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

PETITIONS

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

Medicare

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

The Petition of the undersigned are committed to Medicare, one of the world’s fairest and most efficient health systems. We are concerned that the current Government’s proposed changes to Medicare attempt to divide Australians according to their income and ignore the fundamental philosophy that underpins Medicare—a system where taxpayers pay through their taxes for health care that we can all enjoy at low or no cost at the time of service.

Your Petitioners request that the Senate amend any Medicare bills to preserve the unifying features of Medicare so that there is one system of access to doctors’ services.

by Senator Allison (from 43 citizens).

Marriage

To the President and members of the Senate.

The petition of certain citizens of Australia draws to the attention of the Senate a matter of deep concern to us. We are strongly opposed to any moves that would change the definition of marriage from that of a union between a man and a woman. We specifically oppose the expansion of the definition of marriage to include a union between two men, or between two women.

Your petitioners therefore pray that the Senate will use its powers to oppose the expansion of the definition of marriage beyond that of a union between a man and a woman.

by Senator Mason (from 202 citizens).

Petitions received.

NOTICES

Presentation

Senator Ian Campbell to move on the next day of sitting:

That the Marriage Amendment Bill 2004 be now read a first time.

Senator Bartlett to move on the next day of sitting:

That the following matters be referred to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 30 November 2004:

(a) the provisions of the National Animal Welfare Bill 2003;

(b) whether there is benefit in moving towards nationally uniform and enforceable animal welfare laws in Australia; and

(c) whether current processes adequately ensure proper animal welfare standards in areas that come under Commonwealth jurisdiction, such as imports and exports of wildlife and other animals.

Senator Harris to move on 11 August 2004:

(1) That a select committee, to be known as the Select Committee on the Commercial ‘Rape’ of Small Business by Telstra, be appointed to inquire into and report by 25 November 2004 or, if the Senate does not meet on that day, the next sitting day after that day on the following matters:

(a) having regard to previous inquiries by Senate committees relating to the activities of Telstra and other wholly-owned subsidiaries, the new information that has come to light in relation to Network Design and Construction/National Network Solutions and Telstra management in Queensland, and the catastrophic damage being done to small business on a daily basis:

(i) whether any action should be taken urgently against the Chief Executive and Board of Telstra, employees or agents of Telstra’s wholly-owned subsidiaries or Telstra employees in
relation to actions against Telstra contractors, and
(ii) whether any criminal offence was committed in that regard; and
(b) whether Telstra should be obliged to compensate, on a case-by-case basis, the small business contractors affected by the behaviour of Telstra, its employees or employees or agents of its wholly-owned subsidiaries.

(2) That the committee consist of 7 senators, 3 nominated by the Leader of the Government in the Senate, 2 nominated by the Leader of the Opposition in the Senate, 1 nominated from the group of independents and 1 nominated by the One Nation Party.

(3) That the committee may proceed to the dispatch of business notwithstanding that not all members have been duly nominated and appointed and notwithstanding any vacancy.

(4) That:
(a) the chair of the committee be elected by and from the members of the committee;
(b) in the absence of agreement on the selection of a chair, duly notified to the President, the allocation of the chair be determined by the Senate;
(c) the deputy chair of the committee be elected by and from the members of the committee immediately after the election of the chair;
(d) the deputy chair act as chair when there is no chair or the chair is not present at a meeting; and
(e) in the event of the votes on any question before the committee being equally divided, the chair, or deputy chair when acting as chair, have a casting vote.

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

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

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

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

(9) That the committee have access to, and have power to make use of, the evidence and records of previous inquiries by Senate committees mentioned in paragraph (1)(a).

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

BUSINESS
Rearrangement

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

That the order of general business for consideration today be as follows:

(1) general business notice of motion no. 951 standing in the name of Senator Lundy relating to Australian content quotas for radio and television; and

(2) consideration of government documents.

Question agreed to.
COMMITTEES
Legal and Constitutional Legislation Committee
Extension of Time

Senator FERRIS (South Australia) (9.34 a.m.)—by leave—At the request of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I move:

That the time for the presentation of the report of the Legal and Constitutional Legislation Committee on the provisions of the Anti-terrorism Bill (No. 2) 2004 be extended to 6 August 2004.

Question agreed to.

NOTICES
Postponement

Items of business were postponed as follows:

General business notice of motion no. 957 standing in the name of Senator Nettle for today, relating to James Hardie Industries, postponed till 9 August 2004.

General business notice of motion no. 958 standing in the name of Senator Nettle for today, relating to an Airservices Australia contract for the manufacture and supply of fire engines, postponed till 9 August 2004.

PRIVILEGE

Senator RIDGEWAY (New South Wales) (9.34 a.m.)—I 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.

Question agreed to

COMMITTEES
Legal and Constitutional Legislation Committee
Reference

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.34 a.m.)—At the request of the Minister for Justice and Customs, Senator Ellison, I move:

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 (No. 2) 2004 by 11 August 2004; and


Question agreed to.

MISSILE DEFENCE

Senator ALLISON (Victoria) (9.35 a.m.)—I move:

That the Senate—

(a) notes:

(i) the proposed memorandum of understanding between Australia and the United States of America (US) on missile defence,

(ii) the Senate resolutions of 29 June 2000, 1 March 2001, and 30 August 2001 on missile defence,

(iii) that the use of nuclear weapons in space is prohibited by the Outer Space Treaty, signed by Australia in January 1967,

(iv) Australia’s support for the 13 steps in the final declaration of the 2000 Nuclear Non-Proliferation Treaty Review Conference, and

(v) that the proliferation of weapons of mass destruction and missile delivery systems is a serious international security issue; and
(b) urges the Government not to sign the proposed 25-year missile defence research, development, trials and operation agreement with the US until and unless:

(i) a public inquiry has been conducted by a Senate committee, and

(ii) the agreement is approved by both the House of Representatives and the Senate.

Question negatived.

WORLD BREASTFEEDING WEEK

Senator STOTT DESPOJA (South Australia) (9.36 a.m.)—I move:

That the Senate—

(a) acknowledges that 1 August to 7 August 2004 is World Breastfeeding 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.

Question agreed to.

BUSHFIRES

Senator BROWN (Tasmania) (9.36 a.m.)—I move:

That the Senate—

(a) notes that the report of the Council of Australian Governments (COAG) inquiry on bushfire mitigation and management was provided to the Prime Minister (Mr Howard) on or around 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.

Question agreed to.

COMMITTEES

Community Affairs Legislation Committee

Meeting

Senator FERRIS (South Australia) (9.38 a.m.)—On behalf of the Chair of the Community Affairs Legislation Committee, I move:

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.

Question agreed to.

Rural and Regional Affairs and Transport Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (9.39 a.m.)—On behalf of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, I move:

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.

Question agreed to.
Foreign Affairs, Defence and Trade References Committee

Extension of Time

Senator FERRIS (South Australia) (9.39 a.m.)—On behalf of the Chair of the Foreign Affairs, Defence and Trade References Committee, I move:

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.

Question agreed to.

Free Trade Agreement Committee

Report

Senator O'BRIEN (Tasmania) (9.40 a.m.)—On behalf of the Chair of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America, I present the final report of the committee, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator O'BRIEN (Tasmania) (9.41 a.m.)—I move:

That the Senate take note of the report.

I seek leave to incorporate in Hansard a tabling statement, which would have been made by Senator Cook were he able to be present today. I have asked the Opposition Whip for consent to incorporate the statement. I have not had the opportunity to speak to any other opposition members. I also seek leave to make my own comments at this time.

Leave granted.

The statement read as follows—

Mr President, the report being tabled today is the product of an exhaustive examination of the Australia-US Free Trade Agreement.

The evidence gathered covers the full range of both expert opinion and the views of members of the general public.

Close consideration has also been given to the various econometric reports that have been produced.

The Committee’s Report explores that range of views, and has sought to juxtapose the arguments and judgements in such a way that the debate is represented as robustly and comprehensively as possible.

Any trade agreement, especially one as unprecedentedly complex as the FTA, necessarily entails both costs and benefits.

One of the most difficult tasks for this Committee has been to try and assess those costs and benefits. Econometric studies can only ever provide a guide to the expected economic benefits, and even then it depends significantly on the assumptions made as to what the outcomes will be. Assumptions are invariably contestable, and the Committee has sought to reflect that fact in its own commentary on the merits of the various studies.

The Agreement has received strong support from those business groups who regard the FTA as providing new and significant opportunities to do business with America, and facilitating access to American technology and commercial know-how.

They applaud the greater integration of the Australian economy with what is undeniably the world’s most economically powerful country, arguing that the benefits will be dramatically outweigh any downsides. Other business interests see only modest benefits.

For many people, however, the Agreement represents nothing but economic, cultural and employment risks from exposure to powerful United States interests.

Some economists have argued that the trade diversion effects of the FTA could work to the overall detriment of the Australian economy.

Many have argued strongly that the Agreement will undermine Australia’s sovereignty and erode social policy, and that many of the FTA’s provisions will severely restrict Australia’s future capacity to direct and manage its own affairs.
Final assessments of the Agreement must be made with respect to Australia’s national interest. Given that national interest is itself a highly contested notion, it is hardly surprising that the Committee has operated in an environment of claim and counter-claim, amidst the clash of big ideas and passionate and powerful arguments. The adversarial nature of much of the debate on the FTA has not assisted sober analysis.

The main purpose of trade agreements is to remove as far as possible any tariff or other restrictions to the flow of goods and services between the parties involved, and to create an environment which facilitates rather than impedes the capacity of companies to get on with business. There are several ‘headline’ areas of the FTA that have drawn the most attention.

Agriculture has traditionally been a fraught area for trade negotiations. The FTA has delivered overall benefits to Australia in this sector, although these are universally acknowledged to be less than what Australian producers and the government had hoped for.

Sugar was omitted entirely from the deal. Some improved access to US markets for beef has been achieved, but with long phase-in periods and safeguards. While quotas remain in certain dairy products, there are valuable opportunities for value-added products. The horticultural industries and seafood exporters are also pleased with the opportunities that have opened up for them.

Investment is another area in which a relatively open market has been further liberalised. According to the government’s commissioned study, the projected gains from such liberalisation are said to be the major area of economic benefit to Australia.

But again, DFAT’s own Impact Analysis, and the report by the US International Trade Commission have both stated that the FTA will not usher in a flood of new investment.

Much has been made of the proclaimed ‘dynamic gains’ arising out of the Agreement. These are very difficult to measure in practice, and the proof of the pudding will be very much in the eating.

Service industries are a major component of modern economies, and the FTA provides for greater opportunities in cross-border trade in services. Much will depend on Australian firms’ capacity to enter the US services market, and the government procurement area in particular. The gates have been opened; hopefully the service providers are at least in the starting blocks.

Issues such as mutual recognition of qualifications and easier movement of business people between Australia and the US are still to be resolved.

While the removal of tariff and other barriers enhances Australia’s access to the American markets, the opening of Australia’s markets to highly competitive and export-oriented US firms will obviously have ramifications for Australian companies and their employees.

Many Australian firms have already shown themselves to be good global competitors. But concerns about job losses have been pressed strongly by employee representatives, especially in the manufacturing industries, and the various econometric studies have confirmed that effects will be variable from sector to sector. This is a matter that governments at all levels will have to attend to carefully if they are to ensure their industry policies can proceed optimally.

Health services, and in particular the operation of Australia’s Pharmaceuticals Benefits Scheme, has been one of the most hotly contested areas of the Agreement. This is the first time a trade agreement has included measures directly addressing a country’s pharmaceutical policies. This Committee has heard heated debates about the possible impact of the FTA commitments on the PBS and on whether the concessions made here could drive up the price of drugs in Australia.

The intellectual property provisions relating to generic drugs have been another area of concern. The changes made to Australian law and PBS procedures are complex, and the probable outcomes are contested. Many assurances have been given by ministers and officials, but these are important issues with implications for Commonwealth and state governments’ health spending as well as for Australian consumers.

Intellectual property emerged as one of the most significant aspects of the Agreement. The issues are significant, because it is a relatively new area for inclusion in trade deals. It is a complex and
constantly evolving area in terms of both technology and government regulation, and it lies at the heart of 21st century so-called ‘knowledge industries’. It has enormous implications for innovation and all the benefits that flow from it.

The IP Chapter of the FTA is the largest chapter in both form and substance and requires the most significant changes to current Australian law. The Committee has heard arguments that the changes to Australian copyright law required by the FTA will upset the careful balance between the rights of owners and the interest of users that currently forms the basis of Australia’s IP regime. The result is that, in some areas, Australia will be more protective of copyright than in the US.

While IP creators and owners, particularly large US copyright-owning corporations, stand to benefit from the greater IP protection, the changes may impose additional costs on Australian consumers and researchers. As a net importer of IP, the changes could have a negative impact on the Australian economy as a whole.

Further, the changes required by the FTA are essentially trade restrictive measures rather than trade liberalising ones as they strengthen the monopoly of IP owners. In many cases, the changes required by the FTA have gone against the recommendations of IP law reform processes in Australia over the last few years.

Some of the early debate about the FTA was agitated by concerns about Australia’s capacity to maintain proper regulatory regimes in a range of matters, including quarantine and environmental protection. Although there are various working parties and committees established under the FTA that will provide forums for discussion on such matters, we have been assured that they have no authority or official standing in Australia’s regulatory framework. Again, what flows from these various committees is yet to be seen. Even the details of their membership, their structure and operation is largely still not settled.

Perhaps the most notable matter thrown up by the whole FTA experience is the question of proper process in negotiating international agreements. The current process, whereby the government can, without reference to the parliament, set out to strike a binding agreement with another country, is fraught with difficulty and does nothing to facilitate a measured debate about the treaty being pursued. Nor does the current process provide for the public to be brought along with any agreement.

State and territory governments, who are necessarily important players in facilitating the implementation of the FTA, have an insufficient role in the negotiating process. The Treaties Council of ministers did not even meet to address the FTA.

This lack of transparency, and in particular the inability of the Commonwealth parliament to consider the FTA until after the deal has been done—indeed not until after it has been officially signed—is clearly unsatisfactory.

A proper framework for parliamentary scrutiny of treaty negotiations at all stages must be established as a matter of urgency. The Committee’s report explores these process issues in some detail. It is a matter that cries out for resolution.

The Committee urges the government to take seriously all the matters raised by it in this Report. They have been comprehensively canvassed.

Senator O’BRIEN—This inquiry has tested the members of the committee, committee staff, the general public and the Senate since early this year. In establishing the factual basis that lay behind an 1,100 page agreement—which the Senate saw some time after the government announced it would enter into such an agreement—even before the full document had been sighted we saw coalition senators telling senators that we should support the agreement unconditionally. The agreement has now been reviewed and the final report has been presented to the Senate—a report which runs to 223 pages, without the recommendations—and is an indication of the breadth of material and the
depth of the evidence that this committee accepted.

The committee conducted a number of roundtable discussions involving trade specialists, medical industry specialists, particularly with regard to the Pharmaceutical Benefits Scheme, and intellectual property specialists. It heard from a range of witnesses, some specifically invited to present material to the committee and some who chose to make their submission without the committee’s prompting. A number of witnesses were the subject of extremely robust questioning by the committee. It is the wont of Senate committees to test the evidence of witnesses and it is appropriate for that to be done. I believe there is a point beyond which such questioning should not go and I believe that point was transgressed on a number of occasions during the committee’s deliberations. There was one occasion when two witnesses who were presenting evidence to the committee, at the request of the committee, were challenged as to why they had in fact bothered to present their evidence to the committee. When the witnesses pointed out that they had been invited by the committee, there was no retreat by the senator asking the questions. I said at the time that, when that behaviour transgressed the point of common decency, it became somewhat reprehensible. I think that, for anyone who bothers to read Hansard, they will discover that at times the acrimonious debate made it difficult for the committee to conduct its work.

A number of allegations were made about inadequate time being allocated to government senators in the process of asking questions, but let me tell you what occurred on a number of occasions in my presence. Senator Cook, having taken evidence from witnesses, would occasionally ask questions himself and on other occasions would invite other senators, including government senators, to commence the questioning. On a number of occasions Senator Brandis was invited to commence the questioning or to ask questions immediately after Senator Cook. On a number of occasions Senator Brandis declined to ask questions at that time but later, as the time was approaching for the witness to cease giving evidence, commenced asking questions and then complained that he was not being given enough time to continue his questioning.

When a senator is given an opportunity to ask questions and declines, and then later decides to ask questions, it is not open, in my view, for that senator to complain that the time has run out before they had a chance to complete their questions. I suggest that when Senate committees are being conducted and a chair is trying to run a schedule of witnesses, it is appropriate for senators to either cooperate or say at the start, when the proceedings have been established, that there is inadequate time and perhaps suggest that the witness return at another time or that questions be taken on notice. But we had to undergo the charade of complaints against the chair which were completely unfounded and were designed to obfuscate the outcome of the inquiry and justify the outrageous behaviour we saw from time to time from some government senators.

Some government senators might say that the Hansard does not completely reveal all of this, and of course the Hansard will not, because some of the things that took place—such as declining to ask questions—may not appear in every part of the Hansard. But I invite senators to look at the media’s coverage of the behaviour of some government senators at a press conference on Monday. That sort of behaviour indicates the way those senators behaved during some of the committee hearings when we had witnesses before us. I have been party to quite a number of Senate inquiries and I think I have a reputation for being a robust questioner from
time to time. I am entitled to do that, as are
government senators, but there is a point be-
yond which senators should not go.

In relation to the current debate on this
matter, my understanding from conversations
I had with government senators was that they
would present their response to the report by
four o’clock on Tuesday. I think that was the
original undertaking. The remarks that were
made indicated to me that we would have a
commentary about the report as it stood then.
In fact, the government senators’ response
was provided to the committee at 7 p.m. or
thereabouts last night—I certainly did not
see it before that time.

I do not object to the government taking
its time to respond, even though it was at
pains to put pressure on Labor senators to
put forward their view on the matter—and,
indeed, pressures were applied to Senator
Harris to bring forward his comments before
the closing time of seven o’clock. But what
do we see in that commentary? We see a
commentary on the debate that has occurred
since the time that Labor senators put for-
ward their report, not a commentary on the
whole of the proceedings. We have seen the
government senators take advantage of the
delay that they have occasioned to comment
on the contemporaneous debate rather than
on the contents of the report—in other
words, to enter into the debate about whether
the Labor Party’s proposal to amend the free
trade agreement is valid. That is a permissi-
ble device, but it is a device. It is not a ful-
some response to the committee report. It is a
response to the current political debate. That
is the environment in which this committee
has operated. On this matter, the opposition
has been pursuing fact and the government
has been pursuing politics.

At the end of the day, the opposition has
taken a responsible position on this report.
The opposition senators, in this report, put
forward a series of proposals which were
open for the parliament to consider. My party
has made a decision about how it will re-
respond to that report. I fully concur with that
response. It would be appropriate, if the gov-
ernment really wants this report to be ap-
proved, for the government to support La-
bor’s amendments. I think we are seeing
more and more that the community wants the
government to support our amendments be-
cause, if it does so, it can have the agreement
by the end of next week. I fully expect this
debate to be a robust one as well. I welcome
that. We will not stop here.

Senator BRANDIS (Queensland) (9.51
a.m.)—There can have been few Senate
committee reports which have been more
eagerly anticipated and upon which more
depends than the final report of the Select
Committee on the Free Trade Agreement
between Australia and the United States of
America, on which I was privileged to serve
as Deputy Chair. The report tabled today
contains one recommendation from the
committee. It contains a long discussion of
the evidence with which government sena-
tors do not concur but nevertheless accept as
a fairly balanced presentation of different
points of view that were agitated before the
committee, and it contains some remarks by
government senators which appear at pages
241 to 249.

The important point to notice is that the
much anticipated report of this committee
contains one recommendation and one only,
and it is a bipartisan recommendation be-
tween government and opposition senators.
That recommendation—which Senator Con-
roy, a member of the committee and Labor
shadow minister for trade, moved and I, as
the deputy chairman of the committee, sec-
onded at a meeting last Monday—was car-
rried with the support of all government and
all opposition senators. The recommendation
was that the Senate pass the free trade agreement implementation legislation.

It was an unconditional recommendation and, as I have said, was the only recommendation of the committee. Labor senators made many other recommendations and Senator Ridgeway, on behalf of the Australian Democrats, and Senator Harris, on behalf of the One Nation Party, also made recommendations. But the committee itself reached bipartisanship on the only issue that mattered in the end—that is, whether the Senate should pass the free trade agreement implementation legislation or whether it should not. That recommendation, as I have said, was unconditional.

I will not bother with a lot of the points that Senator O’Brien made. The committee, which met for some 13 days, did have a very thorough examination of evidence from many points of view. There can be no doubt about that. Nobody can say that all of the arguments, all of the points of view, were not fully and properly exposed. Government senators confined our remarks to the one matter which remains in controversy between the government and the opposition.

It was not in controversy on Monday in the sense that on Monday the Labor Party gave its unconditional support to these bills, albeit making a number of particular recommendations. But an issue of controversy has since arisen over the question of generic pharmaceuticals. In our report government senators specifically addressed this one remaining issue in controversy, which is dealt with in the principal report between paragraphs 4.75 and 4.108.

I have been at pains to say that the committee makes one recommendation, and that is a bipartisan recommendation, because, on a number of occasions in his press conferences this week, Mr Latham has said that the committee has made a number of recommendations about a variety of matters. That is plain wrong. The committee has made a single recommendation. Labor senators speaking only for themselves have made recommendations about a range of matters as have representatives of the minor parties.

A test of success of a Senate committee is whether it is able to assemble from a wide variety of conflicting points of view a consensus position. This committee was able to do that. Given the heat and the intensity of the controversy and the deep and grave issues of national interest with which the committee was seized, I think it was a great achievement that this committee was able to achieve a consensus view, at least as between government and opposition senators.

I want to make remarks about a couple of individual participants. I should first say something about Senator Cook. Just as a couple of years ago on another famous committee, Senator Cook and I had many robust exchanges during the hearings. On the tabling of this report, I think we should pay tribute to Senator Cook. And I do not say that merely because we have been saddened by the shocking news of his serious illness, of which we learned only last week. We of course wish him the very best and a full recovery. Senator Cook, as chairman of the committee, was able to produce from this intensely contested debate a consensus view between government and opposition. He deserves great credit for having arrived at that position and for bringing his very considerable experience as a former trade minister, as a founder of the Cairns Group and his erudition on trade policy to bear on the committee’s deliberations.

Credit is also due in that regard to Senator Conroy, the Labor Party trade spokesman. I think it is a notorious fact that he has been fighting to make his side of politics see sense on this issue of great national importance.
On Monday when the Labor Party announced its conclusions, I was the first to congratulate Senator Conroy on his achievement in winning a famous victory over the Luddite Left of his own party.

Were there to be a Labor government elected in this country, the three people whose portfolio responsibilities would be Australia’s relations with the world would be Senator Conroy, the shadow minister for trade; Mr Beazley, the shadow minister for defence; and Mr Rudd, the shadow foreign minister, all of whom are enthusiastic and longstanding supporters of the free trade agreement. I hope that they will not allow Mr Latham’s latest political stunt in trying to get a bit of cover from the Left of his party to stand in the way of the consummation of this historic agreement.

I want to mention two other people. Mr Stephen Deady, the chief negotiator, gave very generously of his time and appeared before the committee on three of its 13 hearing days, on two occasions for all-day sessions, accompanied by the team of negotiators he led. It is a shame—and the government senators make this observation in their remarks—that in the principal report more weight is not given to what Mr Deady had to say. To all the scaremongering, ratbag criticism from a miscellany of groups that did not even understand the agreement, Mr Deady was able to give a detailed, informed, technical, calm and authoritative explanation. If you read the Hansard of Mr Deady’s evidence—and government senators set out extracts of the Hansard about the generic pharmaceuticals issue in our remarks—you will see that these issues are phoney issues. They are bogus dilemmas that have been raised to score political points.

Finally, I want to mention one person who has not been mentioned at all in this debate, and that is the Australian Ambassador to the United States, the Hon. Michael Thawley. I was in Washington last year on a study trip and I was fortunate enough to accompany Mr Thawley to the Capitol to meetings with Senator Richard Lugar, the Chairman of the Senate Foreign Relations Committee, and Senator Evan Bayh, a key ally of Australia on this issue. Mr Thawley’s contribution has been a distinguished one. (Time expired)

Senator RIDGEWAY (New South Wales) (10.01 a.m.)—I also rise to speak on the tabling of the report of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America. It has been a very long and involved process in getting to this speech today. I would hope that in the time remaining for this debate—as during the debate over the past few days—many of the issues will be aired and there will be an opportunity for the Australian public to become more aware of the contents of the agreement, as well as its consequences in the short, medium and long term.

The Democrats have been following this issue now for almost two years—since the government first announced that they were looking into the possibility of a free trade agreement with United States. Of course it is not over yet. The Senate is debating the implementing legislation and there is still a lot of work to be done. But the tabling of this report is an ending of sorts, because the inquiry was extremely important as part of a process and played a crucial role in uncovering to the Australian people just what the free trade agreement is all about.

The Australian Democrats supported the initial establishment of the Senate select committee and, given that the executive of government in this country has the power to enter into this agreement without the involvement of parliament, I think it is always important to remind ourselves that the Sen-
ate, as the house of review, has a role in carefully scrutinising and analysing the terms of the deal to essentially determine whether it is in Australia’s interest, particularly when the government has chosen to ignore sound advice in terms of the Productivity Commission being given the job of assessing the national interest.

This inquiry has conducted extensive hearings around the country. We have received over 500 submissions from individuals and organisations keen to share their views about this agreement. The committee secretariat staff are to be commended for the incredible work that they have done on this occasion. I think that they have shown enormous diligence throughout the entire process. They are also to be commended for the very high-quality final report, 1,100 pages of it, on the very complex free trade agreement. The major issues of agreement that have emerged through this inquiry have been outlined and discussed in a thorough and reasoned manner. The report comprehensively covers the details of the free trade agreement and the divergent views on the more controversial aspects of the deal itself. The discussion in each chapter is very detailed, outlining the arguments of the witnesses and comparing these to the DFAT and government responses.

In the opinion of the Democrats, however, the conclusions reached in this report simply do not go far enough. Based on the evidence we have seen over recent months and after looking at the details of the deal, we do not believe for one moment that it is in Australia’s interest. While the shortcomings of the deal are discussed, the report fails to conclude that the deal itself is not in Australia’s interest. In our minority report we have explained our response to this inquiry. Based on the evidence we have seen throughout the inquiry we firmly believe that the report’s conclusions should have been much stronger and an overall recommendation should have been made against support for the deal.

There were over 500 submissions to this inquiry from people from all walks of life—from academics, CEOs, unions and NGOs to the little mums and dads, ordinary people down the street. There is overwhelming and legitimate concern in the community about the impact this agreement is going to have on our individual lives as well as on the nation. After listening to these concerns and studying the terms of the deal carefully and thoroughly, the Democrats have come to the reasoned and balanced conclusion that the free trade agreement is not in Australia’s interest. It will do more harm than good. Even if we are to accept that it might bring some economic benefit to some sectors of our economy, the cost to our social, cultural and environmental interests is just too high a price to be paid. We should not be paying this price for a measly economic gain and a pat on the head from our friends in the United States. This deal should have been a great opportunity for Australia. I want to make it clear that the Australian Democrats are not against trade. I think it is capable of bringing real benefit to our country. However, the deal as it stands is unbalanced and unfair. The government have simply bowed to pressure of US interests and accepted the scraps from their table just to be able to say they have got a deal.

Let me briefly enumerate one more time, for the record, our concerns as a result of this deal. The cost of the Pharmaceutical Benefits Scheme will rise. Australian film and television production will suffocate as their protection is removed. Australian innovation will be stifled by larger and more powerful corporations. Jobs will be lost as a result. Many small businesses will go under. Public services in our local communities will be provided by huge US conglomerates. Our ability to protect our island nation from imported
diseases will be whittled away. Genetically modified products will enter our market unlabelled with no consumer information. And if we try to change anything the US government will sue for damages and make us change our law.

The Australian Labor Party know this. They sat on the same inquiry, they heard the same evidence and they questioned the same witnesses. They know just what a bad outcome this is for Australia, yet they have decided to support this deal. We know they are more than aware of its shortcomings, as they have kindly provided us with a list of 42 reasons why the free trade agreement will damage our country. They are also 42 reasons not to support the deal. The opposition know it is a dud, yet they have put political expediency ahead of the national interest and decided to support it.

I am extremely disappointed at the ALP’s decision to support this deal this week. There has been much talk of two conditional amendments, but I see them as nothing more than two band-aids on a leaky dike. I firmly believe that Labor are absolutely aware that the two amendments they propose will achieve nothing at all. The terms of the deal are locked in, and they cannot be changed. Announcing to the world that the opposition will save Australia from the free trade agreement is a plain and simple lie. The ALP needed to bite the bullet and stand up for this nation, and they have failed. Right now, they are playing an entertaining game of brinkmanship with the government on the free trade agreement. This critical deal will sell our national interest down the river for generations to come, and the ALP have failed this country by falling into line. It is just not good enough—the national interest must always come first, and this should never happen again. It is time to end this undemocratic farce, where the executive government can bind us indefinitely into the future without having to consult the parliament—the representatives of the Australian people. The parliament must have a voice in this process. It is disgraceful that the government is allowed to enter into an agreement of this kind, in our name and on whatever terms it decides are good enough.

I will give it to the Americans: they got this part right. The United States Congress members and senators got to vote on this deal, but we in the Australian parliament get no such opportunity. It is time that Australia embraced a similar arrangement. The current system whereby, without consultation, our executive can make commitments that have a significant impact on every facet of Australia’s economic and social structure and bind us long into the future is inappropriate and lacks democratic legitimacy. I am extremely disappointed at the outcome because the inquiry had such promise. The ending to this story is nothing but unsatisfactory. There is a high degree of frustration out there in the community and here in this place. People realise deep down that it is a bad deal for the country, but I am discouraged that they will not stand up and be counted. A conscience vote is not going to apply in this case. If it did, maybe we would get a different outcome. The Democrats know this, and we are proud to say it. We will not stand by and watch this country’s future be sold at bargain basement prices, because it is too important. In closing, I would like to thank the committee secretariat staff for their incredibly hard work throughout this inquiry. (Time expired)

Senator KIRK (South Australia) (10.11 a.m.)—In the past, Australia has undoubtedly
benefited from trade liberalisation, which has reduced trade barriers and boosted our economic growth. The purpose of trade liberalisation is to create more competitive industries. It provides benefits to consumers, and it builds stronger relationships with our trading partners. We in the Australian Labor Party have always fought strongly to ensure that the benefits of any economic growth that emerged from trade liberalisation are shared equally in our community. The US-Australia free trade agreement, which is the subject of the tabling of the report this morning, promises all these things for Australia and Australians. The intended purpose of the free trade agreement is to closely integrate Australia with the United States, which is the world’s largest and most dynamic economy. As a consequence of the free trade agreement, there should be a reduction in tariffs and an improvement in market access.

A number of concerns about the free trade agreement were raised with two committees of the parliament—firstly, the Joint Standing Committee on Treaties, of which I am a member, and, secondly, the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America. I was not a member of the committee at the time; I was recently appointed to the committee given the necessary resignation of the chair, Senator Peter Cook. Before both of these committees a number of concerns were raised about the free trade agreement and Labor have taken them on board. We have proposed a number of amendments to the enabling legislation to improve the free trade agreement.

The Australia-US free trade agreement has generated an enormous amount of debate throughout the community. In the two years that I have been in the Senate the free trade agreement and the impact that it will have on our community has been the issue on which I have received the most feedback from constituents and party members. Very strong opposition has been voiced against this deal from the trade unions and some community organisations. On the other hand, there has been a great deal of support for the free trade agreement from business and from state and territory Labor governments. Of particular concern is the fact that the sugar industry were left out of the deal. Their disappointment on that matter was raised at the conclusion of the negotiations, and since then they have remained disappointed with the deal.

A number of other issues have been raised, particularly the impact of the deal on our Pharmaceutical Benefits Scheme, on local content in future audiovisual mechanisms, on intellectual property and on job losses that may flow from the deal. Labor have said we will only support this free trade agreement and its implementing legislation through this parliament if the government address our key concerns, in particular the Pharmaceutical Benefits Scheme and the impact on Australian media content.

We in the Labor Party do not want Australia to pass up the chance to deal with the United States—recognised, of course, as the world’s largest and most dynamic economy—but we have said all along that the deal could have been improved. The government could have achieved a better deal for Australia had it taken more time at the negotiating table and had it not been so concerned about political advantage arising from securing a deal sooner rather than later. But we now have the deal, and it is this deal that we have to consider today.

Throughout the course of the examination and the debate surrounding the free trade agreement, Labor have raised a number of concerns about its social impact. As I said, our two particular concerns are the impact on, firstly, the Pharmaceutical Benefits Scheme and, secondly, the existing local
content rules. As a consequence of, in particular, the Senate select committee on the free trade agreement and the recommendations that flowed from that, Labor have proposed that there be two amendments to the legislation.

I turn firstly to the Pharmaceutical Benefits Scheme. Labor have recognised under the agreement that there is a concern that pharmaceutical companies may well lodge what have been called bogus or dodgy patent applications in an attempt to prevent generic drugs from coming onto the market. Labor are concerned about this because we understand that generics are essential to ordinary consumers because they provide a less expensive drug or medication. This obviously is of benefit to those people who have to take a lot of medication and who would otherwise have to expend a great deal of money on it. Labor have said that we wish to ensure that pharmaceutical companies do not take advantage of the scheme and that they will be penalised if they make bogus or dodgy patent applications. We consider that an amendment to that effect will protect Australia’s PBS, and to us that is a very important issue. We will insist that this amendment be passed by both houses of parliament to protect the PBS and thereby protect Australian consumers.

The other amendment that we consider necessary, and which must be passed by both houses of parliament, is one that will protect current local content standards. Presently the Australian Broadcasting Authority, the ABA, has the power to set local content rules. We are concerned about this because we understand that generics are essential to ordinary consumers because they provide a less expensive drug or medication. This obviously is of benefit to those people who have to take a lot of medication and who would otherwise have to expend a great deal of money on it. Labor have said that we wish to ensure that pharmaceutical companies do not take advantage of the scheme and that they will be penalised if they make bogus or dodgy patent applications. We consider that an amendment to that effect will protect Australia’s PBS, and to us that is a very important issue. We will insist that this amendment be passed by both houses of parliament to protect the PBS and thereby protect Australian consumers.

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from Senator Boswell, who was a member of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America.

Leave granted.

Senator Boswell’s incorporated speech read as follows—

I rise as a member of the Senate select committee to endorse the tabling of this report.

In February the US Free Trade Agreement was submitted to our committee for report three months later. The reporting date was extended until 12 August and today a few days early it is being tabled in the Senate.

At the outset I pay tribute to the Chair, Senator Peter Cook, who unfortunately is not able to be here for the tabling of the report due to illness, to the Deputy Chair, Senator George Brandis, and to my fellow members of the committee for the cooperative manner in which the hearings were undertaken. I also pay tribute to the secretary of the committee and all his staff for the mammoth effort they have put in to running this committee and in compiling this report.

This is a very important moment for Australia. The report recommends that the government ratify the AUSFTA.

This reflects many views expressed to the committee who urged the government to support the opportunity available to Australia to enter into a FTA with the world’s largest economy, the US.

I have already told the Senate of the new and immediate opening of many new agricultural markets for Australian primary producers.

They include immediate elimination of tariffs for in quota beef of 4.4c per kilogram and the extension of dairy products, also for 99 per cent of horticulture, fishing immediate free trade with the removal of tariffs up to 35 per cent. Wool, wine, lamb and mutton, peanuts, cotton, avocados wheat and grain all receive decreasing and in some cases immediate tariff free access into the world’s largest market of nearly 300 million.

Our report has received over 500 submissions, held specialist roundtables with the pharmaceutical industry and other industries. It has heard contributions through days of hearings and has thoroughly examined the agreement from our terms of reference.

The report has received much media prominence of late because of the Labor Party delaying any decision until it was released.

It is noted that the Labor senators on the committee did not place the two conditions in their recommendations which the Leader of the Opposition is now trying to hold the country to ransom before agreeing to vote for the FTA.

The government and negotiators along with industry assured the committee that the PBS was not under attack. The government released its review procedure whereby the PBAC remained the gatekeeper for any listing or prices increases for PBS listed drugs and, similarly, with the protection of generics and patents.

Latham is playing politics with the issue for his own political benefit. This is not the result of the recommendation of his Labor senators on this committee whose report he continually maintained was holding up his final decision.

I am proud to have been associated with this committee and its inquiry into the US FTA. And I congratulate the government, my colleague Mark Vaile and his negotiators for the excellent job they did in representing Australia’s interest in securing this agreement.

Senator FERRIS—Just two days ago, the report of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America was finalised. The one and only motion in the report, which was agreed to by both government and opposition members, was that the committee recommend that the Senate agree to the US Free Trade Agreement Implementation Bill 2004.

There were no ifs, no buts, no foreshadowed amendments and no equivocations. I now call on the Labor Party to support the motion that they supported just two days ago.

Many, many words have been spoken in this place regarding this agreement, and of course we are still part way through the second reading debate on the implementation
bill, which I understand we will be returning to very shortly. Repeating and rehashing all the arguments in favour of the free trade agreement that have already been made does not seem to me to be the best way for me to use this opportunity, so I will outline four key questions that were examined by our committee in which I took a particular interest.

The first and most important to me was what this agreement means for Australian primary producers—the farmers of this country. What we knew at the start, and were able to confirm through evidence, was that US tariffs on the majority of agricultural products—including lamb and most sheep, and a wide range of horticultural products, such as oranges, cut flowers, mangoes, mandarins, tomatoes, olives, olive oil, fresh macadamia nuts and cotton seeds—will be reduced to zero from day one of the agreement. The elimination of further agricultural tariffs will take place over periods of four, 10 and 18 years. The elimination of these tariffs means that Australian farmers and primary producers will be more competitive in the huge United States market. Agricultural sectors such as horticulture and the lamb and sheepmeat industries can look to the US market as a real and ongoing opportunity for them.

Other key agricultural areas will benefit. Stephen Strachan, Chief Executive of the Winemakers Federation of Australia, has said publicly:

The US is our largest and fastest growing market, with exports running at almost $833 million in the last twelve months ... Importantly, the Free Trade Agreement will ensure that the Australian wine industry does not fall behind the liberalisation achieved by its major competitors South Africa and Chile in their deals with the US.

Ms Virginia Greville, from the Department of Agriculture, Fisheries and Forestry, one of our senior negotiators, who spent a lot of time taking the committee through this particular matter, said this agreement will have no impact at all on our level of protection, on our conservative quarantine regime or on any standards, no matter what other witnesses may say. So we were able to understand, and
the report reflects, that the agreement will have no impact at all on Australia’s level of protection or on our quarantine regime, which is accepted as conservative but among the world’s best. It is a science based system and will continue to be so.

Thirdly, as a South Australian I wanted to know what the impact of the agreement would be on our manufacturing industry. Again, contrary to claims by the vocal left wing of the Labor Party and some of the more irresponsible trade union evidence that was received, it was shown on examination and on cross-examination that this agreement will provide a significant benefit to Australia’s manufacturing industry. Greater competition through the reduction of tariffs will increase productivity and competitiveness throughout the sector. Automotive products, metals, minerals and the chemicals sector will all receive a particular boost from the agreement, with virtually all US tariffs in these areas going to zero from day one. Importantly for my home state of South Australia, the agreement delivers access to the world’s largest market for our automotive products and automotive parts. The agreement is forecast to boost Australian exports of automotive products by almost eight per cent from day one. How could anybody who represents workers in this particular industry provide such fear based and erroneous advice to this committee?

Finally, and most importantly, the committee sought to clarify the impact of the free trade agreement on the price of pharmaceuticals and the PBS, an issue that has now arisen in this place as something of a furphy. The price of pharmaceuticals supplied in the PBS will not rise under the free trade agreement. The role of the Pharmaceutical Benefits Advisory Committee, PBAC, known as the gatekeeper to the Pharmaceutical Benefits Scheme, will not be undermined in any way at all. Again, erroneous, fear based and mischievous evidence was presented to the contrary for reasons that no-one can understand. Who would want to stir up fear among the elderly, the sick and the poor that the price of their drugs was going to increase? No responsible person, surely.

On the subject of generic pharmaceuticals I defer to my colleague the shadow minister for trade, Stephen Conroy, whose submission to the shadow cabinet, which was reported in yesterday’s national press, categorically stated:

The Australian generics [drug] industry is comfortable with the legislation and does not expect it will result in delays to the launch of generics.

So what are we talking about? The Labor Party’s suggested amendment to the legislation seems to me to be opportunistic, potentially damaging law that would undermine existing intellectual property laws in Australia and stifle innovation. It is quite clear that Senator Conroy shares my view. It is also clear that the agreement makes no changes to what is patentable under Australian patent law, and so-called false or spurious patent applications are already thrown out by IP Australia.

Of course, the Labor Party have form on the Pharmaceutical Benefits Scheme. Nobody in this place will forget what happened just a number of weeks ago, when the double backflip with pike was undertaken to reverse the two-year-old decision to cease blocking legislation on the Pharmaceutical Benefits Scheme because they had proclaimed themselves to be saviours of it. The rollover was spectacular, because it became politically expedient to do so. For Australia’s sake—for all Australians’ sake—let us hope it does not take the Labor Party another 25 months to realise the error of their ways on this very important occasion.

Senator HARRIS (Queensland) (10.31 a.m.)—by leave—I seek clarification of the
record in relation to a statement Senator Brandis made, and I am pleased that Senator Brandis is in the chamber. I understand that Senator Brandis said that there was a consensus of the committee on the major issue and relating to recommendation 1—

Senator Brandis—That was consensus between the government and the opposition. That’s what I said.

Senator HARRIS—I will accept Senator Brandis’s interjection because it does assist. If the record clearly shows that the consensus was between government and opposition, it is a correct representation. However, if the record shows that there was a consensus of the committee, that is incorrect, because Senator Ridgeway, as the Democrats’ rep, and I, as One Nation, opposed that recommendation.

Senator Brandis—Senator Harris, that is a matter of public record that you and Senator Ridgeway opposed. What I said was that there was consensus between government and opposition.

Senator HARRIS (Queensland) (10.33 a.m.)—I believe the Senate select committee on the Australia-US free trade agreement is one of the most critical Senate committees that I have participated in. The report does show that the process of the Senate can and does work. It does show that there is a willingness within this chamber for the government, the opposition and the crossbenchers to fairly place on record the information that was brought before that committee. I think it is a great plus for the Senate that, as an entity, it can have that impartiality and that process to follow. One Nation do oppose the free trade agreement, based upon the evidence that was placed before the committee. Let me put clearly on the record that, if there are amendments that are intended to alter the agreement to take away some of the concerns that we have, we will support those amendments because it is clear from the opposition’s willingness to support the agreement that it will have carriage through this chamber.

I will now speak briefly to a document I believe should be shared with the Australian public. It is entitled US-Australia free trade agreement: potential economywide and selected sectoral effects, dated May 2004. It was prepared by the United States International Trade Commission and carries its logo as verification. In this document, the United States International Trade Commission has a summary of the views of interested parties. When you read them, they mirror and echo the views of a substantial number of the sectors in Australia who put information before the committee. I am going to quote a few. A United States senator from Wisconsin, the Hon. Russell Feingold, states:

... the US-Australia FTA will not be good for the dairy producers in Wisconsin.

He goes on to state:

As more dairy products are imported, prices will fall, forcing dairy farmers out of business.

We have the Hon. Tim Johnson, United States senator from South Dakota, summarised as saying:

... there are limited opportunities and benefits for the U.S. livestock industry and agricultural sector.

The Hon. Charles E. Schumer, United States senator from New York, is ‘concerned that the US-Australia FTA will adversely affect the US dairy industry, especially over the long term.’ The Hon. Ed Case, member of congress for Hawaii, says:

The loss of a third major agricultural industry—macadamia nuts—would be a critical blow to the state’s agricultural economy.

Family Dairies USA opposes the US-Australia FTA and states that it will be detrimental to all producers. The Hawaii Department of Agriculture opposes the inclusion of macadamia nuts, asserting that it will
result in severe negative consequences to the US industry based in Hawaii. The National Farmers Union—I stress this is the United States National Farmers Union—believes that the US FTA poses a serious threat to many sectors of the US agricultural sector while providing no opportunities for additional exports. The US National Milk Producers Federation says:

In its view, the agreement will result in lower milk prices and farm income, and lead to the loss of numerous U.S. dairy farms.

Where have we heard those words before? We have heard them from the Australian dairy farmers—not from the industries that represent them but clearly from the farmers themselves. Here we have substantial evidence—not rhetoric—from the United States that there is dissent in the United States relating to the free trade agreement with Australia.

I turn now to One Nation’s recommendations. One of the major areas of concern One Nation has with this document is in the definitions for the purposes of the agreement in chapter 1: in paragraph 10, the meaning of GATS; in paragraph 11, the meaning of GATTS 1994; and, in particular, in paragraph 22, the definition of service supplied in the exercise of governmental authority:

... any service which is supplied neither on a commercial basis, or in competition with one or more service providers ...

That wording as it is written in the negative clearly indicates that if there is a private enterprise providing a service in Australia that is the equivalent of a government service then that government service is not protected by that definition. One Nation’s recommendation is that all government services be excluded from the US-Australia free trade agreement.

With respect to agriculture, One Nation recommends that nothing in this agreement will preclude Australia from taking such action or measures necessary to ensure the viability of rural and regional economies and the family farm. With respect to chapter 4, ‘Textiles and apparel’, One Nation recommends that nothing in this agreement will preclude Australia from taking such action or measures necessary to ensure the viability of the Australian textile, footwear, apparel and leather industries. Another major area is in chapter 7, ‘Sanitary and phytosanitary measures’. It is absolutely imperative that those facilities remain accessible to Australia to protect our environment. One Nation recommends that nothing in this agreement will preclude Australia from taking such action or measures necessary to ensure the protection of the environment, including assessing by public consultation the economic, social, cultural and environmental impacts of the adverse effects to the Australian environment of an imported product or produce.

Chapter 19 covers the environment. One Nation recommends that nothing in the agreement will require Australia to enter into, embark on or be forced to participate in any activity, material or otherwise, detrimental to the Australian environment. In the final provisions, One Nation recommends that nothing in this agreement will preclude Australia from withdrawing from any provision of the agreement upon resolution of 50 per cent plus one of the Australian population eligible to participate in a referendum. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

TRADE PRACTICES LEGISLATION AMENDMENT BILL 2004
First Reading

Bill received from the House of Representatives.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.44 a.m.)—I move:
That this bill may proceed without formalities and be now read a first time.

Question agreed to.

Bill read a first time.

Second Reading

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.44 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

TRADE PRACTICES LEGISLATION AMENDMENT BILL 2004

The Trade Practices Act 1974 forms the central pillar of Australia’s competition policy framework.

The Act promotes competition and fair trading by prohibiting anti-competitive conduct and by providing the processes and institutions necessary to ensure these laws are enforced and administered to the benefit of all Australians, including big and small business, and consumers.

This Government considered that it was appropriate to review the operation and administration of the competition provisions of the Act, in light of the significant structural and regulatory changes that have occurred over the last decade and in honouring its election commitment announced in ‘Securing Australia’s Prosperity’.

The Trade Practices Legislation Amendment Bill 2004 implements the Government’s response to recommendations arising from the independent review of the Act, chaired by Sir Daryl Dawson. The Dawson Review is the most comprehensive review of the competition provisions of the Act for a decade.

