INTERNET
The Journals for the Senate are available at

Proof and Official Hansards for the House of Representatives,
the Senate and committee hearings are available at

For searching purposes use
http://parlinfo.aph.gov.au

SITTING DAYS—2004

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

RADIO BROADCASTS
Broadcasts of proceedings of the Parliament can be heard on the following Parliamentary and News Network radio stations, in the areas identified.

- **CANBERRA**: 1440 AM
- **SYDNEY**: 630 AM
- **NEWCASTLE**: 1458 AM
- **GOSFORD**: 98.1 FM
- **BRISBANE**: 936 AM
- **GOLD COAST**: 95.7 FM
- **MELBOURNE**: 1026 AM
- **ADELAIDE**: 972 AM
- **PERTH**: 585 AM
- **HOBART**: 747 AM
- **NORTHERN TASMANIA**: 92.5 FM
- **DARWIN**: 102.5 FM
CONTENTS

WEDNESDAY, 11 AUGUST

Fisheries (Validation of Plans of Management) Bill 2004—
  First Reading ........................................................................................................... 26087
  Second Reading .................................................................................................... 26087

Business—
  Consideration of Legislation .............................................................................. 26088

US Free Trade Agreement Implementation Bill 2004 and
US Free Trade Agreement Implementation (Customs Tariff) Bill 2004—
  In Committee ........................................................................................................ 26088

Matters of Public Interest—
  Former President Ronald Reagan ........................................................................ 26127
  Government Purchasing Policy ............................................................................. 26130
  Racism .................................................................................................................... 26133
  Social Welfare: Pensions and Benefits ................................................................. 26136

Questions Without Notice—
  Iraq ......................................................................................................................... 26140

Distinguished Visitors ............................................................................................ 26141

Questions Without Notice—
  Employment: Mature Age Workers ................................................................... 26141
  Former Parliamentarians: Business Appointments ............................................. 26142
  Indigenous Affairs ............................................................................................... 26143
  Former Parliamentarians: Business Appointments ............................................. 26145
  Veterans: Health Services .................................................................................... 26145

Distinguished Visitors ............................................................................................ 26146

Questions Without Notice—
  Herron, Senator the Hon. John: Appointment .................................................... 26146
  Health: Asbestos Related Disease ....................................................................... 26148
  Sport: Drugs Testing ............................................................................................. 26149
  Environment: Great Barrier Reef ......................................................................... 26150
  Iraq: Military Involvement ................................................................................... 26152
  Immigration: Detainees ....................................................................................... 26153

Questions Without Notice: Additional Answers—
  Health: Asbestos Related Disease ....................................................................... 26154
  Telecommunications: Interception ....................................................................... 26154
  Former Parliamentarians: Business Appointments ............................................. 26155

Questions Without Notice: Take Note of Answers—
  Iraq: Military Involvement ................................................................................... 26155
  Immigration: Detainees ....................................................................................... 26162

Petitions—
  Military Detention: Australian Citizens .............................................................. 26163
  Media: Content ..................................................................................................... 26164
  Education: Higher Education .............................................................................. 26164
  Medicare: Bulk-Billing ....................................................................................... 26164

Notices—
  Presentation ........................................................................................................... 26164

Committees—
  Selection of Bills Committee—Report ................................................................. 26168

Business—
  Rearrangement .................................................................................................... 26172
CONTENTS—continued

