained have, as is the usual practice for the Opposition, been referred to an already over-burdened Senate Committee.

I challenge the Opposition to not respond in a predictable fashion and oppose the Bill simply because it does not meet their precise specifications.

I cannot imagine that even the Opposition believes it is acceptable that a person who carries both an Australian passport and foreign passport can leave Australia on a foreign passport even though that person’s Australian passport has been cancelled by Australian authorities.

Securing our borders against incoming or outgoing terrorist suspects is an important weapon in our fight against terrorism, both domestically and internationally.

We are not interested in letting terrorists enter Australia.
Nor are we interested in exporting terrorists who are then free to pursue their deadly ambitions in other countries.

I trust that the Opposition does not need a Senate Committee to repeat these basic facts in order for them to acknowledge the importance and urgency of these measures.

Debate (on motion by Senator Mackay) adjourned.

Ordered that the Family and Community Services and Veterans’ Affairs Legislation Amendment (2004 Budget Measures) Bill 2004 and the Anti-terrorism Bill (No. 3) 2004 be listed on the Notice Paper as separate orders of the day.

US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004
US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF) BILL 2004
Second Reading
Debate resumed.

Senator LUNDY (Australian Capital Territory) (5.38 p.m.)—I speak in continuation of remarks I made earlier today. When I left off, I was talking about the other concerns that face the ICT sector in the area of copyright, the treatment of circumvention devices and software patents, and the potential for litigation. That is why Labor have specifically addressed these problems in our policy statement released yesterday by Labor leader Mark Latham. The policy statement was informed by the necessary and comprehensive inquiry Labor initiated through the Senate select committee chaired by Labor’s Senator Peter Cook. The Senate committee identified intellectual property as a major concern and has made 13 recommendations to address the problems and weaknesses identified. Three of those major concerns were copyright extension, circumvention devices and the potential for abuse of software patents.

I turn firstly to the issue of circumvention devices. These are technological protection measures used by copyright owners to prevent the copying or use of copyrighted material in ways that are not authorised. Generally, the claimed purpose is that these technological protection measures are an anti-piracy device. However, it is important to note that the Australian Competition and Consumer Commission have previously formed a view that these so-called TPMs in some cases can serve another purpose; that is, they constitute an attempt to stifle competition. This is because the ACCC observed that large corporations—and the example used on numerous occasions is Sony—have sought to regionalise their DVDs and the hardware upon which they are played in order to extract greater profits and prevent parallel importation. Quite correctly, the ACCC concluded that, while piracy is a genuine concern, another effect of the TPMs is in fact anticompetitive. However, the ACCC were not successful in their case against Sony, and now the provisions of the free trade agreement seek to strengthen the ability of large corporations to protect their markets even more vociferously than is currently permitted under Australian law.

To ensure there remains a fair balance between innovation, consumers and owners of copyright in relation to technological protection measures, Labor will ensure it is permissible to sell, purchase and use legally manufactured video, DVD and related software items, including components, equipment and hardware, regardless of the place of purchase. Further on this point, the free trade agreement provides that Australian law be expanded to create new criminal offences in relation to how Australians can create and use alternative technology to play DVDs and the terms by which Australians can copy purchased DVDs for their own private use. Arising from this is one of the major con-
cerns relating to the lack of fair use provisions in Australian copyright law. Currently, copying copyrighted material for private use is technically illegal. Fair use provisions would mean the private copying of CDs and DVDs et cetera for legitimate private uses such as time shifting and space shifting—time shifting means taping something to watch later and space shifting means using it perhaps in the car or on a different device—would be legitimised under Australian law. As a result, to ensure there remains a fair balance between copyright owners and users, Labor will examine options for broadening, through the provisions of the Copyright Act 1968, the fair dealing exceptions to more closely reflect the fair use doctrine that exists in the US. In doing so, Labor will draw on the recommendations from the numerous government initiated reports addressing copyright issues that have not yet been acted upon.

I now turn to patents. The comprehensive Senate inquiry into the free trade agreement heard evidence that the free trade agreement was introducing elements of the US patents system into Australia. However, there were assurances provided by the Department of Foreign Affairs and Trade and the Department of Communications, Information Technology and the Arts that this was not the case. Notwithstanding this, the stated intent of the free trade agreement is to harmonise the US and Australian intellectual property regimes. This has caused serious concerns about the expansion of what are known as spurious business process patents that are a feature in the US as a result of much maligned US patent office decisions. As a result, many Australian software developers and companies are concerned that this system will gain ground in Australia, even in the absence of any specific changes to the Australian patents system as it relates to software.

In particular, the use of the practice of selective enforcement by teams of patent lawyers employed by large multinational companies may increase in Australia. This could potentially make small Australian software companies and individual open source developers more vulnerable to this style of anticompetitive bullying through the threat of litigation, although not necessarily litigation per se. We have heard that in some cases the threat of litigation is enough to turn our innovators away. In this scenario small companies do not stand a chance. Labor will monitor any activity of this nature through the proposed Senate select committee on intellectual property. In particular, Labor has a big problem, as would any responsible government, with this type of litigious bullying that is anticompetitive in its effect. The Senate select committee on IP will also address how Labor could enshrine in the Copyright Act 1968 the rights of universities, libraries and education and research institutions to readily and cost effectively access material for academic research and related purposes, including whether or not they should be exempt from paying royalties after 50 years. In addition, the committee will review the standard of originality applied in Australia.

There are a number of other checks and balances that have been identified, both in Labor’s policy statement and in the body of the recommendations in the Senate report. They are all incredibly important issues because they go to the heart of how Australia will operate in the new environment under the free trade agreement. Labor recognise many of these legitimate concerns and have moved to put in place policies and a course of action that I believe will give us the capacity to set an appropriate IP agenda for the future of Australian law with the good use of a Senate select committee on intellectual property. It is a very important focus be-
cause, as I said at the start of my presentation earlier today, intellectual property is absolutely critical in ensuring that our innovators, entrepreneurs and businesses in this country do have the best opportunity to create knowledge and to create jobs.

Intellectual property in itself, as has been reflected in the Senate report and in other places, has not been a high priority for the Howard government. One of the observations that was made continually throughout the inquiry is that many of the recommendations contained in the review of our digital agenda legislation seemed to stand contrary to the proposals in the free trade agreement—hence Labor’s focus on this issue in an attempt to address the more problematic issues that have arisen and to try to set Australia on a responsible path, paying due attention to this critical area of public policy.

I turn back now to the broader issue that I started off with and the areas affecting my portfolio. The Howard government has shown itself to be highly negligent in the area of protecting Australian local content and it has been highly negligent about putting forward a strong case to protect Australian intellectual property interests both in Australian law and in how that affects Australian companies. On both of these fronts, I would like to acknowledge the work of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America for comprehensively investigating all of these matters and producing a report which demonstrates very clearly the complexity contained in the agreement. It certainly provided Labor with some strong clues and some strong direction as to how we can proceed.

I urge the government to accept both of Labor’s amendments. We have heard that they have accepted our amendment with respect to local content. It is now incumbent upon the Howard government to accept also the point in relation to pharmaceutical patents. Unless they do so, the Howard government will truly be exposed for not having shored up the necessary safeguards to allow this free trade agreement to pass.

