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

COMMITTEES

Foreign Affairs, Defence and Trade References Committee

Meeting

Senator MACKAY (Tasmania) (12.31 p.m.)—by leave—At the request of the Chair of the Foreign Affairs, Defence and Trade References Committee, Senator Hutchins, I move:

That the Foreign Affairs, Defence and Trade References Committee be authorised to hold a public meeting during the sitting of the Senate today, from 3.30 pm to 5 pm, to take evidence for the committee’s inquiry into the effectiveness of the Australian military justice system.

Question agreed to.

US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004

In Committee

Consideration resumed from 9 August.

US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF) BILL 2004

The TEMPORARY CHAIRMAN (Senator Lightfoot)—We are dealing with two amendments moved by the Greens: amendment (1) on sheet 4351 and amendment (1) on sheet 4366 revised.

Senator NETTLE (New South Wales) (12.32 p.m.)—During the debate last night on these two amendments moved by the Greens, Senator Ridgeway informed the committee that he had more questions to ask on these amendments, so I will use this opportunity to ask some questions about the quarantine component of the free trade agreement. What the particular amendment we are debating at the moment does is to ensure that the joint committee with the responsibility to implement the US-Australia free trade agreement, which has people appointed to it by the executive of the Australian government and the executive of the United States government, holds meetings which are open and provides a report to the parliament on membership and attendance at the meetings, meetings that have been held, issues considered and recommendations made at the meetings.

This is the committee that is given the responsibility of implementing the US-Australia free trade agreement, a committee to which our government and the Bush administration appoint individuals, and it, not the parliament, becomes the responsible committee for the implementation of the US-Australia free trade agreement. The amendment that the Australian Greens have moved brings back the responsibility for the implementation of the US-Australia free trade agreement to this parliament, rather than allowing the executive government—be it a Howard or a Latham government—to hand that responsibility over to a committee to which they appoint individuals.

Paragraph (4) of the first amendment on sheet 4366 ensures that any decisions that are made by this joint committee—by the executives of the two governments—about the implementation of the US-Australia free trade agreement become instruments that can be disallowed by either the Senate or the House of Representatives. This Greens’ amendment brings the power back to the Senate and the House of Representatives when decisions are made by the joint committee as to how the US-Australia free trade agreement is going to be implemented, rather than handing it over to a committee on which President Bush and Prime Minister Howard...
appoint individuals. The reason we need to do this should be patently obvious: decisions about sovereignty and decisions about being able to implement laws in a way in which they serve the public interest of this country and the United States should be made in our parliaments; they should not be made in a committee to which the two executives can appoint individuals who then make decisions and rulings that need to be adhered to by our parliament or the parliament of the United States.

I will move to one particular area which, as I mentioned last night, farmers, particularly orchardists, in parts of New South Wales that I have been visiting are concerned about, and that is the way in which our quarantine laws are weakened by the mechanisms of the US-Australia free trade agreement. Quarantine laws in Australia, I am sure all of us would stand up and agree, are there for a scientific purpose. They are to protect our produce and its capacity to be disease and pest free. But the US-Australia free trade agreement sets up a range of different committees which make determinations about whether or not our quarantine laws are perceived as a barrier to trade. The SPS committee, which is one of two committees being set up, will comprise trade representatives as well as scientists. Both of the committees that are being set up as a part of the quarantine concessions that this government has made to the United States are intended to ‘facilitate trade between the parties’. That is a quote from the trade agreement’s article 7.4, annex 7-A, section A1.

We have two committees on which trade representatives as well as scientists are based, and these committees are given, by the US-Australia free trade agreement, the prerogative to make decisions that will facilitate trade between parties—trade representatives, not scientists, making decisions about whether our quarantine laws are scientifically prudent. Clearly, by appointing trade representatives to these committees and by setting a term of reference for them which is about facilitating trade between parties, there cannot be an expectation that these trade representatives or bodies set up to make decisions on trade will be making decisions on the basis of our scientific laws and the standing of our quarantine laws. No wonder the small farmers and orchardists who are growing apples and pears in the northern tablelands of New South Wales are concerned.

We have scientifically proven quarantine laws that we are continually defending from attacks from not just the United States but also the European Union, who claim that our quarantine laws are a barrier to trade, that our quarantine laws are not there for scientific reasons but for trading reasons. They have not won those disputes in the World Trade Organisation. We have been able to defend the scientific validity of our quarantine laws. Now the United States has another opportunity through a free trade agreement with Australia—let us remember that the US is the largest economic superpower in the world—that sets up a committee with trade representatives on it that will make determinations as to whether our quarantine laws are scientifically prudent. If that is not getting in through the back door, I do not know what is. The US have not been able to win their cases in the World Trade Organisation so now they have a trade agreement set up with a country that has a far smaller economy than they do, and out of that trade agreement they have got concessions from this government for committees that make decisions on the basis of facilitating trade between countries and that have trade representatives as well as scientists on them. That is not a protection of our quarantine laws.

The question needs to be asked of the minister: why has the government failed in this regard? The Minister for Trade, Mr
Vaile, went into these negotiations saying that he would be defending Australia’s quarantine laws. Yet he has set up these committees with a clear framework for the basis on which they are to make decisions, and put trade representatives on them rather than keeping them as scientific forums which decide on our quarantine laws. This is why we need to ensure that decisions made by this joint committee appointed by the Howard government and the Bush administration to implement our free trade agreement are decisions that we can debate here in the parliament. They impact on the livelihoods of orchardists—people growing citrus fruits, stone fruits, apples and pears—and producers of pork, who rely on our quarantine laws to protect their pork exports. We have seen comments from the United States saying with respect to these exact industries, stone fruits, citrus and pork, that Australia’s quarantine laws will be weakened as a result of the trade agreement. Wins will come for American farmers in these three areas as a result of what the Australian government has agreed to. There is no comfort there for Australian farmers, and the government and the opposition need to answer the question: why are you doing this to our farmers and orchardists? Why are you putting their livelihoods and the quarantine laws that protect their livelihoods in the hands of trade representatives to make decisions—not our own existing scientifically based analysis that has stood up in the World Trade Organisation?

**Senator RIDGEWAY** (New South Wales) (12.42 p.m.)—I want to make a few comments on behalf of the Australian Democrats.

**Senator HILL** (South Australia—Minister for Defence) (12.42 p.m.)—I wonder whether I could answer Senator Nettle’s questions first, Senator Ridgeway. It might make it easier, if that is okay. Senator Nettle raised two issues. The first concerned the Greens’ amendment on sheet 4366, which is to require the joint committee that is set up to supervise implementation of the agreement—a committee between governments—to assume a new role, and that is reporting to the Australian parliament and in effect being accountable to the parliament, even to the extent that within the amendment she argues for provisions that would enable any instrument that came out of that process to be disallowed by the Australian parliament. Consistent with what I said last night, this is a failure to appreciate basically our system of governance, which gives this responsibility to the executive. It would be inappropriate therefore for us to seek to interfere in the conduct of the business of a committee that is reporting to both executives. If the Australian parliament is minded it has other ways of pursuing the implementation of the free trade agreement as the years go by. It could conduct inquiries; it could obviously ask questions in the parliament. There are a range of different processes that can be utilised. But to seek to corrupt the institutionalised structure for administration by this means we would suggest is not only unwise but inappropriate.

The second issue she raised concerned the quarantine provisions of the agreement. It was not related to the implementation bill but related to the agreement. As this chamber knows, the government has been at pains to stress that the free trade agreement will not compromise Australia’s quarantine regime. This was one of our no-go areas in these ne-
We wanted an agreement that allowed for an expansion of Australian trade but not at a cost to Australia’s quarantine regime, which has been so important in protecting this country from quarantine threats.

Senator Nettle, on this occasion, confuses the role of both the committee and the working group that are set up under the free trade agreement to assist in the implementation of that agreement as in some way threatening that Australian quarantine structure. In doing so, she is mistaken. If she refers to chapter 7 of the agreement she will see the role of the committee that is established to assist both governments in the implementation of the agreement is as is stated there:

The objectives of the Committee shall be to enhance each Party’s implementation of the SPS Agreement, protect human, animal, or plant life or health, enhance consultation and cooperation between the Parties on sanitary and phytosanitary matters, and facilitate trade between the Parties.

There is nothing in that that is threatening to Australia’s quarantine regime. If she then moves to annex 7-A, which sets up the technical group, she will find that whilst that group provides technical advice it can in no way interfere with the scientific assessment which is the basis of a quarantine assessment.

These issues were explored at considerable depth by both the joint parliamentary committee and the Senate committee and, whilst those committees made various suggestions, I do not think that either found that there was any real threat to Australia’s quarantine arrangements as a result of either the committee or the working group. I appreciate the concern she is expressing, but it is the confident view of the government that the agreement as it has been negotiated will in no way threaten Australia’s quarantine arrangements and that her fears in this regard are not well founded.

Senator Nettle (New South Wales)

(12.48 p.m.)—I would just like to point the minister to some other comments. It is interesting to hear the government’s view that this will not impact on Australia’s quarantine laws. That is not a view shared by the US farmers that have lobbied so hard to ensure that these new committees are set up outside our scientific processes with the capacity to have ‘facilitating trade’ as one of their terms of reference. The American Farm Bureau Federation in a document that they wrote, ‘The Implications of an Australian Free Trade Agreement on US Agriculture’, said:

It is critical to note that this increase in exports—that is, an increase in the US agricultural exports—depends as much or more on the progress in follow-up sanitary and phytosanitary talks on items such as Australia’s quarantine and food safety regulations than on changes to Australia’s low or zero tariffs.

So we have got the US farmers saying here that what happens in these follow-up talks that occur as result of the committees that the government is setting up is as important or more important for them in getting their produce into the Australian marketplace.

Here is a comment from two Australian academics, Professor Linda Weiss from the University of Sydney and Dr Elizabeth Thurbon from the University of New South Wales, in their responses to questions on notice from the Senate select committee on the US-Australia free trade agreement. The section that they write about these quarantine laws concludes with this statement:

Agreeing to provide a political forum outside the auspice of the World Trade Organisation in which to discuss Australia’s quarantine issues cannot be justified on national interest grounds.

The Greens completely support and understand that statement. What is being set up here is a political forum in which people are
appointed by the executive of the Howard government or the Bush administration to discuss quarantine issues and to facilitate trade between the two countries. What comments does the minister have in response to those from the US farmers that the talks that occur will be as important, if not more important, for US farmers in getting their produce into the Australian marketplace and impacting on our quarantine laws?

Senator RIDGEWAY (New South Wales) (12.50 p.m.)—I just want to provide the Democrats’ response to the Greens’ amendments on sheets 4351 and 4366. Firstly, the Greens’ amendments seem fine to be supported. In fact, in a couple of areas they overlap our amendments exactly. I heard the explanation provided by Senator Nettle in terms of an introduction of a definition of an agreement to be used throughout the legislation. Whilst I think it probably needs more explanation in terms of what its effect is going to be, I do not think there is any difficulty from an Australian Democrats’ perspective in being able to support that. As well, I understand that amendment (2) on sheet 4351 removes a section requiring US Customs officers to accompany verification officers. I want it on record that we have a similar amendment that removes this entire schedule and all others, so we will support that amendment. On amendment (3), removing schedule 5, again because we have an amendment that removes all of those schedules we would support that Australian Greens’ proposal.

Senator NETTLE (New South Wales) (12.52 p.m.)—Whilst we are dealing with the first amendment on my sheet of amendments and the first amendment on Senator Brown’s sheet of amendments, I ask the minister to respond to the concerns that have been put forward on the trade agreement’s capacity to undermine our quarantine laws. There have been comments from two academics from Sydney University and the University of New South Wales that a political forum is being set up outside the auspices of the WTO, with the capacity to discuss and make decisions on quarantine issues. There have also been comments from US farmers that these discussions will be equally as important as or more important than the decisions that are made about changes to Australia’s tariffs quotas. Could the minister respond to these concerns. They are ones that I know are shared by farmers in New South Wales whom I have spoken to, who can see that setting up a committee of trade representatives rather than of scientists, with the capacity to facilitate trade, heads us in a direction of decisions being made about our quarantine laws that are not purely scientific decisions.

These decisions will be influenced by the terms of reference which the minister read out. The final term of reference for this committee that he read out was about the two committees facilitating trade. These are not the scientific committees that exist in the WTO; they are political forums to which our government and the US government appoint individuals. They make decisions and then, even if the decision they make is not something that, for example, the United States is happy with, they can take that decision to the disputes mechanism within this agreement, which allows another panel comprising three trade lawyers to make a decision about whether or not our quarantine laws create a barrier to trade. This is the issue that the min-
ister acknowledged last night. Decisions about the implementation of this agreement can be made in a trade forum of three trade lawyers—not in the Australian parliament, as proposed in this amendment that the Greens are putting forward. Decisions about the implementation of this agreement can be made by a panel of three trade lawyers. There is no comfort for Australian farmers. Firstly, we have got this committee of trade representatives deciding on quarantine laws. If the US government is not happy with those decisions, the matter can then go to the disputes mechanism within this agreement—a disputes mechanism whereby three trade lawyers are making a decision. How does that provide any comfort to Australian farmers concerned about the quarantine laws that protect their livelihoods?

Senator HILL (South Australia—Minister for Defence) (12.55 p.m.)—What is the relevance of trade officials? The answer of course is that we are looking at the connection between quarantine protection and trade issues. What we are talking about is where trade in a particular product might be threatened from a quarantine perspective; that is the relevance. The WTO obligation is that the restrictive measure should be the option that is least trade restrictive. But that does not alter the fact that Australia has a right to protect itself from quarantine threat, and that right is not detrimentally affected by this agreement. The fact that experts from both sides will discuss these issues might be useful but those experts cannot require any particular quarantine outcome from Australia. Australia decides that for itself. Contrary to what Senator Nettle said, I am advised that the dispute settlement mechanism under the free trade agreement does not include disputes in relation to quarantine. So in this negotiation the negotiators have not departed from the existing WTO processes.

The farmers may well think they could have access through these bodies to discuss these issues with Australia—and sometimes discussion is a useful thing—but that in itself does not provide any threat to Australia’s quarantine regime. They cannot determine an outcome relating to Australia’s quarantine regime. The Australian government, hopefully with the support of the Australian parliament, will be the body that makes those decisions. Whilst this government is in office, its decisions will always be to protect Australia from quarantine risk. As I said, that was simply a no-go zone in relation to this negotiation. The protection of that quarantine environment is so important to us that we would not hesitate to sacrifice economic advantage in an effort to ensure protection of our natural assets for the benefit of future generations.

Senator NETTLE (New South Wales) (12.58 p.m.)—Let us talk about the disputes mechanism making a decision that one of Australia’s quarantine laws is found to be a barrier to trade. That is what the disputes mechanism is deciding: whether any existing laws in our country are barriers to trade. So the disputes mechanism, involving three trade lawyers, decides that one part of our quarantine laws is a barrier to trade. My understanding of what the disputes mechanism can then do is this: through the trade agreement it can ensure that that law is changed so that it is not a barrier to trade. It can impose trade sanctions equivalent to the amount of money it believes has been lost via the Australian quarantine law that is a barrier to trade. So it can require compensation to be paid.

We have got a group of three trade lawyers making a decision about whether or not our laws are barriers to trade. Once they have decided something is a barrier to trade, what powers do they have? My understanding is that they can impose trade sanctions, as we
saw when the New Zealand government decided to put their audiovisual sector onto the bargaining table for the General Agreement on Trade in Services. A subsequent government—in that case, a Labour government—came in in New Zealand and tried to increase the local content of audiovisual services. The United States, through the same trade disputes mechanism, threatened to impose sanctions on New Zealand equivalent to the amount of money the United States entertainment industry believed it had lost as a result of the changes to New Zealand law that had come about by them putting their audiovisual sector on the trade table. They had made those changes, and a Labour government got in and tried to increase the New Zealand content.

At the World Trade Organisation the United States were able to argue and win their case. They threatened to impose sanctions on the New Zealand government if they tried to increase their local content. So the New Zealand government did not. They were so threatened by the trade sanctions, the economic sanctions being proposed by the United States, that there was no increase in local content provisions by the New Zealand government. That is how powerful the trade dispute mechanism that is in this US-Australia free trade agreement is. A new government in New Zealand, a Labour government, got in and wanted to increase the local content levels. By winning through that dispute mechanism, the economic threat imposed by the United States, the great economic power that it is, was so great that the New Zealand government did not increase their content. That is the power of these trade agreements. Can the minister explain this for us: what power does the dispute mechanism have when it makes a decision that a quarantine law, a local content law or whatever it may be is a barrier to trade? What power does it have to change that situation?

Senator HILL (South Australia—Minister for Defence) (1.02 p.m.)—I will never satisfy Senator Nettle, but I guess it helps to fill in the day. I draw Senator Nettle’s attention to article 7.2.2, which is under the quarantine part of the act. It explicitly says:

Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

That is the answer to her concern in relation to quarantine matters. She then seemed to move into the area of audiovisual protection. As she knows, Australia were able to successfully negotiate the level of protection that we required under that part. That was very important to us because our cultural identity was something that we were also not prepared to sacrifice for purely economic gain. We were pleased with the outcome that we were able to negotiate, the level of protection we were able to negotiate and the further flexibility that was provided to us in that part. I cannot see any concern in relation to a disputes settlement mechanism, because an outcome of any dispute cannot be to reduce the level of protection that the United States has already agreed to.

Senator BROWN (Tasmania) (1.03 p.m.)—Quarantine is not just a matter of the dispute mechanism, as dismissed by the minister, but a matter of what changes have been made to the overview of quarantine arrangements. Could the minister please explain to the committee what appointments will be made under the free trade agreement relating to quarantine, what those appointments are to and who will make them. We hear the blandishments about quarantine being safe and unchanged, but I hear the concern of people in the rural communities that it is not quite as easy as that. For example, if you do have people involved in trade—perhaps their barley wheat is being traded—being involved in the quarantine overview or
decision-making process, that is a very important change, and the committee needs to know about it.

**Senator Hill** (South Australia—Minister for Defence) (1.05 p.m.)—In chapter 7, article 7.4 establishes the committee to which we have been referring. It says it will comprise:

… representatives of each Party who have responsibility for sanitary and phytosanitary matters.

It is reasonable to assume that they would be principally government officials. In relation to what is referred to in annex 7-A as the Standing Technical Working Group on Animal and Plant Health Measures, again that chapter gives us guidance. It says:

The Working Group shall be co-chaired by the chief administrators of the Australian Government Department of Agriculture, Fisheries and Forestry’s Biosecurity Australia and the United States Department of Agriculture’s Animal and Plant Health Inspection Service …

We are looking principally at a technical group of specialists.

**Senator Brown** (Tasmania) (1.06 p.m.)—Does that include US technical experts being involved in decisions on Australian quarantine matters?

**Senator Hill** (South Australia—Minister for Defence) (1.07 p.m.)—I have been answering this particular question now for some time—about an hour, basically. Australian quarantine laws are determined by Australia and neither the technical group nor the committee can change Australia’s quarantine laws; that is a fundamental safeguard.

**Senator Brown** (Tasmania) (1.07 p.m.)—Will American experts be brought into the technical group or the other group that is looking at Australian quarantine laws and decisions made there?

**Senator Hill** (South Australia—Minister for Defence) (1.07 p.m.)—These are groups set up to facilitate the administration of the agreement—a broader policy type committee and a technical specialist group to support that committee. As I said in answer to a question from Senator Nettle, we are not looking at the quarantine issues in a vacuum; we are looking at the background of trade. The objective, obviously, is to ensure that protective measures are the least trade restrictive options. That is understandable because one of our objectives is to expand trade. But our overriding objective is not to expand trade at the risk of reducing our quarantine protection regime. That is why these committees have no capacity to change Australia’s quarantine laws and furthermore, as I also said in answer to Senator Nettle, there is not even a dispute settlement mechanism on quarantine provided for within the agreement.

**Senator Brown** (Tasmania) (1.09 p.m.)—Senator Hill has spent an hour trying to get around the truth that is at the kernel of this matter; that is, US authorities will be appointed to the technical advisory groups—the Australian-US committee on sanitary and phytosanitary matters as well as the Australian-US technical working group on animal and plant health measures. These will comprise not only scientists but trade representatives—that is, representatives of US multinational corporations. That cuts straight to the matter. These will be looking, and I quote Senator Hill, ‘to ensure the technical measures are the least trade restrictive options’.

When you are looking at quarantine there is no least or more about it. Either you are protecting the country from the potential of invasive species and organisms or you are not. The minister says, ‘We’re going to look at the ones that are best for trade.’ They are not the ones that are the best for quarantine. What right do trade representatives have to invade the right of scientists with quarantine expertise and people with technical know-
how and experience in this field and to know what is best for Australia? The trade representatives from the United States are looking at the trade advantage that they can get by knocking off quarantine measures here. The minister tries to fool us into believing that this simply means there is going to be a little bit of talk in a backroom. No, there is enormous political leverage here. That is why the measures are there. You do not get people being appointed to committees like this unless there is an advantage for the new party, the new kid on the block—in this case US trade interests. The measures are put there to prevent Australia from having the rigour in defending itself from invasive species that it has had in the past.

The example with NAFTA of the repeated pressure on measures just like this to break down quarantine laws and protective laws is writ large. How is a future Australian government going to be able to withstand the pressure of trade representatives, who know the ins and outs of the quarantine decision-making process of our sovereign nation? They will be up against farmers, who are not a party to what is going on, and who are trying to protect their crops, their orchards and their stock. The competing entity, the United States, which is keeping the barriers up on sugar and for a long time to come—forever, if it wants to manipulate the wording of this agreement—on beef and other prime exports that should have free entry to the United States under a free trade agreement, will break it down because the entity that wants to compete with the Australian agricultural industries is now in the house. It is at the coalface of the decision-making component of quarantine laws in this country. That is what is wrong with this agreement.

‘Don’t worry about it,’ says the minister and Prime Minister Howard. If we are not going to worry about it, what are these trade representatives doing on these quarantine advisory panels, for goodness sake? Whom does the minister think he is fooling here? This is a trade agreement which has been written under pressure from the US corporate sector against the interests of Australia’s 100 per cent ability to determine for itself its quarantine protection. It is a Trojan Horse. The minister knows that; the government knows that. Labor knows that but it accepts this; Labor thinks that this is fine too. Has Senator Conroy got something to say about this? How does Labor justify these trade representatives coming into these important groups looking at quarantine? It is obvious what is going on here. It cannot be accepted. It is not accepted by the Greens. We are going to have to live with this for decades to come. Prime Minister Howard will have moved on, but this Trojan Horse will remain, against the interests of this country.

Senator NETTLE (New South Wales) (1.14 p.m.)—I want to read out to the minister and the committee some concerns that have been expressed by the two academics from Sydney University and the University of New South Wales, whom I mentioned before, about the way in which quarantine decisions in Australia are already being influenced—and this is before we get any committees with trade representatives sitting on them making decisions. In doing this I will deal with the issue of pork. It is worth noting that the US Trade Representative said in a press release:

Food inspection procedures that have posed barriers in the past will be addressed, benefitting sectors such as pork, citrus, apples and stone fruit.

I now read from the submission of the academics to the Senate select committee:

The inclusion of pork in this statement is particularly concerning in light of Biosecurity Australia’s recent decision to allow pork imports from—

the United States—
even though the CSIRO recommended otherwise.

The CSIRO ... concluded that changes to quar-
antine protocols proposed by Biosecurity Austra-
lia would see a 94 to 99 per cent likelihood of an
outbreak of the deadly post-weaning multi-
 systemic wasting syndrome in the next 10 years.
Since its appearance in Europe only a few years
ago, this disease has killed eight million pigs, at a
cost of $1.5 billion. It has no vaccination or cure; only Australia, Finland and Belgium are free from it.

... on May 13, 2004, a Senate Committee recom-
mended that Biosecurity Australia’s decision to
allow importation of pork products be overturned,
and that quarantine restrictions remain in place ...
the Senate Committee also criticised Biosecurity
Australia for prioritising ‘least trade restrictive’
criteria in its Import Risk Analyses, even though
Australia is not required to do so under its WTO
obligations ... this is illustrative of the extent to
which trade considerations are already influenc-
ing what should be predominately science-based
decisions.

So here we have statements about decisions
that are already being made in Australia by
Biosecurity Australia which are against the
recommendations of the CSIRO and on
which a Senate committee, with the support
of the Australian Labor Party, has come out
and said we should not be making decisions
on the basis of least trade restrictive criteria.
The first Senate committee that looked into
the US-Australia free trade agreement, which
I was a member of, made a recommenda-
tion—a recommendation supported by the
opposition, the Greens and the Democrats—
which said that the government should ex-
empt Australia’s quarantine laws from nego-
tiations on the proposed US-Australia free
trade agreement. At first we had the Labor
Party, the Greens and the Democrats saying,
‘Don’t let our quarantine laws be a part of
this trade agreement.’ After that the Labor
Party came out and said, ‘We on this Senate
committee believe we shouldn’t be making
decisions that are based on least trade restric-
tive criteria.’ Pork is one such example, and I
have many others here as well.

These are quarantine decisions that have
already been made and they have been influ-
enced by trade criteria which the CSIRO has
warned us against. This is before we have
got a trade agreement in place. This is before
we have another committee with trade repre-
sentatives on it and a mandate of making
decisions on a trade basis. It is understand-
able that farmers, who are already seeing
decisions being influenced by trade criteria,
are even more concerned about what the
government has agreed to in this trade
agreement: more committees, more trade
representation and more decisions based on
least trade restrictive criteria rather than on
science. It is understandable that people are
concerned. The Greens say that it is not good
enough. We will continue to stick with the
recommendation of the first Senate commit-
tee that looked at the US-Australia free trade
agreement which was to exempt our quar-
antine decisions from the impact of the US-
Australia free trade agreement.

I turn now to some other comments that
the minister made when we were going a bit
further into this as to a decision that may be
made by the disputes mechanism of the US-
Australia free trade agreement that one of
our laws is perceived to be a barrier to trade.
I was asking the minister about what power
that body has. I have had a look at chapter 21
and at annex 21-A on the formula for mone-
tary assessments. I am wondering if the min-
ister can explain what those monetary as-
sessments are and whether they relate to de-
cisions that the trade panel makes for any
compensation that needs to be paid or to any
trade sanctions that may be imposed by that
committee.

Senator Hill (South Australia—
Minister for Defence) (1.20 p.m.)—I will
attempt to conclude the discussion on quar-
antine. It was interesting to hear Senator Brown. He seemed to be arguing for an isolated Australia as the only way to protect it from invasive species and at the same time he seemed to be arguing for expanded trade in sugar. Senator Nettle said the farmers want a strong quarantine regime—and that is true and that is reasonable—but she also could have said that they want the opportunity to trade. Obviously trade is the background against which we are discussing quarantine issues, but we on this side of the chamber believe it is possible to get win-win outcomes and it is possible to provide expanded trade opportunities whilst at the same time protecting our natural assets from quarantine threats. Senator Brown was obviously wrong when he said that there is always only one way to protect from quarantine threats. There might be a range of different ways. Taking a hypothetical example, if the scientists argue that there are two ways with equal effectiveness and if one is less threatening to trade, then that is obviously the one that this side of the chamber would prefer. It gives us the chance to build wealth, create jobs and provide for the community a whole range of different benefits whilst at the same time protecting our natural asset base.

I need to take some advice in relation to the monetary penalties. As Senator Nettle was saying, article 21.12, in this instance, provides—I repeat, in relation to a dispute mechanism not applying to quarantine but to other issues—that if a party has not conformed to its obligations and the parties are unable to reach agreement et cetera it is possible that a financial penalty can be provided, the formula for which is provided in annex 21-A. I am not sure where Senator Nettle wishes to take that issue but no doubt she will now explain.

Senator Nettle (New South Wales) (1.24 p.m.)—I am glad that we are here to continue asking questions because earlier the minister said that they did not have the power to impose financial penalties and now, looking through the trade agreement, it is quite clear, and I thank the minister for—

Senator Hill—Under quarantine.

Senator Nettle—The questions I have been asking were more general. Whilst you were talking to your advisers I was talking about audiovisual content, and the example I was giving was in relation to New Zealand. The financial penalties that were to be imposed on the New Zealand government as it tried to increase its local content levels were so great that the New Zealand government decided not to do it. Here we have, in annex 21-A of the agreement, a formula by which decisions for financial penalties can be made. So in relation to local content the situation is as the minister explained. He said that there is no capacity to increase local content levels in Australia and we now see that there are monetary penalties.

If we had an Australian government that wanted to increase the local content on television, radio, pay TV or some other form of new media in order to support the film or television industry in Australia—and that was found to be a barrier to trade, because it is quite clearly stipulated in the free trade agreement that you cannot increase local content levels—the minister has now pointed out the process by which financial penalties could be imposed. I thank the minister for pointing out the financial penalties—at annex 21-A of the agreement—that can be imposed upon Australia if a dispute cannot be resolved by the three trade lawyers on the disputes panel.

Senator Brown (Tasmania) (1.26 p.m.)—Another way of putting the question is: could the minister take the committee through what happens if this parliament, a year from now, decides that it wants to increase the local content rule so that Austra—
lian content has to go up by five per cent? If a bill that is obviously in breach of the free trade agreement goes through this parliament, what happens? Does nothing happen or is Senator Nettle right, which appears logical, that financial—

Senator Conroy interjecting—

Senator BROWN—I will come to it in a little while. The question is: can the minister walk the committee through what happens under those circumstances and how the US ensures that Australia does not get to increase its local content?

Senator HILL (South Australia—Minister for Defence) (1.27 p.m.)—I suppose the short answer, I am advised, is that that particular part does not refer to disputes about audiovisual media. Putting that aside for the moment, the issue is that, if Australia were in breach, it might be possible to extract a penalty. But the government’s argument is that we are satisfied with the audiovisual arrangement that has been reached and the protection and flexibility that we have been able to negotiate. I draw Senator Nettle’s attention to this—Senator Brown is leaving and can probably have the luxury of a lunch—

Senator Brown—No, I will be back very shortly.

Senator HILL—I will be good to have you back, Senator. I draw Senator Nettle’s attention to the parts of the agreement that set out, under the heading ‘Cross-border trade in services and investment’, what Australia reserves the right to apply and maintain in relation to multichannelled free-to-air commercial television broadcasting services, free-to-air commercial television broadcasting services, subscription television broadcasting services, free-to-air radio broadcasting services, interactive audio and/or video services, spectrum and licensing, and subsidies or grants. We think that that was a very good outcome for Australia and that it protects our cultural environment to the extent that we believe is reasonable. As I said, that was something that was very important to us in this negotiation and we are pleased with what we were able to achieve.

Senator NETTLE (New South Wales) (1.29 p.m.)—I thank the minister for making it very clear that the government is satisfied with the level of local content that exists on Australian television and radio. He read out some other areas such as multichannelling and pay TV in which, if the United States agrees, there is a capacity for Australia to increase local content levels. But in television and in radio, our two main areas of media at the moment, there is not a requirement. This government may be satisfied with the level of local content that exists on television and radio at the moment. What if a future government wanted to increase local content on television or radio? The question Senator Brown asked is: what process exists under this trade agreement for a future government to increase local content on television or radio?

Senator HILL (South Australia—Minister for Defence) (1.30 p.m.)—This agreement is not designed to last only the length of a specific government. As is the norm, the agreement will also bind future governments. Government makes decisions every day that have an effect upon a future government. There is nothing different in that regard in this agreement.

Senator NETTLE (New South Wales) (1.31 p.m.)—So every future government also has to be satisfied with the level of Australian content that exists on television and radio. I talked about the financial penalties outlined in annex 21-A. Can the minister explain to this chamber to what industries these financial penalties apply? So far the minister has said he does not believe that
they apply to quarantine. Can the minister explain to which industries these financial penalties apply? If a dispute about whether or not Australian laws provide a barrier to trade cannot be resolved by the panel and financial penalties are applied, to which industries do these financial penalties apply?

Senator HILL (South Australia—Minister for Defence) (1.32 p.m.)—The agreement provides for that in circumstances where a party has not conformed with its obligations under article 18.2.1(a) or article 19.2.1(a).

Senator NETTLE (New South Wales) (1.32 p.m.)—That does not answer the question of what industries it applies to. What the minister is saying is: ‘We’ve set a trade agreement. It’s set in stone. If anyone tries to do anything outside it, financial penalties are imposed.’ That is what I take from the minister’s answer. If he wants to qualify his answer and say, ‘It doesn’t apply to this industry or that industry,’ I am giving him the opportunity to do so. But so far the minister’s answer has been: ‘There’s an agreement. It’s set in stone. It’s got levels for content and it’s got other components. If we want to make any changes to that, there are financial penalties.’ Now is the opportunity for the minister, if this does not apply to some sectors, to point them out. Otherwise, all we can take from the minister’s answer is that in any area of the agreement where there is dispute or where one party wants to make a change, financial penalties apply.

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that Greens’ amendment (1) on sheet 4351 and Greens’ amendment (1) on sheet 4366 revised be agreed to.

Question negatived.

Senator NETTLE (New South Wales) (1.34 p.m.)—I move Australian Greens’ amendment (2) on sheet 4366 revised:

(2) Page 4 (after line 11), after clause 3, insert:

6 Free trade agreement subordinate to public welfare objectives

For the purposes of the agreement:

(a) regulatory actions which are designed for the purpose of, and applied to achieve, legitimate public welfare objectives, including the protection of:

(i) public health;
(ii) public safety;
(iii) the environment;

(b) no compensation is payable as a consequence of any expropriation or nationalisation arising under Article 11.7(1) of the agreement unless compensation would be payable under an Australian law other than this Act to an Australian person or company.

This amendment is about protection of public health, public safety and the environment. It ensures that the Australian government now and Australian governments in the future can make decisions to protect Australia’s public welfare, public health, public safety or environment and cannot be threatened with paying compensation as a result of this trade agreement. If an existing Australian law ensures that compensation needs to be paid, that is fine because it is an Australian law. But this amendment says that governments making decisions for public health, public welfare, public safety or our environment cannot be fined as a result of this trade agreement. These are the sorts of objectives that need to be put into trade agreements to ensure that governments—not just here in Australia and in the United States—can make decisions on the basis of public health, public welfare, the environment and public safety. The Australian Greens support trade
agreements whereby sovereign governments have the capacity to make decisions on the basis of public health, public welfare and environmental standards.

Indeed, on an international level, the Greens here and Greens parties in over 80 different countries are arguing, working and campaigning to ensure that trade agreements involving all countries occur—not bilateral sorts of trade agreements like this one between Australia and the United States but agreements that involve all countries and that have environmental, human health, labour and human rights standards enshrined across the board which respect international standards. These are the sorts of trade agreements we should be ensuring occur. Otherwise, we will end up with trade agreements—like the one we are debating right now between Australia and the United States—which do not have those public health, environmental, labour or human rights standards central to them. Any of those fundamental standards can be overridden by the interests of the trade agreement. For example, if the Australian government wanted to bring in a carbon tax—an example which Senator Brown gave last night—and to use the funds from a carbon tax to protect our natural environment, that could go to the disputes mechanism and we could have to pay compensation for bringing in a carbon tax. This amendment ensures that, when we are making decisions for these public interest initiatives, we do not face the prospect of paying compensation as a result of the disputes tribunal set up in this agreement.

Senator HILL (South Australia—Minister for Defence) (1.38 p.m.)—The government’s argument, of course, is that environmental and public welfare objectives are secured by the existing agreement and that there is nothing in the enabling legislation that puts them at risk. As I said last night and I have said again today, the government was interested in negotiating an agreement that improved access to the US market, but it was not prepared to do so at a cost to the environment, public health or public safety. Therefore, an amendment that simply repeats that situation is unnecessary. I will leave it at that for the moment.

Senator BROWN (Tasmania) (1.39 p.m.)—Six major US environmental groups—the Center for International Environmental Law, the Defenders of Wildlife, Earthjustice, Friends of the Earth, Sierra Club and Pacific Environment—have expressed opposition to the US-Australia free trade agreement. They have pointed out that the environment is indeed at risk. What is more, they do so from a position of experience. They point out that, for example, the investor rights provisions in the agreement before us are very similar to those that operate under the North American Free Trade Agreement, NAFTA. As I pointed out last night, their letter expressing opposition to this agreement says:

Under NAFTA, both Mexico and Canada have already lost cases involving environmental protections, and the United States faces challenges to public health and environmental standards. These cases have included challenges to policies concerning toxic gasoline additives, hazardous waste treatment, transboundary transport of hazardous waste, open-pit mining mitigation measures, and others.

Let us take the first one of those as an example. This was a challenge to Canada, which had a law preventing toxic gasoline additives that was disputed under the disputes mechanism of NAFTA by a multinational petroleum corporation—and they won. Can the minister tell us that that cannot happen under this agreement?

Senator HILL (South Australia—Minister for Defence) (1.42 p.m.)—Unlike NAFTA, this agreement does not include an investor-state dispute settlement mechanism.
Senator BROWN (Tasmania) (1.42 p.m.)—That sort of glib response is not going to help us. Let me give the full quote so that the minister can consider it and come back with a more informative and appropriate response. This quote comes from the statement issued by the six US environmental organisations. They say that the Australia-US free trade agreement:

... does not include an ‘investor suit’ mechanism that permits foreign investors to directly challenge environmental laws and regulations before international tribunals. We welcome the exclusion of such a mechanism.