Suspension of Standing Orders..................................................................................... 26172
Procedural Motion........................................................................................................ 26176
Motion .......................................................................................................................... 26177
Notices—
Postponement ............................................................................................................... 26181
Nuclear Waste .................................................................................................................. .. 26181
Human Rights: Burma ....................................................................................................... 26181
International Day of the World’s Indigenous Peoples.................................................. 26181
Committees—
Electoral Matters Committee—Extension of Time ....................................................... 26182
Rural and Regional Affairs and Transport Legislation Committee—Meeting ............ 26183
Scrutiny of Bills Committee—Report ........................................................................ 26183
Budget—
Consideration by Legislation Committees—Additional Information ......................... 26183
Committees—
Foreign Affairs, Defence and Trade Committee: Joint—Report ................................. 26183
Public Works Committee—Reports ............................................................................. 26184
Public Accounts and Audit Committee—Report .......................................................... 26186
Parliamentary Zone—
Proposal for Works ....................................................................................................... 26187
Environment: Great Barrier Reef—
Return to Order ............................................................................................................ 26187
Delegation Reports—
Parliamentary Delegation to Thailand, Vietnam and Cambodia .................................... 26195
Higher Education Legislation Amendment Bill (No. 3) 2004 and
Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004—
First Reading ................................................................................................................ 26195
Second Reading ............................................................................................................. 26195
Committees—
Employment, Workplace Relations and Education References Committee—Report .. 26196
Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004—
Report of Senate Economics Legislation Committee .................................................. 26203
Crimes Legislation Amendment (Telecommunications Offences and Other Measures)
Bill (No. 2) 2004—
Report of Senate Legal and Constitutional Legislation Committee .......................... 26203
US Free Trade Agreement Implementation Bill 2004 and
US Free Trade Agreement Implementation (Customs Tariff) Bill 2004—
In Committee ................................................................................................................ 26203
Documents—
Tabling .......................................................................................................................... 26251
Questions on Notice—
Environment: Port Botany Container Terminal—(Question No. 3052) ......................... 26253
Environment: Renewable Energy—(Question No. 3061) ............................................. 26254
Drugs: Postinor-2—(Question No. 3066) ..................................................................... 26254
Environment: Endangered Species—(Question No. 3068) ......................................... 26255
Medicare—(Question No. 3081) .................................................................................. 26256
Health: Pharmaceutical Benefits Scheme—(Question No. 3082) .............................. 26257
The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 a.m. and read prayers.

FISHERIES (VALIDATION OF PLANS OF MANAGEMENT) BILL 2004

First Reading

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (9.31 a.m.)—I move:

That the following bill be introduced: A Bill for an Act to provide certainty about the validity of certain plans of management under the Fisheries Management Act 1991, and for related purposes.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (9.31 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (9.32 a.m.)—I table the explanatory memorandum relating to the bill and 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—

FISHERIES (VALIDATION OF PLANS OF MANAGEMENT) BILL 2004

The Fisheries (Validation of Plans of Management) Bill 2004 (the Bill) provides certainty about the validity of certain plans of management determined, amended and/or revoked under the Fisheries Management Act 1991. It also provides certainty about things done under or for the purposes of those plans.

The Australian Fisheries Management Authority (AFMA) manages Commonwealth fisheries under the Fisheries Management Act 1991 and the Fisheries Administration Act 1991. Under Division 2 of Fisheries Management Act 1991, plans of management can be created for Commonwealth fisheries to establish the arrangements under which the resources are to be sustainably managed.

A plan of management may determine a range of matters for a fishery including the area, fishing method and gear, the fishing capacity and target species. It may also specify how AFMA will adjust catch levels when there are changes in the size and structure of the stock, economic and social conditions in a fishery or other events that may impact upon the biological sustainability of the stock or associated and dependent stocks.

A plan of management may also provide for the management of the fishery by means of a system of statutory fishing rights (SFRs) and other fishing concessions, and may formulate procedures to be followed for selecting persons to whom fishing concessions are to be granted. It is put in place following extensive consultation and review processes.

Plans of management are an essential tool for the effective management of Commonwealth fisheries and have been put in operation for a number of years in some of the significant Commonwealth fisheries. As such, it is important to ensure that nothing can call into question the regime of access to resources under these plans and things done under or for the purposes of those plans.

In this respect, a legal audit was undertaken last year which identified that there is a potential argument that there may have been an inconsistency in the process by which plans of management were determined, amended or revoked before July 2003 by the Managing Director or by the Acting Managing Director of AFMA.