I suppose it comes as no surprise to many who have been observing this debate that the Howard government is so vulnerable on all of these issues. I am yet to hear from Senator Kemp after his outburst in the chamber yesterday. He had a go at Labor’s attempt to insist upon amendments, only to find out one hour later that the Prime Minister himself agreed with Labor’s amendment on local content at least. I think Senator Kemp has to eat his words, wipe a bit of egg off his face and come back in here and acknowledge the fact that that amendment was a worthy initiative. Without it, of course, local content provisions would not be protected.

I will conclude my remarks by going to another area of concern for Labor about the cultural aspects, and that is in relation to new media. One of the criticisms expressed all the way through was the ambiguity surrounding new media. That is why Labor, as part of our policy statement, have identified the areas of new media that we believe need to be formalised and formally recognised so as to preserve our right, as the government claims, to actually legislate for local content into these areas of new media in the future. This is a very important element. All the way through the debate we have heard very loud assurances from the government that this in fact would be possible. Labor—in government soon, I hope—will give the then Howard opposition the opportunity to actually put its commitment to the test, because we will be seeking to make those necessary amendments to preserve our ability, once and for all, to make local content provisions apply to new media.
That is a summing-up of many of the issues in relation to the free trade agreement with respect to my portfolio. I think Labor have managed to resolve the outstanding issues of grave concern to both the cultural sector and the ICT sector. I think it is only with Labor’s diligence and effort in taking the time to inquire into the free trade agreement that we have actually come to this conclusion. I would be absolutely astounded if the Howard government does not take up Labor’s very sensible recommendations and ultimately support the two amendments that we will be insisting upon.

**Senator JOHNSTON** (Western Australia) (5.50 p.m.)—Tonight I want to talk about the amendments which Labor has foreshadowed in order to pass the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004. Having dithered now for more than five months on this matter, Labor is engaged in a shameless face-saving charade with these so-called mooted amendments.

It is important to note that the Senate Standing Committee on Foreign Affairs, Defence and Trade considered the US free trade relationship and reported on it as long ago as November 2003. This report was titled *The general agreement on trade in services and an Australia-US free trade agreement*. There were a number of recommendations made then by that committee which are relevant to the debate attending the passage through the Senate of this free trade legislation—and I shall come back to those recommendations in a moment. So the broad concept of a bilateral trade agreement with the United States has been at large and on the political agenda for almost two years now. The legislation has been available for many months now and the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America has been taking submissions and publishing such submissions for some several months now.

Notwithstanding all this examination, debate and research, Labor has agonised with the decision. It is an opposition that has sought to shirk the issue, to postpone the dreaded day of arriving at a decision. This delay, this wishing and hoping that this issue would go away, has finally come to the day of judgment. Why has it sought, as an opposition, to avoid at every excuse or pretext this decision making day? The answers are these. Firstly, there is a deep and heartfelt loathing of all things American within the parliamentary Labor Party. This loathing finds its voice in the words of its leader and in the intractable attitude of its vitriolic Left faction. Secondly, a number of sensible, responsible members of Labor bring to caucus a reason and rationale which is undeniable in support of acceptance of this bilateral opportunity. The arguments and articulate persuasion of such people are irresistible within caucus but actually serve to underline and lay bare the poison towards and naked hatred of the United States by the Left within the Labor Party. An uncertain, dithering, shoot-from-the-hip leader has done everything he could to avoid collision between these two tribes. Thirdly, as a party which has always been hostage to small, often vested interest groups on the free trade agreement Labor has again been pulled and tugged from pillar to post by such self-interested groups, which it seeks to appease at any cost. Principally, the cost of such appeasement has been good government.

It is against this backdrop that Labor has finally conceded that the free trade agreement bills must be passed. But, as is to be expected with such a weak and vacuous approach to public policy, a face-saving device is sought by Labor. Such a device is necessary to hold aloft to the hardliners so as to be seen to appease those self-interested, but
now disappointed, sectional interests. The government has expressed the view that if there is a capacity for such amendments to enhance or value add then it would give due consideration. The government’s attitude is reasonable and accommodating, so I suspect the local content amendments would be passed. Senators should, however, be aware that—as is to be expected with any such face-saving device, such contrivance—these amendments actually add nothing to the legislation to enhance or protect Australian content.

I turn to the PBS amendments, as mooted. I have not seen the substance of these amendments. They are awaited with considerable interest, for reasons which will become apparent. Recommendation 13 of the Senate standing committee inquiry last year highlighted a determination to prevent any undermining of the PBS. That was way back in November 2003. I pause to bring to the Senate’s attention what various informed and interested parties have said about the free trade agreement and its involvement and relationship with the PBS. Minister Mark Vaile said:

Let there be no misunderstanding on this point. The agreement I signed in Washington on 18 May this year—and the legislation I am introducing today—does not and will not have any detrimental effect on the PBS.

Health Minister Abbott said:
The architecture of the PBS remains completely unchanged ... prices to consumers won’t change ... The Pharmaceutical Benefits Advisory Committee remains the gatekeeper to the system and cost-effectiveness remains the criteria under which drugs will be listed on the PBS ... none of that will change.

Journalist Jonathon Holmes on the *Four Corners* program said:
It’s true that there’s nothing in the Free Trade Agreement that will dramatically change the PBS tomorrow.

US Senator Jon Kyl said:
The one thing, of course, that they—the representatives of the Australian government—were very insistent on was that we not suggest any tampering with the pharmacy benefits scheme. And I think I knew better than to suggest that.

Importantly, Senator Conroy, the Labor Party shadow minister for trade, said at his press conference that after hearing all of the evidence the concerns he originally had had essentially disappeared, and he in fact gave the whole process a clean bill of health.

Lastly, I want to point to something that is important with respect to the position of this Labor opposition in the labour movement. The state premiers, who have retained the confidence of their electorates and who have in each case been re-elected, all want the bill passed, with no mention of the PBS and with no conditions—with no hooks on the wall. They are obviously earnest, professional, skilled legislators and governors, and they see no problems in the legislation. The real difference of course is that Mr Latham does not have the confidence of any electorate to this point in time.

Labor wants to impose some form of penalty regime, as I understand these amendments with respect to the PBS, to prevent the proprietors of patent rights extending the duration of their protection to the commercial detriment of cheaper generic drug producers. It may come as some surprise to members opposite that the general policy of patent and intellectual property legislation throughout the Western world is to reward and encourage inventors whilst at the same time not inhibiting improvements of existing technology by others. This is a crucially important, very sensitive and careful balance. What is apparently suggested by Labor is the quarantining, with a specific code of legisla-
tion, of intellectual property in the nature of patents insofar as they relate to pharmaceuticals only. This is in stark contrast to what is to happen to intellectual property at large.

This is a huge legislative task—one that came to life yesterday for the first time, following question time. We have had two years for the Labor Party to produce some semblance of an indication that they wanted to make these far-reaching and very complex changes to intellectual property legislation in Australia. This is, at first glance, a very complex task. More obviously, it is bad law and bad policy to be making it on the run in this fashion. Such amendments fail to understand the diverse factual and legal matrix which would present in each application and which would effectively require the legislation to pre-empt and usurp the role of the Australian judiciary on the adjudication of such intellectual property rights. Again, it is bad law and bad public policy.