After extensive and comprehensive consultation and consideration, the Dawson Review concluded that the competition provisions of the Act have served Australians well. The Committee made a total of 43 recommendations aimed at improving the operation of competition and authorisation provisions, as well as the administration of the Act.

The overall theme of the Dawson Review is that the competition provisions should protect the competitive process, rather than particular competitors. The Government strongly supports this view of the Act, and has accepted the vast majority of the Dawson Review recommendations.

The Bill will improve existing ACCC processes by providing for greater accountability, transparency, and timeliness in decision making and reducing the regulatory burden on business.

The major initiatives contained in the Bill are as follows.

Mergers

New merger clearance process

A voluntary formal clearance system will be created that will operate in parallel with the informal clearance system. The test for considering mergers will remain unchanged—section 50 of the Trade Practices Act will continue to prohibit mergers that would have the effect, or be likely to have the effect of substantially lessening competition in a market.

The Dawson Review found that the ACCC’s informal system of merger clearance can be quick, inexpensive and flexible in many circumstances but identified a lack of certainty for business as a clear disadvantage:

- There is (necessarily) no statutory time limit on the ACCC;
- The absence of a meaningful appeals mechanism may allow the extraction of undertakings that go beyond the competition concerns of a merger;
- The lack of a legal requirement for the ACCC to provide reasons for its decisions prevents the development of a body of precedent; and
- Ultimately, there is no certainty of immunity from legal action.

In response to these concerns, the Dawson Review recommended that a voluntary formal clearance system operate in parallel with the existing informal system—thus providing business with options dependent upon their particular circumstances.
The informal system will continue to answer the needs of straightforward mergers. Parties to more difficult mergers will be able to utilise the informal system to address ACCC concerns but, when they are ready to proceed, the formal system will provide the certainty of legislated time limits, require the disclosure of reasons, allow the applicant to appeal to the Australian Competition Tribunal, and provide immunity from legal action should the clearance be granted.

**Merger authorisations**

The Dawson Review identified that dissatisfaction with the merger authorisation process has been largely attributed to concerns about the time which may be taken to reach a decision and the risk of third party intervention by the way of appeals to the Tribunal.

These factors have rendered the authorisation process commercially unrealistic for many merger proposals, especially those involving publicly listed companies.

The Bill provides that merger authorisation applications will be considered directly by the Tribunal so as to ensure commercially realistic timeframes for such applications, and to prevent strategic appeals by third parties. Third party interests will be considered as part of the Tribunal’s comprehensive assessment.

**Non-merger authorisation**

The Bill addresses the concerns of business regarding the sometimes expensive and protracted nature of the non merger authorisation process by placing time limits on the ACCC for considering applications. Small business in particular is advantaged by providing the ACCC with the discretion to waive, either in whole or part, the filing fee, in appropriate circumstances.

**Collective bargaining**

This Government acknowledges and supports the important contribution made by small business to the Australian economy.

The Bill will reduce the regulatory burden on small business by introducing a notification process for collective bargaining by small business dealing with large business, as an alternative to the authorisation process.

In the absence of objection by the ACCC, the Bill provides collective bargaining arrangements will receive immunity at the end of 14 days for a period of three years. The Government proposes that the period be initially set at 28 days by regulation, with further assessment at the end of 12 months.

The onus will be on the ACCC to provide notice that the conduct does not, or is unlikely to benefit the public, or the benefit will not outweigh the detriment resulting from the conduct.

The ACCC already authorises collective bargaining arrangements, including those by chicken growers, dairy farmers, sugar cane growers and small private hospitals. However, the process of obtaining authorisation may be expensive, time consuming and impose an unnecessary burden on small business—in many cases notification will be an appropriate, effective and speedy alternative.

To ensure the collective bargaining process benefits small business dealing with large business, there is a transaction limit of $3 million in any 12 month period. However, it is recognised in the Bill that there are businesses with high turnover and small profit margins which should have a higher transaction limit, and the Bill provides that a higher limit can be set by regulation.

The Government considers there would be a range of businesses suitable for a higher limit. These could include motor vehicle dealers, petrol station owners and some agricultural businesses. The Minister for Small Business and Tourism will develop proposals for the Government’s consideration in respect of these regulations.

**Exclusionary provisions, price fixing and joint ventures**

The Act prohibits exclusionary and price-fixing provisions outright, that is, not subject to a substantial lessening of competition test. The Government considers that outright prohibition should continue for such serious cartel conduct.

However, the Dawson Review found that the existing joint venture exemption contained in the Act is too narrow to encompass many newer forms of joint ventures, such as those found in e-commerce.
The Bill provides a joint venture defence to the prohibitions on exclusionary provisions and price fixing provisions. Clear cartel behaviour will continue to be prohibited outright but genuine joint ventures will be considered on the basis of a competition test. Authorisation on public benefit grounds will still be available for other joint ventures where appropriate.

**Dual Listed companies**

The modern phenomenon of dual listed companies is recognised in this Bill by allowing intra-party transactions in a dual listed entity to be treated on the same basis as related party transactions within a group of companies, and for the aggregate market power of the dual listed company to be assessable for the purpose of considering market power.

The formation of a dual listed company will be prohibited where it would substantially lessen competition in a market, with authorisation available in appropriate cases.

**Third line forcing**

Most exclusive dealing arrangements are only prohibited by the Act if they substantially lessen competition. Third line forcing, which involves selling only on condition that goods are acquired from a third party, is however prohibited outright.

The Dawson Review considered that third line forcing is often beneficial and pro-competitive. The ACCC presently opposes very few of the hundreds of third line forcing notifications received annually and has also found that these arrangements can encourage competition, such as the grocery shopper docket arrangements for cheaper petrol.

The Bill amends the Act to subject third line forcing to a substantial lessening of competition test, consistent with other forms of exclusive dealing.

**Enforcement**

The ACCC is a vigorous and effective regulator. In recognition of the ACCC’s extensive investigative powers and their potential to significantly disrupt business if not used appropriately, the Dawson Review recommended greater transparency and accountability in the ACCC’s enforcement mechanisms, and greater safeguards on the use of its extensive powers.

The current provisions in the Act provide the ACCC with the power to enter premises and inspect documents without a warrant. This Bill will provide the ACCC with the ability to search premises and seize evidence, however these powers are matched with appropriate accountability by requiring the ACCC to obtain a warrant from a Magistrate.

These amendments both enhance the effectiveness of the ACCC’s investigative powers and also ensure accountability and transparency. The relevant rights and responsibilities of the ACCC in carrying out its enforcement duties are clearly specified.

**Penalties**

The Bill provides for higher penalties for contraventions of the Act, as a means of better deterring corporations or individuals from engaging in anti-competitive behaviour.

The Government has adopted recommendations made by the Dawson Review which provide that the maximum pecuniary penalty for corporations be raised to be the greater of $10 million or three times the gain from the contravention or, where gain cannot be readily ascertained, 10 per cent of the turnover of the body corporate and all of its interconnected bodies corporate (if any).

The Bill also gives the Court the option to disqualify an individual implicated in a contravention of Part IV of the Act from being a director of a corporation or being involved in its management.

Corporations are also to be prohibited from indemnifying, directly or indirectly, officers, employees or agents against the imposition of a pecuniary penalty.

**Other measures in the Bill**

In addition to implementing the major recommendations of the Dawson Review, the Act is amended to apply to local government consistently with other levels of government—that is, to the extent it carries on a business.

The Bill also implements measures to help ensure the constitutional validity of the Act’s national application, addressing uncertainties raised by the High Court in the Hughes case.
Conclusion
The Trade Practices Act is an essential component of Australia’s regulatory framework, and the Bill enhances existing measures in the Act to provide greater accountability, transparency, timeliness and efficiency.

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.

COMMITTEES
Rural and Regional Affairs and Transport Legislation Committee
Interim Report

Senator EGGLESTON (Western Australia) (10.44 a.m.)—On behalf of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I present an interim report of the committee on the administration of the Civil Aviation Safety Authority, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator EGGLESTON—I seek leave to move a motion in relation to the report.

Leave granted.

Senator EGGLESTON—I move:

That the Senate adopt the recommendation of the interim report.

Senator O’BRIEN (Tasmania) (10.45 a.m.)—I rise to speak on that motion. I was going to seek leave to note the tabling of the interim report, but I am happy to deal with it in this fashion. The Rural and Regional Affairs and Transport Legislation Committee has been carefully examining the administration of the Civil Aviation Safety Authority and other aviation matters over recent years—examinations, I might say, that have not always pleased the Minister for Transport and Regional Services or made CASA and its senior officers comfortable. Nonetheless, this inquiry has been an example of the Senate at its best: doing the hard work—work the minister has been unwilling or unable to do himself. If the minister paid a modicum of the attention to aviation issues that this committee has demonstrated, the Australian aviation community would have a good deal more confidence in him. There is no better example of this than the minister’s national airspace fiasco, a fiasco brought into sharp relief by a near miss last year between a Virgin Boeing 737 and a light aircraft near Launceston—in fact, not very far from where I live. Tasmania is my home state. My office is in the town of Launceston and I live in the Tamar Valley, the approximate area of the near miss. I can assure the Senate that the minister’s competence, or lack thereof, is a matter of great interest to air travellers in and out of Launceston airport—and I travel there regularly myself.

Last week’s announcement that Airservices Australia recognises the need for change to the government’s National Airspace System to enhance safety is welcome; it is albeit belated but good news nevertheless. Labor and aviation unions argued that industry professions had not been involved in the design and implementation of the system introduced in November 2003. We argued that the system may not be as safe as the previous system, particularly because conditions in Australia are significantly different from conditions in the United States of America—the system on which the current National Airspace System model is based. As stated by my colleague the shadow minister for transport, Mr Martin Ferguson, Labor’s concerns about the National Airspace System have always been about the safety of the aviation community, aviators and passengers alike. For months the minister abused anyone who dared question the wisdom of his government’s national airspace reforms. Now, Labor calls on the minister to back Airser-
services Australia’s move to enhance safety, particularly through a focus on C class airspace at airports and protection for arriving and departing aircraft.

This is a significant announcement by the government and confirms that Labor’s longstanding concerns were well grounded. It reinstates safety as the priority for airspace management ahead of economic considerations and, frankly, affirms that CASA has a significant role to play in the analysis of the proposed changes to ensure that they are as safe as possible through their implementation safety case. In my view, the minister and this government ought to reflect on their approach to other aviation issues in the context of their flawed national airspace implementation. Rather than focus on the politics, the minister ought to focus on the policy.

We have all shared concern about safety in the aviation industry. This committee has looked at issues such as the Whyalla Air disaster. It has looked at issues to do with airspace, at the safety of particular operators, at the system of regulation of operators and at the withdrawal or non-withdrawal of air operating certificates by particular aviators and by certain maintenance organisations. This committee has been doing the work to make sure that, when it comes to the safety regime that applies in this country for aviation, it cannot be said that every effort has not been made to ensure that the regulator has operated properly. You will see in the committee’s report, for example, that the committee did pursue the issue of the activities of one CASA officer, Mr Foley, who held a senior position in CASA. His performance, frankly, was under close scrutiny by this committee, and that line of inquiry effectively ceased when Mr Foley ceased to be employed by CASA.

This committee looked at the administration of matters raised by avgas contamination. There can be no doubt that the contamination of avgas and the closing down for a significant period of a sector of aviation reliant on avgas, particularly in a key tourism period, had dramatic effects on communities. One community affected was that of Flinders Island, serviced only by aircraft using avgas. This effectively closed down the aviation services to the island and tourism operations on the island over the Christmas period, the peak period for tourism, and had dramatic effects on business. Frankly, whilst it would be difficult to say that the finger ought to be pointed at the government or the minister for the contamination, one would have to say that the government was not at its best in pursuing the proper outcomes to ensure that what should have been done in the lead-up to that problem occurring was done and that the problem would be obviated in the future.

In the course of the inquiry that is the subject of the interim report today the committee identified problems in the administration of CASA and in the course of pursuing those problems it sought solutions. The single recommendation of this report sets out the view of the committee that it will report its findings on these matters in the context of its standing inquiry into annual reports. I say again that this committee has played an outstanding role in scrutinising the actions of this government in a whole range of critical policy areas. The committee substantially operated on the basis of consensus and unanimity so it cannot be said that it operated with a political intent and with the usual political divisions that one might see in certain other committees of the parliament—certainly committees of the other place.

I have to say that the sloppiness of Ministers Truss and Anderson in particular has caused a lot of work for members of this committee. I have to also say that those ministers have been quick to criticise this committee and the findings of its members and
individuals who choose to make statements to hold this government to account. I think it is important to note that this committee has been led well in the past by former senator Winston Crane, and Senator Bill Heffernan has continued Senator Crane’s tradition of seeking to find a consensus view on committee reports. That is not always possible, but that has been the tradition of this committee and I would hope that, insofar as it is possible, it will continue into the future.

The issue of national airspace ought to be reflected on. Not only has this committee used the ordinary committee inquiry processes but it has used the Senate estimates process to follow up inquiries before the committee, particularly to do with national airspace. I encourage senators to look at passages of the Senate estimates Hansard to see exactly what the views of the government, as represented by its bureaucrats, have been to criticisms of the National Airspace System. We have seen every contention raised by senators pooh-poohed by officers of CASA on behalf of the government and, frankly, those concerns have now been shown to have been valid. The reality is that, had we not been raising concerns, the public would have been lulled into a false sense of security.

In my travels around this country—be it to Launceston, Broome, Cairns, Western Australia or Canberra—I have talked to the aviation community and they have significant concerns about the government’s proposed National Airspace System. The government has refused to listen to them and it has only been near misses and activities of other agencies which have pointed out those problems which have called this government to account. This committee has played a critical part in keeping the matter on the agenda. I hope to continue to address these matters in the future.

Senator BUCKLAND (South Australia) (10.55 a.m.)—I want to add a few words about this interim report into the administration of CASA, mainly because I have been on this Senate Rural and Regional Affairs and Transport Legislation Committee. Whilst the committee’s work is not perhaps seen by the majority of people as being the sexiest part of the operation of parliament, it is a committee that always has to act in the public interest in matters like this—the transport aspect, or AQIS and the safety of the import of foodstuffs. It is a committee that does, as I think Senator O’Brien said, work with a great deal of cooperation. I think that is something that a lot of committees in this place do not do. Senator O’Brien was correct to say that certainly Winston Crane and in later times Senator Bill Heffernan have done their utmost to try to get a spirit of cooperation and consensus in the reports that we deliver. On most occasions we are able to do that.

This report arose out of the previous parliament and it was a report that came about because of problems that were quite evident in the air traffic industry. The inquiry encompassed three primary issues that were of concern to the committee’s predecessor—that is, the committee of the 39th Parliament. Those issues were picked up by this committee and included the appointment of Mr Laurie Foley. We have already heard from Senator O’Brien that that problem was resolved by Mr Foley’s resignation. So that was off the agenda for us. But the administration of matters that arose out of the avgas contamination was pursued. With the matter being pursued, there was a settlement with Mobil Oil, the producer of the contaminated avgas. They put on the table an acceptable compensation package to the operators. That took care of the economic loss that they suffered through the contaminated fuel. It was an issue that the committee did pursue with a
great deal of vigour and we were satisfied that the right thing had been done at the end of the day. But it did take an effort to ensure that the government actively took their role in bringing about a resolution.

I could talk for hours on that issue alone, but it is important for people to understand that the contamination of fuel was something that did have a large impact on small operators, particularly in regional areas. They could not continue their services until everything was done right—their engines had been checked and they were assured the fuel was clean and it was not waxing up, which was the problem. So it was a real public accountability role that the Senate committee took on that issue.

The other issue was the oversight of the administration of the maintenance programs of Australia’s regular public transport operators. This issue is ongoing and is taken up and dealt with in the recommendation in the report. The recommendation states:

The Committee recommends that it concludes its inquiry into the administration of CASA by reporting its findings as part of the report it makes to the Senate in accordance with the provisions of standing order 25(21).

That is, that it will be dealt with through the process of Senate estimates.

The maintenance programs for Australia’s regular public transport operators have become an ongoing issue that is pursued with a lot of interest by the committee. Whilst there may not be a great deal of interest by the responsible ministers, the committee is extremely concerned about this issue. Over the period we have been pursuing it, CASA have been treating this with a great deal of seriousness and are now preparing to properly answer questions put to them during the estimates process. They are ensuring that the practices they talked about are being implemented and monitored and that assurances are given to us. Many of us feel far more comfortable because of that process.

It is not just the Senate committee that should feel comfortable with the answers it gets from CASA; the public should feel a degree of comfort knowing that the right thing is being done to ensure that there is the utmost safety in travel. The committee has adopted an ongoing role in monitoring the work of CASA in relation to maintenance, and it is one that we should be pleased with. The public can rest assured that the committee is serious about ensuring safety in the air.

A couple of other issues need to be highlighted. There is the matter of public accountability of the government. This committee—cooperatively, I have to say—is trying to ensure that there is accountability for the things the government is saying it will do, might do or perhaps is core or non-core in its commitment. We are taking everything the government is saying as something that should be pursued with a degree of vigour that makes sure the public feel that CASA is accountable for their actions.

The government, unlike Labor, is not quite committed to airport security. They are a bit hit and miss on that issue, and many of us who live in non-capital cities can see the difference. When you come through places like Adelaide airport or Canberra airport, you go through screening processes where everything is put through the X-ray, including your baggage. You are picked up if you have metal in your shoes or anything of that nature. I believe this is a good process and should be stepped up. I have no objection to occasionally being pulled aside for a further search to see whether there is any contamination on my clothing that could make me a threat to other travellers. I have no problem with that.

I have a problem when I go to places like Whyalla airport or Port Lincoln airport
where there is a large travelling public and I do not go through the same process. An aeroplane is an aeroplane. It does not matter how big or how small it is. It flies and has the potential to create danger to people. I am still devastated and in shock over what happened in New York but, let me tell you, the same thing can happen with a small aircraft in many places—in shopping centres or car parks. Devastation can be the result of that kind of action or a plane not making its destination because something has been put in someone’s baggage with the intent of causing destruction and harm. I object to the government’s hit and miss attitude.

Labor will not continue with this government’s policy of occasionally doing something to upgrade airports. It seems a coat of paint on the airport door is enough to give greater security—not even security officers to monitor passenger movement. Much of this comes back to CASA in that they have a greater role to play. This committee monitors those kinds of things. As members of the committee, we are concerned that the government has not been serious about upgrading airport security and improving the safety of those who travel by air in Australia.

Another issue of great concern to me is the attitude towards safety on board aircraft, particularly larger aircraft with cabin crew. It is of concern to us, if Australia is to comply with standards overseas and airlines want to ship staff off to New Zealand or employ staff from overseas, that we downgrade cabin crew numbers to suit other countries—(Time expired)

Senator STEPHENS (New South Wales) (11.05 a.m.)—I rise to note the tabling of the interim report on the administration of CASA by the Rural and Regional Affairs and Transport Legislation Committee. I concur very strongly with the remarks of the previous speakers, Senator O’Brien and Senator Buckland, that the committee has had the responsibility of an enormous task in examining the administration of CASA over recent years. Perhaps the examination has been a bit disconcerting for some senior officers in CASA but it has been an important process of investigation and evaluation of air transport and air safety issues that we have been hearing about nationally. This morning I want to raise some of those issues and talk about the responses we have finally seen from the government. I welcome Saturday’s announcement that, in particular, the National Airspace System that was implemented only six months ago is now to be reviewed, given the number of disconcerting events that have taken place in the six months since its introduction.

We know that the National Airspace System was modelled on the system used in the United States. I remember arguing here in December last year about how that system, which might work very effectively in America, was not appropriate for regional Australia, particularly for smaller regional airports. Since the implementation of this system, we have had a series of incidents—up to 20—reported by air traffic controllers involving Australia’s downgraded airspace. Many light aircraft have been operating without working transponders. Pilots have been operating on wrong frequencies and straying into the tightly controlled international and domestic capital city flight paths. We know that air traffic controllers have been reporting their concerns consistently over time. We have heard about the incidents in regional Australia. We heard what happened in Tamworth, we heard what happened in Launceston—the serious incident which triggered the final inquiry and the decision, announced on Saturday, that there would be a major review of the system. I note that Airservices Australia has said that there will be ‘enhancements to the system’, including of course the reintro-
duction of the radio frequency boundaries. I say on behalf of all air travellers that we welcome that announcement because it is an important safety feature for all of us.

The proposed changes are significant and confirm that the concerns expressed over the past six months were very well grounded. The changes reinstate safety as the priority for airspace management rather than economic considerations. We heard at the implementation of the National Airspace System that this system would be less costly for aviators. The counterargument that we heard from the unions was that the industry professions had not been involved in the design and implementation of the system. Therefore, how could it be as safe as the existing system? Of course, that is exactly what has been found to be the case. CASA has a significant role to play in the analysis of the proposed changes to ensure that they are as safe as possible through their implementation safety case.

I also make some comments about airport planning and development issues that have arisen at a number of airports. We have had many local councils and both state and territory governments indicating their concerns about airport developments, particularly relating to rates income and local infrastructure. Many local regional airports—small airports—formerly owned and managed by the council are now being sold simply because of the new rates regime, which means that they are no longer economically viable for councils to operate. That has meant that some small communities’ airports have effectively been downgraded to such an extent that they are no longer being used, to the disadvantage of those small communities. We know that airport owners can do something to allay these issues. In particular, airport owners can develop a close and cooperative relationship with local councils to resolve most of the issues before they become major issues. We know—and the industry tells us—that there is a real need for the Airports Act to be reviewed. The government initiated a review in November 2002, but we are yet to see anything like a finalisation of that review—we need to see that very soon.

The other issue raised with us about CASA and its administration is airport charges. Airservices Australia has circulated a proposed fees schedule for users of tower airports from 1 July 2005. The schedule proposes a massive charge increase for smaller and regional towered airports. I have had many representations from regional communities in New South Wales about the implications of these massive charges. The proposed charges are a culmination of the government’s decision to impose location-specific charging in 1998 and effectively reflect the removal of government subsidy of these charges. Again, the impact is likely to be fairly significant for small regional airports that provide a vital transport service to isolated communities that are long distances from main service centres.

There will be some significant increases in charges. I refer to some of the airports in New South Wales. The charges for Albury airport will increase from $8.67 to $29.55 per tonne, which is a huge increase. The charges for Camden airport will increase from $8.67 to $164.22. The charges for Tamworth airport will increase from $8.67 to $41.19. They are significant charges which impact on the economic viability of regional services.

The government purports to be supporting rural and regional Australia, but surely these airport charges are just one more kick in the guts for people living outside our capital cities. That is certainly the message that has been brought home to me by regional communities. Labor has a viable policy alterna-
tive—that is, to reintroduce network pricing for these charges. Network pricing equalises the costs across all airports. That would in fact result in a uniform charge much closer to $6 per tonne, rather than the outrageous charge of $164.22 per tonne proposed for Camden airport.

We have also been considering in recent weeks the analysis of the critical safety and security issues around cabin crew roles. Concerted pressure from federal Labor has forced the government to determine that the maintenance of Australia’s longstanding crew-to-passenger ratio was in the national interest and would be retained within our local jurisdiction, despite different rules in other jurisdictions. There has been significant pressure on the air industry to implement changes that would allow crews to be staffed out of other countries at higher crew-to-passenger ratios, which would impact on our local crews. We know that would be a downgrading of safety; it would also be a downgrading of passenger services.

In the last few weeks we have considered the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003. Many of the professional aviation industry associations, such as the Flight Attendants Association, led the fight to block the proposed mutual recognition with New Zealand legislation earlier this year. During the recent Senate inquiry into the proposed legislation, Labor developed the position that the government are proposing to introduce a new aviation regime but have not undertaken the research required to justify the change. They appear to have relied on hearsay information that there will be benefits with little cost. No evidence was presented to the committee to justify that. Both the Department of Transport and Regional Services and Qantas, when asked to quantify the benefits, were unable to do so. The greatest cost for Australia in not maintaining the scrutiny of air services and CASA is the potential for reduced safety, and Labor will not allow that to happen.

Question agreed to.

Environment, Communications, Information Technology and the Arts References Committee

Report

Senator CHERRY (Queensland) (11.16 a.m.)—I present the report of the Environment, Communications, Information Technology and the Arts References Committee on the Australian telecommunications network, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator CHERRY—I seek leave to move a motion in relation to the report.

Leave granted.

Senator CHERRY—I move:

That the Senate take note of the report.

The report from the Environment, Communications, Information Technology and the Arts References Committee on the Australian telecommunications network is significant. It completes a two-year inquiry which was initiated by the Senate two years ago arising out of concerns as to whether Telstra, as custodian of the national telecommunications network, was adequately delivering a quality world-class network that was adequately maintained in terms of services to all Australians. Evidence to the committee has been mixed, as it always is in these areas, but what came through clearly was that in so many areas Telstra is failing to adequately invest in the telecommunications network, it is failing to provide adequate maintenance crews to maintain the network and, as a result, services being delivered to so many parts of Australia are well below what one would
regard as being of a reasonable, world-class standard.

The committee received 150 submissions. It took evidence in Wollongong, Newcastle, Ballarat, Mildura, Launceston, Cairns, Rockhampton, Caboolture, Bunbury, Perth, Melbourne, Canberra, Sydney, Adelaide and Brisbane, and visited Nambour, Dubbo and the Gold Coast in the course of the inquiry for other purposes. All of the information came together in what I think is a very good call to the government from regional Australia, in particular, and also from urban Australia, to do better on telecommunications services. The fundamental concern which I have had all the way through this inquiry has been that the government is so obsessed with selling Telstra that it has taken its eye off the ball in terms of making sure that Telstra is regulated properly and delivering properly.

What has come from all those communities has been a cry to the government to listen to the concerns of those communities and ensure that the telecommunications services which are being delivered meet their needs. What is quite clear across Australia is that they do not. They do not, because Telstra is not rolling out new and improved telecommunications services on an equitable, fair and reasonable basis to all Australians as they become available.

The committee has, as a result, made 19 recommendations, which seek to ensure that Telstra delivers in a more timely fashion, and a more fair fashion, the services that the Australian community should expect in a reasonable, modern economy. The key recommendation is a national commitment to replace the existing outdated copper network with fibre to the home over the next decade. Other countries have done that. Other countries have provided the national leadership and said to their national carrier, ‘You have to bring your service up to 21st century standard.’ But in Australia we have not done that. Our government adopts a hands-off approach to telecommunications services. It leaves them to the market. It leaves them to a dominant monopoly provider, collecting monopoly rents in terms of its profits and, as a result, our network is falling behind what is happening in other countries. If Canada can make that sort of commitment on a national basis, why can’t Australia? That is one of the issues on which the government needs to accept it is failing in its leadership.

We have called for the removal of all pair gain systems from the network and for the network to be required to support a minimum dial-up speed of at least 40 kilobits per second, which is double the current minimum of 19.2. The government has made a huge deal—and I am sure we will hear it from Senator Tierney—about the significance of the minimum dial-up speed of 19.2 kilobits per second, but as at 2002 only 2.7 per cent of households in Australia had a dial-up speed of below 19.2 kilobits per second. So the minimum standard the government put in place is very minimal. Even Mr Dick Honan, who gave evidence to the committee on another inquiry at Dubbo, said that that standard should be increased over time. Yet we have seen no proposal from the government to increase that standard over time. We believe that 40 kilobits per second is a reasonable expectation. We acknowledge that it will cost money. But at this stage, around Australia less than half of our phone system would support a 40 kilobits per second dial-up speed, and it is time for that to be improved. It is not good enough in a 21st century economy for that sort of dial-up speed to be accepted in rural Australia, let alone in urban Australia.

We have also called for a requirement, a licence condition, for Telstra to be obliged to provide a broadband service to all Australians who ask for it. Again, that is not unrea-
sonable. There is such an ISCN requirement at the moment, but moving up to the next level to proper, genuine broadband, it should be a requirement that that be provided. I am dealing—as I am sure other senators have done—with a range of consumers, particularly in new suburban estates, who cannot get access to broadband. The whole notion that we can build new urban estates without access to state-of-the-art technology in telecommunications is utterly ludicrous in a country that should be planning for the future.

We have called for the ACA to develop and make publicly available a comprehensive inventory of all telecommunications infrastructure to assist other providers and local government in planning new services. Again, no-one knows what is in the ground because Telstra regards it as secret, commercial-in-confidence material. Yet it is a public resource. It has been built over the years by many Australian workers—including my dad, who worked for the PMG for 42 years. It is essential that it be recognised as a public resource; it is an essential piece of public infrastructure. The mapping of the infrastructure should be available so that we can get the competitive providers in there and local government can plan on a reasonable basis.

We have also recommended that the ACA be required to conduct an independent review of the state of repair of the customer access network and that it require remedial work to be carried out where necessary. We have also suggested that the ACA should be required to monitor faults on data services as well as on phone lines. The fundamental problem with this government is that, from 1997 onwards, the ACA has been a hands-off regulator. It is there to collect reports. It accepts the data provided by Telstra—I do not think it necessarily checks it, Senator Mackay; I am sure you will talk about that in great detail—but it does not actually regulate. What has become clear, particularly in the development of Oftel and Ofcom in the UK, is that hands-off regulation of telecommunications does not work.

At the end of the day, the government has a responsibility to ensure that the monopoly providers of telecommunications network services upgrade it on a reasonable basis to meet community expectations and the national strategic needs. That is why the committee and, in particular, the Democrats believe that the ACA as a hands-off regulator has to be restructured. It has to become much more of a hands-on regulator. The aspirations of the government, which currently are not really set anywhere, need to be set clearly in legislation. The ACA needs to be given a clear mandate of what is expected of it, and it should be given the clear powers to deliver that.

We have recommended that the customer service guarantee be modified to ensure that carriers do not use mass service disruption notices to avoid their obligations to consumers. I am sure Senator Moore, whom I see in the chamber, will have a lot to say about that in the course of this debate. We have also called for the universal service levy to make more funds available for improved equipment for people with disabilities.

Finally, there are suggested changes to ensure that the telecommunications network as a whole becomes more competitive by making changes to government contracting in telecommunication services and by funding programs to promote competitive infrastructure, particularly in regional areas. It is extraordinary how much of the funding that has been made available by the government for telecommunications access services has gone back into Telstra rather than to competitors. That has resulted in the reinforcement of Telstra’s dominance in regional areas rather than the promotion of competition. I could say a
lot more about competition, but I have spoken about that in the chamber on many occasions—and I am sure Senator Lundy, who is an expert in that area, will talk about it at some stage.

The concerns in this report are real concerns. They are a real cry for help from Australia, particularly from regional Australia. I believe the government needs to respond. It needs to take the report very seriously. It should not dismiss this report as the idle ramblings of a few Democrat and Labor senators. There were 150 submissions to this inquiry. There were dozens of hearings in regional and urban Australia at which witnesses gave evidence. There is a genuine and legitimate concern out there that Telstra is not delivering a 21st century, modern telecommunications network, and it is time for the government to deliver on that.

I wish to thank the 150 submitters to the inquiry, who provided us with an enormous wealth of material, and the many people who gave evidence to the committee around the country. I also acknowledge the extraordinary work of the Senate secretariat—in particular, Frank Nugent and Mick McLean. In my view, they have put together an exceedingly good draft report on behalf of the committee and have brought together a lot of the key issues.

I also want to acknowledge the cooperation of Telstra and the regulatory bodies. Telstra provided us with some extremely good insights into future telecommunications. The report has a very good chapter on that future, which I commend to all people. That is the future I would like to aspire to, but I do not believe we will get there while Telstra reduces capital spending and its staffing each year and while the government has its hands off the tiller. Hopefully this report will push the government towards the future I aspire to. I urge the government to read this report carefully. Do not dismiss it; act on it.

**Senator TIERNEY** (New South Wales) (11.26 a.m.)—The government are dissenting from the report of the Senate References Committee on Environment, Communications, Information Technology and the Arts because we have here a very thinly veiled political attack, particularly on one participant in the industry—Telstra. When this inquiry was set up, which was over two years ago, we were leading up to the possible sale of a third tranche of Telstra. The whole aim of the inquiry was to try and discredit the move to the privatisation of Telstra. As time went on and as the possible sale of a third tranche of Telstra was put back, so the inquiry kept spinning out. It spun out to such a point that two years have now passed and a lot of the information collected in the early stages is now irrelevant because of the upgrade of the network by Telstra and the introduction of new technology, such as broadband. The intent of the set-up of this inquiry was originally revealed in the media statements by Senator Mackay, who is in the chamber today. She said:

At the moment it is difficult to get all the information from Telstra to consider this issue in detail, but that material can be fully ascertained through a Senate inquiry. This process will provide a far more accurate picture of service levels than the Government’s current plan to proceed with T3 after canvassing opinions amongst its own backbench.

Labor remains implacably opposed to the full privatisation of Telstra.

**Senator Mackay**—And we still are.

**Senator TIERNEY**—I know you are, Senator. You set up an inquiry, you made up your mind before the inquiry started and you went out to seek the evidence to support your rather biased views. We know what you are on about, Senator Mackay. We are not quite sure what Senator Allison was on about, be-
cause she thought the whole thing was about broadband. That is what her press release indicated. It is a bit curious that she then supported the set-up of a totally separate inquiry into broadband when she thought this inquiry was about broadband. They were the initial skirmishes in the establishment of this inquiry. The government has held its own, far more objective inquiries than this issue. We had the Besley inquiry, the Estens inquiry and the Productivity Commission look at this whole area and produce reports. Over the last few years, including during this inquiry, the government has been implementing those recommendations.

One would be forgiven for thinking that the whole network was in a state of collapse by the way in which evidence was gathered and provided by some of the witnesses that appeared before us. We heard a lot about pair gains, gels and pressures in the system and the way in which storms would make the whole system collapse. We had a whole string of witnesses from the CEPU—and no matter where we turned up or whatever city or town we were in the CEPU was there—telling us about pair gains and gas pressure. One would have thought that the whole thing was on the verge of collapse. This gave a very biased view of the serviceability of the network.

I want to go into some factual detail to show how the network is working far more effectively and far more efficiently than it was under the previous Labor government. If we look at the actual figures—real figures, not just the rhetoric that we have been hearing this morning—we can compare 1996, which was the point at which the last Labor government left office, to 2003 across a number of criteria. With respect to call centre performance, the percentage of directory assistance calls answered within 10 seconds has gone up from 33 per cent to 94 per cent over that period of time, 1996-2003. The percentage of directory assistance calls leaving without being answered has dropped from 18 per cent to two per cent. The percentage of calls of Telstra service difficulties answered within 15 seconds has gone up from 66 per cent to 73 per cent. The percentage of calls to the Telstra’s service difficulties queue leaving without being answered has dropped from 13 per cent to six per cent. Average hours to clear payphone faults have dropped from 24 hours to 12 hours. The percentage of public telephones operating at any one time has gone up from 96 per cent to 99 per cent.

The percentage of new connections completed within the specified time frame has gone up from 86 per cent to 97 per cent. The percentage of customers connected to new services within the specified time frame has gone up from 83 per cent to 92 per cent. Fault rectification in metropolitan areas—and they compare these in two different ways—was 79 per cent and 51 per cent, and is now 90 per cent. The percentage of faults in country and rural areas cleared within two working days has gone up from 84 per cent to 93 per cent. This does not look to me like a network on the verge of collapse. This looks like a network that is improving, and it is the improving technology that is actually driving these changes.

One of the other things that we looked at was related to Internet access. The whole issue of dial-up speed and the way this changes over time is something that is very difficult to mandate by government and incredibly difficult to predict in terms of the changing technology. The pity is that Labor and the Democrats are wanting to concentrate on dial-up speeds—which is an ageing technology. According to the report, they would have us invest $5 billion in improving this aspect of an ageing technology when of course in recent times, particularly in the last
few months, we have broadband spreading quite dramatically throughout Australia.

Senator Lundy—Quite dramatically? How?

Senator TIERNEY—Yes. Senator, I think you will find, if you look at the recent figures—and again, this report is completely out of date—that that aspect of improving telecommunications in Australia is increasing quite considerably. One of the other main aspects considered by this report relates to the level of competition. The opposition would have you believe that competition is in a terrible state, that Telstra is totally dominating this market. The reality shows that the market share of Telstra has been steadily eroding across a wide range of services, and this is to be welcomed.

Senator Lundy—That is not true either.

Senator TIERNEY—Senator, you obviously have not read the minority report, have you? That would convince you that these things are actually happening and that we have a very wide range of services where this is occurring. For instance, mobile telephony in particular, long-distance services, reselling local calls, broadband services, and the range of services in capital cities have all improved dramatically through competition. Of course real competition started only in 1997 and we are only seven years beyond that and, given the time span and the development of communications, we have here a rapidly improving competitive framework. In those areas which the big players such as Optus and Telstra have bypassed, smaller players are coming in to fill the gap. The committee saw examples of this in regional Victoria and also here in the ACT. It is spreading across a number of towns and smaller cities in Australia. That sort of competition is very much to be welcomed.

One of the main benefits of the reform is reflected in the pricing structure and in the flow-through to the economy. What has occurred in pricing—and this is probably the real bottom line in improvements for consumers—is that local call prices have fallen by 35 per cent, long-distance prices are down by 27 per cent, international calls have fallen by 59 per cent and fixed mobile call charges by 13 per cent. That cost drop flows through to greatly benefit and underpin the economy and particularly benefits small businesses. Employment aggregates have increased. In the last recorded year, 2002-03, the outcome from these sorts of reforms and price changes was 54,000 new jobs. These are all positive contributions. These are improving not just communications in Australia; these are also improving the functioning of our economy. This report is a sham. There have been major changes and improvements in telecommunications under the competitive regime. (Time expired)

Senator LUNDY (Australian Capital Territory) (11.36 a.m.)—It is my pleasure to speak to the majority report of the Senate Environment, Communications and Information Technology References Committee. I am pleased to do so following that extraordinary contribution from Senator Tierney, who seems to claim that just because the government minority report says something it is a fact. What we know is that that is absolutely incorrect, and we know how hard the Howard government have worked to put their spin on how Telstra conducts its business in the Australian marketplace.

The report shows that Telstra has been highly neglectful in maintaining its infrastructure. As a result, the poor quality of service has impacted on many Australians not only in rural and regional Australia but also in outer metropolitan Australia, metropolitan Australia and the inner city suburbs of our biggest cities. In all of these areas, Telstra is still failing the quality service test. What Senator Tierney does not acknowledge is that
this neglect has been permitted by the Howard government. More than anything else, we have seen from the evidence collected in this inquiry and from statements by the minister that this is the Howard government’s plan. In question time yesterday, Senator Coonan acknowledged that the government has a direct interest in maintaining Telstra’s share price. This means it has a direct interest in ensuring that Telstra does not spend too much in capital expenditure, does not invest too much in building any new networks and does not spend too much maintaining those networks or ensuring that they operate correctly.

What we are dealing with here is the ultimate conflict of interest. The Howard government, with its privatisation agenda, has had one of its members of its executive acknowledge that the government’s prime motivation with respect to telecommunications policy in this country is to keep Telstra’s bottom line healthy so it can sell Telstra as soon as possible. That was the highest priority that Senator Coonan laid out when she responded to Senator Bishop’s question. It was the government’s highest priority. I quote Senator Coonan:

As I said yesterday and as I have said consistently, the timing as to when this is achievable—and she was referring to privatisation—will depend on a number of matters. Of course, it depends on shareholder value.

‘Of course, it depends on shareholder value.’ That is what Senator Coonan said. She went onto say:

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 ... 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 ...

That really sums it up. When confronted with an inquiry like this, and with a comprehensive amount of evidence showing the degree of neglect in our telecommunications sector, the best that Howard government senators can come up with is a pathetic defence of Telstra, which can be seen in the form of their minority report. Once again, the Howard government has chosen to come to the defence of a company that most Australians know is not performing.

One of the greatest areas of neglect is in what we know as the consumer access network. The vast majority of submissions to this inquiry laid out complaint after concern about the state of the consumer access network, which is part of the physical infrastructure between the exchanges and the homes and businesses around this country. The primary recommendation in this report identifies the fact that it is the renewal and the replacement of this network that is now the context of this debate. Why? Because the copper network is so degraded and so out of date it is no longer capable of keeping up with the pace in the demand for higher bandwidth services and broadband services in this country. It is not future-proof.

Thanks to the Howard government’s permitting and encouraging Telstra to make no investment in that network, Australia is now confronted with the ultimate challenge of providing some form of new network. The committee said that the best way to proceed with that is to look to the future—to put on those far-sighted glasses. We have identified a fibre-optic network as the best way. If there is going to be any spend in this country on renewing this network, it needs to be one built of optic fibre so it can at least have the capacity to carry the bandwidth and size of files that will really drive our information economy in the decades, indeed centuries, to come. Recommendation 1 of the report states:
The government should publicly confirm its acknowledgment that the existing copper fixed line network is becoming increasingly obsolete. Government policy should focus on the objective of having this network replaced with a fixed line network based on fibre to the home technology or alternative technologies offering similar capacity over the next decade.

There it is. The Howard government would not be used to a vision statement like that, but that is where we are at in the telecommunications debate. The following recommendation goes to how the current network still needs to be remediated, putting aside the fact that we know, and we took evidence in this inquiry, that the copper network is on its last sweat. This has led to observations by many witnesses that it is near obsolescence, and the reliance of the ADSL broadband technology is really getting that last sweat out of the copper network.

I now turn to the issue of how we get the best out of what is left of that copper network. One of the issues that has preoccupied my mind, as Senator Cherry alluded to earlier, is the presence of pair gain and RIM technology in the network. This is a line-splitting technology, and there are many different types, but it basically means that if an exchange and lines are running out from an exchange, at some point those lines are split up into more lines so more services can be provided. This worked well with voice services. It has been a good five years since Telstra acknowledged that the greater use for their network in the future would be data services, yet these pair gain and RIM systems prevent broadband services from being delivered. In some cases they also prevent and degrade dial-up Internet services from being used, yet still Telstra have not made the decision to stop putting this technology in their network. They are still installing it, despite the telecommunication services inquiry specifically saying, ‘Do not use any more pair gain systems because of their broadband blocking effect.’

Senator Mackay—Sam Boulding.

Senator LUNDY—Senator Mackay reminds me that a pair gain fault was involved in the very tragic Sam Boulding affair. Pair gain systems are an insidious presence in a modern day telecommunications network. That is why one of our recommendations is for Telstra, as soon as it possibly can, to remove from its network all pair gain systems which do not support broadband services or which restrict dial-up Internet connection speeds.

I note with interest that Telstra have announced they will spend $28 million upgrading their network to make ADSL available to another 250,000 customer lines that had previously been hampered by devices known as RIMs. What a coincidence! I think someone might have leaked this report to Telstra or tipped them off so they knew to put out this good news statement the day our report addressing pair gains was being tabled in the chamber. If this is the case, they should come clean because it is another example of the symbiotic relationship that exists between Telstra and the Howard government—they look after each other’s interests, which are not the interests of telecommunications users in this country.

This report by Labor and Democrat senators identifies once and for all the fundamentally flawed approach of the Howard government in acquiescing to Telstra’s poor performance, low maintenance and degradation of the essential telecommunications services that people and businesses in this country rely on day after day. It is an absolute disgrace, and for the first time we have documented that neglect. It is now incumbent upon the Howard government—in the short time they have left—to try to rectify some of this mess.
Debate resumed from 4 August, on motion by Senator Hill:

That these bills be now read a second time.

upon which Senator Nettle had moved by way of an amendment:

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”.

Senator MARSHALL (Victoria) (11.47 a.m.)—Last night I started to speak on the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 but ran out of time, so I continue my remarks today. The question before us, which has not been satisfactorily addressed by the government at any point throughout this debate, is: why were health policy, the Pharmaceutical Benefits Scheme and its operation included in a trade agreement? What was the purpose of putting good public health policy into a trade agreement?

Trade agreements are not areas where we develop good public policy in the national interest; they are for trade policy. One can only make the assumption—I think correctly—that the trade in pharmaceuticals is a concern to the US companies and that the US required the PBS to be in the trade agreement because they wanted to change the operation of it. There can be no other explanation for that: they seek to change the operation of good public health policy. That is something that the Labor Party will never accept or tolerate. We are not the only people who think it is inappropriate for trade agreements to be impinging upon good public health policy. US congressman Mr Tom Allen said:

... I question whether it is appropriate to use trade policy to interfere in other nations’ health systems. We certainly wouldn’t accept such a demand from other countries.

Clearly US congressmen have a higher standard of what should or should not be in trade agreements. Congressman Tom Allen would not accept these sorts of clauses in agreements, which would impinge upon health policy in the US, but, when the US insisted on them being included in this agreement, the Australian government simply buckled and folded. Mr Henry A. Waxman, another congressman in the US—

Senator Brandis—But you support the agreement.

Senator MARSHALL—I am glad Senator Brandis is here. He might be able to answer the question why the PBS has been included in trade policy. I look forward to listening to his speech, and maybe he will address that. What did Mr Henry Waxman say about it? He said:

Domestic healthcare policy should not be decided in trade agreements. It is wrong for us to interfere with another country’s domestic health policy, particularly when it comes to the affordability of medicine which is an equally sensitive issue here in the United States. This is special interest policy making at its worst. The Bush Administration is letting the pharmaceutical industry use trade agreements to manipulate the drug laws of the United States and other countries in ways that the industry could not otherwise achieve.

That is an absolute condemnation of the PBS being included in this trade agreement, and it is being condemned by the USA as well. There can be no other explanation. That says
The PBS is there so it can be manipulated by US multinational drug companies because they have consistently said they want Australians to pay higher prices for drugs. That is their agenda and that is why the Howard government simply rolled over and allowed the PBS to be included in trade policy. Mark Udall, another US congressman, said:

I am concerned about the potential precedent of the Administration meddling excessively in the internal affairs of a trading partner. With regard to this treaty, the USTR initially sought substantial changes in Australia’s drug-pricing program. Though the USTR was not completely successful, the agreement does give U.S. drug companies more say in what drugs are included under Australia’s universal drug coverage program. While market access for U.S. goods is important, we shouldn’t be in the business of bullying the world and potentially undermining a country’s ability to provide prescription drugs to its citizens.

Again, US congressmen know the end result of including the PBS in this agreement. That is where we come to the difference between us. The only difference between the government and the Labor Party on the free trade agreement is that the Labor Party want to protect the PBS. We will stand by the PBS. We will ensure that Australians continue to get affordable medicines. We will protect the integrity of the PBS and this coalition government will not. The coalition government will not because they have been happy to include it in the trade agreement. They have not come clean with their true agenda and they have not addressed the issue of why the PBS is there in the first place. All they have done all the way through is play party politics with this. They are using their self-interest for political purposes to try to undermine this agreement. They have tried to wedge the Labor Party and they have accused this of being a political stunt. Let me be absolutely clear: this is no political stunt. This is an attempt by the Labor Party to ensure that the PBS remains intact for the purpose for which it was designed: to provide affordable medicines to Australians. We will not back off from that. We will force these amendments through and we will not move away from that position.

The reason we are in this position in the first place is that the government did not negotiate this agreement to its completion because it needed to rush it through. It needed to rush the negotiations to complete them in time to put it up as an election issue before the forthcoming election. It has been rushed through; it has not been negotiated satisfactorily. Quite frankly, the government has achieved only the most meagre of gains for Australia as a result of this agreement. It has been a serious problem. They have rushed it through for their political self-interest.