There is a small, residual legal risk that this potential inconsistency may encourage some fishers to challenge the validity of these plans, even though the plans of management were formulated.
correctly, with due regard to the proper consultation and review processes.

The Australian Government is of the view that all current plans of management are valid. However, it is important for industry that these plans are placed beyond risk and are certain. The consequences of a successful challenge could be significant. It would undermine many of the existing arrangements and rules underpinning the management of Commonwealth fisheries. This would create uncertainty and instability within the industry.

The Australian Government is of the firm belief that the plans of management will withstand any challenge wants to ensure there is no scope for uncertainty about the status of the plans of management.

The provisions of this Bill address this small legal risk and put beyond all doubt the validity of existing plans of management determined, amended and/or revoked under the Fisheries Management Act 1991 and things done under or for the purposes of those plans. The Bill will have no affect on fishing operators, other than to ensure that the current management arrangements relating to their fisheries are certain.

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

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

Question agreed to.
tion of that clause in the free trade agreement. Questions have been raised about the ambiguity around the degree of change that is required before the process is triggered—whether such a change must affect governance structures or simply one investor and whether it is necessary to show that such change has resulted in harm to an investor.

The amendment being put forward is one that the government ought to consider if they want to give assurances to the Australian people. While on the one hand they may talk about the free trade agreement with the United States not including an investor-state dispute resolution mechanism, the reality is that the agreement provides an opportunity for a foot in the door. The government must at the very least explain what the process is, how it can be triggered and under what circumstances, and give some explanation of the changes in circumstances that could affect the settlement of disputes. This does raise issues about how the North American Free Trade Agreement has been played out in North America, particularly between the United States, Canada and Mexico. Some of these issues have already been put on the record but I do want to repeat some of them because the government need to give an ironclad assurance that we will not end up in a situation at some time in the future where powerful corporations from the United States have an opportunity through this agreement, if circumstances should change, to directly sue the government or other governments as a result of what it is we are agreeing to in the free trade agreement itself.

I think that in many respects Canada and Mexico probably never thought that they were going to end up in this particular situation either but you only have to look at some of the cases that have been brought forward to see they have. One is Metalclad v. the Municipality of Guadalcazar. In that particular case, the US corporation was awarded USD16.7 million because it was refused permission by a local municipality to build a 650,000-tonne per annum hazardous waste facility on land that was already so contaminated by toxic waste that local ground water was compromised. The site had previously been managed by a Mexican company and Metalclad had bought the land. But Metalclad applied for a permit to operate a toxic waste processing plant on landfill, which had previously been refused by the local municipality. After local protests, the governor of the particular state declared the site part of a special ecological zone, and I think we can see the irony in that. The reality, though, is that Metalclad sued the government of Mexico under the North American Free Trade Agreement, claiming that the actions of the municipal government amounted to expropriation without compensation, and the end result was USD16.7 million having to be paid to Metalclad.

There are other examples. One is Sun Belt Water Inc. v. British Columbia, involving Canada, where the US based company is in the process of suing Canada for USD10.5 billion because the Canadian province of British Columbia interfered with its plans to export water to California. Even though Sun Belt has never actually exported water from Canada, it claims that the ban reduced its future profits. This case reinforces the concerns of many Canadians that the NAFTA rules treat an essential service like water as a traded commodity. I think that these things are pertinent when you consider some of the COAG initiatives, particularly the creation of a national water trading system. There is already the treatment of water as a commodity. I know, for example, that occurs in many places, particularly in the Murrumbidgee Irrigation Area and the Coleambally Irrigation Area. So we are not talking about something that may happen; this is already starting to happen.
The list goes on: United Parcel Service of America v. the Canadian Postal Service and the issue of Ethyl Corp. v. Canada, about chemicals used as a fuel additive, which I think Senator Brown referred to yesterday. I wonder if the minister might care to respond to the issues raised in article 11.16.1, to give some explanation, given that the DFAT guide gives very little explanation, if anything at all, about what would trigger the process if, at some stage in the near future perhaps, a US corporation may get its foot in the door and may trigger the process, with the government having to respond by allowing consultations, thereby applying pressure to force the door open. So we will end up under the free trade agreement with the United States having exactly the same as what is in NAFTA: an investor-state dispute resolution mechanism. I do not think that anyone would want that, and I am sure that even my colleagues on the government side are probably not even aware that the door is slightly ajar and that it provides an opportunity for US corporations to be able to open that quite wide. So I think the government really needs to look seriously at this amendment because, unless the government is prepared to give an ironclad guarantee by ensuring that there never, ever is an investor-state dispute resolution mechanism by having an amendment of this sort, it can give no guarantees that this will not occur in the future.