I pause to point out that insofar as the United States practice of evergreening is concerned—that is, where the proprietary interest of a patent seeks to modify the intended purpose of that patent with some small or spurious change such that there is an extension of the protection of the patent—the laws of this country are very different. In our own country in this jurisdiction, we have seen nothing that resembles the practices which have prevailed in the United States.

I also point to the High Court decision in Aktiebolaget Hassle v. Alphapharm, decided on 12 December 2002. I refer to this case as one of the most recent which contains some relevance to disputation between generic producers and patent holders. I note that it was an appeal to the High Court from the Full Court of the Federal Court on appeal from orders made by the single judge at first instance. If nothing else, this case highlights how complex the law on this subject is and how easy it is for very distinguished jurists to fall into error.

Codification through ad hoc amendments, as is apparently proposed by the opposition in this instance, is utterly simplistic and plainly in ignorance. I further point out that no amount of legislation will prevent or restrain any person or corporation from issuing legal process or obtaining or seeking to obtain an injunction. I await the opposition's amendments with interest as it will, I suspect, in order to achieve its expressed purpose, of necessity attack and diminish rights to due process. That is the only way I can perceive there would be some capability yielded that would inhibit the necessary time frames for the judicial process to take its course. This is a very ad hoc and knee-jerk policy direction on the part of Labor, made on the run and without any real grasp of the practical requirements of the law to achieve the stated aims. The justification for such amendments is totally misconceived in the face of this legislation—and I pause to express my agreement with the very fine words expressed by Senator George Brandis here earlier this afternoon. This is nothing more or less than a face-saving device, a face-saving pretext.

In closing I say that such a face-saving device can never, ever be a justification for bad public policy or a flaky and wayward understanding of the law in Australia relating to intellectual property. Face-saving amendments such as are mooted by Labor will always be the resort of a confused, vacillating and timid leadership desperate to convince an electorate that the opposite is in fact the case. They fail. This is a confused, vacillating and timid opposition and the Australian people know it.

Senator CARR (Victoria) (6.02 p.m.)—I rise to speak in support of the Labor Party’s position on the US Free Trade Agreement.
Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004. I begin by pointing out that any trade agreement, especially one as complex as this agreement, comes with costs and benefits. I would like to pay tribute to the Labor senators on the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America who were instrumental in preparing the report of the committee—Senator O’Brien, Senator Conroy and Senator Cook and of course their staff. They have performed a great service for the parliament through their analysis in this document. When we look at it closely, the report draws to our attention some basic but pertinent facts about the nature of economic modelling and the nature of this agreement.

I start with the proposition of economic modelling because I think that it needs to be asserted and never forgotten that economic modelling can only ever provide guidance and of course always depends upon the assumptions that are actually placed in the model that lead to the conclusions that are finally reached. So it is important that we test the assumptions made by economic modellers and that we not take at face value the things that they resolve as a result of their work without understanding the assumptions that go to the heart of the propositions they are putting forward. When we look at this issue we have to test whether or not the removal of barriers to trade between countries will lead to an increase in two-way flows of investment. That is just one example. We have to examine whether or not two-way flows of investment will have ramifications for jobs in this country and of course for jobs in the other country that is the subject of such an agreement.

We also have to take the opportunity to examine some of the less tangible issues that arise from these trade treaties, this form of economic legislation by way of treaty. We have to examine whether or not the effects of these agreements will mean benefits are spread throughout the entire economy and the entire society. From my perspective, in terms of my responsibilities in representing the Labor Party on industry, innovation, science and research matters, we have to examine whether or not these agreements will benefit Australian industry as a whole—not just the big firms with the capacity to compete with anything near equality with American firms.

When we examine the economic modelling we notice that this agreement was negotiated, frankly, far too quickly. We see a hasty agreement put together to meet political timetables, namely the election timetables in the United States and in this country. We have an agreement which is the result of a government that has been negligent with regard to the amount of analysis that was actually undertaken to examine the effects of this agreement. Only through the Senate committee have we seen a process of proper examination through which we can draw some conclusions. They are not comprehensive conclusions; they are not complete. However, there is now a far better understanding of what is involved with this agreement than the government ever undertook to provide.

The various economic models put forward are in fact contradictory because they are all based on different assumptions. It would therefore follow that they are going to come up with different conclusions.

However, I would assert that each study points to the serious economic issues that require attention from government, and in particular each of the studies points to the negative effects that this agreement will have on the manufacturing industry in this country. I say that because it is quite apparent to
me that, when you examine the overall economic benefits of such agreements, the benefits are not distributed evenly across the economy. There is no doubt in my mind that there are indeed winners and losers in this arrangement and that it is difficult to assess in clear terms what the employment implications will be. What is apparent to me is that the absolutes of the benefits in dollar terms range from the negative, through minor gains, to the billions of dollars that the government estimated in its modelling. I note that in particular the CIE report refers to its ‘back-of-the-envelope’ calculations. How you can enter into an agreement of this type, complexity and duration and come forward with a model based on back-of-the-envelope calculations defies description. It is negligent of this government to undertake such a process. It was negligent of this government not to have had the industry department, for instance, undertake any formal study or formal analysis or even undertake any formal advice on the implications of this agreement for industry in this country.

If we take the Centre for International Economics model of 2001, it predicted that Australia would benefit by $10.9 billion over 20 years. That study assumed that all the major sectors, including sugar, would be liberalised. The centre’s latest study in 2004 indicates that the net benefit would rise to $52 billion, and that is on an agreement that does not include all the things they included in their first study. Both ACIL and the Productivity Commission predict that Australia’s trade relations with the US will be worse off. If we look at the Senate committee’s report and at Philippa Dee’s findings we can see that the benefit is marginal, at $53 million per annum. The National Institute of Economic and Industry Research found that the agreement would lead to a loss of manufacturing jobs in average annual terms of 57,700 and that employment losses would be as high as 195,400 by 2025.

I am not saying that one should take any one of those particular models as gospel, because, as I say, the results you get depend on the assumptions you make. What is clear, though, is that all of them, even the CIE study, pointed to difficulties for the automotive industry. Even the CIE study highlighted problems for domestic drive train manufacture. CIE might not have identified that in all parts of its report but it is clearly stated in the body of the position it brought forward.

As the shadow minister for industry I have had to carefully balance these contradictory models and other evidence available to us to make some calculation of the effects of this agreement on Australian industry, particularly the employment implications. Some issues that concern me are quite apparent when you look at the fundamental structural questions that arise from any analysis of the United States and Australia. We simply have to acknowledge that there is a massive trade imbalance between the two countries. The Australian Bureau of Statistics has reported that, for 2002-03, Australia’s merchandise trade deficit with the United States was $12.13 billion. That is the highest merchandise trade deficit Australia has recorded with any trading partner. Our trade deficit with the United States is most acute in manufactured goods. In the 12 months to March we had a massive trade deficit in chemical and related products, manufactured goods, and machinery and transport equipment.

Tariffs in the United States are generally lower than those in Australia, particularly in manufacturing. This means that Australian tariffs will have to fall further, potentially eliminating any obvious benefits that the present tariff regime provides for Australian domestic industry. There are massive disparities in the economies of scale between Aus-
Australian industries and US industries which cannot be overcome by any trade agreement. The margin of cost of production that stems from that basic fact provides the United States with an enormous economic advantage, and the fact is that the margin of cost of production for US goods will remain much lower than that of Australia. Likewise, there are huge differences in the amount of government assistance provided to industry between the United States and Australia, giving the United States manufacturers a considerable advantage.