It was interesting that in one of the previous debates Senator Tierney tried to criticise the Labor Party for going into the committee process with a predetermined position. But Senator Brandis went into the select committee process with a predetermined position, because he had already stated that he supported the free trade agreement. The treaties committee process was likewise compromised, because the chair of that committee had already predetermined and put in writing that he supported the free trade agreement. Prior to even seeing the text of the free trade agreement, and prior to hearing any of the evidence, Senator Brandis and Dr Southcott were happy to make up their minds. And they made up their minds based on what? An agreement they had not seen, on this false hope that everything was going to be good. They were seduced by the word ‘free’. If coalition MPs can get something for nothing, they will try and grab it.

Senator Brandis interjecting—

Senator MARSHALL—The fact is that you should have done more work and you
should have negotiated this to a more effective result. All through the debate we have heard your hollow criticisms. When Labor said that we wanted to evaluate the effects of this agreement based on the evidence before us, consider it and then come to a considered position, what did we hear from the government? They said: ‘How dare you do that. Just sign it. Listen to the Labor premiers.’ I do not know how the Labor premiers came to their decision. I think it was probably a little bit of dumb luck, as it was for you guys. That is the position we are in. But now you need to listen to what the Labor premiers are saying.

Senator Brandis interjecting—

Senator MARSHALL—You wanted us to listen to what the Labor premiers were saying. Every one of them now says: pass our amendments. They say this agreement should not go forward without the protection of the PBS. They want you, and urge you, to support our amendments. Eat your own words, Senator Brandis, because you were the one on many occasions saying: ‘Listen to the state premiers. Why don’t you do what the state premiers say?’ I throw that challenge back to you, Senator Brandis. Listen to what the state premiers say: support our amendment and protect the PBS. This is an opportunity for the government to actually do something that is right—to stand up for the Australian people and protect the PBS. You will still get your free trade agreement, as meagre as it is. You did not put enough work into it, but there are some very meagre benefits. We will support it on that basis. We could have done a lot better, and we should have done a lot better, but we will not undermine the PBS and nor should you.

I sense, looking at the press today, that there may be a bit of weakening in your position. I heard Mr Downer say, ‘Well, maybe we could consider some amendments; we might have a little look at it.’ It is a little late coming, but you will have your opportunity to support our amendments. At the end of the day, even you will have to conclude that what we propose will protect the PBS. You will have to admit that your misleading statements, made through the whole process, that nothing in the free trade agreement would undermine the PBS were not true. If they were true, you would not have put it in the FTA. You buckled because the US wanted it in there and you just put it in there. Good public health policy being negotiated away through trade agreements is not something that the Labor Party will do. That is not something the Labor Party will stand for, and quite frankly the government ought to be condemned for doing so.

Throughout this year the Labor Party said, as we have always said, that we will judge the Howard government’s trade agreement with the United States on the evidence and we will decide whether it is a net plus or a minus. That is why we referred it to a Senate select committee. Again, how many government members did we hear say that that was just a political stunt? The report was tabled today. Unfortunately, there only seems to be one copy of that report available to the opposition, which certainly gives me some concerns. Senator Brandis indicated that these were issues that were heavily contested. I think he went on to say that they were matters of great debate—these ‘heavily contested matters of great debate’, where the government said it was simply a political stunt.

We then heard Senator Ferris, another government member on the committee, say there were four areas of serious concern that she wanted to address through the committee process. So, through their own mouths they say how important the committee process was, but we hear all the other government members saying what a political stunt it was.
It just does not ring true. In this matter the government has simply put its own self-interest and its own political goals ahead of the national interest. If anyone has made this a political football, it has been the government from day one. Instead of allowing a proper, fair dinkum process that was going to analyse the benefits and the negatives from this agreement, it has wanted to politicise it all the way through.

The other thing I want to cover is the concern that Labor has about the lack of economic modelling on jobs. It is something that I asked the Department of Foreign Affairs and Trade to do when we had a briefing with them as members of the Joint Standing Committee on Treaties. DFAT indicated that they would do economic modelling on jobs. They would do so based on occupation, on sector and on regions. Ultimately, they did not do that. They refused to do it. That brings into play serious concerns. Understanding that there may be a negative impact on jobs, Labor will boost enterprise export growth in jobs in the Australian manufacturing sector through a manufacturing support package. We will provide a $25 million centre of excellence for advanced manufacturing in this country. (Time expired)

Senator BRANDIS (Queensland) (12.00 p.m.)—Let there be no doubt about it: this is a historic debate. The free trade agreement with the United States is or will become perhaps one of the greatest achievements of the Howard government and, when this legislation passes—as I hope it will—this debate will come to be seen as perhaps the most important debate that the Senate has had during the 40th Parliament. What the free trade agreement represents is nothing less than this: a once-in-a-lifetime opportunity for access to the world’s largest market and most dynamic economy. The achievement of the Australian negotiators, led by Mr Stephen Deady, in securing this agreement is a historic achievement which will underwrite the prosperity of this nation into the 21st century. For that reason—and you would not have thought it, having heard Senator Marshall’s contribution a few minutes ago—we do have bipartisanship on the substance of this issue. Disregard this latest little political stunt that Mr Latham is playing to cover the backdown from his earlier positions—the Labor Party has given us bipartisanship on this issue. The two sides of politics which are capable of forming governments in this country—the coalition and the Australian Labor Party—are both of the view that the free trade agreement is a worthwhile agreement for Australia.

The point that must not be missed, when we listen to the meanderings of people like Senator Ridgeway and Senator Harris from the minor parties, is this: to the extent that there is a controversy, it is a controversy about the extent of the benefits. What a tremendous position to be in, that, where we have a controversy about this epoch-making trade treaty, the controversy is about the extent of the gains. That is the measure of the achievement of the government and of the negotiators who have secured this agreement. This tremendously beneficial agreement delivers conspicuous gains for Australia—not meagre gains, as Senator Marshall would have you believe, but gains like this: the gain, according to the government’s modeller, the Centre for International Economics, of $6 billion a year from the start, which will increase with time; and the disappearance of 97 per cent of American tariffs on Australian manufactures from day one. That is not a meagre gain.

The United States is the most protected economy in the industrialised world, the largest economy in the world, the biggest market in the world—and from day one, tariffs on 97 per cent of Australian manufactures go to zero. How is that a meagre gain?
From day one, tariffs on two-thirds of agricultural exports to the United States go to zero, and tariffs on other sectors—in particular, the beef and the dairy sector—will reduce over time so that, at the outyears, the last tariffs go in 2016. And once they are gone, they are gone for good. For all generations to come, there will be no tariffs on manufactured goods and virtually no tariffs on agricultural goods. Every senator in this place knows in particular how protected the American agricultural sector is. So do not kid us, Senator Marshall, about meagre gains; these are real and substantial gains, as every single businessperson, every last businessperson, who appeared before the Senate select committee on the free trade agreement was eager to point out.

Nevertheless, there have been the carping critics. They have been a bizarre coalition—a veritable political Noah’s ark of industrial dinosaurs, pseudo-intellectuals, movie stars, ageing rock stars, footloose trendies, America haters, conspiracy theorists, old-fashioned socialists, right-wing Hansonites, left-wing Hansonites, Luddites, levellers and luvvies—a veritable political witches’ brew. But none of them represents the mainstream of the Australian community, and not one of them represents the point of view of the people who will actually trade and take advantage of this agreement. Nevertheless, we did have the old line dished up to us by the inhabitants of the political Noah’s ark. It reminded me of nothing more than the debates we had in the early 1980s, when the Hawke government did what the Fraser government should have done. I must say—that is, liberalise the Australian economy—a course of action which the Howard government has continued.

But I decided to go back a bit further into history, because, prior to the US free trade agreement, I think we would all accept that the most important trade agreement that this nation ever entered into was the trade treaty with Japan in 1957. That was the treaty that underwrote the Australia-Japan economic relationship. Japan, in every year since 1967, has been Australia’s No. 1 export market. For most years since 1971, the volume of trade between Australia and Japan has been larger than the volume of trade between Australia and any other nation. And the treaty that underwrote that beneficial economic relationship was the great Australia-Japan trade treaty of 1957.

And do you know what? What did the Labor Party do in relation to that treaty? They opposed it tooth and nail. When the then Minister for Trade, Sir John McEwen, introduced the treaty into the House of Representatives on 27 August 1957 and moved that the House take note of the treaty, it was opposed for six days of debate by the Labor Party. If the Labor Party had had their way then, just like the Left if they had their way today with this free trade agreement, we would never have had that treaty. We would never have had the foundation of the economic and trading relationship that this country has enjoyed with Japan in all the half century since. Look at the remarks that were made in that debate by Dr Evatt.

Senator McGauran—He was crazy!

Senator BRANDIS—Senator McGauran, there are certain similarities between the late Dr Evatt and the current Leader of the Opposition, it must be said. Dr Evatt said the treaty would have a ‘detrimental, disastrous’ effect upon Australian industry. He accused the Menzies government of ‘deliberately sacrificing the industry of this country’. He condemned the treaty for its lack of safeguards.

Senator McGauran—Is this Latham or Evatt?

Senator BRANDIS—This is Dr Evatt—Mr Latham’s strikingly similar predecessor
in the office of Leader of the Opposition, an office from which, like Dr Evatt, I am sure Mr Latham will never rise. Dr Evatt said:
I submit that the treaty should not be adopted. From an Australian point of view it is a thoroughly bad treaty.
He also said that the safeguards were inadequate and that there had been inadequate consultation. Dr Evatt said:
If the House accepts such an agreement, it, in effect, condones economic aggression—by Japanese companies against the Australian work force. These are the very same lines that have been trotted out in relation to this free trade agreement. He said:
The treaty represents a serious danger to the Australian industry—that sees the ‘the interests of Australian workers’ particularly in the manufacturing industry being ‘prejudiced’ by the ‘aggressive action’ of Japanese capital. He said:
... it is against the interests of ordinary people and especially of the employees of Australia.
Dr Evatt was followed in that debate by the redoubtable Mr Eddie Ward. Mr Ward was even more virulent in his condemnation of the Japan trade treaty. He had this to say at the conclusion of a long tirade. He said in his speech to the House of Representatives on 5 September 1957:
... the Australian Labour Party is urging the rejection of this infamous document ... 
... 
... 
this criminal action against the Australian nation and the Australian people.
These are the very arguments, the very forebodings of economic disaster that we have heard lately from people on the Left and trends wherever they happen to be on the political spectrum at any given time—you can never be sure. These are the same forebodings and doom-laden imprecations in almost the very same words that we have heard from sections of the Australian Labor Party in condemning the free trade agreement that we heard half a century ago explaining why the Japan treaty would be a disaster.

Now, fast forward 47 years to Melbourne on Monday, 7 June 2004 to the evidence of Mr Doug Cameron, the head of the AMWU, to the Senate inquiry on the free trade agreement.

Senator McGauran—Doc Evatt’s love child.

Senator BRANDIS—The ghost of Dr Evatt; the ghost of Eddie Ward. Among other things he said that if the Australian government and the Australian parliament commit this country to the US free trade agreement they will be committing ‘economic treason’. That is almost word for word the same ignorant argument as was used half a century before. As Talleyrand once famously said of the Bourbons, so can we say of people like Mr Doug Cameron: ‘They have learnt nothing and they have forgotten nothing.’ Today people like Mr Doug Cameron and the point of view he represents are about as relevant to our contemporary politics as would be a claimant to the Bourbon throne.

I have taken you at some length to that debate in 1957 because I want to remind the Senate that we have heard it all before—not only have we heard it all before but we have heard it in almost the same words before, two generations ago from the Luddites of the 1950s. If the Australian Labor Party had had their way in the 1950s, we would not have had the economically beneficial relationship with Japan that we now have. Perhaps in 50 years time somebody will reflect back on some of the extraordinary evidence given to the Senate committee and they will say, ‘They were wrong in 1957 and they were wrong in 2004 and they have learnt nothing
since.’ They have a mindset which is in its essentials hostile to the notion of free trade.

At least Senator Harris in his remarks yesterday was candid enough to say that the One Nation Party opposes free trade—those were his very words. But it is not just the One Nation Party; it is also the Luddites and the left-wing Hansonites of certain sections of the union movement—although not all of them and I should acknowledge, for example, the intelligent contribution made to this debate by Senator Ludwig’s father, a very distinguished Queensland trade union leader, and many other more sensible members of the trade union movement.

I mentioned before Mr Doug Cameron as a kind of poster child of this retro ignorance. But my very poor view of Mr Doug Cameron is not one that I hold alone. This is what Mr Mark Latham said about Mr Doug Cameron and his agenda in an article he published in the Australian Financial Review a few years ago. Mr Mark Latham wrote this:

The key to neo-protectionists like Cameron ... is to decode their message. Having lost the Cold War, they are now using the bogey word “globalisation” to launch a new campaign against capitalism.

... ... ...

Given a choice between two Scotsmen ... follow Adam Smith, not Doug Cameron ...

Senator McGauran—Who was that again?

Senator BRANDIS—That was Mr Mark Latham, writing a few years ago, Senator McGauran. Yes, the same Mr Mark Latham who is now playing chicken with this trade treaty, trying to pull a political stunt, but who nevertheless, it must be said, has given his sanction to bipartisanship on this issue.

Madam Acting Deputy President, we have heard from many senators about the benefits of the treaty. Let me recite, for example, the benefits to my own state of Queensland—the Premier of which has been one of the most eloquent, unambiguous advocates of the adoption of the US free trade agreement. The state of Queensland, which is a mineral-exporting state and an agricultural-exporting state, will benefit enormously from this treaty—from the elimination, for example, of tariffs on the produce of the mining industry. Queensland exports to the United States almost $1 billion worth of beef, $88 million worth of aluminium, $41 million worth of lamb, $33.7 million worth of ships and boats and $24.9 million worth of medicines. My state, like every state in this Commonwealth, will be a huge beneficiary of this agreement. Yet there are still some—the unenlightened, the Hansonites, the Luddites, the trade union leaders like Mr Doug Cameron—who would deny this to the Australian people.

We heard evidence from a variety of witnesses at the Senate committee hearings. We heard evidence from a number of critics of the agreement. We heard the evidence of distinguished economists like Professor Ross Garnaut, who was a critic of the agreement but largely a critic of the process. Professor Garnaut did not say that the agreement was a bad thing for Australia. He advocated the view, which many in this chamber share, that multilateral trade treaties are better than bilateral trade treaties. That may well be so but not even Professor Garnaut was prepared to go so far as to say that it is a zero sum game, that bilateral trade treaties and multilateral trade treaties cannot sit together. Witnesses like Professor Garnaut deserved to be heard with respect, and they were and their evidence was carefully considered.

But I have to say that we also heard evidence from certain witnesses whose critique of the free trade agreement was based, once you scratched the surface, on a visceral, hostile anti-Americanism. No evidence was more so than that of two Sydney academics, Professor Weiss from the University of Syd-
ney and Dr Thurbon from the University of New South Wales. These two commentators, representing themselves as experts in the politics of international economic relations, gave the Senate committee an undistinguished performance and presented a submission which, dressed up as a piece of scholarship, was undorned by a single scholarly reference and was revealed within a moment to be nothing more than a flimsy polemic. They warned of a new era of economic serfdom. They said that the treaty was anti-Australian, and they gave evidence which revealed that their claimed credentials as experts were nothing more than camouflage for an ideological polemical rant.

The same, I am sorry to say, must be said of a gentleman who has been responsible for much of the misinformation about the effect on the PBS of this treaty, Dr Thomas Faunce. In his evidence to the Senate committee on 21 June he demanded that Australia stand up for human rights and not allow itself to become America’s poodle. That was the degree of scholarly objectivity and calm, mature consideration that Dr Faunce gave to the treaty. But let me finish by quoting the evidence of a true expert, Australia’s former Ambassador to the GATT, Mr Alan Oxley. He said on 5 May:

You asked, Chair, what would be the downside for Australia if we rejected the agreement. We would probably be regarded as the most bizarre country in the world ... I honestly do not know how any serious Australian government could justify—

rejection of this agreement to its people or—to the world at large.

Senator Mackay—Mr Acting Deputy President, I rise on a point of order. For the record, I think it is appropriate to point that it was not ‘Madam Acting Deputy President’ in that instance. I think you would be appreciative of the fact that it was ‘Mr Acting Deputy President’. While we are at it, in the interests of intellectual rigour, I also point out that the French dynasty is not pronounced ‘Burbons’ but actually ‘Borbons’.

The ACTING DEPUTY PRESIDENT
(Senator Chapman)—There is no point of order.

Senator HARRADINE
(Tasmania)
(12.20 p.m.)—A number of concerns about the effect of the free trade agreement were placed by various people before the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America. They included concerns about the economic, cultural and employment risks that may flow. It is difficult to accurately assess the beneficial and negative consequences of the agreement. I suppose the proof of the pudding will be in the eating, and I guess it is the responsibility of the government of the day to fully assess the costs and benefits to Australia generally.

I want to raise a couple of matters: one is to do with treaties and how the parliament is not able to deal effectively with treaties and the other is about intellectual property. I have had a great concern for most of my 29 years here in the Senate about the process whereby governments commit Australia to international agreements and treaties. Indeed, as far back as 1983 I gave notice to the Senate, through a notice of motion, about appointing a standing committee of the Senate—to be known as the Senate Standing Committee on Treaties—to consider all treaties put before the Senate. That was in 1983. It was not until 1996 that this actually happened in response to the Senate committee report Trick or Treaty?

I should acknowledge that the Joint Standing Committee on Treaties reported on the Australia-US free trade agreement in June. But I am still concerned about the process by which these international agreements are arranged. I agree with the Senate committee
that there is a lack of transparency and involvement of parliament in this process, as we only get involved after the deal has been done. It becomes in effect a take it or leave it situation. I do not think that is proper parliamentary accountability. I will be interested to hear the government’s response on that matter but also on intellectual property.

Patents have been an issue of concern to me for many years. Other senators more recently have expressed concern, for example, at the push for genes and gene sequences to be patentable. One of my concerns was whether the FTA would impact on section 18(2) of the Patents Act, which says:

Human beings, and the biological processes for their generation, are not patentable inventions.

I will be asking the government about this matter during the committee stage. In a recent estimates committee I did raise the matter and was informed in writing as follows:

The proposed free trade agreement with the United States does not affect section 18(2) of the Patents Act 1990. Article 17.9.2 of the Australia-United States Free Trade Agreement allows Australia to exclude inventions from patentability where necessary to protect public order or morality, including human, animal or plant life. Section 18(2) of the Patents Act falls within this allowable exclusion.

That is some reassurance, but I note again the general concern that the widespread changes introduced by the FTA may have unintended or unanticipated consequences.

In an estimates committee hearing last year, I raised with IP Australia the issue of the patentability of human beings, the biological processes for their generation, the issue of human embryonic stem cells and whether they are patentable. An article in the Journal of Law and Medicine headed ‘The attack of the clones: patent law and stem cell research’ by Dr Matthew Rimmer states:

...there is a fundamental ambiguity in the Patents Act 1990 ... as to whether stem cell research is patentable subject matter. There is a need to revise the legislation in light of the establishment of the National Stem Cell Centre and the passing of the Research Involving Human Embryos Act 2002 ...

Given the very strong push for commercialisation of all research, which will be bolstered by the FTA, I imagine there will be pressure from the United States for the patentability of human embryonic stem cells or material derived from these cells. It goes to the very heart of human nature and the dignity of each individual human being. I need to have answers about those matters when we come to the committee stage of the debate.

IP Australia advised last year that it remains unclear exactly what inventions would be excluded from patentability by section 18(2) of the Patents Act. The minister should come clean with all of this. I will be asking the minister to explain to me what effect the free trade agreement would have on the patentability of human embryonic stem cells. I do not want any of the ‘it’s commercial-confidence’ business that we were faced with in the estimates committee. This stem cell centre, which is a private company, has been given about $100 million of taxpayers’ money, and a significant amount of that is for experimentation on human embryos.

I note that Dr Philippa Dee’s report to the Senate select committee estimated that Australia could end up paying 25 per cent more per year in net royalty payments. What is the benefit to the Australian community from a closer harmonisation of intellectual property laws between Australia and the US when that will result in longer patent times and higher costs for Australians? I should also say that, while patents and copyright are important to help to pay patent and copyright holders for the important development costs, risks and talent, the FTA appears to take on many of the excesses of US patent and copyright law.
Patents or copyright, in effect, give a person a monopoly over a particular idea or process. In this sense, it is ironic that apparently we are awarding longer monopolies and more stringent systems of fines in a free trade agreement. For example, I understand that US copyright for an author was recently extended from the life of the author plus 50 years to the life of the author plus 70 years. That seems excessive to me—it is obviously of little assistance to the author. Are we to have that in Australia too? If we are serious about a competitive economy, why would we be increasing these monopolies and the associated costs of licence fees and administration?

The United States is often seen as the exemplar of free trade and competition but, under their more expensive intellectual property restrictions, we are in fact being persuaded to pay them more royalties for no real return. It is in the interests of the US to persuade the rest of the world to keep paying them licence fees and royalties in perpetuity for copying, viewing, listening or whatever, but it is not in our interests.

In principle, I am in favour of free trade as long as Australia does not lose out, but the intellectual property parts of this agreement seem to be taking us to a more restricted, less competitive and more expensive environment. I am also concerned about how much of the US intellectual property system we have to take on as part of the FTA. Do we have to accept the validity of all US patents and apply them in Australia? Will we have to extend or change Australian IP laws every time the US Congress changes US laws in this area?

I am also concerned about the effect of the freer access of US capital to Australian markets. Will this lead to a further increase in Australian housing prices, making it even more difficult for Australians to afford a home? Would it mean that privatised utilities—the basic infrastructure of Australia—such as water and electricity et cetera are sold off over time to United States interests? These are very important questions that need to be dealt with thoroughly by the government in the committee stage of the debate.

Again, I acknowledge that I am generally in favour of free trade so long as there is no concern remaining about the effects of the measures that I have mentioned. Again, I look forward to the committee stage and the full answers to be provided by the minister at that time.

Senator RIDGEWAY (New South Wales)
(12.33 p.m.)—I acknowledge that I have already contributed to the second reading debate but I want to make some comments in respect of a second reading amendment circulated by Senator Nettle on behalf of the Australian Greens. I understand the rules allow for those senators who have spoken before circulation of such amendments to make further comments. In that context I want to say on behalf of the Australian Democrats that we will support the Australian Greens second reading amendment but note that, unfortunately, this is not going to make the free trade agreement any better. In many respects I think the damage has already been done and no amount of further study is really going to change our minds. We have seen enough to know that, on balance, it is going to do real harm to our national interest and therefore cannot be supported.

For the record, I note that the Democrats sought to compel the government to do exactly this type of review way back in March this year. You might recall that we successfully moved a motion in the Senate noting that under US trade law, before any agreement can be ratified, a thorough environmental impact assessment must be done to review the extent to which positive and negative environmental impacts may flow from
economic changes estimated to result from any prospective agreement. On that occasion our motion called on the government to conduct a full public analysis of the environmental, social and cultural impact of the Free Trade Agreement between Australia and the United States of America and, in line with the way the government was conducting their assessment of whether or not it would be in Australia’s interest to require the consultants that had been engaged—I think the Centre for International Economics or others as the case may have been—not only to conduct a proper analysis of the other issues that needed to be considered but to table the reports of those reviews in parliament for its consideration. The Senate did agree to that motion. Unfortunately, the government would not listen.

We already know that the agreement is not in Australia’s interest and will have a disastrous effect on social, cultural and environmental outcomes—most of all because that analysis has not been done. Quite frankly, whilst our laws are somewhat relaxed or even deficient in addressing these issues, I think that any trade agreement with any nation in the context of any national interest assessment should look beyond the economic bottom line to also include social, cultural and environmental outcomes.

Those issues are particularly important given that, through this sort of arrangement, we open ourselves to a range of pressures and influences from the United States. For example, whilst the government gives some assurances, it may be under pressure to change some of our laws in the future. I do not believe that the Australian Democrats would want that to happen. Certainly, I do not believe anyone in this place would want to go down that path. We will be supporting the second reading amendment although, as I said, it has little effect other than to make the point that the analysis of the free trade agreement is deficient. Obviously, there should have been public input into the environmental impact assessment and it should have been one which looked at what the real and likely outcomes were going to be.

At the time the motion was brought on I recall also having asked a direct question of the Leader of the Government in the Senate, Senator Hill, on this particular matter. The response from government was that these were things that were going to be difficult to quantify in any form whatsoever. It seems to me that if the Americans can do it, and it is a requirement of the national interest assessment process there, then there is no reason why we ought to use the excuse that it cannot be done. It simply must be done. I would hope that, if nothing else, this agreement will provide an opportunity for us to fix our laws not just on the question, as Senator Harradine has rightly said, of the role of parliament in ratifying treaties but, more particularly, on trade agreements. It is one matter where I think the Democrats have been hard on the trail for quite some time. Obviously, we see it in a much broader way. The US Congress follows that path. The Congress decides, as a result of the instructions that are given by the US President on any trade agreements with any country, and so it should in this case as well.

The Australian Democrats will be supporting the Australian Greens second reading amendment. Again, we do not see the reason for it because the agreement itself is fatally flawed and it will have a negative impact, I think, in the short, medium and long term.

Senator LUDWIG (Queensland) (12.39 p.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. The Free Trade Agreement between Australia and the United States of America has attracted, as you would
expect, significant attention. There have been two significant reports by parliament on this matter. The first report was report No. 61 of the Joint Standing Committee on Treaties titled *Australia-United States, Free Trade Agreement*. The second report—the *Final Report on the Free Trade Agreement between Australia and the United States of America*—was tabled today by the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America. The summary of the report was made available on the web site on Monday. Obviously, on close scrutiny, there has been a bit more work done since then.

I listened carefully to Senator Brandis’s speech and I agree with him on one point—which I do not often do—that it is a historic period that we are entering in relation to this agreement. This agreement is a living document. It will continue past my life and his, I suspect, and the life of the 40th Parliament. It will, in my view, create an environment of allowing trade and growth and productivity for Australia.

A couple of issues hanging in the balance at the moment and exercising the minds of Senator Brandis and others relate to the two amendments Labor has proposed. Senator Brandis says that $6 billion worth of additional benefits may flow from the trade agreement, whereas we say, based on our commissioned report into the area, that perhaps there will be a marginal gain. If one takes the view of Senator Brandis, it is difficult to understand why the government cannot pick up Labor’s two amendments. The government has indicated clearly that it can accept the amendment relating to local content and I already detect in the media today some back-peddling by the Deputy Prime Minister, Mr Anderson, and Mr Downer on the strong stance they took earlier in the week on the Pharmaceutical Benefits Scheme.

This may be a bit predictive, and perhaps not quite in order, but I think that by question time today in the House or perhaps by early next week we will witness a significant movement by the government on the PBS issue. I cannot understand why the government would put in jeopardy such a historic agreement on issues that do require protection, such as the Pharmaceutical Benefits Scheme. I think the government will come to the conclusion, as we have, that you can have both—you can protect the Pharmaceutical Benefits Scheme and you can have the free trade agreement. That goes without saying.

What Labor has said—both Mr Mark Latham and Senator Stephen Conroy—is that we will assess the Howard government’s trade agreement with the US and ascribe to it a plus or minus: is it a plus or minus for Australia? The agreement does not come into force until next year. We are now debating the enabling legislation, two bills that will give effect to the free trade agreement and allow Australia to meet its obligations under the trade treaty in Australian domestic law.

The Select Committee on the Free Trade Agreement between Australia and the United States of America in its final report came to the conclusion that on balance it was in Australia’s interest to support the free trade agreement. Mr Latham and Senator Conroy said that they would take into consideration the conclusions of the Select Committee on the Free Trade Agreement between Australia and the United States. We are now at the juncture where, whether the gain for Australia from the free trade agreement be small, as indicated in the majority report, or whether it be enormous, as Senator Brandis believes, we can say without a doubt that there is a benefit to Australia. Therefore, the free trade agreement is an agreement which we should support. It marks the beginning of an impor-
Senator ROBERT RAY—Mr President, I ask a supplementary question. Minister, given that you have said that it may have been because of pressure of business, would you concede though, given the other elements contained in the Flood report, that an annual review of these classified documents on a whole-of-government basis is desirable? Will you seek at least an answer from the Prime Minister as to whether the future practice will always be to have these agency reports reviewed?

Senator HILL—I think part of the emphasis of the Flood report was in fact that ONA should play a greater national coordinating and leadership role as the senior intelligence assessment body. I certainly accept that in principle. Whether much additional value is gained through ONA then bringing its view on the totality of the reports to whole-of-government assessment through NSC is, I think, a debating point. I certainly cannot see any downside in it and, as it is ONA’s responsibility, as I understand it now, it clearly should occur. I am sure that as a result of the Flood investigation drawing to the government’s attention that it has not occurred on two occasions it will not recur.

Economy: Fiscal Policy

Senator HEFFERNAN (2.03 p.m.)—My question is to the Minister for Finance and Administration. Will the minister inform the Senate how the Howard government is delivering balanced budgets and a reduction in taxes? Is the minister aware of any alternative proposal?

Senator MINCHIN—I thank Senator Heffernan for that good question. One of the great achievements of the Howard government has been our fiscal prudence—the fact that we have returned the budget to surplus after all those years of Labor deficits and reduced the massive debt that Labor left us.
We have done that by living within our means, and in so doing we have reduced interest payments and ensured efficient delivery of government services. That has allowed us to direct resources to areas where they are needed: to schools and education, to national security, to road infrastructure and of course to the substantial tax cuts in recent budgets.

I was asked about the alternatives. From the alternative government we constantly hear that they will take all that but they have plans to do all that and more. According to the Labor Party, they would spend even more than us on health, education and other services and they would deliver even bigger tax cuts. They would have a bigger surplus, as well as delivering, apparently, an intergenerational fund. Most of the ingredients of this wonderful magic pudding that has been put on the table we are yet to see. What we have heard is an announcement of about $10 billion in new spending commitments by a future—and let us hope never-to-be—Labor government. Most of these commitments are completely unfunded, just as Mayor Mark Latham's Liverpool City Council spending spree was completely unfunded.

The Labor Party continually claim that they have identified cuts in government spending which will pay for all these wonderful new promises, but they never tell us where these cuts in government spending are. Mr Latham went on the Alan Jones program months ago and said that he would produce a list of all these cuts to government programs that were going to pay for his promises, but we have not seen that list. He then said, ‘Turn to the back of all our policy documents and you will see where all the savings are.’ If you do that exercise, and we have done it methodically, as you would expect, you find only $4 billion cuts to existing programs to go towards paying for the $10 billion of new spending. Where the rest is, the $6 billion that we estimate is missing, is a mystery.

That mystery has now become a complete farce with the involvement of the accounting firm PricewaterhouseCoopers to audit these policy costings. We had the revelation from Pricewaterhouse that they would not be doing any auditing at all—all they would be doing would be adding up what Labor put to them in relation to the costs of their policies and savings; they would just get out the adding machine and add it all up. There is no auditing going on at all. The reality is that the Labor savings—what they say they would cut—are illusory. They simply cannot fund the irresponsible promises which they have put on the table. We have noticed that they are going around quietly scaling back on the promises that they have made and hoping that no-one is going to notice. We have noticed, particularly those of us from South Australia, that the great announced commitment to the Murray-Darling of $350 million was scaled back to $150 million—as we saw on the web site. Now we understand they are telling financial journalists, to try to enhance their credibility, that in fact they have promised only $32 million.

Labor has scaled back its great coastguard from over $600 million to $500 million. The spending on the Medicare teams that were going to run around the country—100 teams, at a cost of $240 million—has been cut back to $80 million and, of course, everybody noticed the backflip on the PBS copayment. The fact is that the Labor Party cannot pay for its promises. It does not know how it will match up. We have not yet seen the tax policy, but that will be on top of the $10 billion. It is time that Mr Latham came clean and told the public which government programs he will cut to pay for his at least $10 billion in new promises, with the tax policy still to come. Otherwise the public should expect that Mr Latham will do exactly to the Com-
monwealth government finances what he did to the Liverpool council finances—he will leave them in a complete shambles.

National Security

Senator FAULKNER (2.08 p.m.)—My question is directed to Senator Hill, the Leader of the Government in the Senate and Minister for Defence. I ask the minister whether he can assure the Senate that there was no compromise of classified national security information as a result of the ONA liaison officer in Washington reportedly mislaying a briefcase full of classified documents. Has this incident been investigated before or since it was reported five weeks ago? Can the minister inform the Senate of the details of this incident and the results of any investigation? Minister, what has been the reaction of the United States government to this incident?

Senator HILL—As Senator Faulkner said, this was an incident that occurred some time ago. Action was taken against the officer concerned, and that was reported publicly in this country. I can assure the Senate that there was no compromise of classified information. I certainly have not seen any suggestion that there was. I understood that the briefcase was recovered intact; however, I will seek further advice on that and if I need to report further to the Senate I will. As was said, the official was employed by ONA. ONA comes within the portfolio responsibility of the Prime Minister, and I will refer that aspect to him. He will no doubt take advice from his department and, if there is anything different from what I just said, I will report back to the Senate. It was an unfortunate incident, and the official concerned has paid a high price.

Senator FAULKNER—Mr President, I ask a supplementary question. Minister, I note that you have taken on notice those other parts about the investigation of the incident and the reaction of the US government. I further ask, Minister, whether the tragic suicide in Washington of former DIO liaison officer Merv Jenkins led to changes in the way classified information is exchanged between Australia and the United States. If so, was the ONA liaison officer responsible for the mislaying of classified information fully briefed on the new handling procedures?

Senator HILL—The sad suicide to which Senator Faulkner referred occurred some years ago. The matters relating to the officer’s professional conduct were considered by Mr Blunn and reported on some time ago—as far as I can recall, before I became minister of this portfolio. I can see no relationship between the two issues. They were entirely different matters. The matters concerning Mr Jenkins, as I recall, did not in any way relate to documents being mislaid. (Time expired)

Agriculture: Sugar Industry

Senator MASON (2.12 p.m.)—My question is to the Minister representing the Minister for Fisheries, Forestry and Conservation, Senator Ian Macdonald. Will the minister inform the Senate of the steps that the Howard government has taken to assist Australia’s sugar industry? Is the minister aware of media reports regarding the outcome of Australia’s World Trade Organisation challenge to European sugar export subsidies? Is the minister aware of any alternative policy approaches?

Senator IAN MACDONALD—As a Queenslander, Senator Mason will understand, as do the Howard government, that the sugar industry is very important to Queensland and to Australia. We understand how efficient the sugar industry is, and we have been very concerned about the difficulties in which the industry has found itself. That is
why the Howard government provided some $444 million in the last budget to address the difficulties caused by a corrupted world market and very low sugar prices.

In addition to providing direct financial assistance, the Howard government have been doing something more important, and we have been doing it for a long while: we have been attacking the root cause of the problem that confronts the sugar industry and indeed many Australian primary production industries. That is why we have maintained a committed and focused attack on corrupt world trading practices. We recognise that the only way to do this is to get a freer world trading regime, and that is best done by enforcing the WTO regulations.

Senators will know that Australia, Brazil and Thailand have joined together in a major attack on the European Union subsidies which violate world trade rules. Subsidies given by the European Union to sugar farmers there equate to something like $1.4 billion annually. I am aware that there are media reports suggesting a positive result for Australia against the European Union sugar export subsidy regime. I can confirm to the Senate that the Australian government has received overnight a copy of a preliminary ruling by the World Trade Organisation. I emphasise that there is still a long way to go and that this is an interim report, but I am confident—as are Mr Truss and Mr Vaile—that the panel will uphold Australia’s complaint that the EU subsidised sugar exports are inconsistent with the EU’s WTO export subsidy commitment.

If the European Union implements the finding, it will mean a reduction in the amount of sugar it dumps onto world markets. This would help drive up depressed world prices. Indeed, this is a great win for the Australian sugar farmers and a great win for the Howard government. A win on this issue will increase the world price for sugar in the longer term and raise the income of Australia’s hardworking sugarcane farmers who are dependent on the world market for around 80 per cent of their returns.

I have been asked whether I am aware of alternative policies. The Labor Party are only interested in sugar when they think they can get a vote out of other people’s adversities. At a time when the sugar industry was in some difficulty, a raft of Labor politicians went up there, stirring up the pot, building upon the difficulties that were no fault of the sugar industry and making cheap political points—never a positive solution as to what to do to help the sugar industry. By contrast, the Howard government have acted. We have provided financial assistance but, more importantly, we have maintained our focus on and commitment to the WTO. This proves that having a freer regime is what we need to address. This has paid dividends for Queensland sugar farmers and will continue to pay substantial dividends into the future.

Sport: Drug Testing

Senator WONG (2.17 p.m.)—My question is to Senator Kemp, the Minister for the Arts and Sport. Does the minister recall that he has been asked a number of times in the Senate about the failure to promptly undertake DNA testing on the material found in the sharps bucket from room 121 of the AIS facility Del Monte in Adelaide? Does the minister also recall that on each of these occasions he has refused or been unable to answer these important questions? Can the minister now inform the Senate of the reason for the failure of any of the investigations ordered by the AIS and the Australian Sports Commission to promptly undertake comprehensive DNA testing on the material found in the sharps bucket from room 121 of the AIS facility Del Monte?
Senator KEMP—It is nice to see Senator Wong coming into this debate. It is a debate that has continued in this chamber for a considerable period of time. Senator Wong raises the question of DNA testing which has been the subject of discussions in this chamber and, indeed, in the press. I can inform Senator Wong that the use of DNA testing on objects found at the Del Monte facility was considered by the independent investigator Justin Stanwix. He was the first independent investigator examining the possible breach of antidoping policy. So this issue was considered by an independent investigator, and that was the first investigation. In light of the material he had, it was his decision, I understand, not to proceed with the testing of DNA material.

Senator Wong can take some comfort from the fact that under the terms of reference that have been given to Robert Anderson he will be looking at all issues on the handling of this matter and will provide information as to whether this issue was handled correctly or not. I think that is the appropriate place in which that responsibility should lie. I stress that there have been two investigations into this matter: the Stanwix investigation and the Robert Anderson investigation. I have pointed out to Senator Wong that the issue she has raised was considered, I have been advised, by Justin Stanwix. Senator Wong is apparently unhappy about the decision that was made at that particular time. Therefore, this issue is most likely to be considered by Robert Anderson as part of his terms of reference into the handling of this particular issue.

Senator WONG—Mr President, I ask a supplementary question, although I am not sure the minister actually answered the first question. Does the minister agree that the more comprehensive DNA testing ordered only in recent weeks is the only reason that some of the truth has started to be revealed about the injection practices in room 121? When was the minister first briefed on the Sports Commission’s actions on the collection of evidence, including DNA analysis? Why didn’t the minister order the commission to do everything to find the best evidence available back in December last year when the evidence was still fresh and usable?

Senator KEMP—Senator Wong would be aware that the material has been used and that these are precisely the matters which have been considered by Robert Anderson. Some important issues have been raised here. I am sorry Senator Wong raised again the particular issue which Senator Faulkner raised in this chamber—an allegation that room 121 was used as an injecting room or, indeed, a ‘shooting gallery’. Those are the words that Senator Faulkner used in this chamber and those are the words which flashed around the world.

What was the result of those allegations that Senator Faulkner made? Robert Anderson has indicated that he is quite unable to accept that there were group injecting sessions involving up to six athletes in one room. In other words, a very damaging allegation was made in this parliament by Senator Faulkner—an allegation that was picked up by the press, examined by Robert Anderson and, of course, rejected. (Time expired)

Telecommunications: Interception

Senator GREIG (2.22 p.m.)—My question is to Senator Ellison, the Minister representing the Attorney-General. Can the minister confirm that, according to the most recent annual report on the Telecommunications (Interception) Act, 3,058 interception warrants were granted in Australia in one year, compared to the most recent US annual report, which shows that 1,442 interception warrants were granted over the same period? Is the minister aware that the per capita rate of telephone interceptions in Australia is
therefore some 30 times greater than that of the United States? Can the minister confirm that only half of these interception warrants in Australia have led to an arrest? How does the minister justify this extraordinary intrusion into the private conversations of Australians, if only half of these interceptions have been successful in bringing criminals to justice?

**Senator Ellison**—If you were to look at every search warrant, warrant for surveillance or warrant for any undercover operation that was given in this country, you would not find that in every case there was a conviction of a person. What we have here is a situation where law enforcement has a rigorous regime imposed on it in relation to the issuing of telephone intercepts. In the Telecommunications (Interception) Act there is a process set out for the obtaining of such a warrant and for the entities that can make an application for such an intercept warrant. Not just anyone can make that application. There are also restrictions on what they can do with the product of that telephone intercept.

This is an essential tool in the fight against serious and organised crime. It is one of a suite of modern mechanisms for law enforcement in the fight against crime. I think all Australians would expect that law enforcement would have at its disposal this sort of mechanism, albeit with those protections in relation to privacy and the rights of the individual, which we have in the Telecommunications (Interception) Act.

Of course, we cannot guarantee in every case where a warrant is issued that there is going to be a subsequent arrest and conviction. That would just be fanciful. But what we do say is that the results speak for themselves. Law enforcement, particularly at the federal level in Australia, has done a great job in cracking down on organised crime. The recent results in cutting down the supply of heroin, which has been acknowledged internationally, is a result that all Australians would applaud. In achieving that, the Australian Federal Police, Customs and others who work with them do need to rely on these sorts of mechanisms in the fight against crime in Australia.

I accept what Senator Greig says in relation to the number in the report. I think that to compare us with the United States is always difficult. We are in a different environment and we have a different situation from that in the United States. We believe we have a robust system in Australia, both federally and at the state and territory level. The cooperation that we have, particularly involving the Australian Crime Commission, an innovative body set up last year in which all law enforcement is brought together—again, using coercive powers under strict conditions—is achieving results in the fight against organised crime.

As to the number of convictions that have flowed from these telephone intercepts, I will see if I can get some further information for the Senate, but I can say that this is an essential part of the fight against serious and organised crime. We make no excuse for surveillance devices and we make no excuse for controlled operations—they are essential. But we do say that they will be given to law enforcement under strict conditions and strict accountability, which we have in our legislation.

**Senator Greig**—Mr President, I ask a supplementary question. I thank the minister for his answer. Can the minister state whether the figures in the annual report on the Telecommunications (Interception) Act include incidents of access to stored communications, such as email, SMS and voicemail, or whether those forms of communications have been accessed by the police without obtaining an interception warrant? Is the
minister concerned that there is a significant lack of accountability in relation to the government’s access to private email, SMS and voicemail between Australians if this information is not to be included in annual reports?

Senator ELLISON—The fact that Senator Greig is quoting from a report that is tabled in the parliament reveals the accountability that is involved in this system. This is a regime that is applied across all governments. The Australian system is open and accountable. I will take on notice the question of stored information that Senator Greig refers to and advise the Senate should I have anything further to add. There is proposed legislation that deals with this issue. In this modern day and age of information technology, this is something we are confronting every day in the fight against crime.

Sport: Drug Testing

Senator FAULKNER (2.27 p.m.)—My question is directed to Senator Kemp, the Minister for the Arts and Sport. Does the minister recall that Mr Anderson QC made it clear in his report tabled in the Senate that DNA testing was not undertaken on all items but instead on a sample of those items in the sharps bucket at room 121 at Del Monte? In light of this, has Mr Anderson ordered further DNA analysis of any material relevant to his inquiry? Given that Mr Anderson has made the assumption that the second DNA found in the sharps bucket belonged to Mark French, will Mr Anderson now take up French’s repeated offer to provide his DNA for cross-matching?

Senator KEMP—I thank Senator Faulkner for his question. The matters you have raised are matters for Mr Anderson to make a decision on. It is not for me to instruct Mr Robert Anderson in the way you appear to be indicating in your question, Senator Faulkner. Senator Faulkner would know that Robert Anderson is a very distinguished jurist. I assume that Senator Faulkner has read the report, which I have tabled in the parliament. Robert Anderson has done a very thorough job. I can inform Senator Faulkner that the Anderson inquiry is ongoing. I am advised that Mr Anderson has agreed to continue his investigation into French’s allegations, including considering the issue of computers at the AIS Del Monte facility and any other scientific or other information that may come to hand.

I can advise the Senate that Mr Robert Anderson is also proceeding with the second part of his inquiry, which involves investigating and reporting on the processes—this is a matter I touched on in my response to Senator Wong—employed by the Australian Sports Commission, Cycling Australia and any other relevant bodies involved in this issue in December last year. As I indicated, Mr Anderson is due to report his findings on 31 October 2004.

There have been lots of loose allegations thrown around regarding this issue. There is no doubt that, where mud is thrown, we all know that mud will stick. The most vigorous attacks on the Australian sports system and this process, I think it is fair to say, came from Senator Faulkner. I would invite Senator Faulkner to look closely at the issues that he raised in relation to this matter and to look at some of the statements that he made, to compare those statements with the findings of Robert Anderson and to reflect on whether some people are due an apology from Senator Faulkner.

We have a sports system which we can be very proud of. Senator Wong shakes her head—she does not think we can be proud. Most people would think that this is a sports system, and particularly a drug testing regime, with which this country has in many ways led the world, Senator Wong. But there
is no doubt that, if you want to stand up in
the parliament and make attacks on people
and institutions for political points, they can
stick. In relation to my response to Senator
Wong, I drew the Senate’s attention to an
extreme comment made by Senator Faulkner.
Senator Faulkner said that room 121 was
used as an injecting room—or, indeed, a
‘shooting gallery’—by up to six cyclists. I
invite Senator Faulkner to read the Robert
Anderson report, to reflect on the damage
that that statement of his has done to the
Australian sports system and to stand up in
this parliament and apologise.

**Senator Faulkner**—Mr President, I
ask a supplementary question. In the light of
that extraordinary answer, or non-answer, to
my question, I now ask the minister to con-
firm the evidence in the Anderson report of
self-injection practices; the direct evidence
and admissions by Mark French, who has a
life ban; the admissions of self-injection by
Shane Kelly, including a basis of reprimand;
admissions of self-injection in Europe by
Graeme Brown; admissions of self-injection
in Europe by Brett Lancaster; untruthful de-
nials by Jobie Dajka, followed by admissions
of self-injection; and the fact that at least two
different sets of DNA were found on items in
that sharps bucket in that room in Del Monte.
Why don’t you take responsibility for this?
The best thing you can do for Australian
sport is resign.

**Senator Faulkner interjecting**—

**The President**—Order! I apologise
for the fact that I cannot shout as loudly as
Senator Faulkner but I call Senator Kemp.

**Senator Kemp**—Senator Faulkner has
been counselled before about getting excited
in the Senate, again making allegations. I
invite you, Senator Faulkner, to read the
Anderson report. I invite you, Senator
Faulkner, to read the allegations that you
made, particularly of the ‘shooting gallery’,
to look at what you said and to look at what
the Anderson report said. Why don’t you get
out and apologise?

**Honourable senators interjecting**—

**The President**—Order! There is too
much noise in the Senate. My hearing has
not gone; unfortunately my voice has. I have
asked you all to come to order.

**Foreign Affairs: Sudan**

**Senator Harradine** (2.34 p.m.)—My
question is about the tragic crisis in Darfur in
western Sudan, where 50,000 people have
been massacred by militia groups and over a
million people have been displaced. The UN
recently called it the worst humanitarian cri-
sis in the world. My question is to Minister
Hill, the Minister representing the Minister
for Foreign Affairs. At the last estimates
committee hearing on foreign affairs, de-
fence and trade, I raised this question of what
the government is doing about this particular
matter and what sort of contribution it is
making in the humanitarian area. The one-
word answer I got from the Department of
Foreign Affairs and Trade was ‘no’. What I
want to know now is: what is the govern-
ment doing at the moment? Is it involved in
any humanitarian programs? What action is
it proposing to take?