Senator HARRIS (Queensland) (9.41 a.m.)—I wish to concur very much with what Senator Ridgeway has been discussing. When considering the Australia-US free trade agreement, we need to look at it in reflection and look at its similarities to NAFTA. If we look at chapter 11 of NAFTA, we see that its subchapter A has exactly the same heading—‘Investment’—as the free trade agreement, so there is a parallel even in the actual setting out of the two documents. If we look at sections of the agreement, we see these terms or headings: ‘Investors of another party’, ‘National treatment’, ‘Most-favoured-nation treatment’, ‘Minimum standard of treatment’ and ‘Performance requirements’. These are all in sections that have parts of NAFTA lifted out verbatim, and I emphasise the word ‘verbatim’. It is not that they are similar or that the chapters just by chance happen to be talking about the same issue; the wording contained within sections of the agreement is absolutely verbatim. One of the ones that Senator Ridgeway has picked up very aptly—subsection (2) of NAFTA’s article 1103, ‘Most-favoured-nation treatment’—says:

Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of another Party or of a non-Party with respect to the establishment, acquisition, expansion, management, operation and sale or other disposition of investments.

The words that I want to highlight in that are ‘or of a non-party with respect to the establishment’. What is the reference to ‘a non-party’? We know who the two parties are in the Australia-US free trade agreement. They are obviously Australia and the United States of America.

When the document clearly articulates the rights of a non-party entity, who is it speaking about? As a result of NAFTA, we now know what the reference to a non-party in NAFTA refers to. Senator Ridgeway raised two or three of the issues in the US. There are 19 actions that have either been heard and completed or are in the process of being completed. The issues are varied. For example, in the case of Ethyl Corp. v. Government of Canada, from 14 April 1997, a US chemical company challenged Canadian environmental regulations on gasoline. In the case of S.D. Myers Inc. v. Government of Canada a US waste treatment company challenged the
Canadian ban on the export of PCBs, compliant with the multilateral environmental agreement.

The United States themselves are not insulated against this process opened up in NAFTA. The concern of One Nation is that Australia is going to be exposed to the same situation that the US government find themselves in in the case of The Loewen Group Inc. and Raymond L. Loewen v. United States of America. In that case a Canadian funeral conglomerate is challenging a Mississippi jury’s award of damages. So we have a situation where a Canadian company, through NAFTA, is challenging the decision of a jury in a court case in the United States of America. In the case of Pope & Talbot Inc. v. Government of Canada a US timber company is challenging Canada’s implementation of the 1996 US-Canadian softwood lumber agreement. So a Canadian government agreement is under challenge from Pope & Talbot.

In the case of the Methanex Corp. v. United States of America a Canadian corporation is challenging California’s phase-out of MTBE, which is contaminating drinking water around the state. In the case of United Parcel Service of America v. Government of Canada UPS claims that the Canadian post office delivery service enjoys an unfair subsidy because it is a public service. That is an absolutely classic example. We have written into the US-Australia free trade agreement clauses whereby non-party entities can access this facility. I remind the chamber of the current request from the EU under the General Agreement on Trade in Services. GATS, to which Australia is a signatory, allows the European Union to challenge the status of Australia Post. So here we have another door opening. Senator Ridgeway made the comment that the door has been nudged open. It has not been nudged open—this allows somebody to sail a battleship through Australia’s rights.