Senator Hill knows that, I know that and everybody who was here last night knows that. That deals with the glib response that he just gave. The groups go on to say:

However, the AUSFTA still explicitly leaves the door open to direct suits by multinational investors before ad-hoc international tribunals. Article 11.16.1 of the agreement permits the executives of the two governments to establish an ad-hoc investor suit process in particular cases, without any approval or oversight by either the U.S. Congress or the Australian parliament ...

So we get no say in it. The statement continues:

By allowing foreign investors to bypass domestic legal processes, investment suits permitted under this procedure would undermine democratic governance concerning public interest policies. Moreover, we—

that is, the environment groups, and it is their lawyers who are speaking to us through this letter—

continue to have significant concerns about the substantive rights provided to foreign investors in the AUSFTA. The agreement provides multinational businesses rights that are similar to those in NAFTA and other agreements. Under NAFTA, both Mexico and Canada have already lost cases ...

We then get to the quote I made earlier. So I say to the minister: yes, there is not an investor suit mechanism here, but there are other mechanisms by which governments under pressure from the corporate sector can establish ad hoc investor suit processes in particular cases without any approval or oversight by this parliament. Is that wrong? If so, let us have the minister show us where it is wrong. When these ad hoc decision-making processes are set up, decisions can bypass domestic legal processes. As the environment groups say, ‘investment suits permitted under this procedure would undermine democratic governance concerning public interest’. Is that wrong? If it is, let us have the minister explain how.

Senator HILL (South Australia—Minister for Defence) (1.45 p.m.)—This subject is covered by a further amendment of the Greens that has not yet been moved. One might hope that this would reduce the time needed for debate for that amendment when it is subsequently moved but, as it took 3½ hours to vote on the first amendment, that is probably wishful thinking. As I said, there is no investor-state dispute settlement mechanism in this agreement, and the mechanism to which Senator Brown refers would require implementation with the agreement of both states. That is the protection that has, from the Australian perspective, been in-built—that an action could not be brought by an investor unless the Australian government was prepared to agree to that action. It is difficult to imagine a circumstance in which that would occur.

Senator BROWN (Tasmania) (1.46 p.m.)—What an appalling reply that was! To go to the last glib response of ‘difficult to imagine’, the Canadians never imagined that their law preventing toxic additives going into their petrol would be challenged, but it was challenged and the corporation involved won under the dispute mechanism. They have toxic additives previously banned under Canadian law now going into their petrol. They did not imagine that, but the reality is
that they got it. The environment groups say that such challenges have been followed by more on hazardous waste treatment, trans-boundary transport of hazardous wastes, open-pit mining mitigation measures and more.

Let us do away with this appalling, irresponsible approach, which says: ‘We don’t know what is going to happen in the future, so it won’t happen.’ We are in this parliament to make sure that this nation’s interests are best served and that we do not have transnational corporations with the power to lobby governments of the day getting up a dispute mechanism which undermines and overrides the laws of this country with no comeback by this parliament. We are not involved. We are not even told about it. We get no report. There is no transparency. There is no report back and this parliament has no ability to vote on it.

The minister is quite correct: if the Labor Party had the gumption to stand up for this country and support Green amendments meaning that this parliament would arbitrate on the secret dispute mechanisms that the government is setting up with the US government for the benefit of multinational corporations, we would be getting somewhere. But do you know what is going to happen? Labor is going to go over there and vote with the Howard government against the Green mechanism which would bring this parliament into play against these secret bodies set up to arbitrate what will or will not be in the national interest under this agreement. We have not got an opposition here; we have a rubber-stamp of the Howard government! Labor has brought in some amendments which fix up a couple of important glitches, but there are 100 more that it is totally happy to go along with. We have a couple of wins for the Labor Party but a lay-down misere for the Howard government, and the country is left with a free trade agreement which puts this parliament out to pasture—it makes it irrelevant. That is what we are debating here today: keeping this parliament empowered. The parliament on Capital Hill comprises the elected representatives of the people. We Greens object to an executive process—we do not have the free trade agreement before us today; we have some enabling legislation, but the free trade agreement is not before this chamber—signing away the powers of this parliament and the rights of the Australian people in an extraparliamentary deal because it suits Prime Minister Howard and big sections of big business, of course, in the run to this election. Labor has fallen into line. We will not; we have no intention of doing that.

What I have pointed out here is that when it comes to this nation’s environment the experience in North America is that the laws of Canada, Mexico and indeed the United States can be undermined by multinationals going to whichever government they need to attack the other governments’ laws, getting up a dispute mechanism and having those laws ruled invalid. That is the reality and that is the experience of NAFTA. Here we have the legal advice to responsible US groups saying to us in Australia, ‘Don’t sign this agreement.’ It is touted as being good for the United States. These are United States groups with enormous experience in what a free trade agreement like this can do to subvert and undermine a country’s laws and its sovereignty, and the minister has no answer to it except to say, ‘I can’t imagine a situation in which that could occur for us.’ That is irresponsible. These are real cases. They are well known in bilateral free trade agreement law and, indeed, in general free trade agreement law. The minister must be on top of it. He must have been advised about it. I ask again: can the minister give a categorical assurance to this committee that there will not and cannot be a situation like that in Canada, where national law can be overrid-
den by a dispute mechanism outside the reach of this parliament? I do not think we are going to get a ‘yes’ to that.

Senator HILL (South Australia—Minister for Defence) (1.52 p.m.)—I regret that Senator Brown did not listen to the previous answer that I gave, which was that investor action could only be brought with the agreement of the state. Therein lies a very significant distinction from NAFTA. It is a distinction that I would have thought Senator Brown would support. In relation to the dispute settlement resolution, yes, it does allow for the settlement of disputes under the agreement. That is what it is all about. Therefore, it is the mechanism that is implemented pursuant to the terms of an agreement between the governments of the two states. There is nothing extraordinary in that.

I assured this chamber last night and assured this chamber again today that the disputes mechanism is not going to change Australia’s public health protection, environmental protection or quarantine protection, which we believe are critically important. It has not been established as some sort of shadow trade restriction. It has been set up for bona fide reasons to protect Australian national interests. That was never going to be compromised in a negotiation to which the government were a party. We were pleased with the outcome of the negotiation in that we have been able to get expanded access. It is not everything we wanted in terms of access but we have been able to get significantly expanded access into the United States market across a whole range of sectors, which could significantly contribute towards economic growth, the creation of wealth and the creation of jobs in this country—all benefits that most Australians wish to see.

I understand that there are some interest groups—Senator Brown, I think, falls within this category as well—that have a philosophical objection to freer trade. That is simply not the position of the Australian government. The Australian government’s position is that freer trade brings economic benefits from which all Australians can gain. But we have to ensure that freer trade does not come at the price of sacrificing other important values. We have set out those values. Our assessment has been the subject of exhaustive parliamentary scrutiny. We are satisfied that the key areas that Senator Brown is referring to—public health, public safety and the environment—are more than adequately protected under the terms of this agreement.

Senator BROWN (Tasmania) (1.56 p.m.)—Last night Senator Hill told this committee that an example of a matter that we might want to see resolved is if a US entity thought that an environmental law Australia was bringing in was not really aimed at protecting the environment. He gave the game away then and there. Any environmental law that this parliament chooses to enact in the future could be challenged on the basis that it is not fair dinkum. If you bring in a carbon tax, for example, the American corporations who do not want to see that—for example, the big petroleum corporations—could immediately challenge that on the basis that it was a tax-raising matter, that that was its primary aim—something the minister said had indicated that—and that it was not about the environment at all.

You can see a whole range of such laws. Cultural integrity is another one. They could say that the reason for bringing in an increase of protection for cultural rights in Australia or an increase for home-made entertainment or other content on broadcasting was not really to protect Australian culture but was to beat competition in the United States. That goes to a dispute mechanism, under the minister’s own reasoning. This is the government telling us that their understanding is that US corporations will be able
to challenge the free trade agreement when this parliament moves on laws if the US corporations suspect that it is not just for the purpose that is intended in the name of the bill and that there can be some advantage for Australia over US interests involved in such a law. The government knows this. This is simply opening up the way for US corporations, through the US government with the assent of the government of the day, to go to a dispute mechanism.

What are the Australian government going to say? Will they say, ‘We won’t allow that to be disputed’? The US government will immediately retaliate by saying, ‘We won’t hear your disputes.’ Of course the disputes will be heard and of course the secret, faceless arbitration body outside the reach of this parliament—the undemocratic body not elected by parliament, not vetted by parliament, with no response or responsibility to the parliament and with the parliament unable to do anything about it—is going to arbitrate on matters of importance and critical interest to this country, because the government said so and because the Labor Party agreed to it. We will resume this debate later in the afternoon, but the minister is going to have to do better than that. I will be asking him to give examples of the safeguards which he says exist in this legislation but which in effect are not there at all.

Progress reported.

QUESTIONS WITHOUT NOTICE
Former Parliamentarians: Business Appointments

Senator FAULKNER (2.00 p.m.)—My question is directed to Senator Hill, the Minister representing the Prime Minister. I refer the minister to former Minister for Communications, Information Technology and the Arts Richard Alston’s employment by the large radio company Austereo only months after his eight-year term as minister for communications ended. When did the government first become aware of Mr Alston’s employment by Austereo? What, if anything, was done to ensure the former minister did not use or access any confidential or sensitive government information? In the light of the actions of former Howard government ministers Reith, Wooldridge, Fahey and now Alston, what assurances can the minister give any business dealing with the Howard government that the minister they are dealing with will not be working as a lobbyist for a business competitor soon after their leaving ministerial office?

Senator HILL—One of my colleagues, through interjection, was reminding the Leader of the Opposition of former Senator Graham Richardson and his employment subsequent to parliamentary service. The Labor Party tends to distinguish between the employment of former members from its own side and former members on the government side who might seek employment. Neither the parliament nor successive governments have imposed constraints on former ministers as to what employment they may take up after leaving office. I have no reason to think that former ministers from either side of politics have abused the public trust by taking unfair advantage of their past positions, nor do I have any reason to doubt that Mr Alston has acted, and will act, with the utmost propriety.

Senator FAULKNER—Mr President, I note that no attempt was made to answer the question I asked. I ask a supplementary question. Given that Mr Alston resigned as a senator on 10 February 2004, can the minister assure the Senate that Mr Alston was not working as a paid or unpaid lobbyist for Austereo before that date? Can the minister assure the Senate that Mr Alston had not reached an understanding with Austereo before leaving the Senate or, in fact, before completing his term as minister for commu-
communications in October 2003? Could the minister please provide those assurances to the Senate?

Senator HILL—For me to give those assurances, I should refer that to Mr Alston, obviously, to seek his response. I am rather surprised to hear Senator Faulkner attacking Mr Alston in this way, because I think all honourable senators would accept that Richard Alston is a person of the highest personal standards.

Senator Conroy—We’re asking you what your opinion is.

Senator HILL—Is Senator Conroy disputing that? To some extent, we on both sides of the chamber have to rely on proper standards of behaviour from those who retire with particular sources of knowledge. Those who leave the parliament are entitled to take employment, but they must do so consistent with the obligation to ensure there is no conflict of interest. (Time expired)

Industry: Resources Sector

Senator LIGHTFOOT (2.04 p.m.)—My question is directed to the Minister representing the Minister for Industry, Tourism and Resources, Senator the Hon. Nick Minchin. Will the minister update the Senate on the strong performance of the resources industry under the Howard government? Is the minister aware of any emerging risks to the prosperity of Australia’s resources industry?

Senator MINCHIN—I thank Senator Lightfoot for his question and acknowledge his strong support for the Western Australian resources sector. Australian companies are currently in the process of reporting their interim profit results, and one of the star performers in those results is the great Australian resources sector, where predictions are that earnings growth will be up by about 30 to 40 per cent. Companies like Alumina and Rio Tinto have reported significant increases in their profits, and the index for resources has gone up 28 per cent over the past 12 months. This is, of course, great news not only for workers in that industry; it is great news for all the workers with superannuation funds invested in Australian resources companies. It is very good news for investment. There is a pipeline of billions of dollars of resources projects coming down the line. This does not come around simply as a result of good luck.

Access Economics—and we all know Access Economics; they advise the Labor Party, among others—did a report for the Business Council which found that the mining industry achieved higher productivity growth than any other industry sector in Australia between 1994 and 2002. That report concluded that this was due to the flexibility of its workplace arrangements. The mining industry was found to have very high flexibility of employment contracts and low reliance on awards. In fact, Australian workplace agreements operate in 50 per cent of the resources sector operations, and it is 80 per cent in hard-rock mining. That flexibility has produced very good outcomes for workers in this industry. Real wages in the mining sector have grown by 19 per cent since we came into office, compared with 14 per cent for the economy as a whole.

I was asked about threats to this. There is a very significant threat to this performance. The Labor Party, in deference to its union masters, has committed to scrapping AWAs, to add to the complexity of awards by expanding the current 20 allowable matters and to restore the commission’s role in regulating the minutiae of workplace arrangements. Steve Knott from the Australian Mines and Metals Association summed up the consequences of these policies for the industry when he said:

Proposals to return to a monopolistic union and tribunal-centred system of industrial relations
would have disastrous ... consequences for Australia.

Labor is proposing to sacrifice the success of this great resources sector of ours on the altar of trade union control of workplace relations in Australia. Of course, this is before we take account of Labor’s policies in a range of other areas that will damage Australia’s resources sector.

Senator Chris Evans interjecting—

Senator MINCHIN—Senator Evans ought to stick up for the resources sector instead of supporting these policies, which are going to do so much damage in his state if they ever get into office. Labor are going to cut the diesel fuel tax rebate, impose a new payroll tax on all employers and sign the Kyoto protocol and increase the mandatory renewable energy target. All of these things are going to be damaging to the resources sector, which is our vital and most important export sector and a great employer.

The resources sector is a great success story but it has required hard work and a good policy to bring that about and that is all under threat. The Labor Party seem to operate on the basis that the economy is on autopilot, it will all just continue—the resources sector will continue to employ Australians no matter what they do. They seem to think it does not matter what taxes they bring in, what regulations they bring in, what union interference they bring in, it will all continue. Well, it will not. Their policies are a grave disservice to the resources sector. They will do enormous damage to the resources sector. Labor senators from Western Australia in particular ought to stand up for this industry.

Former Parliamentarians: Business Appointments

Senator CONROY (2.08 p.m.)—My question is to Senator Hill, representing the Prime Minister. Does the minister acknowledge that the actions of former Howard government ministers, such as Dr Wooldridge, Mr Fahey, Mr Reith and now Mr Alston, are causing public disquiet that ministers can trade on their public position for private profit? Does he understand how such actions can give rise to suspicion that ministerial decisions could be made with one eye on future employment prospects? Why will the government not support Labor’s commitment to impose a 12-month ban on former ministers taking up paid employment in areas relevant to their responsibility as ministers?

Senator HILL—I guess the difference is that we believe that former ministers on both sides can be honourable. We do not necessarily think that an arbitrary period of 12 months resolves an issue if somebody is not going to be honourable.

Senator Faulkner interjecting—

Senator Chris Evans interjecting—

The PRESIDENT—Senator Faulkner and Senator Evans, the minister is answering the question. I ask you to come to order.

Senator HILL—If you are going to provide an arbitrary period of 12 months, why not 24 months, why not six months? Or why not do what the defence department does and provide 12 months but allow a discretionary waiver of the 12 months, which seems to occur more often than not? If you are going to allow the waiver, to whom are you going to give the power to grant the waiver?

Senator Ellison interjecting—

Senator Faulkner interjecting—

The PRESIDENT—Senator Faulkner and Senator Ellison, conversations while the minister is on his feet are not allowable.

Senator HILL—This issue has risen today because our former colleague Richard Alston has taken a job. I do not think that that is an unreasonable thing. Can he manage conflict of interest situations? I am sure he can. Will he act honourably? Yes, I am abso-
lutely certain he will act honourably. I think any senator on the other side who is honest with himself or herself would agree that they would have no concern at all in relation to the behaviour of former Senator Alston.

Senator CONROY—Mr President, I ask a supplementary question. The minister is agreeing with the Minister for Communications, Information Technology and the Arts, Senator Coonan, that it should just be left to former ministers themselves to determine whether taking a job creates a conflict of interest. According to Senator Coonan, ‘They know what they knew and what they didn’t know.’

Senator HILL—Labor object to former parliamentarians taking jobs. What about those who take jobs whilst they are still in office—perhaps even prime ministers? What former Labor Prime Minister invested in piggeries, made decisions in relation to the Commonwealth Bank and negotiated secret treaties with Indonesia when they were Prime Minister of this country? Wasn’t that Mr Keating? How many Labor senators got up in this place and said, ‘That is appalling. We should bring in a 12-month period of grace for Mr Keating. He should be out of office for 12 months before he can invest in his piggery’? How many Labor senators got up in this place and said that then? What hypocrisy! In office, it was Mr Keating; out of office, it was former Senator Richardson. It does not matter: one set of rules for the Labor Party and another set of rules for the coalition. One set of rules when they are in government and another set of rules when they are out of government. (Time expired)

Small Business: Growth

Senator SANTORO (2.14 p.m.)—My question is to the Special Minister of State, Senator Abetz, representing the Minister for Small Business and Tourism. Will the minister outline to the Senate how the Howard government is helping small business, which is the engine room of jobs growth in Australia? Furthermore, is the minister aware of any alternative policies, and what consequences would these have for Australian small businesses and their employees?

Senator ABETZ—I thank Senator Santoro for his question and acknowledge his longstanding interest in small business. Senator Santoro has introduced me to literally hundreds of small business operators in Queensland and has championed their cause. Because of his intricate knowledge of small business he rightly describes it as the engine room of our economy. As Senator Santoro would know, there are elements within this parliament that would seek to turn off that engine, and they of course are those who sit opposite, together with their trade union masters. Labor, if elected, will institute the most job destroying, business bankrupting system of industrial relations that this country has ever seen. Mr Latham, if elected, is set to eclipse the dubious achievements of his mentor Mr Whitlam and devastate the economy in one term, not in two, as it took Mr Whitlam.

Six of Labor’s job destroying policies and disincentives for employment have been announced in their recent industrial relations policy. Firstly, there is a new federal payroll tax for every business with 20 or more employees. Just imagine what an expanding small business would do. You have got 18 or 19 employees, you want to take on a new employee, but if you step onto that threshold you start paying tax and there is extra paperwork. What would you do? You would not employ another worker. Just imagine if you did have 20 or 21 workers and Labor were to come into office. You would seek to get rid of one or two workers to avoid the cost of that Labor tax and to avoid the paperwork. Labor are willing to sacrifice jobs on the altar of higher taxation. Labor want to
kill the economic goose that lays the jobs growth eggs for the Australian people.

Secondly, secondary boycotts would be allowed again. Having worked on the Dollar Sweets case in a personal capacity, I know the devastation that secondary boycotts have on small business. Labor would seek to legalise secondary boycotts. Thirdly, Labor want to return to an inflexible centralised wage fixing system which fails to take into account the many factors which are needed for small business to operate. Fourthly, they want to reduce casual employment, forgetting that casual employment often grows into full-time employment for those small businesses that are growing. Fifthly, Labor would force independent contractors into being part of the industrial relations system.

Most importantly and finally, what every small business hates more than anything else is a return to the bad old days of Labor’s unfair unfair dismissal laws. If Labor were willing to abolish those right here and now there would be jobs growth in this country of 50,000 jobs. No wonder the Financial Review has condemned the Australian Labor Party’s policy in this area as airbrushing out the jobless from their industrial relations policy. Small business has condemned them. The reason that Labor have adopted this policy is that the Labor senators opposite represent the trade union movement. Each and every one of them is beholden to the trade union movement. When only 17 per cent of Australian workers are actually in a union we have 100 per cent of those opposite engaged—(Time expired)

Former Parliamentarians: Business Appointments

Senator CARR (2.17 p.m.)—My question without notice is to Senator Coonan, Minister for Communications, Information Technology and the Arts. Has the minister for communications had any contact with former minister Richard Alston at any time since she was appointed minister earlier this year? Has there been any contact between Mr Alston and her staff? When was this contact? Who initiated the contact? What was the nature of the discussions? At the time of any such contact was the minister aware that Mr Alston had been engaged as a lobbyist by the Austrereo media group?

Senator COONAN—I can inform the Senate that the first I knew of former Senator Alston’s appointment as a consultant for Austrereo was when the Australian rang me last night. I have not had any discussion with Mr Alston about this issue at all. It is a legitimate point that all ministers face when they leave a ministry, and I think the principle is correct. It is a sound principle that recently retired ministers should not take up positions that will conflict with their prior duties, if in fact that is what is occurring. It is not a matter of length of time that will sort this out; it is a matter of whether there is a conflict.

In respect of any of the issues that Mr Alston might be involved with, I suppose one way of speculating about this is that he might be involved in providing some advice about digital radio. He has been gone long enough, since October last year, that he would not have any knowledge of the outcome of a report that has recently become available to my predecessor and to me and I doubt whether he would have any knowledge of digital trials. In those circumstances it is very difficult to see, on the face of it, how any experience that Mr Alston might have had in his previous ministry could have had direct relevance to those particular issues. It is a knee-jerk reaction and it shows that people who advocate some time limit when ministers should not take up appointments simply do not understand that it is a matter of whether there is any conflict. You could have a conflict three years afterwards—it is possi-
— or you might have one as soon as you leave. That is why you have to judge each of these matters on their facts.

With respect to former Senator Alston, I have absolutely no reason to think that he is anything other than a most honourable man. He was a very successful communications minister and he does have a lot of general experience in the area. We have Mr Tanner saying, on the one hand, that he was a hopeless minister and then, on the other hand, complaining about the fact that he is obviously good enough for his consultancy services to be required and in fact sought. It is an absolute furphy by the Labor Party that there is any problem with what the former Senator Alston has sought to do in relation to life after being a minister.

The other point I would make is that this is very dangerous territory for the Labor Party. The Labor Party is in a glass house here, throwing stones in circumstances where the reputations of decent people are, once again, traduced. It is entirely inappropriate to assume that the mere fact of an appointment equates to a conflict. I personally resent the imputation that I would have any part of it.

**Senator CARR**—Mr President, I ask a supplementary question. Given that the minister has now conceded that she only knew of Mr Alston’s involvement with Austereo from last night, can she now advise the Senate on how many occasions she discussed with him matters of interest to Austereo? Further, can the minister assure the Senate that Richard Alston has not passed confidential government information on this or other commercial-in-confidence matters to Austereo? If she cannot provide that assurance now, what action will she take to satisfy herself on this important matter? When will she be able to report back to the Senate on these questions?

**Senator COONAN**—I am able to report right now because I have had absolutely no conversations about Austereo with Mr Alston at all. Senator Carr seems to have got his questions completely around the wrong way because he was not expecting that answer. He has posed his questions on the basis that I had had some conversation, and he is absolutely dead wrong. The Labor Party really ought to reflect on some of the extraordinary potential conflicts of interest of some of their previous ministers. I might remind you of a few. What about Mr Kerin, who was minister for primary industries and then became involved with the Australian Meat and Livestock Corporation? What about former minister Ros Kelly—who I think is a very decent person? She was environment minister and now she works with an environmental consultancy. The list goes on and on. If we are seriously going to stand here and take up the Senate’s time, be my guest and keep asking these questions.

**Aviation: Regional Airport Landing Fees**

**Senator RIDGEWAY** (2.24 p.m.)—My question is to Senator Ian Campbell, the Minister representing the Minister for Transport and Regional Services. It concerns increased landing fees at regional airports. What steps has the government taken to consult with remote and Indigenous communities about the proposed user-pays approach to airport fees which will result in a likely increase in air traffic control fees and airport rescue and firefighting service charges? What response has the government had from operators such as flying schools, charter operators and the Royal Flying Doctor Service on this question?

**Senator IAN CAMPBELL**—It is an issue that is very important to rural and remote communities and of course to remote Aboriginal communities. During my time in the portfolio I have had regular contact on this
issue. In fact, I made myself a point of contact in Western Australia for the transport portfolio for regional and remote interests, and I certainly listened very carefully to submissions made to me by people such as the Royal Aero Club of Western Australia, the Royal Flying Doctor Service and others.

As I understand it, the Airservices Australia paper that was distributed was an options paper. It was driven, as I understand it, by an Australian Competition and Consumer Commission necessity. The government has made it quite clear in all of its statements that it will, under no circumstances, allow landing fees to become prohibitive for organisations such as the Royal Flying Doctor Service, flight training schools or groups, such as Aboriginal communities, who need as a matter of necessity to have access to goods and services through air transport. They need these services particularly during the wet season in the north because often roads and other potential transportation networks are simply not there. The government is very cognisant of this.

Airservices are doing what they are required to do under the law and under regulation. In some parts of the country the proposals are being promoted as some sort of law that is about to come into force. That is not the case; they are out there for discussion. Quite clearly, any senator who has come into contact with people who have seen that paper knows that the sorts of proposed increases are way above what anyone can afford—way above what air training schools can afford, what Aboriginal communities can afford and what the Royal Flying Doctor Service can afford. So we are going through a process to bring in a system of landing services charges that is fair, equitable and affordable. The government has given assurances in that regard and I am very happy to give Senator Ridgeway assurances for the communities he represents. The Deputy Prime Minister and Minister for Transport and Regional Services is engaged in discussions on this important issue. We are very keen to make sure that people feel some assurance about future landing service charges, and we will seek to give them that assurance as soon as possible.

Senator RIDGEWAY—Mr President, I ask a supplementary question. I thank the minister for his answer and the government’s response in ensuring that the costs will not be prohibitive. Is the minister prepared to give an undertaking to the parliament that the government will act immediately to offset the impact of this proposed restructure of airport fees? Will he provide that information to the parliament so that some fair assessment can be made, particularly given the likely severe financial impact that it will have on everything from mail services through to the Royal Flying Doctor Service and, more particularly, in relation to the delivery of fresh food and milk to rural and remote Indigenous communities, who quite frankly are suffering poor health circumstances. Getting fresh food there is vital to changing that circumstance.

Senator IAN CAMPBELL—Firstly, can I make it clear that these price increases are not price increases; they are contained in a discussion paper. Airservices Australia will be making a submission to the ACCC in relation to the pricing of these services, but the government has made its policy quite clear, and that is that it will make sure that whatever pricing comes out of the process is fair and affordable. So I can give reassurance to those communities that the government will ensure that the pricing of these important air services is affordable. We are trying to get two policy outcomes: one is affordability and the other is high-quality service. The government is absolutely certain we can achieve that, but I do commend Airservices on the consultation process they are going through.
It is open and transparent, as will be the remainder of the process.

Older Australians

Senator STEPHENS (2.29 p.m.)—My question is to Senator Hill, the Minister representing the Prime Minister. Does the minister recall that the Prime Minister has, time after time, stressed the importance of valuing the experience of older Australians? Didn’t Mr Howard, for example as recently as June this year at the Australian of the Year nominations, say that it was so important to value: ... the capacity of the older generation of Australians, who have lived through so many periods in the history of this country, to give of their wisdom and their experience to the younger generations.

Is the wisdom of people such as General Gratton, Admirals Hudson and Beaumont and Air Marshal Fennell to be rudely denigrated by this government through demeaning insults? Why does the government have a problem with an older generation of Australians speaking from wisdom and experience on important issues such as truth in government?

Senator HILL—I thought that was yesterday’s question, but I guess 24 hours does not make a lot of difference. The questions committee must have had a struggle today: we have had three on former Senator Alston and they have gone back to the House of Representatives question time from yesterday and dredged out a few repechages. This government does not rudely denigrate older Australians, even if it disagrees with their—

Government senators—It is like Senator Faulkner and Mr Baillieu.

Senator HILL—Senator Faulkner defamed Mr Baillieu. The only mistake was that Mr Baillieu had been dead for years. The family still has not got an apology. I might say. This government have not rudely denigrated these individuals. We obviously do not share their views. We are surprised by their views because at the time of the—

Honourable senators interjecting—

Senator Chris Evans—They’re all Labor Party hacks, are they?

The PRESIDENT—Order! Senators on my left! Senator Evans, you have been particularly noisy today. I ask you to come to order.

Senator HILL—At the time of the decision taken by the coalition to enforce UN Security Council resolutions, almost the whole world believed that Saddam Hussein had weapons of mass destruction and a continuing program for development of weapons of mass destruction. It was the view of the intelligence services in the United States, in the United Kingdom, in Australia, in France, in Germany and in Russia—and so I can go on. It was even the view of Mr Rudd, the shadow spokesman for the ALP in this country, who said, ‘Of course they’ve got weapons of mass destruction.’ That was not the issue; the issue was what was the best course of action to take to reduce the threat from those weapons. If this esteemed group of elderly Australians hold a different view, so be it. Everyone is entitled to their own view. I am just saying to the Senate that their view is the exception rather than the rule. Their view is not consistent with the finding as to what evidence was put before the Australian government, findings by the committees of this parliament and also by Mr Flood. But if they wish to come out and express that they hold a different point of view, so be it.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I would like to draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from the parliament of Ireland, led by Dr Rory O’Hanlon, Chairman of the Dail Eireann. Dr O’Hanlon is accompanied by Senator Rory Kiely, who is the
chairman of the senate. I warmly welcome the delegation to the Australian parliament and in particular to the Senate chamber. I trust that your visit is both informative and enjoyable. With the concurrence of honourable senators I propose to invite both presiding officers, the Ceann Comhairle and the Cathaoirleach, to join me here and take seats on the floor of the Senate, on this historic occasion when both presiding officers from the Irish parliament are with us.

Honourable senators—Hear, hear!

Dr O’Hanlon and Senator Kiely were seated accordingly.

QUESTIONS WITHOUT NOTICE

Older Australians

Senator STEPHENS—Mr President, I ask a supplementary question. I thank the minister for acknowledging that this was an esteemed group of elderly Australians. Given that at least 13 of the signatories to the statement on the importance of truth in government are younger than Mr Howard, has the Prime Minister rebuked the Parliamentary Secretary to the Minister for Industry, Tourism and Resources for stating ‘when you have a look at it, in the first instance, there are a lot of disgruntled old men who are well and truly out of the system’? Given that at least 13 of the signatories are the same age or younger than the Prime Minister and that almost half of the signatories are in their 60s, has Mr Entsch been disciplined for his attack on the value and wisdom of people who are the same age as the Prime Minister?

Senator HILL—The older I get, the more I respect the elderly. Wisdom is something to be treasured, and it comes with years. We are lucky to have such a wise Prime Minister as we have in this country, offering great leadership and being prepared to take the tough decisions, whether they are decisions on the economy or whether they are decisions in Australia’s national security interests. That is really, apart from a bit of humour, what this is all about. The Australian government under Mr Howard took tough decisions on Iraq because we believed it was the best way to address a threat associated with weapons of mass destruction. It is easy to be wise after the event. It is harder to take the tough decisions at the time. Mr Howard, leading this government, will continue to take them when Australia’s national security interests are at stake. (Time expired)

The PRESIDENT—I ask the Senate to come to order. You are very noisy today. I did tell my colleagues who are here from the Irish parliament how well behaved the Senate normally is. Unfortunately, you are letting me down today and I do not like that.

Iraq: Allawi Government

Senator BROWN—My question goes to the Minister representing the Minister for Foreign Affairs. It is about tough decisions in Iraq. I ask the minister, in view of the defence forces from Australia that are there to promote freedom and democracy, what action the government has taken about the Allawi government’s decision to close down al-Jazeera TV in this new democracy in Iraq. What action has the government taken, in view of our defence forces being in Iraq, to follow up on the stories in the Oregonian about the Oregon National Guard witnessing the bashing, beating and inhumane and unacceptable treatment of Iraqi prisoners under the Allawi government on 29 June last? What action has the government taken to follow up on reports by Paul McGeough regarding the allegation that Prime Minister Allawi personally shot to death six prisoners at a prison in north-west Baghdad in the month of June?

Senator HILL—The interim government in Iraq, headed by Mr Allawi, is obviously facing major security issues. To some extent, insurgents and terrorists have switched their
primary attack from the coalition, which is better protected, to the new Iraqi leadership and those who are prepared to very courageously take positions of office for the future of a better Iraq. I refer to policemen, local mayors, local governors, judges and the like who are being assassinated through the efforts of the insurgents to destroy the hope and chance of the Iraqi people for a better future. That is the difficult environment in which Mr Allawi is operating. I think he has started very well. I think his government is operating quite effectively in terms of the administration of the various government departments that are now all up and operating in progressing the security forces. Of course, Australia is proud to be helping to train the new Iraqi army and navy and helping to respond to those threats and that violence.

One of the most horrible but nevertheless effective ways of destroying hope in Iraq in terms of reconstruction is this practice of kidnapping those foreigners who are prepared to enter Iraq and contribute their labour to rebuilding Iraq. Al-Jazeera has had the practice of publicising those kidnappings and the beheading of kidnapped persons. The fear, of course, is that that encourages a continuation of that abhorrent practice. So I can understand the concerns of Mr Allawi regarding the activities of al-Jazeera because, whilst I think that news services obviously have rights, I think they also have responsibilities. If their broadcasting is such that it encourages insurgents to carry out horrendous activities such as this, I can understand why Mr Allawi would look at ways in which he might limit the dissemination of such material.

My prejudice as an Australian brought up in this free environment is that I wish to see the media as free as is reasonably possible. But I am not in the environment in which Mr Allawi finds himself. I am not faced with the responsibilities that he has to keep his people alive in the face of attacks from terrorists and the responsibilities that he has to encourage foreigners to invest and provide their labour within Iraq to help him and his people rebuild their country. I am not going to take the opportunity today to condemn him. I think it would be better if Senator Brown made some effort to understand the predicament faced by Mr Allawi.

Senator BROWN—Mr President, I ask a supplementary question. The minister has quite clearly indicated that he supports the truncating of the freedom of the media in this fledgling democracy. What I want to ask him about is the other two components of my question. Firstly, what is the response to the bashing, beating and inhumane treatment of prisoners under the Allawi government? Secondly, has this government approached the US government with a view to finding out who the US guards were that were alleged to have been present in the prison when Mr Allawi personally executed six prisoners, according to the reports from the esteemed journalist Paul McGeough in the Sydney Morning Herald and the Age? Has the government made that inquiry?

Senator HILL—In relation to the behaviour of Iraqi officials, I am pleased to say that the Australians who are contributing in Iraq, particularly in training security forces, are also seeking to educate them in terms of the values and human rights that we think are important. So that is our contribution towards better conduct. In relation to the allegations that were made about Mr Allawi, it is a matter of interest that I do not think anybody else has raised those allegations apart from Senator Brown. Not only have people not sought to pursue it, I have seen no evidence to support it.
Sport: Drug Testing

Senator KIRK (2.44 p.m.)—My question is to Senator Coonan, the Minister representing the Minister for the Arts and Sport. Can the minister inform the Senate of when Minister Kemp was first provided with a copy of or was briefed on the contents of the report of the investigation undertaken by Mr Stanwix into allegations of drug use at the AIS Del Monte facility? Did these briefs or the report set out the details of allegations regarding the involvement of other cyclists, including introducing new members of the team to injection practices, the use of particular rooms for injections or indeed the broader injection culture which was allegedly the case in the AIS cycling team?

Senator COONAN—I thank Senator Kirk for the question. She will have to wait for Senator Kemp to return to ask him when he became aware of the report that she refers to. Obviously, Senator Kemp is not here in the chamber. He has leave because he has a number of important meetings that he has to attend. I think some of them relate to some of these matters, the antidoping matters, and some of the very serious problems that many countries experience in relation to sending clean athletes to the games. The Labor Party has asked Senator Kemp many of these questions before. I have actually reviewed what Senator Kemp has said—I have reviewed his answers—and I think he was in fact asked yesterday about when he actually received a report. He has answered that. When you are asking for something that is within his knowledge, I think it is entirely appropriate that you should ask him when he returns. Having said that, I would have thought it would be important for the Labor Party to at some stage actually get behind our Olympians. I think the Olympic Games are due to start in something less than a week.

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left! Senator Evans, come to order!

Senator COONAN—The Olympic Games are due to start very soon and I would have thought that if the Labor Party had a patriotic bone in their body they would be actually cheering for our athletes. They should be actually getting behind our athletes, calling it for Australia and stopping this constant negative carping about a number of inquiries that, so far as I can tell, have been conducted appropriately and thoroughly—particularly when there is an ongoing review, the Anderson report, of the processes and procedures in case there was something that was not appropriately handled or not handled in the best possible way. That is still obviously an ongoing matter, and I would have thought that by this stage the Labor Party would have been giving it a rest.

Senator KIRK—Mr President, I ask a supplementary question. I will ask the minister to take the question on notice if she could. I wonder if she, as senior minister in the portfolio, can tell us what action Minister Kemp took when he was first informed of these allegations regarding a broader injection culture in the AIS Del Monte facility? What immediate actions did he require the AIS and the Australian Sports Commission to take? Or does the minister condone the apparent lack of any action by Minister Kemp to clean up this culture until he was forced to set up yet another inquiry by revelations made here in the Senate?

Senator COONAN—The premise of the question is that first one has to establish when Senator Kemp received the report. I have already said that I think that is something that should be put to Senator Kemp. The rest of Senator Kirk’s questions then flow from establishing that one way or the other. But what I can say from Senator Kemp’s brief here, which is very fulsome, is
that he has acted appropriately and he has acted promptly. There have now been, I think, about four inquiries, one of which is ongoing. It is time that the Labor Party let this rest.