Our automotive industry is critical, not just in an economic sense but also in a social sense. It is incredibly important to our society. It currently has a turnover of $17 billion per year, it accounts for six per cent of value added employment in the total manufacturing sector and its exports total about $5 billion a year. Significantly, the sector currently employs around 55,000 people. That is a hell of a lot of Australian families who are dependent upon the automotive industry in this country. The US already has a large trade surplus with Australia in the automotive sector. In 2003 the United States recorded a trade surplus in automotive components alone of $US272 million, and now we are going to have an agreement where there will be considerable disadvantages of scale and higher costs of production for many Australian manufacturers. We have a situation in the components industry in which the components manufacturers are being required by the domestic car companies to enter into contracts under which there must be a 20 per cent price reduction over a three-year period. The choice is: if you don’t sign, you don’t get the job—and car components can be imported from China or India. On top of that, the car component manufacturers have agreements with the AMWU which, on average, lead to five per cent increases in wages per annum. I would suggest that that poses quite a serious set of economic numbers. You will not see any of the practical effects of these matters in the economic modelling.

In this agreement we have a situation where reductions in tariffs to zero will increase import penetration. At an industry dinner for automotive component manufacturers in Queensland recently, which I had the pleasure to attend, the United States Ambassador, Mr Tom Schieffer, was pleased to point out:

... on day one is an opportunity to receive American parts for your cars without the 15% tariff that you now have to pay. That will make the cars you make here cheaper and more competitive in markets around the world, not just in the US.

I do not think all the component manufacturers greeted the prospect of a 15 per cent reduction in tariffs on American components with the same enthusiasm as the ambassador thought they might.

We have run into quite fundamental problems in our approach stemming from these economic facts. I state the position clearly as far as the Labor Party is concerned: I want to see a competitive and prosperous automotive components manufacturing industry in this country. We have various studies pointing to the fact that the industry is under considerable pressure. Even the Victorian government’s study out of Monash University pointed to the prospect of over 1,000 jobs being lost across the sector as a result of this agreement. I am also aware that the head of General Motors North America, Mr Bob Lutz, pointed out in a recent article in the Detroit press that, if Australian manufactured Monaros achieved significant volumes and market acceptability in the United States, production would be shifted from Australia to the United States. That poses some difficulties for those that presume that the iconic ute will be driving down the main streets of Detroit. That image may be open to some challenge. The more lurid assumptions that
are being made by some reporters on these questions need to be examined more clearly in the light of economic realities.

The trade deficit that we have with the United States and other disparities in the production scale are not the only problems. There needs to be a fundamental change in manufacturing culture in this country and it is important in this context to appreciate that the government has a critical role to play. I am sure a Labor government will take up this challenge and seek to address some of the structural problems that are now being faced by manufacturing in this country. We have a serious difficulty with regard to research and development and the capacity of this government to concentrate on the drivers of productivity—research and development and skills formation. At the moment far too little money is actually spent by private firms on R&D. Only one in four enterprises, according to AIG, is spending any money at all on R&D. The story goes that some of those are in fact spending more on their electricity bill than they are on research and development and that only one in four of those involves itself in any way with any public research agency.

I point out to the Senate that in 1974 manufacturing value added constituted 16.3 per cent of GDP. Today that is at 10.7 per cent. The sector still employs 1.1 million Australians, but this figure highlights the serious challenge that is being faced by Australian manufacturing. With currency movements and many other factors, many manufacturers are doing it very hard. If it is going to enter into these types of agreements, it is appropriate that the government face up to its responsibilities to actually assist and to put its shoulder to the wheel. Manufacturers need to be able to turn to the government and be sure that there is a policy framework in place to encourage industry development and to ensure that the challenges faced by industry are faced with a government with a shoulder to the wheel. The government needs to ensure that the best possible efforts are made to improve productivity to ensure that Australian manufacturers and Australian industry are in a position to compete with American companies, which are going to pose a much more serious threat to Australian manufacturers than they have in the past.

It is not just a question of opportunities here; it has to be acknowledged that there are serious threats as well. I ask the simple question: where is the industry minister on this issue and on these questions? We have not heard from him. The only time we saw a statement on these issues was when I went public a little while ago highlighting the fact that Minister Macfarlane had not been seen on the issue—that he was missing in action. The only time we saw the minister say anything on the US FTA was in response to the opposition and in an attempt to score political points—not to do anything to assist the industry or encourage the industry department to undertake its responsibilities. The department has not even undertaken a proper study of the implications of this agreement. No monitoring is going on in the industry department and no attempt is being made to address the fundamental questions of market failure or the responsibilities of the Commonwealth government to the manufacturers and the manufacturing work force of this country. There are 1.1 million Australians that earn a living from manufacturing and depend upon the capacity of this country to pull its weight in the world. We are falling behind and we are under enormous pressure. The industry department has provided no formal advice to DFAT on these matters and has done no independent analysis. Quite frankly, it has been asleep at the wheel. That is why this Senate Committee report is so valuable. It provides the framework and highlights the need for substantive policy...
intervention by the Commonwealth government.

With regard to intellectual property, we are seeing issues being addressed in a way which provides guidance for a future Labor government and which we will take up. It points out, for instance, the enormous difficulties for our manufacturing industries and our universities and research agencies. Philippa Dee pointed out that there is a potential loss of some $88 million in IP and copyright in that area. The report also points out the need for an independent commission of inquiry to determine the legislative responses needed to establish mechanisms to encourage industry development. It provides a vehicle by which we can move forward to encourage a proper response by the Commonwealth—a response which is clearly lacking in this failed government and a minister who frankly is not interested in manufacturing and has made no effort to fulfil his responsibilities. Finally, with regard to the PBS and evergreening, the Labor Party’s initiatives highlight the possibilities to develop this area. (Time expired)

Senator WATSON (Tasmania) (6.22 p.m.)—This evening I rise to speak in favour of the free trade agreement between Australia and the United States of America, especially as it relates to my home state of Tasmania. This agreement, concluded in February this year, will immediately remove all tariffs from 97 per cent of non-farm exports to the United States and 66 per cent of agricultural exports. Tariffs will be removed from an additional nine per cent of exports within four years, and the process of tariff removal and improved access to the United States market will be locked in for the next 18 years, leaving an opportunity for market growth and employment opportunities far beyond the life of this parliament. The annual benefits to the Australian economy are estimated to be in excess of $6 billion over this period.

For Tasmania, this could equate to a $50 million annual bonanza and 5,300 new jobs, according to a University of Tasmania economics professor, Dr Bruce Felmingham. These figures are based on economic modelling undertaken by the Centre for International Economics. In fact, Dr Felmingham is quoted as saying that it is a lot better than he thought it was going to be. The dairy industry will be one of the real beneficiaries in the Tasmanian farming sector. The Chief Executive of the Tasmanian Farmers and Graziers Association, Greg Bradfield, said:

The deal will treble the Australian Dairy industry’s quota access into the world’s second largest dairy market. The dairy industry’s initial estimate suggests access will increase by around $56 million in 2005 and increase by about 5 per cent each year thereafter.

Tasmania produces some of the finest and best-known brands of cheese and dairy products, including the famous King Island brand. These are the quality products which stand to benefit from increased quotas and the removal of tariffs in the US market. All tariffs have been removed from horticultural products, opening the way for new markets for Tasmanian fresh fruit and vegetables, particularly strawberries and cherries, as well as cut flowers.