I will keep going with my list of cases under NAFTA. In Mondev International Ltd. v. United States of America a Canadian real estate developer challenged a Massachusetts supreme court ruling on local government sovereign immunity. We are not talking here about a corporation having a disagreement with the American government; we are talking about the facility where a Canadian real estate developer challenged a Massachusetts supreme court ruling on local government sovereign immunity. We face the possibility that a non-party entity could sue the Australian government in relation to a Supreme Court ruling. What on earth are we getting into?

The government cannot say that this is rhetoric or that we are filibustering. We are providing, for this chamber and for the Australian people, documented proof of the type of loophole that Senator Brown’s amendment is attempting to close. These are the equivalent examples—real examples—of where NAFTA has allowed non-party entities to access a similar clause. In the case of the ADF Group Inc. v. United States of America a Canadian steel contractor challenged a US ‘buy American’ law. The equivalent section of the Australia-US trade agreement could actually result in a non-party entity—that is, any corporation, whether it be American or Australian—challenging Australia’s ability to have any laws that support the ‘buy Australian’ campaign. For goodness sake! Surely the government can see the dangers in this road that they are going down.

Then we have Waste Management against Mexico, which is again out of the NAFTA examples. In that case a US waste disposal giant challenged the city of Acapulco on the revocation of a waste disposal concession. So you have Acapulco declining to have a
waste disposal facility in their area with NAFTA being the vehicle under which that non-party entity accesses the rights under that agreement. Then we have Adams et al. against Mexico, where US landowners challenged a Mexican court ruling that the developer who sold them the property did not own land. Here we are now actually moving into property rights. If ever there is an area in Australia that is absolutely in disarray, it is the area concerning the right of a property owner within Australia to be able to enjoy their parcel of land in peace and harmony. These are just a few of the examples.

We have the situation in the Australia-US free trade agreement where similar, if not absolutely identical words, have been lifted out of NAFTA and placed in this agreement. We have a complete raft of actual examples of where this type of wording referring to non-party entities does not just nudge the door open; it blows it wide open and allows non-party entities to access the agreement. I foreshadow that I will have copies of this document made and shown to the whips in the chamber and I will seek leave to table that document.

Senator BROWN (Tasmania) (9.55 a.m.)—The amendment to the bill is an important one, as the last two speakers have said. It is about the ability of US corporations to seek arbitration, and therefore compensation, if they feel that their interests have been infringed by Australia acting in the national interest, through Australian governments—and that includes state governments—to foster, for example, the health, education or safety of Australians. What would help greatly at this stage would be for the minister to inform the committee about how the government interprets the loose wording of the agreement and to explain to the chamber just how the dispute resolution mechanism will work—give an example, explain how it will be triggered, what the process is for a dispute mechanism and how the arbitration component of the mechanism comes into play.

The amendment that the Greens have brought here would not allow an arbitration system that has, by the terminology, the equivalent weight of an Australian court, but it will not be an Australian court determining, for example, damages. Both previous speakers have explained how, in cases under the North American Free Trade Agreement, damages have led to billions of dollars in payouts to corporations over such things as the disposal of hazardous waste being prevented or toxic additives to petroleum. There was the famous case in Mexico where protection of a conservation area against being a hazardous waste dump was challenged and succeeded under the free trade agreement there. So I ask the minister to outline to the committee the process that will be undertaken when arbitration is sought by US interests through the US government. Who will be the arbitrating body? Where will the arbitration take place? What are the potential outcomes for that arbitration? Who may join in the arbitration process?