Social Welfare: Fraud

Senator HUMPHRIES (2.49 p.m.)—My question is to the Minister for Family and Community Services, Senator Patterson. Will the minister update the Senate on what the Howard government has done to crack down on welfare cheats and to ensure that Australian taxpayer funds are targeted at those in need? Is the minister aware of any alternative policies?

Senator PATTERSON—Since 1996, when we came into government, we have instituted a number of measures and a number of programs to actually improve welfare compliance. That has been in order to ensure that taxpayers’ money is spent on improved services, rather than wasted on welfare fraud or overpayment. These have included a number of measures: increasing the number of reviews, widening the data matching selection criteria and specific programs which review activity. Unlike the Labor Party, which presided over record fraud and non-compliance, we are behaving in a responsible way. The Howard government is responsibly managing taxpayer funds.

In this year we have announced measures that build on successful initiatives from previous budgets that detect and prevent cases of incorrect payments. For example, in this last budget we announced the Keeping the System Fair campaign. That is expected to actually result in net savings to taxpayers of $215 million. As a result of the various measures—and these are measures that have ranged across the time of Jocelyn Newman, Amanda Vanstone and me—the latest figures show that to 31 March this year there is an estimated net saving to taxpayers of $1.9 billion. That should be looked at in the light of the fact that we were able to pay families, just before the end of June, $2 billion in family bonuses and benefits. That $1.9 billion in savings now equates to $49 million a week—not $44 million but now $49 million a week of taxpayers’ money that would otherwise be in the pockets of people who are either cheating and abusing the system or just not bothering to tell Centrelink that their circumstances have changed. Either way, they are not entitled to the payment. If they are cheating, abusing or not bothering to tell Centrelink about changes in their circumstances they are not entitled to that money. They are not entitled to the $49 million a week that we are now saving. That is $49 million a week that can now go into other projects, such as the young carers project that we had in the last budget and assisting families with a bonus.

What are the alternative policies? We have been waiting 89 days for Labor. I think it is 89 days today since Mr Latham said, in his budget reply, that he would respond by releasing a family and tax policy. Laurie Ferguson, Tanya Plibersek and Bob McMullan have all suggested that there will be increased taxation. Mr Latham has said that he will not raise company taxes, he will not raise capital gains tax and he will lower the personal rate. He has also promised budget surpluses—increased spending but lower taxes.

The devil is always in the detail of Labor’s policies, and when you look at their policies on superannuation you see a super blooper. When you look at the baby payment you can see some of the issues concerning when you have your baby and what your income is. Now we have Labor’s IR policy—a policy which is about returning to union dominated wages, a federal payroll tax, a tax on jobs and an inflexible working environment. The greatest risk from a Labor gov-
ernment is that we will see a blow-out in unemployment welfare payments. That is what we will see—an unemployment blow-out. We have seen it before. We saw it when Labor was in government before. We saw it when we had high interest rates. We saw it when we had high inflation. What did those things result in? They resulted in high unemployment. It is not just that Labor cannot manage the welfare system. You have to be able to manage the welfare system but you also have to manage the economy. The number of people on unemployment benefits will rise, undoubtedly, under Labor. (Time expired)

Liberal Party of Australia: Electoral Fundraising

Senator FAULKNER (2.54 p.m.)—Can the minister confirm that in Senate estimates in June, the Chief of the Defence Force, General Cosgrove, emphatically stated:

There is a convention that is well understood that we will seek to avoid an overt association of a military person in an image or in any other way with a political activity.

Is the minister aware that the member for Moncrieff, Mr Ciobo, at a function held to raise funds for his election campaign, auctioned a framed reproduction of Will Dyson’s The Mate, autographed by the Chief of the Defence Force, General Cosgrove? Can the minister advise the Senate whether General Cosgrove was aware that the reproduction was to be used for Liberal Party campaign fundraising purposes? If, as I suspect, that was not the case, can the minister inform the Senate of whether he or the member for Moncrieff have apologised to General Cosgrove for the unauthorised use of his name and position?

Senator HILL—I think it was established in the estimates that there is no rule, as such, but it is obviously of interest to the military and the political system not to politicise the military. Therefore we should make efforts, when we are publicly seen or photographed or whatever with the military, to avoid it being portrayed as an endorsement by the military of a particular party or political position. I do not know the circumstances under which General Cosgrove autographed something. I will make some inquiries about that. I suppose the issue is whether those who were at this particular function would interpret that as some sort of endorsement by General Cosgrove of the member for Moncrieff. My view is that I doubt that they would see it in those terms. They would, rather, see the signature of value being that of an important Australian, a former Australian of the Year. I will make inquiries and if I think I need to speak to the member for Moncrieff in relation to the matter I will do so.

Senator FAULKNER—Mr President, I ask a supplementary question. I suspect that General Cosgrove did not know about this. The key point here is that it is in clear contravention of that important statement that the general made in estimates. I ask whether the minister, in the light of this, will take steps to ensure that the member for Moncrieff donates the $4,000 raised by the unauthorised use of General Cosgrove’s name and position to a suitable charity. Perhaps Legacy would be an appropriate charity in this circumstance. While the minister is at it, can he indicate to the Senate whether he believes it was appropriate for the member for Moncrieff to use the Australian coat of arms immediately above the words ‘fundraising auction’ on the cover of this booklet?

Senator HILL—The Labor Party is on the big picture issues again—the future of this government! I guess that avoids the need for policy development, doesn’t it? We finally got a defence policy the other day: chocolate bars should be withdrawn from the ration packs of soldiers. I am sorry that Senator Evans was deposed but finally we got a
policy from the Labor Party: chocolate bars have to be taken out of the ration packs of soldiers as a savings measure. As the election approaches it is time for the Labor Party to take its responsibility seriously. It is time for it to start developing some policy. It is time for it to put some alternatives to the Australian people on the matters that really count. (Time expired)

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

Opposition senators interjecting—

The PRESIDENT—The minister has called time, I am sorry.

Senator Bartlett—Mr President, on a point of order: is Minister Hill seriously trying to call question time to an end before one hour is up, or does he want a contingent notice of motion?

Senator Faulkner—Mr President, on the point of order: is it competent for the minister to ask that further questions be placed on notice with 20 seconds to go before the—

Government senators interjecting—

Senator Faulkner—Well, that is the truth. As you know, Mr President, question time, under our standing orders—which have been in place for more than a decade in relation to the timing of question time—goes from 2 p.m. to 3 p.m. It is not competent—and I am sure you know it, Mr President—for the minister to cut off question time before 3 p.m. That is what he did. I think you should call Senator Bartlett. I know the government are embarrassed, but let them answer a few questions.

The PRESIDENT—Senator Faulkner, the minister has called time. It is now well after three o’clock, and I believe that when he called time it was on the understanding that it had been an hour. It may have been a few seconds less, but really it is not for me to instruct the minister as to when he wants to call time.

Senator Robert Ray—On the point of order, Mr President; you consistently do not start question time at two o’clock. It is nearly always 20 or 25 seconds later, for good reason. I am asking you to start it right on two o’clock in future so that we can have the full hour. You did not start it right on two o’clock today.

The PRESIDENT—Senator Ray, the reason I do not start right on two o’clock is to allow the broadcast to come on line. Today I started question time at 10 seconds after two.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Social Welfare: Age Pensions

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.02 p.m.)—Senator Harris asked me a question without notice yesterday regarding Centrelink’s pursuit of an overpayment which had been waived by the Administrative Appeals Tribunal. I can assure Senator Harris that in this case the proper legal processes have been followed at all times. I think Senator Harris has misunderstood the situation he raised in the Senate yesterday. The debt being pursued by Centrelink had not been waived; it had been written off by the Administrative Appeals Tribunal. The difference is that a waived debt is one on which no further recovery action occurs. A written off debt, as in this case, is one on which no immediate recovery action occurs, because the customer does not have the capacity to repay the debt at that time. Recovery can occur once the circumstances allowing for debt recovery change.

I have been advised that this was made clear in the tribunal’s decision and to the legal representatives of the customer con-
cerned. The Administrative Appeals Tribunal affirmed that the customer had been paid an age pension to which he was not entitled, as he had exceeded the allowable assets threshold. Prior to this, the customer had used all appeals mechanisms available to him, and in each instance the decision had been affirmed. Records show that the customer had been contacted on several occasions while he was on age pension and that he had failed to update his circumstances until this was brought to Centrelink’s attention five years ago. The Administrative Appeals Tribunal recognised that the customer had no capacity to repay the debt at that point in time, so the debt was written off until the customer or his estate had the capacity to pay.

This ruling was in accordance with section 1236 of the Social Security Act 1991 and with the government’s policy of not placing people in financial hardship when recovering overpayments. When a customer’s circumstances change, there may be a settlement. For example, after the customer dies Centrelink can contact the executor or surviving parties and negotiate a settlement. If there is no response, Centrelink can commence legal action. In this case, Centrelink was required to commence legal action. Subsequently, the executor agreed to a settlement.

The Howard government are committed to ensuring that people receive their correct entitlements under social security law and repay any outstanding overpayments. However, we do not want people to be put under hardship and we will negotiate suitable arrangements for them to repay their debts. It is imperative that customers advise Centrelink of the full details of their circumstances when they apply for payment and that they advise it of any changes in these circumstances to ensure that they receive the right payment and do not incur an overpayment.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Answers to Questions

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.05 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Defence (Senator Hill) to questions without notice asked today.

I particularly want to focus on the very important question asked by Senator Stephens about truth in government, which of course was the thrust of the document signed by 43 retired senior military, diplomatic and Public Service professionals. I have to ask what is wrong with the statement from these eminent Australians that:

… truth in government ... is fundamental to effective parliamentary democracy.

That is what the statement says. What is wrong with that? What is wrong with the part of their statement that says:

Without that trust, the democratic structure of our society will be undermined and with it our standing and influence in the world.

That is the approach Mr Howard condemns, disagrees with and says is no longer relevant. Of course he attacks these signatories as being older—‘some of the older approaches are no longer relevant’. That is a typical gratuitous piece of Howard dog-whistling—a Howard government insult. That is what you expect.

I say that truth in government is vital to Australian democracy. But what have we seen? As has been pointed out, we have seen the sorry spectacle of two frontbenchers in Mr Howard’s government, two parliamentary secretaries, Mr Entsch and Mrs Kelly, attacking the age and the credibility of these 43 signatories. They could not attack the substance of the statement, so of course, as always, they played the individuals. What did Mr Howard do? He hinted that these 43 sig-
natories are too old really to know any better. What has been exposed here in question time today is the hypocrisy of Mr Howard. In June this year at the Australian of the Year nominations what did he say? He said it was so important to value:

... the capacity of the older generation of Australians, who have lived through so many periods in the history of this country, to give of their wisdom and their experience to the younger generations.

Those are Mr Howard’s own words, but of course it does not apply, Senator Brandis, in this instance, does it?

Senator Brandis interjecting—

Senator FAULKNER—It does not apply, because he is worried, Senator Brandis, about your boy, Peter Costello, coming through and he is worried about you being in there behind him. We know that. It is just absolute hypocrisy from Mr Howard. It is an amazing thing, but in opposition sometimes you have a bit of time on your hands. We have done a quick check of *Who’s Who* for these signatories. We found that 13 of these ‘older Australians’ are younger than Mr Howard himself. He is older than at least 13 of them. We have not checked the lot yet—

we just have not had enough time on our hands to do that—but a quick search so far shows that 13 are younger than John Howard. Our checking has also shown that five of those on the list are recipients of the Companion of the Order of Australia, nine have been awarded the Order of Australia and four have been awarded AMs. This is not just any old advice; this is quality advice that the Howard government should take account of.

Senator Brandis, you are out of order. You should not be interjecting from out of your seat.

The DEPUTY PRESIDENT—Senator Brandis, you are not in the chair, thank you. I am in the chair.
have a great deal of respect, wasted his time today. Of all the things that Senator Faulkner does well, the thing he does best, I think, is to engage in somewhat recondite essays into Labor Party history. When we hear Senator Faulkner talk about the arcane corners of Australian Labor Party history, it is an intellectual delight. If Senator Faulkner had used his time more wisely than to give the speech he has just given, he could have told us about one of the signatories among the 43: Dr John Burton. I pick on Dr John Burton because he is perhaps the least contemporary of those signatories, having retired from the service of the Commonwealth of Australia in, I think, 1954. Dr John Burton was the protege of Dr Evatt. I think he was Dr Evatt’s private secretary when Dr Evatt was the Minister for External Affairs in the 1940s.

Senator Faulkner, if he had used his time more usefully, could have told us that Dr John Burton was the golden boy of the New South Wales branch of the Labor Party in the 1940s and the early 1950s—as you would know, Senator Forshaw. He could have told us that Dr John Burton, when he was a young man in the early 1950s, was seen by some as a future Labor Prime Minister of Australia. There were attempts made to get Dr John Burton preselected for a safe Labor seat somewhere in Sydney—my memory escapes me as to where it was, but no doubt Senator Faulkner could have told us if he had used his time more usefully. Dr Burton failed in his attempt to be preselected when he was the golden, young rising star of the Labor Party in the late 1940s and early 1950s. His political career was snuffed out by factional intrigue before it had an opportunity to get off the ground. I believe Dr Burton left Australia in about 1954. I do not know when he returned, but most of this man’s career, more than 50 years ago, was enjoyed in the United Kingdom. So, if we are talking about contemporaneity, that is the sort of signatory that has been attracted to this letter. It is an extreme case, I will agree, but it is typical of the document. The signatories have these two things in common. First of all, most of them—not all of them, I will concede—are known Labor Party partisans who are interested in pursuing a political agenda and, secondly, none of them have contemporary information.

Another of the signatories was my old friend Sir Richard Peek, the very model of a modern major general or perhaps the model of a modern admiral of the fleet, who we saw during the ‘children overboard’ inquiry. He was the gentleman who said that I should be taken out and shot—something with which perhaps Labor senators would agree. Sir Richard Peek began his career in the Royal Australian Navy in 1928 during the prime ministership of Stanley Melbourne Bruce and retired in, I think, 1976. That was the degree of contemporaneity of that eminent gentleman’s knowledge. So it is not about age, but it is about contemporaneity and about who has a political agenda.

Senator STEPHENS (New South Wales) (3.15 p.m.)—Having listened to Senator Brandis’s contribution, I think he is absolutely wrong. It was about the fact that these people are very concerned about our national interest and it certainly was not about where they may or may not be aligned politically. It was certainly about their call for truth in government. I find it hard to believe, as we heard last night and yesterday, that the members for Leichhardt and Dawson would deliberately have cast such a slur on the integrity of a group of such highly respected individuals calling for honesty in government—something which they themselves would surely agree with. In Mrs Kelly’s description of ‘doddering daquiri diplomats’, I am afraid she was dazzled by the attraction of alliterative plosives and distracted from the
substance of the statement by the fact of the birth date of its signatories.

Senator Ferguson interjecting—

Senator STEPHENS—The age of the signatories is certainly not relevant, and I am sure Senator Ferguson would agree. It is their message that was important. As Mr Woolcott pointed out on Lateline last night—and I must say that his dignity actually made a marked contrast with the unseemliness of the reported retorts of the members of the government—denigrating senior public servants because they happen to be born before either Mrs Kelly or Mr Entsch seems to me to be dragging a fairly red herring across what was a serious attempt to improve the calibre of our public life. The thinking seems to be, in a nutshell, that they are old and that therefore we can laugh at them and nobody will seriously examine what they have to say. But I would suggest that we should be doing exactly that. I wonder exactly what Mrs Kelly was thinking and whether her admiration for the Prime Minister has actually diminished since he recently turned 65, and I wonder what members of The Nationals, who themselves are not necessarily the sprightliest demographic group around, thought when they heard Mrs Kelly’s dismissive remark that these old people should keep their opinions to themselves. I suggest that they should do exactly the opposite. The combined experience of 43 eminent people in public life is something to be valued and not scorned. If their combined wisdom tells us that we need to raise the bar as far as honesty and integrity are concerned then we all on both sides of politics would do well to listen. I cannot help thinking of Bertrand Russell’s remark when he said:

The trouble with the world is that the stupid are cocksure and the intelligent are full of doubt.

These are unquestionably intelligent people who did not compose their statement without some serious activity in mind and they did not append their signatures without conscientiously examining the issues.

Senator Ferguson interjecting—

Senator STEPHENS—A little examination of conscience, Senator Lightfoot, never did anyone any harm. It often happens in our individual as well as our political lives that we become self-satisfied and must rely on others to firmly remind us of the standards that we should be aspiring to.

Senator Ferguson—Where is Senator Lightfoot?

Senator STEPHENS—I am sorry. Senator Ferguson, I apologise. Can I say, though, Senator Ferguson, that instead of keeping their opinions to themselves the people who presented this statement were right to air them. They had nothing personal to gain and certainly, from the way that they have been berated here today, they had a lot to lose. For those of us who listened to what they had to say, there was certainly a benefit to be had.

Mr Entsch thinks these people had an axe to grind and we heard today that Senator Macdonald considers them all to be ‘Labor hacks’—hardly the case—as if they had an undisclosed end to serve. What they say is that what we all want is truth in government. Mr Howard says they are wrong. But are they wrong to actually say Australia’s involvement in the war against terror has increased our danger of being a target to terrorists? I do not think so. When did the terrorists name this country as a target before we went to war in Iraq? The fact that what these people say may be unpalatable does not mean that it is not true. In the light of the articulate and succinct expression in this statement, it is clear that the signatories are far from being mentally feeble or inept, and I have great difficulty in understanding how the member for Dawson could describe them as ‘doddering’. I think we are justified to ask
if Mrs Kelly herself was caught napping in the comfort zone she was so sure was the domicile of the signatories. As for the remainder of her comment, I really have no reason to believe the actual consumption of daiquiris had any influence on what she said and I have no doubt that in the sober light of day she might consider the insulting nature of her words and apologise. *(Time expired)*

**Senator FERGUSON** *(South Australia)*

(3.20 p.m.)—Firstly can I say to Senator Stephens that if she thinks we were not a terrorist target before we went to Iraq she must be the only person in this chamber who has not heard of what happened in Bali and also what was planned in Singapore—long before we went to Iraq. Senator Stephens, you may need to update your knowledge. Indeed I may look like Senator Lightfoot, but I am on the ball in that regard and you are not. Isn’t it very strange that the first time one of the 43 signatories to the statement, General Peter Gration, was interviewed he said, ‘This is not meant to be a political statement.’ Have you ever heard anything so ridiculous in your life? Not meant to be a political statement! He also said that the democratic structure of our society had been undermined because Australia went to war in Iraq based on misleading the Australian population and based on a lie. The shadow defence minister, Mr Kim Beazley, does not agree with him, Senator Stephens, you may need to update your knowledge. Indeed I may look like Senator Lightfoot, but I am on the ball in that regard and you are not. Isn’t it very strange that the first time one of the 43 signatories to the statement, General Peter Gration, was interviewed he said, ‘This is not meant to be a political statement.’ Have you ever heard anything so ridiculous in your life? Not meant to be a political statement!

The other usual suspects on the list who have been willing to criticise the Howard government since 1996 have had nothing to do with all of the issues that they raised in their statement. Most of those people have been usual suspects for a long time, because they have done nothing but criticise the Howard government ever since it was elected in 1996.

Mr Howard did say that it is important to value the capacity of older Australians, and it is important to value their capacity, provided...
they are sticking to subjects that they have some contemporary knowledge of and first-hand information about. None of those people on that list, with the exception of one—there may have been one who retired after 11 September 2001—is conscious of or has any knowledge of the information or advice that was provided to this government before it made its decisions. Not one of them has been privy to the changing circumstances that have been a part of our world since 11 September 2001, when we commenced the war on terrorism after those terrible acts took place at the twin towers in New York. Sure, we value the contributions of older Australians, but we do not value the uninformed opinions of older Australians. No matter what capacity they had or respect they enjoyed while they were in a job, once they are retired and no longer privy to the knowledge that is available to those who have to make decisions—(Time expired)

Senator FORSHAW (New South Wales)
(3.25 p.m.)—I have just listened intently to Senator Ferguson’s attempt to defend the outrageous attacks by members of the government, particularly Mrs De-Anne Kelly and Mr Warren Entsch, on the 43 eminent, distinguished Australians who signed that letter calling for truth in government. Two arguments were advanced by the government’s spokespeople, including Senator Ferguson, to try to discredit those eminent Australians.

The first is that they are all retired from their respective positions of diplomats and military chiefs of the Army, Navy, Defence Force and so on, and they had all retired before September 11. The argument is that, because they are retired and are not in active service, they somehow have nothing to contribute. These people are not living on the moon. These are people who have had lengthy, distinguished careers in the military and in foreign affairs as diplomats or as heads of departments. Many of these—dare I say all of them—have continued their interest and involvement in looking at the great issues facing the world today. They did not just stop thinking about what happens around the world when they retired. For the Prime Minister and others to get up and say ‘Because you worked in those areas before September 11, you have nothing valuable to contribute’ is in itself an insult to those people and to all other retired and elderly people in this country. The suggestion that the moment you leave the work force you somehow have no more to offer or your opinion is worthless because you are no longer working in the field was the essence of Senator Brandis’s arguments about contemporaneity.

The other falsehood of the argument put by Senator Ferguson is that they were not privy to the intelligence that this government had. Out of the mouth that has just spoken was the flaw in the government’s argument, because the biggest failing in terms of September 11 in the US was the failure of intelligence. The greatest military nation on this earth with the greatest, most sophisticated intelligence network in the world still was unable to predict the events of September 11. It was unable to stop them. Here in Australia we have had finding after finding that clearly demonstrates that there were systemic failures of intelligence in this country with respect to Bali. With respect to our involvement in Iraq, just as with the ‘children over-board’ issue, we have seen failures of intelligence and on occasions—maybe not on all occasions but certainly on some—a deliberate distortion of the message and the intelligence and a refusal to accept the intelligence that was coming through. We know in respect of Bali, for instance, that there was intelligence that warned Australians, the department and the minister about potential problems with terrorism.
Senator Ferguson and the Prime Minister talk about the world having changed after September 11. The problem is that the issues of terrorism and the threat from al-Qaeda were in existence before September 11, not just in the Middle East or in America but also in our region. On your government’s watch, Senator Ferguson, you failed. You cannot now turn around and attack these distinguished Australians because they happen to have expressed an opinion which is different from this government’s.

But, of course, that is the approach of this government. When you do not like the message, you change it or ignore it, just as you did in the children overboard affair. When you do not like the message and you cannot change it, because it is so blatant it stares you in the face, you attack the messenger, just as the member for Dawson, Mrs De-Anne Kelly, had the temerity to attack these people as ‘doddering daiquiri diplomats’. This is the woman who has threatened to cross the floor several times in defence of her community but chickened out on every occasion. People like Warren Entsch have attacked these distinguished Australians. And who do we finally have in the papers today? We get the real doddering fools like Paddy McGuinness, Piers Akerman and others trying to defend this government and attacking the record of these fine and distinguished Australians. We are led by a Prime Minister who thinks that older people should make a contribution. (Time expired)

Senator STOTT DESPOJA (South Australia) (3.30 p.m.)—This is a disgraceful debate. What a disgrace this government is in the Senate. What other nation on this earth with a democracy comparable to ours would have a debate that denigrated 43 of its eminent, high-achieving citizens? They are citizens who have helped to make this nation what it is. Not all of us will agree with the sentiments or the comments expressed by these distinguished Australians at any time throughout their careers, but let us not forget that these are Australian citizens who are being denigrated, mocked, ridiculed, patronised and trivialised—not just in the Senate today under parliamentary privilege but in the public and community sphere. It is a disgrace, and I am embarrassed by a debate such as this, even though politically I may not line up with some of those Australians.

Over many years I have been used to this place and this executive government deriding, trivialising and patronising youth and talking about wisdom relating to age and about the invaluable notion of experience and relating that to age. But, today, we have done the opposite. It is all about contemporaneity. It is all about older people and if they are ‘informed’. Let us not forget the statement that was made in this place: that we value the views of informed older Australian but we do not value the views of uninformed older Australians. Let that sentence go out into the community. Who are we to determine whether we value informed or otherwise views of the citizens that we represent? What a horrific and disgraceful debate.

As for the issue at substance—whether or not this nation went to war on a lie—we can express our personal and legislative views, and my views and those of my party are well known. This nation was, in my opinion, taken to war on a lie. It was not something that was substantiated or that evidence was appropriate or whether it was weapons of mass destruction or any other terror link—whatever rationale was given, we know the truth and citizens know the truth. And let us never ‘shoot the messenger’, which is an expression that has been used. When citizens express their opinion, whether we consider it valuable because it is informed or not, how dare we denigrate it.
To take 43 of our most distinguished, serving, eminent Australians and talk about them in this way has been shocking. Whether it is Mrs Kelly, Michael Baume—whom I watched on Lateline with absolute stunned wonder last night—or members of this parliament, they should know better. Yes, by all means we can agree to disagree, but the personalising of this debate has been shocking. It does not surprise me—but I thought that if you were going to pick on people you might not pick on people as distinguished and wise as these people and make this debate about age.

I have to admit how ironic it is after all these years—and I can see Senator Kerry Nettle sitting near me; the two of us know more than most in this place about having our opinions devalued because of our age, although maybe not so much these days, I hope—that the opposite debate now stands. This is nothing to do with age. This is about truth, accountability and honesty in government—government scrutiny, and truth and openness in government. How dare we personalise this debate.

In my remaining minute I was going to comment on the cooling-off period to which the Labor Party have today made comment on as another aspect of truth in government. I put on record the private member’s bill I moved as leader of the Australian Democrats back in February 2002 which did provide for a cooling-off period. On that occasion Minister Hill, in his response to me in question time two years ago, made it clear that he did not support that notion. At the time I got the impression that the Labor Party did not support it, so today I welcome their support for such an idea and I urge them to consider my private member’s bill on this issue. It looks at different experiences—certainly the second reading speech does—around the world. In light of former Senator Alston’s employment that was announced today, I think it is about time Australian citizens knew that there was a cooling-off period for ministers.

(Time expired)

Question agreed to.

PETITIONS

The Clerk—A petition has been lodged for presentation as follows:

Military Detention: Australian Citizens

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

The Petition of the undersigned shows:

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

Your petitioners ask that the Senate should:

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

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

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

by The President (from 15 citizens).

Petition received.

NOTICES

Presentation

Senator Mason to move on the next day of sitting:

That the time for the presentation of the report of the Joint Standing Committee on Electoral Matters on electoral funding and disclosure and any amendments to the Commonwealth Electoral Act necessary in relation to political donations be extended to 30 September 2004.

Senator Heffernan to move on the next day of sitting:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the
Senate on Wednesday, 11 August 2004, from 4.30 pm to 8 pm, to take evidence for the committee’s inquiry into the provisions of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004.

Senator Ridgeway to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) 9 August 2004 was International Day of the World’s Indigenous Peoples,
(ii) this is the final year of the International Decade of the World’s Indigenous Peoples, which commenced in 1995, and
(iii) the theme of the decade was ‘Indigenous people—partnership in action’, with the focus on strengthening international cooperation for the solution of problems faced by Indigenous people in such areas as human rights, the environment, development, education and health;
(b) notes that Mr John Howard’s Coalition Government has been in power for eight of the 10 years in which the human rights of Indigenous people have been an international focus and that, in those past 8 years:
(i) the gap between the life expectancy of Indigenous and non-Indigenous Australians has widened,
(ii) Indigenous Australians continue to suffer from ill-health at drastically higher rates than non-Indigenous Australians, for example, Indigenous people suffer from middle ear infections at a rate that is more than 4 times that determined by the World Health Organization to constitute a national health emergency,
(iii) the rates of imprisonment of Indigenous Australians have increased compared to those of non-Indigenous Australians,
(iv) the ratio of Indigenous to non-Indigenous university students has declined, and
(v) amendments to the Native Title Act 1993 have further diminished Indigenous land rights;
(c) notes that:
(i) self-determination is a human right enshrined in international law, that services to Indigenous people are most effective when they are controlled and run by Indigenous people, and that Indigenous self-determination in Australia has been attacked by the Howard Government’s mainstreaming approach, including the recent abolition of the Aboriginal and Torres Strait Islander Commission, and the tendering out of Indigenous Legal Services, and
(ii) Australia is the only state which has spoken, in the inter-sessional Working Group, against the inclusion of any language of self-determination in the draft Declaration on the Rights of Indigenous Peoples;
(d) calls on the Government to:
(i) immediately abandon its alternative draft Declaration on the Rights of Indigenous Peoples, as this contravenes the basic anti-discrimination principles of the common article 2 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and
(ii) engage in constructive dialogue with Indigenous groups in Australia, and to ensure that any proposal to alter the current text of the draft declaration adheres to the principles espoused by Mick Dodson in 1996, namely, the proposal must be reasonable, necessary and strengthen the existing text, and accord with the principles of equality, non-discrimination and the absolute prohibition of racial discrimination.

Senator Allison to move on the next day of sitting:
That there be laid on the table by the Minister for Finance and Administration, no later than 1 pm on 12 August 2004, the document containing
the Commonwealth sites, including offshore islands and territories, listed as potential sites for the storage of nuclear waste and referred to by the Minister on the Australian Broadcasting Corporation’s AM Program on 14 July 2004.

Senator Sherry to move 15 sitting days after today:


Senator Greig to move, contingent on the notice of motion for the first reading of the Marriage Amendment Bill 2004 being called on:

That so much of the standing orders be suspended as would prevent Senator Greig moving a motion to provide that the Marriage Amendment Bill 2004 not be further considered until the Senate has finally considered the Sexuality and Gender Identity Discrimination Bill 2003.

Senator Greig to move, contingent on the Marriage Amendment Bill 2004 being read a second time:

That so much of the standing orders be suspended as would prevent Senator Greig moving a motion to provide that the Marriage Amendment Bill 2004 not be further considered until the Senate has finally considered the Sexuality Anti-Vilification Bill 2003.

Senator Greig to move, contingent on the order of the day for the further consideration of the Marriage Amendment Bill 2004 being called on:

That so much of the standing orders be suspended as would prevent Senator Greig moving a motion to provide that further consideration of the Marriage Amendment Bill 2004 be postponed until the Legal and Constitutional Legislation Committee has presented its report on the provisions of the Marriage Legislation Amendment Bill 2004.

Senator Bartlett to move two sitting days after today:

That the Senate—

(a) notes that:

(i) the High Court of Australia on Friday, 6 August 2004, gave rulings addressing two areas of great significance regarding existing Australian legislation,

(ii) the ruling showed that there is a lack of any statutory provisions for stateless people within the jurisdiction of Australia, resulting in the possibility of lifetime detention for any stateless person who was not granted a protection visa but cannot be deported to any other country, and

(iii) the ruling also showed that there is a lack of legislation relating to conditions of administrative detention that must be met for that detention to remain lawful; and

(b) calls on the Australian Government, as a matter of urgency, to:

(i) enact legislation to prevent the situation whereby people who have been charged with no crime are faced with the possibility of lifetime detention,

(ii) enact legislation to resolve the issue whereby there are no legal provisions regarding the conditions which administrative detention must meet in order to remain lawful,

(iii) resolve the issues surrounding stateless people currently in immigration detention in Australia, by the granting of visas while the Government is unable to deport those people, and

(iv) investigate the implications of the High Court’s interpretation of the Australian Constitution that allows for lifetime administrative detention, with a view to enacting a Bill of Rights in order to protect people within the jurisdiction of Australia from such an abuse of basic human rights.

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

That the following bill be introduced: A Bill for an Act to provide certainty about the validity

**Senator IAN CAMPBELL** (Western Australia—Manager of Government Business in the Senate) (3.36 p.m.)—I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004, allowing it to be considered during this period of sittings.

I also table a statement of reasons justifying the need for this bill to be considered during these sittings and seek leave to have the statement incorporated in *Hansard*.

Leave granted.

*The statement read as follows—*

**Purpose of the Bill**
The bill introduces new and updated telecommunications offences in the Criminal Code to replace existing outdated offences in the Crimes Act 1914, including Internet child pornography offences and Internet "grooming" and procuring offences. The bill will also insert new contamination of goods offences and new personal financial information offences into the Criminal Code and includes a number of other measures, clarifying aspects of the Criminal Code, Customs Act 1901, Cybercrime Act 2001, Mutual Assistance in Criminal Matters Act 1987 and Crimes (Aviation) Act 1991.

**Reasons for Urgency**
The content of the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill 2004, introduced in the Senate on 24 June 2004, was re-introduced in the House of Representatives on 4 August 2004 in two separate bills: the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) (the Telecommunications Offences Bill No. 2) and the Criminal Code Amendment (Suicide Related Material Offences) Bill.

The Telecommunications Offences Bill No. 2 contains a number of very important measures dealing with use of the Internet to facilitate or exploit the sexual abuse of children. These measures include new offences covering use of the Internet to access, transmit and make available child pornography, and use of the Internet to "groom" or procure children with the intention of engaging in sexual activity with them.

The Telecommunications Offences Bill No. 2 also contains a range of other new measures of particular relevance to events of recent years. These include strong new offences dealing with:

- threats and hoaxes made over the telephone or by email;
- contamination of goods, and
- dishonestly obtaining or dealing in personal financial information (these offences cover credit card skimming and "phishing" for bank details over the Internet).

Given the important issues dealt with by the Telecommunications Offences Bill No. 2, the Australian community would benefit greatly from it being considered and passed by the Senate as soon as possible.

(Circulated by authority of the Minister for Justice and Customs)

**Postponement**

Items of business were postponed as follows:


**CIGARETTE VENDING MACHINES**

**Senator ALLISON** (Victoria) (3.37 p.m.)—by leave—I move the motion as amended:

That the Senate—

(a) congratulates the Australian Capital Territory member of the Legislative Assembly, Roslyn Dundas, on the successful third reading of her private member’s bill,
which introduces a ban on cigarette vending machines;
(b) notes that:
(i) smoking cigarettes continues to be the largest single preventable cause of illness and death in Australia, killing approximately 19,000 Australians a year,
(ii) costs to the Australian public due to death and illness related to smoking are estimated by the National Drug Strategy to be more than $21 billion a year,
(iii) ready access to cigarettes is a predictor of the uptake of smoking,
(iv) the sale of cigarettes is restricted to persons over 18 years of age in all Australian states and territories by law, and
(v) vending machines are an easily accessible, anonymous and poorly supervised source of cigarettes for young people who may be contemplating smoking or who are just beginning to smoke; and
(c) calls on the Federal Government and the governments of all other states and territories to follow the lead of the Australian Capital Territory Legislative Assembly and Tasmania and introduce a total ban on cigarette vending machines, as recommended in the National Tobacco Strategy and endorsed by all states and territories and the Commonwealth, on the grounds that cigarette vending machines provide a ready supply of cigarettes to minors.

Question agreed to.

COUNCIL OF AUSTRALIAN GOVERNMENTS

Senator BROWN (Tasmania) (3.38 p.m.)—I move:
That the Senate—
(a) notes that the Council of Australian Governments (COAG) and its ministerial councils are increasingly being used as decision-making forums, reaching binding formal agreements which bypass effective parliamentary and public scrutiny;
(b) considers that this device undermines the authority of parliament; and
(c) calls on the Government to:
(i) hold COAG and ministerial council meetings in open session, and
(ii) submit binding agreements of COAG and ministerial councils to parliament for ratification before implementation.

Question put.
The Senate divided. [3.43 p.m.]

(The Deputy President—Senator J.J. Hogg)

Ayes........... 10
Noes........... 43
Majority....... 33

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

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

* denotes teller

Question negatived.
PARLIAMENT: THREE-YEAR TERMS

Senator BROWN (Tasmania) (3.46 p.m.)—I move:

That the Senate calls on the Government to legislate for fixed 3-year parliamentary terms to commence after the next federal election.

Question put.

The Senate divided. [3.48 p.m.]

(The Deputy President—Senator J.J. Hogg)

Ayes…………... 9
Noes…………... 44

Majority……… 35

AYES

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

NOES

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

* denotes teller

Question negatived.

ENVIRONMENT: GREAT BARRIER REEF

Senator McLUCAS (Queensland) (3.50 p.m.)—by leave—I move the motion as amended:

That there be laid on the table by the Minister for the Environment and Heritage, no later than 3 pm on 11 August 2004, the following documents:

(a) all correspondence and other communications including maps relating to Repulse Bay or the Representative Areas Program between the Member for Dawson, Ms De-Anne Kelly, or her office, and the Great Barrier Reef Marine Park Authority (GBRMPA) during the period 1 January to 5 August 2004;

(b) all correspondence and other communications including maps relating to Repulse Bay, GBRMPA or the Representative Areas Program between the Member for Dawson, Ms De-Anne Kelly, or her office, and the Minister for the Environment and Heritage or the Minister’s office during the period 1 January to 5 August 2004; and

(c) all correspondence and other communications including maps relating to GBRMPA or the Representative Areas Program between the Member for Dawson, Ms De-Anne Kelly, or her office, and the Department of the Environment and Heritage during the period 1 January to 5 August 2004.

Question agreed to.