Tasmania, as we know, is a prime producer of fine wool for export. Tariffs will be removed progressively on all wool products. This will assist the ongoing viability and sustainability of this vital and traditional Tasmanian industry. The immediate removal of all tariffs from sheepmeat and lamb is estimated to reduce costs to the industry by $1.5 million annually, assisting both farmers and abattoirs to maintain and grow their exports, with flow-on benefits to workers in these industries.
The immediate removal of all tariffs from seafood exports to the United States will not have an immediate impact on the Tasmanian industry, but as prices decline in Asian markets for Tasmanian crayfish and abalone, as has been the case during the past two years, the opportunity to diversify into new markets will become increasingly important for local producers.

The forest industries in Tasmania contribute over $1.1 billion to the Tasmanian economy. An important part of this industry is the production of high-quality timber, veneers, doors and furniture. With the removal of all tariffs from the timber industry, this high-value end of the market will be encouraged to expand exports to the United States. This will increase employment in the forest industry and ensure that Tasmania’s unique timbers are value added and directed to the markets where they can maximise their contribution both economically and environmentally.

The manufacturing sector in Tasmania contributes $2.6 billion per annum to the state’s economy. Many of these manufacturers currently export to the United States. These include export oriented businesses such as INCAT Australia, ACL Bearings in Launceston, TEMCO ferro-alloys and Tasmanian Alkaloids. For these businesses, the effect on market access is difficult to assess, but all will benefit from lower costs when investing in the United States machinery and electronic equipment to maintain competitiveness and to expand production. Small business will also be the winner, with lower costs for plants and equipment purchased from the United States as a result of import duties being removed.

In summary, Tasmania has positioned itself as a producer of high-quality products and services, produced by a large number of small to medium enterprises and a few large manufacturers. During the year to June 2004, this resulted in a 20 per cent increase in export sales to the United States to $275 million, or 12 per cent of the total Tasmanian exports. That is not a bad result.

While there has been some scaremongering about the effects that the free trade agreement will have on the health system, I believe that it will provide for a more transparent, accessible and efficient Pharmaceutical Benefits Scheme. For example, it has been suggested by some that drug prices could significantly increase as a result of the free trade agreement. This fallacy or suggestion has shown a complete lack of understanding as to who really decides the costs of medicines and the costs to consumers. At the moment, the government cannot even get a $1 increase, which has been blocked by the Senate. So you can hardly think that suggested price hikes will get through easily, particularly through this Senate.

A further suggestion has been that the free trade agreement will lead to the delayed entry of generic medicines and dramatically increase the running costs of the PBS. The relevant provisions merely reinforce the existing patent laws. What they do is clarify that a generic medicine cannot be marketed while there is a current patent, thereby adding to the element of transparency. The free trade agreement with the United States will result in lower manufacturing costs in Australia and improved access to the world’s largest and most sophisticated market, and there will be an immediate benefit to Tasmania which will continue to grow in importance over the next few years.

Senator STEPHENS (New South Wales) (6.29 p.m.)—I, too, wish to make a contribution to this debate on the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004. The consideration of the free trade agreement is probably
the most significant debate for Australia as a nation that we have had in quite some time. While Labor are supporting the FTA we make no secret of the fact that the way the government went about negotiating the agreement was not the way we would have chosen. We will now be paying close attention to the monitoring mechanisms built into this agreement to ensure that it is in fact in our national interest.

I would like to remind senators that the economic gains claimed by the government are exaggerated. Professor Ross Garnaut, a professor of economics at the ANU, Dr Philippa Dee from the Productivity Commission and the ANU, and Dr Peter Brain from the National Institute of Economic and Industry Research all studied the agreement closely and found that there will be minimal gains or slight losses. One of the important points that these experts make is that the economic gains are limited by the restricted access to US agricultural markets. The FTA does not cover all agricultural products, as we know, and, of course, sugar was excluded from the FTA, despite Minister Anderson’s loud claim that it would be un-Australian to exclude it. It is therefore essential that the government’s compensation package for the sugar industry achieves significant, long-term reforms in the cane farming and milling sectors of the sugar industry. Labor will be monitoring this package to ensure that it achieves those aims and has greater substance than the government’s current sugar industry assistance.

Senators will also recall that our government led us all to believe that the agreement would deliver free trade in agriculture, as indeed did the US government, so it is disappointing that the myth of Australia flooding the US markets with agricultural products was allowed to flourish, with the result that the agreement on beef and dairy products is far from what we had all hoped. The fact is that our agricultural exports are not frightening to the US. We have not got the productive capacity to threaten them. Australia operates a beef production system that is one-sixth the size of that in the US. To give senators a picture of the threat we pose, Australia supplies the US with the equivalent of four hamburgers out of every 100 consumed. Our beef industry is not so much a threat as a complement to the US beef industry, so it is a pity our access to their market is so limited.

However, under the terms of the agreement, an additional 70,000 tonnes of quota access will be granted to Australian beef, accruing over an 18-year period until 2022, when a permanent safeguard will apply. In the meantime, we will do what we can to look after the interests of our beef industry. The annual ministerial meetings will provide an opportunity for Australia to pursue our agricultural interests. Labor are determined to use those arrangements to seek a most favoured position for Australia. This means that we, too, will have access to the most favourable deal the US makes with any other country.

Similarly, our dairy industry has a limited capacity and the US had no need to fear it. We currently produce approximately 22 billion pounds of milk, a mere 12 per cent of the US production volume. Of this 22 billion pounds of milk, we consume half ourselves. The other 11 billion pounds are exported to 100 different countries. The US would not agree to giving our dairy industry free trade but the agreement will triple the quota access to the US and allow access to grow at five per cent per year. Financially, this will result in the farm gate returns of a million-litre farm going up by $2,000 to $3,000 a year. That is a modest gain but not the huge financial benefit the government is touting. As Labor have repeatedly pointed out, where on balance the free trade agreement is in the national interest, we support it.
Senator Lees spoke earlier today about her concerns about the quarantine provisions in the free trade agreement, and there are many people who are concerned about the extent to which we will lose the quality protection that our products enjoy. Both qualitative and quantitative science based risk assessment processes must be used in developing import risk assessments. As Senator O’Brien pointed out yesterday, this is particularly important in enshrining the Import Risk Analysis Process Handbook in regulations and requiring the consent of both houses before that process could be varied. This means that, under Labor, no process of the FTA could be imported into our current import risk assessment process without the support of the House of Representatives and the Senate.

Another thing that Labor considers very important and one that we have heard a lot about is the issue of maintaining the fine balance between users and owners of copyright. Any alteration in our copyright legislation could result in significant costs, especially for educational institutions. The Joint Standing Committee on Treaties, of which I am a member, unanimously recommended that the government replace the Australian doctrine of fair dealing with one that resembles the US open-ended defence of fair use and that the Attorney-General’s Department and the Department of Communications, Information Technology and the Arts review the standard of originality applied to copyright material with a view to adopting a higher standard, such as that in the US. Labor will keep a close eye on this matter and will require the Attorney-General to report annually to parliament on changes to the Copyright Act affecting universities, libraries and educational and public research institutions, particularly with regard to any increased costs they may bear. I am very pleased that the government is considering favourably Labor’s amendment that will protect local content at 55 per cent and that will ensure that, if any government in the future wants to reduce the number of Australian voices on television or Australian content, it will have to be brought to the House of Representatives and the Senate.