**Senator Hill**—It has been and contin-
ues to be a tragedy in the Darfur region—
there is no doubt about that at all. I have seen
the same estimates, that between 30,000 and
50,000 people have died and that up to 1.2
million people have been displaced. Unfor-
tunately, that situation continues. The Austra-
lian government has provided humanitarian
assistance that now totals some $20 million.
The last $12 million of emergency humani-
tarian assistance was announced on 27 July.
The total $20 million is a contribution that
has been made since May this year. Nine
million dollars will go to WFP and UNICEF;
the remaining funds will be channelled
through other relief agencies, including ICRC, Oxfam and World Vision.

The government, through Mr Downer, has also made representations to the foreign minister of Sudan, and the government has been supporting the UN process in seeking to address the cause of the problems in the Darfur region and seek a solution. In particular, we argued for and strongly supported the UN Security Council resolution which was passed on the 30th of last month. Senator Harradine will recall that that resolution called on Sudan to end the human rights violations in Darfur. It imposed an arms embargo on the region and called for international support for an African Union deployment in the region. That AU deployment is, as I understand it, still being refined. It is intended to be an observer mission. The UN resolution asked for member states to support the African Union in efforts to provide that mission. Countries around the world are currently looking at ways in which they might assist.

Senator Harradine I think would be aware of the fact that France has sent military to Chad and that they are now operating near the border. He would also be aware that the European Union has sent an information-seeking mission to the region to report back to the European Union on what further contribution it might make and how it can further assist the UN process. Kofi Annan has been to the region and obtained pledges on the issue. There has been a subsequent UN mission sent to ascertain progress in Sudan in meeting the pledges it made to the Secretary-General of the UN.

The good news is that the whole of the international community is engaged on the issue. There is no dispute about what has occurred or the seriousness of the issue. The challenge is to effectively put in place a mechanism that will bring the violence to an end and allow the displaced people to return to their homes in Sudan. In that process Australia is strongly supportive and we will continue to look for ways in which we can help an outcome of that type to be achieved.

Senator HARRADINE—Mr President, I ask a supplementary question. In February I received a response from the Department of Foreign Affairs and Trade—a simple ‘no’ to the question that I asked: was the department involved in any humanitarian effort to avert the looming humanitarian crisis? My supplementary question is: can the minister advise what can be done to ensure that humanitarian crises of such enormous and shocking proportions are acted upon more quickly in the future?

Senator HILL—It is a good supplementary, with respect, because the problems in Darfur really started last year. It would seem that there was some reluctance on the part of the international community to apply too much pressure on the government in Khartoum out of a concern that it might derail the peace process in relation to the north-south civil war in Sudan. That civil war has continued for at least 20—some would say 50—years with several million people being killed, and a comprehensive peace agreement is currently being negotiated outside of Nairobi. It is in the interests of all the Sudanese and anyone who is concerned in looking for better outcomes in that country that that agreement gets put in place and is supported by the proposed UNMISUD. It has been a complication in this circumstance of two humanitarian catastrophes.

Taxation: Family Payments

Senator JACINTA COLLINS (2.42 p.m.)—My question is to Senator Patterson, Minister for Family and Community Services. Can the minister confirm that her decision to change the indexation of family payments, which will see the value of the new
$600 payment eroded for many families within five years, was a mistake? Is the minister aware that if her intention was to retain the real value of family payments into the future there was no need to tamper with the indexation formula at all? Minister, who was responsible for the amendment? Why did you allow it to become part of the bill and why then did you not disclose the changes in the explanatory material published with the legislation which was then rushed through the Senate on faith after the budget?

Senator PATTERSON—We have guaranteed that the family tax benefit will be indexed as it was before the budget. We have guaranteed that the $600 will be maintained in real terms. I made a statement about that when questions were asked in estimates. I put out a press release. What the Australian families are waiting for is a guarantee from the Labor Party about their family package. They have now waited 84 days. Mr Latham was going to give them a family package when he responded to the budget 12 weeks—three months—ago today. Families have been waiting for a family package for 84 days. Mr Latham got up that night on the 7.30 Report and was asked by the commentator: will you guarantee that Australian families will not be worse off under Labor? He was asked that question twice. He failed to confirm that families will not be worse off under Labor. Mr McMullan, when he was asked as spokesman for finance whether he would guarantee the $600 increase per child in family tax benefit beyond this financial year, answered ‘no’. The Australian public have been waiting ad infinitum—84 days—for a family package. They have been waiting 84 days to see whether they will be guaranteed that they will not be worse off under Labor.

I indicated that we would keep the $600 indexed in real terms. It is clear from the letter to the committee from the secretary that there was no intention in the legislation to change the indexation rate. We have guaranteed that. We will be bringing in legislation to fix it. I presume the Labor Party will be supporting it. We have increased benefits to families. Families now get on average $7,000. The Labor Party has failed to guarantee the $600 increase in the benefit per child beyond this financial year. That is what the Australian public are waiting for, and they have been waiting 84 days. Mr Latham promised them a response in his reply to the budget, two nights after the budget, and they are still waiting.

Senator JACINTA COLLINS—Mr President, I ask a supplementary question. I note that the minister has not answered my question, which was: who was responsible for the amendment that went through in that bill? I ask the minister: isn’t it the case that the idea of changing the indexation of family payments came from Treasury and not from your department at all? I ask the minister: wasn’t Treasury’s purpose in changing the indexation formula to claw back benefits over time in order to minimise the long-term cost of these supposedly generous budget measures? Minister, wasn’t your real mistake to be so gullible and incompetent as to trust that the Treasurer would not try and find a way to recoup payments from families after the election and would not pull the wool over your eyes quite successfully?

Senator PATTERSON—They never fail to concoct a conspiracy. You can always guarantee that Labor will concoct a conspiracy. It was very clear that the intention of the legislation was not there. I made a commitment on the Sunday after it was raised in estimates that, if there was an issue, it would be addressed. I am living up to that commitment. What Labor has not lived up to is guaranteeing that that $600 per child will be maintained beyond this financial year. Australian families, as I said before, have waited...
84 days. They were promised a family package by Mr Latham in his speech in reply on budget night, and they are still waiting.

**Australian Labor Party: Centenary House**

Senator BRANDIS (2.47 p.m.)—My question is to the Special Minister of State, Senator Abetz. Will the minister confirm that Australian taxpayers will have to pay more than $6 million to the ALP in the next financial year for the lease of Centenary House? Will he also confirm that this is also more than $4 million above market rates? What action has the Australian government taken to save taxpayers money?

Senator ABETZ—I thank Senator Brandis for his ongoing concern about this serious issue, as it does deal with issues of accountability and integrity in public administration. I can confirm to the Senate that Labor’s Centenary House rental rort will cost Australian taxpayers more than $4 million over the next 12 months. For those who might not remember, in 1993 the Labor government—while Senator Faulkner still had his feet under the cabinet table—agreed to a 15-year lease of a Labor owned building to the taxpayers with an uncompetitive, annual nine per cent ratchet clause and no market review. Over the life of the lease, taxpayers will be forced to pay Labor $36 million above market rates. Let me make that clear: that is not $36 million in total; that is $36 million above market rates. As we approach the 11th anniversary of the lease, we should remember that from 23 September this year taxpayers will be paying an outrageous $949 per square metre or more than three times the actual market rate. This is an issue about Mr Latham’s personal credibility, his values, his ethics and his personal approach to leadership, which is to embrace the Keating era of greed.

It should not be forgotten that there is a clause in the lease that allows it to be extended for another five years up to 2012. If Labor gets into government and the lease is extended, the total rip-off would blow out to $56 million above market rates. Next week the investigation by Mr Justice Hunt into Centenary House commences. I am sad that it has come to this. For years we on this side have been calling on a succession of Labor leaders—Mr Beazley, Mr Crean and now Mr Latham—to do the right thing by Australians, to negotiate a fair and honest lease and to extract the Labor Party out of the hangover of the Keating era of greed. We hope that Mr Latham will do the right thing. After all, we always hear him talk about values, especially in relation to others, but it seems that all he does is talk about values rather than practise them, especially when it comes to him and the Australian Labor Party.

To date Mr Latham has failed to give an assurance that his government would not extend the lease of Centenary House. Remember that Centenary House is 100 per cent owned by Labor. All he needs to do is make one simple phone call. To do that he would need one single cell of backbone, one whiff of integrity, but of course he does not have either of those. Perhaps he is too busy trying to rewrite his Iraq policy, develop a tax policy and develop his environment policy or paper over the free trade agreement debacle that his party is currently facing. Mr Latham not only has policy failures; he has leadership failures in the areas of values, ethics and integrity when it comes to his own party gaining from the public purse. Mr Latham is not fit to be the Prime Minister of this great country.

Senator Faulkner—Mr President, I rise on a point of order. Would you now ask Senator Abetz to withdraw those parts of his answer which were not in conformity with the standing orders?
The PRESIDENT—Senator, as I indicated to you, I will look at the Hansard and, if any parts of Senator Abetz’s contribution were unparliamentary, I will ask him to withdraw them. But I want to review the Hansard.

Senator Abetz—Mr President, I would like you to do the same in relation to all of Senator Faulkner’s contributions during question time today. What Senator Faulkner has just done is an abuse of the point of order process.

Norfolk Island: Murder Investigation

Senator CARR (2.53 p.m.)—My question without notice is to Senator Ellison, the Minister for Justice and Customs. Can the minister indicate when it was that he became aware of the claim made by Senator Lightfoot on the Sunday program of 27 June that a police officer told him that they knew who murdered Janelle Patton on Norfolk Island in 2002 but had insufficient evidence to arrest this person? Was any AFP officer authorised to so brief Senator Lightfoot? Given that Senator Lightfoot’s comments clearly trespass on an operational matter, has the minister requested the senator to make no further comment on the matter? Can the minister explain why the AFP would reveal such information to Senator Lightfoot but not to the coroner, Mr Ron Cahill?

Senator ELLISON—I understand that the Australian Federal Police are dealing with this matter. Of course this is an ongoing investigation in relation to a murder on Norfolk Island. I have nothing further to add. In relation to when I became aware of those comments, I think it was very soon after that. I will get back to the Senate if I have anything further to add. The Australian Federal Police are dealing with this matter. It would be inappropriate for me to embroil myself in a murder investigation in any way and in the way that Senator Carr is suggesting. It would be totally inappropriate for me to be involved in this investigation. The AFP are quite rightly handling it and will continue to do so.

Senator CARR—Mr President, I ask a supplementary question. Given that it is inappropriate for the minister to comment on such a matter, is it not also inappropriate for Senator Lightfoot to comment on this matter? Given that the minister is unable to explain why Senator Lightfoot has been involved, is it not possible that Senator Lightfoot’s comments in fact reflect his mere peddling of gossip and big-noting himself rather than any deep understanding of what is actually going on?

Senator ELLISON—This is a serious issue—the investigation of a murder on Norfolk Island. The question of Senator Lightfoot’s comments is a matter which the AFP are dealing with.

Environment: Water Management

Senator LEES (2.55 p.m.)—My question is to Senator Ian Campbell, the new Minister for the Environment and Heritage. I ask the minister if he is aware that more salt interception schemes that include what are known as evaporation basins are planned along the Murray River in South Australia. Does the minister agree that, while interception of salt water before it gets to the river is very important, the disposal of this water into leaky basins, particularly basins that are on or near remnant mallee, is not acceptable? Can the minister undertake to ensure that no more disposal basins are built until there is an absolute guarantee that they are not going to negatively impact on the environment?

Senator IAN CAMPBELL—I thank Senator Lees for asking the first question in the Senate to me as the environment minister. I have been waiting all week for a question from Labor, the Greens or the Democrats. I congratulate Senator Lees on not only asking my first question but asking a ques-
tion on an issue that is so important to all Australians. I think all Australians, if they knew the effort that Senator Lees had put into the Murray-Darling Basin as an issue, would commend her for a long, passionate and, dare I say, successful engagement with this very important issue for the whole of Australia, certainly the whole of the eastern seaboard. Of course the Murray-Darling is not only an iconic part of the Australian natural environment and our history but also a bit of a bellwether for the environmental health of our continent.

Salt interception schemes and the disposal basins are clearly of concern to the government. I think Senator Lees would know better than most that you need a whole suite of measures to address the ecological state of the Murray-Darling Basin and the river itself and that salt interception schemes have been part of that suite of measures in the past. My advice is that engineering solutions, such as the salt interception schemes and disposal basins, are in fact matters that would normally be referred under the Environment Protection and Biodiversity Conservation Act made by this parliament. So I can give her an assurance on the basis that, until they are proved to be ecologically sustainable, they could not because of the EPBC Act, which was passed by this parliament—again with the constructive support of Senator Lees.

The government has invested in excess of $1 billion in the Murray-Darling over recent years. There has been $720 million through the Natural Heritage Trust program and the national action plan on salinity. Both programs have transformed the way that we address environmental issues around Australia, but particularly in the Murray where they are already showing some success. How have they transformed it? They have transformed it because they have brought together not only state and federal governments in a unique way to fight environmental degradation, particularly in the Murray-Darling Basin, but also community groups to help address these issues.

In the Murray-Darling already we see some progress. Salinity levels at Morgan, for example, have been reduced by approximately 200 EC. We do in fact attribute some of that success to the salt interception schemes that I know Senator Lees has concerns about. These are issues that we need to address if we are going to be successful in our continuing efforts to restore the environmental values of the river and of the basin and, of course, ensure that agriculture in that very important basin is sustainable. We are also doing a sustainable rivers audit to provide more valuable information regarding the health of the rivers and the streams within that basin. That process will help inform our work on the use of the salt interception schemes in the future that Senator Lees is so concerned about.

Senator LEES—Mr President, I ask a supplementary question. I thank the minister for his answer, but the problem is not so much the interception—indeed, we acknowledge that the interception must go ahead—as the disposal of this salinised water. I ask the minister: can he undertake to work with the Murray-Darling Basin Commission to ensure that other methods of disposal such as desalination plants are judged not just on short-term economic costs but on long-term cost and long-term sustainability?

With regard to the EPBC Act I understand that, as a dozen or more new sites which are on or next to remnant mallee are already mapped, the state government is already planning that at least two of these sites go ahead in the short term. Can I have some indication from the minister that he will now intervene without any further prompting to get directly in touch with both the basin
commission and the state government to ensure that they do not go ahead until we have further information?

Senator Ian Campbell—My understanding of the law, which is improving each hour, is that we will need that assurance under the EPBC mechanisms before it can proceed. When I was talking about salt disposal schemes, I was referring to disposal basins again. The problem is that we are getting seepage and leakage in some of these basins so, although the schemes have made a contribution to reducing salt in this iconic river and within the basin, there is not a lot of use—and Senator Lees would agree—in storing the salt on a temporary basis, so we have got to do that. Desalination plants do have a benefit, but Senator Lees would also know, Mr President, as I am sure you would, that one of the problems is they are very energy intensive and potentially create greenhouse gases. Australia is very committed to reducing Australia’s greenhouse gas signature through a range of measures, and we do not want to work against that environmental outcome to solve another one.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Australian Customs Service

Senator Ellison (Western Australia—Minister for Justice and Customs) (3.02 p.m.)—Yesterday Senator Faulkner asked me a question in relation to performance enhancing drugs in sport. I undertook to get some further information in relation to the question and I now seek leave to incorporate that information.

Leave granted.

The answer read as follows—

1. 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?

Answer:
The changes to laws completed in November 1999 involved changes to regulation under the Customs Administration Act 1985, and also to legislation governing ASDA and ASC. This technically allowed Customs to pass information to these agencies, but there also needed to be protocols developed by the three agencies to define the nature of the information to be provided and the processes for securely passing information. These protocols were completed in February 2000.

2. 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?

Answer:
Since the protocol was in place, the process has been followed in all instances where Customs had sufficient information to identify a sports-related importation.

3. On how many occasions since 1999 has Customs intercepted suspected prohibited performance enhancing drugs and not passed the information to the relevant Commonwealth authorities?

Answer:
Customs has made a total of 5140 detections of Image and Performance Enhancing Drugs (PIEDs) since 2000/01. The overwhelming majority of these did not relate to sports persons. Customs has made 25 referrals to ASC and ASDA under the legislation and protocols.

4. 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?
Customs investigates and prosecutes taking into account such things as the strength of the evidence, the intent of the offender, the seriousness of the offence and the public interest. It would not be reasonable for Customs to prosecute in many PIED cases. Customs has investigated 1017 cases of PIEDs importation since the beginning of calendar year 2000. As noted earlier, the vast majority did not relate to sports persons. The ASC would have to provide the number of instances of breach action.

5. 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?

Answer: I take it the referral is to a case brought against Mr Eadie in the Court for Arbitration in Sport. The case against Mr Sean Eadie was not a prosecution for drug trafficking, but a hearing to determine his suitability to be a member of the Olympic team. All the information Customs had—including the facts on the goods in question—was provided to ASDA and ASC before they commenced action against Mr Eadie.

In this case, Customs carried out procedures that applied five years ago in dealing with two shipments of prohibited imports (PIs) intercepted in the mail. One shipment was returned to the sender at the request of the addressee, who told Customs he had not ordered the goods. The other shipment was destroyed following notification by Customs to the addressee to which no reply was made.

Customs does not—and cannot—retain all the material for all detections of PIs indefinitely. PIs are generally transferred to Customs Stores until the claims for them, legal action or other proceedings are resolved. If there is no claim or no action, the goods are disposed of in accordance with the Customs Act. All actions, including disposals, are recorded and audited.

6. 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?

Answer: I am fully satisfied with the actions of the Customs Service in the fight against drugs in sport. No other Customs service in the world provides this level of support to the fight against drugs in sport. However, it needs to be borne in mind that importations are only means to detect athletes who may be using prohibited sports substances.

ANSWERS TO QUESTIONS ON NOTICE

Question Nos 3015, 3016 and 3027

Senator ALLISON (Victoria) (3.03 p.m.)—Pursuant to standing order 74(5), I ask the Minister representing the Minister for Health and Ageing for an explanation as to why answers have not been provided to my questions on notice Nos 3015, 3016 and 3027 of 17 June.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.03 p.m.)—I will undertake to bring that to the attention of the relevant minister, Mr Abbott.

Senator ALLISON (Victoria) (3.05 p.m.)—I move:

That the Senate take note of the explanation.

Perhaps I should say 'non-explanation'. This morning—about mid-morning, I think it was—as I always do before moving that the Senate take note of unanswered questions, I advised the minister’s office that I would be asking for reasons as to why these questions
have not been answered. I would have suspected that by now the minister would have a reasonable explanation, but it seems not. Question No. 3015 is a very important one. It relates to a study being done at present, the Australian longitudinal study on women’s health. That study indicated that partial incontinence affects 13 per cent of young women and more than a third of middle-aged and older women. Risk factors for incontinence severity include heavy smoking in young women, hysterectomy in middle-aged women, use of hormone replacement therapy in older women and being overweight in all three age groups. I asked the minister what measures were being put in place by the government to warn women about these risk factors.

I would have thought it would be relatively easy for the government to at least answer the first question because this week is Continence Awareness Week. In fact, on the government’s own web site is an initiative, paid for by the government, which encourages people to talk to their doctor, nurse continence advisers or physiotherapists. One of the reasons I asked this question is that the majority of women do not seek help. There are 1.8 million women in this country who have some degree of incontinence. It is a much smaller number for men—in fact, only 216,000.

There is also a helpline. The minister could have explained that here were some of the efforts that the government was making in this respect. We also know that the awareness week initiative and the helpline encourage women—in fact, anyone with incontinence—to seek a doctor’s assistance, but doctors have been found to be very reluctant in dealing with incontinence and unenthusiastic about treatment such as pelvic floor exercises. My purpose in asking this question was to draw attention to the predominance of women in this category and the need for government to act on the risk factors and, particularly, to warn women about those risk factors.

I asked: what, if any, economic analysis had been done of the potential health services and aged care savings that might be achieved by reducing the incontinence rate through prevention? We know that somewhere between 50 per cent and 80 per cent of all of those in nursing homes are incontinent. It is a mistake to assume that incontinence is related to age or is not treatable. In fact, it is. A great deal could be done to encourage women, in particular, but also men to deal with incontinence in their lives.

Another point that needs to be made concerns the causal relationship between caesarean section and the need for hysterectomy in later life. I asked: what efforts were being made to reduce the rates of caesarean section in childbirth—particularly in the private hospital sector, where we know there are far higher rates of caesarean section—and draw attention to the fact that very few women are warned about this situation? Very few women are warned that, if they have their baby in a private hospital, the chances are greater that they will have a caesarean section, and so it is with a hysterectomy. I think very few women are warned about this situation when they undergo surgery—not that they undergo it for trivial reasons—but these matters are very important to women.

Senator Hill interjecting—

Senator ALLISON—Senator Hill does not seem to think so but, believe me, they are.

Senator Hill—I think you are unfairly attacking the medical profession. What is your basis for saying that?

Senator ALLISON—I am pointing to some very clear statistics. In fact, had the Minister for Health and Ageing paid attention to this question—and I will give Minis-
ter Patterson a copy of this document as well—he would know that there are quite clear statistics which show that the rates of caesarean section are greater in the private hospital system and that there is a causal relationship between caesarean section and the need for a hysterectomy. It is clearly shown in the statistics. I will acquaint your office with them, Senator Patterson, if you doubt them. The Minister for Health and Ageing did have the opportunity to answer those questions. If I am wrong, I will stand corrected. I would be very happy if there were a sensible explanation for those statistics. I think it is important that we take care of women’s health, and that is why I asked these questions. I want to know why it is that the government is so casual about answering questions like these. There is now an increasing understanding that there is a link between incontinence—particularly in the elderly—and anxiety and depression. I would like to know what measures the federal government is taking in that regard. There is a range of very good and very important questions there.

There is also a question I have not yet mentioned about current negotiations which have been going on for months on end into the public health outcomes funding agreement—the so-called PHOFA review, or rather the review that was conducted but has not yet been finalised. No doubt the report is still sitting on some minister’s desk somewhere, joining all the others. There is no explicit reference in the National Women’s Health Program—in the draft PHOFAs between the federal and state governments—to a number of the programs that were previously there. I think we are entitled to know why that is, and that is what my question goes to.

I have a very long list of questions that have not been answered by this government. I am a patient person, I am happy to accept that some of those questions might be difficult to answer, but the habit of this government, the arrogance of this government in ignoring questions—sometimes for years on end—needs to be drawn attention to. If everyone in this place stood up and complained at the end of question time that their questions had not been answered—and I would encourage other senators to do that—maybe we would get some action. But the minister needs to be warned that I will keep raising these problems until we have answers to those questions. I am going to keep coming in here after question time and using up the time of the Senate in this way. I think it is important. We deserve to have answers to significant questions. Quite frankly, it is pretty pathetic of the minister to come in here today, having been warned that I would be asking these questions, and not have the faintest idea why they have not been answered.

Question agreed to.

QUESTIONS WITHOUT NOTICE:

TAKE NOTE OF ANSWERS

Sport: Drug Testing

Senator LUNDY (Australian Capital Territory) (3.11 p.m.)—I move:

That the Senate take note of the answers given by the Minister for the Arts and Sport (Senator Kemp) to questions without notice asked today.

We received some very disappointing responses from Senator Kemp this week. The sloppy handling of the investigations into the alleged use of banned substances by cyclists at the AIS and the obfuscation in relation to evidence that has come to light recently have made a mockery of the claim by the Minister for the Arts and Sport that the Howard government is ‘getting tough on drugs in sport’. In fact, his appalling responses in question time this week reinforce the level of farce. The minister said that, if people do not abide by the rules, they will be caught. These
words ring very hollow, considering the minister’s failure to order an immediate and thorough investigation into the allegation of doping practices at the AIS’s Del Monte residence. The minister yesterday attempted to pass the buck by implying that investigations into those allegations had not been made easier by the disclosure of information contained in the investigation reports. The truth is that if the so-called evidence had not been questioned by people concerned by the government’s total lack of interest in catching those who do not abide by the rules, then some of the people who attempted to cheat the system would never have been caught.

That is the truth. We have watched the minister as he has allowed this matter to bumble along for eight long months. Five separate investigations have failed to produce an acceptable resolution, and half a tabled report and unanswered questions regarding the securing of computer evidence and DNA testing raise the spectre that there is something more to it than we are being told.

We now face the situation where serious questions have been raised regarding the thoroughness and independence of investigations into a number of doping allegations. At best these investigations have been lacklustre and shoddy and at worst they indicate weak and timid acquiescence by the minister to allow these allegations to be swept under the carpet. The clumsiness and inconsistency with which the minister and the Australian Sports Commission have handled these investigations, and the spectre of cover-ups that has been raised as a result, have undeniably tarnished Australia’s reputation as a world leader in the fight against drugs in sport. Peter Bartels, Chairman of the Australian Sports Commission, said that the findings regarding the use of banned substances by Australian cyclists were very serious. World Anti-Doping Agency head, Dick Pound, has slammed the government’s handling of this matter by stating:

The rest of the world is going to say, ‘How it is that Australia deals with all these things in secret?’

The mishandling of this investigation, which should have been dealt with immediately and decisively last year, has left Australian cyclists in the precarious position where, with just a little over a week to the Athens Olympics, the final make-up of the cycling team is still under question due to outstanding appeals. So athletes are still not certain whether they will be competing at the Olympics and Australia’s standing as a world antidoping leader has been called into question—under the watch of the Howard government. It is time for Senator Kemp to come clean or move on. To do neither will only further tarnish what was, under the previous Labor government, a strong reputation for being tough on drugs in sport.

The one positive thing in this whole affair is that it has established without question the need for a totally independent and wholly credible investigative and prosecutorial body which can comprehensively and without bias assess cases relating to allegations of improper use of banned substances in sport. A Latham Labor government has given its commitment to immediately establish a sports doping ombudsman who is empowered to receive and investigate allegations of doping practices within, and impacting on, sport. When will the minister finally admit that the current in-house practices regarding the investigations of sport doping cases are totally inadequate and do something decisive to change them before time runs out?

**Senator KEMP** (Victoria—Minister for the Arts and Sport) (3.16 p.m.)—It shows when someone comes into this chamber and reads a speech. Every word of the speech by Senator Lundy was read—regardless of the
answers given in question time today. I looked very closely at Senator Lundy. Senator Lundy had written down ‘lacklustre and shoddy’, regardless of the answers to the questions. The questions were answered very comprehensively and effectively, I thought. The speech was all written down, given to Senator Lundy and she read it.

Senator Lundy knows very little about what has happened here. Her remarks show that. Senator Lundy will be aware that initially the allegations that were made were tested in the independent report by Justin Stanwix. Allegations were made about unnamed athletes and we had the first independent report by Justin Stanwix. The second report—the Robert Anderson report—grew out of allegations made at the end of May. So this nonsense that Senator Lundy goes on about—seven months—is absolutely disgraceful.

Senator Lundy—Why did you cover it up?

Senator KEMP—Mr Deputy President, I listened to Senator Lundy in quiet, and I think I am entitled to the same sort of respect. When you question Senator Lundy on fact, she always gets very defensive. Let me get this clear. Five athletes were named at the end of May in a hearing before CAS. As a result of the naming of those athletes, another investigation, by Robert Anderson, was put in train. A former Australian Supreme Court justice and much respected Australian jurist, Robert Anderson QC, was asked to conduct an inquiry.

Senator Lundy—Why did you cover it up?

Senator KEMP—There was no cover-up. Robert Anderson is a man of outstanding repute, a man who everyone agrees is an eminent jurist. Robert Anderson produced his report, and that report has been tabled in this parliament. There is no cover-up. That is complete, absolute nonsense. In fact, the report is available. The report has been made public, and Senator Lundy goes around talking about a cover-up.

Senator Lundy—You covered it up from December.

The DEPUTY PRESIDENT—Senator Lundy, you have had your shot. Give Senator Kemp his chance.

Senator KEMP—Exactly. When we question Senator Lundy’s grasp of the detail, we always get this semi-hysterical attack. Senator Lundy, it is not seven months. Get this clear—

The DEPUTY PRESIDENT—Senator Kemp, you will assist the debate not by addressing other senators in the chamber, but by addressing the chair.

Senator KEMP—The point I am making is that the investigations were not ‘lacklustre and shoddy’. We have had an independent inquiry by Justin Stanwix into allegations about unnamed athletes, and action was taken in relation to that. Then, when five athletes were named at the end of May, another investigation was put in train. So much for Senator Lundy’s comments about delay. Where is the cover-up? The ‘cover-up’, apparently, Senator Lundy, is that a very effective and respected jurist is asked to conduct an investigation, that investigation is conducted, and the report is tabled. Yet Senator Lundy parrots, time after time, ‘Cover-up! Cover-up! Cover-up!’

Senator Lundy went on to make a number of other statements which I will cover. Of course, when mud is thrown, as I pointed out to Senator Faulkner, some of it sticks. There is no question that some very strong statements were made in this parliament by Senator Faulkner. Senator Faulkner has just come into this debate—presumably to help salvage something from Senator Lundy’s performance. Robert Anderson, in his report, com-
menting on the issue involving up to six athletes in a shooting gallery, said, ‘Those paragraphs have been widely understood and stated in parliament and reported in the media to the great personal prejudice of the athletes concerned.’ That is what was said in the Anderson report.

The time has come, in my view, for Senator Faulkner to recognise that the allegations thrown around in this chamber by Senator Lundy and Senator Faulkner inevitably do damage. They are made not because the Labor Party is seeking the political truth but because it is seeking to make political points, regardless of the damage that is done to the Australian sports system and to the reputations of some athletes. I think it is a pretty disgraceful performance. There is no cover-up. (Time expired)

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.21 p.m.)—Today in this chamber we have had proof positive of the utter incapacity of Australia’s Minister for the Arts and Sport, Senator Kemp. He still cannot answer simple questions on what has happened in relation to the biggest scandal we have seen about drugs in sport in this country for at least a decade, if not longer. All this has occurred under Senator Kemp’s stewardship. He cannot give a clear account of the responsibilities and the role played by the Australian Sports Commission and the AIS in this scandal. These are Commonwealth agencies in Senator Kemp’s portfolio; they are under his stewardship.

Let us be clear about one thing: a scandal has been brewing in the AIS cycling program since December last year, and Senator Kemp has been utterly incapable of cleaning it up. He did absolutely nothing until the federal opposition, the Labor Party, held the Howard government and Senator Kemp accountable for these matters in this chamber. Instead, what has he been doing? He has either consciously or through absolute ignorance been a party to an attempted cover-up of this scandal, and he stands condemned for it.

This cover-up has failed because enough people in Australian sport could not stomach the stench of drugs, which has been fostered by the incompetence of Senator Kemp, Australia’s minister for sport. People could not stomach it in sport. And the opposition insists, as always, in holding Senator Kemp and the Howard government accountable. Senator Kemp knows—many people know—how incompetent he is. The actions of the Prime Minister, his ministerial colleagues and the public servants clearly demonstrate that his many failures in relation to this scandal are obvious.

Senator Kemp should have done the right thing and developed some backbone and cleaned up this mess before now, before the eve of the Olympics, which is what the Labor Party wanted. This mess is staining Australia’s sport, and I hold Senator Kemp completely and fully responsible for it. He knows that he has to demand a comprehensive account of the responsibilities of his agencies. He needs to come clean with the public, and he needs to impose changes on reluctant agencies so this can never happen again.

Senator Kemp should certainly know by now that the solution lies in the establishment, albeit belated, of a truly independent and credible investigation. We need a truly credible investigation, a hearing and a prosecution process for allegations about drugs in sport in this country. It is in the hands of the minister to finally direct all agencies to properly and thoroughly investigate all evidence relating to the use of drugs in the AIS cycling program, with a duty of care to those young cyclists in that program. In my view and in the opposition’s view, that duty of care ought to be the guiding principle.
All evidence, all possible sources of information or identification of those that have been involved in wrongdoing—and I refer to all DNA analysis which has finally been undertaken eight months after the discovery—should have been taken eight months ago, back in December last year. Analysis of computers, DNA analysis, payment records, credit card records and Internet ordering patterns should have been done and insisted on by this incompetent and hopeless minister eight months ago. But now we have him embarrassing Australia and Australian sport on the eve of the Olympics.

Do not listen to this nonsense about false claims being made. We know about the direct evidence of French; we know about the admissions of self-injection by Shane Kelly; we know about the admissions of self-injection in Europe by Graeme Brown; we know about admissions of self-injection by Brett Lancaster; we know about the untruthful denials by Jobie Dajka, we know about the two different sets of DNA in the sharps bucket; we know about the purchase of Testicomp in Germany; and we know this incompetent minister should go. *(Time expired)*

**Senator FIFIELD** (Victoria) *(3.27 p.m.)*—That was an incredible tirade against the Minister for the Arts and Sport. It was an outrageous tirade about his administration of the sports portfolio. I have two words to say in response to that tirade: Ros Kelly. If we are talking about cover-up, about rorting, about maladministration and about sports ministers, the words ‘Ros Kelly’ come to mind immediately. There is no amnesia on the part of our sports minister. There are no claims that he was merely relying on a whiteboard for inspiration.

There have been a series of allegations made about the cyclists. Independent processes have been put in place and are being followed. The matters are still being examined; action has been taken. What is the outrage here? That we should not follow due process? That we should smear the reputations of cyclists? That is Labor’s typical approach. ‘What did you know, when did you find out, what did you do and who did you tell?’—it is the same approach across every single portfolio. The Sports Commission, the Australian Cycling Federation and the Australian Olympic Committee acted quickly in relation to Mr Dajka. The information was presented to them. They acted quickly; they took decisive action.

What we need to keep in mind here is the reputation of our athletes. We need to protect the reputation of our cyclists and the Australian Olympic team. Using phrases like ‘shooting galleries’ might be good to get you on the front page of the tabloids but it maligns an entire team. If the Labor Party are genuinely interested in getting to the bottom of these matters, if they are genuinely interested in protecting the reputations of our sportsmen and sportswomen, they will not use terms like ‘shooting gallery’ to malign an entire team.

On this side of the chamber we want to support our athletes. We think the reputations of our athletes should be protected. We do not think their reputation should be dragged through the mud. Allegations have been made, processes have been put in place, investigations are being undertaken and action is being taken. Senator Kemp has been very up-front, very transparent. Senator Kemp has said that the government will look at the idea of an independent investigatory agency. This was a proposal recommended in 1990 when Labor were in office. Senator Faulkner was sports minister around 1993. What happened? Nothing. We are looking at the proposal. So those on the other side of the chamber are in no position to allege a cover-up or failure of action.
I would just like to quote Dr Pipe, who commented that Australia is seen as a nation that takes doping very seriously. He said:
People around the world are not surprised that doping incidents come to the fore in Australia, given this is a country that takes both sports seriously and takes anti-doping activities very seriously indeed.

Dr Pipe, FINA’s Doping Control Review Board Chairman, recognises that we take doping seriously and we take sport seriously. The Anderson inquiry, which Senator Kemp referred to, being conducted by a retired jurist, is ongoing. Mr Anderson has agreed to continue his investigation, including consideration of the issues concerning computers at the AIS Del Monte campus and any other scientific or other information that may come to hand. Mr Anderson is also proceeding with the second part of his inquiry, which involves investigating and reporting on the processes employed by the Australian Sports Commission, Cycling Australia and any other relevant parties involved since this issue arose in December last year. Mr Anderson is due to report his findings by 31 October 2004. We know that Senator Lundy has a vendetta against the Australian Sports Commission and the Australian Institute of Sport. That is fair enough; it was for domestic Canberra political reasons. But she and Senator Faulkner should not be dragging the reputations of our sports men and women through the mud. Senator Faulkner should apologise to the cyclists. (Time expired)

Senator WONG (South Australia) (3.32 p.m.)—Isn’t it astonishing? Senator Fifield comes in here and tries to defend a pathetic and incompetent minister who is unable to manage his portfolio properly. He tries to defend him by asserting that the opposition somehow are not supportive of Australia’s Olympic athletes, that somehow we are unpatriotic because we want to be tough on drugs in sport. It is offensive to cloak yourself in that sort of patriotism. This is not about whether or not we support our athletes. Of course we do. We on this side of the chamber say that we are committed to clean athletes. We are committed to there being no drugs in sport. We are tough on drugs in sport. Unlike the Howard government, which has presided over a cover-up, whether through incompetence or for some other reason, the Labor Party are serious about cleaning up drugs in sport, as we should be.

Australia until this time has had a reasonably good reputation when it comes to drugs in sport. But then in December last year a sharps bucket was found by cleaners in the Del Monte facility in Adelaide. This certainly suggests that some athletes who use that facility—some cyclists in the Australian team—have been injecting themselves. What did this minister do? Did he require that the evidence in that sharps bucket be held and tested by scientists for DNA, for residues of whatever chemicals were in the sharps bucket contents? No, he did not. In fact, DNA testing was not undertaken until June 2004. So this minister sat on evidence found in an Australian Institute of Sport facility that demonstrated or clearly implicated one or some or more of the athletes using that facility. It suggested that injecting had been occurring and he sat on the evidence for seven months.

If any police officer undertook this sort of investigation, leaving evidence which could have implicated, which could have indicated who was doing what for seven months, the public and this parliament and anyone else who knew about it would say that they should be hauled over the coals. But this minister dares to come in here, cloak himself in patriotism and accuse the opposition raising this issue of attacking our athletes in some attempt to cover up his own incompetence. The reality is that this evidence was found in December 2003. It was suggested at
the time that equine growth hormone had been injected. Although it is a banned substance, it was not detectable in the drug testing procedures which existed then. So one of the only ways that we could possibly have found out what was injected and by whom was by properly testing what was found in the sharps bucket. It is appalling that for seven months this minister has done nothing about it and that, as we understand from the Anderson report, even to this day only some of the items in the sharps bucket have been tested. If this minister were really serious about being tough on drugs in sport, surely that testing would have been done immediately.

Today in the Senate when the minister was asked yet again why he had not done it, why he had not actually gone and ensured that that testing was done on what was found in room 121, the minister was unable—as on every occasion—to provide an answer. He has been unable to provide an explanation as to why for seven months DNA testing and other scientific testing of all the items in that sharps bucket have not occurred. He has been unable to provide an answer.

We say that Australian sports athletes deserve better than that. Our reputation as a sporting nation deserves better than that. This minister should have investigated this immediately. He should have undertaken investigations or caused them to be undertaken. He ought not to have left this until the evidence had clearly deteriorated and was virtually unusable or at least compromised. Instead, in August, many months after the discovery, we still have as many questions as answers, right on the eve of the Australian team walking into the opening ceremony in Athens. Frankly, our athletes deserve better than that. Our reputation as a clean sporting nation deserves more than that. (Time expired)

Question agreed to.

DOCUMENTS
Auditor-General's Reports
Report No. 6 of 2004-05

The DEPUTY PRESIDENT—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 6 of 2004-05—Performance Audit—Performance management in the Australian Public Service.

DEFENCE: MISSILE DEFENCE SYSTEM

Return to Order

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Industry, Tourism and Resources) (3.38 p.m.)—I seek leave to make a statement on behalf of Senator Hill.

Leave granted.

Senator TROETH—This statement is in response to a motion moved by Senator Brown and agreed to by the Senate on 4 August 2004 that there be laid on the table by the Minister for Defence no later than 4 p.m. today the memorandum of understanding between the governments of Australia and the United States of America concerning the program of cooperation on missile defence. The memorandum of understanding is not a public document and for it to be released would require the mutual agreement of both governments. It has not been the practice of this or previous governments to compromise working relations with allies on matters of national security by breaching the above principle.

Senator BROWN (Tasmania) (3.38 p.m.)—by leave—That is quite an extraordinary statement coming from Minister Hill, who did not see fit to come into the Senate and read it himself. The Australian government signed up some months ago now to this
joint arrangement with the United States—essentially, the Prime Minister and President Bush—to foster the missile defence program known as Son of Star Wars, with quite massive ramifications for this nation and this region. One does not have to be well read on the subject to know that it will potentially lead to a new arms race in the Asia-Pacific involving powerful players like China, India, Pakistan and Indonesia, and it has major ramifications for our nation.

What the minister has put before the Senate today is that the document signed with much fanfare by the Howard government and the Bush administration, and upon which so much of our external affairs relationships and the safety of this country depends in the years ahead, is not available to this parliament. The minister did not say in the statement that Senator Troeth read out that an attempt had been made to get clearance from the Bush administration to produce the document. He simply said, ‘We’re not going to produce it, because we signed it with another country.’ That is not acceptable. This is a sovereign parliament.

When an agreement of this importance is consummated with a foreign government, it is the right of this parliament and the duty of the government involved to be informed in detail. If there are some secrecy provisions, the government should say that so arrangements can be made to have the matter dealt with in camera. This is a matter of enormous public interest and geopolitical significance for our nation, for Australia. It is just not acceptable for the minister to have a junior representative of the government in the parliament read out a dismissive document like the one we just heard read out. It is just not acceptable. The government can be assured that the Greens will pursue this further. It is a matter of high public information and high public importance. The Senate and this parliament should not be treated in a cavalier fashion like this.

COMMITTEES

Employment, Workplace Relations and Education References Committee

Report

Senator CROSSIN (Northern Territory) (3.42 p.m.)—On behalf of the Chair of the Employment, Workplace Relations and Education References Committee, Senator George Campbell, I present the report of the committee on the Office of the Chief Scientist, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator CROSSIN—I seek leave to move a motion in relation to the report.

Leave granted.

Senator CROSSIN—I move:

That the Senate take note of the report.

The committee’s inquiry into the role of the Office of the Chief Scientist was triggered by the government’s refusal to allow the Chief Scientist, Dr Robin Batterham, to appear before Senate estimates hearings to answer serious conflict of interest allegations arising from his dual part-time roles as Chief Scientist for the Commonwealth and chief technologist for Rio Tinto. It is a matter of concern to this committee that the minister had refused the Chief Scientist the opportunity to accept invitations to appear before the committee. I want to stress that this inquiry has not in any way questioned Dr Batterham’s standing in Australia and overseas as a highly respected research scientist. Dr Batterham’s professional record is beyond reproach and was never at any time under question.

The committee rejects outright the claim by the Minister for Science that there has been a ‘witch hunt’ against Dr Batterham. At
no time during the inquiry was Dr Batterham’s character or his professional conduct questioned in the performance of his duties as Chief Scientist. These were not and were never going to be issues that the committee was going to address. Conflict of interest allegations surrounding Dr Batterham deserved close examination to establish any weaknesses in how the Office of the Chief Scientist is structured and whether the terms of Dr Batterham’s appointment had resulted in difficulties for him in discharging his duties as Chief Scientist.

The main issue before the committee is the perception of a possible conflict of interest arising from Dr Batterham’s dual part-time roles as Chief Scientist for the Commonwealth and chief technologist for Rio Tinto. The committee is concerned that the Chief Scientist’s contract of employment with the Minister for Science does not contain any accountability provisions for parliamentary oversight of the Office of the Chief Scientist. The committee believes that the contract provides an inadequate mechanism to identify and manage potential conflict of interest arising from the Chief Scientist’s dual part-time roles.

The inquiry was concerned principally with broader issues of public administration and government accountability. The committee is concerned that public trust in science and therefore in the Office of the Chief Scientist has been damaged and will be eroded further if the position of the Chief Scientist remains a part-time appointment. Such public trust is of importance to the public education role of this position. The position necessarily has a high profile role in representing the interests of science to a wider public. Scientific research involves many issues and debates that are contestable, and a high degree of public trust in the position of Chief Scientist is necessary if the incumbent is to be able to play an effective role in such debates to the extent of expressing controversial views or analyses.

The committee holds the view that the way the government restructured the Office of the Chief Scientist in 1996, to create a part-time position, resulted in a public perception of an apparent conflict of interest and, to a lesser extent, an apparent indirect pecuniary conflict of interest involving the Chief Scientist’s public duties. The committee is also concerned that the Chief Scientist is required to comply with several sets of conflict of interest guidelines which vary in scope and operation. It is particularly concerned about how the Australian Public Service and CRC conflict of interest guidelines apply to the Chief Scientist.

The committee considered the allegations of conflict of interest raised by the Australian Greens. It finds that there is a clear conflict of public and private duties arising from the dual part-time roles performed by Dr Batterham. The circumstances of Dr Batterham’s part-time appointment fall squarely within any mainstream definition of conflict of interest. However, the committee does not believe there is any evidence to demonstrate either a direct or indirect pecuniary conflict of interest, or a real conflict of interest arising from the Chief Scientist’s advisory role. The committee also finds that the actual, potential and apparent conflicts of interest arising from Dr Batterham’s dual part-time roles have not been addressed and managed to the committee’s satisfaction.

The committee finds that the CRC guidelines and their application to the Chief Scientist are confusing and lack perceptual clarity on the issue of conflict of interest. At the very least, the committee believes that the CRC committee should obtain from Rio Tinto details of how the so-called firewall which applies to the Chief Scientist is put into practice. Any firewall arrangements
should be formally recognised in the CRC committee conflict of interest guidelines.

The committee finds that the Australian Public Service conflict of interest guidelines were compromised by the government’s administrative arrangements with regard to the Office of the Chief Scientist. The committee’s report makes four recommendations to address these conflict of interest concerns. Firstly, it recommends that the conflict of interest guidelines included in the Australian Public Service code of conduct should be reviewed to ensure that the broader conflict of interest concepts examined in the report can be addressed more transparently and rigorously. Secondly, the committee recommends that in view of the responsibility and potential workload attached to the Office of the Chief Scientist, and in the light of the potential for conflict of interest associated in particular with a part-time Chief Scientist, the position of the Chief Scientist should be full time. Thirdly, it recommends that guidelines, codes of conduct and procedures on dealing with potential and actual conflicts of interest applying to holders of public office in the Australian government should be similar and consistent across all government agencies and bodies. Finally, the committee recommends that the position of Chief Scientist should be appointed under Public Service conditions. The terms of the appointment should be such that the Office of the Chief Scientist will be subject to public accountability equivalent to that applying to other senior public servants.

The committee concludes that potential and apparent conflicts of interest which arise from Dr Batterham’s dual part-time roles are as damaging to the Office of the Chief Scientist as any real conflict of interest. They erode public confidence in the political and administrative process and call into question the integrity of high-level scientific advice provided to government. The public interest is not being served as long as the perception of a conflict of interest remains and is not properly managed. This is why the committee recommends restoring the position of Chief Scientist to a full-time appointment under Public Service conditions as a matter of importance and sound public administration.

In closing, I thank our colleagues on the committee from all parties for their efforts and their cooperation in producing this report. I thank all those who assisted the committee with its deliberations including, of course, the committee secretariat—namely, John Carter, David Sullivan, and Dijana Jurjevic. I commend this report to the Senate.

Senator STOTT DESPOJA (South Australia) (3.51 p.m.)—I also wish to speak to the Senate Employment, Workplace Relations and Education References Committee’s report on the Office of the Chief Scientist in my capacity as the Democrats’ science spokesperson and as a member of the committee and the subcommittee for the purposes of this inquiry. The Democrats supported the motion that came before the Senate for this inquiry, despite some concerns about the process that led to that point. I believed that there were issues that needed to be addressed and it was important to me and the Democrats that this was done in an appropriate manner. A number of us, certainly Senator Carr and I, as members of that committee were very disappointed by the decision of the Minister for Science to refuse to allow the Chief Scientist, Dr Batterham, to appear before the committee—either through the estimates committee process or, as per one suggestion, at a private hearing, or even a private meeting, of the committee—to resolve some of the matters that we perceived as requiring responses or that needed to be investigated.
The minister’s stubbornness, which is reflected in correspondence provided to the committee, left the Senate with few options other than the one we decided to explore, which was the decision to hold a brief inquiry into these matters. Even then there was the potential—and, I think, an attempt—to thwart those processes by delaying the appearance of the Chief Scientist before that committee. I make it very clear that it was not the Chief Scientist’s decision; it was very much a government decision. At every step of the way I believe that the government has not made this process as smooth as it could and should have been.