AIRSERVICES AUSTRALIA

Senator NETTLE (New South Wales) (3.51 p.m.)—by leave—I, and also on behalf of Senator Carr, move the motion as amended:

That the Senate—

(a) notes the recent Government decision to award an $18 million Airservices Australia contract for the manufacture and supply of airport emergency vehicles to an Austrian
firm, Rosenbauer, in preference to a Hunter Valley company, the Varley Group;

(b) condemns this decision for:
(i) failing to promote regional industrial development, and
(ii) missing an opportunity to create 60 direct jobs and up to 180 indirect jobs in the Hunter region, including 10 to 15 apprenticeships;

(c) notes the severe weakness in the Government’s procurement guidelines which means that it is not mandatory for the following to be considered:
(i) the development of long-term, internationally competitive industry in Australia,
(ii) enhancement of Australia’s export potential and import replacement, and
(iii) employment, training and skills development, and initiatives in regional areas;

(d) congratulates the Hunter region workers and companies for leading a campaign to overturn this Government decision;

(e) condemns the Government for not arranging for departmental officials to visit the Varley Group to gain an appreciation of the company, its capability and its products; and

(f) calls on the Government to:
(i) investigate the awarding of this contract and reconsider the decision to award it to an overseas company, in order to create economic growth and jobs in the Hunter region, and
(ii) develop and implement effective government purchasing and manufacturing policies that promote Australian industry development and jobs.

Question agreed to.

DELEGATION REPORTS

President’s Visits to the United Kingdom and the Republic of Ireland and the People’s Republic of China

The DEPUTY PRESIDENT—I present the following reports by the President of his visits to the United Kingdom and the Republic of Ireland, which took place during April and May 2003, and to the People’s Republic of China, which took place in June 2004.

COMMITTEES

Environment, Communications, Information Technology and the Arts References Committee

Report

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.53 p.m.)—At the request of the Chair of the Environment, Communications, Information Technology and the Arts References Committee, Senator Cherry, I present a report on competition in broadband services, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator BARTLETT—I move:

That the Senate take note of the report.

Senator LUNDY (Australian Capital Territory) (3.54 p.m.)—I would like to make some remarks about this report entitled Competition in broadband services that has just been tabled in the Senate. As Senator Bartlett has said on behalf of Senator Cherry, who chairs the Environment, Communications, Information Technology and the Arts References Committee, this is the second report of this committee on related matters in two weeks. It is important to remind the Senate that the committee’s report on the Austra-
The Australian telecommunications network was tabled last week. In many respects this particular report, *Competition in broadband services*, flows directly from many of the outcomes, observations and indeed recommendations that were found in the ATN report.

I would like to spend the next few moments going through the recommendations of this report because it builds very specifically on the findings of the Australian telecommunications network report. In fact, when we established the terms of reference for this committee, the Howard government tried to oppose them being referred to the ECITA committee. That was something of a surprise but true to form. The Howard government is reticent to really grasp the real challenges in telecommunications policy, one of which Labor and I have contended for a very long time is the importance of having a broadband infrastructure for Australia that is future proof.

The context of this report being tabled today is years and years of neglect and almost a conspiracy between Telstra and the government to help fatten up Telstra’s bottom line in anticipation of privatisation, at the direct expense of improved services for Australians. Whilst the Howard government is very quick to claim some of the statistical changes in telecommunications services, what we know from the big picture is that we have been sliding backwards. This report documents very specifically the areas in which Australia is suffering, the areas in which Australia is going backwards with respect to broadband services. So let me turn to recommendation 1, which says:

The Government should set, in consultation with industry, a ten-year national target for an optic fibre consumer access network roll-out and should invest the necessary regulatory and compliance powers with the Australian Communications Authority to ensure that this target is met.

This is an incredibly important recommendation because it sets the vision. We have to accept that Telstra’s copper network has been neglected to the extent that it is no longer going to be able to be future proofed in the way this country needs—in the way small business needs, in the way people who are furthering their education need, in the way schools need, and in the way government services and government departments need. This government has not delivered. What we really need to come to terms with as a country is getting the vision right. We need an appropriately rolled out fibre optic network that has the capacity to provide the real broadband that will be required in the future.

One question this recommendation introduces is: what will be the necessary incentives for investment in this infrastructure? This is a very big policy question because what we know and what we have been able to document through this report is that this government have not got the mix right. We know that competition policy is failing. We know that regulatory policy in some respects is actually hindering investment and fairness in the market and, therefore, certainly the quality of services for consumers. We know that the worst outcome is that this government could continue to put money in the pockets of Telstra so that they can continue to hinder the roll-out of the necessary services, like broadband, around the country, because that is exactly what has been happening. I turn to recommendation 2:

The Committee recommends that the Government’s accepted definitions of ADSL and broadband speeds reflect international best practice standards and should not be determined or overly influenced by product definitions of speed offered by Telstra and other carriers ...

Those who get an ADSL service would know there is a choice of 256 or 512, or one megabyte or two megabytes—these are arbitrary levels set by Telstra. ADSL, we know, can
provide a far greater bandwidth service, so why don’t Telstra make that available? The fact is that Telstra are trying to inhibit the style of services because it suits their pricing model, it suits their service model and it suits Telstra to constrain the roll-out of broadband in this country. Recommendation 3 says:

The Committee recommends that the Productivity Commission be tasked to undertake a full examination of all the options for structural reform in Australian telecommunications, including but not restricted to, the structural separation of Telstra.

Structure has been a consistent theme right through both the Australian telecommunications network inquiry and the broadband services competition inquiry. There is no surprise in knowing that the one issue that the Howard government has consistently prevented being analysed to any great degree is structural reform. Couple that with the facts that competition policy, by the ACCC’s own admission, is not working in these areas and that Telstra is too big to be regulated and it means that structural reform needs to be considered in a careful and sensible way. I think that the recommendation that the Productivity Commission be the body to finally consider the broad issue of structural reform in the telecommunications sector is timely and appropriate.

Recommendations 4, 5 and 6 relate to structural issues as well. This committee recommends that Telstra be required to divest its shareholding in Foxtel. This is unequivocal. The ACCC has said it, the National Competition Council, I believe, has said it and certainly Labor has said it as well. This is a big issue as far as Telstra’s persistent involvement in and aspiration concerning the media are concerned. Very clearly, it needs to be addressed. Recommendation 5 reads:

The Government should direct the Australian Competition and Consumer Commission to provide further advice on its recommendations in its report Emerging Market Structures in the Communications Sector on the feasibility of introducing a content access regime ...

This builds on the commitments, given as part of the content-sharing deal by Telstra, which have not come to fruition. So there are issues on the basis of content and infrastructure, not least of which is Telstra’s use of walled gardens to allow their Internet content to be favoured by their own Internet service provider customers and so forth. Recommendation 6 reflects on the issue of divestiture of the HFC network. The committee believes that it will be timely for the ACCC to revisit this recommendation in the context of other developments.

Outside these issues of structural reform, which I think are all part of the current debate, the rest of the recommendations relate to some of the failings of competition policy as they currently stand. Recommendation 7 says:

The Government should review section 151AKA(10) of the Trade Practices Act 1974 to determine whether, under some circumstances, it may prevent the Australian Competition and Consumer Commission from acting swiftly to address anti-competitive conduct. Consideration should be given to the necessity and the effectiveness of issuing consultation and competition notices in addressing anti-competitive conduct ...

That is a long way of saying that we need to make sure that our competition laws are actually doing their job, that they are effective and that if a competition notice is enforced it is having a desired effect. The committee took some evidence—and we heard from the Chairman of the ACCC itself, Graeme Samuel—that Telstra is too big to regulate. When we have a situation where the ACCC has used its trump card in regulatory power, the competition notice, and yet it does not seem to be having the desired effect on changing the behaviour of Telstra, we know we have a problem.
Recommendation 8 is that the ACCC further examine the anticompetitive effects of the current peering arrangements, and it cites cost disadvantages to smaller ISPs. Recommendation 9 relates to:

... the availability of access to, and cost of, backhaul services for carriers building or proposing to build new broadband infrastructure.

These two recommendations relate to the access regime in telecommunications—increasingly important issues. I turn to recommendation 10. The committee has identified that Telstra’s current geospatial data sets, including exchange boundaries, exchange coordination lists of the RIM polygon mapping and distribution areas, are all critical for genuine competition. The committee recommends that these data sets be made available on request, in a usable format, to the competition—to other carriers and ISPs. Without that information Telstra will still have a perpetual advantage in the market, an advantage that this report has documented very specifically.

I conclude by saying that this inquiry has identified the structural impediments, the regulatory impediments and the competition policy impediments to a vibrant and dynamic level of investment in broadband in Australia. Without that investment we are being specifically hindered. This report details a way forward whereby the government could start to redeem themselves for the damage that they have caused in their close relationship with Telstra. (Time expired)

Senator TCHEN (Victoria) (4.04 p.m.)—I also rise to speak on the report Competition in broadband services by the Senate Environment, Communications, Information Technology and the Arts References Committee. The government members of this committee dissent entirely from the report by the Labor and Democrat members regarding this inquiry. This inquiry was given extremely broad terms of reference. There were five terms of reference. The inquiry was supposed to look at:

... the current and prospective levels of competition in broadband services,
... any impediments to competition and to the uptake of broadband technology;
... the implications of communications technology convergence on competition ...
... the impact and relationship between ownership of content and distribution of content on competition;
... any opportunities to maximise the capacity and use of existing broadband infrastructure.

These are brave targets indeed.

In the course of this inquiry 55 submissions were received and seven public hearings were held in various parts of Australia, including country centres, during which 67 witnesses representing 43 entities—including individuals representing themselves—including the Department of Communications, Information Technology and the Arts and the Australian Competition and Consumer Commission, attended to give evidence. This represented a significant community effort commensurate, perhaps, with the broad scope of the terms of reference. I take this opportunity to thank and commend all the witnesses who appeared before the inquiry and who made written submissions.

Unfortunately for all the contributions made by these public-minded members of the community, the majority Labor and Democrat members of the inquiry turned it into an exercise of a solution in search of a problem.

This was the ninth Senate inquiry into telecommunications since 2000. The course of the inquiry ran almost in parallel with the inquiry into the Australian telecommunications network, the report of which was tabled last Thursday. That inquiry had a reference given exactly one year and one day earlier than this one. I raise this comparison because
the preface to the report of this inquiry makes particular reference to the fact that, at the time that the Senate referred the inquiry, this committee was engaged in a comprehensive inquiry into the adequacy of the Australian telecommunications network. It is said to have found that the absence of competitive broadband infrastructure is a key constraint to the development of competition in broadband services especially in rural and regional areas, which was the conclusion found, allegedly, in this inquiry.

This inquiry follows that telecommunications network inquiry. What was found in that inquiry therefore must bear significantly on the deliberations of this inquiry. In this context, I think it would be helpful to quote the words of Senator Tierney, deputy chair of both inquiries, at the tabling of the earlier report:

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 ...

Can what was irrelevant and out of date for that earlier inquiry be relevant to this inquiry? It seems that senators who signed the majority report believe that is so. To them the mere fact that man has gone into space does not stop them from demanding that safety rails are placed around the edge of the world to stop seafarers, presumably unionised ones, from going over the edge.

From the government members’ point of view, we believe that this inquiry is unnecessary, is based on false information and has come to a conclusion which was well developed beforehand. Throughout this inquiry uneasiness merged into hostility about Telstra’s dominant position in the market. It was a constant and pervasive presence. A quick scrutiny of the 10 recommendations of the majority report show up this measure of hostility. I draw your attention, Mr Acting Deputy President, to the 10 recommendations of which at least seven specifically argue that Telstra should be reduced or restrained in one way or another. Of the other three recommendations, recommendation 5 does not refer to Telstra directly but refers to a report by the Australian Competition and Consumer Commission which again refers to Telstra.

The first two recommendations refer to a national target for an optical fibre consumer access network roll-out and also require the government’s accepted definitions of ADSL and broadband speeds to reflect international best practice standards. These two recommendations assume again that broadband technology is in a state of standing still. Recommendation 1 assumes that optical fibre is the only or best way that broadband can be provided. In fact, evidence received during the inquiry demonstrated one thing in particular—the complexity of, and the fast-changing picture in, broadband technology. This is actually acknowledged in the majority report in the conclusion, which says:

The Committee acknowledges that the issues are complex and that there is no single solution to the impediments to broadband competition identified in this report.

Yet these majority members then blithely go on to recommend that a particular technology be identified as something which must be followed.

I have already referred to what appears to be the innate hostility of the majority members of the committee to Telstra. While it is undeniable that Telstra’s performance has not been perfect, again from the evidence, from the community’s point of view both the level of service and the cost of the service offered by Telstra to the consumer have improved significantly since 1996. There is no dispute about that. While it is also true that, as both the supplier of wholesale services to the other retailers and a direct provider of the
same retail services to the public, Telstra is in a position to exercise unfair and predatory advantage over its competitors and that perhaps some form of Chinese wall should exist between Telstra’s wholesale and retail businesses, there is no evidence to suggest that Telstra has behaved in such a predatory manner. There have been accusations but there is no proof that it has behaved in that way and there is certainly no suggestion that existing regulations have been powerless to prevent Telstra from behaving in a predatory manner.

It is true that the ACCC has called for serious consideration to be given to Telstra’s divestiture of both its shares in Foxtel and the HFC network, which form one of the recommendations. However, the government members of the committee note that the ACCC has arrived at these views on the basis of concern about a perceived conflict of interest on the part of Telstra, which I have already mentioned, rather than on any actual predatory behaviour by Telstra in competition or on any firm knowledge of any real community benefits that would flow from such divestiture. One wonders if the ACCC would have come up with a different call if it were actually the ‘Australian Consumer and Competition Commission’.

In summary, the other thing that was obvious from this inquiry was that the government has in place a regulatory process which will provide for the management of the future growth of the broadband market and the introduction of broadband technology.

Senator CHERRY (Queensland) (4.14 p.m.)—I rise to speak on the report on competition in broadband services by the Senate Environment, Communications, Information Technology and the Arts References Committee. This is a very important report because it concerns a fundamental part of Australia’s telecommunications infrastructure: the roll-out of broadband technology across Australia. The picture which emerges from this report is that of a work in progress, and inevitably it will be. I am sure we will hear the same complaint that I heard from the government last week, that the report is already out of date. Because of the rapid changes in terms of the roll-out and the changing nature of this market, I think the government, in defending the status quo, is failing to recognise that governments do have a role in trying to influence where policy goes, where access is, the pricing of that access and where the infrastructure is invested in.

The fundamental recommendation of this committee is that we need to have a substantial investment in the roll-out of a new fibre optic cable network across Australia. It is a recommendation similar to the one we made last week in respect of the customer access network and it is one which is equally important, if not in fact more important, for the broadband network. If we are going to have a proper roll-out of real broadband—not pretend broadband and not halfway broadband, which is what the ADSL technology is, but real broadband—then we need to ensure that we have a proper fibre optic cable network to the home that can actually deliver that. That should be a long-term objective of Australia. Other countries have done it. Korea has done it and Japan has done it, so why can’t Australia? In Korea and Japan there are certainly much faster upload and download speeds at costs much cheaper than anything that has been achieved in Australia. Yes, I accept there are population density issues involved, but Canada have done it and they have population density issues similar to Australia’s, so why can’t we do it? This is the sort of question which the committee has been trying to grapple with and the government has failed to address.
I noticed that even the government senators’ report noted that the most recent figure suggests that Telstra has 750,000 broadband customers—five times as many broadband customers as its nearest rival. Telstra has a 68 per cent market share in broadband and it is able to use its market dominance in other parts of the telecommunications market to actually ensure it develops a dominant position in the broadband area. This has been a matter which has been reported on regularly by the Australian Competition and Consumer Commission and by and large the government has ignored every single recommendation of its competition watchdog. I was listening to Senator Tchen’s comments suggesting that the ACCC were really adopting a conflict of interest or a theoretical approach. No, the ACCC were adopting a view that they have been trying to regulate telecommunications since 1997 and they have come to the conclusion that there are fundamental structural impediments to competition in telecommunications and that those structural impediments are that Telstra, as the most vertically and horizontally integrated telco in the world, is simply beyond the regulator’s ability to effectively regulate.

That is also dealt with fundamentally in the recommendations of this committee report. It calls on the government to actually look at and do the extra work on the issues raised by the ACCC. I saw comments by the Minister for Communications, Information Technology and the Arts, Senator Coonan—and I am pleased she is in the chamber for this debate—in the media this morning suggesting that the ACCC needed to do work on the costs and benefits of the structural separation of Telstra. It is not the ACCC’s role to do that; it is the government’s job to do that. It is the Productivity Commission’s job to do that. It is time that the government did what the National Competition Council told this committee it should do: have a proper assessment under competition policy principles of the benefits, one way or the other, of the structural separation of Telstra. It is time that review occurred so that we do look at the costs and benefits and it is time that an appropriate body—presumably the Productivity Commission or some other body—did that work. This committee has called on the government to initiate that process. It has called on the government to initiate a review of the ownership of both Foxtel and the HFC cable network and also to look at the broader issues in encouraging competition in this very important area. It has also called on the government to look at the issue of peering, which is a fundamental concern for many smaller ISPs on the basis that they are unable to compete adequately with Telstra, given current peering arrangements. We have also called for changes in the backhaul operation and the costing of the backhaul cables—a very important issue that adds costs and reduces competition in the roll-out of broadband across Australia.

Over the last six months we have seen very significant changes in the pricing of broadband in Australia and a regulatory response from the ACCC. The concern of many in the industry is that the approaches which are being adopted at this stage are about ensuring Telstra’s continuing market dominance in the broadband market as it emerges and as it grows. This is something which should worry Australia over the longer term because the roll-out of broadband is the absolute backbone of the information economy. If we do not have a roll-out of broadband to business and consumers on fair terms and with reasonable access, then we are going to deny large chunks of our country access to the information economy. In particular, this committee heard evidence from many country towns and many communities which have been denied access, even to ADSL, on the basis that there were not
enough people prepared to sign up to the demand register. We heard evidence that the demand register’s numbers have changed from 15 to 20, up to 150 and 200 and down to other figures at different times, depending on Telstra’s arguments at the time. This has to be improved. The roll-out of broadband to all communities in Australia, particularly regional communities, should be a national priority—and the national broadband strategy, which we talk about in this report, is not going to get there. It is not going to deliver it because it is too small, it is too lacking in imagination and it is simply failing to address the fundamental core issue of investment in the infrastructure and the competition issues that underpin access to that infrastructure. This is what this report is about. It is an important contribution to the debate, and I do commend it to the Senate.

I also wish to thank the committee secretariat for their assistance in putting together this report, which we have done in a fairly short period of time. I wish to thank the many people who gave submissions to the committee, in particular the councils of Ballarat and the Gold Coast, who hosted the committee. They gave us an extraordinary insight into what regional communities can do in terms of the application and development of broadband. We also note that in both areas there were impediments to taking that further, and we certainly need to look at some of the planning and geospatial mapping issues in terms of allowing Telstra’s competitors to know where the infrastructure is that they can hook into. I wish to thank the committee members, particularly Senator Tchen and Senator Lundy, for their work on this committee report, which is a very important report. I also thank Telstra and the government authorities who appeared in front of the committee and gave us excellent access to the materials which were available to them. Broadband is a changing area of policy, one on which I believe the government needs to provide more leadership rather than be a spectator. This committee report, heartily endorsed by the Democrats, is very much about showing how a government could provide leadership to ensure that the backbone of the information economy stretches out to as many Australians as economically feasible. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Membership

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—The President has received a letter from a party leader seeking variations to the membership of certain committees.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.23 p.m.)—by leave—I move:

That Senator Colbeck be appointed as a participating member of the following committees:

- Community Affairs Legislation and References Committees.
- Economics Legislation and References Committees.
- Employment, Workplace Relations and Education Legislation and References Committees.
- Environment, Communications, Information Technology and the Arts Legislation and References Committees.
- Finance and Public Administration Legislation and References Committees.
- Foreign Affairs, Defence and Trade Legislation and References Committees.
- Legal and Constitutional Legislation and References Committees.

Question agreed to.
CRIMES LEGISLATION AMENDMENT (TELECOMMUNICATIONS OFFENCES AND OTHER MEASURES) BILL (NO. 2) 2004

First Reading

Bill received from the House of Representatives.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.24 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.24 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

CRIMES LEGISLATION AMENDMENT (TELECOMMUNICATIONS OFFENCES AND OTHER MEASURES) BILL (NO. 2) 2004

The past decade has seen the rapid expansion of the internet into our work, our homes and every aspect of our daily lives. Mobile telephones have likewise become a normal part of Australian life. In all areas of telecommunications, technology has become more advanced and more sophisticated.

The telecommunications environment has changed, and this Bill—the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004—will ensure that Commonwealth criminal offences remain effective in this changed environment.

This Bill replaces a Bill of a similar name which was introduced into the Senate on 24 June 2004 except that the suicide related material offences have been included in a separate Bill.

This Bill continues the Australian Government’s proactive approach to updating criminal laws in light of rapid technological change. For example, the Government developed the Cybercrime Act 2001 to provide a solid platform of criminal offences to assist Australia meet the challenges posed by computer hackers and ‘denial of service’ attacks. Importantly, the cybercrime offences are cast in technologically-neutral terms. The same approach is adopted in many of these new and updated telecommunications offences.

The existing telecommunications offences in Part VIIB of the Crimes Act 1914 were enacted in 1989. This Bill will repeal existing outdated telecommunications offences and insert a package of revised and new telecommunications offences into the Criminal Code. Moving these offences from the Crimes Act to the Criminal Code continues the process of relocating all serious Commonwealth offences into the Criminal Code.

Among the offences included in the Bill are a range of important new measures dealing with use of the Internet to facilitate or exploit the sexual abuse of children.

The Bill contains new offences dealing with use of the Internet to access, transmit and make available child pornography and child abuse material, as well as the possession or production of such material with intent to place it on the Internet. These offences complement existing offences prohibiting the importation of such material into Australia and will carry a maximum penalty of ten years imprisonment.

Law enforcement agencies estimate that around 85 per cent of child pornography seized in Australia is distributed via the Internet. In September last year, German police cracked a global child pornography network involving over 26,000 Internet users. By focusing on the Internet, these new federal offences target the very heart of the abhorrent child pornography industry.

The new offences will also prohibit the use of a telecommunications service, including by means of the Internet, to procure or ‘groom’ a person who is under 16 years of age, for the purpose of engaging in sexual activity with that person or so
that a third person can engage in sexual activity with that person. These offences carry penalties of 12-15 years imprisonment.

These new offences target adult offenders who exploit the anonymity of telecommunications services (for example, a ‘chat room’ on the Internet) to win the trust of a child as a first step towards the future sexual abuse of that child. This abhorrent practice is known as ‘online grooming’.

The new ‘procurement’ offences will also target situations where an offender, having won a child’s trust, then uses a telecommunications service to orchestrate a meeting with the child so as to engage in sexual activity.

These new offences would provide a firm legal basis for proactive AFP policing of this disturbing practice. The underlying rationale for the new offences is to allow law enforcement to intervene before a child is actually abused. A typical investigation may involve an AFP officer, or investigator at the Australian High Tech Crime Centre, assuming the identity of a fictitious child, interacting with potential predatory adults over the Internet, and arresting a predatory adult before they have an opportunity to sexually abuse a real child that they are also ‘grooming’. A Queensland prosecution has been successful on this basis.

The Parliament can take an important leadership role in this area. New federal offences will provide a springboard to a national approach to this issue.

Tough offences targeting sexual predators in this way aligns with the Government’s commitment to a nationally consistent child sex offender registration system, and the CrimTrac Agency’s work in this area.

The telecommunications offences package also contains new and updated offences dealing with interference with telecommunications and use of telecommunications to engage in inappropriate behaviour. Among these measures are:

- new offences dealing with the ‘rebirthing’ of stolen mobile phones and the copying of mobile phone SIM cards
- an updated version of the existing offence dealing with use of a telecommunications service to menace, harass or cause offence that is extended to cover Internet content that causes offence
- new offences dealing with use of a telecommunications service to make threats or hoaxes, and
- new offences dealing with improper use of emergency service numbers, including triple zero.

In addition to the telecommunications offences, this Bill also introduces other significant offences, targeting credit card skimming and the contamination of goods.

The personal financial information offences introduced into the Criminal Code by this Bill are a key component of the Australian Government’s national strategy to crack down on credit card skimming and Internet banking fraud. Credit card skimming is the process by which legitimate credit and debit card data is illicitly captured or copied, frequently by means of an electronic skimming device.

These amendments will criminalise dishonestly obtaining or dealing with personal financial information without the consent of the person to whom the information relates. These amendments will also criminalise possession or importation of a device with the intention that the device be used to commit a personal financial information offence.

Internet banking fraud, including ‘phishing’—where online criminals use apparently legitimate emails to trick people into divulging banking details—will also be covered by the Bill. Any person who uses a deception to obtain another person’s financial information will be guilty of an offence.

The proposed laws will ensure that Australians can feel more confident about electronic, telephone and Internet banking, knowing that penalties of up to 5 years imprisonment apply to those who capture or misuse their confidential financial details.

Comprehensive new contamination of goods offences are also included in this Bill. These offences—to be inserted into the Criminal Code—will apply to a person who contaminates goods intending to cause economic loss, public alarm or anxiety, and in some cases, harm to public health.
These offences also extend to persons who threaten to contaminate goods, or falsely claim to have contaminated goods. This recognises that the level of economic loss or public anxiety or alarm can be the same, regardless of whether the contamination is real, threatened or fictitious. It also reflects that in each case, the offender’s intention is to cause economic loss, public alarm or anxiety.

The offences will overlap and complement existing State and Territory offences. Importantly, the federal contamination offences will have some extraterritorial reach. For example, a threat to contaminate Australian goods which is made from outside of Australia would be covered.

Finally, this Bill will also make a number of amendments to a range of other criminal law and justice Acts. These include simplifying some procedures under the Mutual Assistance in Criminal Laws Act 1987 and amending the Crimes (Aviation) Act 1991 to outlaw child prostitution on board Australian-registered aircraft outside Australia, ensuring that the application of Australia’s criminal laws on board aircraft complies with the Optional Protocol to the Convention of the Rights of the Child on the sale of children. It also includes amending Chapter 2 of the Criminal Code, and amending the Customs Act 1901 to make clear the elements of the serious drug offences in that Act.

I believe that this Bill represents a significant advance in upgrading the criminal law to ensure it meets the challenges posed by new technology and the opportunities which it provides to criminals.

Ordered that further consideration of this bill be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

INDIGENOUS EDUCATION (TARGETED ASSISTANCE) AMENDMENT BILL 2004

First Reading

Bill received from the House of Representatives.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.25 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.25 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

INDIGENOUS EDUCATION (TARGETED ASSISTANCE) AMENDMENT BILL 2004

This Bill amends the Indigenous Education (Targeted Assistance) Act 2000 (the Act) to maintain and enhance the Australian Government’s effort in improving education outcomes for Indigenous Australians over the 2005 to 2008 funding quadrennium.

Accelerating Indigenous educational outcomes is a key element in the Australian Government’s 10-point national agenda for schooling. Closing the education divide between Indigenous and non-Indigenous Australians remains one of this Government’s highest education priorities. The National Aboriginal and Torres Strait Islander Education Policy, endorsed by all Australian governments and reflected in the objects of the Act, guides programme initiatives across Australia in continuing efforts to achieve equity between Indigenous and non-Indigenous Australians.

The Australian Government’s approach is to redirect resources to programmes that have demonstrably improved outcomes, to provide greater weighting of resources towards Indigenous students of greatest disadvantage—those in remote areas, and to improve mainstream service provision for Indigenous students.

The Bill will enable agreements to be made with education providers and others over the 2005—
2008 programme years for the making of payments to advance the objects of the Act. It will provide funding appropriations to support payments under the Indigenous Education Strategic Initiatives Programme (IESIP) and, importantly, for the first time, will also provide the funding appropriations to support payments under the Indigenous Education Direct Assistance Programme (IEDA). Funding appropriations for IEDA are currently via Appropriation Bill No. 1.

Bringing IEDA under the Act will provide certainty of funding for this programme for a four year period, facilitate improved programme management, and align the programme with academic calendar years. This will provide ensure consistency of accountability arrangements and their scrutiny across the Australian Government’s Indigenous education supplementary funding programmes.

The IEDA programme has been significantly reshaped for 2005-2008 following a review of the programme in 2003 which included consultations across the country. The reshaped programme will consist of two elements: better targeted tuition assistance for Indigenous students through the Indigenous Tutorial Assistance Scheme; and the introduction of a Whole of School Intervention Strategy. The changes to IEDA will: ensure that Indigenous students can access high quality tutorial assistance at key stages of their education; focus resources on initiatives that have demonstrably improved outcomes; more heavily weight resources toward the most disadvantaged students—those in remote areas; and encourage education providers and Indigenous communities to work together to accelerate outcomes for Indigenous students.

Payments of per-capita supplementary recurrent assistance to education and training providers will continue under IESIP with only minor modifications. There will also be funding available under IESIP to support existing and new national initiatives and significant projects, with an emphasis on Indigenous students in remote areas. Initiatives will be directed towards promoting systemic changes and developing flexible whole-of-government approaches to education delivery. The National Indigenous English Literacy and Numeracy Strategy will continue and, following its evaluation in 2003, will be reshaped by strengthening the application of “what works”, particularly around: the practices of teachers and their support staff; preparing young people for formal schooling; and helping re-engage and retain more Indigenous students to Year 12 or its vocational education and training equivalent.

A new flagship project will be the Scaffolding approach to teaching literacy. This is a structured approach to teaching that has proven to be especially effective with Indigenous students in remote areas. The Australian Government will partner with education providers to embed the Scaffolding literacy approach into teaching practices. A range of other new initiatives and ongoing initiatives that have delivered genuine improvements will also be supported under IESIP.

Through this Bill the Government is significantly strengthening the financial and educational accountability arrangements under the Act. In particular the Bill provides that, to be eligible to receive funding, parties to agreements must make a commitment to the objects of the Act and a commitment to achieve the performance targets specified in the agreements. A significant measure introduced by the Bill, which addresses a concern of the Commonwealth Grants Commission about the quality of data available for its Report on Indigenous Funding 2001, is that funding recipients may be required to report performance data for different geographical locations. If, on the evidence of performance reports submitted, a funding recipient is underperforming, there will be capacity for the Australian Government to direct the party to take specified action, and to report on the action taken.

Payments under the Act are to supplement, rather than substitute for, the other forms of funding available to advance the education of all Australian students, including Indigenous students. Funding under the Act is therefore intended to accelerate closure of the education divide between Indigenous and non-Indigenous Australians. Consistent with this objective, the Australian Government is implementing measures to ensure that there is an appropriate level of funding and effort dedicated to Indigenous students by education providers from both own-source funds.
and from Australian Government mainstream funding.

The Bill includes a requirement that agreements must include a condition that the other party report on how it has advanced, and intends to advance, the objects of the Act from funds other than Australian Government mainstream and Indigenous-specific funds. Additionally, under authority of the Learning Together Achievement Through Choice and Opportunity Bill 2004, government and non-government school systems will be required to report annually to the Australian Government on how mainstream school funding provided by the Australian Government is being spent on improving Indigenous student outcomes. This will include a requirement to report on the goals for Indigenous education, progress in achieving those goals, barriers faced, strategies for overcoming those barriers, and initiatives funded.

These measures reflect the Australian Government’s commitment to accelerate progress in improving Indigenous education and training outcomes. They represent a significant step to improve mainstream service provision for Indigenous students, and to better focus Indigenous-specific resources to the most disadvantaged Indigenous students. I commend the Bill to the Senate.

Debate (on motion by Senator Crossin) adjourned.

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

US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004

US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF) BILL 2004

In Committee

Consideration resumed.

US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The committee is considering the US Free Trade Agreement Implementation Bill 2004 and amendment (2) on sheet 4366 revised, moved by Senator Nettle.

Senator NETTLE (New South Wales) (4.26 p.m.)—I want to give the government another opportunity to address an issue which was not satisfactorily addressed last night. It was about the requirement in this legislation for an environmental assessment of the impact of the legislation to be dealt with and completed by the government before the committee which implements the trade agreement can come into effect. Last night we had two conflicting comments from the government: a view expressed by the minister in the chamber at the time, Senator Hill, that the government believed their obligations had been fulfilled by the cursory environmental analysis provided by the Centre for International Economics and a different view expressed by government senators in the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America that the government will be carrying out an environmental assessment of the agreement in the context of the overall analysis of the agreement. I want to give the government another opportunity to say whether overnight they have achieved more clarity on whether an environmental assessment of the trade agreement would be carried out as per the agreement.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.28 p.m.)—I thank Senator Nettle for having outlined what she sees as a conflict in some information that has been talked about in this debate relating to the requirement of an environmental assessment, as I understand it, and a perceived conflict between the minister, Senator Hill, and some views of the Senate committee. Senator Hill ought to be able to provide clarity on that matter.
I do have some information that I can provide to the chamber that may deal with Senator Nettle’s question relating to the government’s plans in respect of an environmental impact analysis of the free trade agreement. The government commissioned an analysis of the environmental impact of the Australia-US free trade agreement as part of the economic analysis of the FTA by the Centre for International Economics that Senator Nettle referred to. On my advice, there is no legal requirement for Australia to undertake such a study before concluding a treaty such as the FTA.

The review of the Centre for International Economics confirmed the government’s assessment that nothing in the environment chapter or other chapters of the free trade agreement would impact on the ability of the government to set our own environment standards and laws. The CIE study also looked at the economic impact of the FTA on the environment, and the finding was that only a modest impact was likely.

Australia will continue to regulate and to impose high standards as it needs to. Nothing in the free trade agreement stops us from doing that. The parliamentary inquiries—that is, the JSCOT inquiry and the Senate select committee—took evidence from the community, including from those with an interest in the environment, before coming to any judgment about whether additional environmental assessment is appropriate. So, of course, the government did consider that. That is the information available to me in relation to the issues raised by Senator Nettle. If there is anything that I can add that would assist to meet that query, I will obviously get that information and provide it.

Senator BROWN (Tasmania) (4.31 p.m.)—I take the acting minister to annex 11-B of the agreement, headedline ‘Expropriation’. It deals with just that—expropriation, as corporations might see it, of their rights cemented under this agreement when they challenge the government of the day to get their slice of power, influence or money for government actions which previously would have been part of the law of the land. The minister will see that paragraph 4(b) states:

Except in rare circumstances, nondiscriminatory regulatory actions by a Party—that means a government—that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety, and the environment, do not constitute indirect expropriations.

What are the ‘rare circumstances’?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.33 p.m.)—The answer to Senator Brown’s question, as I understand the way in which it was framed, is that it would only be—as Senator Brown has pointed out—‘except in very rare circumstances, the non-discriminatory regulatory actions by a party that are designed and applied to achieve public welfare objectives such as the protection of public health, safety, and the environment do not constitute indirect expropriations’. Whilst you can never rule out and, I suppose, exhaustively list what may constitute indirect expropriations, what is being referred to here are matters such as the protection of public health, safety and the environment. Clearly the text provides that they do not constitute indirect expropriations. If I have some additional advice as to what other rare circumstances might present themselves which need to be advanced in this debate, I will obviously get that advice. But the text seems pretty clear on its face that matters that are necessary to achieve legitimate public welfare objectives would not constitute an indirect expropriation.
Senator BROWN (Tasmania) (4.35 p.m.)—I am going to be very accommodating here because I think it is quite unfair that Senator Coonan is in the position she is in. Where Senator Hill has been taking charge of this debate, suddenly Senator Coonan is put in the terribly difficult position of having to answer questions on quite complex matters that the Greens and the Democrats have been putting forward in the committee stages of this legislation. Nevertheless, that is the job. I do not know what Senator Hill is doing that has made this debate second to it.

I come back to my question which—as you would have noted, Chair—Senator Coonan did not answer. The question is about paragraph 4(b) on page 1114 of the treaty itself. It is about the circumstances under which governments can expropriate—that is, take for the public good property or rights that companies may have. To put it bluntly, what happens if an American company operating in Australia does not like a law that is brought in that makes its operating expenses greater or that takes away a right it believes it has? For example, water flowing down the Murray River: the government wants to get an environmental flow or put in a carbon tax, which was not there when the company set up but the government thinks it is good for the environment.

This clause is saying that, where such actions are non-discriminatory and the Australian government applies them to achieve environmental or public health outcomes or safety, they are not classed as expropriations and the companies on the face of it—and there are all sorts of other things in this agreement which cut right across this, but under this clause at least—cannot claim compensation. Four words at the front, however, cut across that clause—‘except in rare circumstances’, which is when they can claim compensation. What the committee needs to know from the government, who signed the treaty and who agreed to those words, is: what are those rare circumstances that are the exceptions that allow the US government on behalf of its corporations to cut across Australian law applying to Australians to claim compensation from the Australian taxpayers?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.38 p.m.)—Senator Brown has raised an issue that relates to the expropriation section and in particular paragraph 4(b) of the free trade agreement text. As I said in response to an earlier question—and, if there is anything that Senator Hill can add when he gets here, I am sure he will do so—my advice is that this really relates to providing a safeguard, a saver, except in rare circumstances, for situations that may be difficult to envisage now but which are thought appropriate to allow compensation to be claimed. I am a former member of JSCOT and I can recall that quite regularly in treaties not every circumstance that might be in contemplation was spelt out in great particularity and in great detail because, as bitter experience tells you, the more prescriptive you are the more likely it is that you are going to not have thought of a circumstance that may well arise. So the language is deliberately there, knowing that the rare circumstances have not been exhaustively catalogued. ‘Rare’ I imagine, Senator Brown, does mean rare. For that reason it is difficult to give you a catalogue of every rare circumstance that might have been in contemplation. Senator Brown, that is my advice. If there is an explanation that elaborates further on what I have said that can be provided by Senator Hill, he will be here shortly and will no doubt do so.