Labor’s line in the sand, however, as we have all heard today, comes with the terms outlined in chapter 17 relating to the Therapeutic Goods Act and the PBS. As it stands, the US FTA gives US drug companies the right to seek reviews of listings and other decisions made by our Pharmaceutical Benefits Advisory Committee. Let us be very clear about this: the Howard government has succumbed to US pressure to guarantee drug lobbies priority in access to the deliberations of the Pharmaceutical Benefits Advisory Committee. We have heard the argument that large pharmaceutical companies need to charge high prices in order to subsidise their research into new drugs that can improve the current treatment of serious diseases and conditions. The truth is that these big pharmaceutical companies are extremely lucrative. Their promotional budget—touting their brands to doctors—costs many more times than the amount they spend on actually researching significantly new drugs. Much of their research money is spent on slightly changing an existing drug and trying to find a minor advantage over an existing brand so that they can patent their own version and sell it at a profit.

So the story that the incentive for this control over how drugs are listed on our PBS is to provide money for significant breakthroughs is just that—a story, a fabrication. The real motivation is money: more profits for the companies, more costs for the patients. Let me quote Professor David Henry, former chair of the government’s Pharmaceutical Benefits Advisory Committee, on this subject. He says:
Every single provision in the text of the agreement as it applies to drugs is to favour the US companies, to increase the prices, to ultimately reduce access to cheap, affordable drugs in Australia. There’s no question about it.

Commitment to the principle of universal access to affordable medicines currently underpins the PBS. Labor values that commitment very highly on its list of priorities, and we cannot stand by and allow wealthy drug companies to play games with our access to fairly priced medications. It is plain good sense to amend the agreement in the way that Labor proposes: to prevent a drug company from lodging a patent claim as a delaying tactic in keeping cheaper generic drugs off the market for as long as they can spin out the litigation. Our amendments would protect the PBS by preventing and penalising drug companies that try to stop cheaper generic drugs coming onto the market by lodging spurious patent claims. The validity of these claims would be determined by a court, not by the TGA or by the government.

The government argues—and we have heard several government senators speak in this way today—that it does not want evergreening of drugs to take place and that it does not believe there is anything in the FTA that will increase the possibility of evergreening taking place. In question time today Senator Patterson quoted with approval one of the government’s advisors stating that the FTA ‘neither encourages nor prevents evergreening’. This agreement, as it stands, does not prevent evergreening, which is why the Labor Party is insisting on the amendment that will make sure that those extremely wealthy American drug companies which champion George Bush’s position do not engage in that practice in this country.

Much as Senator Brandis may have used his legal expertise in the previous debate to pour scorn on Labor’s commitment to protect the PBS, the government must be aware that even the generic medicines industry are very concerned that there be no delay to the entry of generic medications. I am sure that they will be particularly intrigued by Senator Brandis’s argument that the legislation as it stands could in fact facilitate the earlier entry of generic medications.

The issue is not a threat to the genuine use of patents; it is important that patents be protected, and we appreciate that. Labor’s amendment to the enabling legislation says that, if a generic drug company files an incorrect or spurious patent application, the TGA is entitled to fine that generic drug company for submitting an incorrect application. If it is acceptable to fine a generic company for filing a false document, it should also be acceptable to fine a drug company that puts together a patent claim that is not about the science or the chemical product but is about its commercial interests. Let us prevent companies from using the courts to drag out the proceedings and to slow down the introduction of a cheaper generic drug.

To allow even the possibility of such unnecessarily expensive medications would surely be a retrograde step for all of us. The Prime Minister has called this stand by Labor ‘an unnecessary stunt’. It is necessary to protect our PBS, and I cannot understand why the Prime Minister insists otherwise. I have received over a thousand letters and phone calls from impassioned Australians who also see this necessity. Why does the government have such a blind spot on this important issue? The only place the word ‘unnecessary’ has in this debate is in the plain fact that it is unnecessary for these price hikes to take place. Our PBS must be protected as it is.

Calling Labor’s insistence on this amendment a stunt is an insult to the many people who justifiably object to the inevitable and unnecessary hike in the price at the pharmacy if we allow the agreement to go
through without this amendment. I would like to remind the Senate that Labor studied the details of the US free trade agreement very carefully before coming up with these amendments, and I commend the Senate select committee and the Labor senators who participated in those deliberations, which were very complex and very difficult. We also considered other complex and difficult issues, including investment in services such as water and the introduction of GM food crops in Australia. These are also issues that are worrying the Australian people. Labor pursued the information we needed to enable us to make a decision that, overall, the FTA is in the national interest. It is a regrettable fact that the government failed to negotiate the best possible deal for Australia. There are serious flaws in the agreement in the areas of local content and the PBS. The government can join with Labor to protect both our local content and our PBS. I call on them to do so.

Senator MARSHALL (Victoria) (6.43 p.m.)—I rise to join tonight’s debate on the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 in response to some of the twaddle I have heard from government senators about this matter. They are the same government senators who, before the free trade agreement text was even available or tabled in this parliament, time after time got up in this place to tell us what great benefits the agreement was going to bring to this country. They did not have a clue what was in it and they had not even gone through a process of analysis, yet with such confidence they were able to predict fantastic benefits that were going to arise from it.

Labor always took the position that we would pass the free trade agreement on its merits, and we set some benchmarks for that process. We engaged actively in the Joint Standing Committee on Treaties process, which was fairly exhaustive. Unfortunately, some previously declared bias, particularly of the chair of the committee—who had already declared that he supported the free trade agreement and would use his position as chair of the Joint Standing Committee on Treaties to promote the benefits of the free trade agreement, which at that time he had not even seen, to the Australian public—brought into disrepute many of the findings of that committee.

Because of that biased process, Labor embarked on a Senate select committee process which was to be a thorough one to get from the public all the concerns that needed to be addressed and to carefully analyse the free trade agreement in a considered way. That is the process that was undertaken; yet we hear the government say that it was a process of delay that resulted in a political stunt. It is quite amazing to me to hear government senators saying, time after time, that what we are doing in protecting the PBS is simply a political stunt and going on to say that we are just trying to appease the left wing of the party, trying to win votes and trying to wedge people. They go on with all this politics, attacking the opposition. The only people playing politics here are the government.

The question that really has to be asked—and this is what the government have failed to address at all—is: why is public policy about medicines, and the affordability of medicines, in a trade agreement? Why is public policy in a trade agreement? We know that the Americans believe that Australians do not pay a high enough price for pharmaceuticals. They insist that it be in a trade agreement. I ask: to what end? If we believe the government when they say that they have absolutely protected the PBS, why did they allow it to be in the free trade agreement anyway? If it was going to make no change, why is it there? It must be absolutely unnecessary.
We know why it is there. It is there because it opens up our PBS, and the affordable price of pharmaceuticals to ordinary Australians, to multinational pharmaceutical companies based in the US who make massive profits and spend billions of dollars on litigation every year. It opens up our country and our PBS to those sorts of pressures. That is why it is there, and that is something that the Labor Party will not accept. We said from the outset that we would not allow this free trade agreement to undermine the PBS, and that is why we will be steadfast in our opposition to these bills without the amendment that is proposed by the Labor Party. We will not support the bills without the amendment proposed by the Labor Party, because it is only that amendment that protects the PBS from being undermined—and the government know it.