We supported this inquiry on the basis of growing concerns from many within the community, specifically within the science community, who had concerns—and, I must admit, continue to express them—about the nature of the Chief Scientist’s appointment. My party and I strongly support the position and the role of the Chief Scientist. However, the issue of the effectiveness and the perceptions of the part-time appointment of Australia’s Chief Scientist needs to be examined. That is especially so when we compare ourselves with other nations. For example, the United Kingdom, Canada and the United States of America all have full-time appointments, as should we.

The perpetual danger of real and/or perceived conflicts of interest with the Chief Scientist—who is employed part time—while holding that office required examination and I am glad the committee has done so. The recent announcement of the expansion of the role of the Prime Minister’s Science and Engineering Council, PMSEC, of which the Chief Scientist is chief executive officer, has no doubt made it more important to ensure the accountability and the independence of the Chief Scientist’s position. The Democrats believe investigation of these issues was necessary to ensure the appropriate strategic coordination of our research effort.

To that end, when the motion for the inquiry initially came to the Senate, I amended the terms of reference to include an examination of the need for statutory criteria for the appointment of the Chief Scientist. As we all know, a key part of the role of the Senate is to keep the government accountable, and the Democrats are very proud of our record in this respect. This was an appropriate inquiry for the Senate committee to conduct. The Australian Democrats are in agreement with the majority of recommendations and the observations contained in the chair’s report. I have, however, provided a supplementary comment on the issues where we may have had different views from those of the chair. The committee was unanimous—I make that very clear—in recommending that the position of the Chief Scientist become a full-time position. However, this is only one of several criteria that we believe, and that I believe, should be detailed in legislation. This view was also expressed by FASTS in their submission to the inquiry.

It also concerns the Democrats that much of the chair’s recommendation 4 actually relies on the minister of the day being agreeable to the terms set out in that recommendation. So there is that extraordinary opportunity still for ministerial discretion or approval. The Democrats have long been committed to ensuring that appointments to governing organisations or authorities that are public, for example, are based on merit and that the processes by which these appointments are made are transparent, accountable, open and honest. Such a system works effectively in places such as the United Kingdom.

We believe that a position such as that of the Chief Scientist, the holder of which enjoys a significant level of influence over
government—and who is, of course, on the public payroll—must be appointed from now on in an open and transparent way against defined criteria. That is the thrust of my supplementary report. Such criteria would also reduce the likelihood of future conflicts of interest. I welcome the chair’s report and the reports from others who participated in this inquiry. I endorse the comments made by Senator Crossin in thanking the secretariat, witnesses and all participants. I think this was an incredibly useful inquiry and I urge the government to pay attention to the recommendations contained in this report.

Senator BROWN (Tasmania) (3.57 p.m.)—The committee has found that there is a clear conflict of public and private duties arising from the dual part-time roles performed by Dr Batterham. His circumstances fall squarely within any mainstream definition of conflict of interest. The follow-on from that is that clearly the Chief Scientist should relinquish one of his jobs. It is not tenable for the Chief Scientist to maintain both the jobs of Chief Scientist of this nation and chief technologist for the major coal company, Rio Tinto. There is a clear conflict of duty and interest as seen from the public’s point of view. The committee’s findings speak volumes of that, but they speak also of the need for there to be an improvement in the way in which the government applies Public Service rules to all posts to ensure that this sort of conflict does not apply in the future.

I want to point to the some of the background as to why the Chief Scientist has been found to be in an invidious position from the point of view of public perception. Rio Tinto is a big corporation. We are in an age where there is enormous concern about global warming. We are in an age where government has a big role in stimulating technology and research about ways forward that will get us off the global warming treadmill and away from being the world’s worst per capita polluter amongst industrialised nations.

The government has been very tardy about that. There has been not only limited but also dwindling government input into renewable energy and energy efficiency businesses, which are hugely job prospective and hugely export oriented for the future of this country. I want to point out here that 12 or 13 years ago we outcompeted Japan in the production of solar panels. Now Japan produces 50 per cent of the world’s output and Australia produces less than one per cent. This is the sunshine country. Japan is technology oriented and looks much more at the future. It has sprinted the field while this government has pulled the purse strings.

But the government has not pulled the purse strings everywhere. When we look at Rio Tinto, the company for which the Chief Scientist has been chief technologist since his appointment in 1999, we find that some $340 million in direct, indirect or enhancing grants has gone to that corporation. In October 2001, $35 million went, in the form of a 24-year interest free loan, to the Rio Tinto Foundation for a Sustainable Minerals Industry. The foundation is not a legal entity; it is an advisory group to Rio Tinto. Also in October 2001, $102 million went to a strategic investment incentive for energy generation to support the Comalco alumina refinery at Gladstone. In May 2002, another $125 million went to a strategic investment incentive for the HIsmelt iron smelter. More funding has gone to cooperative research centres in which Rio Tinto has core participation. In December 2000, $14.5 million went to the CRC for Coal in Sustainable Development. In December 2002, $21.8 million went to the CRC for Greenhouse Gas Technologies. In December 2002, $18.8 million went to a sustainable resource processing investigation. In August 2003, $23.4 million in additional
funding was allocated to the CRC for Greenhouse Gas Technologies with in-kind contributions from Geoscience Australia, the CSIRO and the Australian Greenhouse Office.

When you look at the other side of the ledger, Mr Acting Deputy President, you find that the well of funding for the sunrise industries for environmental technology—which are based on renewable energy serving the whole of Australia and on energy efficiency—is basically dry. We have seen this extraordinary conjunction of the billowing of government largesse directly and indirectly to a huge company like Rio Tinto, whose chief technologist is Dr Batterham, at the same time as Dr Batterham has been the Chief Scientist for the government—whose role is to advise the government on the way forward. This gives the appearance of a conflict of interest.

We heard a lot in the committee process about how the Chief Scientist absents himself from decisions which involve Rio Tinto, about how he is not there when the vote is taken and about how—when it comes to CRCs and applications for other funding from Rio Tinto—a firewall is set up in Rio Tinto so that the Chief Scientist is not involved. But the committee could not get, and did not get, any indication from Rio Tinto of what that firewall was—nor did anybody in the government have any idea of what the firewall was. Nobody could tell us. Any fair observer from the outside would be led to believe that this firewall is a fiction—insofar as anybody could believe that there are tight, laid-down and publicly examinable rules which are, in effect, a firewall. We all know that it is not about the words you say and it is not about the contacts you make; it is about the influence you have that can work enormously to favour your point of view in working with posts such as that of Chief Scientist.

The committee also found that, on one occasion, Dr Batterham did use unpublished and unverified data, which was supplied by Rio Tinto, in a meeting of Commonwealth and state energy ministers and failed to declare the source of that information. That created the appearance of a real conflict of interest. The report went on to say:

The same data subsequently appeared in a high profile report prepared by a PMSEIC working group. It appears that the working group was not aware Rio Tinto had commissioned information attributed to a private company, Roam Consulting. However, the committee finds that the Chief Scientist is not responsible for this oversight because he was not directly involved in preparing the presentation to PMSEIC and did not present it to the working group. The committee concludes that this case has contributed to a perception of conflict of interest which risks eroding public confidence in the independence of advice provided to Government by the Chief Scientist.

This is no small matter, because the figures that went through to the Prime Minister’s scientific advisory group were extraordinarily influential in terms of the outcomes for this nation. They presented a very low-cost option for geosequestration. They actually came from Rio Tinto and its consulting company. That ought to have been acknowledged, but it was not. If you are going to have the presentation of verifiable information to such extraordinarily influential advisory organisations as the Prime Minister’s scientific advisory group then they need to know the source of that information. The committee was unable to find anybody else on the planet who had such low costings for the potential of geosequestration. Nobody else was able to present such low costings, and therefore present such a favourable view of the potential for unproven technology to take carbon dioxide out of the exudates from coal-fired power stations and put them underground. This is unproven technology. It was presented as the lowest cost option
without the information being identified as coming at the behest of the coal company for whom the Chief Scientist is the chief technologist—that is, Rio Tinto.

Of course, this has the mark of a conflict of public interest written all over it. Such a circumstance should not be allowed to recur. Those who are competing for government moneys, those who are promoting solar power, wind power, biofuels, energy efficiency, wave power and geothermal power all have a right to feel aggrieved that such an important committee as that advising the Prime Minister could use figures which were not corroborated by other scientific sources but which came from the company itself. I seek leave to continue my remarks later.

 Senator STOTT DESPOJA (South Australia) (4.08 p.m.)—by leave—I would like to correct the record. I made a comment in my address that a recommendation was unanimous. I meant to say that it was a majority recommendation, a cross-party recommendation, of the Labor Party, the Greens and the Australian Democrats. I want to make that very clear. As much as I would love the government to sign on to that recommendation, it was not a unanimous one and I apologise to the government if it was in any way worried that I misrepresented it.

 Leave granted; debate adjourned.

 Treaties Committee Report

 Senator KIRK (South Australia) (4.09 p.m.)—On behalf of the Joint Standing Committee on Treaties, I present the 62nd report of the committee entitled Treaties tabled on 30 March 2004, together with the minutes of proceedings. I seek leave to move a motion in relation to the report.

 Leave granted.

 Senator KIRK—I move:

 That the Senate take note of the report.

 Report 62 contains the findings of the inquiry conducted by the Joint Standing Committee on Treaties into two proposed treaty actions tabled in the parliament on 30 March 2004. The committee considered and supports the agreement with New Zealand for the establishment of a joint scheme for the regulation of therapeutic products. This aims to safeguard public health and safety. The agreement will achieve this through the establishment and maintenance of a joint regulatory scheme for the regulation of the quality, safety and performance of therapeutic products, and the manufacture, supply, import, export and promotion of therapeutic goods. The agreement provides a framework for a joint scheme and establishes the governance and accountability arrangements for the new regulatory agency. In doing so, the agreement will deliver public health benefits for Australia by providing an enhanced and sustainable regulatory capacity for therapeutic products.

 The agreement addresses Australia’s obligation under the trans-Tasman mutual recognition arrangement to work with New Zealand to develop a more integrated trans-Tasman economy by removing regulatory impediments between the two countries. The agreement will also, firstly, reduce industry compliance costs by increasing regulatory cost efficiency; secondly, benefit consumers by increasing the timely availability of therapeutic products potentially at a reduced cost; and, thirdly, provide Australia and New Zealand with greater capacity to influence international regulatory policy and standards.

 During the inquiry, the committee received submissions expressing some concern about the effects of harmonising Australian and New Zealand laws relating to therapeutic products, particularly in relation to patents and advertising. The interested parties were, however, in favour of the agreement overall. The committee considers that the proposed
agreement will enhance the protection of public health and safety and further trans-Tasman cooperation.

The committee also supports the second treaty, the World Health Organisation Framework Convention on Tobacco Control. This treaty was established to address the growing global tobacco epidemic, and is the world’s first international public health treaty. The convention aims to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke. Further, the convention will provide a framework for tobacco control measures to be implemented by the parties at the national, regional and international level in order to reduce the prevalence of tobacco use and exposure to tobacco smoke. The committee believes this convention will have a positive effect on public health within Australia, and it will enhance Australia’s leadership role in relation to tobacco control internationally.

On behalf of the committee I would like to thank the organisations, individuals and government departments that participated in the committee’s inquiry into both these treaties. Their contributions are greatly appreciated. I would also very much like to thank members of the secretariat for their hard work in helping us to prepare our report. I commend the report to the Senate.

Question agreed to.

Rural and Regional Affairs and Transport Legislation Committee
Membership

The ACTING DEPUTY PRESIDENT (Senator Watson)—The President has received a letter from a party leader seeking to vary the membership of a committee.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.13 p.m.)—by leave—I move:

That Senator Bartlett be appointed as a participating member of the Rural and Regional Affairs and Transport Legislation Committee.

Question agreed to.

COMMUNICATIONS: RADIO AND TELEVISION LOCAL CONTENT QUOTAS

Senator LUNDY (Australian Capital Territory) (4.14 p.m.)—I move:

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.

Seeing Australian faces and voices on Australian screens and hearing them on the airwaves has, I think, always been important to everybody in this country. It is the importance of this issue that has seen the protection of our local content quotas on all three media that I mentioned. This has now become a crucial element in the debate about whether or not Australia should pass the enabling legislation for the free trade agreement with the United States.

It is very interesting that, for many, particularly those in the film and television sector, it has been a hard-fought campaign involving constant negotiation with the Howard-Costello government. Early in the piece they effectively argued—and rightfully so—for an exclusion from the agreement for the cultural sector and cultural issues. This exclusion clause for culture was successfully obtained by Australia under the Singapore-Australia free trade agreement. However, when it came to talk of a free trade agreement with the United States, initially in November 2002, it quickly became evident that, despite the government’s rhetoric on the im-
importance of Australian content, an exclusion clause was never going to be seriously considered by the Americans.

During the period of the negotiations, the Labor opposition argued very strongly for an exclusion clause for culture, as did those in the sector, but the Howard government were either unwilling or unable to obtain such an exclusion for the cultural sector that was anywhere near what they had been prepared to obtain in other free trade agreements. At this juncture it is important to note that Australia itself has absolutely no barriers to the importation of content from other countries. We are one of the most open markets in the world, and we are ourselves extremely multicultural and celebrate our diversity. It is in this context that our diversity is represented in our local content.

Since the conclusion of negotiations and, indeed, the release of the text of the agreement, it has to be said that these provisions have created a lot of uncertainty right across the board—amongst actors, writers and those who manage and distribute copyrighted work, such as libraries—about the implications and how they would impact upon our ability to be true to our own cultural aims and expectations as well as to ensure that we can still legislate for local content. I am referring not only to the uncertainty about the implications for the cultural sector but to a wide range of areas that would be impacted by the free trade agreement. It was in this context of uncertainty and ambiguity and the fact that the negotiations were effectively held in secret that the so-called consultations with various interested parties and stakeholders looked, in retrospect, quite disingenuous. That 'trust us, we're the government' approach exploited a great deal of goodwill from the whole cultural sector as this agreement was negotiated.

It was in that context that Labor made a decision to refer these issues to a comprehensive Senate inquiry. There had to be a process by which detail and fact could be extracted from the text of the document. What would it mean for Australia? What were the actual provisions in the fine print relating to local content? These very important facts would never have come to light if the Senate Select Committee on the Free Trade Agreement between Australia and the United States had not conducted its investigation. As Mark Latham said earlier this week, this was the right approach. The agreement does not come into force until next year, and we have a duty to the Australian people to make a considered decision. It is only because of the Senate select committee’s examination of the provisions as outlined in the text of the agreement that a range of issues were investigated in detail and the actual effect of those provisions assessed in Australia.

Some of these issues included the fact that a ratchet provision existed which applied to annex 1 of the Australia-US free trade agreement. That ratcheting provision provided that the current local content levels could be reduced but could not be increased again if that reduction occurred. Of course, the Australian Broadcasting Authority had the capability to make those reductions. The committee inquiry raised the issue of the capping of local content across pay TV at 10 per cent and a maximum of 20 per cent if consultations occurred with affected parties. It raised the issue of the quotas on multichannelling and what effect that will have once technology exceeds current capabilities. It raised the issue of the quotas on new media—or interactive audio-video, as it is now termed—and a lack of definition within the text of the agreement relating to new media. It raised the issue of the requirement to consult with the US before any increase to quotas under

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Australian law. It raised the issue of the effect on Australian music broadcast quotas being capped at 25 per cent. It also raised copyright extension and how that relates to the cultural sector generally, be it authors, schools, TAFEs, universities, public libraries and, of course, the citizens of this country.

Certainly the most concerning element that I think came up continually was the capping of local content and the capability of ratcheting down those content quotas which applied. Paragraph 6.22 of the Senate select committee’s report, tabled in the Senate today, states:

As indicated earlier, the industry has expressed concerns that the standstill agreement on local content, allied with the ‘ratchetting’ provision, will result in lower local content requirements. The industry argues that while the quotas are now at their highest levels, they have been significantly lower in the past when the networks were not making profits. If the networks were again to become unprofitable, there would be pressure to lower their costs. Because local productions are expensive compared with the imported product, there would be an incentive to request lower quotas for local content.

That highlights that this ratchet clause effectively meant that any downward movement as determined by the Australian Broadcasting Authority—perhaps under pressure from the sector—would be irreversible regardless of the cap imposed.

It was because of the ability of the ABA to effectively reduce local content quotas and essentially never see them return to current levels that Labor grew increasingly concerned about the direct impact on the already struggling film and television industry. Labor senators recognised this as a very real concern, and in the Labor senators’ recommendations contained in the report of the Senate select committee the following recommendation was listed:

Labor Senators acknowledge the concern expressed by many witnesses on the ‘ratchet’ nature of Australia’s commitments for local content. Labor Senators therefore recommend that Australia’s local content requirements for free-to-air television, subscription television and radio be enshrined in legislation, so that reductions in these quotas require reference to the Parliament.

That was recommendation 31. I would also like to read recommendation 32 into Hansard. It states:

Labor Senators recognise that the Free Trade Agreement means that Australia’s local content quotas cannot be increased above their current level except in limited circumstances. However they also recognise that over the longer term future technologies are likely to result in these quotas becoming an ineffective mechanism for encouraging the creation of local content. Labor Senators therefore recommend that the Government consider new or increased direct incentives to encourage local content production, but that local content requirements apply in emerging technological platforms, wherever possible.

The Labor Party and, I believe, those engaged with the Australian cultural sector have consistently argued that any reduction to local content quotas below the existing caps would produce very negative results for the Australian film and television industry in the future and ultimately threaten the ability of Australians to hear Australian voices and see Australian faces on our screens, certainly to the extent that we have in the past. So it was of some interest that in November 2003 John Howard told radio 3AW:

We’re not willing to give up the existing local content rules, we think they’re worth preserving. Obviously in a negotiation like this if we want something big from the Americans then they will want something from us and we are willing to look at some suggestions they might have in other areas, but the line we’ve taken to date is that the existing local content rules ought to be preserved in relation to existing media.

The fact is that the deal done with the United States was not consistent with the Prime
Minister’s comments on the preservation of local content rules in the media, by virtue of the existence of the ratchet clause in the agreement. The ratchet clause means that the ABA does not ensure that our local content quotas are maintained at all. This is why Labor have insisted that this mechanism must be subject to review in both houses of parliament, effectively enshrining those quotas in legislation. That is the substance of our amendment, on which we will insist in the consideration of the enabling legislation.

The Howard government have conceded the point. On Tuesday they said they would support Labor’s insistence on amendments to the FTA enabling legislation in relation to cultural content and local content quotas. When they did, the Howard government also conceded just how vulnerable they had left Australia and our ability to protect our local content quotas. It seems that, despite the government chair of the Joint Standing Committee on Treaties recommending it, it did not occur to John Howard to make it a specific feature or to even attempt to negotiate that particular element out at the time. It has been left up to Labor to identify and defend just how important it is to protect Australian content on Australian screens and airwaves, given that our film and television industry is struggling.

It is Labor that have always been committed to protecting Australian content. That is why, as a condition of our support for the Australia-United States agreement enabling legislation, we will insist on this amendment in the area of local content. We hope that this will allay concern about any future reductions in local content for free-to-air television, pay television and radio. An amendment to legislate the current local content standards is what we are proposing. As I said, this is in line with the position of the Joint Standing Committee on Treaties relating to the Australia-US free trade agreement.

The committee itself recommended that the government take immediate action to incorporate the current quota levels for local content under the Broadcasting Services Act 1992, which is subject to the ratchet provisions of the treaty, so that they can only be changed by a deliberative decision of the parliament.

But there is more to this story because, of course, Labor have identified other issues in our consideration of it. If successful at the next election, Labor will go further and ensure Australians continue to see Australian faces and hear Australian voices through their popular media by ensuring that the free trade agreement provides flexibility to regulate for local content on future media. Labor will legislate to ensure that the free trade agreement definition of ‘interactive audio and/or video services’ includes but is not limited to future media already identified, which includes: broadband web sites, data-casting, digital film distribution, digital film exhibition, digital television subscription, interactive television, electronic program guides, Internet content narrow band, Internet TV and walled gardens, satellite delivery, 3G cellular mobile phone services, video on demand, e-cinema, e-commerce and interactive advertising.

Labor will also establish an inquiry to examine further options for effective government regulation of local content on future media mechanisms, and Labor will announce a policy package to encourage further investment in Australia’s film and television industry before the next election. These are all incredibly responsible positions to take and points to make at this time. They acknowledge the challenges that Australia’s film and television industry faces. Our commitment to investing in this industry is very important, particularly in the context of the statistics we saw released yesterday as a result of the national production survey that the
Australian Film Commission distributed and spoke to, as recorded in this morning’s media. These figures—and it is worth putting all of this discussion into the context of what is happening in the industry—show 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 television 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. And 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, down to its lowest level in 10 years, with local TV drama hours having fallen from an average of 718 hours per year in the late 1990s to 574 hours in 2003-04.

These figures are a vindication of why Labor certainly will be investing in a local industry development package and why the amendment to the enabling legislation to the free trade agreement is so critical at this time. Labor will ensure that our local content quotas are maintained, because they in turn contribute substantially to the viability of our local film and television industry, the employment of many Australians and, most importantly, the ability to see Australian lives and experiences portrayed in art and in the creation of stories and reflections of how we live our lives—our unique cultural identity. We want to see our cultural identity and to be able to relate to it, to comment and to reflect on it, to criticise and to celebrate it. But it is not possible to do that if Australia becomes swamped with what we know is cheaper content that is purchased rather than produced by our networks.

Our local content quotas are what create the mechanism and the motivation for the investment in Australian content. That is their significance in the context of this whole debate. You would be hard pressed to find anyone in this building who did not say that they cared about Australian culture and cultural identity. But it is at times like this, when we start to debate the actual substance of the laws and rules that make that kind of reflection possible, that the Howard government is being really put to the test—that we are all put to the test. When put to the test, it is only the Australian Labor Party that have stepped forward and said: ‘No we have to protect this. We have to lock it up and not allow it to be broken down through a ratcheting clause.’ The Howard government has been exposed by immediately acknowledging that there was a weakness in the enabling legislation and in the free trade agreement and by accepting Labor’s approach to this amendment. They will be supporting this amendment, so this amendment will get up. That is absolute evidence that Labor are fully vindicated in raising the concerns in the way that we have and insisting upon that outcome.

In conclusion, I would like to acknowledge a huge number of different people who have played a role in helping bring this issue forward into the public domain for discussion and debate in the lead-up to this debate in parliament. In particular, a number of actors, directors and producers have stepped up to the plate and expressed their view. Certainly, they have an interest because they work in the sector, but they have an absolute right to express their view because they are the ones that live and breathe the sort of work, commitment and creativity that gives heart and soul to this Australian content that we are talking about. I would like to ac-
knowledge Toni Collette, Gillian Armstrong, David Wenham, Rachel Griffiths, Geoffrey Rush, Samantha Lang, the writer Geoffrey Atherden, David Williamson, John Wood, Cate Blanchett, Phil Noyce, Hal McElroy, Julie McCrossin, Kate Woods, Ray Lawrence, Jan Chapman, the producers and directors, Robert Connolly and Geoff Morrell. All of those people, and many more, have added their voices to try to get more public attention on this campaign. Finally we are dealing here with an acceptance and acquiescence by the Howard government that our local content does need more firm protection than they were able to negotiate in the free trade agreement.

Senator EGGLESTON (Western Australia) (4.34 p.m.)—There is no doubt that Australians are very conscious of our cultural identity, and I must say Australia has an admirable history of quality radio play production, film production and production for television. In fact, some of the earliest films in the world were made in Australia. But, unfortunately, the US film and television production industry is huge and over the years has tended to dominate the movie industry in the Western world. The American industry recovers the cost of production in their home market and is able to sell copies of TV series very cheaply to other countries such as Australia for sums as low as $20,000 an episode.

The cost of an hour of TV production in Australia ranges upwards from $100,000 to $200,000. However, the free-to-air television stations can purchase, as I have said, second-run US programs for $10,000 to $20,000. Thus there is an obvious problem for Australian television production houses in selling their products into the local market and competing with American production. The free-to-air commercial television industry is commercially driven and if the choice is between an episode of a US production costing $20,000 or an Australian made episode costing $200,000, the commercial realities are such that the cheaper product will always be chosen.

However, as I have said, Australians are proud of our literary achievements and we want to see quality productions of Australian stories on stage and on air. I am proud to say that quotas for Australian content were first introduced in 1961 by the Menzies government—which may surprise Senator Lundy—and it is the coalition which has ensured that local content has been preserved almost since the days when television first came to Australia. The current requirement is that 55 per cent of all free-to-air television should be made locally. That is a reasonable quota because it means that Australians can enjoy a variety of Australian, British and American television productions as well as some from other countries such as Canada and Germany.

That mixture suits the Australian population who, in point of fact, tend to have a wider view of the world than their American or British counterparts. So it is clear that Australians do support local content quotas and, needless to say, so does the Howard government in continuance of the leadership shown by Sir Robert Menzies. Accordingly, the government has ensured that the US free trade agreement will preserve Australian content in audiovisual media. Notwithstanding this, we have witnessed a concerted campaign against the Australia-US free trade agreement by the Australian entertainment industry. There has been a lot of hyperbole, a lot of over-the-top claims have been made and there have been dire predictions of disaster for the Australian film and television industry. According to one media report this week, a prominent and internationally renowned Australian actress ‘collapsed in tears on the floor’ of Senator Conroy’s office while trying to communicate to him the ne-
cessity for Labor to reject the free trade agreement.

Contrary to what the Australian public has been hearing from the acting fraternity, there is absolutely nothing in the free trade agreement that puts Australian content quotas in jeopardy. Indeed, the final outcome on audiovisual in the free trade agreement is to allow Australia to maintain its existing local content requirements in respect of free-to-air commercial television, pay television and radio broadcasting. This is the effect of an annex 1 reservation in the free trade agreement. We have heard a lot about the ALP amendment on content, and I think the kindlest thing that can be said about it is that it is superfluous.

In relation to the question of local content, it is important for senators to understand that the Howard government’s support for Australian productions will be maintained. We are not going to let the Australian television or film industry wither on the vine. The Howard government has retained the capacity to continue and even increase its support to the cultural sector by way of grants, subsidies and tax incentives. In 2003-04 the Howard government provided direct support to the Australian film industry through programs, grants and subsidies, delivered through the Australian Film Commission and the Film Finance Corporation, to the tune of $133 million.

In fact the Howard government has a proud record of supporting the Australian film industry. In 2001 it provided $92.7 million for a package of funding to build the capacity of the film industry—training the industry professionals of the future, boosting our digital capacity and funding Australians to make film and television programs to tell our stories with Australian voices and faces. This package included the refundable tax offset for large-budget film productions. This offset applies to an eligible film’s Australian production expenditure and effectively amounts to a cash subsidy. According to the Department of Communications, Information Technology and the Arts, the ‘incentive is expected to amount to approximately 10 per cent of a film’s total cost of production’. I am sure senators will agree that a welcome development announced in the recent budget was to extend this offset to high-budget television productions. The offset scheme has been successful in attracting to Australia very large-budget film productions such as the *Matrix* series of films and the third episode of *Star Wars*. In addition, I remind the Senate that the free trade agreement does not affect the government’s capacity to support national cultural institutions and agencies, such as the ABC and SBS, and other cultural institutions through the Australia Council.

I think it is true to say that the biggest issue facing our media industries with respect to local production is the introduction of new media, particularly the advent of digital technology for television and also, it must not be forgotten, for film. Film cinemas in the future will not be running films but projecting their productions through digital technology. Digital TV is going to permit multichannelling. So, instead of one channel on existing spectrum bands, each of the existing channels could have three channels. That means the demand for product to fill the time spaces on these channels is going to rise quite dramatically.

This increased demand for film product in both television and in other new media represents both a threat and an opportunity to the Australian film and audiovisual producers. The threat is obviously that there will simply not be enough Australian product to meet the voracious demand of digital television. On the other hand, the advent of digital technology can be regarded as an opportunity. If the local content quotas are to be
maintained, as they will be, then clearly local production will need to increase to meet the requirements of the quota under the digital regime. It should be remembered that the digital revolution will affect the whole world. Just as there will be increased demand for production in Australia, so will there be increased demand for product worldwide. I think this represents an enormous opportunity for Australian producers to service that demand. People in other parts of the world regard Australia as an exotic and interesting country, and Australia’s audiovisual producers can capitalise on that.

The Australian industry is small, but we do have the advantage of a reputation for good productions. Australian audiovisual productions are well regarded around the world because of their quality, and they attract interest because of their content. *Neighbours*, for example, has been successful because it has portrayed stories about real people in real life situations which have universal appeal. Similarly, our films have been successful because the stories portrayed have had universal appeal and because people around the world have found the stories interesting. We have seen this with films such as *Gallipoli*, *Picnic at Hanging Rock* and many other successful Australian films.

For these reasons, Australian programs—from *Skippy* in the 1960s and 1970s, which was shown throughout Europe, through *Neighbours* and *Home and Away*, to the wonderful documentaries and excellent Australian news programs—have been screened around the world. The Senate should understand that not only are the existing local content standards protected but also that the US free trade agreement has sufficient flexibility to allow the introduction of new or additional local content requirements. In annex II there is a reservation which allows for new or additional local content requirements in respect of digital multichannelling on free-to-air commercial television, pay TV, free-to-air commercial radio broadcasting, and interactive audio and video services.

The government is further able to intervene to place local content requirements on new forms of media, subject to agreement on the degree and level of new or additional local content requirements. In the event that free-to-air multichannelling is permitted at some time in the future, the government will have the capacity to apply transmission quotas requiring local content to two channels or 20 per cent of the channels offered by one service provider, but to no more than three channels altogether. This means that the 55 per cent local content quota may be applied to at least two channels, and to a third channel if 15 or more channels are offered by a service provider.

In relation to pay TV, expenditure requirements of up to 10 per cent of program expenditure can be placed on a broader range of formats than is currently the case. These additional formats are the arts, children’s television, documentaries and educational programs. Where it is determined that the 10 per cent expenditure requirement for drama is insufficient, it can be, at the government’s discretion, increased to 20 per cent. Transmission quotas of up to 25 per cent can be imposed on individual free-to-air commercial radio stations. Where Australian content is not readily available on interactive media services, measures can be introduced to rectify this. In the context of introducing new or additional local content requirements for subscription television services or for interactive video and audio services, such as those delivered across the Internet, the government has made a commitment to consult with affected parties, including the US. But the key point is that the Australian government can determine when it considers Australians are not getting enough access to Australian content. For the information of the
Senate, and for Senator Lundy in particular, it is very important to understand that there is no veto power provided to the United States on that matter.

The ALP is hopelessly divided over this historic free trade agreement. Over the last five months some shadow ministers have been privately indicating that the ALP would never support the free trade agreement while others have been privately indicating that the ALP would sign. Only last Monday Senator Lundy told a public meeting of the arts community that she was personally opposed to the free trade agreement. This all indicates an absence of leadership from the Leader of the Opposition, Mr Latham. It represents a stark contrast to the leadership of the Prime Minister and the measures the government has taken to protect the Australian film and television industry and to preserve an Australian voice in it.

One of the points that Senator Lundy made was that this agreement does not include a reservation like the so-called ‘Singapore reservation’ on cultural matters, which was included in the Singapore free trade agreement. But the US-Australia free trade agreement outcome clearly contains greater specificity than the Singapore free trade agreement outcome. In short, it is more targeted than the broad Singapore free trade agreement reservation. The negotiated outcome with the United States addresses Australia’s genuine concerns while also meeting the US’s legitimate interests in having some certainty about the future openness of the Australian market. In particular, the key reservation is still in annex II, giving Australia the right to introduce new measures as well as to maintain existing measures with respect to Australian content.

In keeping with the lead taken by Sir Robert Menzies back in 1961, some 40 years ago, the Howard government recognises the importance of maintaining local content and our cultural heritage. Accordingly, local content rules are being maintained under the provisions of the United States free trade agreement. The free trade agreement also has sufficient flexibility to allow the introduction of new or additional local content requirements over a range of existing and new media. Provided the local industry continues to produce programs, films and stories which have merit and attract the attention of listeners and viewers on the basis of their inherent value and universal appeal, I am confident that the industry will have a vibrant future.

As I have said, my view is that the advent of new technologies and the attendant higher demand for product represents an opportunity for the Australian audiovisual industry to capture a percentage of the increased demand around the world for the products that digital technology will bring. Finally, I believe the Australian government has done a very creditable job in protecting Australian content. Rather than be criticised—as has happened in the Senate over the last few days—the Howard government should be praised for protecting Australian voices in our audiovisual industry.

Senator RIDGEWAY (New South Wales)

(4.53 p.m.)—I also rise to speak on the general business motion put forward by Senator Lundy on Australian content in media. Before I start, I want to add to the list of names that Senator Lundy read out. Someone who deserves to be mentioned who was very public in her opposition to the free trade agreement—having appeared before the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America and, I think, previously before the Senate Foreign Affairs, Defence and Trade References Committee looking at Advancing the national interest—is Claudia Karvan, a well-known Australian actress.
who deserves all credit for the position she took in this particular case.

Australia has a system of controls in place to ensure that a basic minimum level of Australian content is broadcast in our media. Our cultural policy exists to ensure, essentially, that a diverse range of local voices are being heard and that unique Australian stories continue to be told. The Australian Democrats strongly support the Australian cultural sector and will resist any attempts to weaken our strong and vibrant national cultural identity. I want it to be clear for the record that in previous agreements such as the Singapore free trade agreement the government had no difficulty in securing a total exemption for all cultural industries.

In this particular agreement with the United States, and in the face of pressure from the largest film and television industry in the world—I think we could adequately describe Hollywood as that—the government has sold out the Australian cultural sector on four main fronts. First of all, once quotas on free-to-air TV decline the government will never be able to increase them. Second, the government may not impose local content requirements on most pay television channels. For those pay television channels on which the government may act to impose local content rules, the level of local content is set at very low levels in no way similar to the current free-to-air television rules. Third, the government will never be able to regulate existing media unless it is currently regulated for local content. This means that cinema, including e-cinema, may never be regulated. Last, the government may not begin to act to introduce rules for interactive media until the level of access for Australian audiences to local production is already found to be at unacceptably low levels; so there is no ability to take pre-emptive action.

It is important to remind ourselves that television channels in this country slashed spending on Australian drama by half in the three years to 2003. Last week the Australian Bureau of Statistics published new figures showing that the stations cut their drama production budgets from $319 million in 1999-2000 to $160 million in 2002-03. In addition to that, the Australian Film Commission data shows that the pay TV drama channels have never complied with even the 10 per cent quota. In 2002-03 their prescribed quota for Australian drama was $28 million but they spent just $18 million—a $10 million shortfall. So total spending by all channels on drama and comedy productions has crumbled from $366 million in 1996-97 to $175 million six years later, as networks have switched to cheaper sport and reality TV. The ABS found that between 2000 and 2003 the amount of first-release drama and comedy broadcast fell by more than a third to just 718 hours, down from 1,097 hours three years earlier. The average cost of production per hour screened was also slashed sharply, as station budgets were cut to match the slump in advertising revenue.

I think that the continuing decline in spending on Australian television drama and the rise in cheaper reality television and game shows would be perpetuated by the provisions of the US free trade agreement. We ought not kid ourselves about that. The agreement would essentially mean that Australia would be locked into a cycle of falling investment in local drama and that more and more of our current local content quota would be taken up with cheap-to-produce puerile reality television, with the government powerless to do much about it. The free trade agreement with the United States would not allow Australia to increase pay TV local content quotas above the 20 per cent requirement. Not only do these figures compare unfavourably with the requirements for
local content on free-to-air services; the Media, Entertainment and Arts Alliance pointed out that the quota compares unfavourably with those imposed overseas. Canada, for example, is said to have a 60 per cent local content quota on some channels.

But the story gets a lot worse than that. The free trade agreement also means that the United States can challenge any regulation for Australian content in new media. That will severely limit future options for government to be able to regulate and deal with new forms of media technology. In many respects, this outcome flies in the face of the assertions made to the Senate committee by the Minister for Trade that the end result on audiovisual was, in fact, an excellent one. The minister himself went on to say:

The bottom line is these commitments give Australia sufficient flexibility to not only maintain the current amounts of local content available to Australian audiences as new media services become more important, but to actually increase these amounts.

This is a very misleading statement when you consider the conditions set down in the free trade agreement. This government, and in particular the Minister for Trade, Mr Vaile, have basically handed over control of the future of Australian cultural policy to the United States. This travesty was emphasised by the Australian film industry in evidence given to the Senate select committee. Representing the industry, Ms Megan Elliott, from the Media, Entertainment and Arts Alliance, said:

The constraints on government policy mean that in the longer term, over the next 10 to 15 years, the audiovisual sector will be worse off than it is today. This agreement is not a blueprint for growth. It is not a vision for an expanding audiovisual sector encouraged by sensible and astute policy intervention. Instead, it represents a declaration by Australia of its declining aspirations for what it can achieve in the promotion of its culture. This is the most disappointing aspect of the agreement. Much has been made by the government of its success in retaining current Australian content standards for commercial television, despite the fact that they cannot be increased and will likely be rolled back in future years. However, as one reads the text it is clear that much lower targets have been set for newer and still-to-be-developed media.

In answer to a question earlier this week Senator Kemp argued that it is difficult to regulate in an area of emerging technology because we do not know what it will be. The government have used the same excuse to avoid appropriately funding and regulating the telecommunications industry. It is fair to ask: what are the alternatives here? The truth is that, besides taking a very different approach and looking at what we did in Australia’s trade agreement with Singapore—that is, exempt Australia’s cultural industries completely—the government could have agreed to minimum quotas on Australian content for all media. Australia could also have retained full control over the setting of quotas. More importantly, the government could have exempted cultural industries from the free trade agreement, as they have done not only with Singapore but with other countries.

Labor’s proposed amendment to have local content requirements for free-to-air TV enshrined in legislation so that any reductions in quotas would need parliamentary approval will not protect the emerging media market. I think that Senator Lundy and the Labor Party know that. In their support for this free trade agreement Labor will have to share responsibility with this government for the deterioration in Australia’s unique identity, character and cultural diversity. If we are talking about reality TV in this country, not only have we lost out with respect to our control over Australian cultural policy; we have gained nothing in return. The Australian film and television industry argued very
strongly that Australia will not gain any greater access to the US audiovisual market. In evidence to the Senate committee they said:

The US has no tariff or non-tariff barriers that could be removed by this agreement, yet it will remain one of the most closed markets for audiovisual product in the world. The size of its domestic market and the inward-looking nature of its cultural production make it both entirely self-sufficient and the world’s largest net exporter of audiovisual products and services.

They are saying that it is a closed shop arrangement: the US are happy to do business with us but we cannot do business in return.

In her testimony before the Senate inquiry, Ms Megan Elliott 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.

The ALP know full well that the amendment they have foreshadowed will do nothing to change this situation. It might lock in content quotas at their current levels but it will have no bearing on the media landscape in the future, particularly given that any assessment will not be done against the enabling legislation but against the text of the free trade agreement.

Another area that will have a significant impact on the Australian film and television industry is the investment chapter in the free trade agreement. In this Australia has agreed to national treatment rules that prohibit each party from discriminating in any way against investors in the other country. As I suspect we all know, most of the financial support for the development and production of Australian feature films, television programs and other projects in this country is provided through government assistance by way of investment rather than by way of grants or subsidies. Agencies such as the Film Finance Corporation acquire copyright interests and earn returns on their investments. It is not just a straight-out approach of handing over some money as grants or subsidies. The Democrats are particularly concerned that this might mean that these agencies cannot exclusively invest in Australian films. If that is the case, it will cripple the Australian film industry. When asked a question about this issue in the parliament, the minister was unable to give a clear answer. The Democrats made it clear that we understood that direct grants and tax rebates were exempted from the free trade agreement, but the minister was unable to prove to the Senate that public investment in domestic film production would be protected in the deal.

Further, in answer to a question I asked on this matter during the Senate hearings, this interpretation was confirmed. Mr Herd of the Screen Producers Association of Australia explained that the way in which the agreement is currently drafted imposes performance requirements on governments. For example, currently a condition for the Film Finance Corporation to invest in a project is that it contains significant Australian content and is made by Australians. That is a performance requirement. The agreement as it is currently drafted would essentially allow the United States to say that it is a non-conforming measure and that the Australian government cannot do that any longer.

One of the big problems that we see with the current drafting is that for some reason the negotiators saw fit to not reserve the Film Finance Corporation, the Australian Film Commission, the Australian Broadcasting Corporation and SBS—all those cultural institutions which invest in Australian content—from the application of the agreement,
with regard to not only the services chapter but the investment chapter. Mr Harris of the Screen Directors Association also confirmed that the minister does not seem to have taken this into account. He said:

When this issue of investment was raised with the negotiators—
and that was directly with the negotiators—
they said that they had taken it on board and were going to address it and find out whether it was an issue.

Mr Harris said they simply had not got back to the producers in any way, shape or form. He said that that was not the intention of the agreement for all those involved in those discussions. All he was saying was that, as the text exists now, that appears to be the result.

A final point is that the Democrats remain very concerned that the FTA may have an impact on Australian public broadcasting through the ABC and SBS. Funding arrangements for our national broadcasters will not be affected, because at least the government had the wisdom to ensure that Commonwealth subsidies and grants are specifically excluded from the agreement. However, the definition of ‘public services’ in the FTA seems to be ambiguous and untested, and it excludes services provided on a commercial basis or in competition with other service providers. Given that SBS advertising and ABC product marketing operate in a competitive commercial environment, any regulation to do with these services may not be covered by the public services exemption. It may mean that the US could challenge some regulation of public broadcasting, claiming it is inconsistent with the free trade agreement. We believe that the terms of the free trade agreement that will have such a marked impact on Australian culture are very dangerous to our future national identity and therefore cannot be supported.

To conclude, I want to say a number of things about people who have been involved in this process. To my mind, there is no question that Australia’s cultural future has been severely compromised forever as a result of this free trade agreement. In many respects, given the way our film and television industries have operated, we are a unique nation with our own stories to tell and a vision to share. We can be rightly proud of the way we perform not only in Australia but also on the international stage. The names themselves speak pretty much about how the industry has been able to nurture that process. But, given the way there has been a decline in film and television production, I wonder what the future is going to be like. The free trade agreement indeed makes it much more difficult.

Our ability to make sure that we continue to have vibrant and dynamic creative industries has been sold away. Unfortunately, we are now in a situation where the ALP has decided to stand by and watch the future of our cultural heritage go down the drain. The government has failed this country by accepting the deal and by not exempting culture, as it did in the Singapore free trade agreement. The ALP has failed this country by falling into line. Anyone out there who is listening, particularly those in the arts and culture sector, ought to say to the ALP that this is not good enough. I know that Senator Lundy, to her credit, cares deeply about these issues, which I am sure is the reason she proposed this debate today. However, her party’s decision to support this free trade agreement is very disappointing indeed. It is a very disappointing outcome for our nation, given the high cost of what is at stake to establish what is a restrictive trade agreement with the United States—it is not a free one and it is certainly not fair.

I remember statements that were made by the Deputy Prime Minister. He said that if
sugar were excluded it would be un-Australian. Quite frankly, sugar has been excluded and this free trade agreement is un-Australian. We ought to take note of the comments that have been made by the leaders in government as well as others who have said that they have problems with this. I am going to call again on the Labor Party: perhaps caucus or even the leader of the Labor Party ought to allow the members of the ALP to exercise a conscience vote on this issue.

We have dealt with these issues before. I think that there was a free trade agreement during the time of the Clinton administration. We rejected it then because it was not in the national interest. Most of all we have to say: do the right thing. Do what is in the interests of Australia and certainly in the interests of the Australian people. That is the thing that matters the most, not just an alliance that is created for emotive reasons. It is ultimately about looking after us before others.

Senator MOORE (Queensland) (5.12 p.m.)—I take part in the discussion this afternoon as a self-proclaimed TV kid of the 1960s. I grew up loving television and film. That relationship has continued to this day. As Senator Eggleston has pointed out, my own experience seems to reflect the history of the industry. In 1961, when, as a very young Australian, I was watching television at home in regional Queensland, decisions were being made here in our national capital to institute some quotas and regulation to ensure that local content was protected in our arts industry, particularly in what they saw then as the innovative new industry of television.

But while this wonderful new process was being introduced into Australia and so many Australians were purchasing televisions and sharing the experience by travelling to their neighbours’ places so they could all gather around the one television—we were all there, taking part in something that was going to be so important to our community—concerns were raised at the top levels of our government that, through this process, perhaps our national culture was not being protected and celebrated. Protections needed to be introduced in that industry—at that stage limited to a very early TV production area—through the government of the day to ensure that Australian productions, Australian actors and Australian stories were being celebrated through that process. That was successful. It was promoted through the government. A system was put in place whereby there was regular review of the Australian local content in the broadcasting industry that was considered regularly.

In 2001-02, when the last review of the broadcasting process was done, decisions were made to have Australian content in the broadcasting area of free-to-air television at a certain level, which I believe was 55 per cent for major productions—with some sub-quotas beneath that for drama, comedy and so on—and, in the advertising sector, 80 per cent Australian content. That was a bit of a surprise to me, in fact. I did not realise that 20 per cent of our advertisements were not Australian made. It is amazing the things you find out when you are looking at something new. My own experience in getting involved in this wonderful industry and being involved in TV is not unusual. In fact, recent figures tend to indicate:

Australians watch an average three hours and 17 minutes television a day.

I make no comments at all about the quality or about what we are watching, but we are watching that much. The figures also indicate:

More than a third of Australians are watching television between 6 pm and 10pm on any given night.
I hope some of those people are watching parliament! They further indicate:

Between 7 pm and 9 pm more than sixty percent of all television households are tuned in. 94% of all Australian adults watch television during any given week.

Those statistics are actually not that scary, because, when we all look at our own families and homes, with people walking through areas, we know that people have this relationship with their television sets.

Through that process, we understand what an incredibly powerful tool and mechanism the sense of visual expression is. We also have a deep sense of pride because we know that, since 1961, there have been rules in place which ensure that a certain element of what we are watching is Australian content. There are no rules and no understanding that we have to enjoy what we are watching or accept that that is what we want to watch, but we have to know that Australians are lighting, producing, filming and acting in Australian stories and are having their stories shown. That is something of which we can be proud and something that I think is accepted by everybody in this place.

That is one of the things that came as a shock regarding the final aspects of the negotiations of the American trade agreement, because there had been such public statements by people from all parties, very different elements, about how proud they were to ensure that Australian stories are at the forefront of our film and broadcasting industry. There was no disagreement on that point. In fact, the people who worked in the industry, the people who were making the laws and the people who were reviewing the industry all shared this commitment. However, over the last 12 months, there seems to have been a growth of concern about exactly what was going to happen in this one trade agreement. Other agreements had been negotiated with other countries and had gone through without any discussion of cultural content. There had been side discussions about whether or not it should be included, but the final result of other trade agreements was that they related to trade issues. That was accepted and they were concluded. Everybody did not like everything that was in them, but those other trade agreements did not raise issues to do with our cultural heritage and our film industry and broadcasting. Those things are only in this particular trade agreement—the US free trade agreement.