Senator BROWN (Tasmania) (4.40 p.m.)—I certainly do not want to be exhausted by a catalogue; all I want is an example. Can the minister give an example of a
rare circumstance which pulls the rug from under this clause?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.41 p.m.)—I am further advised that there is no investor-state dispute settlement mechanism in the agreement of the kind that I think was alluded to in Senator Brown’s earlier question. Any concern by a United States company or corporation will need of course to be pursued through our jurisdiction, through the Australian courts, and Australian law would apply. That is not changed by the agreement. That is our jurisdiction and the law that would apply in Australia is not being changed by the agreement or by the enabling bill that is currently under consideration by the chamber. The agreement’s provisions of expropriation, on my understanding, reflect Australia’s existing obligations under customary international law and these arrangements are consistent with existing Australian practice in this area. It seems that this merely reflects what is currently the customary approach taken in international law as it applies in Australian courts.

Senator BROWN (Tasmania) (4.42 p.m.)—We are not getting far, and I am going to keep going. I want an explanation of why those four words ‘except in rare circumstances’ are in this clause in this so-called free trade agreement. I have been around long enough to know that you do not get escape hatches like that without them being meant to be used. We want to know why the escape hatch is built into this clause. What is wrong with saying that there are no regulatory actions by a party that are designed and applied to look after the country that can be considered expropriations? Why should Australia be subject to litigation and compensation for a law coming out of this parliament or for an action by the government under the law of this parliament?

When you see that principle generally being upheld but prefaced here by the words ‘except in rare circumstances’ all the orange lights flash. So far the minister has not been able to give one example of what the rare circumstances were in the minds of those writing this treaty, let alone the catalogue that she feared might exhaust me. I ask again of the minister: what are the rare circumstances—give me one, two or three—that were envisaged by the drafters of this clause of this free trade agreement of your government?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.44 p.m.)—Senator Brown, I am certainly not being obtuse or attempting not to deal with the question, but the way in which these treaty clauses operate has this intent. It is impossible to rule out the possibility that in some cases a non-discriminatory measure could constitute expropriation. That is not to say that I am able to speculate here about what that possibility might be. It is a saving clause that enables such a possibility to arise even if there is not one contemplated. Obviously, it has to be looked at on a case by case basis. That is what the courts do now—and I can vouch for that from experience—and the agreement will not change that. So I am not able, nor do I think it appropriate that I try, to conjure up some hypothetical situation. What I am telling the chamber in trying to be responsive to your questions, Senator Brown, is that this is a fairly standard way in which to have a saving clause so that you do not rule out the possibility that there may be cases, and we do not know what they might be, where a non-discriminatory measure could constitute expropriation. It is not something that is unusual. Whilst it is difficult to drill down and give concrete examples, because we are looking at a possibility, a hypothetical, it is not altered by the ap-
approach that the court takes to these particular matters now. Certainly the agreement will not change this.

Senator Brown (Tasmania) (4.47 p.m.)—This is extraordinary. We have an agreement between the Howard government and the Bush administration, made with all their firepower brought to bear on every phrase. We know that they worked for months on getting every phrase agreed to. We have an important clause in here, which worries the Greens and many others I am sure, which says that in rare circumstances a party—and that means a government, and that means a corporation working on a government—can claim that laws made in Australia that have public welfare objectives, such as the protection of health, safety and the environment, can constitute expropriations. Action clause: sue; result clause: taxpayers pay compensation to the aggrieved corporation—otherwise you would not have that clause there.

The minister, with the help of all the advisers who know the ins and outs of this agreement, cannot give us one example of where this escape hatch—it is really a back door, not to escape by but through which multinational corporations can get into the domain—can be levered open to make sure that the interests of these corporations over-ride those of the Australian people and the Australian parliament of the day. I have here some very good notes from the Australian Conservation Foundation, which analyse this agreement. The foundation says:

The following are hypothetical examples that—while not giving rise to compensation under current Australian law—might require compensation to be paid to U.S. investors under the AUSFTA …

I would like the government to consider five examples listed and respond as to whether there is a risk that compensation could be paid under the circumstances. The first is:

• an amendment to a State planning scheme designed to protect sensitive coastal areas from development, which prohibits a U.S. property owner from developing a coastal property

I know of one such very large coastal property in Tasmania. Is that at risk of expropriation? Would that be a rare circumstance? Or is there some other avenue outside the clause we are talking about whereby recompense could flow to such an investor? The second example listed is:

• an Australian law that bans the importation and use within Australia of certain harmful substances or goods, which affects a U.S. company engaged in the exporting of such substances or goods to Australia

We have talked about hazardous waste crossing borders being a matter of litigation under the North American Free Trade Agreement. The third example is:

• new emissions standards on power generators that significantly interfere with the profits of U.S. companies which own Australian coal fire power generators

We know that there are such companies that do own such Australian assets. Will new emissions standards be potentially compensable at the expense of Australian taxpayers? Another example is:

• the declaration of new marine parks or other measures that deny U.S. oil companies the right to drill for oil in sensitive marine areas within their exploration lease …

The companies are having a right expropriated, if you like, by the law. In Australia there would not be any trouble, because the Australian companies would have to put up with that, although, under the Constitution, if it were land, and this is not, they might have to be compensated. You very often find that the government will make some arrangement with them anyway. But what we are concerned about here is a foreign company with a right to drill for oil objecting to a marine
park being declared in Australian waters. The final example given by the Australian Conservation Foundation is:

- new anti-tree-clearing or water conservation laws which significantly interfere with the profits of U.S. agricultural companies operating in Australia.

Whether or not these are rare circumstances, I ask the minister: can she assure this committee that in none of those cases would there be the potential for an aggrieved US corporation to go to one of the secret arbitration entities, some of which have not yet been set up, to find whether there is some way in which, in all the loose, undefined, open for interpretation later clauses of the free trade agreement, compensation could be sought from the Australian government?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.53 p.m.)—Senator Brown, you have mentioned a number of hypotheticals and asked me to give you some view as to whether or not I think that would be a rare circumstance. While the factual situations may be correct—you have in fact said that a couple exist—they are obviously hypothetical. It is important to emphasise that only some environmental measures may constitute a form of expropriation. Most environmental and other regulations are not forms of expropriation—I think that is a fair comment. There would have to be a measure which, for example, effectively took away the ability of a business to continue to function, which would perhaps be a rare circumstance. In the kinds of situations you outlined—and I think I heard accurately each of the five that you mentioned—it is described more as an imposition of additional costs on a company. That would be very unlikely to constitute expropriation but, as I said in an earlier answer, it certainly depends on the case. Insofar as you can have views about hypotheticals, the simple imposition of additional costs on a company would be very unlikely to constitute expropriation. If you entirely shut down an activity and took away the ability of the business to continue to function, that may well be something that might come within the purview of an exceptional circumstance.

On the issue to do with state planning on coastal development, my advice is that that would be very unlikely to constitute expropriation. Indeed, my advice is that all other examples given seem to come within the category of imposing considerable additional costs on firms, but that is within normal police powers of government and not expropriation. It would be difficult to envisage a situation where they would give rise to compensation.

Senator BROWN (Tasmania) (4.56 p.m.)—Difficult to see a situation; if it closed the business down it might, but one assumes that, if it closed 80 per cent down, it mightn’t—the whole thing is a set of vagaries. There is nothing specific. All of us on the crossbench object to this free trade agreement and every time we say, ‘What is the circumstance you’re envisaging where there will be a claim for compensation or a legal action against the Australian government?’ the minister retreats—or in this case, the minister’s deputy retreats—to the position of saying, ‘It’ll be hypothetical; we don’t know about it yet.’ So we come in here and quote cases under the North American Free Trade Agreement, which is a parallel with this agreement—and every time we say, ‘What is the circumstance you’re envisaging where there will be a claim for compensation or a legal action against the Australian government?’ the minister retreats—or in this case, the minister’s deputy retreats—to the position of saying, ‘It’ll be hypothetical; we don’t know about it yet.’ So we come in here and quote cases under the North American Free Trade Agreement, which is a parallel with this agreement—there are exceptions, but in the main it is a parallel—where there has been action against the Canadian, Mexican or US government—and it is early days yet, but some has been successful and overridden Canadian environmental law—and the government says, ‘We don’t know what will happen in Australia.’ I say in return that we know it is going to happen—US corporations overriding Australian laws—and it is
going to happen in a court of law beyond the reach of this parliament, under the ‘joint committee’, so-called, or one of its arbitration entities which this parliament does not know about, cannot see, does not appoint, will not get any feedback from, has no input into and has no hold over. What an extraordinary situation. What a derogation of the rights and powers of this parliament and the interests of the Australian people.

Just today, former Liberal Party leader John Hewson has criticised parliamentary debate about the Australian free trade agreement with the US. I am reading from a report which says:

Dr Hewson has told a business breakfast in Perth that he supports the agreement and believes it will be beneficial to Australia.

But he says many Australians are ill-informed about it because there has not been enough debate in Parliament.

“The trouble with a lot of our politicians is they’ll fight to get a deal like this done, they’ll make it a political issue, they’ll get it through the system, put their hand over their heart ... and say ‘I did a fantastic job’,” he said.

“But somebody’s going to have to monitor it and manage it over a very long period of time that’s probably going to outlive all of them as politicians.”

Then listen to this. The article continues:

Dr Hewson says many Australians may not be aware their country will be giving up a lot of sovereignty by signing the agreement.

“You can go to media ownership, you can go to foreign investment, you can go to intellectual property, a host of areas and I don’t think people in Australia have had it explained to them what that can mean,” he said.

Dr Hewson is spot-on. He knows how this place works and does not work, and it is not working today. This chamber is not working, and I will tell you why: it is because the government has not brought the free trade agreement before the chamber. It is a free trade agreement full of weasel words and catch-outs, wide open to the enormous legal power and persuasion of the multinational corporations, closed to the average Australian—as Dr Hewson has pointed out, they do not know what this is about, and those who do have every right to be fearful about it—and outside the reach of this parliament. We are being asked to give up our powers even to oversee the arbitration of all those weasel words and unknowns in this so-called free trade agreement.

Now we come to a very simple matter. There is a clause that says there will be rare circumstances where companies will be able to sue because they believe new environmental laws, health laws or safety laws in Australia have taken away something that was their right, but the government does not care to tell us what those ‘rare circumstances’ are. A parliament cannot function when it is not given detail as important as that and the opposition sits mute. I saw some criticism from Senator Conroy the other day about the Greens having disagreed with this agreement five months ago and now, after all the study, we are still disagreeing with it. The Greens are always open to being informed and seeing the detail come out in a way we did not expect, but the process of this chamber debate has been one of obfuscation by the government. Worse than that, the government side comes from a position of ignorance because it simply cannot explain what the free trade agreement and all these clauses mean.

Do you know why the government cannot explain them? The reason is that they are deliberately not meant to be explainable. This free trade agreement is deliberately concocted so that it is not tied down, it is not defined and it is not clear. It does not say what the impact will be in taking away the rights of Australians, as Dr Hewson pointed out. The free trade agreement takes away the
sovereignty of this parliament. It is the sovereignty of this parliament and the rights of the Australian people that are eroded by all the unknowns in the agreement. Does parliament get to sort out what those unknowns are and to make them knowable, defined and quantifiable in a responsible manner? No, because the opposition, the Labor Party, has agreed to this Howard deal with the Bush administration with all its unknowables.

Senator O’Brien—We’ve had a select committee for five months.

Senator Brown—Senator O’Brien said there has been a select committee for five months, so Senator O’Brien is now the expert. The minister failed to answer, Madam Temporary Chairman McLucas, so I ask Senator O’Brien for the Labor Party, which is agreeing to this free trade agreement: what are the circumstances in which Australian environmental, social and safety laws can be sued by American corporations for compensation because they intrude on the rights of those corporations? You give us the ‘rare circumstances’, as you are so studied up after five months in committees and so on and as you have signed up to this. What is the Labor Party’s explanation for those get-out clauses—rather, those break-in clauses—for the multinational corporations?

What an extraordinary situation we are in, with these two big parties selling out this nation. It is one thing to say you support an agreement but, when you cannot explain that agreement to the sovereign parliament of this nation, you lose the power and the right to hold the position that this is good for Australia. ‘Good’, my foot! You do not even know what it stands for. You are leaving that to an arbitration commission that is outside the laws of this country—outside the courts of this country and beyond the reach of this parliament—to be manufactured under some so-called joint committee, defined in chapter 21, at some time in the future, with people on it appointed by executives outside the reach of this parliament.

Who will have the power and influence over those appointments and the deliberations of the committee and its dozen or more subcommittees set up to look at quarantine, manufacturing, the environment and whatever else? The big corporations, of course, because they reach into executive government in a way they cannot quite reach into the parliaments. It is a rotten process. If it were defined and we could debate it, we could stand in a position where we might lose on that but, when there is nothing to debate because there is nothing definite here—it is all left to be decided outside this parliament—then we have every right to get frustrated and angry about it.

I ask the opposition, if it wants to answer: what is it that you see? What is the defined arbitration process that you see? Who are the people on this joint committee who will arbitrate the interests of this nation? What are their names? How will you appoint them if you get into government? What qualifications will be required? They are not laid down in the treaty, let alone in the legislation before this parliament. What is your safeguard for the people of Australia? What do you have to say to Dr Hewson’s claim that sovereignty is being drained out of this parliament by a debate that is not informed?

Hand over heart, the Prime Minister said, ‘Oh, yes, this is good for Australia.’ I have my hand over the heart for a different appreciation of Australia. This agreement devalues forever and a day the right of the democratic system in this country to arbitrate on behalf of, in the interests of and for the good of the Australia I know. As I said earlier, if it gets so bad that you want to get out of this agreement, parliament cannot do anything about it. It is up to the executive—the un-
elected executive, I might add; they are elected as individuals but, as an executive, they are not elected at all by the people of this country.

Here is the chamber—the one backstop the people have—which should be having a full-on debate here to winkle out every hidden clause and make sure it is understood, but the opposition have gone missing. They have not just gone missing; they have crossed to the other side. There is no debate coming out of the Labor Party here at all. They have to defend the Howard position, and they hope that all the fire will go to the minister opposite. There are a couple of clauses coming up that the Labor Party have had a lot of publicity about, which they hope will convince the Australian people that they have fixed it up. We know differently. We know that that couple of clauses do not match up with the hundreds of fix-ups that were required if this legislation was to stand up to the requirements of the Australian people if they knew about them. But John Hewson says that Australians are ill-informed about this agreement because there has not been enough debate in parliament.

What happened in the House of Representatives? The Labor Party simply threw up their hands or voted for it. Talk about waiting for a Senate committee! And now in this chamber the Labor Party are sitting on their hands, because they have decided that they want this deal done.

The Greens do have amendments. There are some pretty strong amendments coming up which would ensure that the Labor Party, were it to support them and were it to win the election, would have the power to indeed fix up this agreement by re-empowering parliament to be the overseer in the years ahead. These amendments would make sure that these secret, faceless arbitration systems that will determine what is and is not good for Australia in the future have their determinations brought back to the parliament as disallowable instruments—that is, the parliament would have a say whether they are good or not good for this country.

I will be interested to see whether the Labor Party supports democracy at that level and whether there is faith in these faceless, secret courts set up by this free trade agreement—not part of the Australian courts, not part of the Australian parliament and not part of the Australian people—to arbitrate on this free trade agreement. If there are going to be good results coming out of that and the Labor Party believes in that then it will be supporting the Green amendments to make sure that the deliberation of those courts on the interpretation of this agreement come back into this parliament as regulations or disallowable instruments so that the parliament can say yes or no and so that both houses have a say. That is sensible, that is informative, that is mature politics, that is democracy—and that is the challenge to the Labor Party in the coming hours as we debate this legislation.

Senator NETTLE (New South Wales) (5.10 p.m.)—While we are talking at this stage about a number of environmental concerns, I want to raise some concerns with the minister and see whether he could address them. They come from the Whale and Dolphin Conservation Society. It is a global organisation that just last week expressed concern at the inclusion of whales, dolphins and porpoises in the tariff schedule of the free trade agreement. According to its media release it is alerting the public to the inclusion of whales, dolphins and porpoises in the tariff schedule. It says:

The US not only allows some trade in whales and dolphins at present, it also allows whales and dolphins to be imported for its commercial marine theme parks which hold marine mammals in captivity for entertainment. With 46 species of
et species in Australian waters, and a trade agreement in place, Australia may become a logical source for such trade in the future.

Whilst domestic legislation in Australia currently prohibits trade in whales and dolphins for commercial purposes, permits for taking and trading on the grounds allowed, are left to the discretion of the Federal Environment Minister. WDCS expressed concern that the FTA may become a driver for this loophole to be significantly widened. Certainly the US itself has been pressured by the WTO in the past with respect of what marine mammal trade restrictions it does have.

Further, the US, traditionally a stridently anti-whaling, pro marine mammal conservation nation—did a breathtaking about-face at the International Whaling Commission meeting last month, by actively supporting the move for the resumption of commercial whaling.

According to the media release, Michelle Grady from the Whale and Dolphin Conservation Society says:

The move by the US to support commercial whaling at the IWC meeting this year, casts a dark cloud over its position on the protection of whales in all respects. The inclusion of cetaceans in the Tariff Schedule of the FTA must be reassessed in the light of this disturbing policy shift by the US in the last couple of weeks ...

She concludes:

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

What does the minister have to say about the concerns of the Whale and Dolphin Conservation Society in relation to the listing of whales, dolphins, porpoises and dugongs in the tariff schedule of the free trade agreement?

Senator HILL (South Australia—Minister for Defence) (5.13 p.m.)—I was not expecting this one, I have to say. Australia does not trade in whales or dolphins; Australia is not going to trade in whales or dolphins. Australia, at least in recent times, has a proud record of conservation in relation to whales and dolphins. I am told that article 22.1 has the consequence that we do not have to trade in whales or dolphins. I think it is an important issue. I am very proud of the efforts that Australia has taken under this government to protect whales and to use all its influences to achieve better global outcomes in that regard. There is certainly nothing that this government intends to do that is inconsistent with the steps that it has taken in that regard.

Senator HARRIS (Queensland) (5.14 p.m.)—I rise to place on record that One Nation also has concerns with article 11.7.1, particularly in relation to paragraph 4(a)(i) of annex 11-B, which states:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred ...

I would be interested in getting a brief explanation from Senator Hill as to what he views as possibly being an economic impact as a result of the government’s action under that section.

But before the minister responds to that, I want to pick up on a couple of issues that Senator Brown has raised, particularly in relation to jurisdiction and the rigour that the Australian people and the Australian parliament will or will not have in some of these decisions that will be made by committees or assessing authorities set up under the free trade agreement. I want to refer to the recommendations of One Nation to the Select Committee on the Free Trade Agreement between Australia and the United States of America. In the opening paragraph, under item 8, One Nation:
... reaffirm the right of the Australian parliament to regulate, legislate and protect exclusively Australian interests.

Going to the substantive recommendations, recommendation 23.4 states:

One Nation recommends adoption of the Senate Foreign Affairs, Defence and Trade Committee recommendations, Voting on trade: The General Agreement on Trade in Services and an Australia-US Free Trade Agreement in relation to the process for parliamentary scrutiny and endorsement of proposed trade treaties:

(a) Prior to making offers for further market liberalisation under any WTO Agreements, or commencing negotiations for bilateral or regional free trade agreements, the government shall table in both Houses of parliament a document setting out its priorities and objectives, including comprehensive information about the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise.

(b) These documents shall be referred to the Joint Standing Committee on Foreign Affairs, Defence and Trade for examination by public hearing and report to the parliament within 90 days.

(c) Both Houses of parliament will then consider the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, and vote on whether to endorse the government’s proposal or not.

(d) Once parliament has endorsed the proposal, negotiations may begin.

(e) Once the negotiation process is complete, the government shall then table in parliament a package including the proposed treaty together with any legislation required to implement the treaty domestically.

(f) The treaty and the implementing legislation are then voted on as a package, in an up or down vote, i.e., on the basis that the package is either accepted or rejected in its entirety.

That is the outcome of the Senate Foreign Affairs, Defence and Trade References Committee’s recommendations. It cannot be put any clearer that, following a complete inquiry, those are the Senate’s recommendations. Those recommendations are that, even before the government sets out to negotiate on a treaty, it brings the basis of that treaty, its priorities, its objectives and comprehensive information about its economic, regional, social, cultural and regulatory and environmental impacts into this place and the House of Representatives for parliamentary scrutiny. This is what should be happening.

On 5 August I issued a media release headed: ‘Free Raid Agreement on pharmaceuticals’. I want to quote a section from that media release, because it goes to the heart of what we are talking about here:

“Australia can alter domestic legislation in regard to the PBS as much as we like, but disputes between Australia and the US over the PBS, or any element of the Agreement, will be decided by a dispute resolution panel, based on the text of the Agreement, nothing to do with Australian law. Minister Vaile’s letter of exchange on the PBS forms part of the Agreement.”

“The dispute panel set up under this Agreement is like an invisible government. Its powerful new enforcement capacities allow it to make rules encroaching into areas traditionally considered the realm of domestic policy, shifting decisions from democratically-elected domestic bodies to the FTA dispute panel.”

“One Nation opposes this shift in decision-making. We are committed to accountable, democratic government. Under this Agreement, there is an abysmal lack of basic protection for Australia in all areas, including the administration of the PBS.”

We are now discussing the US Free Trade Agreement Implementation Bill 2004. As I said yesterday, it alters 10 pieces of legislation, but they are only enabling legislation. The deal is done: the Prime Minister of this country has signed the agreement, it has passed through both houses of the US parliamentary system and the President of the US has signed off on it. What is important
and has to be understood is that, when an issue is raised in relation to expropriations, the decisions will not be based on anything that we discuss, alter or amend in our domestic law; they will be decided upon the text of the agreement. That is what the panel will look at. That is what they will make their decisions on relating to any disputes or expropriations.

That leads us to another interesting issue. I have here a document titled *U.S.—Australia Free Trade Agreement: potential economy-wide and selected sectorial effects* that was provided for the Senate select committee. It is unusual in one sense: it carries and identifies the author very clearly—the United States International Trade Commission. It carries their logo. But what we have here, interestingly, is a document that does not in any way, shape or form indicate who the author is. This could be a pile of blank A5 paper that I have picked up out of a ream and have printed anything that I like on it and quoted from it. Who is the author of this document? How do we in this chamber know that the very document that we are relying on—either in support of or critically condemning—is the basis of the text that the Prime Minister of Australia and the President of the US signed? Do we have the actual document? Are the words that are contained within this document without an author those that were signed off on? In all probability, I doubt it.

I remind the chamber that, when the committee started its deliberations, we did not even have this document. Why did we not have it? Because it was off being legally scrubbed. So we have the ridiculous situation where all senators are basing their whole debate in this chamber on a document that does not even carry the author’s identification. How can we, in a responsible manner, say to the Australian people, ‘We have read the document, and we can guarantee to you this is what it says in its text’? We cannot. We have to assume that this is an identical document. We have to assume that, in the process of legally being scrubbed, there are no omissions. But one thing you can bet your life on: when the dispute panel sit down to sort out who is right and who is wrong or on what they will base their ultimate decision, they will not be using an unidentified document. They will be doing it from the original document that the Prime Minister of Australia and the President of the US signed. That is the point that I want to make very clearly today. I ask Senator Hill, through you, Madam Temporary Chairman, whether he is prepared to state in this chamber that the text of the document that I hold in my right hand is identical to the text of the document that the Prime Minister of Australia and the President of the United States signed.

**Senator RIDGEWAY** (New South Wales) (5.28 p.m.)—I also want to contribute to this debate on behalf of the Australian Democrats and, in particular, refer to the Greens amendment about essentially the protection of public health, safety and the environment. I think it is a very crucial amendment most of all because it seeks to make the free trade agreement subordinate to public welfare objectives. That is a most important point to make, given that there has been very little debate—even here in parliament and out in the community—about a proper understanding of the impact of the free trade agreement, certainly in the context of the two major parties signing away the future in respect of the capacity of parliament to regulate in Australia’s national interest, particularly when it comes to social and community policy in this country.

I note the ministers’ responses earlier in the day—and certainly that from Minister Coonan—in respect of these same issues. I am quite surprised that they have been unable to answer some of the questions that
seem to me to be pretty straightforward. If people are across the details of the free trade agreement, there ought to be some answer given to the questions that have been asked as part of this debate.

Whilst we support the amendments, we think that they should have gone even further and looked at proposing the introduction of new sections into the Broadcasting Services Act, the National Health Act and the Quarantine Act to ensure that the public interest was protected and, most of all, that no action could be taken in respect of these acts that takes US interests into account. I think this is at the heart of the issue that we are debating on this particular question. I think Senator Brown is right in pointing out that we do not get to debate the actual text of the free trade agreement—we are not dealing with that on this occasion, just with the enabling legislation. Some amendments have been put forward by the opposition, I think in a very flawed way, given that they had the hide to qualify the free trade agreement 42 times. It seems to me that they are picking two of these and leaving 40 unanswered. They were probably 42 good arguments about why the free trade agreement was flawed and why it should not be supported.

The processes of review, the panels to be established and the mechanisms for dealing with disputes are important issues when you consider the way in which this trade agreement has been put together as a preferential trade deal between Australia and the United States. Minister Hill spoke earlier about the sanitary and phytosanitary disputes. I would refer him and the government to the general practice under the WTO: there is already a committee that looks at these things on an ad hoc basis, as and when those disputes arise. There has never been any great problem with that. It was always regarded far and wide as the best way of addressing problems that people may have with, for example, quarantine laws that people believe are actually trade barriers in disguise.

I would ask why it is that the Australian government—certainly with the support of the United States—needs this new body with the United States under the free trade agreement. It seems to me that it is far more dangerous that the Australian public have been misled on this particular question—there are so many trapdoors hidden in this free trade agreement that we effectively rule ourselves out in terms of having any capacity to regulate in the interest of health policy, other social policy and certainly the way the community sector operates. I do not believe the government has been fully truthful in disclosing information about the impact this is going to have on the capacity of parliament to pass laws and deal with these issues if and when they arise, because we know things will go wrong; they will go off the track.

I think the Labor Party know that as well, and have responded by saying that they will put in an amendment to deal with the Pharmaceutical Benefits Scheme. But at the same time they know this will be resolved not by looking at any legislation and where a dispute may arise but from within the actual text of the free trade agreement. That will be the overriding presumption in this case. They know that. I think the Australian people deserve to know they are being sold out on this particular issue.

I want to go back to the issue of quarantine standards. It seems to me that the WTO is already providing a legitimate forum to deal with any particular issues that arise as a result of a dispute or what was being used as a trade barrier. It is a forum that has been in existence for some time, and it is generally accepted that this is the preferred way to go with multilateral arrangements. I think the government need to answer this question. When they give a response to say that the
United States will not bring pressure to bear in order to change circumstances in relation to this preferential trade deal, I draw their attention to and I ask them to make comment about the recent draft import risk assessment report done by Biosecurity Australia.

The assessment looked at the question of whether or not to allow Philippine bananas into Australia, because of the question of disease. The assessment that was done at the time was widely circulated. We all thought Biosecurity Australia would come out with a report that would provide the right sort of quarantine answers and, most of all, that there would be rigour applied through a scientific approach to an assessment of how trade might occur in that circumstance. Not surprisingly, the Prime Minister went to the Philippines and spoke to the Philippine government about this. He proposed to establish between the Philippines and Australia a body similar to the one established in the free trade agreement between Australia and the United States. Subsequent to that announcement, Biosecurity Australia changed its import risk assessment and proposed to allow banana imports into Australia. The precedent is already set.

The government makes grand claims that our quarantine standards will be protected, that a scientific approach will occur and that our institutions—groups like Biosecurity Australia—will not have pressure applied to them by the larger and more powerful countries like the United States. But the precedent is here. The Prime Minister made sure that the change occurred. I am not suggesting that he was involved in changing this report, but what I do say is that allowing the Philippine government to export bananas to Australia has certainly set the precedent for how the US free trade agreement might be viewed, particularly in relation to quarantine and the assessment processes that our own institutions go through in dealing with this particular issue.

The crucial matter here is that, with the support of the Labor Party, the government have compromised and allowed the United States to have a role in determining Australian policy. Even if we accept the government’s assertions that they will resist any undue pressure for policy to be changed, the fact is that through this free trade agreement we have allowed the voice of another nation to be heard on issues that should, I think, be determined by Australians alone, first and foremost.

On the issue of the PBS, we have to ask why we have gone down the path of creating an independent and separate review panel when we have a very adequate and able system already in place to deal with those types of issues. Through this free trade agreement we have put quarantine on the table, compromised multilateral processes and enabled the United States—not just the government but the large multinational pharmaceutical companies—to have their way with the PBS. The cracks are already there. I think the free trade agreement can ably be described as a piece of land with lots of cracks. The United States are like the water flowing over it and eventually they are going to go into it. If anyone thinks for a moment that the prices of medicines are not going to go up, they are kidding themselves. The sad thing is that we will not be able to come back and fix it because once this agreement is put in train that is how this is going to end up.

Even with the provisions for dispute resolutions, the evidence put before the Senate committee stated in general that trade tribunals operate in a more secretive way than any other in international law processes. The evidence about these new, alternative dispute mechanisms raises the question: how will not just the Australian parliament but the Austra-
lian public have an opportunity to gain confidence in the integrity of the process—that it is fair, that people are able to have input and that the outcome is one that is in Australia’s interest—given that the bigger player in this case will have a far greater say?

In dealing with these issues it ought to be a very normal thing for the government and the opposition to support what is in Australia’s national interest. Quite frankly, when we look at the chapters on cross-border trade in services, government procurement, transparency and investment, we know that representatives of the wealthier sectors have been involved in meetings with DFAT and have expressed their concerns in more than one discussion. The response from DFAT is that community services are not really the target in this free trade agreement; it is more concerned with financial, legal, professional and commercial matters.

The issue that needs to be raised is how the government has dealt with concerns that have been expressed by the community sector. It is a very legitimate question to ask why the government decided to agree with the United States in taking a negative list approach—that is, any area of policy dealt with by government in this country is on the table unless the government agrees with the United States to exclude it. The reality is that, as far as I am aware, there are no exclusions whatsoever, despite the fact that in the free trade agreement with Singapore we took a different approach and excluded Australian culture. But we were not brave enough to do that in this instance, and we are leaving our Australian cultural institutions open to what might come as a result of the size and nature of places like Hollywood.

I point out that the costs to users of community services provided by community organisations and government will eventually be borne by the Australian people. This issue goes to the government’s capacity to regulate in our interests, particularly in the provision of services, and the question of how it is done, by looking at whether services are provided for profit or on a not-for-profit basis. Essentially, any services provided by government in competition with commercial providers may be seen to be inconsistent—and these issues are going to be resolved as time goes on.

The point is that many things are on the table that the government did not think ought to be removed. I want to mention some of them because they have not featured in the debate. We have spoken about the PBS and Australian content, but how will we deal with things such as child protection, youth services and the job network in this country? These services seem to be moving down the path of not necessarily being run by government but being more commercial in their operation. What about telephone counselling services such as Lifeline? Why did the government not include a schedule as part of the free trade agreement to exempt some of these services and take a positive list approach rather than a negative one? Emergency financial aid, aged care, residential care and nursing homes are all pretty much run on a commercial basis these days. The provision of community services will be directly impacted upon by harmonisation and integration with the United States. (Time expired)

Senator BROWN (Tasmania) (5.43 p.m.)—I thank the two previous speakers for their important contributions. I will certainly make way for the minister if he wishes to respond to either of them.

Senator HILL (South Australia—Minister for Defence) (5.44 p.m.)—Senator Harris wanted me to assure him that the document that he was waving around was the real document and that it had not been doctored in some way afterwards. I am not sure
which one he was waving around, but the one that I think we all have was signed by
Minister Vaile and US Trade Representative Zoellick in Washington. Senator Harris’s

copy certainly looks like the one I have. That was the final text, and that is it. I do not think

there is any conspiracy in that regard. There were earlier drafts and the final draft was

scrubbed, but the text that was signed I think is the text that Senator Harris and I have.

He was concerned about the expropriation provisions. As I understand it, the domestic

law of Australia is not changed in that regard and, as far as the international relationship is

concerned, the agreement in effect restates what is customary international law. Article

11.7 ‘Expropriation and compensation’ states:

Neither Party may expropriate or nationalise a covered investment either directly or indirectly

through measures equivalent to expropriation or nationalisation … except:

(a) for a public purpose …

But I think of particular importance to Senator Harris is clause (c), which says it must be:

on payment of prompt, adequate, and effective compensation—

which is the domestic law. Then you get to, I can see, the more complex issue of whether an

action is expropriation or not in terms of a regulation that government might set for some

good purpose that can have an indirect detrimental consequence on somebody’s in-

vestment or business. Some of those issues are not straightforward. They have to be ex-

amined in the detail of every individual case, but I think the important thing is that when we

look to annex 11-B, to which I think Senator Harris was referring, I am told that that is consistent with what is Australia’s current domestic law. There is no secret agenda in that. It of course deals with the situation of indirect expropriation. I could read it but I do not think there is much point in doing so. If there is a problem of interpre-
tation as far as Senator Harris is concerned, I am happy to have a go at it but perhaps it

would be more useful to get some form of official interpretation for him or his constitu-

ents who may be concerned. The important thing is that I am told that it is consistent

with the existing domestic law.

Senator Ridgeway is difficult to answer. I gained the impression from listening to Senator Ridgeway—and I guess it reflects the Democrats position—that they simply do not believe in these agreements. They be-

lieve that, at every step when you make a concession to another state in order to get the

advantage of a trade benefit, the concession is too great a risk to bear. To talk about I

think it was Lifeline as being under threat— and I do not see Senator Ridgeway as an alarmist—is an unhelpful contribution.

This agreement is designed to expand trade opportunities by reducing barriers. Each side agrees to do that and each side has no-go zones and you see if you can deter-

mine an outcome that, as I said, can facilitate an economic growth in trade whilst preserv-
ing what you believe is important—in our instance in areas such as the environment,

public health, the cultural sector, quarantine and others. We believe we have done that

appropriately, and it has been subject to two parliamentary inquiries. I think it is reason-
able to assume that this debate is now on the basis of a well informed public. As I said, I

do not think we will ever convince the Democrats, but it is the government’s view that

we have been able to protect what is important whilst at the same time providing new

opportunities for economic growth, which was our objective. Our objective was always

a win-win outcome, and we believe this agreement achieves that goal. Senator Ridgeway raised quarantine, but I thought, with respect, the issues he raised were ones
that I had addressed both earlier today and last night, and there is not much point in repeating what I said.

Senator HARRIS (Queensland) (5.51 p.m.)—I would like to thank Senator Hill for his answer, particularly pertaining to the document that I held in my right hand. I have spoken to each of the whips in the chamber and would seek leave to table the document that I referred to.

Leave granted.

Senator BROWN (Tasmania) (5.51 p.m.)—Senator Harrison is making a good point. We have all sorts of legislation and important national documents put before the parliament. I do not remember seeing one without the imprimatur of the government of Australia on it before. One has to wonder why it is missing from the free trade agreement.

One of the problems in asking the minister to go back to things like quarantine, which he was just referring to, is that we did not get any clear answers from him the first time around, so it is not really tempting to go back and try again. But a while ago Senator Nettle asked the minister a pretty clear and straight question which relates to concerns from the Whale and Dolphin Conservation Society Australasia, expressed in a press release from Michelle Grady, who I think the minister knows and who I think he will agree is a very responsible person. She queries why the tariff schedule of the free trade agreement lists whales, dolphins and porpoises. The minister says there is no way that we will ever trade in those. Are koalas and Tasmanian devils listed on the tariff schedule? Do you have a full inventory of Australia’s wildlife there? If not, why are the cetaceans on there? It is a pretty straight question. Ms O’Grady points, ominously, to the actions of the US—the Bush administration—quite recently and says in her press release:

... the US, traditionally a stridently anti-whaling, pro marine mammal conservation nation—did a breathtaking about-face at the International Whaling Commission meeting last month, by actively supporting the move for the resumption of commercial whaling.

We have to call a spade a spade. This free trade agreement is forever. What on earth are whales, dolphins and porpoises doing on the tariff list if there is no intention to invoke a tariff? There may be some simple explanation. There may even be the phrase ‘rare circumstances’—of the variety that Senator Coonan was totally unable to explain to us earlier on—put into the free trade agreement to allow corporations to get in the back door and attack environmental and social law in the country. There it is. Minister, why are whales, dolphins, porpoises and even dugongs listed on the tariff schedule? Will the government take them off in order to comprehensively rule out the risk of them being seen as a potential tradable item under this agreement?