Senator HILL (South Australia—Minister for Defence) (9.58 a.m.)—I have listened to the speeches this morning, particularly from Senator Ridgeway and Senator Harris. They continue to draw upon experiences from the North American Free Trade Agreement, which they argue provides a warning for Australia in relation to this bilateral agreement with the US. The point is that the provisions that are in NAFTA are not in this agreement. It is an interesting intellectual debate, but they could have come into the chamber today and said that they were pleased to see that the provisions within NAFTA that have allowed the sort of actions they have spoken about to be instituted cannot be instituted under this agreement. Rather they chose to come in here and tell us

CHAMBER
of the dire outcomes that flowed from litigation out of the North American agreement. The short and simple answer to their concerns is that the investor-state clause simply does not exist in this agreement.

There is a provision for consultation between states, and that causes Senator Brown concern. He is seeking through this amendment to provide particular restrictions on it. It is the view of the government that the consultation provision—although it may not ever be instituted; nobody knows for certain—provides some flexibility that may well be in the interests of Australian investors. All the emphasis in the argument from the three speakers this morning has been on the negative side of this debate, without any reflection on circumstances where an Australian investor might go to the Australian government and seek some form of arbitration. This provision at least allows the Australian government a process of consultation with the other party state—the United States—on that issue.

It is very hard to predict in the long term what circumstances will arise, but it seems to me that out of this consultation provision Australia gets the benefit of both sides. On the one hand, Australian investors will be protected from unnecessary or inappropriate actions by US investors in that the Australian government is the buffer in this provision—such arbitration could not occur without the Australian government’s agreement. On the other hand, at least it gives the Australian government a consultative process if it is in the interests of an Australian investor to argue for some form of arbitration. So it is the government’s view that the provision is sensible and it has safeguards within it, but it also provides some flexibility that could in some circumstances be to the benefit of Australian investors. Therefore, we certainly do not support amendments that would, in an arbitrary way, restrict its application. In relation to the detail of how that would be implemented, that would obviously come out of the consultation between the party states. As no instance has arisen and there has been no consultation between the party states, the detail of that cannot be pre-determined—and you would not want to try to pre-determine it because otherwise you are undermining the flexibility of the consultation.

So what we are setting up here is a framework. It is designed, as I said yesterday, to facilitate economic growth, but in a way that ensures that there are not abuses. I recognise, as was said in the Senate yesterday, that there are two economies involved here, and one is much larger and much stronger than the other. Therefore, the role of the Australian state party is particularly important. Even though we do have these investor-state dispute settlements in a whole range of existing agreements, nevertheless in this one—and having observed the experience elsewhere—the negotiation has led to a different outcome which Senator Ridgeway and Senator Harris, at least, should be applauding. It is on that basis, therefore, that we are not prepared to agree to further restrictions upon the consultation provision that we have in article 11.6 of the agreement.

Senator BROWN (Tasmania) (10.04 a.m.)—I would like to explore this a little further. If an Australian company goes to the government and says, ‘We want some action because our interests are being infringed under the free trade agreement,’ and the Australian government goes to the US Administration and says, ‘We want this fixed,’ and the US government says, ‘We have done it right’—that is, there is a dispute—the minister says there is an agreement, nevertheless, for arbitration. Will that be in an Australian court or in an American court? Is it appealable to an Australian or an American court? If the answer is ‘no’ to either or both of those questions, who will arbitrate, where will the
arbitration take place and what is the appeal mechanism?

Senator HILL (South Australia—Leader of the Government in the Senate) (10.05 a.m.)—It is not prescribed within the article. It would be as agreed between the two state parties.

Senator BROWN (Tasmania) (10.05 a.m.)—So we have the admission from the government that the free trade agreement, for all its thousand pages, does not tell this parliament how the handling of a dispute between this country and the United States, or between a corporation in this country and a corporation in the United States, under the free trade agreement is to be arbitrated. We do know it can be arbitrated—we have got that much from the minister. We must take it from the minister’s reply that it will not be in an Australian court.

Senator HILL—How can you say that from what I said?