That context allows people to ask a lot of questions about exactly what is going to happen now. This is the only agreement in which our cultural heritage and the broadcasting industry are even mentioned. Through this process, there has been discussion. We have heard from people who were on the two inquiries on the US free trade agreement—the one in the treaties area and the other in the Senate select committee. There were many submissions to those two inquiries raising the concerns of people in the industry about how including the broadcasting and film industry in a trade agreement might impact on the future of the industry. That is the way Senate inquiries and general House inquiries operate: there is an issue to be discussed and any citizen is able to come forward with their views and concerns, and that did happen. We are seeing that in the amount of debate in the Senate at the moment about the overarching agreement. In those inquiries, there were issues—genuine concerns—raised by the film and broadcasting industry about what could happen to the industry should the clauses in the trade agreement that in any way impact on the industry be finalised.

It is no surprise to people that these issues were raised. We now have a concern about what a done deal will do to the industry. There are two major areas in TV and broad-
casting: the free-to-air area, which I have already mentioned, with the 55 per cent for major productions and the 80 per cent for advertising; and the pay TV area, which is ever-growing, as we know. I am a pay TV subscriber. I do not understand the technology, but I know there is a proliferation of channels. The areas in which I find most Australian content at the moment are sport—which is good—and also, to my great surprise, the channel called UKTV. There is a certain irony for me when I find Australian product—mainly elderly product, I grant you—being shown on the UKTV channel on the pay TV network. As to the ongoing future of that area, there are quotas now being negotiated for that as well. They are much less generous than the free-to-air TV area but still there are quotas.

The question from the industry is: if we now have agreement that we have the 55 per cent and 80 per cent and the 10 to 20 per cent in the pay TV area, what happens in the future in the TV and broadcasting area? This is where this interesting concept of ‘ratcheting’ comes in. It is a word I enjoy saying over and over again—ratchet, ratchet, ratchet. It is one of those wonderful concepts, like ‘grandparenting’ or ‘grandfathering’. The scary concept for people as they read through the detail is that there is only one way for the quotas for free-to-air TV to go. We can never have an increase above 55 per cent of major productions or above 80 per cent of advertising. Should that be decreased through the decision of the ABA, it can never be lifted again. That is the concept of the ratchet process: once it goes down, it cannot go up again. It is not rocket science, but it seems to only go one way. That is a genuine concern of the industry. If the amount of Australian content in the TV industry is ever reduced under the process which the government has agreed to sign up to, it cannot go up again. To me that does not sum up ‘flexibility’, a word that is used constantly in the agreement: ‘This is flexible; this is allowing flexibility.’ It seems to me it is going one way: down.

Since the early sixties the TV industry has had a training program for people wanting to move on and through the industry. This allows people to look at careers both here and overseas. The concern about the decision to sign up to the free trade agreement is not just from people who may not be able to succeed in the big world. I have heard comment made that the only people who are worried about change are those who do not have talent or are in some way limited. That is just not true. As we have heard from Senator Lundy and Senator Ridgeway, the industry concerns about the content aspects of this agreement are being raised by people who have not just been successful in Australia but actually taken our industry overseas and been able to get great acclaim and awards in their chosen industry—through the American and European film industries—by showing that Australia has the talent and the ability to create high-quality product and to succeed on the international stage.

They received their training, their experience and their support here within the Australian industry. This has been a result of strong government support for the industry at the federal and state levels. This industry has been nurtured and helped along. Senator Eggleston pointed out the various levels of support that have been provided to the industry. We applaud that. It shows genuine cooperation between the federal and the state levels. My own state of Queensland, as you know, has been very active in promoting a film industry based in our state putting out international and national product.

Given this experience, the industry is saying that it needs that support to continue. It is still a very vulnerable industry. Senator
Lundy has pointed out on a number of occasions the huge commercial gamble in the industry and how much it costs to make a production in Australia. On an hourly basis it is much cheaper in the TV area for Australian channels to get in overseas product than produce it locally. There is an enormous financial difference. It costs between $250,000 and $500,000 to make one hour of commercial comedy or drama in Australia. People indicate that they like Australian product. But the real issue here is that it only costs between $30,000 and $50,000 to license an hour of US television—whether it is one of the current big raters like JAG or Law and Order or one of the re-runs that constantly come onto our television screens. Those figures were quoted in the Age of Friday, 19 December last year. This continues to be a genuine issue. The economic thrust of getting overseas product at the enormous economies of scale that the massive markets that America and other places can provide, compared to the higher cost of producing Australian product, is one of the reasons the industry requires support not just from the government but from the community. The industry needs to know it is being looked after and protected, because of its vulnerability.

In that environment, the signing of an agreement which includes the cultural process gives a message to the industry that they may not be safe and they may not be secure. That is the message that is causing so much concern. If the government is prepared to sign an agreement which does not clearly protect not just the current status of Australian content in the industry but perhaps the content of some future growth, what then is the commitment to other forms of support from the government? These are questions which I think are quite reasonable. It may not mean that those answers will necessarily be negative, but it means that more questions are being raised and that the security and confidence of an industry which we must support and love will be affected.

Why are our stories so important? Senator Ridgeway talked about the fact that we are a culture of stories and that people enjoy telling our stories. One of the more concerning quotes that I have read, and one that has stuck with me since the time that I read it, was attributed to Geoffrey Atherden, the creator of Mother and Son, which I know is a series that many people enjoy, and also Grass Roots. His statement is:

Kids are growing up here with the idea that all the interesting things happen to people somewhere else; that if you want a great life you really need to live somewhere else ...

That is a real message for Australians. I am thinking back to my own experience watching the television as a kid and remembering whether I was seeing situations in which I could place myself, situations that I could enjoy and actually hope to participate in. I hope that when the kids who come in here to look at parliament are watching our television now they are seeing stories which they can relate to, which they can see themselves in—in our states of Australia—and which they can see their future in.

My own nieces enjoy TV and music. One of the things that is worrying me, in line with the previous quote, is that when they begin singing along and when they begin acting out—as we all do, sometimes a lot in this place—they somehow immediately have an American accent. When they are singing along to music they are singing in an American accent. When they are playing out their stories that is the kind of process that they adopt. That is one of the reasons that our stories must be real and that we must sense that we are able to be protected and strong in our own culture.
My dad, who was actually a Queensland drover—and there are not many of those left anymore—did not have a lot of formal education but, thanks to the educational processes of the time, he could quote whole streams of Australian poetry. That was the way people were taught at that time. He was able to burst into whole streams of Lawson and Paterson. That kind of ownership is something that I think we should be encouraging in our kids—not that I think they all have to have the ability to quote streams of poetry. I am talking about that sense of identity—the sense that our stories can be shared; that we have something of value that we own and of which we are proud.

I would like to end with a quote from a Queensland artist, who has also been extremely successful overseas, particularly in the American context. He is a country singer from Queensland called Graeme Connors.

Senator Humphries—You are not going to sing, are you?

Senator Moore—No, not at all. One of my comrades in Queensland has been known to break into song in the Queensland parliament, but I promise you that I will not. Graeme Connors writes about the issue of keeping our own identity in Australia. One of his songs is about the experience of being an Australian, seeing the young people of today and not knowing whether they really understand our context. It says:

I stood beneath the Tree of Knowledge, let my imagination run,
Way back to the Great Shearers strike of ‘91.
And as I quietly contemplated all that tragic history,
A tour bus full of kids from the city pulled up in front of me.
And it’s baseball caps on backwards like they wear ‘em in LA.
Coca Cola, Nike shoes and Oakley shades.

Here in the middle of the Heartland, I feel I’m caught between,
Beverley Hills 90210 and the Great Australian Dream.
I hope that, through continued concentration on our industry, we will make sure that our kids know more about Graeme Connors and what he is hoping for than about some of the American singers, who are also good but who do not tell our local stories.

Senator Humphries (Australian Capital Territory) (5.32 p.m.)—I want to contribute to this debate because I think that, again, this is part of the scene setting we have seen from the Australian Labor Party as they attempt to portray themselves as the champions of Australian interests in the face of dastardly agreements reached by the Australian government that somehow sell those interests down the river. I am afraid that the closer you look at what the free trade agreement actually does, the more you realise that that is pure, unadulterated hyperbole and that, in fact, almost all of the issues of concern which have been raised in the parliament today and in the last few days about things that might be wrong, that might be at risk and that might be under threat from this agreement are not under threat at all.

We are talking today about the requirements to have Australian content in broadcasting in this country. It is worth reminding members of the Senate—as Senator Eggleston has already done—that it was the Menzies government, in 1960 or 1961, that established the idea, particularly with commercial free-to-air television, that there ought to be certain thresholds for Australian programming. A 40 per cent quota of Australian programs was established at that time, rising to 50 per cent in 1965. Today that figure stands at 55 per cent. A quota of 55 per cent of Australian programming has to be presented to Australian viewers between
There have been changes to the rules over time, and those changes have essentially provided for more flexibility—less of a formulaic approach to Australian content and one that allows some flexibility. In 1989 the Australian Broadcasting Tribunal revised the local content rules that were set up in the 1960s. It stipulated that the overall quota for Australian local programming between 6 a.m. and midnight averaged over the year should be 35 per cent in 1990, rising by five per cent each year until it reached 50 per cent in 1993. The Australian Broadcasting Authority, which was established in 1992, revised the standard and increased the quota to 55 per cent in 1998. Senators should note that there is a very clear trend there from a low base to a higher base. There has been an increase in the amount of Australian content required to be seen on Australian screens and broadcast over Australian radio sets. That trend is one which has not been reversed during the recent life of broadcasting in this country. The question for us, of course, is whether there is any likelihood of it being reversed, with or without this free trade agreement.

Australian content rules are currently imposed under the Australian industry codes of practice developed by Commercial Radio Australia. These are not explicitly required under the Broadcasting Services Act; however, the codes contain quotas for Australian music generally as well as for new Australian music based on the predominant format of the service that is being broadcast, whether it is rock, jazz or whatever it might be. Those quotas have worked well and it has not been felt that there is a need to upgrade them or to
entrench them in legislation or by way of other requirements.

We have quite clear rules in this country which are preserved by the terms of the agreement we have entered into with the United States. Indeed, the local content requirement was a key feature of the negotiations with the United States, and the Australian government went to those negotiations intent on preserving our capacity as a community to have such rules. We are perhaps in if not a unique position in the world then a relatively unusual one in that, as an English speaking nation, we are particularly susceptible to the material produced by other English speaking nations, particularly the United States of America. Other nations have flourishing local content industries by virtue of the barriers set up by their different languages. It is very hard to imagine, for example, a US film having quite the same penetration into the Indian market as it has into the Australian market, given that Indian people want to watch Indian productions and there is, as a result, a flourishing market. We have a particular position here because we do speak English and are therefore able to take, without any modification, American movies or British television shows or whatever. That is why we have these Australian content rules.

That was very much in the minds of Australian negotiators when they began these negotiations. As a result, the free trade agreement has very clear outcomes on audiovisual content. The agreement allows Australia to maintain existing local content requirements in Australia in relation to free-to-air commercial TV, subscription TV, radio broadcasting, taxation concessions for Australian production and coproduction arrangements with other countries, including any future agreements. The agreement ensures that Australia maintains sufficient freedom to introduce new or additional local content requirements in relation to possible digital multichannelling on free-to-air commercial TV, subscription television or interactive audio and/or video services. That is a carefully negotiated and quite deliberate outcome of that process.

I am disturbed when I hear people talking about how much of a threat the present arrangements are and how important it is that there be amendments to those arrangements. I heard Senator Lundy say that the ratchet clause concerning local content in the free trade agreement is not consistent with the Prime Minister’s assurances that Australian content would be preserved. That, frankly, is an exaggeration. There is nothing in those arrangements that detracts from the Australian content requirements we now have. What the free trade agreement preserves is Australia’s capacity to set local content rules. In the event that there is some reduction in the level of Australian content then there is an ability, arguably without an amendment, to ratchet those back up to their previous levels or to some other higher level. But I ask senators to consider how likely it is that we will see such a circumstance. Bear in mind that when these Australian content rules were put in place they were set at 40 per cent, lifted to 50 per cent and are now set at 55 per cent—and, as far as advertising is concerned, at 80 per cent. The trend is fairly clear: it is to increase Australian content. It is very hard to imagine why the Australian Broadcasting Authority or an Australian government or anyone else would want to start lowering those Australian content requirements. So the particular circumstances that Senator Lundy has posed are fairly unlikely to transpire and fairly hard to envisage.

The fact is the issue that has been raised is a fairly small point that has been exaggerated for political purposes. No doubt this is going to be the precursor for a campaign run across the country, whereby Senator Lundy and the
Labor Party are going to run around saying, ‘We have preserved Australian content with our amendment.’ It is just not the case. Australian content is preserved by the terms of the agreement we have reached with the United States. The point of this amendment, which of course we are yet to see but which we assume will somehow address the point that has been raised, is to deal with a relatively unlikely scenario, one which I think we can safely assume is very unlikely to transpire.

As Senator Lundy put it, the government immediately agreed to deal with this ‘weakness’ simply because it was not an important enough point to prevent Australians taking advantage of the free trade agreement. We were not prepared as a government to see a deal as important as this to the Australian community held up by virtue of a point which is really very small in comparison to the enormous benefits which the agreement presents. Frankly, the degree of exaggeration we have seen over this matter is to do with the Labor Party attempting to salvage some face, some credibility, when in their dissen-

place to reflect what he said was a chance for enormous penetration by US content into the Australian marketplace. As I have indicated clearly, there is not the capacity for greater penetration into the Australian market. I will make two points in relation to this concern expressed by Senator Ridgeway. He implied that it would be difficult for Australian film and television to enter into the American market in the way in which he felt US material would enter into the Australian market.

Firstly, I make the point that a lack of reciprocity in respect of this particular aspect of the agreement, if there is any—and I do not think there is—should not be seen as some kind of deal breaker. The fact is that there are many multiple benefits from the free trade agreement. In some areas, Australia has made some concessions; in others, the United States has made concessions. You cannot judge the agreement by taking a single slice of it and analysing whether, overall, it is good or bad for Australia. It is a foolish way of considering the agreement. You look at the totality of the agreement, and the totality of the agreement represents billions of dollars of benefit to Australia. When the agreement is fully on stream, it will represent 30,000 jobs to the Australian community, and that is a huge amount of benefit which we ought not to walk away from.

Secondly, it seemed to me that in fretting, as he did, about the penetration of Australian content into the US market, Senator Ridgeway had rather overlooked the tremendous penetration that has already occurred. I do not think I can recall an academy awards ceremony in a number of years when Australians have not featured prominently as receivers of major awards. When I last visited the United States I noticed that Australian films were extremely popular in American cinemas and that we punched well above our weight when it came to the acceptability of Australian product in the US market. So ar-
guing that there is some kind of deficiency or flaw in the agreement in that respect seems to me to be just a tad far-fetched.

As I have said before, this is principally about posturing on the part of the Australian Labor Party to pretend that in some way they are friends of local industries like the Australian cultural industries and that they are really fighting to preserve their position, to protect their interests, when in fact they are apparently accepting the free trade agreement. The extent of the change being made here by this flagged amendment on local content is extremely small in the scheme of things. If this change were made it is doubtful whether it would actually make one iota of difference to the viewing of Australians over the next 50 years. It is very doubtful whether you could measure in any way the effect of the change which has been proposed by the Australian Labor Party.

But the government, to their credit, have not played politics on this issue. The government have said, ‘We believe the agreement is too important to let go by the board over an issue as minor as that,’ and have indicated that they are prepared to support the spirit of what the Labor Party have put forward. It is a pity we did not see a greater focus on the national interest coming from the Australian Labor Party. Perhaps it is because of the luxury of serving in opposition that they can afford to play politics with these things and ensure that they get their day of glory in the sun. We do not have that luxury. We need to look at what is in the Australian interest. Clearly what is in the Australian interest is that this agreement be passed, and we are working to achieve that. By all means, portray yourselves as the people who saved Australian content. But you know—and I think most people in the cultural industries in Australia well know—that that simply is not true.

Senator DENMAN (Tasmania) (5.51 p.m.)—One particular aspect of the debate about the free trade agreement with the United States, both inside this chamber and in the public domain, has made me extremely angry. Members of the government in the other place and senators opposite seem to have taken the view that it was incumbent on us on this side to simply accept the free trade agreement on face value. If we take this argument we should simply have accepted the FTA for what it was, not asked a single question about it or sought further information through any form of inquiry. The Australia-United States free trade agreement will have long-term applications and implications. In fact, in respect of some provisions it will take up to 20 years for them to kick in.

The agreement does not come into force until 1 January 2005. Why, then, the rush to get parliamentary approval in Australia? Why, then, the insistence by members of the government that it is wrong for those of us on this side and on the crossbenches to look into the agreement further and to assess its implications? Those of us on this side of the house have always been clear in our view that the agreement should only be approved if it is in our national interest. There is nothing anti-American about that. There is nothing anti-Australian in that. Quite the opposite. The agreement should only be approved if it is in the national interest of Australia and ensures that an environment is maintained in which we have good and appropriate relations with a major ally and trading partner such as the United States. Of course it is easy for the government to take the view that we should simply rubber-stamp the negotiations and approve and sign up. But for non-government members and, importantly, also for the public, time was needed to consider the implications. As it happens, that time has been available.
The agreement is a huge document covering a complexity of matters and extending to over a thousand pages. It is far-reaching and detailed. It is clear from the hundreds of emails and letters that I have received that many Australians are not happy or comfortable with the deal negotiated by the government. The two areas which have dominated this correspondence have rightly become the subject of very close scrutiny by those of us on this side of the chamber: the threats to the Pharmaceutical Benefits Scheme and to Australian culture. As members of parliament we are often the recipients of what I might describe as rote campaign emails and letters. But on this occasion, whilst there was an element of this, the incidence of individual contributions to the debate was quite stunning. It was quite stunning for me too in my electorate office. I had quite a number of people coming in and expressing concerns. This was particularly the case in relation to the potential loss of Australian identity and culture. In many ways this is perhaps not surprising. Many of these pleas came from some of Australia's finest and most brilliant talent. Other very clear messages came from the next generation, an emerging generation, of actors and performers concerned that it will be denied the opportunity to develop and contribute to the presence of Australian culture and identity on our television and cinema screens and on our airwaves. It is right and proper and, I must say, a relief that the government has indicated its willingness to agree to the Labor Party's amendment to the free trade agreement enacting legislation in this regard. It is not only an acknowledgment of that which is right, but also a recognition that our insistence on proper consideration of this agreement was appropriate.

It is important that we recognise that it is only relatively recently that there has been a requirement for Australian content on free-to-air television to exceed 50 per cent. It has been a gradual process over time, necessitated by changes in society and within the industry. When television began in Australia there was a substantial amount of live programming; the delivery of local content and Australian culture was prevalent. But a whole range of factors, including production costs, globalisation and the implications of aggregation, changed the situation. We acknowledge as a society and as a parliament that it would be appropriate to legislate to ensure minimum levels of Australian content. It has been an emerging process, responding to the various pressures on the television industry. This demonstrates the need to have the ability and the freedom to protect that which is important in our society.

Free-to-air television was the new medium of the last half of the previous century. There are now other forms, and there will be more. Pay television is one. As yet we do not know the impact it will have or how broadly it will be embraced by Australians. Certainly the take-up in the initial years of its availability was not up to expectation. Operators fell by the wayside; others merged their operations. Sadly, the indifference seems to have also affected the ongoing assessment of pay television in Australia. It was intended, as I understand, to conduct a review in 1997 to consider the minimum levels of Australian content on Australian pay TV. I am told that it was the expectation that the review would most likely have increased the minimum requirement to 20 per cent. The review has not taken place. Now it seems that through the FTA we were prepared to fetter ourselves for evermore.

As a former teacher, I believe in the importance of all Australians, and our young minds in particular, being exposed to Australian voices and images on our television screens. It is vital that we all have the opportunity to see Australian stories depicted in our cinemas. It is essential that we continue
to be able to hear Australian singers and musicians on our airwaves and to see their music on our music video channels. Under current legislation, contemporary music channels have at least 25 per cent local content. There is no requirement for music video channels to have any obligations to the local industry at all.

During the Senate committee inquiry into poverty, I was particularly moved by the stories of hardship of Australians working in the performing arts, film and television. For the majority there is insufficient work in any one part of the industry to sustain their livelihoods. Whether they are actors, camera operators, sound technicians or members of the many other professions that contribute to and make possible our film, television and stage industries, they rely very much on being able to work across these various forms of the performing arts. When the production of a movie finishes or the run of a stage show ends, there is not necessarily work available for any of these people. The possibility to work in television or advertising becomes vital—and vice versa. If we drive Australians out of these industries because of decreasing opportunities for them to make their livelihoods therein, the consequences for our country and our culture will be devastating. If we drop below the critical mass required to sustain our cultural industries—

Debate interrupted.

DOCUMENTS

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! The time for this debate has expired. There are 30 government documents listed for consideration on today’s Notice Paper and there is a limit of 45 minutes for their consideration. To expedite the consideration of the documents I propose, with the concurrence of honourable senators, to call the documents in groups of five. Documents called in each group to which no senator rises will be discharged from the Notice Paper. Documents not called on today will remain on the Notice Paper. There being no objection it is so ordered. I call documents 1 to 5.

Human Rights and Equal Opportunity Commission

Debate resumed from 13 May, on motion by Senator Bartlett:

That the Senate take note of the document.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (6.00 p.m.)—The Human Rights and Equal Opportunity Commission report A last resort? National inquiry into children in immigration detention has received a lot of focus out in the community, but I am disappointed to say that it has not received a lot of attention in this parliament. It was tabled either on budget day or on the day after in that short sitting week and was very much subsumed within the focus on what is of course an important document as well—the annual federal budget. We then went into estimates and since then we have been focused on pre-election issues.

This is an incredibly significant report. It is very comprehensive, it is quite long, and it is important because it documents the facts, and amongst all the rhetoric and all the claim and counterclaim about this issue, the facts speak for themselves. The facts cannot be changed, they cannot be swept under the table and, unfortunately for this government, they will not go away. This report details the enormity, breadth, length and extent of harm that has been done to children over a long period as a direct result of government policy and, indeed, I must say, of a legislative regime put in place by this parliament back in the early 1990s against the wishes of the Australian Democrats—a mandatory detention regime. Since that time, it has become
more and more harsh, more and more dam-
ing and more and more cruel.

There have been many forums around the
country examining the details of this report
and the broader issue of children in deten-
tion. The commissioner, Dr Sev Ozdowski,
should be congratulated for his work not just
in putting together such a comprehensive
document but in continuing to try to get the
message out to the community. The govern-
ment must be condemned for such an appall-
ing response to such a significant document
about such an important issue. As I said last
night in the adjournment debate, the priority
we give to children and their protection in
this country is far too low. Whilst we might
all say nice words from time to time, if we
really stop and think about it and take the
politics out of it, we are crazy—in our own
interests, let alone in the interests of a just
community and a just world—if we do any-
thing other than put children at the top of our
priorities, ensuring that policies do not cause
harm to children and that we address any
actions that are causing harm to children
rather than saying, ‘That is an unfortunate
by-product.’

There were three responses from this gov-
ernment and they all need to be condemned.
Firstly, the main response—and this was
confirmed in estimates—was: ‘I don’t think
we’ll make any response to this; it’s all
something from the past. We’ve moved to
get children out of detention now so it
doesn’t matter.’ That is grossly inadequate
once you look at what is in the report.

The second response has been to say that
there are no children left in detention. The
minister said that there is one child left in
detention and that is the child of a boat ar-
ival seeking asylum. She tried to qualify it
very cleverly, as these government ministers
always do, again trying to create the false
impression that there is only one child left,
there is nothing to worry about and they are
all free. The facts are that they are not. Even
as recently as 28 July, the figure that I have
is that 90 children are in secure—that is,
closed—facilities. These are children who
have had their freedom taken away from
them. The minister points to the home deten-
tion places in Port Augusta, which I have
visited, as has my colleague Senator Stott
Despoja. Sure, the environment is nicer, but
the children are not free and they are sepa-
rated from their families. There are still 19
children on Nauru and there are 35 children
in Villawood. The harm being done to them
is absolutely enormous. The simple fact is
that this is causing enormous damage.

The other appalling response from the
government is to say, ‘If we let all the chil-
dren out, that would send a bad message to
people smugglers.’ They are basically say-
ing, ‘We can implement child abuse because
otherwise we will send a bad message to
people smugglers.’ The Democrats’ view is
to strip away all the different views about the
best way to approach this issue. Any policy,
whether it is this one or anything else, that
causes such immense harm and damage to
children cannot be justified and must be
changed. Even though this report is many
hundreds of pages long, that is the simple
message it gives. I seek leave to continue my
remarks later.

Leave granted; debate adjourned.

**Treaties**

*Senator BARTLETT (Queensland—
Leader of the Australian Democrats)* (6.06
p.m.)—I move:

That the Senate take note of the document.

This document is a bilateral treaty between
the Australian government and the govern-
ment of Nauru concerning additional police
and other assistance to Nauru which was
tabled last June. This treaty will be dealt with
by the Joint Standing Committee on Treaties
next Monday so I will not pre-empt that fully, but I do think it is worth drawing attention to because often these treaties are not focused on.

This agreement relates to the range of assistance that the Australian government has been providing to Nauru in relation to the so-called Pacific solution, which involves the detention and imprisonment of a range of asylum seekers and refugees, who have now been on Nauru for nearly three years. It is an interesting document for a range of reasons. I have spoken a number of times about my abhorrence of the Pacific solution and the disgraceful precedent that has been set by Australia in exploiting the economic and social vulnerability of Nauru, using it to take the refugees and asylum seekers that Australia did not want to deal with and putting them beyond the reach of the law and, indeed, even beyond the reach of scrutiny. It has been very difficult, as many people would know, for people to even enter Nauru if they want to visit the detention camps and the detainees there. I have been fortunate to have been allowed into Nauru twice although I think it is outrageous that it should be anything other than a straightforward thing to visit that country—and I have been to the camps and met officials, politicians and other people on Nauru.

As this document says, in the national interest analysis Nauru is on the verge of state failure. It is bankrupt in a very real sense. It is a fact that the income that Nauru receives from the Australian government via the operation of the camps on Nauru is one of the biggest, if not the biggest, sources of income for that entire country. That shows how tied Nauru is to basically doing as Australia wants in this area.

The additional police and other assistance that is part of this treaty, or agreement, in a sense is partly welcome. It is welcome that Australia is providing assistance to Nauru, whether it is with police and security or in other forms. Nauru definitely needs help with governance—there is no doubt about that—but it is being distorted and warped by being done in the context of the exploitation of Nauru to solve Australia’s political problems with refugees as well as providing the precedent of basically facilitating, encouraging and paying Nauru to store people—asylum seekers, vulnerable people, refugees in most cases—out of the reach of Australian law.

Certainly, there is a court action that, as I understand it, is still under appeal to the High Court suggesting that it is in breach of Nauru’s constitution and Nauru’s laws. Australia, in conjunction with New Zealand and other nations in our region, is quite rightly trying to encourage better governance amongst Pacific island nations and to support improved processes, whether it is in the Solomon Islands, Papua New Guinea or elsewhere. To at the same time adopt a process which encourages Nauru to flout the spirit, if not the reality, of its constitution and pay it to do so sends an appalling message to the other nations in the Pacific islands. It totally distorts the assistance that is being given through this particular agreement. So, whilst some aspects may be welcome, the fact that it is being done and that any help provided as a consequence is tied to the appalling precedent of using Nauru as a housing place for refugees to keep them out of the reach of the rule of law means that it is a terrible way to provide assistance. That precedent should never be repeated. The Democrats certainly will continue to push for it to be unwound.

Question agreed to.
That the Senate take note of the document.

The Productivity Commission report No. 28 into first home ownership is a very important one which, again, has received no meaningful debate in the Senate. It is a significant report. It goes to 250-plus pages—more than that when you consider the foreword—and it deals with a fundamental issue: home ownership. Many of us have spoken about the importance of home ownership, the great Australian dream. Why is it that such a fundamental report into what is clearly a major issue—and there are some significant problems with the goal of home ownership—gets so little attention? I would suggest it is because it is in the too-hard basket for both the larger parties. Indeed, as senators will recall, this inquiry was initiated by the government because the pressure regarding the massive increase in the cost of housing and the huge problem that was growing with housing affordability were finally starting to get too much for them—not just with home ownership but with private rental and the difficulty with the length of waiting lists for public and community housing.

The cost of housing across the board continues to be a major problem. It finally got the attention it deserved after literally years of effort by many people in the community as well as by the Democrats in this chamber trying to bring the problem of housing affordability to the attention of the Senate and to the attention of the government, trying to force the government at national level to act. We have asked this federal government questions on this in question time. The repeated approach of ministers has been to say that the federal government’s role in housing affordability is to give a bunch of money to the states, to pay rent assistance to welfare recipients and to keep interest rates low because, if interest rates are low, that makes housing affordable.

Obviously if interest rates are low it is easier to afford a house than if they are high. I acknowledge that and I am certainly not advocating that they go up, although some of this government’s economic irresponsibility in recent times is making that a probability and it is quite possible that they would have gone up if we did not have an election pending. Either way, if you look at the statistics—and some of them are contained in this report—you will see that, even though interest rates are far lower, thankfully, than they were during the height of the mismanagement of the Keating era, other aspects and impacts on the housing market, through changes to the tax system in particular, have led to housing affordability problems being almost on a par with what they were when housing lending interest rates were at a peak of 17 or 18 per cent all that time ago.

It is great that interest rates are low but the cost of buying a house and the size of a loan have grown and grown. The size of private debt in this country is now getting to chronic proportions and a large part of that is to do with the debt tied up in homes—in first homes in particular—and that is flowing through in many other ways. The leverage that people are now getting from their homes to borrow further is adding to that debt escalation. This is really becoming a serious issue. It is another example of where, for all this government’s talk about being good economic managers, they are letting some areas get dangerously out of control.

In relation to home ownership and housing affordability, the government was under pressure. Finally the recognition was building and there was growing media focus on the cost of housing and its unaffordability. What did the government do? They pulled out the tried but true method: ‘We’ll have an inquiry. We’ll refer it to the Productivity Commission.’ That seemed to satisfy the media and other people. They looked at the
issue and they did a good job, I think. They received a lot of useful submissions, brought out an interim report, took more comments and brought down the report. What did we get immediately from the government? They said, ‘We’re not going to do that.’ They ruled it out straightaway.

There is no national housing strategy as is clearly needed. The Democrats continue to say that we just need some national leadership. There is no one single solution to the issue of housing affordability but if we could just get some leadership and recognition that it is a problem that needs to be addressed we would go a long way forward. We need to look at the tax regime—capital gains tax and negative gearing—yet both the major parties have put that in the too-hard basket. They have ruled it out straightaway. They will not even look at tinkering or modifying it in any shape or form. That condemns more and more Australians to continuing to struggle with the growing unaffordability of housing. The Prime Minister says that he has never had anybody complain to him and say, ‘The value of my house has gone up.’ No, they probably have not but they probably should have said to him, ‘I can’t afford to buy a house because the price has gone up so high,’ or ‘My rent has gone up because the price of the house has gone too high for the owner.’ I seek leave to continue my remarks later.

Leave granted; debate adjourned.

**Consideration**

The following orders of the day relating to government documents were considered:

Department of Foreign Affairs and Trade—Iraq: The path ahead—Discussion paper, June 2004. Motion of Senator Stott Despoja to take note of document agreed to.


Department of Communications, Information Technology and the Arts—Report—Review of the operation of the universal service obligation and customer service guarantee under section 159A of the Telecommunications (Consumer Protection and Service Standards) Act 1999, 7 April 2004. Motion to take note of document moved by the Leader of the Australian Democrats (Senator Bartlett). Debate was adjourned till Thursday at general business, Senator Bartlett in continuation.

**National Handgun Buyback Act 2003**—Agreement between the Commonwealth of Australia and the States and Territories concerning the accountability and administrative procedures for the handgun buyback, 2003 (Amended). Motion to take note of document moved by the Leader of the Australian Democrats (Senator Bartlett). Debate was adjourned till Thursday at general business, Senator Bartlett in continuation.

Treaty—**Multilateral**—Text, together with national interest analysis and annexures—WIPO Copyright Treaty, adopted by the Diplomatic Conference at Geneva on 20 December 1996. Motion to take note of document moved by the Leader of the Australian Democrats (Senator Bartlett). Debate was adjourned till Thursday at general business, Senator Bartlett in continuation.

Treaty—**Multilateral**—Text, together with national interest analysis and annexures—WIPO Performances and Phonograms Treaty, adopted by the Diplomatic Conference at Geneva on 20 December 1996. Motion to take note of document moved by the Leader of the Australian Democrats (Senator Bartlett). Debate was adjourned till Thursday at general business, Senator Bartlett in continuation.

Treaty—**Multilateral**—Text, together with national interest analysis and annexures—Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict, done at New York on 25 May 2000. Motion to take note of document moved by the Leader of the
Australian Democrats (Senator Bartlett). Debate was adjourned till Thursday at general business, Senator Bartlett in continuation.

United Nations—Optional Protocol to the International Covenant on Civil and Political Rights—Human Rights Committee—Communication—No. 920/2000—Views. Motion to take note of document moved by the Leader of the Australian Democrats (Senator Bartlett). Debate was adjourned till Thursday at general business, Senator Bartlett in continuation.

United Nations—Optional Protocol to the International Covenant on Civil and Political Rights—Human Rights Committee—Communication—No. 1080/2002—Views. Motion to take note of document moved by the Leader of the Australian Democrats (Senator Bartlett). Debate was adjourned till Thursday at general business, Senator Bartlett in continuation.

United Nations—Optional Protocol to the International Covenant on Civil and Political Rights—Human Rights Committee—Communication—No. 1239/2004—Decision. Motion to take note of document moved by the Leader of the Australian Democrats (Senator Bartlett). Debate was adjourned till Thursday at general business, Senator Bartlett in continuation.

Treaties—List of multilateral treaty actions under negotiation, consideration or review by the Australian Government as at June 2004. Motion to take note of document moved by the Leader of the Australian Democrats (Senator Bartlett). Debate was adjourned till Thursday at general business, Senator Bartlett in continuation.

Inquiry into Australian intelligence agencies—Report by Philip Flood AO, July 2004. Motion of Leader of the Australian Democrats (Senator Bartlett) to take note of document called on. Debate was adjourned till Thursday at general business, Senator Bartlett in continuation.

General business orders of the day nos 4, 6 to 8, 10 to 14, 22, 23 and 26 to 29 relating to government documents were called on but no motion was moved.

COMMITTEES

Privileges Committee

Report

Debate resumed from 3 August, on motion by Senator Robert Ray:

That the Senate—

(a) endorse the finding contained at paragraph 1.23; and

(b) adopt the recommendation at paragraph 1.30,

of the 119th report of the Committee of Privileges.

Senator MACKAY (Tasmania) (6.18 p.m.)—I speak to the 119th report of the Privileges Committee regarding the motion I referred to that committee of possible false or misleading evidence before the Environment, Communications, Information Technology and the Arts Legislation Committee. By way of background, I referred this matter to the Privileges Committee after Telstra officers Mr Bill Scales and Mr Anthony Rix provided evidence at the February estimates that the high rate of faults in the Telstra network was due largely to heavy rain and not network deterioration. This evidence appeared entirely contradictory to an internal Telstra document tabled in the House of Representatives by Mr Lindsay Tanner, which stated that the growth in fault rates appeared to be due to general network deterioration and reduced rehabilitation activity on the network. I note at this point that a references committee report was brought down today which said precisely that.

The Privileges Committee concluded that no contempt should be found because there was no intention to mislead. However, there are several aspects of the report that I would like to comment further on. Firstly, the committee accepted that I found the evidence of Mr Rix in particular to be in direct contra-
diction to the information contained in the internal Telstra document. The committee accepted that the allegations I raised were not trivial and that there was no other remedy available in this case as the protection of the committee’s operations was entirely a matter for the Senate. Importantly, the committee found that:

... a great deal of contextual and explanatory material is required to support a thesis that Mr Rix’s evidence and the internal Telstra document are not inconsistent.

It further said:

... it took several pages of technical detail, additional context and numerous statistical attachments to clarify that the evidence of Mr Scales and Mr Rix was about quite specific technical areas that could be distinguished from the situation covered in the internal Telstra document.

The committee seems to be saying here that the only way Telstra could explain the prima facie inconsistencies in evidence was to load the Privileges Committee with a massive amount of explanatory material. This concerns me somewhat as I believe that the evidence provided in estimates hearings should be clear and concise and should be able to be taken on face value rather than requiring a mass of explanatory material down the track just to contextualise the evidence and to iron out any inconsistencies. I do not believe this reflects the intention of the estimates hearing process.

My second concern relates to the finding of the committee that:

... with regard to the apparent contradiction between Mr Rix’s evidence and the internal Telstra document, there is no evidence that Mr Rix was aware of the document, let alone that he chose deliberately to proffer apparently contradictory evidence at the additional estimates hearing.

As such, in the absence of any evidence of an intention to mislead, the committee had no choice but to conclude that no contempt could be found.

This aspect of the report concerns me, as the test for the relevant intent involves a subjective determination of knowledge which, as shown in this case, can simply be denied to avoid responsibility. We do not know with any certainty whether Mr Rix was aware of the contradictory internal document; nor do we know whether he intended to provide contradictory evidence to the estimates hearings. However, what we do know is that those officers who attend estimates hearings are expected to have knowledge of the issues upon which they speak or answer questions.

The fact that the Privileges Committee has not found the requisite intent to be satisfied raises the question of whether it is in fact possible to do so. It appears that, in the absence of an outright admission of guilt, intention to mislead or to provide false evidence is impossible to prove. Perhaps the rules of the Senate need to be reviewed with respect to the test applied in such circumstances, to allow for an alternative test of reasonableness.

Further, in his submission to the committee, Mr Scales rebutted my claims on the basis that he had qualified with ‘I think’ his estimates response that the faults over that period were as a result of the weather. I make the point that the findings in this Privileges Committee report ought not to be seen by Telstra as giving tacit approval to such qualified answers being an excuse for inaccuracies in evidence; nor should this be seen as a method of providing a convenient sidestep to avoid questions. As the Privileges Committee noted in its findings:

The integrity and trustworthiness of evidence are essential for the proper performance of a committee’s functions. If evidence given to a committee cannot be relied upon, the basis of that committee’s conclusions may be called into question and its ability to carry out its functions may be compromised.
I hope that Telstra officials take note of these comments and consider more carefully the answers they provide.

There is no real excuse for such qualified answers in the estimates hearings, due to the common practice of taking questions on notice when the answers are not known by those in attendance—provided we get them back in a reasonable time, of course. Furthermore, the vast number of officials that Telstra and other agencies—particularly Telstra, with its resources—can and do bring to the hearings ought to ensure that people with a broad range of expertise and knowledge are present and able to respond to a wide variety of questions.

It is reasonable for senators to presume that the answers they are given are accurate. Statements made by the group managing director are, it is reasonable to presume, more likely than not to be accurate, irrespective of whether they are qualified by ‘I think’ or ‘I presume’ or whatever. However, as we have seen in these circumstances, that is not the case. Perhaps qualified answers need to be rejected by senators in future estimates hearings.

My third concern relates to the recommendations of the committee that Telstra report to the Senate on measures it has implemented to ensure that senior officers are appropriately trained in their obligations to parliament. The committee noted in its report that this is not the first time officers of Telstra have come to the attention of the Privileges Committee in the context of false or misleading evidence and that in its 64th report the committee had observed that senior officers of Telstra appeared inappropriately equipped to deal with their accountability responsibilities. So this is not the first time Telstra has been asked to go back to school to learn the process.

However, despite having been through all this before, Telstra officials are, I believe, still lacking in this area. I am sceptical about these latest recommendations being acted on, as I believe that Telstra officials have little regard for their responsibilities to the parliament. In particular, I believe they have a complete disregard for the estimates process. I do not make this statement lightly. I make it in the light of comments made by Telstra officials themselves. On 1 July last year, Mr Scales addressed a packed meeting of 1,000 Telstra employees in Melbourne. In that speech he made a reference to the operation of Senate estimates committees which leaves little doubt in my mind as to his opinion of our Senate and estimates processes. According to a transcript of the speech, he said:

Senate Estimates ... is a somewhat arcane involvement where you almost have to suspend belief for a few days when you go there, where what happens is that you sit there in front of what are effectively 7 or 8 Judge Judies and what they do is that they then ask you a range of questions and as you answer a question there is someone at the back of you on a PC that’s composing another question for the various ... Judge Judies to ask you. He went on:

And the whole intent of the politicians that are there is to try and find a way over those 11 hours for us to make that phrase that gets turned into the headline that becomes news.

I believe that Mr Scales was totally out of order in making these comments, which indicate both a lack of understanding of Telstra’s parliamentary responsibilities and a complete disregard for the accountability provisions which apply to Telstra in exactly the same way that they apply to other government agencies.

In fact the Privileges Committee made the point that the partial privatisation of Telstra does not affect the expectations of the committee or of the Senate that senior officers of
Telstra have precisely the same responsibility as officers from government departments. I think Telstra do make that distinction. They have often used the protection of commercial-in-confidence and the fact that they operate in a competitive market as a reason for not providing advice to Senate estimates. They do make that distinction, and I can provide evidence of that.

There were 1,000 people there when Mr Scales made that speech. A video was made of it, and it could well be that another 10,000 Telstra employees have now seen it and have the same view as Mr Scales with respect to the processes of our parliament and our Senate. I think that that speaks volumes. I urge Telstra to be far more careful in future. I urge Telstra to be truthful and unqualified in its responses to the Senate and to fulfil its obligations as a company that is majority owned by the Australian people.

Question agreed to.

Economics References Committee
Report

Consideration resumed from 24 June, on motion by Senator Stephens:

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (6.28 p.m.)—I rise to speak to the report of the Senate Economics References Committee inquiry into the structure and distributive effects of the Australian taxation system. I recommend this report as reading for anybody who is serious about understanding some of the details and the complexities of our taxation system. It is something that generates a lot of heat now and again in the public arena around specific areas but, as with many other things, there are always a few people who are happy to make broad-brush statements without really having any understanding—or even an interest in understanding—some of the complexities of the issue.

It is pleasing to see a Senate committee report that in effect is unanimous and predominantly provides an outline of a range of public policy issues and perspectives on what is an important issue. We all have to pay tax. We need to ensure that that occurs, and that the system operates fairly and that it enhances rather than detracts from the fair distribution of wealth in the Australian community. Looking at the distributive effects of the Australian taxation system is a very important task but certainly not an easy one. As my colleague Senator Murray said in his remarks on the report, in the development of public policy and political party guidance it is vital that senators and their parties be as fully informed and as current as possible on pressing issues of national interest. The insights in this report will influence outcomes in tax policy in the future, and I urge people who are interested to examine the report because it will influence debates about tax policy in the future.

It is certainly the view of the Democrats that we have a responsibility to be as fully informed and as current as possible on important issues of public policy, such as taxation. Even though it can be time consuming and of no great electoral benefit to spend time in these committees examining this sort of detail, I believe we have a responsibility when we are elected to the parliament, and to the Senate in particular, to not just try to get our faces on television whenever we can but to have an understanding of the issues put before us in public debate, and particularly in legislation. Tax law is enormously complex. I do not think many of us in this chamber would suggest that we have a comprehensive understanding of it. Perhaps there might be one or two, but the number would certainly be in single figures. Taxation affects every Australian, so we have a responsibility to be as informed as possible and to rely on, or to make use of, the expertise in the community.
This inquiry received submissions from a large number of people in the community, both from individuals and from a wide range of organisations such as the Shop, Distributive and Allied Employees Association, the Municipal Association of Victoria, the Alcohol and Other Drugs Council, the Festival of Light, the Western Australian Farmers Federation, the Australian Council of Social Services, the Women’s Action Alliance and the Real Estate Institute, all of which have different interests and different perspectives on the tax system.

I would like to touch briefly on a couple of issues. The committee dealt with a number of areas, and one that I think is important and that needs further debate is the taxation of superannuation and other benefits of retirees. The committee acknowledged that there needs to be more examination of the tax regime for superannuation and post-retirement incomes, because there are different strands of thought. Some believe that superannuation is taxed too harshly and that we need to remove taxation from that area as much as possible to maximise savings, and others believe that many retirees have too favourable tax treatment and that it is more generous than for working taxpayers on the same income. So we have to examine those different perspectives and balance them, and more debate and examination of those issues is needed.

Effective marginal tax rates has been talked about off and on. There are problems for people on lower and middle incomes, who effectively end up paying more tax than people who are on higher incomes because they lose so many benefits and concessions and can end up losing 80c or 90c of each extra dollar they earn. That is obviously a massive disincentive as well as being unjust. It is a difficult area and very hard to address fully without creating knock-on effects, but it really needs a lot of examination. The committee specifically recommended that, from the range of areas that could do with further and more specific examination, an inquiry into the effective marginal tax rates in the Australian taxation system should be the first cab off the rank. I certainly acknowledge that. Other taxation areas the committee recommended the Senate should consider referring for more focused examination are tax avoidance and the erosion of the tax base, tax expenditures and grants, intergenerational issues—a very important area if we are looking at equity—the tax treatment of self-employed workers and wage-earners and the tax treatment of superannuation and retirement incomes, which I have already mentioned. That is not a comprehensive list but the committee specifically singled out those areas out as potentially benefiting from further examination by subsequent inquiries, and one would imagine that would be after the election. They are recommendations that I back and I draw them to the attention of the Senate.

There is one particular aspect and the underpinning rationale behind it that I would like to reflect on briefly. The committee talked about and looked at the impact of the tax system on Australian families. It is important that we do look at the impact of a range of policies on the family. Again, there was a range of views about two-income families, single-income families, dependent partners, dependent children and how the tax system should recognise the different household combinations that we have. I believe it is important to support the family unit. The wider the range of family units, supportive relationships and households that we have the better it is for our society in many ways, and we do not want a tax system that undermines supportive relationships. There is a statement in the report that implies that it is important to examine efforts to increase Australia’s birth rate by encouraging people to
have more children and to have them earlier and that that should be underpinned by changes to the tax system to encourage and reward the decision to have children. I know this is a common view but I believe it is one that we need to think about more closely. There are many, many people in the world, and whether we need to encourage Australians to have more children when there are still plenty of people who can come here through immigration is something we need to examine, even if you are looking at it solely from a dollar and cents perspective.

It is interesting to look at the approach of this government, which has been putting more and more disincentive on family migration, family reunion and refugees because of the supposed costs given that they get sicker and do not earn as much money as people coming here on business visas. But at the same time there are suggestions that we should be spending money and providing incentives in various ways to encourage people to have more children, which is also a cost. I am certainly not saying that we should not be supporting people who have children. It is very important that families with children do have adequate support to make sure that those children are nurtured properly and have a healthy, supportive childhood. But we are talking about spending more money to encourage people to have more children at the same time as we are complaining about people migrating here for family or humanitarian purposes and we are creating disincentives for them to do so.

The impact of the total population on the globe is the same wherever the people are on the globe. They might chew up more resources in different parts, depending on how wealthy they are, but I think we are better off encouraging a redistribution of the total number of people on the planet rather than encouraging more people to be on that planet. That is an aspect that we do need to think more clearly about before we spend more money or provide more incentives for people to have children. That is not the same as saying we should not be supporting people who already have them, but bringing in more programs to encourage more children is something that needs more thought. (Time expired)

Question agreed to.