Senator HILL (South Australia—Minister for Defence) (5.55 p.m.)—Yes, I do respect Michelle Grady. I can understand why she might be concerned and that she would want to ensure that there is no ulterior motive in this regard. I am told that the answer is historical—that the World Customs Organisation determines the nomenclature for tariffs for all WHO members. It has had a tariff line for whales and dolphins, so it appears in our tariff schedule and the US schedule. I am told that it has always been there. Having said that, there is, of course, nothing in this agreement that obliges any trade in whales or dolphins, and there is no intention to do so.

In relation to the current US policy on whaling, I have to confess that I am a little out of touch, but I do know that there are some who have argued that a form of regulated whaling might have to be conceded in
order for the international whaling organisation to survive and that, without its surviving, whales would be under greater threat now. I am not sure whether that was the rationale behind the US position. When I dealt with the US on whale conservation, I found them quite good. I did not always agree with aspects of their policy, but on the big questions in the International Whaling Commission I found them to be very good and very supportive of the pro-conservation position.

Senator BROWN (Tasmania) (5.57 p.m.)—The answer is ‘historical’ but it is not in this agreement. What on earth does the minister mean when he says that it is historical that there are whales, porpoises and dugongs listed here as a sort of remnant from some past age of slaughter and trade and when he says, ‘Goodness me, we won’t be looking at trading in these creatures in the future’? They are on the list. He mentioned the WHO; maybe he meant the WTO. It is inconceivable that Australians negotiating this agreement—this government, the Howard government—could leave whales and dolphins, and cetaceans generally, on the list. What Senator Nettle’s inquiry leads to and what I am asking is this: will the government take them off the list, to remove doubt? If there is no doubt that they are not going to be traded in the future, will the government remove these from the tariff list to dispel the doubt which otherwise the Whale and Dolphin Conservation Society has every right to entertain?

Senator HILL (South Australia—Minister for Defence) (5.59 p.m.)—The point is that there is benefit in maintaining consistent language. I think that is why there is common nomenclature. It does not mean that items under it are currently traded. Senator Brown knows that Australia is not going to trade in these products. Yes, I meant to say WTO. With the government having assured those who are interested in the issue that there is no intention, it might be argued that it would be better to let the matter rest there. It is obviously difficult to change the headings in a schedule that have been agreed on a global basis. This is a bilateral agreement. It might use the common language of the World Customs Organisation, but in terms of these particular items there is no intention of trading them. Neither side intends to trade them with the other. To create a panic out of that—I am not saying that Michelle is doing it but I suspect Senator Brown might be seeking to do it—is, I would respectfully suggest, mischievous.

Senator BROWN (Tasmania) (6.00 p.m.)—I respectfully suggest that the minister is mischievous, Chair.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—That is not the amendment we are debating now.

Senator BROWN—No, that is the point I am making in the debate.

The TEMPORARY CHAIRMAN—You have made your point, Senator Brown.

Senator BROWN—Yes, and I want to emphasise it. The point is that the minister should give an assurance to this committee that whales, dolphins, porpoises and dugongs will be removed from that tariff schedule. The minister says, ‘The senator knows that there’s no intention to trade in these in the near future.’ I do not know anything of the sort. After all, this is a minister who authorised trade in even bigger living entities in Australia, which are the great trees of Tasmania, and it is occurring at the greatest rate in history. He has no worry with that or with the rare and endangered species that are poisoned in the process.

The ruthlessness of that process under the Howard government leaves me and many others bewildered. But the argument in here by the minister is, ‘Oh, no, we would never resume such a trade under any pressure from
any corporation in the United States’—which
does trade in them, by the way; it imports
such creatures for its aquariums. The minis-
ter says, ‘Oh, no, that won’t happen with
Australia.’ Well, Minister, why have you left
it on the schedule? Why have the Australian
negotiators left this on the schedule? Was it
delinquent, culpable? I do not know.

But we know that every phrase of the free
trade agreement was gone over and over by
the Australian government. It shows that the
Australian government does not give a cuss
about the non-monetary aspects of this
agreement. It is quite happy to leave this is-

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about the non-monetary aspects of this
agreement. It is quite happy to leave this is-
sue on the statutes. It is quite happy to leave
it there for people to worry about. I am
lucky; I am in the parliament. I can argue
about these things. But people outside who
devote their time, their lives, to making the
world safer, in this case for whales and dol-
phins, are having the rug pulled from under
them. They are being genuinely concerned
by a government that did not care and left
what Senator Hill calls ‘an historic remnant’
on the statute book—because that was easy,
and why worry about it?’ Wrong. People
have got a right to worry about it.

I refer the minister again to the enforce-
ability components of the agreement. We
were talking last night but did not quite get
to this section. I refer to the Australian Net-
work of Environmental Defenders Offices.
They say that many of the provisions in this
agreement are ‘aspirational’ and ‘platitudi-
nous’. They give as an example from the
agreement:

... each Party shall ensure that its laws provide for
and encourage high levels of environmental pro-
tection and shall strive to continue to improve
their respective levels of environmental protec-
tion, including through such environmental laws
and policies.

Consequent upon that, Chair, you will re-
member that the minister said, ‘Oh, well, there is, for example, the potential for action
to be taken if parties on either side thought
government was bringing in environmental laws for spurious reasons.’ The implication
from what the minister said there was that
action could be taken then and either the law
could be stopped or some compensation
mechanism could come into play. The Aus-
tralian environmental defenders organisation
say:

Given the lack of detail—
in much of the agreement—

it remains a live question as to whether the Envi-
ronment Chapter—and particularly, the agree-
ment to negotiate a United States-Australia Joint
Statement on Environmental Cooperation—
provides adequate safeguards to protect the inter-
est of the environment. By way of contrast, Can-
da, Mexico and the US created the Commission
for Environmental Cooperation under a side
agreement to NAFTA. The Commission promotes
environmental cooperation among the three coun-
tries, and sets down the dispute settlement provi-
sions that can be invoked if a country persistently
fails to enforce environmental laws that have
conferred a trade benefit. Part of the mandate of
the Commission is to help harmonize standards
upwards and to oversee the enforcement of exist-

Why wasn’t such an agreement established
here? Was it considered? What was Austra-
lia’s point of view, and why didn’t it eventu-
ate?

The TEMPORARY CHAIRMAN—I
put the question that Senator Nettle’s
amendment—

Senator BROWN—I asked a reasoned
and fair question, which comes from envi-
ronmental lawyers around the country, in
relation to the commission looking after the
environment set up under the North Ameri-
can Free Trade Agreement. We are seeing all sorts of groups set up under this Australia-US free trade agreement. Why isn’t there a commission for environmental cooperation set up under a side agreement?

Senator HILL (South Australia—Minister for Defence) (6.06 p.m.)—I am reluctant to rise again because I was hoping that after six or seven hours we might actually get to vote on an amendment. I think we have had two votes so far. At this rate, the Greens’ goal of the chamber never voting on this particular implementation bill might be achieved. As I would like to see the bill passed, that is not in my best interests. A different approach was taken in this trade agreement. I refer Senator Brown to article 19.6 ‘Environmental Cooperation’, which provides:

The Parties recognise the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening bilateral trade and investment relations ... The Parties agree to negotiate a United States-Australia Joint Statement on Environmental Cooperation under which the Parties will explore ways to further support these ongoing activities.

I understand that that statement was negotiated and was agreed to by the parties. It is a different way of approaching the issue but I think it demonstrates the good faith of both parties wanting to see not only trade expansion but trade expansion that is compatible with sound environmental outcomes.

Senator BROWN (Tasmania) (6.08 p.m.)—The answer to the question is that no environmental committee was set up to oversee the implementation of the treaty over the coming years, as under the North American Free Trade Agreement. In the absence of any other information from the government, it must be presumed that the government did not consider it and that it caved in to the United States in not having that agreement with Australia, because the Australian government was a much easier touch. We get the sort of arrangement that says there will be ongoing cooperation and so on but we all know that that means very little. There is no power in that at all. There is nothing to have in hand. There is no process and no people. There is no way in which the parliament can adjudicate or have reach into such a provision. It is just a failed process by the government.

We have had a long debate about many issues here, and the environment has been woven through them. The environment has been dumped, as far as this agreement is concerned, by this government. So little does it care about the environment, the government cannot even abide by the requirement in the US free trade agreement that there be an environmental effects statement and that there be public comment on it. The Greens’ amendment would overcome the problems of loss of sovereignty, which Dr John Hewson spoke about in Perth today. The Greens’ amendment, which Senator Nettle moved, would add after clause 3 of the enabling legislation a free trade agreement subordinate clause headed ‘Free trade agreement subordinate to public welfare objectives’. The clause states:

For the purposes of the agreement:

(a) regulatory actions which are designed for the purpose of, and applied to achieve, legitimate public welfare objectives, including the protection of:

(i) public health;
(ii) public safety;
(iii) the environment;

do not constitute indirect expropriations for the purposes of the agreement; and
(b) no compensation is payable as a consequence of any expropriation or nationalisation arising under Article 11.7(1) of the agreement unless compensation would be payable under an Australian law other than this Act to an Australian person or company.

What that says—and the Labor Party have that well before them—is that, when it comes to looking at public health, public safety and the environment, nothing in this agreement will be allowed to take away from the very best practice in Australia as implemented in law. The only case in which there can be compensation when the Australian government enacts legislation to protect public health, public safety and the environment is where it would be compensation for an Australian company. That is a very simple, logical, basic matter.

But there is clear concern in the way this act is construed. American corporations, entities or individuals would be able to sue the taxpayers of Australia through an agreement that is outside the parliament—so they cannot have reach into it—for compensation for US companies which believe they have been inappropriately treated. Can the minister say what is wrong with the Greens’ amendment? Can the minister give some reason that the government should not support the Greens’ amendment to ensure that public welfare objectives are not overridden or subject to compensation for foreign companies?

Senator HILL (South Australia—Minister for Defence) (6.13 p.m.)—I repeat the point I made to Senator Harris: the advice I have is that the provisions that exist in the agreement are consistent with existing customary international law. So a new liability, as being asserted by Senator Brown, flowing from this agreement is not created. Article 11.7 does provide expropriation, but it also provides that it must be:

- (a) for a public purpose—
- (b) in a non-discriminatory manner;
- (c) on payment of prompt, adequate, and effective compensation; and
- (d) in accordance with due process of law.

In terms of expropriation that is what I would have thought Senator Brown would be requiring. In relation to this third amendment of Senator Brown’s that we are debating, as we move into about our sixth hour of debate, it is the view of the government that it does not provide additional support and that the protection is already there for that provision of indirect expropriation, including the definitions that I referred to for Senator Harris. Therefore the amendment proposed by the Greens does not add value and, on that basis, they have not convinced the government that passage of their amendment is warranted.

Senator RIDGEWAY (New South Wales) (6.15 p.m.)—That is quite an extraordinary response from the minister to a question on the inclusion of social policy in trade agreements. I want to ask a very specific question of the minister about why both the Australian and the United States governments agreed to completely exempt the area of Internet gambling from the free trade agreement. In particular, I want to know whether that was done for social policy reasons or for reasons to do with the recognition of the limitations of trade tribunals when it comes to social policy being dealt with in trade agreements. If they have already set that precedent, is it not also possible—and should it not have been the case if an argument was being put forward about social policy and doing things in the interests of both Australians and Americans in this case—to put forward a range of other exemptions? Why is Internet gambling completely separate and unique, as
opposed to other social policies such as the PBS? Why were these other policies not exempted from the free trade agreement?

Senator HILL (South Australia—Minister for Defence) (6.17 p.m.)—I am told that Internet gambling is not unique in its reference. I draw the attention of the committee to the reference to social services in the agreement under the heading ‘Cross-border Trade in Services and Investment’, where it says:

Australia reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

That seems to me to be quite a broad reservation.

Senator Harris—Could the minister assist by giving a page number when he is quoting from the document? That would help us to follow where he is in the document.

Senator HILL—It did not seem to me to have a page number.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—I understand the minister to say that yes he will, providing he has a number.

Senator HILL—Senator Harris, the number at the bottom of the page is ‘Annex II—Australia—4’.

Senator BROWN (Tasmania) (6.19 p.m.)—I want to recap: the minister has said no, that this Greens’ amendment to protect the environment, social welfare and health and safety does not add anything to the agreement so we will not put it in. It does cover a multitude of avenues by which those matters in Australia can either be undermined in the agreement or be made compensatable. To put it round the other way: taxpayers in Australia will be paying if there is a claim on the basis of the free trade agreement against Australian laws which foster health or safety or the environment and which are found to be in some way or other unfair to the interests of the free trading concept. I would have thought that if there were no concerns about the Greens’ amendment the government would support it, in the same way that it said it would support the Labor amendments provided they did not infringe on the free trade agreement and that they added something, or were at least neutral.

The opportunity is here to ask the Labor Party whether it sees any problems with this amendment by the Greens, which brings into law the guarantee that matters such as public health, public safety and the environment will not be subject to compensation for America or for American companies.

The TEMPORARY CHAIRMAN—I put the question that the amendment moved by Senator Nettle—

Senator BROWN (Tasmania) (6.21 p.m.)—I would like to note that there was no response to that issue from either the government or the opposition.

Senator HILL (South Australia—Minister for Defence) (6.21 p.m.)—If I constantly respond I am playing into Senator Brown’s hands of wanting to string out this debate forever. What he said is not quite true. I said that we do not believe that his amendment added value, but we believe there is also a negative to adopting it in that it would weaken the protections on expropriation that are included, which I have said are consistent with existing law and which we think are very important. Not only is there not a positive; we believe there is a negative in adopting this particular amendment.

Senator BROWN (Tasmania) (6.22 p.m.)—That is not so. I want to mention the
stringing out business. I am not stringing this out. This is one of the most important pieces of legislation you could have before a parliament like ours. I believe it is an abomination that every law in Australia, potentially, is in some way or other interrelated with this trade agreement but it will go outside the parliament and we will not be able to get it back in the future. This is our one opportunity. The fact that Labor is agreeing with the government on it means that it is left to the crossbench to debate it. Every matter we have brought up here is serious, has huge long-term ramifications and is going unsettled.

We are about to have a division on this Green amendment which gives some assurance that a whole range of concerns, yet to be determined in a deliberately vaguely written agreement, will not infringe the rights of this parliament and the people of Australia in matters of public health, safety and the environment in the future, and zero is being said by the Labor opposition. Yet there is no adequate guarantee, because there is none to be given, about these matters coming from the government.

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

The committee divided. [6.28 p.m.]
(The Chairman—Senator J.J. Hogg)

Ayes…………… 12
Noes…………… 42
Majority……… 30

AYES

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

NOES

Barnett, G.  Bishop, T.M.
Boswell, R.L.D.  Buckland, G.
Calvert, P.H.  Campbell, G.
Carr, K.J.  Chapman, H.G.P.
Colbeck, R.  Collins, J.M.A.
Crossin, P.M.  Eggleston, A.*
Evans, C.V.  Ferguson, A.B.
Ferris, J.M.  Fifield, M.P.
Forshaw, M.G.  Heffernan, W.
Hill, R.M.  Hogg, J.J.
Hutchins, S.P.  Knowles, S.C.
Lightfoot, P.R.  Ludwig, J.W.
Lundy, K.A.  Mackay, S.M.
Marshall, G.  Mason, B.J.
McGauran, J.J.J.  McLucas, J.E.
Moore, C.  O’Brien, K.W.K.
Patterson, K.C.  Payne, M.A.
Scullion, N.G.  Sherry, N.J.
Stephens, U.  Tchen, T.
Troeth, J.M.  Watson, J.O.W.
Webber, R.  Wong, P.

* denotes teller

Question negatived.

Senator BROWN (Tasmania) (6.33 p.m.)—I move:
(R4) Page 4, (after line 11), after Clause 3, add:

7 Parties may not submit to arbitration

For the purposes of this agreement, consultations on investor-state dispute settlement, on any matter, may not include arbitration between an investor and a party.

The amendment nullifies article 11.16 of the free trade agreement, which is a backdoor mechanism to introduce an investor-state dispute resolution. The North American Free Trade Agreement allows companies—that is, investors—to take a party—that is, the country—to a dispute resolution process. The dispute resolution panel is set up and operates under the terms of the free trade agreement, not a court of law and not the parliament. The panel can order the country to pay compensation or to change the law or any other remedy it chooses, and there is no appeal. The Australian free trade agreement
 does not have an overt investor-state dispute resolution clause but article 11.16 opens the door to the same effect, and we had some discussion about that earlier in the day.

The Greens’ amendment means that the parties can get together to talk out their dispute, but they do not go to a de facto court of law not created under the laws of this country, not available or appealable to the courts of this country and outside the reach of this parliament. The government will have some answer to that but, on the issue of investor-state dispute settlement mechanism in this agreement, the Australian Conservation Foundation says:

At the present time, under Chapter 11, US companies will not have the right to sue the Australian Government for alleged violations of the AUSFTA. This is because Chapter 11 omits the highly controversial “investor-state” dispute settlement mechanism included in other FTAs, such as the North American Free Trade Agreement (the NAFTA). Investors have used the NAFTA’s chapter 11 provisions to challenge US Canadian and Mexican environmental laws and social polices, and to claim sums as high as a billion dollars in compensation. Within North America, this has undermined public confidence in the desirability of trade and investment liberalisation.

However, the AUSFTA leaves the door open for an investor-state dispute mechanism to be established in the future. Article 11.16 states.

“If a Party [U.S or Australian Governments] considers that there has been a change in circumstances affecting the settlement of disputes on matters within the scope of this Chapter and that, in light of such change, the Parties should consider allowing an investor of a Party to submit to arbitration with the other Party a claim regarding a matter within the scope of this Chapter, the Party may request consultations with the other Party on the subject, including the development of procedures that may be appropriate. Upon such a request, the Parties shall promptly enter into consultations with a view towards allowing such a claim and establishing such procedures.”

The article, as currently worded, is ambiguous, as is the whole agreement. It is not clear that the agreement of both parties would be required in order to establish an investor state dispute settlement mechanism.

The first thing to be said here is that in the free trade agreement there is the ability for an arbitration system to hear disputes, judge on matters and punish the Australian interest if it is found to be short of the mark on the free trade agreement. One reading of this is that it will require both governments to agree to such a dispute mechanism in the future. What we can be sure of is that the parliament has no say. It is not up to this parliament; it is up to the executive once again. The parliament gets left out. It is up to the executive in the United States, because the congress has not passed enabling legislation; it has passed the free trade agreement, effectively. It has been signed by the President.

Yet in any sort of arbitration it is very likely that American interests will be taking Australia to arbitration. Its economy is 20 times the size of Australia’s, its population is 10 times bigger and so on. There is the provision here for the executive of the Australian government to enable the establishment of an arbitration process in agreement with the executive in the United States. The Australian Conservation Foundation’s lawyers are saying that the article as currently worded is ambiguous enough to make it not clear that the agreement of both parties would be required in order to establish an investor-state dispute settlement mechanism—so the way is even open for unilateral establishment of such an agreement. I would like to hear the government’s argument about that latter point, but the government will have to admit that there is no dispute about the former point—that is, future governments outside the reach of this parliament can agree to set up an arbitration system.
Senator HILL (South Australia—Minister for Defence) (6.39 p.m.)—I think Senator Brown conceded that the agreement does not include an investor-state dispute settlement mechanism. I think he almost said that he was pleased with that particular aspect of the agreement. As he said, the agreement does provide, under article 11.16, for consultation between the parties—that is, between the states—in relation to an investor-state dispute. But, as I said this morning, for there to be a process to flow from that consultation, it would require the agreement of both parties—that is, both states. If both states agree that there is a way forward to settle a dispute then I do not see what is wrong with that.

One can be sure that Australia, as one of the state parties, will ensure that the weight that Senator Brown referred to in terms of one economy being much larger than the other will not allow an unfair or unjust approach. That is the assurance that we have been able to give, and the provisions in the agreement enable us to give that assurance. On that basis, I cannot see the concern that Senator Brown is seeking to overcome. If it would require the agreement of Australia, I do not see his concern. The agreement of Australia would ensure that there is not an imbalance, and I understood that an imbalance is Senator Brown’s concern. On that basis, I am not persuaded that we need to further constrain this provision. It might even be argued that restraint is actually inconsistent with the terms of the provision. Leaving that aside, on the merits I do not see that a case has been made out that justifies a further restraint.

Senator BROWN (Tasmania) (6.42 p.m.)—Our problem is that we live in the age of children overboard, weapons of mass destruction and ‘Australia is a safer place after the Iraq invasion’. Along comes a minister who was involved directly or indirectly in all those things and says, ‘You can be assured that this government would never allow an arbitration process that wasn’t in the nation’s interests.’ I care to think that the corporate sector in the United States has a clout way beyond that of many Australian interests in this agreement. Just look at the farmers. Where is the free trade as far as agricultural produce in this country is concerned? It is sold down the drain.

Taxpayers are paying over $400 million to make up for sugar being sold out. Beef has been sold out—it is not going to be free trade ever. After 20 years it is, if the American market is doing okay. There are difficulties with pork. Lamb might, one of these days, get there. There are restrictions on avocados, citrus fruit and stone fruit. You cannot sell that if it is in a competitive period with the American producers. In the manufacturing section, we look at fast ferries from Tasmania or Western Australia—wherever they might be—and barriers stay total. It is an embargo, effectively. Insofar as this being a free trade agreement, tell somebody else. Then the government which brokered such a free trade agreement—which is not free, because it is loaded so much against Australia—says: ‘Trust us. Yes, sitting in here is a little time bomb called article 11.16, which says if the governments get together they can allow arbitration on some matter that is worrying a American mega-corporation, but this government would not depart from the Australian interest.’ Tell somebody else; do not tell me that.

But, even if you did, Minister Hill has been around for long enough to know that governments come in great varieties and you cannot bind future governments. What he says here is not binding. The Greens’ amendment is. The Greens’ amendment is to an act of parliament, and a future government is not easily going to get that undone through the Senate. The Greens’ amendment
says that there will not be arbitration in these matters. We are not going to expose taxpayers or Australian interests to the full weight of corporate America, with its enormous powers not just in law but of political persuasion. Whatever the future government is going to be, I think this government would be amply able to cave in to the influence that the United States can bring to bear—after all, we went to war in Iraq because the Prime Minister felt that that was a requirement for the best future outcome for the country, including the agreement we are dealing with now.

So I do not accept the bland assurances coming from the government. What I do accept is that the Greens’ amendment takes the matter beyond doubt. But we are again in this situation where we know that arbitration will be entered into; that is why article 11.16 is there. The Greens’ amendment says no, that cannot happen; it is up to this parliament. Tonight we have the power to prevent that happening, and the government says nothing—except ‘trust us’, effectively. I do not. This amendment ought to be passed. If the opposition wants to protect Australia’s interests from the full and unequal force of American pressure to get an investor-state dispute settlement going to arbitration, with potentially billions of dollars in payouts involved, it should be supporting this amendment.

Senator RIDGEWAY (New South Wales) (6.47 p.m.)—I think the Greens’ amendment is really about seeking to ensure that there is never ever an investor-state dispute resolution mechanism under the agreement. The Australian Democrats will be supporting the amendment, but I think that the minister probably needs to have a look at article 11.16.1, which provides a foot in the door for such a process to be triggered. The government needs to give some assurance, quite frankly, that we will not end up with the situation that currently exists under NAFTA where investors or corporations can sue foreign governments, as has been the case in Mexico and Canada, and there may be a change in circumstances affecting the settlement of disputes. An investor at the current time, as I understand the article, can request consultations with the other government to make a complaint and the other government is then obliged to promptly enter into consultations with a view towards allowing such a claim and establishing such procedures.

The interesting thing here is that even the explanation that has been offered by DFAT in its guide to the Australia-US free trade agreement provides little guidance as to the nature of the change in circumstances and what is required to trigger the operation of the clause. There is certainly ambiguity when you consider questions about the degree of change that is required: whether such a change must affect governance structures or simply one investor or whether it is necessary to show that such change has resulted in harm to an investor.

This seems to me to be a very important amendment. If I am correct in reading this part of the free trade agreement—with very little guidance from DFAT’s guide to the free trade agreement itself—there is all the possibility that this provides an opportunity for the United States to put their foot in the door. There is all the opportunity for the investors to request consultations and, as a result, seek to change what the government thinks is currently there. It is not iron clad, and I think the government does need to consider this issue quite seriously. (Time expired)

Progress reported.

ADJOURNMENT

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

That the Senate do now adjourn.

CHAMBER
Nixon, Mr Richard

Senator MASON (Queensland) (6.51 p.m.)—I want to speak briefly tonight on the occasion of the 30th anniversary of the resignation of President Richard Nixon. I want to say a few words about the good and the bad of Richard Nixon, and perhaps also a word about what that means to us today as both parliamentarians and citizens. Let me go back 30 years—not to Washington, or even the United States, but to Canberra. I must have been 10 or 11 years old and I went to visit my father who was a journalist with the United States Information Service at the American Embassy. I walked across the black and white checkerboard foyer at the American Embassy. I remember this vividly. I looked up and there was a picture of a smiling Richard Nixon, smiling probably because he had just had a landslide victory against Senator George McGovern—one of the greatest landslide victories in United States political history. You might have thought that would be a vindication of Nixon, but within two years he had resigned in disgrace.

This brings me to the paradox of Richard Nixon, who, perhaps with the exception of Franklin Roosevelt—who played politics with a deft hand and was a brilliant politician—remains one of the most fascinating figures of American political history. He embodies that paradox and the paradox is this: the great certainly are not always good and the good are not always great. While on the one hand he was a master at foreign policy, and I think that is agreed by all, on the other hand—and I can remember this as a kid—he suffered from the most acute personal insecurities, feelings of mistrust, bordering on paranoia. Towards the end he fell into drunken profanities, illegalities and in the end he was crucified by his own hatred. Richard Nixon was very much that paradox.

Sure, Nixon was a heavyweight. At his funeral his old friend Senator Bob Dole prophesied that in the future the second half of the 20th century would be known as ‘the age of Nixon’. He was speaking not just about Nixon’s own political accomplishments but of Nixon’s own dominating political career. Nixon was elected to congress in 1946, where he had a short but very prominent career. In 1950 he was elected to the Senate in California in a very anticommunist and strident campaign against Helen Gahagan Douglas. Within two years his work in the Senate caught the attention of the party elders and General Eisenhower and, at the age of 39, he was elected Vice-President of the United States. He was a well respected Vice-President, assuming greater responsibilities in that office than many—he certainly did much work in foreign affairs—given that General Eisenhower suffered from ill health and had suffered heart attacks and on occasions could not assume full presidential duties.

It was only in 1960 after Nixon’s defeat that his real test began. He was defeated by President Kennedy of course, by one of the smallest margins in political history. Many thought his career was over. He said he could not abide private life, he would be bored sick being a lawyer and he had to go back into politics. In 1962 he sought to be governor of California. Of course he was defeated in humiliating fashion. This was the lowest point of his political career, except perhaps when he resigned in 1974. But just when everyone wrote him off in 1962 he bounced back. The Republican Party was thrashed in the 1964 presidential election by President Johnson. In 1968 he secured the Republican nomination for President—as a private citizen—heating, among others, Governor Reagan of California. He did all those things—he moved about the country, he went overseas. He would pay any price, he said, to remain in the arena.
It was one of the most brilliant comebacks in American political history, to come back from six years in the wilderness as a private citizen to secure the presidency of the United States—an accomplishment that may never be repeated. Whatever else Nixon had, he had bucketloads of tenacity. He never gave up. In his inaugural address to the American people he drew on his Quaker heritage and said, ‘The greatest honour history can bestow is the title of peacemaker.’ He ended the Vietnam War, averted nuclear war in the Middle East, opened the door to China and reached detente with the Soviet Union.

He did, for a while, create a safer world. But all of those accomplishments have to be seen in the context of or are now clouded by his personal insecurities, banality, pet hatreds, his ‘enemy list’, the darkest of dark moods and, finally, illegality and criminal activity. There can be no excuses for a President, whom we expect to uphold the law and a constitution but who breaks them. Even worse perhaps is that his conduct led to diminished respect for the presidency and, more broadly, suspicion of government.

While I would like to say that the legacy of Watergate and Nixon is that the system works, I sometimes wonder. Nixon was a crook. He was caught—that was great—and the constitution was not subverted. But since then many presidents, prime ministers and other potentates have thought the lesson of Watergate is: don’t get caught. It is a cynical view about the real lessons of Watergate for our leaders, but I sometimes wonder.

There is one aspect of Nixon that is not often talked about that comes out clearly in his autobiography. I remember reading it when I was about 17. It was the first major political biography that I read. People have to understand that Nixon was an outsider or he felt himself to be an outsider. He was a hardworking and brilliant student. He won a scholarship to Harvard, but he could not go because his parents did not have the finances. But for the rest of his life he hated the liberal establishment on the Eastern Seaboard: the intellectuals, the journalists, the liberal Republicans and others—the Ivy Leaguers. He said that they were out to get him. Of course they were in the end, but he ended up destroying himself. On his way to the helicopter after he had resigned, he said to the White House staff:

Always give your best, never get discouraged, never be petty; always remember, others may hate you, but those who hate you don’t win unless you hate them, and then you destroy yourself.

How very true. It is poignant that, at the moment of his exit, he finally realised that hate had destroyed him. But he said one thing in his farewell address to the White House staff that I think rings true for all of us. It is a lesson for all of us. As parliamentarians, particularly, you will understand this. I remember him saying, as I watched on TV:

… greatness comes not when things go always good for you, but the greatness comes when you are really tested, when you take some knocks, some disappointments, when sadness comes, because only if you have been in the deepest valley can you ever know how magnificent it is to be on the highest mountain.

It is such a paradox that in the case of Richard Nixon he saw further and understood more when he was struggling in the valleys than he ever saw when he was striding the summits.

Australian Customs Service

Senator MARK BISHOP (Western Australia) (7.00 p.m.)—I rise tonight to outline several issues of concern in the Customs portfolio. I want to address the Howard government’s abysmal report card on managing the financial resources available to Customs to fulfil its most important role. I will begin with an issue that has been well publicised in recent years. The import of freight via sea
containers has increased the necessity for tighter border security measures. Despite this necessity, the Howard government continues to mislead Australians on the issue of sea container security. It is currently impossible to ascertain the amount of illicit cargo entering Australia via sea containers. Customs officers at Senate estimates conceded that a considerable amount of illegal imports are entering in this manner. This is supported by the fact that other entry mechanisms, such as air cargo and mail, are now highly scrutinised.

The evasion of duty through undeclared cargo is considered to be another major incentive for more container inspections. Global estimates suggest that trade fraud costs $US195 billion per year. Annual turnover for the illegal drug industry is about $US430 billion. Approximately 80 per cent of consignments from developing countries are misdeclared. Cargo theft is estimated to be in the order of $US54 billion per year.

The Howard government recently increased the number of containers inspected from 80,000 to 100,000 over the next four years. However, spread over the four ports with X-ray facilities it amounts to an extra 415 containers per month for each facility by 2008. Australian ports receive approximately 1.6 million loaded import containers and a quarter of a million imported empties per annum. This means the Howard government has increased the inspection rate on import containers by the great figure of one per cent.

Thankfully, though, people within the stevedoring industry are taking the issue seriously. Hong Kong’s Modern Terminals Ltd is running a six-month pilot study to inspect every container that arrives. Importantly, the system will provide Customs in Hong Kong with comprehensive, integrated data on every export container. It is not expected that the system will cause any significant delays to cargo movement.

In Australia, the Port of Melbourne Corporation and Westgate Ports are jointly funding an $80 million cargo berth. Among many other initiatives, the new cargo berth will include high-speed container scanning for all containers. It is estimated that the port of Melbourne handles nearly $70 billion in annual trade. This contributes more than $5.4 billion to the state’s economy each year. Eighty million dollars would appear to be a very sensible investment when providing protection for $70 billion in annual trade. Imagine the economic damage if a security failure closed the port of Melbourne for even a short period. Initiatives such as these must be applauded.

Container security in Australia is already the poor cousin internationally. It is now facing further embarrassment domestically. The recently announced Customs container examination facility for Adelaide will inspect around 1,300 containers each year. What the announcement does not say is that Adelaide imported in excess of 49,000 containers in 2002-03. This equates to an inspection rate of less than three per cent. Container inspection in the US is currently well in excess of 12 per cent. The recent increase in container inspection contradicts the Howard government’s claims that approaching five per cent was adequate. Interestingly, this is a target they are yet to achieve. This is indeed a confession, 2½ years after 9-11, that the ongoing ALP criticism is justified. Australia’s waterfront is wide open to terrorism simply through the 2½-plus million containers which are not inspected.

While on the issue of border security, it would be remiss of me not to mention the recent drugs debacle. The issue of performance-enhancing drugs has led to another embarrassing admission by the Minister for Jus-
tice and Customs. There were 1,269 seized illegal imports of prohibited performance-enhancing drugs in 2002-03. Only 376 were formally investigated. This resulted in the magnificent sum of 67 convictions. So the chances of someone importing illegal substances into Australia and escaping prosecution are very high indeed. It is important to note that the legislation provides for a fine of $100,000 and five years jail for such offences. Customs has long been struggling to perform its responsibilities, and now the cracks are wide open.

I move now to the issue of the Customs cargo management re-engineering project. It is likely that the enormous cost overrun of this project is responsible for many border security failures. The CMR project has the capacity to standardise and streamline reporting across Australia’s borders—an eminently sensible goal. I quote the Minister for Justice and Customs, who said:

Once the Bill has been passed by the House of Representatives next week, the new system will be phased in over two years reflecting industry need for time to adapt to the new processes and information technology systems ...

Unfortunately for the import/export industry, the minister said this over three years ago. In May this year, the Australian’s ‘IT Business’ section had this to say:

Nightmares don’t get much worse in the IT industry than the Australian Customs Service’s Cargo Management Reengineering project. Long on promises and short on delivery, the CMR has been a horror show almost from day one. It has been years in the making and is $100 million over budget.

The significant delay and estimated cost overrun in excess of $150 million make this project an unmitigated disaster. The delay in delivery is indicative of the Howard government’s failure to appropriately oversee such initiatives. Significantly, the cost overrun has been offset by cutting costs within other areas of Customs’ responsibility and has also caused confusion and scepticism in the import and export marketplace.

A search on the Internet reveals outdated material and advice in relation to the release of the CMR. This should not be surprising—the continuing cost of updating this material would be a significant impost or cost to industry. The lack of updates on industry websites indicates that they have adopted a wait-and-see attitude to the CMR delivery, and who could blame them. Initially, as the minister stated, the system was due to be phased in by mid-2003. The export component of the system is now due for launch in October this year, and the import component has been put back to mid-2005. That is a delay of at least two years. Going on the record thus far, it would be fair to say that further delays should not be ruled out.

In conclusion, there are many issues within the Australian Customs Service that highlight the Howard government’s failures. This situation is not caused by the ineffectiveness of Customs officers, who provide a valuable service; it is brought about by the Howard government’s failure to provide appropriate resources for a service that has had to adjust to rapid change in the requirements of border security. The Howard government should cease its reliance on publicity stunts to prop up its poor record on these issues. It needs to act immediately to repair the damage it has inflicted on the Australian Customs Service.

National Stem Cell Centre

Senator HARRADINE (Tasmania) (7.09 p.m.)—Senators may recall that some weeks ago I noted my concern at the unexplained increase in funding for the National Stem Cell Centre Ltd from $43.55 million in 2002 to around $100 million in the last budget. The funding has more than doubled, the normal funding processes do not appear to
have been followed and the money is not properly accountable to the public.

At the budget estimates hearings a couple of months ago, I asked Biotechnology Australia and the Australian Research Council how and why that extra money was allocated. I did not really get any answers. What I did find out was that the performance of the National Stem Cell Centre had not been evaluated and no funding committee had recommended that funding to the NSCC be more than doubled. To try to find out whether the NSCC had had such success that it warranted this $57.9 million increase, I asked for details of the NSCC’s achievements. But the officers could not or would not tell me what they were. Industry minister Ian Macfarlane later intervened to say that I could not have information on the centre’s performance because it was commercial-in-confidence.

The funding deeds the Commonwealth has with the NSCC include a number of milestones or critical dates that the NSCC has to meet in order to satisfy its obligations to the Commonwealth for funding. The Australian Research Council gave me a copy of the NSCC business plan which was part of the funding deed, but most of the milestone information had been blacked out—‘redacted’ is the current jargon. One of the Biotechnology Australia officials said to me:

I think you have requested those—

the milestones—
as part of the business plan in the past, and the minister has made a judgment that some of those are commercial-in-confidence and should not be released ...

Since then I have been very helpfully handed a set of papers that include the performance of the National Stem Cell Centre against a number of milestones. I was given this not by the department, mind you, but by someone else. The papers contain the same milestone tables, without the blacking out. They reveal that last year the NSCC was running so far behind with a number of milestones that the deadlines had to be extended. Out of the 26 short-term milestones in the business plan, the NSCC was running behind in eight milestones, or 30 per cent.

The eight milestones were extended because the centre was: three months behind in establishing a control framework for research operations at the Monash Science Technology Research and Innovation Precinct, named STRIP; four months behind in completing the fit-out for moving into the STRIP; three months behind in ensuring the formal opening of the NSCC facility at the Monash STRIP; three months behind in commencing training of major national research facility technicians; three months behind in opening the new major national research facility; three months behind in having the first non-centre user of the major national research facility; seven months behind in the NSCC awarding the first postgraduate student scholarships; and seven months behind in the first NSCC funded postgraduate students commencing training.