If there is any politics being played on this at all, it is that the government know that to accept our amendment would be an admission that they have misled the Australian people throughout this period of time. Who says that? Government members say it themselves. Let us go to recommendation No. 5 of the report of the Joint Standing Committee on Treaties, which every government member signed on to. It says:

In establishing the independent review of PBAC processes (for PBS listing under Annex 2-C of the Agreement), the Committee recommends that, in order to ensure that the fundamental integrity of the PBS is retained, the following principles be taken into account ...

Then it recommends a number of steps that need to be put in place. So even the Joint Standing Committee on Treaties, which every government member signed on to, recognised that we need to ensure that the fundamental integrity of the PBS be retained. Why would they make such a recommendation if they felt that the integrity of the PBS was already retained? It makes no sense. Of course they accepted that the PBS was going to be undermined by this agreement. If they were released from their party shackles, they would accept the amendment that the Labor Party is going to move to protect the PBS in this process.

Earlier in the debate I heard Senator Watson say that our amendment is unnecessary. If he really believes that it is unnecessary, what is the problem? If it is unnecessary, why not pass it? He went on to tell us that all it does is mirror what is there now in patent law. But then the government went on to tell us that it is unworkable. If the amendment mirrors what is there now, how can it be unworkable unless what is there now is also unworkable? I have not heard anyone argue that. If it mirrors what is there now and if it is unnecessary, what is the government’s problem? What is the problem with passing the amendment?

We know what the problem is: it is that you want to play politics with it. You know the agreement needs strengthening in this area but you cannot bring yourselves to admit it because you have been saying to the Australian public all the way through this debate that you have protected the PBS. But your own government members on the joint standing committee recognised that you have not. You know that you have not, but you cannot bring yourself to protect the PBS because you cannot admit that you were wrong and that you have misled the Australian people all through this process. That is a disgrace. The government ought to stop playing politics, do the right thing and support the amendments proposed by the Labor Party.

Debate interrupted.

NOTICES
Presentation

Senator Ellison to move on the next day of sitting:
That the provisions of the following bills be referred to the Legal and Constitutional Legislation Committee for inquiry and report as follows:

- Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill 2004 by 11 August 2004; and

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! It being after 6.50 p.m. and there being no consideration of government documents, I propose the question:

That the Senate do now adjourn.

Veterans: Korean War

Senator MARK BISHOP (Western Australia) (6.51 p.m.)—Tonight in the adjournment debate I propose to address the recently completed mortality study of Australian veterans who served in Korea. Korea is frequently referred to as the forgotten war, though the reasons for that are not entirely clear. Certainly the war came at a time of severe fatigue after five years of international conflict. It also occurred at a time when the world was preoccupied with rebuilding nations and economies bled dry. It was also seen by some as not being a real war of the kind the world had just experienced—that of course being World War II.

For some, it was a civil war wrapped up in the early stages of the Cold War. It was, then, a war more to do with ideology, with political overtones. It certainly was not a world war, though some saw the ideological conflict as having those consequences. All that is irrelevant now, although the vestiges remain. North Korea is still considered a risk, and it is one of the last remaining examples of the failed communist experiment. What remains relevant, though, is that almost 18,000 Australians served in Korea. Of those, 349 lost their lives in action and 29 were captured as prisoners of war. Korean veterans, as we know, have long been concerned with their health. This is not an issue about benefits, because all those who served there are entitled to qualifying service under the Veterans' Entitlements Act. It is about the recognition of the effects of that service and of the appropriateness of the health care that is available to those men who served. In particular, there is considered to be a need to ensure that the statements of principle which guide the acceptance of claims for disability pension accurately reflect the circumstances of that conflict.

Ironically in the current international context, it was also a war fought under the auspices of the United Nations but led by the United States. There is one key, salient point in this mortality study. The mortality rate has been very high. While we do not have a comparative study of World War II veterans to inform us, we do have a similar study of Vietnam veterans. Vietnam involved over 59,000 Australians, serving in rotations. That mortality study, completed in 1997, found some evidence of excess mortality compared with the general population. There were, in particular, findings of some elevation of rates of cancers, including cancer of the prostate. Elevated suicide rates were also suggested, though there was some difficulty in making estimates due to the masking action of the healthy worker effect. It is this same effect which has confounded predictions on the longevity of World War II veterans—who, despite their ordeals, have survived beyond all predictions.

The findings for Korean veterans, however, are very different. There is no doubt that Korea was a very tough campaign. The combat against the North Koreans, and later the Chinese, was particularly fierce. Korea is also a tough country to fight in geographically. The Australians too, as seemed to be
the custom, were poorly equipped, relying often on the Americans for suitable clothing and rations. In fact it is clear that some of the most severe health effects stemmed directly from appalling living conditions. All this is well documented in the report, as is the history of the war—the conduct of the battles as they raged from south to north and back again. So too is the role of the Australian Army, Navy and Air Force. All the distinctions between the services rendered by the three arms of the forces are set out simply because the health effects are directly related.

In summary, the mortality study concluded that there has been a 21 per cent increase in mortality among Korean veterans compared with the general Australian population. This is derived from a survey of the death certificates of 95 per cent of those who died after their return. This is an extraordinary outcome, and our compliments must go to those who did that research. Looking at the outcomes in more detail, we see that elevations in the rates of causes of death varied considerably. For example, the death rate from disease of the circulatory system was elevated by 13 per cent. Stroke was elevated by 17 per cent and ischaemic heart disease by 10 per cent. The death rate from cancer was elevated by 31 per cent. The death rate from all external causes—homicides, accidents and suicides—was elevated by 37 per cent. Suicide rates alone were elevated by some 31 per cent. The death rate from respiratory diseases was elevated by 32 per cent. Within this, chronic obstructive pulmonary disease was up by 49 per cent. The death rate from all digestive diseases was elevated by 35 per cent, and deaths from alcohol induced liver disease were up by 36 per cent. These are indeed extraordinary figures, but they are contradicted in two instances by a significant reduction in deaths from diseases of the skin—down 74 per cent—and congenital malformations, which were down 36 per cent.

A further breakdown of these figures has been done for each of the three services. The breakdowns within the disease categories are also very instructive. The death rates from cancers of the head and neck, for example, were elevated some 96 per cent above the general male community. Many of these cancers are identified as being associated with smoking, although the measurement of this was not possible. This leads, then, to the identification of factors of causation. Smoking clearly has been a significant cause. Breathing in fumes from crude heating stoves was, no doubt, another. Alcoholism, hepatitis infection, endemic parasites and bacteria were all hazards. Exposure to a range of chemicals was also. Here there was a general range of exposure to solvents, petrol products—including diesel and kerosene—pesticides, herbicides, DDT and many other products. There can be no doubt that all these, individually and collectively, had an effect.

The study, however, has been unable to accurately attribute cause and effect. This, no doubt, would be instructive—but, of course, too late for any preventive measures. It is valuable, however, to reflect on the findings of the study. It shows in the most graphic terms the long-term effect of warlike service on the health of serving personnel. Perhaps we should not assume from the Vietnam mortality study that the outcomes identified there will prevail into the future. On this evidence, that must be doubtful. We need to heed the early signs and be watchful in our health delivery services for the higher probability of certain diseases and illnesses within the veteran population. It is not a question of additional benefits; it is one of heightened awareness and preparation of remedial treatment. Veterans themselves need to be vigilant. Clearly the probability of
some serious health issues is much increased. It also raises in our minds the need to have thorough research and preventive measures in place both before and during deployments.