Corporations and Financial Services Committee
Reports

Debate resumed from 15 June, on motion by Senator Murray:

That the Senate take note of the reports.

Senator BARTLETT  (Queensland—Leader of the Australian Democrats) (6.39 p.m.)—These two reports by the Parliamentary Joint Committee on Corporations and Financial Services are on what has been called CLERP, the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill. That bill has been dealt with by the parliament, so I certainly will not be reflecting on or going back over the specifics of that legislation—we have spent enough time on it already—but I do think it is important to draw attention to the vast body of work contained in these two reports.

The area of corporate accountability requires close examination. It is a complex area. There is a balance between adequate accountability, adequate transparency and indeed adequate empowerment of people in the corporate sector and shareholders, and the need to not put in place too many restrictions that would hinder corporations from being able to generate wealth and generate employment in particular. So it is always a difficult balancing act. The work that this committee does deserves more examination and recognition than it sometimes gets.
You get a lot of concern and splashes of attention when there is a major corporate failure, such as HIH, One.Tel or Ansett, or apparent or alleged major corporate misbehaviour, such as appears to be the case with James Hardie. Without pre-empting the final findings of the inquiry that is currently under way in New South Wales, evidence has certainly been presented that puts a strong case forward that there has been deliberate behaviour. Whether or not it is legal we shall find out, but it certainly appeared to be trying to misuse the law to avoid liabilities that would otherwise be there.

It is natural for people to express lots of concern and outrage when these things happen but the fact is that committees like this doing the hard yards with regard to the fine detail of the legislative regime and its potential failures actually address those sorts of issues. If it were not for the work of committees like this, we would have far more of the HIHs and potentially the James Hardies than we have. Naturally, you can never tell what disasters have been prevented, because they do not happen, but it should be acknowledged that, because of the work that these sorts of committees do and indeed the Senate does, some of these things are prevented and some occurrences are not worse than they would otherwise be.

When people start talking about what sorts of things may need to be done to ensure that James Hardie meets its liabilities and responsibilities, it is the Corporations Law and this area that people talk about and turn to. For that reason, the work that is done by these committees should be recognised. It is very easy to get out there after the fact, slam the entire corporate sector and say that they are all terrible people who should be pulled into line and that anybody who has anything to do with them or has had anything to do with them is somehow or other suspect. That is an easy thing to do but, unless you deliberately and specifically have an approach of trying to attack the corporate sector and the business activity and employment that it generates, all that does is make life more difficult for the vast majority of companies, which are trying to provide employment to generate prosperity and wealth.

If you look at most of those collapses, such as HIH and One.Tel, and allegations of misbehaviour, such as may be the case with James Hardie, you see that it is very clear that in most of those cases it is people deliberately doing something that they know is dodgy and could well be in breach of the law. In many cases they go to great lengths to try to find ways to circumvent the law. It is people who are deliberately doing the wrong thing and who are deliberately trying to get an unfair advantage who we need to be getting at because everybody else is trusted to do it the right way, and they are massively disadvantaged.

The committee came down with two reports because this is such a complex area. The first report contained 27 recommendations and the second, 34. I think there were eight different public hearings, and there were 65 submissions—again, not just from a few stockbrokers and accounting firms but also from a range of community organisations. I note that the Australian Conservation Foundation, for example, appeared before the committee at one stage. There are a lot of people in the community sector who also have an interest. That is important, because I think more and more people are recognising that we are better off working with the business community—as we do and should do with all different parts of the community—to try to advance things we are trying to achieve, whether they be social equality, more employment or better environmental protection, such as the Conservation Foundation is doing. That sort of constructive approach of not just the committee members
but indeed the people that participated in these inquiries should be noted. Whilst there were differing views from different members of the committee about aspects of the things that were examined, there was a lot of unan-
iminity.

Senators would know that the CLERP 9 legislation has passed this chamber with sig-
nificant amendments and significant im-
provements. I think all of us acknowledge that the work is not done; there is more still to be done. But it provides a good foundation for greater accountability in the corporate sector, and from that flows greater opportu-
nity for Australians to gain employment and generate wealth. If we are talking about ad-
dressing the other issues that are of concern to the Democrats—such as better environ-
mental protection and stronger social ser-
vices—then having wealth and employment generated is an important part of that. I think that is sometimes forgotten by some who talk about the need in those areas.

These reports cover a wide range of areas: whistleblowing, executive remuneration, shareholder votes on remuneration reports, infringement notices, liability for breaches of the continuous disclosure provisions, share-
holder participation, conflicts of interest, political donations and disclosure periods. They are all areas of importance, and they are all areas that are technical. I think it is important to acknowledge the work that is done, because it is an area that will continue to be focused on whenever there is a prob-
lem. As I said, it is an area that is being fo-
cused on with the likely problems of James Hardie.

I place on record that the Democrats are committed to ensuring that any appropriate activity is tackled and addressed and that people do not miss out on what they are enti-
tled to. We will support any changes to the Corporations Law that are needed to do that. We will do that from a foundation of under-
standing the law, not just making wild asser-
tions and wild allegations about anybody and everybody. Unless you have that foundation and understanding, you really are not likely to do it properly—either you will not provide the assistance needed to those who have suf-
fered an injustice or you will end up catching in the net a whole lot of people that you do not need to catch.

That is why the Democrats put in the work. Certainly my colleague Senator Murray puts a lot of work into these areas, as do other senators—Senator Conroy in par-
ticular—from other parties. I also pay tribute to Senator Chapman, the chair of the com-
mittee, who has put a lot of energy into this area, because it is crucial to have an under-
standing of what you are talking about when you are dealing with the law. You cannot just get away with making changes in this area on the basis of righteous outrage. It is an area where you need to focus on the detail. It is an area where a lot has been achieved, but there is work still to be done. I reaffirm the De-
mocrats’ commitment to continue to work with the entire community, including the corporate community, to get the best results.

Question agreed to.

Ministerial Discretion in Migration Matters Select Committee Report

Debate resumed from resumed 31 March 2004, on motion by Senator Ludwig:

That the Senate take note of the report.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (6.49 p.m.)—This report, from a committee chaired very ably by Senator Ludwig—it seems so long ago now—is from an inquiry called, in a fairly derogatory way, the ‘cash for visas’ inquiry, which was generated by allegations against Minister Ruddock. I spoke about those when the report was ta-
bled. From my point of view and the Democrats’ point of view, the far more important area was the out-of-control nature of the ministerial discretion regime under the Migration Act. I want to speak to this report in conjunction with documents that were tabled on Tuesday this week in the Senate.

The area of ministerial discretion is contained in a range of areas in the Migration Act. It gives the minister pretty much absolute power to make a positive decision if they feel it is in the public interest, and that is about all they need to say. What the inquiry and this report clearly demonstrated is that there is simply not enough transparency in that process. The documents that were tabled earlier this week demonstrate that more clearly than anything else, because they demonstrate the so-called accountability component of the ministerial discretion. That is meant to ensure that there is adequate understanding of the circumstances where ministerial discretion is used so that the Senate and the public can be confident that that power is not being misused or abused. Of course, that was the concern of the allegations against Minister Ruddock—that the power of ministerial discretion was being misused. They were in part allegations that the powers were being exercised in response to donations. I repeat my statement from earlier this year that I saw no evidence that the former Minister for Immigration and Multicultural and Indigenous Affairs had done that—but that does not detract from my concerns about the open-ended, limitless potential of the ministerial discretion power.

The documents tabled earlier this week show that. They were the documents outlining the uses of this ministerial discretion for the first six months of this year. There were a range of areas. There were two exercises of discretion under section 33. A couple of times in six months seems fairly okay. Discretion under section 91L was used once. That seems okay. Discretion under section 345 was used once. Discretion under section 91L was used in conjunction with another discretion, under section 48B, for a mother and her child. There is a discretion under section 48B which basically allows somebody who has put in a claim for refugee status and been refused to put in a new one. They cannot do that under the act at the moment unless the minister uses her discretion. That discretion was exercised 14 times in the first six months of this year.

There is also a discretion under section 351, where a person that gets an unfavourable decision in the Migration Review Tribunal can have that decision set aside by the minister and have it replaced with a more favourable decision, usually the grant of a visa—as I understand it, whatever visa the minister feels is appropriate. That discretion was used 99 times in the first six months of this year. Each of those is a single piece of paper, some with literally less than 10 lines on them detailing what the circumstances were. At least in circumstances under section 351, which are decisions before the Migration Review Tribunal that are being set aside, there is usually a mention of the person’s circumstances. In the one that I have grabbed at random, the person had been married to an Australian citizen for six years, had four Australian citizen children and had substantial support from the community. The minister felt that, even though they did not meet the entitlements under the act according to tribunal, they should get a spouse visa. That sounds good. We do not know where they are from or any other detail. There is no way of knowing whether or not that is accurate. There is no way of digging underneath. But at least it gives some sort of idea as to why. There were 99 of those in the first six months of the year.

Section 417 is for decisions of the Refugee Review Tribunal not to grant people a
refugee or protection visa. We had 234 of those in the first six months of this year. Of course I am pleased that the minister is granting people protection in Australia. As many senators would know, I talk long and often about not providing enough assistance or help for refugees seeking protection in Australia. But these 234 different, separate uses of the ministerial discretion in this area are virtually word for word identical. In fact, just flipping through five at random, they are word for word identical. They give absolutely no indication of the circumstances. The only difference in them is that some of them get protection visas, some get spouse visas and some get other visas. The minister does not have to give a refugee visa, even though the application before the refugee tribunal was for a protection visa. The minister can give any visa. That is about the only difference. We had 234 of those in the space of six months.

I do not know, but I suspect a lot of them were the East Timorese case load, where people from East Timor had been in Australia for many years, had been refused refugee status through a process which was absolutely disgraceful—but I will not go into that here, because I have spoken on it before—and had to go to the Refugee Review Tribunal and then had to go to the minister to seek the minister’s discretion. It is an incredibly inefficient and very expensive process. It chews up a lot of time and energy in the department, when it is overstretched. It causes immense stress to the people who literally have their futures in the hands of the minister. There is no scope for appeal. If the minister does not want to exercise her discretion, bad luck. People who know the circumstances of those East Timorese would know how compelling their cases were, but there is still no scope to appeal it if the minister decided not to act.

It relied on a lot of people in the community lobbying, pressuring and pushing. In theory that should not make any difference, because the minister should just decide to do it anyway. But of course it makes a difference. Not only do you have people going through hoop after hoop just to get to the minister so she can potentially exercise her discretion—and they and their families are stressed out over an enormous period of time—but you also have all the community organisations that have to support them in the meantime. In many cases they have no access to community support, including any sort of Centrelink payments or Medicare, whilst they are waiting. As soon as their Refugee Review Tribunal negative decision comes down, that is it—all that support is cut off in many cases. So you have that extra stress on the community, on all the people trying to lobby for them and help them. It is a ridiculously inefficient process.

Then at the end of it you have no idea whether it has succeeded, why it has succeeded or why it did not succeed. You just get a piece of paper from this great wad of paper where they are all the same. There are no identifying criteria at all and no indication of what country they are from. You would not know if these were for the East Timorese or not. We can try and ask in estimates; we might find out. That is meant to be transparency and accountability—and the minister is literally holding someone’s life in her hands. These are refugees in fear of being sent back to persecution. They are given protection visas, which means that they meet the persecution test, but there is no way of compelling the minister to do that. It is a ridiculous system. I am not alleging corruption or malpractice. I want as many people who do not succeed at the tribunal to be helped as possible. But we have got to have a better system. This is simply an absurd situation.
A total of 352 different exercises of discretion in six months is about two a day. The minister is supposed to do this personally. She is supposed to look at all the details. What else has the minister got time to do? She is supposed to be minister for Aboriginal affairs as well as this. To think she can properly examine this many cases—and these are just the successful ones; imagine how many unsuccessful ones she has had to look at—is just a farce. There has got to be a better way. That is what this report is about. I really urge the government and the minister to look at it. If the government changes after this election, I urge the Labor Party to look at it, because it is simply a joke.

Question agreed to.

Consideration

The following orders of the day relating to committee reports and government responses were considered:

Free Trade Agreement—Australia and the United States of America—Select Committee—Interim report. Motion of the chair of the committee (Senator Cook) to take note of report agreed to.

Native Title and the Aboriginal and Torres Strait Islander Land Fund—Joint Statutory Committee—Report—Examination of annual reports for 2002-03 in fulfilment of the committee’s duties pursuant to s.206(c) of the Native Title Act 1993. Motion of Senator Ferris to take note of report agreed to.


Employment, Workplace Relations and Education References Committee—Report—Beyond Cole: The future of the construction industry: confrontation or cooperation? Motion of the chair of the committee (Senator George Campbell) to take note of report agreed to.

Community Affairs References Committee—Report—Hepatitis C and the blood supply in Australia. Motion of the chair of the committee (Senator McLucas) to take note of report agreed to.

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Near neighbours—Good neighbours: An inquiry into Australia’s relations with Indonesia. Motion of Senator Ferguson to take note of report agreed to.

Privileges—Standing Committee—118th report—Joint meetings of the Senate and the House of Representatives on 23 and 24 October 2003. Motion of the chair of the committee (Senator Ray) to take note of report agreed to.

Community Affairs References Committee—Report—A hand up not a hand out: Renewing the fight against poverty. Motion of the chair of the committee (Senator Hutchins) to take note of report agreed to.

A hand up not a hand out: Renewing the fight against poverty. Motion of the chair of the committee (Senator Hutchins) to take note of report agreed to.

DOCUMENTS

Auditor-General’s Reports

Report No. 4 of 2004-05

Senator LUDWIG (Queensland) (7.01 p.m.)—by leave—I move:

That the Senate take note of the document.

Audit report No. 4 of 2004-05, Performance audit: Management of customer debt: Centrelink, might perhaps have been better titled ‘Mismanagement of customer debt: Centrelink’. I want to take you back to a statement made by Mr Wayne Swan, the shadow minister for family and community services, in May 2003. He said:

A Howard Government policy urging families and social security recipients to repay debts with high interest rate credit cards is irresponsible and will plunge many into a never-ending cycle of debt.

Mr Swan saw what the government refused to acknowledge: that there was a problem with its family and community services portfolio. To add insult to injury, families were
being asked to repay the debt on credit cards, even when the overpayment occurred through no fault of their own. Families were expected to not only bear the risk of a system that could not get their payments right but also bear the interest on the debts that resulted from that. Centrelink’s own web site revealed that there was an option to pay by credit card. This was being put to families before other more responsible options, like ongoing debt deductions from future benefits. The report into debt management by Centrelink has vindicated Labor’s claims that the system is unfair and inflexible. The report found that, as at 30 June 2003, outstanding customer debt represented approximately one-third of one per cent of relevant Centrelink payments—approaching $1 billion at 30 June 2003, having increased by around 20 per cent over that of the previous two years. This figure alone shows the inability of the Howard government to manage its family and community services system. This is a government which touts its economic credibility and money-handling skills. Perhaps it would be fair to say that $1 billion in debt recovery cannot be called money managing but rather gross negligence by the minister in charge.

Senate estimates figures show that the Howard government raised almost $39 million in Centrelink debts against more than 15,000 pensioners for overpayments resulting from government mistakes. I will say that again: the overpayments reported during this period were settled with credit cards. This is a disgrace that the government would coerce pensioners and low-income owners into using credit cards with annual interest rates of around 15 per cent to settle debts rather than look at better and more sensible options. Options other than linking credit card payment options to the Centrelink web site or encouraging pensioners or people with debts to use credit cards should have been canvassed. In 478 cases the government began legal action to recover money—that is, the government is prosecuting benefit recipients who did not, as I understand it, rort the system but rather were victims of it. That is not to say that the
money should not be recovered, but it is a case of how you recover it. I think the Australian National Audit Office report should really be renamed ‘The mismanagement of customer debt by Centrelink’.

The clawback of pensioner debts follows the $600,000 of annual debts raised as a result of overpaying family tax benefits each year, but this report was not inclusive of those debts, something for which the government can be thankful. In fact, I encourage the Australian National Audit Office to go back and have a look at it in the next year, when those figures will start to work through. The government are experts at paying families and pensioners the wrong amount and then clawing it back from them when they can least afford it. Another disturbing aspect of the ANAO report is that Centrelink does not monitor customer satisfaction with its debt management services. It simply does not want to know. That finding really highlights the way Centrelink has mismanaged customer debt. They do not want to know how the process has been working. The sheer volume of overpayments made each year by Centrelink, and the subsequent complaints of unscrupulous debt recovery practices made to local members, make this service essential in my view. In fact, it would be fair to say that the government’s handling of the family and community services portfolio is nothing short of a shambles. With such a level of debt raised against Centrelink recipients, perhaps performance monitoring of this service is a deliberate oversight by the government. Centrelink does not fully measure its debt management resourcing and costs to ascertain relative productivity and cost efficiency and to achieve future savings. That is what the report says.

It seems to me that this government, while quick to rake back any overpayments, ignores how this is being done and at what cost. Now we have waivers available to people who incur a debt of no more than $50, because for a debt of between $51 and $100 it costs Centrelink more than the actual debt to recover the money. Cost efficiency and savings? I doubt it. The ANAO found that Centrelink has improved the profile and importance of debt prevention in the agency by clearly articulating its objectives in the debt servicing strategy from 2001 to 2004. Whilst I have found, at least to balance my view, that there is admirable accounting of how to prevent a debt in real terms, it does nothing to alleviate the number of debts being accrued by non-suspecting and lawful clients. In fact, it could be said that many people have been discouraged from applying for benefits and assistance because of the very real possibility of incurring a debt not of their making.

The report further found that Centrelink’s debt services team was facing difficulties in coordinating debt prevention and management initiatives across the agency, including monitoring the performance of debt prevention activities and encouraging areas to adopt better debt prevention practices. Things like training call centre operators to an adequate level could assist in this process. Constituents of mine recently applied for top-up payments of their family tax A and B. Because their family had grown so large that they had to move from their home to rented accommodation, these constituents applied for rental assistance back in February but were rejected. Upon receiving their top-up payment, they were advised by a call centre operator that they were entitled to rent assistance, so they applied for it. After being rejected, they made several more calls to Centrelink and received different advice on each occasion. Of course, then they came to my office and pointed out the different advice they had been receiving. To improve leadership and coordination of debt prevention and
management initiatives by the debt services team, Centrelink may benefit from reviewing the implementation of debt prevention activities across the network to ascertain better practice. This report goes on and there are a few other areas I would like to explore. I seek leave to continue my remarks.

Leave granted.

**Auditor-General’s Reports**

**Report No. 2 of 2004-05**

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (7.11 p.m.)—I move:

That the Senate take note of the document.

This is the Auditor-General’s Audit Report No. 2 of 2004-05—Performance audit—Onshore compliance—Visa overstayers and non-citizens working illegally: Department of Immigration and Multicultural and Indigenous Affairs. It is an important report to highlight for a number of reasons. Unfortunately, in many ways a lot of the debate in Australia on immigration in the last few years has been focused on refugees, in particular just a small component of refugees, those who arrive in boats seeking protection onshore in Australia. That is an incredibly small number of people when you are talking about the number of people who come under the scope of the immigration department in one way or another. At its absolute height in 2000-01 we had a little over 4,000 people arriving by boat without visas, seeking protection. Since 1989-90 we have had under 13,500 in total. So in close on 15 years, 13,500 people arrived by boat seeking protection. I do not dismiss that as not deserving any focus at all but, to get a sense of proportion, as this report says, the immigration department estimates that around 20,000 people stay in Australia each year after their visa has expired. There is a rolling estimate of around 60,000 people who are here as overstayers. Some overstayers only overstay for a few days and leave; others overstay for literally decades. We have over 20,000 each year overstaying—far more than we have had arrive by boat over the course of 10 to 15 years—yet all of the resources, all of the political debate, all of the focus and much of the attention of this government has been on those people arriving by boat. Overstaying your visa is clearly a breach of the Migration Act—there is no doubt about that. Arriving and seeking protection from persecution is not a breach of the Migration Act. So we have had all this attention given to a very small number of asylum seekers who were not breaking any law. Enormous resources have been chewed up in a whole range of areas, yet there has been such a small focus on 20,000 people a year who clearly are breaching the law.

The other aspect of this report that I highlight is how poorly we are doing that, and that is even more concerning. The audit report estimates that it is only 0.2 per cent that overstay each year—that is 20,000 people. You might say, ‘That’s not a lot; that’s pretty good.’ I guess 0.2 per cent in some respects is not too bad. If you do the maths—and I think I have done them correctly—it means that there are 10 million people entering and leaving the country each year in various ways. That is an enormous number of people visiting Australia each year. Again, it makes you wonder at all the attention on just, at its height, 4,000 entering by boat—and that is 4,000 who, I might say, want to be found and specifically ask for protection—out of 10 million. Some of those 10 million might be people entering and leaving more than once. But, nonetheless, it gives an idea of the total distortion of the focus.

The report makes seven recommendations, and the department has agreed with them, which is pleasing in a sense, although I wonder, when they agree with them, how well they are actually going to implement
them, particularly when the department has pointed to the Migration Legislation (Migration Agents Integrity Measures) Act that was recently passed—with the support of the Democrats, I might say—suggesting that in some way this is going to improve the situation with overstayers. I looked at that act in immense detail and it addresses some important issues, but I really cannot see how it is going to help much in terms of reducing overstayers. The department also pointed to their intention to introduce legislation to deal with employers who illegally employ people. That is good as well, but they have been talking about that for at least three years—I think longer—and there is still no sign of the bill, let alone an examination of whether it is any good. The department is putting these forward as ways in which they are addressing the problems that are identified by the Audit Office. It does not give me a lot of confidence.

I will just go through some of the findings of the Auditor-General. The audit found that DIMIA’s effectiveness indicator for measuring their performance in locating people in breach of visa conditions is of limited value, because they make no comparison between the number of non-citizens in breach of their visa conditions who are located relative to the total number of people likely to be in breach. The Audit Office found no evidence of ongoing systemic analysis of the data for compliance risk assessment purposes. It found that, in relation to something as basic as printed information provided to people entering Australia, the department advised that generally no letter and no information kit were provided to successful visitor visa applicants who apply using the common form of application to visit Australia for tourism. So many people do not even get any information to tell them what they are entitled or not entitled to do. No wonder they are more likely to break the law.

The audit found that, in their employer awareness campaign to make sure that employers are aware about who they should and should not employ, DIMIA did not gather and analyse employer feedback to monitor the effectiveness of their strategies in insisting employers comply with the law. They did not undertake ongoing analysis and evaluation of the performance information available and they did not profile employer groups and labour suppliers who are likely to employ or refer workers with no authorisation to work, except in their New South Wales state office.

The audit found that DIMIA had developed a data sharing memorandum of understanding with the Australian Taxation Office which included a section on how outcomes would be measured by both parties. That sounds good—they got an MOU with the ATO to try to track down people working illegally. However, there is no indication as to how, when or to whom the performance information will be conveyed, which is a bit of a shortcoming, I would think. The data-sharing memorandum with the tax office could be enhanced by including robust reporting measures for each of the partners to allow for transparency and improved accountability for performance.

The audit found that a measure developed by the board of management of DIMIA in June 2001 approved the development of what was called IMtel to cover all border control and compliance division programs, including compliance investigations, airport operations and intelligence functions. It was designed to be a web based national intelligence database and went into production as of 28 April last year to a limited number of users. The audit found that IMtel is not linked to any of DIMIA’s systems offshore or to any external agencies—for example, the Australian Customs Service—to facilitate intelligence sharing, and DIMIA has not
conducted any cost-benefit analysis concerning such linkage. IMtel is designed to, among other things, capture data relating to community tip-offs about compliance target information, but the audit found that tip-off information is currently captured at state and territory office level and keyed into standalone databases and spreadsheets.

So you have massive structural failures in this very simple and fundamental area. If you contrast that with the huge amount of attention, both political and bureaucratic, towards the tiny number of people who arrive here who do not breach any law but simply seek protection from persecution, you will get an idea of how warped this government’s priorities have been in the area of immigration and how much room for improvement there is. While it is good that the recommendations have been accepted, it is an indictment that so many significant failings in such a basic area were identified. I certainly hope that there is improvement in the future.  

(Time expired)

Question agreed to.

Consideration

The following order of the day relating to reports of the Auditor-General was considered:

Auditor-General—Audit report no. 56 of 2003-04—Performance audit—Management of the processing of asylum seekers: Department of Immigration and Multicultural and Indigenous Affairs—Corrigenda. Motion to take note of document moved by the Leader of the Australian Democrats (Senator Bartlett). Debate adjourned till the next day of sitting, Senator Bartlett in continuation.

Orders of the day nos 1 to 21, 23 to 25, 27 and 29 relating to reports of the Auditor-General were called on but no motion was moved.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Watson)—Order! It being 7.20 p.m., I propose the question:

That the Senate do now adjourn.

Foreign Affairs: Solomon Islands

Standing Committee on Privileges: Telstra

Senator HUMPHRIES (Australian Capital Territory) (7.20 p.m.)—I want to make a few remarks in the adjournment debate tonight on Australia’s involvement in the Solomon Islands. Before I do, I would like to respond to some of the comments made by Senator Mackay when she spoke earlier this afternoon on the report of the Standing Committee on Privileges with respect to a recent inquiry into comments made by officers of Telstra before an estimates committee. I have two comments to make.

Senator Mackay did not disguise her disappointment with the committee’s findings that there had not been an abuse or a breach of privilege in the comments made by officers of Telstra. She indicated that she felt that a contradiction between what had been said by certain officers of Telstra appearing before the estimates committee and information that appeared in an internal memo of Telstra demonstrated that the comments made by one or both of those officers to the estimates committee were misleading. I think she felt that that was enough to have found that there was a case to answer.

For Senator Mackay’s benefit—and I see Senator Ray here and he might wish to make comment about this; I hope I am not preempting the chairman’s role—certainly as far as the committee was concerned from my point of view, the committee did not find that there was a case of the estimates committee being misled, not particularly on any construction of the state of mind of either of the gentlemen who it was suggested had misled.
the committee, but rather that there was no evidence put before the Privileges Committee that the information in the internal memo which had been tabled at the estimates committee was more reliable than the comments made by the gentlemen who appeared before it and gave live evidence. That is, there was no indication put to the committee either by Senator Mackay or anybody else to suggest that the information in the internal memo was truthful and, by implication, the information put by the witnesses was false. I might suggest therefore that Senator Mackay considers that question as she next brings a matter to the Privileges Committee.

Senator Mackay also made comments about the remarks of one of those two gentlemen to a meeting of Telstra employees at some point—I think she said it was in Melbourne. It was alleged that a particular officer of Telstra made disparaging comments about the estimates committee and its members and referred to members of the committee as ‘Judge Juddys’. I should say at the outset that I do not support people referring to members of committees of the Senate in disparaging ways and I certainly would not expect behaviour of that kind from officers of statutory bodies in which the Australian taxpayer has a considerable interest. But I simply draw Senator Mackay’s attention to the irony of what was occurring in her remarks. She spent the first part of her speech making some fairly serious reflections on the two gentlemen concerned, one of whom was responsible for the remarks in Melbourne. She implied, if not actually said, that one or both of the gentlemen had misled the estimates committee if not deliberately then recklessly or accidentally. She then went on to comment about reflections from one of those persons on the estimates committee members at the meeting in Melbourne. Of course, in doing so she was making disparaging comments about that person in much the same way that he allegedly had made disparaging comments about her and her colleagues, the difference between the two being that she was able to make those remarks today and previously in this chamber with the protection of parliamentary privilege—a protection which the gentleman concerned did not have when he made those remarks in Melbourne.

However, that was not the main purpose of my rising to speak on the adjournment debate tonight. I want to talk about the contribution of Australians in the Solomon Islands. Members of this place will be well aware of the work of the Regional Assistance Mission to the Solomon Islands, RAMSI, in their efforts under Operation Helpem Fren. In early 2003 most Australians were aware of the horrors of civil unrest occurring in the Solomons and later became aware of Australia’s military and paramilitary intervention in that nation. However, I believe that our achievements in respect of that operation have been somewhat overshadowed by other events. In this place we focus very often on our shortcomings as a nation and in those circumstances we tend to sweep under the carpet our national successes. I believe that what we have achieved in the Solomon Islands is certainly a national success and ought not to be overlooked.

Australia’s presence in the Solomon Islands began with a resolution passed in both the House of Representatives and the Senate. Australia’s involvement in the Solomon Islands began with the arrival of personnel of the Australian Defence Force, the Australian Federal Police and the Australian Protective Service when it was clear that such intervention was supported by the people of the Solomon Islands and, indeed, the parliament and the government of the Solomon Islands. It was also, incidentally, an action that was supported by New Zealand and by the Pacific Islands Forum.
Our involvement in the Solomons I think was welcomed very clearly by the people of the Solomon Islands. They saw the involvement of a peacekeeping force as not only necessary but also a welcome displacement of what had pretty obviously been roving gangs of criminals in the Solomon Islands community. That involvement made a vital contribution to the security of that nation and to the security of the entire region. The Department of Foreign Affairs and Trade’s assessment of the position in the Solomon Islands before the intervention was very dire. A young naval officer wrote to me about what was occurring in that military operation and he remarked:

For us serving personnel it is great to see we are welcomed everywhere we go. Australia must continue to support our South Pacific friends because whether we like it or not, they do look to us for support. The Solomon Islands are full of a wonderful people with much to offer in the way of culture and friendship.

Of course, the job in the Solomon Islands is not completed yet—not by a long shot. The focus of the mission at this stage is sustainability and self-reliance for Solomon Islanders. We have provided a safe and secure environment in which hopefully the people of the Solomons will rebuild a stable system of government. That is a matter that they have to work out for themselves. The transformation in the Solomons by virtue of the very careful, meticulous and effective work of members of our Defence Force has been most marked.

It is particularly worth observing the role of the Australian Federal Police. It has been very significant. Many officers of the Federal Police in the ACT have taken part in that operation. They have transposed their skills as people providing law and order on the streets of Canberra into a very different environment in the Solomon Islands and they have done so extremely effectively. Our general involvement in the Solomons has been a far cry from either gunboat diplomacy or latter-day colonialism but I believe it does great credit to Australia and to the serving men and women who took part in that operation at a number of levels. I hope that there will be opportunities in the future for Australia to properly recognise the contribution that they have made in securing peace in that country and stability in our region.

Health: Research Funding

Senator BUCKLAND (South Australia) (7.31 p.m.)—I want to put on record my great appreciation for some young people in the community. I am sure these people operate in all states but I was invited to dinner in South Australia held by the Australian Society for Medical Research back in June. It was a night that I think will probably be the most enjoyable night that I have had in my capacity in this place, given that, as people are aware, I will be retiring from the Senate in about 12 months time or a little less. It is one of those nights that I will never forget. I have been to many functions of medical practitioners and researchers but this one was very special.

It was organised by young South Australian medical researchers, the night was vibrant with conversation and I had the opportunity to move around to, I think, every table at the dinner and talk to almost every person there, including many older researchers and lecturers in medical science. But it was the enthusiasm that these people displayed that really caught my interest and made me think that our nation is really in good hands. The only conflict I came into during the night was when the outgoing chairperson of the organisation suggested to me that perhaps if we had spent the money on medical research that we had spent on the rail line to Darwin we would be better off. I have to say I did come into a bit of conflict with that. I ex-
plained that there are many things that we need to do with the government’s money, but I did take on board—I am not pressing the point tonight but I think it should be noted—that these folk were saying that much more should be committed from the government coffers to research into medical science.

I agree with that because these people showed me, through what they had to say, that they are committed to assisting the aged, the young and people like myself who are in reasonably good health to survive this mortal life that we have. What they were researching covered so many things. I did not understand half of it, of course, not being a medically oriented person, but every part of the body seemed to have something that needed researching. I was fascinated by some of the stories that they told me of what they were doing and what they were finding, and the cures that they came across for some of those things that we do not give too much thought to.

I want to put this on record because of the money shortage that they are having. As I say I am not pressing that; I think there is a better opportunity on which to press the government on what is spent on health and research into health, and no doubt I will take the opportunity later to do that. The most important thing I got out of the evening was that young people had organised the whole night. Young people had organised their overseas guest speaker and they had done something positive to contribute to the society at a time when more and more young people are being blamed for failing to do things—failing to have enthusiasm, failing to have direction in their lives, just sitting around and doing nothing.

Most young people, as it was proved to me that night—although I really did not need too much proof—are contributing to our society. Perhaps as some of us get older we become less tolerant when we see people of that age doing things that we thought maybe we would not do, but that is the changing world that we live in. I was encouraged by these people to see that they have a future. But whilst I see the future they have and their hope, purpose, direction and enthusiasm to do what they are doing, the reality is that many of them will never fulfil their life’s dream of working in the field. The money is just not there to support the programs they are working on. Many of them will leave the medical profession and the research side of the profession because of lack of funds and a lack of planning on our part to provide career paths for them. It was suggested to me by one lecturer in medicine from Flinders University that there should be some way of creating bridging facilities for these people to move into other areas of research or other careers. I think, whilst he is right, we would be much worse off if we were to try to steer some of these people into other areas. Rather, we should be looking at ways of funding the research that gives hope and meaning to our future.

As I said, I want to put on record that I very much appreciated meeting this group, sharing with them that night and getting to better understand what they were doing. I was doubly pleased when I went to one table and met a young woman who went to St John’s College in Whyalla with my eldest son. She is now a doctor and doing her PhD at the moment. It is very special when, out of the blue, you come across someone like that. Jamie Duffield was always a very good scholar. I always thought that she would take a career in either sports education or sports medicine, but here she was doing something totally different. It gives you a great deal of pride when you see someone from your home town taking such a leading role as one of the organisers of the night and also being one of the leading science students in this
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field. I was very proud to have met up with Jamie again after not having seen her since she and my son finished high school. We will be getting together in the near future to continue that wonderful relationship that we have. I would encourage the government of the day—and I will do the same later this year when Labor is in government—to put more money into medical research and encourage young people to take up these important science careers.

India: Diversion of Rivers

Senator WATSON (Tasmania) (7.39 p.m.)—Tonight I wish to examine the problem that a lack of access to water could threaten peace around the globe. In doing so, I wish to focus on an Indian project to divert its rivers and the implications that that would have on neighbouring Bangladesh.

In 2002, India revived the decades-old proposal to link its major rivers, which number nearly 30. This project would bring India’s largest rivers together in a countrywide grid. Its intention is to divert water from the north to the states of the south and the east that were particularly hit by the severe droughts in the year 2002. If the proposal were to proceed, it would be the largest project ever to be undertaken by India. Although the proposal was welcomed at the time by most political parties as a solution to India’s drinking water and irrigation problems, it did not take long for the proposal to come up against a lot of criticism. A number of states expressed opposition to the proposal, as there was unwillingness by some states to share water resources with each other. Apart from this problem, India also has treaties on water sharing with its neighbours, Nepal and Bangladesh.

In August 2003 there was a protest from the Bangladesh government to India requesting India not to proceed with the plan because of its ecological and economic impact on Bangladesh. Earlier, the Indian Prime Minister at the time announced that he was making water a top priority. Under the proposal, the hydrological map of India would be redrawn, taking waters from 14 Himalayan tributaries of the Ganges and the Brahmaputra rivers in northern India and Nepal and transferring them south via a series of canals and pumping stations across the Vindhya mountains to replenish 17 southern rivers, including the Godavari, Krishna and Cauvery rivers. Up to 1,500 cubic metres of water a second would be pumped south in the process.

It was feared that the proposal risked major confrontation with Bangladesh, which gets much of its water from the Ganges and Brahmaputra rivers after they leave India. The two countries have been at loggerheads over water since 1974, when India completed the Farakka barrage in the Ganges close to the border, diverting crucial dry season flows into Indian irrigation canals. Bangladesh blames the barrage for dried-up fields, disease and the salt poisoning of the vast Sundarban mangrove swamps in the Ganges delta.

Under a 1996 Ganges treaty between the two countries, India vowed not to reduce the flows over the border any further. Under the current plan, India would do precisely that and Bangladesh would want first call on any water stored during the flood season on the Ganges. The consequences for Bangladesh would be dramatic, as water levels would drop, rendering rivers unnavigable and depriving thousands of Bangladeshi people of sustenance along the waterways. Regrettably, there is no international law to stop such river diversion practices, and the United Nations, while recognising the problems associated with the politics of water, is proceeding at a snail’s pace regarding policy development. Failure to resolve this issue could well lead to major conflicts in the future.
India’s National Water Development Agency in New Delhi, which was backing the scheme, says there would have been enough water to irrigate some 35 million hectares of farmland and produce 34,000 megawatts of hydroelectricity, although as much as a third of this could be needed just to pump the water itself. In all, the scheme would mean the building of something like 300 reservoirs and digging over 1,000 kilometres of canals. According to a retired military engineer who is now with the Mysore Consumer Action Forum, the project would flood an estimated 8,000 square kilometres of land and could leave three million people homeless. As the largest single project of its kind attempted anywhere in the world, the project will not come cheap, costing between $70 billion and $200 billion, and Indian engineers in the US, headed by the Texan power engineer, Sam Kannappan, were lobbying President Bush to persuade the World Bank to back the scheme, which they hoped would be completed in approximately 14 years.

Despite the support of all of India’s major political parties, opposition to the scheme has been mounting. As late as February 2003, Ramaswamy Iyer, the head of the Indian ministry of water resources in the 1980s, condemned the project, saying that India already had half-complete water projects worth billions of dollars that should be finished before moving on to another major project. Iyer and his successor as India’s water boss, M.S. Reddy, both argued that better use of existing water supplies was the answer. They called for renewed efforts to harvest local rainwater by storing it in the tens of thousands of silted-up ancient reservoirs, or tanks, that the government has abandoned.

Even engineers in states that stand to benefit most from the scheme have been sceptical. The driest states, such as Karnataka, also tend to be the highest—often more than 600 metres above sea level—and the engineers doubt that the water from the north would ever reach them. Environmentalists also attacked the plan, claiming it would spread pollution from rivers like the Ganges to cleaner rivers. It is claimed by the Greens in India that interlinking a polluted river with a non-polluted one would have a devastating effect on both rivers. A task force on the project, constituted in December 2002, was expected to complete a schedule for completion of feasibility studies and to provide an estimate of the cost of the project by April 2003. This was to be followed by a meeting of chief ministers in June 2003 to obtain their agreement and cooperation. Unfortunately, none of these deadlines was met and there has been no indication that these events will take place in the near future.

The task force on Interlinking of Rivers in India finalised its action plan in April 2003 but did not spell out the finance that would be required, saying the funds required would be known after the detailed project reports were prepared. No time frame was set for the preparation of these reports. Normally pre-feasibility and feasibility studies precede the formulation of detailed project reports. Although a ballpark figure of $100 million for the project was mentioned in the media, it appears that no proper estimate was done. This is not surprising for, while the interlinking proposal has been spoken about for decades, all the complex engineering, economic, environmental and social issues have never been carefully studied. In fact, the one government committee that did examine aspects of the proposal to some extent in 1999, the National Commission for Integrated Water Resources Development Plan, was ambivalent about the benefits of interlinking the country’s rivers.

In addition to these problems, both Bangladesh and India have recently been hit by severe flooding. Two-thirds of Bangladesh
was inundated by the worst monsoon floods in 15 years. This has caused a breakdown in water and sewerage systems. Tragically, the flooding across Bangladesh, parts of India and Nepal has resulted in almost 570 deaths in the last month or so. Millions of people have been forced from their homes and the flooding has triggered outbreaks of diarrhoea and other water-borne diseases. It seems such a cruel irony that Bangladesh is cursed with water problems at both ends of the spectrum.

On a more positive note, the recently elected Indian Congress Party appears to have had second thoughts about the Interlinking of the Rivers proposal. This is certainly good news. On 13 July the Hindu newspaper reported that the government was ‘seriously thinking of winding up the task force on the Interlinking of Rivers’. The report acknowledged the controversial nature of the whole scheme. On the other hand, the President is reported to favour interlinking of the rivers, pointing to the paradox of simultaneous floods and severe drought conditions. In any event, if India were to decide to revive the project it would have to renegotiate international water agreements with Bangladesh, Nepal and Bhutan. I believe that the new Indian government is to be commended for its commonsense approach. Fortunately, for the moment, it seems that further tragedy in Bangladesh has been averted.

Senate adjourned at 7.49 p.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

Australian Communications Authority Act and Radiocommunications Act—Radio communications (Interpretation) Amendment Determination 2004 (No. 1).


Environment Protection and Biodiversity Conservation Act—Instrument amending list of—

Exempt native specimens under section 303DB, dated 7 June 2004.


Lands Acquisition Act—Statements describing property acquired by agreement under sections 40 and 125 of the Act for specified public purposes [2].

Military Superannuation and Benefits Act—Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 2).
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Veterans’ Affairs: Legal Services
(Question No. 2795)

Senator Ludwig asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 31 March 2004:

1. In the past 12 months has the department or its agencies used, retained or paid for legal or other services from Phillips Fox Lawyers or any of their subsidiaries; if so: (a) can details of each instance be provided; and (b) as a general overview, what was the nature of the work undertaken.

2. Has the Minister attended any forums presented by Phillips Fox; if so, can details be provided.

3. Has the department sponsored any Phillip Fox forums or presentations in the past 12 months; if so, can details of the forums or presentations be provided.

Senator Coonan—The Minister for Veterans’ Affairs has provided the following answer to the honourable senator’s question:

1. Yes. (a) and (b) In the 12 months to 31 March 2004, the Department of Veterans’ Affairs paid Phillips Fox Lawyers for services totalling $1,814,230.91. It is not possible to provide details of each time the company was retained to provide advice. This information is not stored electronically and would require a file search of some 1,600 files to identify up to 400 possible Phillips Fox cases.

   The Military Compensation and Rehabilitation Service (MCRS) paid Phillips Fox Lawyers $1,790,874.97 for legal services. The MCRS engages the services of a number of private legal firms, including Phillips Fox, to assist in undertaking claims management functions in relation to members and former members of the Australian Defence Force. The majority of this assistance is in relation to representation in the Administrative Appeals Tribunal and the Federal Court.

   Defence Service Home Loans (DSHI) paid Phillips Fox Lawyers $23,355.94. DSHI uses the services of Phillips Fox, one of a number of firms it engages, to provide general legal advice in connection with domestic building insurance claims and legal liability advice.

2. The Minister has not attended any forums presented by Phillips Fox.

3. The department has not sponsored any forums or presentations by Phillips Fox in the past 12 months.

Australian Defence Force: Operation Falconer
(Question No. 2894)

Senator Faulkner asked the Minister representing the Prime Minister, upon notice, on 10 May 2004:

1. On what date and at what approximate time did:
   (a) Operation Bastille cease;
   (b) the Government commit the Australian Defence Force (ADF) elements already deployed to the Middle East under Operation Bastille to Operation Falconer;
   (c) the Chief of the Defence Force, pursuant to this government decision to commit the ADF to Operation Falconer, issue the necessary orders under Operation Falconer to the Australian military forces deployed in the Gulf that provided the legal authority for the ADF tactical commanders who would control operations;

QUESTIONS ON NOTICE
(d) Australian operations in Western Iraq under the legal authority of Operation Falconer commence;
(e) Australian Special Air Services (SAS) forces enter Western Iraq; and
(f) Australian SAS forces first engage in offensive operations against Iraqi military forces in Western Iraq.

(2) In relation to part 1(b) above, what was the process by which the Government took the decision to commit the ADF elements to Operation Falconer; and (b) can a copy of the text of this decision be provided.

(3) If the SAS was involved in offensive operations in Iraq prior to midday (AEST), 20 March 2003, what was the legal basis for their operations.

Senator Hill—The Prime Minister has provided the following answer to the honourable senator’s question:

(1) The government decided on 18 March 2003 to commit ADF forces to coalition operations to disarm Iraq. Later that morning, the Chief of the Defence Force issued the execute order for Operation Falconer. At that point, personnel deployed on Operation Bastille transitioned to Operation Falconer. The order formally ceasing Operation Bastille was issued on 21 March 2003.

Australian forces entered Iraq and engaged in offensive operations against Iraqi military forces after Saddam Hussein and his sons had rejected President Bush’s demand, of 18 March 2003, that they leave Iraq.

(2) The government made its decision to commit the Australian Defence Force to the international coalition of military forces prepared to enforce Iraq’s compliance with its international obligations at a meeting of Cabinet in the morning of 18 March 2003.

(3) The legal basis for Australia’s participation in the armed conflict in Iraq is a matter of public record. UN Security Council resolutions adopted under Chapter VII of the United Nations Charter provided clear authority for the use of force against Iraq, including by Australia, to disarm Iraq of weapons of mass destruction and restore international peace and security to the region.

UN Security Council Resolution (UNSCR) 1441 confirmed that Iraq was in material breach of the 1991 cease-fire resolution (UNSCR 687). UNSCR 687 sets out the conditions that form the basis for the cease-fire between Iraq and those States, including Australia, that had been authorised by the earlier resolution (UNSCR 678) to use force against Iraq to restore international peace and security to the area. Iraq’s material breaches of its obligations under the resolutions negated the basis for the cease-fire. Therefore, the authorisation for the use of force was reactivated.

Military Detention: Australian Citizens
(Question No. 2939)

Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 24 May 2004:

With reference to Mamdouh Habib, detained at Guantanamo Bay after his arrest in Pakistan:

(1) (a) Which Australian officials have visited him; (b) when; (c) where; and (d) for how long.
(2) (a) What report was made; and (b) is it the case that there was absolutely no evidence of any treatment which would not be permitted in an Australian prison; if there was such evidence can details please be provided.
(3) (a) Was Mr Habib assured of all his rights; and (b) how did the Government deliver on those assurances.
(4) If Mr Habib made any requests: (a) what were they; and (b) how did the Government respond.
**Senator Hill**—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) (a) Officials from the Australian Federal Police, the Australian Security Intelligence Organisation, and the Department of Foreign Affairs and Trade have visited Mr Habib.  
(c) Australian officials have visited Mr Habib in Pakistan and at Guantanamo Bay.  
(d) Australian officials have visited Mr Habib for periods of time during the visits listed in answer to question 1(b).

(2) (a) A report has been made following each visit to Mr Habib.  
(b) Australian officials who have visited Mr Habib have reported that they saw no evidence to indicate he was being maltreated.

(3) (a) It is a matter for the detaining power to explain to Mr Habib his rights as a detainee.  
(b) Please see the answer to question 3(a) above.

(4) (a) Under the Privacy Act 1988, the Government cannot comment on what requests, if any, Mr Habib has made to Australian officials who have visited him.  
(b) The Government has raised requests made by Mr Habib with the detaining power.

**Health: Autism**  
(Question No. 2942)

**Senator Lundy** asked the Minister representing the Minister for Health and Ageing, upon notice, on 31 May 2004:

(1) Has the Australian Institute of Health and Welfare completed the redevelopment of the Minimum Data Set that was underway in January 2001.

(2) Can the technology associated with the Minimum Data Set be used to report the total number of people with a specific disability who receive government funded services; if so, for each year of operation of the Minimum Data Set: (a) how many individuals with an intellectual disability received a service; and (b) how many individuals with autism spectrum disorder (or a pervasive development disorder, if this term is used) received services.

(3) Can data from the Minimum Data Set be used to report on the number of people with specific conditions within the autism spectrum.

(4) Can the number of people with an autism spectrum disorder be provided, broken down by: (a) the services required; (b) age; and (c) state.