And these are just the short-term milestones as recorded in those papers from last year. We still do not know whether those milestones were met or whether the centre is meeting its key performance indicators. Remember these are not voluntary activities; they are obligatory milestones which the NSCC had committed to meet as part of its contract for funding and which had to be changed to give it more time. Given that the government would not give me more up-to-date information, this is the best indication we have of the NSCC performance thus far.

In answer to one of my questions at the estimates committee about the achievements of the NSCC, the officials from Biotechnology Australia said:
There are milestones that we have set for the centre and we are actually due to get a quarterly report from them today. We will be assessing whether they have met those milestones and then making determinations about funding to be released based on them meeting those milestones.

Yet, despite a substantial list of milestones that have been changed to give the centre more time, its overall funding was more than doubled. Officials from the ARC and Biotechnology Australia were careful not to say where this impetus for more than double the funding had come from, but the implications of their careful answers were from the industry and education ministers’ offices. The papers also give some indication of the ‘care’ with which the National Stem Cell Centre reports to the Commonwealth.

Some of you may remember the controversy in mid-2003 when Professor Alan Trounson stepped down from running the NSCC and took on a new role within the centre. Apparently, the Department of Education, Science and Training only found out about this impetus for more than double the funding had come from, but the implications of their careful answers were from the industry and education ministers’ offices. The papers also give some indication of the ‘care’ with which the National Stem Cell Centre reports to the Commonwealth.

DEST was not the only Commonwealth funding agency to be formally informed after the event. Biotechnology Australia was given a day’s notice of the NSCC’s restructure as a fait accompli. But Biotechnology Australia does not seem to have been too concerned. An official from Biotechnology Australia officer emailed the NSCC stating:

The Commonwealth needs to formally approve change in specified personnel. I will probably need an email from you to which we will respond...

Incredibly, the NSCC then suggested this email be delayed until after the new management structure was formalised. It amazes me that a company so dependent on government funding for its survival deals with its funding agencies in such an offhand way. Or perhaps the National Stem Cell Centre feels so secure in its funding—whatever it does or does not do—because of political patronage which guarantees it continued funding whether or not it performs or whether or not it complies with the funding deed.

I have previously dealt with the ethically contentious issues surrounding the work of the centre. Tonight I am focusing on the important issue of scrutiny of government expenditure. The situation is not good. The Australian parliament needs to have access to information to reassure the Australian public that funding decisions are being taken correctly. The public needs to be reassured that political patronage is not defining research funding in this controversial area. A company should not be given $100 million and funded to 2010-11 without even a formal evaluation of its performance. The government stands condemned on this particular matter. (Time expired)

Child Abuse

Senator SANTORO (Queensland) (7.19 p.m.)—As honourable senators know, I have made the issue of child abuse a primary fo-
cus of my contributions to debate in the Senate. Chiefly, this has been in the context of conditions in my home state of Queensland. The Beattie Labor government, which has now been in power for six years and which in February this year won an election fought on the premier’s further claim that he would do something to put an end to obvious wrongs in the state care system, is still not up to the mark in its duty of care but at least—and at last—when this year’s state budget was brought down in June it outlaid very substantial sums to address the chronic maladministration and failure that has stained Queensland for far too many years.

On previous occasions when I have spoken on this issue in this place—and since June last year I have spoken six times directly on the issue—I have made the point that changing Queensland’s ways in this area is not a partisan question. It is something in which every Queenslander has a vital interest and, I hope, a determination to put right. Through this process, during which a great many Queenslanders lost patience with the Beattie government, I called for the most searching of inquiries. Eventually, when it became absolutely clear that the Beattie government was still more interested in its political supremacy than in accepting responsibility, I called for a royal commission.

It is instructive that, in the context of further shocking allegations of sexual abuse of children by church figures, my Queensland colleague Senator Andrew Bartlett is now making the same call—and I support him on that. As that particular case demonstrates, issues of child protection cannot be quarantined within individual state or territory borders. It does not matter that regulating child protection and paying for it from their own funds—an ever increasing flow of which comes from Commonwealth sources—is formally the responsibility of the states. We see around the country—Western Australia, Victoria, South Australia, Tasmania and the ACT all have inquiries of one sort or another under way—issues of neglect of duty in child protection matters that are frankly shocking and which should make every Australian think very hard about how to fix the problem. Of course, as a senator for Queensland, my own state is my chief focus. It is clear that, while there have been some encouraging changes, many things remain that must be fixed.

The new Department of Child Safety has a director-general, former Children’s Commissioner Robin Sullivan. But there is still no new Children’s Commissioner—a crucial appointment—and no evidence of startling and necessary change that has managed to migrate from paper to practical application. In May, the Queensland child protection minister, Mike Reynolds, revealed that 14 children who had some connection to the former families department had died in the first four months of the year. Up to that point in financial year 2003-04 the number of deaths of children known to the department stood at 29. The figure for the whole of the previous financial year was 19.

There is no doubt that crimes against children anger Australians deeply. The thousands who rallied outside the Victorian parliament on Sunday demonstrate that. Equally, there is no doubt that governments will eventually react when confronted by sufficient evidence that they can no longer hide the facts, or when public disquiet reaches proportions that political leaders see as having possible electoral ramifications. Child protection matters are almost exclusively within state and territory control, as is quite proper in a federal system that has developed a strongly devolved system of governance. But equally, the Commonwealth must have an interest in the matter, must take an interest in the matter and ultimately must insist, through funding mechanisms or by overriding legislation, that
One way the Commonwealth can assist—and it does so, very effectively—is by supporting foster carers. This is something to which the Howard government is strongly committed. Just last week the Minister for Children and Youth Affairs, Mr Larry Anthony, reinforced this point publicly, noting that there are approximately 8,300 foster carers in Australia looking after nearly 10,300 children at risk. The minister noted that child welfare is primarily the responsibility of state and territory governments and that each of these entities has its own legislation, policies and practices in relation to foster care and foster care payments. Commonwealth support for this disparate system of care is substantial.

At the end of last month community services ministers agreed to implement a national plan for foster children, young people and their carers. The plan will see improved training and information for foster carers and the development of uniform data collection to help authorities determine the critical areas that require attention. The Howard government has contributed funding for research by the Child Protection Clearinghouse into various foster care issues. There is also $550,000 for the development of national resources for foster carers and children in foster care. State and territory ministers also have before them a request from the Child and Family Welfare Association of Australia for the establishment of national out-of-home care standards.

The overwhelming majority of foster carers are good people with great good in their hearts and plenty of energy, whose whole focus is the wellbeing of the young people in their care. They deserve the best support, and this is where the Commonwealth can and does play a great role. What is needed is for the states and territories to get their act together—there’s an idea: I emphasise ‘together’—to ensure that children directly and indirectly in state care are not abused or mistreated.

As a Queenslander, it has been instructive for me to observe the unfolding dramas in other places, as jurisdictions around the country struggle to come to grips with the child protection scandals in their own backyards. It is a sorry picture that we see, and I certainly hope that children at risk in other states and territories of Australia do not have to wait as long as Queensland children have had to wait for their governments to stop playing the blame game and start practical implementation of much-needed reforms.

We should never forget that it took the Beattie Labor government five years to finally do more about the obvious problem than find another excuse—in one instance, another excuse of a minister. The issue of child protection certainly predates the election of the Beattie government in 1998. But that is six years ago now, and the Beattie government came to power carrying the baggage of the Goss government, which had lost power 17 months previously. A large part of the Goss government’s baggage was the Heiner case—the decision by the newly installed Goss cabinet in 1990 to shred the evidence gathered by former magistrate Noel Heiner in pursuit of allegations of the sexual abuse of girls in state care. As honourable senators know, this is still a current issue. It is the subject of further inquiry by a House of Representatives committee and, in our own chamber, of an examination as to whether witnesses at an earlier committee inquiry misled the Senate. It is an indictment of the Queensland jurisdiction—and those within it—that official witnesses the present committee would like to examine are unavailable to us. It reflects no credit on the present Queensland government that—even
after all this time and with all the indications we have seen in the intervening 14 years to the effect that institutional abuse continued after the Heiner inquiry was shut down—no-one in the state administration is prepared to accept the responsibility to answer questions that clearly need to be answered.

Discovering Democracy Project

Senator MOORE (Queensland) (7.26 p.m.)—Two weeks ago, along with Senator John Cherry, another Queensland senator, I had the pleasure of visiting the Gatton campus of the University of Queensland and attending a ‘Senate hearing’—but a very special one—put on by students representing three local high schools. Lowood, Laidley and Lockyer state high school students in grade 10, as part of the Discovering Democracy program, worked together to show Senator Cherry and I how a Senate committee should operate. And they did show us how one should work.

The students prepared issues that were important to them and their community, they identified amongst themselves a group of senators and they looked at issues affecting the quality of life for young people in their area, the Lockyer Valley of Queensland. They identified key issues and then worked together to develop their arguments. The key issues were transport; employment; sport; recreation, especially retail; and the environment, particularly the issues of water and salinity as they affected their community. The kids got together. They were all volunteers. No-one was forced to take part in this program. They identified that they wanted to be there and they gave up a full day of their time—at a place other than school—to come along and work together on these issues.

The Lockyer Valley is part of the federal electorate of Blair. It is in south-east Queensland and is mainly a rural electorate. It is an area of wonderful wealth in terms of the local rural economy but it also has particular issues to do with access, rural lifestyle and a fairly low income level across the region. The students identified these issues. In terms of the things that could make their life better, they talked about two reasons for living in the area. One was that their families had been born and raised there: this area has a long history of people who settled there in the 19th century and have stayed there, with third and fourth generations on the land. The other was that, increasingly, families have chosen to move into this part of country Queensland, for lifestyle and economic reasons.

The kids were saying that at this point in time they felt isolated from the wider community and that the main reason for that was transport. The degree of knowledge amongst the transport group was quite wonderful. They had taken the time to study transport routes; they had been onto state government areas to talk about rail routes; and they had looked at the key point of independence and the need for cooperation to make the community vibrant. They talked of their concerns about living in a rural area and their total dependence on their families and friends to be able to move around. There are not particularly strong public transport links to the major cities, and they felt that they were stuck and were always reliant on someone else to be able to travel. This caused them to feel as though they were always behind when it came to choice. They came up with some innovative plans about shared transport and new roads. They were particularly concerned about safety on the roads to ensure that large trucks were not destroying the environment or the roads through their communities. They said that public transport was the real key for people to access job opportunities, training and higher education. They thought that they could work more effectively with their gov-
ernment to develop solutions around that area.

The issue of employment came up a lot. There are just not enough jobs in the area for people when they leave school, let alone when they are trying to get part-time jobs to help them through their study. This is also a major issue for university students who are travelling to the Gatton area. There are no jobs around for people who are taking up full-time studies at the local tertiary education centre—the well-known Gatton College—to supplement their study.

The students spoke very knowledgeably about the effect of the cost of higher education and that, for many of their families, increased HECS fees could mean they could not make the choice of tertiary education—and many of them did want that choice. They knew that to take up most elements of further education would mean that they would have to leave home because, as we said, the transport links are not good and there is no way that they can commute to higher education, including to TAFE college in Ipswich.

They talked to me about how they had chosen options for careers. One young woman was very keen to take up medicine and to move on to become a cardiac surgeon. She knew exactly what she had to do for that option. None of that is available locally, of course. People talked about the options of taking up interior design, nursing, education and working more effectively on the land with their families. Unfortunately, that last choice was not available for many of them, because the economic conditions are such that they can no longer absolutely survive by staying on family properties. The option is always there for them to take up other work. But that means leaving the area, which is something that not many of them really want to do but they can see that that would be the reality.

It was not just the fact that there were not enough jobs around. They had a very good knowledge about quality jobs. They were worried about the fact that either the few small businesses could not afford to employ extra people or the kind of employment being offered was often not the best in terms of wages and conditions. And here, as in so many other areas, we heard stories about young kids, students, who needed to supplement their income but who were used as virtually slave labour in terms of being paid inadequate wages or who were fired without warning, with no explanation. They were just being used because some employers—not all—know that they can do it and get away with it, and that is sad.

The students talked about how you need a market to have jobs. They were concerned that in some of the small country towns where they live and go to school there are closed shopfronts. Businesses are not surviving because there is not enough market. They spoke very knowledgeably about how you build up market to attract people. They felt that they could work within their community, with support from governments—Senator Cherry was there for most of this discussion—to increase the opportunities for people at the local level.

This linked into the issue of retail. So many people in larger cities take for granted options that kids who are living in the country do not have. For them to go shopping or to go out with their friends often means a two- or three-hour journey. From where they live, it does not take that long to drive into Ipswich, Brisbane or Toowoomba. But, by the time the kids link up—they share transport; they catch buses—that journey can take them up to three hours. One of the good things about the Lockyer Valley is that you can go up the range to Toowoomba or you can go down to the areas around Brisbane and Ipswich—it is right in the middle—but it
takes time and it takes money. That was a major issue for them.

The issue of sport got them all going because they all felt that that was something that could be provided cooperatively between government and community. They talked about upgrading the facilities at local areas. Local sports grounds would have good provision of services so that people were able to have the best quality sport facilities to develop their skills and to have the chance, as many young people from the area have already done, to succeed at and enjoy playing sport across the board. Again, the issue of money came up; it is a major concern. I did laugh with them a bit about how often an area called Plainlands came up in their discussion. At the moment it is quite a small community on the highway, but just about all their solutions included some facility at Plainlands. I think it is a central spot.

Senator Cherry—Yes, Plainlands mall.

Senator MOORE—Senator Cherry, it is a message for the people at Plainlands. The kids were very keen about that place. What came out of this visit for me was a concern that, at the beginning of the day, this whole process seemed to be a bit of debate: people who were putting forward their argument were often in a debate with the senator who felt that they had to argue back to the people who were representing the community. By the end of the day, I think we had worked out that the whole process was much more about a community finding expression rather than about debating points and finding out reasons why an argument could not work. I hope that that message will continue with the people who participated.

This whole experience showed me how valuable the Discovering Democracy program is in our schools. I want to pay tribute to the teachers who keep this program going. It is a great shame that the government are going to cut this program, but whilst we have teachers of the quality of those who supported the students in the three high schools that we visited the other day, elements of the program will be maintained because of its value. I would like to congratulate the teachers and, in particular, those students involved. I hope that their knowledge of democracy through this process will continue. This is a good program, and I thank them for allowing me to be their guest.

Immigration: Detainees

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (7.36 p.m.)—I speak tonight on one of the foundations of our democracy and one of the key parts that led in many respects to the evolution of parliamentary democracy around the world—that is, the basic right of people to be able to ensure that they are free from arbitrary detention at the hands of a government or an executive. That need to ensure that people cannot be arbitrarily imprisoned without charge, without being accused of a particular crime by a governing body and without any judicial oversight is one of the most fundamental human rights that we have and one of the most fundamental freedoms. It is a freedom that far too many people around the world do not have. It is one that should be very jealously and very vigilantly guarded.

It is for that reason that I and the Democrats have been so concerned about the potential consequences and the underlying precedent that has now been established as a result of the High Court decisions last Friday. Those decisions related to immigration detention, which has been an issue of great controversy in our country over a long period. We have had mandatory detention of all unauthorised arrivals—people who arrive without a valid visa—for over 12 years. It has been a very contentious issue. Indeed, it
is an issue that has been subjected to many court appeals over quite a period of time. A range of High Court decisions have indicated the lawfulness of mandatory administrative detention. That has been disputed. Almost all those High Court decisions have been split decisions, so there have clearly been differing bodies of opinion about the lawfulness of mandatory administrative detention.

The mandatory detention of all people who arrive in a country, who are in a country for administrative purposes under migration law, is a policy—or a law, rather—that is unprecedented in the democratic world. The United States, European countries, Hong Kong and Canada have various forms and mechanisms for dealing with people who arrive unauthorised or without authorisation of a valid visa but none of them involve mandatory, automatic detention or the ability for automatic detention by the government of the day without any reference to circumstances.

That was a serious enough situation but we now have the decision from last Friday—it was a very close decision of 4-3, but it is nonetheless clear-cut—that it is lawful for people to be detained indefinitely even when they have indicated a wish to be deported and the Australian government has tried every avenue to deport them but has not been able to find a country that is willing to take them. Even in those circumstances, according to the High Court, it is lawful for those people to be kept locked up, regardless of the circumstances—regardless of whether they are young or old, whether it has been one week or six years, whether they are gravely ill or in perfect health, whether they have children or are children, or whether they have family outside in the community. Regardless of any of those circumstances, it is automatic—there is no scope for legal review—for those people to be able to be locked up indefinitely.

This is an extremely serious situation because it is a significant expansion of government power. It now means that, in our country, the minister has the power to keep somebody locked up or to deny a person their freedom indefinitely if they do not have a valid visa in Australia, even if no other country is prepared to take them. It has been suggested that all of these people have no right to be in Australia so therefore they have no right to freedom. The fact is, they have no right, in that very narrow sense of the word, to be in any country. Because they are in that very unfortunate situation of being stateless they should not also have the added burden of having no freedom at all. But that is the situation that people are now in.

The minister said yesterday in question time that there is a safety valve, to use her words, of ministerial discretion. The minister can decide to free them if they think the circumstances warrant it. Firstly, that discretion cannot be compelled. There is no requirement on the minister to use it. There is no ability for anybody to undertake any legal process to force the minister to even look at the matter, let alone make a favourable decision. There is no set of criteria legally enforceable by which they have to judge that situation. There is no need to consider any concept of fairness or justice. It is totally up to the minister’s discretion. That is not a safety valve and it is certainly not a guarantee of the upholding of basic freedoms, because there is no guarantee that a person can be freed. That is not a specific reflection on the current minister. Perhaps the current minister will always do the right and appropriate thing but there is no guarantee that a future minister would do the same thing.

Clearly, it cannot be an adequate safety valve because we have people already in this country who are in precisely that situation: who do not have a valid visa, who have been found to not be a refugee and who have said,
‘I want to be deported,’ but cannot be and so are in detention—in one case, for over four years. There is one person who has been in detention for close to six years in total. A six-year-and-counting jail sentence as a consequence of being stateless does not strike me as just. It certainly does not strike me as an indication that the law has adequate protections and adequate safety valves, to use the minister’s expression, to make sure that people are not unreasonably punished or unreasonably imprisoned. Denying a person their freedom is about as fundamental as it gets. I do not think we should ignore that situation.

It is important to emphasise this also because of the precedent established. We all know that, in this parliament, governments repeatedly come along with laws and say, ‘This is okay because it’s been done previously and has been found to be lawful and acceptable, so we’ll now apply it to another group in the community.’ It is quite clearly now feasible for a government to pass a law that, if the parliament agrees, will enable a minister to keep somebody detained indefinitely—and that could mean for years—without charge, let alone a trial, as long as they can frame it as being an administrative detention for purposes for which the government has a head of power under the Constitution. They have a head of power for migration issues and they clearly have a head of power for security and defence issues. The obvious danger area is the so-called antiterrorism legislation and the potential for a government to say that it needs to have this power to lock up people on the grounds of public safety without judicial oversight; there will be no protection or ability to ensure the basic freedoms guaranteed by the law.

Nobody can seriously suggest that you can have an adequate guarantee of people’s freedoms being protected by relying on the basic decency, humanity or competence of a minister of the day. The minister can change, governments can change and political circumstances can change, and to allow somebody’s freedom to be dependent on always having a minister who will always do the right thing, without any legal protection or oversight or independent examination of the situation, is simply unacceptable. We cannot allow this situation to remain under the migration law for one minute longer, because every minute that it remains is an extra minute that precedent can be pointed to for the misuse of that power and for that loss of a fundamental freedom to be expanded into other areas of law, particularly in an atmosphere where fear of terrorism is so high. I remind the Senate of a report released just today by Human Rights Watch which pointed to a range of countries as diverse as Egypt, Uzbekistan, Morocco, Malaysia and Sweden significantly violating human rights under the rationale of combating terrorism. You cannot fight terrorism by undermining the very freedoms we are trying to protect in that battle against terrorism. *(Time expired)*

**Tasmania: Office of State Governor**

_Senator Barnett (Tasmania) (7.46 p.m.)—_I rise tonight to take exception to the statement by former Tasmanian Governor Richard Butler that he was standing down from the office of governor because of what he called a ‘malicious campaign’ against him which was damaging Tasmania’s good name. In my view, the obvious flaw in that statement is the absurd suggestion by Mr Butler that there was a so-called ‘malicious campaign’ that was somehow the arch-villain in this whole unfortunate constitutional soap opera which has damaged the state’s reputation, rather than any of Mr Butler’s actions and statements. There was no malicious campaign that wrought its evil upon the Butlers and Tasmania. There was only one source of damage to our state’s good name—Richard Butler.
I must say that I was surprised by Jim Bacon’s appointment of Mr Butler last year, but like the vast majority of Tasmanians I was prepared to wait and see whether the Bacon experiment would succeed, because if it did succeed Tasmania would be a better place for it. Sadly, it failed. The reason why is not hard to see: in the early days Mr Butler could not help himself and continued his tirades against the United States and the Howard government. He used speeches in Tasmania to attack the Howard government on a range of domestic and international policy issues—namely, health, education, refugees and the war in Iraq. He started his vice-regal career as a divisive influence in Tasmania, which is an anathema to the vice-regal tradition of a unifying force and a symbol of cohesion and understanding. In this regard I commend and acknowledge the fine and outstanding work of Sir Guy Green, the governor immediately prior to Richard Butler, General Sir Phillip Bennett and indeed so many other governors before them who distinguished themselves in so many ways and who united the people and the state of Tasmania over so many years.

Former Governor Butler had to be disciplined by the new Premier, Paul Lennon, as a result of his statements. Paul Lennon publicly stated that he expected Mr Butler to cease making political comments. Mr Lennon said that he expected this request to be ‘strictly adhered to’. The Premier’s statement is ample evidence that Mr Butler transgressed convention and tradition in his statements and in his Australia Day address this year. If this were simply a case of ill-conceived political statements having been made early in the piece, Mr Butler would still be the Queen’s vice-regal representative in Tasmania tonight. But Mr Butler’s controversial statements were followed by behaviour as governor that most Australians would find both embarrassing and unbecoming of his office, this solemn cornerstone of our constitutional democracy in Tasmania.

The media have adequately covered these incidences in today’s reporting of Mr Butler’s resignation and in recent days. For the record, I would like to detail some of them here. Let me say at the outset that the appointment was of an outspoken and ardent republican, a very political high-profile identity in Labor politics, a person who was an adviser to former Prime Minister Gough Whitlam, and a person who was paid the highest vice-regal salary in Australia—even higher than Australia’s Governor-General, Major General Michael Jeffery—yet this occurred in the smallest state in Australia. The state government and Premier Lennon have to respond to the dilemma of how this came about. Basically, the fact that our state governor was the highest paid in Australia, higher than our Governor-General, was never going to sit well with Tasmanians, or indeed with Australians generally. Mr Butler was sworn in on 2 October last year. Two days later Mr Butler married Jennifer Gray. They took three weeks leave in advance. In October the Butlers went to Singapore and other parts of Asia on their honeymoon. The email reports subsequently quoted in various media showed that Mr Butler had demanded to be upgraded on Singapore Airlines because of his position as governor, despite the fact he had only paid for an economy class air fare.

In November, Mr Butler failed to wear the traditional poppy on Remembrance Day and received the appropriate expressions of concern from the RSL and other parts of the community. He used a speech on Australia Day to launch a thinly veiled attack on the Howard government on refugee and Indigenous issues, health and social welfare policy, education policy and the war on Iraq. He branded the United States as the most ‘highly nationalistic’ and ‘self-centred’ government we have known. He cancelled a commitment
to open National Trust Heritage Month in Launceston, citing an ‘urgent matter’ he had to attend to and was seen attending a recital by the Tasmanian Symphony Orchestra in Hobart.

In May, according to the *Australian* newspaper, he breached protocol at the Danish wedding of Tasmanian Mary Donaldson to Crown Prince Frederik of Denmark by starting his meal before the Danish Queen had arrived. The May budget in Tasmania showed a huge increase in the cost of running Government House. This was a budget prepared by the state Labor government and it included a 70 per cent increase in supplies and consumables, according to the Hobart *Mercury*.

In June this year he claimed that there was a campaign to bring him down—an extraordinary claim under the circumstances, notwithstanding all the views and concerns expressed by the Premier of Tasmania in terms of gagging him and the community’s response to his actions. In July Mr Butler broke with tradition and did not speak at the Vietnam Veterans Day commemorative service. I would suggest that this antiparliamentary statement was akin to the behaviour of a teenage peace activist. One would be hard pressed to find a Vietnam veteran anywhere who is a warmonger.

Then we had the resignations of Government House senior staff: the honorary police aide-de-camp Sydney McClymont, after 17 years in the role; official secretary John Chilcott, who is widely respected by all sides of politics; senior adviser Anne Parker; and military aide-de-camp Chris Beattie. The so-called ‘malicious campaign’ against Richard Butler was in effect his own excuse for his inappropriate nature as Governor of Tasmania. He could have been a great ambassador for Tasmania, or at least attempted to be so, but for whatever reason, whether it be boredom, pride, an imperious ego or contempt for all those around him, Mr Butler executed and then hastened his own downfall.

Even when speaking to me at a Launceston Chamber of Commerce function, following a question I asked as to whether he supported the free trade agreement, in a group meeting with other members of the chamber, in regard to the Howard government’s response to the free trade agreement, he said, ‘You bastards did nothing for us in Tasmania.’ I subsequently wrote to the Premier about that particular comment by Governor Butler and still have not received a response. The editorial in today’s *Australian* newspaper states:

RICHARD Butler lasted just 10 months as governor of Tasmania before his resignation last night. It is an extraordinary end to a turbulent tenure, brought about by his inability to adjust to the job.

... ... ...

He offended community groups. An analysis of the vice-regal diary by Hobart’s daily newspaper *The Mercury* demonstrated that Mr Butler was hosting 70 per cent fewer functions at Government House and only undertaking half of the public engagements in the city of his predecessor, Sir Guy Green. He was also exceedingly well paid for what he did, earning $370,000 a year—more than the Governor-General. And he had trouble hanging on to help—three senior staff walked out of Government House last week. And then there were suggestions Mr Butler was exuberant in enjoying himself.

I conclude by saying that it reveals a state Labor government clearly out of touch with the thinking and values of ordinary Tasmanians. Today the Lennon government announced a $650,000-odd payout to Mr Butler after just 10 months in the job.

**Senator Ian Macdonald**—You’re kidding!

**Senator BARNETT**—I am not kidding. That is the fact. That money could be used to benefit our health system, education, roads...
and so on. It reveals a Labor government which is out of touch. (Time expired)

**Environment: Koalas**

Senator **CHERRY** (Queensland) (7.56 p.m.)—I rise to bring the attention of the Senate to the plight of Australia’s most famous icon, the koala, particularly in Queensland’s south-east corner, where they are under increasing pressure from fast-paced and short-sighted development. Local, national and state authorities seem either unable or unwilling to ensure that new development within the koala habitat is progressed in an appropriate manner.

The koalas in Queensland’s south-east corner are recognised as one of, if not the, most important remaining native population of koalas in Australia. Despite this recognition, the area of habitat suitable for these iconic animals continues to be degraded and fragmented, despite the high international profile and popularity of the species. It is almost a decade since the federal government’s Threatened Species Scientific Committee recognised that the koala was clearly declining in parts of its range. At that time the scientific committee committed to reconsider the koala’s status under federal law again in 2000.

On July 27, the federal Minister for Environment and Heritage received from the Koala Foundation a public nomination to list the koala as vulnerable under the Environment Protection and Biodiversity Conservation Act 1999. I urge the minister to ensure the current backlog of public nominations does not impede the progression of any species deserving federal protection, particularly koalas. The level of scientific and public concern about the koala’s status continues to grow, as was evident in the national media a couple of weeks ago when the Australian Koala Foundation lodged its public nomination. The United States has already recognised the vulnerable status of the koala under its Endangered Species Act, and not without good reason.

In March, the Queensland government, acting on its scientific advisory committee’s recommendation, upgraded the koala’s conservation status to ‘regionally vulnerable’ in the south-east corner. While the Democrats consider that the reclassification of the species, as advised by Queensland, must be recognised as a step forward for the species, we do not believe that destruction of precious habitat in the south-east Queensland bioregion has stopped as a result of the Premier’s announcement of the reclassification.

The Democrats believe that the koala must be recognised as a matter of national environmental significance, if not because of its rapidly declining status, then because of its huge importance to Australian culture and tourism. We believe that, in light of the significant impact that the pace and scope of urban development is having in south-east Queensland and the effects of both land clearing and climate change in other important koala habitats such as the Pilliga Scrub, much more needs to be done to ensure the koala is adequately protected.

To illustrate the threat that habitat destruction currently poses to south-east Queensland’s koala population, I point to the proposed development of an area abutting the Daisy Hill State Forest in Logan City, known as the Shailer property. This is an area of prime koala habitat—indeed, it is part of the state government’s gazetted koala conservation area. In its original considerations, the Logan City Council recommended that any development should include construction of a detention basin, that food trees should be planted in an open space area for the koalas and that no dogs or cats should be kept without council approval. That development application has not been acted upon.
The Shailer area, now known as the Dennisvale estate, is one of very few substantial areas remaining that can provide a safe haven for these koalas. It is not the only area in south-east Queensland that is under threat. I also draw your attention to the work of Save Our Sunningdale Koalas, a small community group who are objecting to a subdivision of a number of housing blocks in their street. They believe that the planned subdivision will destroy natural gum trees on the site and will kill off the remaining koalas. The residents describe the area slated for subdivision as ‘a small island of tall trees in the middle of suburbia’.

On 20 July, the Logan City Council received two development applications for the two large chunks of rural land along Daisy Hill Road. The first application, by NCR Securities Pty Ltd, dealt with the Shailer property. It proposed turning a 48-hectare site into 180 residential lots, which would double the residential density allowed under the current town plan. The second application, by Venture 2 Pty Ltd, proposed 22 allotments on an adjoining lot, which would increase the density. This site is vitally important to koala populations in Logan City. It is bound by the Daisy Hill State Forest on two sides. At present, most of the land is bushland, with a small part cleared for the Shailer farm. The area is contained fully within the gazetted koala conservation area and is protected and gazetted under the Local Government (Planning and Environment) Act 1997. That planning policy sets as its objective:

Important koala habitat should be protected from inappropriate future developments and changes in land use, without affecting existing uses and development rights or removing development commitments.

Although the current Logan town plan has included some development on the site since 1993, the doubling of the density and the sites proposed under the two new applications run completely contrary to the provisions of the koala conservation area planning policy. If this policy is to have any meaning, not only should the application for increased density be refused but also the state government and the Logan City Council should take steps to ensure the full protection of this large and important site. The property borders the Daisy Hill State Forest on two sides and is the largest piece of freehold native vegetation in the Logan City area.

I have written to the state Premier and urged him to follow through on his government’s commitment to ensure appropriate open space and to recognise that koala populations in southern Queensland are vulnerable. I have asked him to use the full powers of the state government to act and to prevent the very pro development forces on the Logan City Council from approving this development application. If the rezoning application is approved, the developers will receive a multimillion dollar windfall in increased land value, making it almost impossible for a future state or federal government to buy the land for conservation purposes.

While I note that the developers propose to hand over about a quarter of the land as an addition to the Daisy Hill forest, the development proposal includes a substantial increase in the amount of land that, according to the current town plan, can be developed. In the decade 1995 to 2004, there were 9,424 koalas admitted to the Moggill Koala Hospital in Brisbane for treatment. The majority of these koalas were injured on roads or by domestic animals such as dogs. Of those admissions, at least 6,000 were confirmed to have died. This is a species that is dying in significant numbers in habitat already fragmented and under challenge from urban development.
In June this year, the Queensland government estimated that there were about 25,000 koalas remaining in south-east Queensland. The Premier also recognised that the proximity of urban development to koalas and their habitats is of greatest danger to them. Injury to almost 10,000 of them in a decade and the deaths of the majority suggest a species in dire straits. If the koala conservation area and the reclassification of koalas as ‘regionally vulnerable’ is to have any meaning, the state government needs to ensure that the full spirit of its planning policies is fully complied with by the Logan City Council. At the very least I believe that the state Environment Protection Agency should commission a fully independent environmental impact statement on the proposal, with full reference to the state and the national koala conservation plans.

If the National Koala Conservation Strategy, agreed to by the Commonwealth and state governments in 1998, is to have any meaning, then the federal Minister for the Environment and Heritage should be doing all he can to project the integrity of Australia’s most important koala conservation area. Fast-tracking the ‘vulnerable’ listing would be a major first step, and I urge the minister to do that. What cannot be tolerated is doing nothing while the developers in Logan City win a multimillion dollar windfall from a pro-development city council providing a rezoning and development approval. The community and the koalas are the losers from doing nothing. If this application proceeds, Australia will see a significant chunk of the most important habitat of its most iconic marsupial destroyed. From that point of view, the Democrats are determined to assist the local residents in their efforts to make sure that Logan City Council, the Queensland state government and the national government do what needs to be done to protect the koalas of Logan City and south-east Queensland.

Senator SANTORO (Queensland) (8.05 p.m.)—Last week, in a contribution to a debate on a matter of public interest in this place, I set out the latest situation in the unending and unedifying saga of poor service delivery by the Beattie Labor government in Queensland. As a senator for Queensland, I am committed to doing all I can to raise wide public awareness of events and issues in my state, particularly when the federal government funds so much of the activity and service delivery—or should I say lack of service delivery—in our state. The Beattie Labor government likes to think that it is an event, and its leader is convinced that he is the main event. I am here tonight to remind that leader and his government and the Queensland Labor caucus that, while the Beattie government might have a claim to being an event in its own right, there is absolutely no doubt that poor service delivery is an issue.

Last Wednesday I stood in this place and reported that Queenslanders had learnt that their electricity supplies were not secure and that their lights might go out at any time. I also said, in the context of the huge—and obviously hugely damaging—cash raids that the Labor government in Queensland regularly inflicts on government owned corporations, that Premier Beattie should tell Queenslanders where in his policy for the last state election they can find the bit about ruining the power utilities, Ergon and Energex, and turning out the lights.

State Liberal leader Bob Quinn said last Friday that Queensland Treasurer Terry Mackenroth should come clean about exactly who advised the Beattie government to take a controversial $150 million special dividend from Energex in 2001. Mr Quinn made this sensible point after it was revealed that Energex Chairman Don Nissen had written to the state government the preceding year ex-
pressing concern over falling capital funding levels. As Mr Quinn points out, the Queensland Treasurer claims the special dividend was all Mr Nissen’s idea. I suspect that this is a somewhat unlikely situation. In fact, I am sure it is an unlikely situation—unless someone first visited Mr Nissen in his Energex office and suggested that, as an alternative to being fitted for concrete boots, he should divvy up some much-needed additional revenue for the government. Mr Nissen is a businessman; he is not the tooth fairy. But this is not a joke. This is extremely serious and a matter of direct concern to the taxpayers of Australia who fund the Queensland government to the tune of $7.2 billion a year in 2004-05—

Senator Crossin interjecting—

Senator McLucas interjecting—

Senator SANTORO—which is the major reason that I get up in this place and make these sorts of contributions that obviously so annoy honourable senators opposite. The Energex special dividend—so special that Energex financed it by borrowing against an unrealised capital gain that arose from a revaluation of its assets—was an unwarranted call on reinvestment funds. In the United Kingdom it is against the law to make dividend payments from unrealised capital gains. In Queensland, confronted by Mr Mackenroth’s thievery, the Auditor-General sought crown law advice and later described the transactions as ‘unusual in terms of generally accepted accountancy practices’. The crown law advice, incidentally, was that there have been no other similar cases in Australia involving the asset revaluation reserve.

I was interested to hear the Premier of Queensland today saying he will not waste time with the state opposition’s daily attacks on what ABC radio news described as the government’s power problem. Of course he will not—he is far too busy slipping on his hard hat and flitting out for another photo opportunity under his major crisis damage control program. There is some justice in the fact that everywhere he got himself photographed earlier this week, busy being a hands-on premier with electricity repair crews, the lights went out in his wake. Premier Beattie is also being challenged to release more than 100 pages of Energex documents which have been denied to the Queensland opposition under freedom of information rules. If he really had nothing to hide, he would release those papers. But he will not, of course. He will instead continue to focus on running away from responsibility and arguing that black is white—or, in this instance, insisting that red ink is not red ink at all.

It is also clear that, at least in the case of Energex, some things have been done that in the penurious environment of the corporation today should not have been done. It is certainly true—to take up an important point that deputy state Liberal leader Bruce Flegg has been making—that scant financial resources are better spent on maintenance than on public relations. The Energex board should explain why it approved the diversion of millions of dollars from its maintenance budget to PR. As an increasing number of Queenslanders are pointing out, Energex is hardly operating in a competitive supply market, at least at the bulk domestic customer end of the scale. It may need to promote itself as a power corporation—although I suggest it should first work on operating like one—but out there in the suburbs, where the lights are going out, customers are being disadvantaged. So much for the smart state that Premier Beattie is forever boasting about.