I mention in passing here the inquiry now being wrapped up by the Senate Foreign Affairs, Defence and Trade Legislation Committee into the health co-arrangements between Defence and the Department of Veterans’ Affairs. Clearly Defence is far better prepared these days for deployments and for subsequent health care, but there is a legacy from Korea and from Vietnam where people believe that the health effects they still suffer from those deployments are not being recognised in modern times. Many other mysteries remain, including ‘Gulf War syndrome’ and exposure to Agent Orange and depleted uranium and so on. This report is a valuable contribution. It is very instructive on the cost of war to the individual. It is another lesson to governments on the human cost of committing to war and on the long-term consequences that are often not prepared for or anticipated and that are paid for by individuals down the road. I commend this report to the Senate.

Human Rights: Child Abuse

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (7.00 p.m.)—I rise tonight to speak further on the critical and often devastating issue of child abuse. Of course, child abuse is not a modern phenomenon; children have been abused and hurt since the year dot, and a lot of that draws on the historical attitude of seeing children as property. However, in recent years the child protection movement has clearly been gaining some momentum, and child abuse is now widely recognised as a major social problem. Nonetheless, it is still an issue that we clearly continue to fail to address properly, let alone prevent. Evidence to a recent Senate Community Affairs Committee inquiry, initiated by the Democrats, into institutionalised children and their treatment clearly indicates, among other things, the harm done to children as massive long-term social and economic costs. It is in our interests as a society to prevent as much as possible and to intervene and address abuse and assault as early as possible. It is obviously also in the interests of the child to do so.

Child abuse does not just happen to children in institutions; it happens in families and it happens in a range of organisations, associations, schools, churches and elsewhere. Nor is it only sexual assault; often that gets a large proportion of the public focus but it is much more wide-ranging than that. Children can suffer and be harmed enormously by physical violence and emotional abuse, by witnessing domestic violence and by parental neglect and failure to provide for them, as well as by the failure of authorities to protect them. Research clearly shows that a significant proportion of harmed and abused children descend, as adults, into homelessness and welfare dependency, a cycle of failed or dysfunctional relationships, crime and other problems.

People would have seen on the front page of the Canberra Times today reports of a recent independent examination entitled The Territory’s Children which lists a litany of Australian Capital Territory cases that stretch back several years. It reports on young people being returned to or left in abusive households. There are reports of abuse of children in care being filed away and not acted on and of a chronic underresourcing of the departments assigned to protect children. That particular report stated that 19 per cent of reports containing serious allegations of abuse were not appraised and children were not sighted, followed up or interviewed when they should have been. This, I believe, is a flow-on consequence from the basic fact that
for too many years children have not been recognised politically as a top priority. We would all be aware of the difference between making statements about how important something is and actually putting it front and centre as a political priority, getting action and continually following up to ensure that the issue is being addressed. While there have been spurts of activity from time to time, often following on from reports such as this, I still believe that overall we continue to fail to put it sufficiently near the top of the priority list.

Ensuring the wellbeing of children, most particularly when they are at risk of abuse and assault but in a broader general sense as well, is absolutely critical. The bottom line, of course, is that children do not vote. Children do not ring politicians all the time and complain about things. They do not email us perpetually and say, ‘Please don’t support this,’ or ‘Please support that.’ So they start from a point of being significantly disadvantaged. They have to rely on others to advocate for them and to draw those issues to our attention in the political arena. We have to make that extra effort, that conscious effort, to directly address the needs and problems of children and to do so in a way that acknowledges the primacy they should have. It is a cliche to say that children are our future—but it is, nonetheless, absolutely correct. The flip side of that is that if we do not address issues affecting children then we will be faced with having to address the consequence of that inaction for decades to come. The ACT example I have just cited is unfortunately not an isolated example. As we all know, you could point to similar reports that show similar failures and chronic underresourcing over a long period of time in virtually all states and territories in Australia.

A clear demonstration of something not having political priority is underresourcing, while areas that have a greater political priority get extra resources. Chronic underresourcing is a chronic problem. My own state of Queensland is notorious for underresourcing over decades the whole range of welfare and community service areas, particularly the child protection area. I know, from my background as a social worker being trained in the 1980s at the University of Queensland, that the view was widespread amongst students in that area that the family services department was not somewhere you would aspire to work as a social worker. That was not because trainee social workers did not care about the welfare of children. That was because that department had a reputation of burning people out, hanging workers out to dry, being grossly underresourced and a nightmare area. Children’s welfare is always going to be a difficult area—there is no doubt about that. By its nature it has to be difficult and fraught, but clearly there is a common problem. We have seen the same thing in New South Wales with its department—repeated reports highlighting underresourcing and major problems internally and organisationally, with management not efficiently following up on problems.

It is a common occurrence around the country. That is why the Democrats continually advocate the need for a national approach with national leadership on child sexual assault and abuse. It is not good enough to say it is a matter for the states as it is a state jurisdiction. It is particularly an area in which we have clearly failed in a major way. In saying that, I do not say that state governments are not doing anything and are turning a blind eye and completely ignoring things. The Queensland government has put some extra resources in recently but it is starting from a long way back in making up for those years of underresourcing. We need to get behind the issue the extra weight and momentum that you get only if you give national leadership, national resourcing, na-
tional priority and proper coordination to this issue.

We repeat our call for the need for a royal commission into child sexual assault and abuse. We have repeated that regularly in the Senate. Indeed, I remind the Senate that we passed a resolution, supported by all the non-government parties, to initiate such a royal commission. I hope that remains a policy of the opposition if, by chance, they get into government after the next election. There is some movement in this area but it is very slow, and too much of what is being put forward is by way of looking good rather than giving it priority. Much was made of the meeting just last month in Hobart of the nation’s police ministers, who agreed to a national paedophile register which will list the names of individuals who have been convicted of child sex offences and limit their ability to commit fresh crimes interstate. That is great, but it was originally recommended in 1995 and in a press release dated November 2002 we had the Minister for Justice and Customs announcing that same group of police ministers had agreed to develop a nationally consistent approach to the registration of child sex offenders. So the movement has been very slow and we need to do a lot more to get a national coordinated approach to and national leadership on what surely has to be one of the most pivotal, crucial and central issues of concern to the entire community.

Senate adjourned at 7.10 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

-Treaties—

*Bilateral*—Text, together with national interest analysis and annexures—


Joint Agreement on Enhanced Cooperation between Australia and Papua New Guinea (Port Moresby, 30 June 2004).


*Multilateral*—Text, together with national interest analysis, regulation impact statement and annexures—


*United Nations*—

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—Committee Against Torture—Communication—No. 148/1999—Decision.

Optional Protocol to the International Covenant on Civil and Political Rights—Human Rights Committee—Communications—


No. 1254/2004—Outline.

No. 1255/2004—Outline.

No. 1256/2004—Outline.
The following documents were tabled by the Clerk:

- Australian Capital Territory (Planning and Land Management) Act—Amendment 34.
- Approval of Amendment 34.