(5) (a) Does the Minimum Data Set record therapy services provided for people with autism spectrum disorders; (b) does the data collected show which specific type of therapy was provided; if so, how much of each specific type of therapy was provided for people with an autism spectrum disorder; and (c) how does the type of therapy provided for people with an autism spectrum disorder differ between states and age groups.

**Senator Ian Campbell**—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

(1) The Australian Institute of Health and Welfare, in collaboration with National Disability Administrators from Commonwealth, State and Territory governments, has completed the redevelopment of the national Minimum Data Set. This agreed data set enables the collation of national data relating
to disability support services provided or funded under the Commonwealth State/Territory Disability Agreement (CSTDA). These support services provide a wide array of assistance to people with a disability whose basic needs include help with self care, mobility and/or communication. The specifications of the data set represents national agreement on what is feasible to collect, on a consistent national basis, across the thousands of outlets providing these disability support services. The first year of the redeveloped data collection was the year 2002–03, and data relating to 2002–03 are soon to be published by the National Disability Administrators and the Australian Institute of Health and Welfare. The new collection covers all services in the year, and will provide data not available in the former collection, for instance on the important role of the ‘informal’ carers of the people receiving these services.

(2) (a) and (b) and (3) The redeveloped Minimum Data Set provides data on people who receive services under the CSTDA, including descriptive information on a specified list of disability groups, including intellectual disability and autism spectrum disorder. It also provides information on the types of services received, including a category ‘therapy services’. There is no detail on the specific conditions within the autism spectrum, or on the specific types of therapy services received. Prior to the commencement of the redeveloped collection for 2002–03, national data were collected in respect of services provided on a single snapshot day (in the Commonwealth/State Disability Agreement —CSDA —Minimum Data Set) and the data now provided in response to this question are from this collection.

Table 1 shows the numbers of people with intellectual disability and the numbers with autism spectrum disorder who received services during the years 1999 to 2002.

Table 1: Consumers of CSDA-funded services on a snapshot day reporting autism or intellectual as a primary or other significant disability group, 1999–2002

<table>
<thead>
<tr>
<th>Year</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>% of all consumers</td>
<td>Number</td>
<td>% of all consumers</td>
</tr>
<tr>
<td><strong>Autism as a primary disability</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1999</td>
<td>1,937</td>
<td>3.1</td>
<td>2,133</td>
<td>3.4</td>
</tr>
<tr>
<td>2000</td>
<td>1,739</td>
<td>2.8</td>
<td>1,931</td>
<td>3.1</td>
</tr>
<tr>
<td>Total reporting autism as a disability group</td>
<td>3,666</td>
<td>5.8</td>
<td>4,064</td>
<td>6.5</td>
</tr>
<tr>
<td><strong>Intellectual as a primary disability</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1999</td>
<td>38,225</td>
<td>60.9</td>
<td>37,484</td>
<td>60.1</td>
</tr>
<tr>
<td>2000</td>
<td>4,519</td>
<td>7.2</td>
<td>4,962</td>
<td>8.0</td>
</tr>
<tr>
<td>Total reporting intellectual as a disability group</td>
<td>42,744</td>
<td>68.1</td>
<td>42,446</td>
<td>68.1</td>
</tr>
</tbody>
</table>

Sources:

AIHW 2003a. Disability support services: revisions to CSDA MDS data and reports 1996 to 2000 (Table 3.3). AIHW cat. No. DIS 29.
AIHW 2003b. Disability support services 2002: national data on services provided under the CSDA (Table 3.8). AIHW cat. No. DIS 31.

AIHW 2002. Disability support services 2001: national data on services provided under the CSDA (Table 3.8). AIHW cat. No. DIS 25.

AIHW 2001. Disability support services 2000: national data on services provided under the CSDA (Table 3.4). AIHW cat. No. DIS 23.

1 Data are available from previous years but relate to ‘services received’ only, not numbers of consumers.

(4) (a)(b)(c)and (5)(a)(b)(c)Table 2 shows, for 2002: People with autism spectrum disorder as a primary or significant disability, tabulated by State.

Table 3 shows, for 2002: People with autism spectrum disorder as a primary or other disability, tabulated by age group.

Table 4 shows, for 2002: People with autism spectrum disorder as a primary or other disability, tabulated by service type received.

Table 2: Consumers of CSDA-funded services on a snapshot day, numbers reporting autism as a primary or other significant disability group by state and territory, 2002

<table>
<thead>
<tr>
<th>Age Group</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Autism as a primary disability</td>
<td>619</td>
<td>808</td>
<td>388</td>
<td>415</td>
<td>189</td>
<td>32</td>
<td>22</td>
<td>29</td>
<td>2,500</td>
</tr>
<tr>
<td>Autism as an other significant disability</td>
<td>753</td>
<td>822</td>
<td>388</td>
<td>115</td>
<td>230</td>
<td>108</td>
<td>32</td>
<td>10</td>
<td>2,456</td>
</tr>
<tr>
<td>Total reporting autism</td>
<td>1,372</td>
<td>1,630</td>
<td>776</td>
<td>530</td>
<td>419</td>
<td>140</td>
<td>54</td>
<td>39</td>
<td>4,956</td>
</tr>
</tbody>
</table>

Source: AIHW 2003b (Table A1.1)

Table 3: Consumers of CSDA-funded services on a snapshot day, age group for consumers with a primary or other significant disability type of autism, 2002

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Number with primary disability of autism</th>
<th>Number with other disability type autism</th>
<th>Total number reporting autism</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–4</td>
<td>354</td>
<td>59</td>
<td>413</td>
<td>8.3</td>
</tr>
<tr>
<td>5–14</td>
<td>774</td>
<td>316</td>
<td>1,090</td>
<td>22.0</td>
</tr>
<tr>
<td>15–24</td>
<td>690</td>
<td>685</td>
<td>1,375</td>
<td>27.7</td>
</tr>
<tr>
<td>25–44</td>
<td>550</td>
<td>1,105</td>
<td>1,655</td>
<td>33.4</td>
</tr>
<tr>
<td>45–59</td>
<td>71</td>
<td>244</td>
<td>315</td>
<td>6.4</td>
</tr>
<tr>
<td>60+</td>
<td>5</td>
<td>31</td>
<td>36</td>
<td>0.7</td>
</tr>
<tr>
<td>Not stated</td>
<td>56</td>
<td>16</td>
<td>72</td>
<td>1.5</td>
</tr>
<tr>
<td>Total</td>
<td>2,500</td>
<td>2,456</td>
<td>4,956</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Source: AIHW 2003b (Table 3.4) and unpublished CSDA MDS 2002 data.

Table 4: Consumers of CSDA-funded services on a snapshot day, service types received by consumers with a primary or other significant disability type of autism, 2002

<table>
<thead>
<tr>
<th>Service Type</th>
<th>Number with primary disability of autism</th>
<th>Number with other disability type autism</th>
<th>Total reporting autism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accommodation support</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Large residential/institution</td>
<td>16</td>
<td>231</td>
<td>247</td>
</tr>
<tr>
<td>Small residential/institution</td>
<td>3</td>
<td>14</td>
<td>17</td>
</tr>
<tr>
<td>Hostels</td>
<td>9</td>
<td>44</td>
<td>53</td>
</tr>
<tr>
<td>Service type</td>
<td>Number with primary disability of autism</td>
<td>Number with other disability type autism</td>
<td>Total reporting autism</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Group homes</td>
<td>324</td>
<td>751</td>
<td>1,075</td>
</tr>
<tr>
<td>Attendant care/personal care</td>
<td>4</td>
<td>10</td>
<td>14</td>
</tr>
<tr>
<td>In-home accommodation support</td>
<td>114</td>
<td>134</td>
<td>248</td>
</tr>
<tr>
<td>Alternative family placement</td>
<td>28</td>
<td>39</td>
<td>67</td>
</tr>
<tr>
<td>Other accommodation support</td>
<td>47</td>
<td>14</td>
<td>61</td>
</tr>
<tr>
<td>Total accommodation support</td>
<td>541</td>
<td>1,223</td>
<td>1,764</td>
</tr>
<tr>
<td>Community support</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Therapy support for individuals</td>
<td>181</td>
<td>75</td>
<td>256</td>
</tr>
<tr>
<td>Early childhood intervention</td>
<td>306</td>
<td>35</td>
<td>341</td>
</tr>
<tr>
<td>Behaviour/specialist intervention</td>
<td>57</td>
<td>64</td>
<td>121</td>
</tr>
<tr>
<td>Counselling (individual/family/group)</td>
<td>17</td>
<td>7</td>
<td>24</td>
</tr>
<tr>
<td>Regional resource and support teams</td>
<td>81</td>
<td>111</td>
<td>192</td>
</tr>
<tr>
<td>Case management, local coordination and development</td>
<td>467</td>
<td>257</td>
<td>724</td>
</tr>
<tr>
<td>Other community support</td>
<td>11</td>
<td>13</td>
<td>24</td>
</tr>
<tr>
<td>Total community support</td>
<td>1,084</td>
<td>523</td>
<td>1,607</td>
</tr>
<tr>
<td>Community access</td>
<td></td>
<td></td>
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<tr>
<td>Learning and life skills development</td>
<td>383</td>
<td>721</td>
<td>1,104</td>
</tr>
<tr>
<td>Recreation/holiday programs</td>
<td>119</td>
<td>79</td>
<td>198</td>
</tr>
<tr>
<td>Other community access</td>
<td>123</td>
<td>265</td>
<td>388</td>
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<tr>
<td>Total community access</td>
<td>619</td>
<td>1,046</td>
<td>1,665</td>
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<tr>
<td>Respite</td>
<td></td>
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<tr>
<td>Own home respite</td>
<td>11</td>
<td>14</td>
<td>25</td>
</tr>
<tr>
<td>Centre-based respite/respite homes</td>
<td>82</td>
<td>99</td>
<td>181</td>
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<tr>
<td>Host family respite/peer support respite</td>
<td>34</td>
<td>14</td>
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<td>Flexible/combination respite</td>
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<td>Other respite</td>
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<td>Employment</td>
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<tr>
<td>Open employment</td>
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<tr>
<td>Supported employment</td>
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<td>385</td>
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<tr>
<td>Open and supported</td>
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<td>29</td>
<td>60</td>
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<tr>
<td>Total employment</td>
<td>301</td>
<td>262</td>
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<tr>
<td>Total</td>
<td>2,500</td>
<td>2,456</td>
<td>4,956</td>
</tr>
</tbody>
</table>

Source: AIHW 2003b (Table A1.6) and unpublished CSDA MDS 2002 data.

Notes
1. Consumer data are estimates after use of a statistical linkage key to account for individuals who received more than one service on the snapshot day. Column totals may not be the sum of the components since individuals may have accessed more than one service type on the snapshot day.
2. Data for consumers of the following CSDA-funded service types were not collected: advocacy, information/referral, combined information/advocacy, mutual support/self-help groups, print disability/alternative formats of communication, research & evaluation, training & development, peak bodies, and other support services.
3. Data provided by the Commonwealth are preliminary and cover 99% of Commonwealth-funded services.
From Table 4 it can be seen that people with autism as one of their reported disabilities received a wide range of services under the CSDA, on the snapshot day in 2002:

- 1,764 received accommodation support services including 1,075 people in group homes;
- 1,607 received community support services, including 341 receiving early intervention services and 256 receiving therapy services;
- 1,665 received ‘community access’ services designed to enhance their access to and inclusion in life in the Australian community, including 1,104 receiving learning and life skills development services;
- 412 people receiving respite services on the snapshot day; and
- 563 specialist employment services on the snapshot day.

As stated above (under Responses 2 and 3) neither the older nor the redeveloped data collection goes into detail on the types of therapy services provided. The redeveloped CSTDA NMDS does collect some indicators of the quantum of services received, and some data will soon be available on the first year of the redeveloped collection.

Concluding note: For the information of members, most of the data provided are in the public domain, published in annual reports for the collection and freely available on the AIHW website www.aihw.gov.au. Data cubes on the same website enable users to construct tables according to their own interests although, in order to protect privacy, these do not include State and Territory breakdowns.

**Health: Lupus**

(Question No. 2949)

**Senator Allison** asked the Minister representing the Minister for Health and Ageing, upon notice, on 2 June 2004:

(1) How many Australians suffer from the disease lupus.

(2) Given the relative magnitude and severity of this auto-immune disease, does the Government agree that more research is required to discover safer, more effective treatments for lupus patients; if so, what measures will the Government take to encourage more research.

(3) Does the Government agree that there is a lack of awareness and knowledge among physicians and the general public of the symptoms and effects on health of lupus; if so, what measures will the Government take to remedy this situation.

**Senator Ian Campbell**—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

(1) It is very difficult to estimate the incidence and prevalence of lupus in the Australian community, due to the difficulty of diagnosis and the relatively low numbers of people affected. Estimates in Australia vary from between 1 in 2,000 to 1 in 10,000 (Schreiber 2001) (ie affecting between 2,000 and 10,000 people). Lupus Queensland estimates that lupus affects more than 20,000 people in Australia. In the United States, it is estimated that approximately 1.5 million Americans have a form of the disease. These are estimates and have not been scientifically validated.

The Australian Bureau of Statistics and the Australian Institute of Health and Welfare do not currently have data available on the prevalence of lupus in Australia. These are the data sources used by the Australian Government.

References

(2) The National Health and Medical Research Council is the principal funder of health and medical research in Australia. The NHMRC funds health and medical research, across a wide range of disciplines, on the basis of scientific merit. As a general rule, the NHMRC does not direct researchers to undertake research in a particular area, but rather relies on the researchers themselves to determine the topics for investigation.

In 2004, the NHMRC will provide $466,500 for funding lupus specific research projects. In addition, the NHMRC will provide approximately $11.4 million in 2004 for funding other autoimmunity research projects, which may have the potential to benefit those suffering from a range of conditions including lupus disease.

(3) Our current estimates indicate that lupus is a relatively uncommon condition. There is likely to be a lack of awareness in the general community about a disease that is not very prevalent. However there would be an awareness and understanding of the condition amongst specialist physicians trained to identify and treat chronic disease.

The Australian Government provides health information to the general public via the HealthInsite website. HealthInsite is a single entry point to quality information from leading health information providers, including peak health organisations, government agencies and educational and research institutions. The website includes data on a wide range of chronic diseases, including lupus.

In terms of educating physicians and other doctors, this is a role undertaken by specialist and professional colleges and universities who would base their educational materials on the best available scientific evidence.

Centrelink
(Question No. 3012)

Senator Nettle ask the Minister for Family and Community Services, upon notice, on 16 June 2004:

(1) In the year for which statistics are most recently available, how many tertiary students receive Centrelink benefits: (a) in each university in Australia; and (b) in total.

(2) In the year for which statistics are most recently available, how many tertiary students receive the Youth Allowance: (a) in each university in Australia; and (b) in total.

Senator Patterson—The answer to the honourable senator’s question is as follows:

(1) (a)-(b) and (2) (a)-(b) There are approximately 2000 tertiary institutions but Centrelink does not differentiate between the types of institutions recorded and therefore is unable to accurately identify universities specifically.

United States Food and Drug Administration
(Question No. 3017)

Senator Faulkner asked the Minister representing the Minister for Health and Ageing, upon notice, on 18 June 2004:

(1) Is the Minister aware that on 22 March 2004, following a major inquiry, the United States Food and Drug Administration (FDA) issued a public health advisory warning about the side effects of antidepressants, Selective Serotonin Reuptake Inhibitors (SSRIs), and drew attention to worsening depression and suicidal tendencies in patients being treated with these medications.

(2) Is the Minister aware of the warnings that have appeared on individual web sites posted by the manufacturers of these medicines, at the direction of the FDA, to warn that patients being treated with antidepressants should be observed closely for clinical worsening and suicidal tendencies.
QUESTIONS ON NOTICE

(3) Has the Minister directed the Adverse Drugs Reactions Advisory Committee (ADRAC) to investigate epidemiological studies that have found high rates of suicide in users of SSRIs, to the extent that SSRI users are between two and ten times more likely to commit suicide than those treated by other means or not treated at all; if not, will the Minister direct ADRAC to issue suitable warnings to Australian consumers and prescribers of these drugs about their common side effects.

Senator Ian Campbell—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

(1) Yes. The Food and Drug Administration (FDA) took this action after receiving advice from one of its expert Drug Advisory Committees that is should issue warnings about suicide in relation to use of SSRI antidepressants in children and adolescents.

None of these medicines are approved in Australia for the treatment of children or adolescents with depression. On the specific issue of use in children and adolescents, the Adverse Drug Reactions Advisory Committee (ADRAC) issued a statement on 12 March 2004. This statement was limited to children and adolescents as the concerns about suicide following the use of Selective Serotonin Reuptake Inhibitors (SSRIs) in this group are different from those for use in adults.

Concerning suicide risk in adults, for some time there have been statements in the Precautions section of the Product Information for each of the SSRIs approved by the TGA in Australia.

(2) Yes.

(3) I have been assured that ADRAC, which meets eight times each year, is regularly reviewing the safety of SSRI medicines including the available data from epidemiological studies.

Medicare

(Question No. 3026)

Senator Denman asked the Minister representing the Minister for Health and Ageing, upon notice, on 22 June 2004:

(1) With reference to the new Medicare Benefits Schedule (MBS) item for certain services provided for and on behalf of a general practitioner (GP) by an allied health provider: is it the case that the rebate will have to be collected by a GP, with the allied health professional then required to recoup the benefit from the GP; if so: (a) why; and (b) would it not reduce administration costs to both the doctor and the allied health professional if the allied health professional were able to claim the benefit directly from the Health Insurance Commission; if not, what procedures have been put in place for the claiming of the rebate.

(2) Why is there a restriction per annum on the number of allied health consultations that will be eligible for the rebate.

(3) Given that it is envisaged that this measure will assist Australians with chronic conditions and complex needs who are being managed under a multi-disciplinary care plan, how is it proposed to process claims in relation to consultations, especially the initial consultation, where more than one allied health professional is involved.

(4) With reference to the new MBS item to support access to dental treatment for those patients with chronic or complex conditions and significant dental problems which are related to their illness, is it the case that the rebate will have to be collected by a GP, with the dentist then required to recoup the benefit from the GP; if so: (a) why; and (b) would it not reduce administration costs to both the doctor and the dentist, if the dentist were able to claim the benefit directly from the Health Insurance Commission; if not, what procedures have been put in place for the claiming of the rebate.

(5) Is there a restriction per annum on the number of such dental consultations that will be eligible for the rebate; if so: (a) what restriction applies; and (b) what is the purpose of the restriction.
Senator Ian Campbell—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

(1) No. From 1 July 2004, patients with chronic conditions and complex care needs who are being managed through an Enhanced Primary Care (EPC) multidisciplinary care plan may be eligible to receive Medicare benefits for certain allied health services.

Allied health services will be provided on referral from a GP, rather than “for and on behalf of” a GP (as originally announced under the measure).

When the service has been provided, the allied health professional may either:

• seek payment for the service from the patient. The patient then claims the Medicare rebate from Medicare; or
• seek payment for the service directly from Medicare. In this case, the allied health professional will be accepting the value of the Medicare rebate as full payment for the service and will not be able to charge the patient a gap.

Although the GP will not collect the rebate for the service provided by the allied health professional, the GP will still have a central role in the management of patients with chronic and complex conditions.

These arrangements are a result of consultations with general practice and allied health professional groups.

(a) and (b) Not applicable.

(2) The Medicare rebate will be $44 for each allied health service, up to a maximum of five services per year for each eligible patient.

The total rebate of $220 per year will assist people with chronic and complex conditions to access a range of allied health services not previously funded under Medicare. Any out-of-pocket expenses associated with the five allied health services also count towards the Medicare Safety Net.

Where a patient has private health insurance covering allied health services, the patient may choose whether to use their private health insurance or to access the Medicare benefit for the service. Patients may also use their private health insurance if they require more than five Medicare-funded allied health services each year.

(3) The Medicare rebate was originally announced as $80 for an initial consultation and $35 for each of four further consultations. This has been revised following consultation with allied health professional and GP groups to $44 for each of the five services. The rebate level will be the same for all allied health professional services covered under this measure.

There is no change to the total amount of benefits available to a patient ($220 for a total of five services).

(4) No. From 1 July 2004, patients with chronic conditions and complex care needs who are being managed through an Enhanced Primary Care (EPC) multidisciplinary care plan may also be eligible to receive Medicare benefits for dental care services in certain circumstances.

Under this measure, dental services will be provided on referral from a GP (similar to the arrangements for allied health services).

When the service has been provided, the dentist may either:

• seek payment for the service from the patient. The patient then claims the Medicare rebate from Medicare; or
• seek payment for the service directly from Medicare. In this case, the dentist will be accepting the value of the Medicare rebate in full payment for the service and will not be able to charge the patient a gap.
QUESTIONS ON NOTICE

(a) and (b) Not applicable.

(5) Yes.

(a) Under this measure, a total rebate of $220 will be available for up to three dental visits per year. There are three dental care items, with a rebate of $73.35 for each item.

Where a patient has private health insurance covering dental treatment, the patient may choose whether to use their private health insurance or to access the Medicare benefit for the service. Patients may also use their private health insurance if they require more than the three services covered by the dental care plan each year.

(b) The total rebate of $220 per year will assist people with chronic and complex conditions to access dental services not previously funded under Medicare. The amount of $220 is consistent with the total rebate for the allied health services component of this measure. Any out-of-pocket expenses associated with the three dental services also count towards the Medicare Safety Net.

Public Health Outcomes Funding Agreements

(Question No. 3027)

Senator Allison asked the Minister representing the Minister for Health and Ageing, upon notice, on 23 June 2004:

(1) Can a copy of the report of the Public Health Outcomes Funding Agreements (PHOFAs) review conducted in 2003 be provided; if not, why not.

(2) Is it the case that this review recommended a strengthening of the Commonwealth’s role in women’s health.

(3) Is it correct that there is no explicit reference to the National Women’s Health Program in the draft 2004-2009 PHOFAs between the Federal Government and the states and territories.

(4) Does the lack of reference to the National Women’s Health Program in the draft 2004-2009 PHOFAs indicate a reduced commitment in this vital area on the part of the Government.


(6) What action is the Government taking to ensure that current programs and services funded under the existing PHOFAs, such as those on female genital mutilation, sexual assault and alternative birthing services, will continue to be supported under the new PHOFAs.

(7) What plans does the Government have to review the National Women’s Health Policy which was developed in 1989, over 15 years ago.

Senator Ian Campbell—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

(1) No. The agreement of all States and Territories is required to release the report.

(2) The report did not contain recommendations.

(3) The draft PHOFA agreement document (2004-2009), currently being negotiated with the States and Territories, provides that Australian Government funding can be used to implement the range of women’s health services previously funded through the PHOFAs, including counselling for sexual assault, alternative birthing and education in relation to female genital mutilation.

(4) The PHOFA offer fully commits the forward estimates for all components of the Agreements, including women’s health, and is indexed. There is no cut whatsoever in the overall level of Australian Government funding to the States and Territories.

(5) The Australian Government is currently negotiating with jurisdictions to agree appropriate performance measures. This process is not complete. It is expected that, inter alia, specific indicators
will relate to sexual and reproductive health, including the management of sexually transmitted infections, and breast and cervical screening.

(6) See answers to (3) and (4) above.

(7) Performance measures for women’s health programs, for inclusion in the renewed PHOFAs, are being reviewed jointly with States and Territories as part of the negotiating process. There is no other review of the National Women’s Health Policy currently envisaged.

**Family Services: Carers**

*(Question No. 3028)*

*Senator Allison* asked the Minister for Family and Community Services, upon notice, on 22 June 2004:

(1) How many families receive carer’s allowance because they have a child with autistic disorder, identified in the Diagnostic and Statistical Manual of Mental Disorders Edition No. 4 as F84.0.

(2) How many families receive carer’s allowance because they have a child with Asperger’s syndrome/disorder, identified as F84.5.

(3) How many families receive carer’s allowance because they have a child with Pervasive Development Disorder – Not Otherwise Specified (PDD-NOS), identified as F84.9.

(4) How many families receive carer’s allowance because their child has another autism spectrum disorder (identified as F84.1-F84.8 and not F84.5).

(5) For the years 2000, 2001, 2002 and 2003, by age of the child, and by state and territory, how many carers applied for carer’s allowance in relation to a child with an autistic disorder.

(6) For the years 2000, 2001, 2002 and 2003, by age of the child, and by state and territory: (a) how many carers applied for carer’s allowance in relation to a child with Asperger’s syndrome/disorder; and (b) how many of those applications were successful.

(7) For the years 2000, 2001, 2002 and 2003, by age of the child, and by state and territory: (a) how many carers applied for carer’s allowance in relation to a child with PDD-NOS (or equivalent) and other autism spectrum disorders; and (b) how many of those applications were successful.

(8) By age and by state and territory, how many people who are receiving a disability pension have: (a) autistic disorder; (b) Asperger’s syndrome/disorder; (c) PDD-NOS; and (d) another autism spectrum disorder.

(9) What percentage of adults with autism live: (a) in the care of a family member; (b) in supported accommodation; and (c) independently.

(10) What percentage of Australians adults who have autism are employed.

(11) What evidence does the Government have that services for people with autism in Australia are as effective as services that Australia’s allies and trading partners provide for people with autism.

*Senator Patterson*—The answer to the honourable senator’s question is as follows:

(1) At 2 July 2004, there were 11,694 children under 16 years of age with their first medical condition identified as autism whose carer received Carer Allowance.

Information on the number of families receiving Carer Allowance because they have a child with autistic disorder identified as F84.0 according to the Diagnostic and Statistical Manual of Mental Disorders Edition No. 4 is not available.

(2) At 2 July 2004, there were 2,522 children under 16 years of age with their first medical condition identified as Asperger’s syndrome/disorder whose carer received Carer Allowance.

Information on the number of families receiving Carer Allowance because they have a child with Asperger’s syndrome/disorder identified as F84.5 is not available.
(3) Information on the number of families receiving Carer Allowance because they have a child with Pervasive Development Disorder – Not Otherwise Specified (PDD-NOS) identified as F84.9 is not available.

(4) Information on the number of families receiving Carer Allowance because they have a child with another autism spectrum disorder identified as F84.1-F84.8 and not F84.5, is not available.

(5) For the period 2000 to 2003 there were 5125 claims for Carer Allowance in respect of a child whose medical condition was listed as autism. The detailed information required to answer this question is not readily available and would be highly resource intensive to obtain. I cannot justify the level of expenditure that would be required to obtain it.

(6) (a) For the period 2000 to 2003 there were 1944 claims for Carer Allowance in respect of a child whose medical condition was listed as Asperger’s syndrome/disorder. The detailed information required to answer this question is not readily available and would be highly resource intensive to obtain. I cannot justify the level of expenditure that would be required to obtain it.

(b) For the period 2000 to 2003 there were 1841 claims granted for Carer Allowance in respect of a child whose medical condition was listed as Asperger’s syndrome/disorder. The detailed information required to answer this question is not readily available and would be highly resource intensive to obtain. I cannot justify the level of expenditure that would be required to obtain it.

(7) (a) and (b) This information is not available.

(8) (a), (b), (c) and (d) This information is not available.

(9) (a), (b) and (c) The Department of Family and Community Services does not have this information. However, at 2 July 2004, there were 2196 adults 16 years of age and over with their first medical condition identified as autism whose carer received Carer Allowance. A current requirement of Carer Allowance eligibility is that the care is provided on a daily basis in a private home that is the residence of the carer and the care receiver.

(10) The Department of Family and Community Services does not have this information.

(11) The Department of Family and Community Services does not have this information.

**Defence: Payment Policy**

(1) Does the department abide by the Cabinet decisions that require: (a) the payment of bills within 28 days of receipt of certified correct invoice; (b) the acceptance of discounts for early payment (for example, 1 per cent if paid within 14 days); and (c) the payment of interest at market rates on invoices paid outside the agreed terms; if not, why not.

(2) Does the department monitor performance in relation to its creditors and debtors; if so, what measures are used to assess its performance against performance targets; if not, why not.

(3) Can a report be provided of performance against those targets for each financial year since 1996-97.

(4) Can the following information be provided for each financial year since 1996-97: (a) the number of invoices processed and total value of all invoices; (b) the number and percentage of invoices paid under agreed terms, and the terms; (c) the number and percentage of invoices paid at: (i) 28 days,
(ii) 45 days, (iii) 60 days, and (iv) 90 days or over; and (d) the value of invoices in each of these intervals.

(5) What procedures are in place to manage the cash-flow benefit to the agency resulting from any late payment regime.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) (a) The department’s payment policy aligns with the Commonwealth Procurement Guidelines issued by the Department of Finance and Administration whereby a maximum payment term of 30 days from receipt of a correctly rendered invoice and receipt of specified goods or services is used. A large and increasing proportion of the department’s payments are made within the specified timeframe.

(b) As a general rule, the department only accepts payment discounts if they represent value for money, that is, if the benefit of accepting a discount is larger than the overdraft rate applied to Commonwealth agencies by the Department of Finance and Administration.

(c) The department does not automatically pay interest at market rates on invoices paid outside the payment terms. Where a late payment clause is included in a contract, the Australian Taxation Office’s General Interest Charge is used to calculate these payments. Where a vendor requests payment of interest or similar penalty, the department will consider on a case-by-case basis.

(2) Yes. An important measure of creditor payment performance is the 90 per cent due date performance benchmark that is monitored by the Minister for Small Business and Tourism through a biannual survey. Defence also monitors various internal measures of its operational efficiency, for example, the average time taken for invoices to be processed onto the payment system. In relation to debtors, Defence analyses the age of its debtors by category and monitors debtor management processes.

(3) The following tables provide examples of performance indicators monitored by Defence.

Creditor Analysis

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Percentage of Accounts Paid by Due Date (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996-1997</td>
<td>92.8</td>
</tr>
<tr>
<td>1997-1998</td>
<td>92.8</td>
</tr>
<tr>
<td>1998-1999</td>
<td>85.7</td>
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<tr>
<td>1999-2000</td>
<td>82.1</td>
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<tr>
<td>2000-2001</td>
<td>78.4</td>
</tr>
<tr>
<td>2001-2002</td>
<td>82.7</td>
</tr>
<tr>
<td>2002-2003</td>
<td>83.9</td>
</tr>
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Debtor Analysis

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Not overdue (%)</th>
<th>1-30 days late (%)</th>
<th>31-60 days late (%)</th>
<th>61-90 days late (%)</th>
<th>91+ days late (%)</th>
<th>Total Debt (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996-1997</td>
<td>25.4</td>
<td>23.5</td>
<td>9.9</td>
<td>4.7</td>
<td>36.5</td>
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</tr>
<tr>
<td>1997-1998</td>
<td>16.8</td>
<td>51.7</td>
<td>8.2</td>
<td>3.7</td>
<td>19.6</td>
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<tr>
<td>1998-1999</td>
<td>20.2</td>
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<td>16.9</td>
<td>3.7</td>
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<td>1999-2000</td>
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<td>16.4</td>
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<td>6.8</td>
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<td>3.2</td>
<td>17.5</td>
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<td>2002-2003</td>
<td>61.2</td>
<td>18.3</td>
<td>9.1</td>
<td>1.9</td>
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### Commonwealth Government – Analysis by age – at 30 June

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<th>Financial Year</th>
<th>Not overdue (%)</th>
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<th>31-60 days late (%)</th>
<th>61-90 days late (%)</th>
<th>91+ days late (%)</th>
<th>Total Debt (%)</th>
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<td>1996-1997</td>
<td>36.0</td>
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<td>1.2</td>
<td>13.9</td>
<td>100.0</td>
</tr>
<tr>
<td>1999-2000</td>
<td>0.9</td>
<td>99.1</td>
<td>0.1</td>
<td>-</td>
<td>-</td>
<td>100.0</td>
</tr>
<tr>
<td>2000-2001</td>
<td>30.1</td>
<td>10.8</td>
<td>58.5</td>
<td>0.2</td>
<td>0.4</td>
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</tr>
<tr>
<td>2001-2002</td>
<td>61.4</td>
<td>27.3</td>
<td>10.9</td>
<td>0.1</td>
<td>0.4</td>
<td>100.0</td>
</tr>
<tr>
<td>2002-2003</td>
<td>94.0</td>
<td>4.8</td>
<td>0.1</td>
<td>0.6</td>
<td>0.5</td>
<td>100.0</td>
</tr>
</tbody>
</table>

### Overseas – Analysis by age – at 30 June

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Not overdue (%)</th>
<th>1-30 days late (%)</th>
<th>31-60 days late (%)</th>
<th>61-90 days late (%)</th>
<th>91+ days late (%)</th>
<th>Total Debt (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996-1997</td>
<td>31.5</td>
<td>29.4</td>
<td>14.5</td>
<td>9.0</td>
<td>15.6</td>
<td>100.0</td>
</tr>
<tr>
<td>1997-1998</td>
<td>30.0</td>
<td>25.8</td>
<td>8.8</td>
<td>4.9</td>
<td>30.5</td>
<td>100.0</td>
</tr>
<tr>
<td>1998-1999</td>
<td>21.4</td>
<td>31.4</td>
<td>7.2</td>
<td>7.8</td>
<td>32.3</td>
<td>100.0</td>
</tr>
<tr>
<td>1999-2000</td>
<td>17.9</td>
<td>24.2</td>
<td>10.4</td>
<td>22.9</td>
<td>24.6</td>
<td>100.0</td>
</tr>
<tr>
<td>2000-2001</td>
<td>33.8</td>
<td>54.4</td>
<td>1.1</td>
<td>3.6</td>
<td>7.2</td>
<td>100.0</td>
</tr>
<tr>
<td>2001-2002</td>
<td>30.6</td>
<td>37.1</td>
<td>7.9</td>
<td>2.4</td>
<td>21.9</td>
<td>100.0</td>
</tr>
<tr>
<td>2002-2003</td>
<td>34.1</td>
<td>18.3</td>
<td>3.9</td>
<td>0.7</td>
<td>42.9</td>
<td>100.0</td>
</tr>
</tbody>
</table>

### Other Trade Debtors – Analysis by age – at 30 June

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Not overdue (%)</th>
<th>1-30 days late (%)</th>
<th>31-60 days late (%)</th>
<th>61-90 days late (%)</th>
<th>91+ days late (%)</th>
<th>Total Debt (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996-1997</td>
<td>21.9</td>
<td>45.2</td>
<td>17.4</td>
<td>7.5</td>
<td>8.0</td>
<td>100.0</td>
</tr>
<tr>
<td>1997-1998</td>
<td>6.9</td>
<td>9.6</td>
<td>2.4</td>
<td>0.7</td>
<td>80.5</td>
<td>100.0</td>
</tr>
<tr>
<td>1998-1999</td>
<td>15.5</td>
<td>51.6</td>
<td>24.4</td>
<td>2.9</td>
<td>5.6</td>
<td>100.0</td>
</tr>
<tr>
<td>1999-2000</td>
<td>85.6</td>
<td>3.0</td>
<td>2.9</td>
<td>1.5</td>
<td>7.1</td>
<td>100.0</td>
</tr>
<tr>
<td>2000-2001</td>
<td>31.2</td>
<td>18.7</td>
<td>3.0</td>
<td>32.0</td>
<td>15.0</td>
<td>100.0</td>
</tr>
<tr>
<td>2001-2002</td>
<td>21.5</td>
<td>22.2</td>
<td>55.0</td>
<td>0.3</td>
<td>1.0</td>
<td>100.0</td>
</tr>
<tr>
<td>2002-2003</td>
<td>60.2</td>
<td>38.5</td>
<td>0.8</td>
<td>0.2</td>
<td>0.3</td>
<td>100.0</td>
</tr>
</tbody>
</table>

### (4) (a)

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Number of Accounts Paid</th>
<th>Value of Accounts Paid ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996-1997</td>
<td>1,164,865</td>
<td>6,807,933,606</td>
</tr>
<tr>
<td>1997-1998</td>
<td>994,547</td>
<td>8,096,610,694</td>
</tr>
<tr>
<td>1998-1999</td>
<td>1,142,887</td>
<td>8,795,234,682</td>
</tr>
<tr>
<td>1999-2000</td>
<td>1,122,962</td>
<td>9,581,594,608</td>
</tr>
<tr>
<td>2000-2001</td>
<td>1,068,434</td>
<td>9,686,476,675</td>
</tr>
<tr>
<td>2001-2002</td>
<td>1,122,962</td>
<td>8,575,673,051</td>
</tr>
<tr>
<td>2002-2003</td>
<td>1,223,733</td>
<td>9,443,429,929</td>
</tr>
</tbody>
</table>

### (b)

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Number of Accounts Paid</th>
<th>Accounts Paid by Due Date</th>
<th>Percentage of Accounts Paid by Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996-1997</td>
<td>1,164,865</td>
<td>1,081,368</td>
<td>92.8</td>
</tr>
<tr>
<td>1997-1998</td>
<td>994,547</td>
<td>923,032</td>
<td>92.8</td>
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<tr>
<td>1998-1999</td>
<td>1,142,887</td>
<td>979,914</td>
<td>85.7</td>
</tr>
</tbody>
</table>

### QUESTIONS ON NOTICE
(c) Changes in the department’s systems over the period has meant that it is impracticable to produce information in the format requested.

(d) The table below indicates the value of invoices paid at 30 days, 45 days, 60 days, and 90 days or over by Defence since 1996-97.

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Number of Accounts Paid</th>
<th>Accounts Paid by Due Date</th>
<th>Percentage of Accounts Paid by Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999-2000</td>
<td>1,122,962</td>
<td>924,579</td>
<td>82.1</td>
</tr>
<tr>
<td>2000-2001</td>
<td>1,068,434</td>
<td>837,360</td>
<td>78.4</td>
</tr>
<tr>
<td>2001-2002</td>
<td>1,122,962</td>
<td>928,843</td>
<td>82.7</td>
</tr>
<tr>
<td>2002-2003</td>
<td>1,223,733</td>
<td>1,026,383</td>
<td>83.9</td>
</tr>
</tbody>
</table>

(c) Changes in the department’s systems over the period has meant that it is impracticable to produce information in the format requested.

(d) The table below indicates the value of invoices paid at 30 days, 45 days, 60 days, and 90 days or over by Defence since 1996-97.

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>30 days (by due date) ($M)</th>
<th>45 days (1-15 days late) ($M)</th>
<th>60 days (16-30 days late) ($M)</th>
<th>90 days (31-60 days late) ($M)</th>
<th>91+ days (61+ days late) ($M)</th>
<th>Total ($M)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996-1997</td>
<td>5,587.1</td>
<td>283.3</td>
<td>21.2</td>
<td>5.6</td>
<td>910.8</td>
<td>6,807.9</td>
</tr>
<tr>
<td>1997-1998</td>
<td>6,196.2</td>
<td>427.6</td>
<td>22.7</td>
<td>6.8</td>
<td>1,443.3</td>
<td>8,096.6</td>
</tr>
<tr>
<td>1998-1999</td>
<td>6,559.6</td>
<td>1,148.6</td>
<td>36.1</td>
<td>19.8</td>
<td>1,031.1</td>
<td>8,795.2</td>
</tr>
<tr>
<td>1999-2000</td>
<td>6,973.3</td>
<td>1,037.0</td>
<td>74.4</td>
<td>35.1</td>
<td>1,461.8</td>
<td>9,581.6</td>
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<tr>
<td>2000-2001</td>
<td>5,099.4</td>
<td>2,502.5</td>
<td>222.6</td>
<td>102.8</td>
<td>1,759.1</td>
<td>9,686.5</td>
</tr>
<tr>
<td>2001-2002</td>
<td>5,953.4</td>
<td>1,187.7</td>
<td>179.6</td>
<td>102.1</td>
<td>1,152.9</td>
<td>8,575.7</td>
</tr>
<tr>
<td>2002-2003</td>
<td>6,719.6</td>
<td>1,171.8</td>
<td>221.5</td>
<td>123.4</td>
<td>1,207.1</td>
<td>9,443.4</td>
</tr>
</tbody>
</table>

Note: Totals in the tables provided may not add due to rounding.

(5) Defence draws its appropriations on a just-in-time basis, whereby, cash is provided daily as required to meet its net cash outflows. Accordingly, no cash flow benefits arise as a result of late payments made by Defence.

**Environment: Woodside Energy Ltd**

(Question Nos 3047 and 3048)

**Senator Brown** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 24 June 2004:

(1) Is it the case that more than 250 dolphins have been killed off the Mauritanian coast, on the border with Senegal, due to the activities of the Australian oil company Woodside.

(2) Is the Government aware that the exploratory work being undertaken by Woodside on the site at Chingetti uses techniques, such as sonar and explosions, which may be killing the local fauna.

(3) (a) What action has the Government taken to prevent the deaths of dolphins and other fauna; and 
(b) has the Government reported Woodside’s destructive activities to any official prosecuting body; if not, why not.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s questions:

(1) I am advised that mass mortalities of marine fauna have occurred in the past in coastal waters off Mauritania but there is no evidence that any of these deaths are associated with petroleum industry activities, including the activities of the Australian oil company, Woodside.

I understand that 125 Atlantic spotted dolphins were found dead on beaches in 1995, more than 200 beached carcasses of cetaceans (whales and dolphins), marine turtles and various fish were reported in June and July 2003 and there were two separate reports of large numbers of dead dolphins, beached whales and marine turtles washing ashore in June 2004. No seismic survey oper-
tions were conducted in Mauritanian waters in the six months before the 1995 or 2003 events. In June 2004 Woodside was conducting a seismic survey, but this was in waters between 100 kilometres and 200 kilometres north of where the beached carcasses were reported.

I am advised that the available evidence suggests the most likely causes of all the deaths to be fishing activities or viral infections.

(2) The Government has been advised by Woodside that the exploratory work being undertaken does not involve sonar or explosions.

(3) (a) The Government has put in place the Environment Protection and Biodiversity Conservation Act 1999 which, amongst other things, protects cetaceans in Australian waters and also makes it an offence for Australians to kill, injure, take, trade, keep, move, or interfere with any cetacean, whether in Australian, international or foreign waters.

(b) No. As noted in the answers to (1) and (2) above, there is no evidence or reason to suggest that Woodside activities are implicated in the deaths of the marine animals found on the beaches of Mauritania.

Foreign Affairs: Solomon Islands
(Question No. 3053)

Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 30 June:

(1) Is the Minister aware that, on 18 November 2003, Ms Sue Arnold, an Australian citizen, filed a formal complaint with Mr Bruce Nankervis, a Regional Assistance Mission to the Solomon Islands (RAMSI) police officer in Honiara, alleging an attempt to murder her and several customary landowners who were exercising their lawful rights in attempting to land at Gavutu Island, so that their party could inspect dolphins held in a sea pen.

(2) Has there been any action taken over this complaint.

(3) Is the Minister aware that the attack on Ms Arnold was the fourth violent attack by dolphin traders on various people, including the British High Commissioner at Honiara and his wife, journalists from A Current Affair and islanders.

(4) Will the Minister investigate and report as to why no action has been taken in relation to this complaint and provide an explanation of why there has been no response from RAMSI police to queries by Mr Gabriel Suri, a Solomon Islands lawyer acting on behalf of Ms Arnold and the customary land owners who were attacked.

Senator Hill—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) Yes.

(2) Yes. Witness statements were taken by police from Ms Arnold and others who were present during the alleged incident. RAMSI police have advised that an assessment of these statements does not support the claim that this was an attempted murder, but that other charges may be warranted. Further discussion is inappropriate before the case is finalised.

(3) The Australian High Commission in Honiara has confirmed it is aware of allegations of other individuals being prevented from visiting the SIMMIEC facilities in Honiara and on Gavutu Island between July and November 2003. The Australian High Commission has rendered consular advice and assistance as appropriate.

(4) As per (2) above, action has been taken. The matter is the responsibility of the RSIP Investigations Unit – not RAMSI police. It is an open case and will continue to be investigated. RAMSI police advise they are not aware of any queries made by Ms Arnold’s lawyer, Mr Gabriel Suri, on this
matter but do suggest he contact the RSIP Investigations Unit should he have any questions about the case.

**Defence: HMAS Westralia**  
(Question No. 3054)

Senator Brown asked the Minister for Defence, upon notice, on 30 June 2004:

With reference to the replacement of HMAS Westralia: Did the Minister claim that the replacement ship, which is from Korea, is ‘environmentally sustainable’ as reported by the Australian Broadcasting Corporation on 3 June 2004; if so, in what way will the ship be environmentally sustainable.

Senator Hill—The answer to the honourable senator’s question is as follows:

Environmental Sustainability in Transport is a standard term of reference within the Organisation for Economic Co-operation and Development of which Australia is a member. Within the international maritime arena this term is also used by the International Maritime Organisation (IMO). The IMO is the primary regulatory body for the development of ship pollution control, management and mitigation strategies and policy. Australia is also a member of the IMO.

The replacement ship DELOS is compliant with all IMO’s annexures pertinent to the prevention of pollution from ships and specifically tankers. In addition, the DELOS meets stringent United States Coast Guard pollution requirements for foreign flagships operating in United States waters.

Key environmental features of the DELOS are double hull construction, latest generation collision avoidance and navigation radar, nontoxic antifoul paint, Volatile Organic Compound recovery system and international certification for the carriage of dangerous chemicals in bulk.

The DELOS also has Lloyds Register ‘Shipright’ notation, which adopts the highest standards of safety, quality and reliability through design, construction and for the operational lifetime of a ship and reduces the risk of structural failure through the application of advanced structural analysis techniques. The DELOS will also participate in the voluntary Oil Companies International Marine Forum Ship Inspection Report Program.

**Jenkins, Mr Mervyn**  
(Question No. 3057)

Senator Brown asked the Minister for Defence, upon notice, on 5 July 2004:

With reference to the death of Mr Mervyn Jenkins:

(1) What investigation was undertaken by Australian authorities; (b) when was the investigation undertaken; and (c) by whom.

(2) What was the cause of Mr Jenkins’ death.

(3) What were the contributing factors.

(4) Is there any further inquiry into Mr Jenkins’ death being considered or under way; if so, can details be provided.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) There was no investigation of the death of Mr Jenkins undertaken by Australian Authorities.

(2) Mr Jenkins’ death was investigated by the Virginia Police Department, Arlington County USA, who concluded that Mr Jenkins had committed suicide.

(3) The circumstances relating to the death of Mr Jenkins are the subject of legal proceedings. It is not appropriate in the circumstances that I make any further response to this question.

(4) There is no inquiry into Mr Jenkins’ death being considered by the Government.
Military Detention: Australian Citizens
(Question No. 3062)

Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 5 July 2004:

With reference to Mr Mamdouh Habib, the Australian who is a prisoner at Guantanamo Bay:

(1) Was Mr Habib transferred from Pakistani authority to that of Egypt or the United States of America.

(2) Did Australia agree to this transfer; if so, when and how.

(3) What did the Australian Government know, do, or endeavour to find out about the torture of Mr Habib in Egypt.

(4) (a) What role did Australia have in Mr Habib’s transfer from Egypt to Guantanamo Bay; and (b) who was involved.

(5) In what way did Australia inquire into, monitor and agree to Mr Habib’s: (a) detention in Egypt; and (b) transfer to Guantanamo Bay.

Senator Hill—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) Australia has no knowledge of the mechanics of the transfer. That is a matter for Pakistan.

(2) No.

(3) The Government made numerous requests to the Egyptian Government, including at the highest levels, for consular access to Mr Habib. Egypt has, however, never acknowledged that it had Mr Habib in its custody.

(4) (a) None.

(b) Not applicable.

(5) (a) Please see the answer to question three above.

(b) The Government was advised Mr Habib was transferred on 4 May 2002 to Guantanamo Bay. We have since remained in close and frequent contact with the US concerning Mr Habib’s welfare and the progress of his case.