There are wrong priorities in Energex—that much at least is as clear as daylight—just as there are in the state government. If, as Dr Flegg says, Energex secretly reallo-
cated $2.1 million from maintenance funding to PR in 2001-02 and increased that take-out to $4.7 million in 2002-03, someone who is in overall charge of the corporation—and that, of course, is the state Treasurer—should be saying, ‘Whoa!’ Unfortunately Mr Mackenroth has not been pointing out that running a power utility is not something that really calls for a Marx Brothers script. He has been too busy, rescripting his own private remake of Ned Kelly.

When the power reticulation system is in such a poor state that the supply network for the Gold Coast region does not meet baseline requirements, something is very wrong indeed. The substandard nature of the supply integrity to the Gold Coast was revealed in the Somerville report into the electricity industry. It showed that the Gold Coast’s 110kV network did not meet the accepted industry N-1 criteria. These criteria mean that the system has an element of spare capacity and can cope with unexpected increases in load or severe weather conditions. They mean that, if one component fails, the remaining components continue to supply consumers because there is a level of duplication built into the system. Mr Quinn, who represents the Gold Coast seat of Robina in the Queensland parliament, is somewhat understandably irate at this. He says and, I hasten to add, I agree with him:

N-1 capacity comes at a higher cost, but if it’s good enough for Brisbane, why not here at the Gold Coast, or are we being treated as second-class citizens by the Beattie government again?

Senator Santoro—Are you going to talk about Queensland too? There you go!

Senator McLUCAS—I am going to talk about a federal program in Queensland, Senator Santoro—something that I have not yet heard you do. You continually talk about the state government. It is a shame you would not go back and recontest the seat of Clayfield, and then you could talk about that to your heart’s content.

The DEPUTY PRESIDENT—Senator McLucas, please address the chair.

Senator McLUCAS—The rural area west of Cairns is a group of small communities very much based on agriculture, with a population of almost 60,000. It is an area that has much going for it, but it faces an enormous set of challenges. There is a series of small townships on the Atherton Tableland interspersed with farmlands. It is a beautiful area of Australia, but it is an area which, as I said, is facing some difficulties. I have a very strong affection for the Atherton Tableland, because that is where I was born, and I will continue to advocate on behalf of tablelanders at every opportunity I can. But, like many rural communities, it has had to respond to and manage significant change over the past 20 or so years. Twenty years ago, there were two tin dredgers that used to dredge—probably inappropriately, given what we now know—creeks west of the town of Ravenshoe. With the collapse of the tin price, those two tin dredgers were packed up and sold, and we lost quite a considerable number of jobs as a result of that.

In 1986 we had the listing of the wet tropics as a World Heritage area. It was a policy
that I absolutely agreed with, but it did result in considerable change and there was an immediate loss of jobs, particularly in the southern end of the tablelands. As a result of the listing of the wet tropics area there has been a considerable growth in tourism, but there is potential that is still not being achieved in that area. More recently we have had the deregulation of the dairy industry, with flow-on effects for farms. There has been amalgamation of farms, and some farms are turning to alternative production. We have had the initial buyout of tobacco licences by the state government, with the deregulation of the tobacco industry; and this year the complete loss of the tobacco industry to the Mareeba-Dimbulah area of the Atherton Tableland. It is a litany of sadness for people who live on the tablelands, and there is a sense of desperation in certain sections of the community.

In my view, though, it is not all bad news. There has been growth in the tourism industry, particularly in the bed and breakfast sector, an area that needs an enormous amount of encouragement. And the diversification that has happened in horticulture and the growing of new products—rare fruits in particular; the growth in the mango industry and the introduction of sugar cane to the tablelands—are things that we should be commending people for encouraging.

It was in the context of this enormous change, with the local federal member looking to defect from the National Party, with the state Tablelands electorate re-electing a One Nation candidate and with a looming federal election that Senator Ian Macdonald visited Mareeba on 12 September 2001 and announced that the Atherton Tableland was selected as the first region to be assisted under the Sustainable Regions program because of restructuring of the tobacco industry, higher unemployment, lower income and other specific issues in the locality. Then on 10 December 2001 Deputy Prime Minister Anderson announced that $18 million would be applied to:

... help the Atherton Tablelands region implement local priority projects, including minor infrastructure and skills building.

What is now known as ATSRAC—the Atherton Tablelands Sustainable Regions Advisory Committee—was born as a result of those announcements. There was plenty of fanfare and lots of photos in the paper, mainly of Senator Boswell telling the Atherton Tableland that they were in fact saved. The answer to any problem brought to the federal government’s attention from the Atherton Tableland was, ‘Go to ATSRAC: they’ll solve all your problems.’

In the first 12 months of the program there was little obvious activity. I expected that this time was being used for planning and strategy setting. The ATSRAC priorities are on the web site, and there is nothing you can really disagree with. But the dozen or so priorities do not describe a vision; they do not explain how the Atherton Tableland will change its economy and build a robust future. They say they will do things like: ‘encourage the development and retention of intellectual property within the region’, ‘encourage the local development of tourism’, ‘improve community wellbeing’, ‘lead to new job creation’ and ‘develop the enthusiasm, skills and optimism of the region’s youth’. You could say that pretty well about any region in Australia. What we needed was a vision that described the future for the Atherton Tableland.

The work that was done in that first 12 months in my view did very little to bring the community together to show a way forward and say, ‘This is how we’re going to get out of the difficulties that we face.’ Those planning documents do not provide a blueprint for the future. They do not provide a vision
that all tablelanders can get behind to promote and champion their community to potential investors and to themselves. This lack of effective and inclusive planning is one of the criticisms that I have of the program. The $18 million is essentially allocated to provide grants to projects that fit within the stated goals. Other funds are apparently used for administration of the program. ATSRAC itself is technically the committee which administers the program. It is a committee made up of the four mayors of Mareeba, Atherton, Eacham and Herberton shires. They are joined by Mr Peter McDade and Professor Bob Beeton, with an observer from the FNQACC. I want to place on record my recognition of each of these people’s commitment to their local government area. They are strong advocates for their electorates.

Therein lies the problem. The reported culture of ATSRAC is of a committee of individuals defending their patch, not developing a shared vision and working to achieve it. I do not blame these individual mayors. They are simply doing what their voters ask of them. But I do blame the Deputy Prime Minister for not identifying that he was establishing a structure destined to be at best problematic and at worst dysfunctional. ATSRAC approved 27 projects to 16 June this year, and recently a further three projects have been announced. Every few months Senator Boswell comes to the tablelands to have his photo taken handing out cheques to grant recipients. Increasingly, following each of these grant announcements the level of disquiet and discord around the tablelands has grown and the number of angry telephone calls to my office about the applications of money has increased.

This is not to say that all of the projects are of little value. But it is my view, and it is a view shared by tablelanders, that all of the projects should have clear, sustainable long-term outcomes and clear objectives for which progress can be measured and which are developed with local input. Those are the first two regional priorities identified on the web site of the program. This is taxpayers’ money, and taxpayers want value for their money. The charge of pork barrelling that is levelled now, by tablelanders themselves, is hard for the government to defend when projects that are being supported have limited or no identifiable benefit for the tablelands.

Senator McGauran—For example?

Senator McLucas—Just wait. Calls of complaint to my office grew. The singularly largest area of complaint is that private businesses, which are in direct competition with similar types of businesses, have been successful in attracting funds. One of the stated principles is that applications must be competitively neutral—in effect, projects must be supported by known competitors. An application, for example, for a timber workshop and gallery for the township of Tolga—which had a history in the timber industry prior to wet tropics listing—has been progressed. It is almost directly across the road from an existing successful timber workshop and gallery known as Tolga Woodworks. Any application is meant to include letters of support from potential competitors. The applicant went to Tolga timbers and said, ‘Will you provide me a letter of support?’ The answer was obviously, ‘No, we won’t,’ but the project has been progressed. It is wrong when a government is interfering in the local economy at this level. If the money is applied, Tolga timbers—an existing business built up over 15 to 20 years—will go down the drain, thanks to ATSRAC and the federal government.

There was an application lodged by a very beautiful bed and breakfast establishment, seeking funds of $170,000, to develop a spa. That is not the right way we should use taxpayers’ money to support one bed and break-
fast establishment over the top of another. I have had long conversations with the owner of the establishment and he is quite rightly very distressed that his business has attracted this level of attention. But he also agrees that there was a better way to spend the money. It would have been better for all of those exclusive bed and breakfast establishments to come together and develop a marketing strategy. This money has not been applied appropriately.

Another area of complaint that people bring to my attention is the funding of projects that then disappear. An amount of $102,000 was given to Eacham Shire Council for the Malanda Dairy Heritage Centre. That has a terribly tragic history. The applicant, the Eacham Shire Council, contracted an organisation to manage the redevelopment of the factory or part of the factory. They ended up in such dispute with the Eacham Shire Council that they left town. The shire council then employed the mayor’s son to operate the project. But if you go to Malanda to look at the dairy heritage centre you will find it is closed, and it has been closed for a long time. That is not good use of taxpayers’ money.

An amount of $750,000 was allocated to a company called Nature Trust Australia for a kenaf industry development—one of the largest, successful grant applications. When I raised this issue in the media I received a phone call from someone saying, ‘I think the people who are the proponents of that development have moved south.’ It became evident that the people who received the $750,000 were no longer on the tablelands. Where is the value to the economy of the Atherton Tableland of $750,000 when the development is not there anymore? I have subsequently found out, through questions on notice, that that money has in fact been returned. Had due diligence been undertaken, it would have revealed concerns prior to those moneys being allocated.

An amount of $150,000 has been allocated for another project to develop accommodation for transient fruit-pickers. It sounds like a legitimate application of funds. I have spoken to the proponent; he seems a decent enough bloke. He has not put in an application to the council yet. There is a long way to go before this project will in fact turn into any jobs or any beds for any of the seasonal workers who are currently in need of accommodation on the Atherton Tableland. But two projects have gained the most prominence in this whole story. The first one is the Atherton hotel. The Atherton hotel is a sweet little hotel in the middle of town. It is a standard sort of country pub. It has a bar at the front. It has lodged an application for some poker machines. A couple of nights a week it has things that I do not really approve of—topless barmaids and things like that. It is not the sort of place that I would usually go to. However, the Atherton hotel received $500,000 to develop 10 four-star hotel rooms, a 350-seat function room and stage and a 50-seat conference facility. Most people, who have any understanding of conference venues, know that you do not put them in a place where there is not much parking space or where the general clientele is more interested in whether it is Wednesday night and topless barmaid night. That is not good use of taxpayers’ money.

Once again, were all of the other hoteliers and club operators in Atherton asked if they supported such a proposal? The answer was no. But this proposal has been approved—$500,000 of taxpayers’ money—for a hotel which is in direct competition with four other hotels and a number of clubs in Atherton, much less Mareeba. There is no understanding of where conference facilities should be located and no understanding that people who want to go to a conference on the Atherton-
ton Tableland want to be in the countryside, not in town.

Senator McGauran—It has a good counter meal.

Senator McLUCAS—It does have a very good counter meal. That is true.

Senator Sherry—Julian has obviously been there!

Senator McLUCAS—But not Wednesday nights, Senator McGauran! But the doozy, the best one of all, was the $491,900 that was allocated to the Mareeba Wild Animal Park. The Mareeba Wild Animal Park apparently, according to ATSRAC, fitted within the priorities that were established for tourism infrastructure. But, when I read the tourism document—a very good document, funded through ATSRAC—I could not see how, using that document, you could advocate a wild animal park with zebras, lions and rhinoceroses and hippopotami as an appropriate adjunct to our tourism potential in Far North Queensland, where our attributes are the beauty of our nature. But ATSRAC decided that it would be. They gave $491,900 to David Gill about two months before he went bankrupt and went home to England. We cannot get this money back from the Mareeba wildlife park. It was a disaster in waiting. Anyone with eyes could have seen that that money was going to go nowhere. And the Deputy Prime Minister signed off on that money.

The other thing the Senate needs to understand is that there are two paths for approval under the ATSRAC process. It goes through the local organisation—ATSRAC, the regional advisory committee—but DoTARS does its own assessment of the application, its own due diligence, and makes its own recommendations to the minister. On my questioning of departmental officials during estimates on the last two occasions, they confirmed that all these projects had been given to the Deputy Prime Minister for approval. We cannot point the finger at the people on the tablelands; the finger needs to be pointed at the department and the minister. The minister approved nearly $500,000 to go to a wildlife park that went bust almost within minutes of receiving that money, and now we cannot get that money back.

I have written to the Deputy Prime Minister on two occasions now, asking for a meeting to talk with him—firstly, to express my concerns for the retention of the funds in that program so that we can actually do some good with the almost $9 million that is left and, secondly, to go through the detail of some of the information that people have brought to me that they do not feel confident about putting in the media themselves, because we are talking about small rural communities. I will be asking the Deputy Prime Minister, if he ever responds to my two letters, for a full audit of all the grants that have been applied. We need to know whether money is expended in line with the application; we need to know what the outcomes are, particularly in terms of job generation; and we need to assess the sustainability of each grant for ongoing economic value. Once we have done all that, we need to publish it so that confidence in this project can finally be built. More than half the money has been spent. I can see a little bit of a value, but certainly not $9 million worth. This program should be about bringing people together, not tearing them apart. Yet that is what is happening on the Atherton Tableland as a result of the Deputy Prime Minister's inaction.

Liberal Party: Western Australia

Senator WEBBER (Western Australia) (8.32 p.m.)—I do not propose to take up too much of the Senate's valuable time. These days federal elections are, more often than not, close-run affairs. I suspect this will
prove to be the case with the coming one as well. The Australian people have become increasingly cynical over the years about the political process and politicians, unfortunately. Given some of the recent goings-on in my home state of Western Australia, they are justified in being cynical. Today in the Australian newspaper is an article headed ‘Letter scam rocks Liberals’. Essentially, the people of Western Australia have seen an inquiry into the Liberal campaign for Swan and specifically the writing of letters to the local newspaper.

An 87-year-old woman, Emily Dickman, had published in the local community newspaper, the Southern Gazette, a letter containing a number of false accusations against the member for Swan, Kim Wilkie. Ms Dickman’s letter claimed that Mr Wilkie had failed to attend a community crime forum that he had organised. Not only did Mr Wilkie attend that forum but he also had an attendance register that did not contain the name Emily Dickman. Concerned about this accusation, Mr Wilkie’s staff contacted Ms Dickman, who indicated that the letter had in fact been written by the Liberal candidate for Swan, Andrew Murfin.

Mr Murfin was interviewed on Perth radio on Friday morning last week but on Friday afternoon, when he was scheduled to appear at his own community crime forum, he failed to appear. I am sure that the irony escapes no-one. To avoid answering the questions of the press, he did what the false letter claimed Mr Wilkie had done. It seems that, in the electorate of Swan, what goes around comes around.

Senator Crossin—That’s what Shane Stone said on the radio the other day!

Senator WEBBER—Indeed. It now appears from the article in the Australian today that the fall guy—or in this case the fall woman—has been found for the false letter. One of Mr Murfin’s campaign workers has been given notice to explain how the letter came to be published. This is in fact the fifth attempt by the Liberal campaign in Swan to explain this misleading letter. On one occasion on Thursday last week, Ms Dickman claimed to local press, ‘I wrote the letter, and Mr Murfin tidied it up.’ Then Ms Dickman twice claimed, when contacted by other media outlets in Perth last week, that Mr Murfin had helped write a letter to her niece in England and she knew nothing about the letter published in the Southern Gazette. Then there is Mr Murfin himself. On 6PR, a Perth radio station, on Friday last week he claimed that he had helped Ms Dickman write a letter so that she could claim money back on her health insurance policy, and he knew nothing about the letter to the Southern Gazette. It would seem that everyone but Mr Murfin is to blame—and now we have found the fall person.

Last night as I sat and watched Media Watch, which identified letter writers to major newspapers who had failed to identify potential conflicts of interest, I wondered whether Ms Dickman and the Liberal campaign for Swan would be given their well-deserved air time as well. The Southern Gazette editor printed a footnote in this week’s newspaper that said:

Ms Dickman’s letter included her details but attempts to contact her were unsuccessful. As she was listed on the electoral roll, it was decided to publish the letter. As a result of this issue we have reviewed and changed our verification process. So the decent, hardworking staff of the Southern Gazette now have to take additional steps to verify letter writers as a result of the actions of the Liberal campaign in Swan. It is clear from the footnote that the editor and staff—and no doubt the readers—of the Southern Gazette are more cynical about the political process as a result of this letter fix-up.

CHAMBER
This of course is only the proverbial tip of the iceberg in my home state. It is not the first time that we have seen Liberal candidates coordinating these kinds of letter campaigns. In fact, the Liberal member for the state seat of Kalgoorlie also has form when it comes to having ink on his hands. It is true that the pen is mightier than the sword, especially when the pen is wielded by unseen people on campaign teams whose coordinated propaganda messages are portrayed as the view of everyday Australians. So much for truth overboard—when you actually start from a position of deceiving the Australian people, there is no truth to get on board in the first place. It is little wonder that the Australian people are cynical.

The Australian people also have the right to be cynical about former ministers and members of parliament who leave this place and immediately jump into the ranks of lobbyists in the very area that they had responsibility for in government. Mr Fahey, Mr Reith, Dr Wooldridge and now our former colleague Richard Alston have all joined the ranks of lobbyists that are working in portfolio areas for which they had ministerial responsibility. The behaviour of another Western Australian falls into this category as well. According to the West Australian published on 31 July this year, the member for Canning, Don Randall:

... lobbied the Minister responsible for the Australian Securities and Investments Commission on behalf of a Perth businessman who was being investigated by the corporate watchdog.

As a result of this lobbying, Mr Randall accepted shares in the WA company Reefton Mining. Reefton Mining occupies a rather dubious place in WA corporate history. During the period 1 July to 31 October 1999, shares in Reefton Mining surged from a mere 7c a share to 35c a share. According to the article in the West Australian, ACC documents show that there was false and insider trading going on at Reefton Mining.

At that time a deal was being negotiated to sell a Mr Nigel Mansfield’s online casino project to Reefton Mining. One of the reasons that Reefton Mining was looked at closely was that several known Perth identities, or ‘persons of interest’ in police parlance, were involved with Reefton Mining or the online casino project. Indeed it is alleged that the notorious Mr John Kizon was one of those persons of interest. According to the paper, Mr Randall’s client was involved in the false and insider trading at Reefton. This client, who apparently caused ASIC to state that it would continue to hunt the man down, was important enough for Mr Randall to make an appointment with the then Minister for Financial Services and Regulation, Mr Hockey. According to the paper, he was given a warning by Mr Hockey to stay away from the target.

At this point one wonders what Mr Randall did. He accepted the payment of the Reefton Mining shares for the services he had provided. However, he claimed to the newspaper that he had no reason to not accept the shares. I quote:

“Not really because I was being paid for services,” he said. “I didn’t know who I was dealing with at that time, did I? At that stage I thought it was just shares in a mining company.”

How could he not know whom he was dealing with? The minister had given him a private warning to stay away from the target. Any reasonable person would have said to themselves: ‘Hold on a minute, my client is being investigated by ASIC. The minister is telling me to stay away from him. Maybe this is not quite all above board.’ A reasonable person would not have taken shares from a client who was under suspicion of behaving illegally.
Even though it is clear that Mr Randall has not acted illegally, his involvement in the matter yet again reinforces the Australian people’s cynical view of politicians. One wonders what Mr Randall was attempting to achieve by lobbying the minister. Surely he was not attempting to get the minister to influence an independent ASIC investigation. One thing is clear: former ministers and members of this parliament must be above reproach if they are going to act as lobbyists when they leave here.

Finally, I have to say that I feel sorry for the Prime Minister—and that must come as a surprise to most people. However, it is hard not to feel sorry for him when every time he comes to Perth the WA division of the Liberal Party manages to serve him up yet another scandal. The last time Mr Howard was in Perth, in February, they managed to serve him up Paul Afkos, the former candidate for Stirling. The irony for those of us not in the Liberal Party was that the Prime Minister made a big announcement on his Tough on Drugs policy on the same day that he opened Mr Afkos’ campaign office in Stirling. Within 11 days Mr Afkos was no longer the candidate for Stirling—a man whom the Prime Minister had described in these glowing terms:

He has been in every sense a wonderful citizen of this country and I’m very proud to have him as the Liberal Party candidate here in Stirling.

Not long after that ringing endorsement it was revealed by the West Australian that Mr Afkos was embroiled in an investigation after he had borrowed $300,000 from a convicted drug dealer. The real problem is not the link to the convicted drug dealer, although it is a very serious issue, but the story that ran in the West Australian on 16 February 2004 titled ‘Libs hid Afkos deal for months’. It appears that for two months Liberal Party officials kept secret the information which the newspaper broke only in February. The article stated:

Mr Afkos yesterday told The West Australian he had told the Liberal Party in December about his involvement with the man who had been arrested by organised crime detectives.

But even as Mr Howard launched Afkos’ campaign in Perth two weeks ago, senior party officials kept the sensational information secret. Liberal Party State director Paul Everingham yesterday admitted he had been made aware of the $300,000 loan and the drug charges and approached Mr Afkos after another Liberal Party member had raised concerns with him. He ordered the party lawyer to investigate the matter.

You have to wonder what sort of game they were playing at Menzies House. It cannot have been much of an investigation if they had not got to the bottom of the matter before the Prime Minister’s visit.

Some of the questions that still need to be answered on this matter are: given that the Director of Public Prosecutions has ruled that the $300,000 must now be repaid as an asset allegedly attributed to a person convicted of and currently charged with drug trafficking, what inquiries have been made to ascertain the source of the campaign funds and the ownership and lease arrangements for campaign offices in the seat of Stirling; given that it is normal practice for campaign funds to remain with the campaign, can we be assured that no money has come from persons associated with or alleged to be involved with drug trafficking; and what inquiries have been made as to any other contributions or donations that may have been made to the Liberal Party by either Mr Afkos or his associates, in particular the person who is the subject of the $300,000 loan? As I said at the outset, we are often concerned about why the political process is held in such low regard by our fellow Australians. These three examples from the Western Aus-
Political Parties: Candidates

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (8.46 p.m.)—There is an election looming in the very foreseeable future, and it is probably as good a time as any to look at some of candidates that are presenting themselves to the people. There are the normal parties; the single issue parties. There are other types of candidates and, of course, there are the more bizarre ones.

Senator Crossin—Talk to us about Telstra, Bozzie!

Senator BOSWELL—Don’t be a goose all your life, dear—you really are one.

Senator Sherry—It takes a lot to get under your skin, Bozzie!

Senator BOSWELL—No, she is not getting under my skin but anyone that would sit at the showground and hand out anti-Latham posters to people—they had a picture of Latham on them—is not really bright.

Senator Sherry—Mr Acting Deputy President, I rise on a point of order. I want to ask whether that description by Senator Boswell was in fact parliamentary.

The ACTING DEPUTY PRESIDENT (Senator Watson)—Senator Boswell, if you would not mind addressing your remarks through the chair, you will not run into these sorts of problems.

Senator BOSWELL—As I was saying, there are a number of people that present themselves to the electorate: the normal parties—the Labor Party, the Liberal Party and The Nationals—the single issue candidates and the absolutely bizarre ones. Let me say that there are none more bizarre than the Citizens Electorate Council, which should be described not as a political party but more as a cult.

Senator Crossin interjecting—

Senator BOSWELL—if you are going to continue to interject, I will tell the members of this parliament—and it will go down on record—what documentation you handed out at the Northern Territory show. It will be very embarrassing for you.

Senator Sherry—Me?

Senator BOSWELL—No, not you—your colleague at the back.

Senator Crossin—We handed out balloons.

Senator BOSWELL—No, it had a picture of your leader Latham on it but it was directed at small business. You sat there like a big goose and handed out anti-Latham propaganda on the Labor Party stand. And if that isn’t embarrassing—you were sitting there for 45 minutes handing out anti-Latham—

The ACTING DEPUTY PRESIDENT—Order! Senator Boswell, if you want to resume your speech, you will address your remarks through the chair.

Senator BOSWELL—I am happy to do so but I do seek protection. If I am provoked, I will retaliate. But if you want to keep order in the House then I suggest you talk to Senator Crossin.

The ACTING DEPUTY PRESIDENT—Senator Boswell, the chair will make those decisions.

Senator BOSWELL—Let me continue about the Citizens Electorate Council, because they are already out there campaigning. I do not consider them a political party at all. They are more like a cult. These people follow a person called Lyndon LaRouche, who was a candidate in the US presidential elections of 1976, 1980, 1984, 1988, 1992, 1996 and 2000. He has certainly been a trier in the American presidential stakes but he has been spectacularly unsuc-
cessful. But that has not stopped him coming to Australia to establish the Citizens Electorate Council as a political party.

About five or six years ago I was on a visit to America and by chance I opened a magazine at an airport—it was the American equivalent of the Australian Women’s Weekly—and there was a two-page spread on Lyndon LaRouche describing how he had preyed on the vulnerable and the elderly. The tactic is to tell people that the world is under threat from various types of businesspeople and various organisations and that only his party has the ability to save it. Older people are vulnerable and can fall for this type of idea hook, line and sinker, and that is what it showed in this American Women’s Weekly. LaRouche served five years of a 15-year sentence for defrauding the vulnerable, the gullible and the elderly. The LaRouchens decry this and say it was nothing more than a political trial, a politically motivated show trial, a conspiracy to keep him out of the way. In fact, it was straight-out fraud of the worst kind by preying on the most vulnerable—the elderly and the naive.

There are just as many vulnerable people in Australia who actually believe in the LaRouche type voodoo economics. They believe they will actually do something for this nation. Even in Australia, they prey on the elderly and naive with a prepared sales pitch that the country is in terrible trouble and they have the answers—they can save it. They use high-pressure tactics to extract every dollar they can. The CEC mainly operates in rural Australia, and that is why I want to offer some warning tonight.

Senator Crossin interjecting—

Senator BOSWELL—You want to shut up. If you shut up, most people do not think you are a fool.

Senator Sherry—That is unparliamentary.

The ACTING DEPUTY PRESIDENT (Senator Watson)—Senator Boswell has been provoked continually. Senator Crossin, I ask you to allow the speaker to make his presentation.

Senator Sherry—Mr Acting Deputy President, I raise a point of order. The description used by Senator Boswell then was unparliamentary and he should be asked to withdraw it.

The ACTING DEPUTY PRESIDENT—It was the result of an interjection.

Senator BOSWELL—I withdraw. Tonight I had a ring from someone in North Queensland which has led to me presenting this speech. There is a CEC candidate running in North Queensland in the seat of Dawson who is already heavily advertising in the local media. I have had a look at the Australian Electoral Commission returns for 2002-03 and they show the total returns to the CEC as $1,462,703, while their media group, CEC services, had $271,592. They are well financed and able to mount these campaigns.

Some of their more bizarre claims are that the world is controlled by an oligopoly led by the Queen and Prince Philip, who also control the drug trade, and that the Ku Klux Klan is controlled by the FBI. Mr Acting Deputy President, you would think that no one would be able to support claims like that. Yet there are some people that are gullible and they do fall for it.

I want to say this too. The CEC is totally anti-Semitic—possibly even more so than the League of Rights. Many people may have heard—I certainly have in rural Australia—that Martin Bryant was set up as a patsy at Port Arthur to bring more restrictive gun laws into Australia. Those are things that go round and should be absolutely debunked in this parliament. The CEC publication regularly features ludicrous and defamatory at-
tacks on Jewish organisations and leaders such as Mark and Isi Leibler. They claim that the Australian defamation commission and the Australia/Israel and Jewish Affairs Council are protecting the world’s financial oligopoly. In the past, the Leiblers have falsely been accused of being part of illegal and immoral activity, including having links to the drug trade and pornography. Again, that is a ludicrous claim. The CEC try to peddle their anti-Jewish propaganda in areas with large Jewish populations. They distributed pamphlets outside Jewish community centres when the Premier of Victoria was addressing the Jewish community. The subject was ‘A recent trip of Steve Bracks to Israel’.

The CEC get a very minor vote—around 0.05, 0.06 or 0.07 per cent. But it is a vote they do not deserve. When you talk about Lyndon LaRouche and the CEC, it is where truth becomes stranger than fiction. (Extension of time granted) I made reference to the CEC being well financed and being able to support a political campaign. Already they are running television ads, and the election has not even started. But we ought to explore some of their fundraising techniques. They are taught by operatives from the LaRouche organisation in the USA and they raise most of their money through the use of younger members. They start by cold calling very vulnerable people, such as the elderly and the naive, with a prepared sales pitch and then they really work on them.

I know that we have a democracy and anyone is entitled to a stand in Australia. I support that. It is a free country and we have a democracy that allows everyone to stand up and present themselves to the people. But I do say that, when organisations like this present themselves, they should be exposed. They should be exposed for the fraud that they are.

I do not know how people actually fall for this stuff. I believe the group is more of a cult than an actual political party. We have seen the CEC exposed on television on numerous occasions, but still it gets out there. The people who actually stand for seats are brainwashed. They stand outside and solicit names on petitions. Let me say this: it deserves absolutely no support from anyone in the Australian electorate.

Senate adjourned at 8.59 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

Productivity Commission—Reports—
No. 29—Impacts of native vegetation and biodiversity regulations, 8 April 2004.
No. 31—Review of the gas access regime, 11 June 2004.

Tabling

The following documents were tabled by the Clerk:

Class Rulings CR 2004/81 and CR 2004/82.
Product Ruling—
PR 2003/8 (Notice of Withdrawal).
PR 2004/80.
Sydney Airport Curfew Act—Dispensations granted under section 20—Dispensation No. 8/04 [2 dispensations].
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Medicare: Bulk-billing
(Question No. 2935)

Senator Nettle asked the Minister representing the Minister for Health and Ageing, upon notice, on 19 May 2004:

With reference to the Government’s Medicare Plus package, in which it is stated an additional 1.8 million in services will be bulk-billed each year:

(1) (a) What was the analytical procedure used to determine this figure; and
    (b) Can details be provided.

(2) Does the analysis include the categorisation of what groups of people will have access to extra bulk-billed services; if so, can the categories and the breakdown of groups be provided.

(3) Given the Rural, Remote and Metropolitan Areas classifications 1 and 2 are excluded, does the analysis include the percentage or number of Australians that will be able to access these extra bulk-billing services; if so, can these figures be provided.

Senator Ian Campbell—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

1.8 million refers to the estimated number of additional bulk billed services that will attract the $7.50 incentive payments not the amount of money that will be spent on these services.

(1) (a) Analysis was based on Medicare information for individual GP provider numbers for the calendar year 2003. For each individual provider number the number of additional bulk billed services resulting from the $7.50 incentive was calculated based on the assumption that for each provider, services previously patient charged would be bulk billed if the average patient charge for patient bulk billed services for that provider for services covered by the incentive was less than $7.50. This analysis provided an estimate of 1.8 million additional bulk billed services.
(b) Aggregate data from this data set is contained in the table below.

2003 Calendar year RRMAs 3-7 + Hobart and surrounds

<table>
<thead>
<tr>
<th>Total services</th>
<th>Bulk billed services</th>
<th>Services for providers with average charge &lt; $7.50</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concession cardholders</td>
<td>14,108,125</td>
<td>8,974,893</td>
</tr>
<tr>
<td>Children under 16 not covered by concession cards</td>
<td>2,302,723</td>
<td>1,431,011</td>
</tr>
<tr>
<td>Cardholders + non concessional Childers</td>
<td>16,410,848</td>
<td>10,405,904</td>
</tr>
</tbody>
</table>

(2) The analysis was based on Medicare information for individual provider numbers not patients. Aggregate data from services provided by individual doctor provider numbers has been supplied in response to the above question 1(b).

(3) The data used in the modelling of this measure only pertains to the number of services that individual GPs provide to certain categories not the number of people that a GP sees or that these services represent. In RRMAs 3-7, Hobart and surrounds for the calendar year 2003 approximately 16.4 million GP services were provided to Commonwealth Concession cardholders and children under
16. This represents around 30% of all services provided to Commonwealth Concession card holders and children under 16

**Defence: Australian Defence Force Academy**

(Question No. 3011)

Senator Chris Evans asked the Minister for Defence, upon notice, on 15 June 2004:

(1) What annual funding has the Commonwealth provided to the Australian Defence Force Academy (ADFA) in each of the past 5 financial years.

(2) What is the projected Commonwealth budget allocation for ADFA for the 2004-05, 2005-06, 2006-07, and 2007-08 financial years.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) The costs provided are direct operating expenditure. They do not include accrual overheads such as compensation, ADF housing, ADF health and ADF removals. The following figures are, therefore, estimates derived from a snapshot of total accrual expenses in 2002-03. They are based on a nominal increase of 3% per annum.

1999-2000 - $82.2m
2000-01 - $84.7m
2001-02 - $87.3m
2002-03 - $90.0m
2003-04 - $70.0m

Note 1: The decrease in 2003-04 is attributable to the end of the capital use charge. The capital use charge only applied up to 2002-03 and, therefore, is not included in subsequent years.

(2) 2004-05 - $72.1m
2005-06 - $74.3m
2006-07 - $76.5m
2007-08 - $78.8m

**Taxation: Goods and Services Tax**

(Question No. 3041)

Senator Brown asked the Minister representing the Treasurer, upon notice, on 23 June 2004:

(1) Are domestic generators of electricity that are connected to the grid charged the goods and services tax (GST) on their total consumption of electricity rather than their net consumption (that is, excluding the quantity that they have generated themselves).

(2) Does the above situation apply to all generators.

(3) What is the justification for charging GST on electricity generated and consumed on the same premises.

(4) In what other situations would consumption of a good or service created or provided by the person or organisation consuming it attract the GST.

(5) What action will the Treasurer take to remove this impost.

Senator Minchin—The Treasurer has provided the following answer to the honourable senator’s question:
QUESTIONS ON NOTICE

(1) (2) and (3) This depends on the terms of the contract between the parties and on the meters monitoring the flow of electricity between them. It may be that there are two separate supplies: one being electricity supplied by the domestic generator and one being the electricity supplied by the retailer. Whether GST is payable on the supply by the domestic generator depends on whether the domestic generator is registered for GST. Generally, most domestic generators will not be registered for GST and therefore their supply of electricity back to the retailer will not be subject to GST. In respect to the retailer’s electricity supply to the domestic generator, this will be a taxable supply and subject to GST. However, I am informed by the ATO that, in practice, there may be meters installed on the domestic generator’s premises that do not measure the two supplies separately. That is, the meter can only measure the net flow of electricity supplied (i.e. the electricity supplied to the domestic generator less the electricity they supply back). In such cases, therefore, the ATO allows the retailers to account/charge for GST on this net value. In other cases where meters are installed that can measure the separate supplies, the ATO would expect GST to be calculated/charged on the total value supplied by the retailer.

(4) Supplies that an entity makes to itself are outside the scope of the GST. For GST purposes, only supplies made to another entity are considered.

(5) The Government has no plans to change the GST treatment applying to the supply of electricity.

Defence: Conscription
(Question No. 3058)

Senator Brown asked the Minister for Defence, upon notice, on 5 July 2004:

(1) Do bills currently before the United States of America House of Representatives (specifically, bills S 89 and HR 163) propose to reintroduce the military draft in 2005.
(2) Can the Minister guarantee that conscription will not be reintroduced in Australia.
(3) Has conscription been considered by the Minister or the department since 2002.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) It is not the practice of the Australian Government to interpret legislation currently being considered by foreign governments.
(2) The Australian Government does not intend to reintroduce conscription.
(3) No.

Environment: Grey Nurse Shark
(Question No. 3063)

Senator Allison asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 7 July 2004:

(1) When did the Government propose the establishment of a marine sanctuary at the Cod Grounds Grey Nurse Shark critical habitat site.
(2) Since that date, what action has the Government taken to protect the site from the recognised key threat to the shark of line fishing.
(3) Given that the Government to date has refused to list this, and other critical habitat sites identified in its recovery plan for the Grey Nurse Shark in Australia, on the register of critical habitat under the Environment Protection and Biodiversity Conservation Act 1999, will the Government list the site on the register; if so, when; if not, why not.
(4) With reference to the Government’s recovery plan for the Grey Nurse Shark which was published in 2002, can statistics be provided as to the current status of the species, and evidence of the recovery or further decline of the Grey Nurse Shark since the implementation of the plan.
Senator Ian Campbell—The answer to the honourable senator’s question is as follows:

(1) The Government released a Discussion Paper on conservation options for the Grey Nurse Shark in the Cod Grounds area in March 2003, in which the option of a marine protected area was canvassed.

(2) The Government has proceeded with the option of a marine protected area. In December 2003, in accordance with subsections 351(1) and 351(2) of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), a notice was gazetted requesting public comment on the proposed proclamation of the Cod Grounds Marine Reserve.

(3) The declaration and management of the Cod Grounds as a Marine Protected Area will provide secure legislative protection for the Grey Nurse Shark. In addition, through the development of a Plan of management, and the operation of the EPBC Act and its regulations, all activities affecting the area will be assessed, and managed, to protect Grey Nurse Sharks and their habitat.

The declaration of the Cod Grounds as a Marine Protected Area does not exclude the possibility of including the Cod Grounds on the Register of Critical Habitat. However, the current priorities are to finalise the Marine Protected Area arrangements, and to focus on specific recovery actions that will improve the protection for the species.

(4) No.