Senator BROWN—Because I asked you directly whether it would be in an Australian court, and you ducked it.

Senator HILL—I said it would be agreed between the state parties.

Senator BROWN—Then will it be in an Australian court?

Senator HILL—It depends on what the parties agree.

The TEMPORARY CHAIRMAN (Senator Knowles)—It would probably be easier if we had a formal response.

Senator BROWN—It is not much use the minister getting angry about this. It is very important material.

Senator HILL—I’m not angry. You just keep putting words in my mouth.

Senator BROWN—The minister says I’m putting words in his mouth but, no, I want words from his mouth that are direct.

Senator HILL—You take no notice of what is said on the other side.

Senator BROWN—The problem for the minister is that he is giving this committee no definition of the arbitration system at all. He says anything will do.

Senator HILL—I didn’t say that.

Senator BROWN—Yes, you did.

Senator HILL—No, I didn’t.

Senator BROWN—You did. The minister put no limit at all on the options available, but I can tell you he will not get to his feet and say it will be in an Australian court because that is not an option. He will not get to his feet and say it will be in a US court because that is not an option, nor are the appeals systems of those courts an option. This will be an arbitration system, set up artificially under the committee by the agreement of the governments and the corporations involved, outside the reach of our parliament. That is what is wrong here—there will be a new, concocted, unspecified legal system, to be fabricated by the executive of the day and the US executive of the day, outside the reach of this parliament.

If the government and the Labor Party think that the Greens, for one—and, I suspect, the Democrats and One Nation for two and three—are simply going to wash their hands of their responsibility to see that there are not judicial systems set up outside the reach of our own law, that executives can fabricate judicial systems to meet the needs of the day and that this parliament has no ability to reach into that fabrication and have a say in it, then they seriously underestimate the Greens and, I suspect, the whole cross-bench. The Labor Party might agree that a future Howard government or some other government down the line can leave Australia’s judicial system on the shelf, but we do not. It will be sidelined. The Americans are not going to agree to it arbitrating. While
some new system is fabricated—and the minister will not specify what it is—it will be left to the corporations involved.

Where is this parliament if we transfer the ability to establish judicial processes to the corporate sector? That is effectively what is being instituted here, with the Labor Party in agreement—a judicial system that suits the corporate sector, outside the reach of citizens. They cannot enjoin in this as third parties. It will not be there. There will be no standing for ordinary Australians in this judicial system. It is concocted to get outside the reach of Australian law and to be outside the reach of Australian citizens and to be outside the reach of the Australian parliament, not least this Senate. Is the Labor Party really going to vote for that? How could the Labor Party vote for that, with all the ramifications that flow from it? Which Australian citizen is going to have access to this fabricated legal system outside the rules of 100 years, as laid down by this parliament and developed under the courts, right through to the High Court of this nation? No-one.

The aggrieved corporate interests—the powerful, the wealthy—through the executive, will be able to establish such a court and seek their own justice. The average Australian will be shut out of that justice. Therefore, this is tantamount to a national injustice. Parliaments, whether they be Australian or American, should not leave citizens without access to a judicial system for which those citizens will pay the price of judgment. But that is what this government, along with the American administration, has devised and that is what this Labor Party is going to vote for.

I will get a bit closer to it. I ask the minister to explain some matters in relation to the joint committee which is to overview the setting up of institutional arrangements and administration. In chapter 21 of the US-Australia free trade agreement, in section A, under the heading ‘Institutional Arrangements and Dispute Settlement’—and that is what we are about at the moment—it states:

The Parties hereby establish a Joint Committee to supervise the implementation of this Agreement and to review the trade relationship between the Parties.

(a) The Joint Committee shall be composed of government officials of each Party—that is, each country—and shall be co-chaired by (i) the United States Trade Representative for the United States and (ii) the Minister for Trade for Australia, or their respective designees.

First up, we have the joint committee which is going to be overseeing this dispute mechanism with the minister for trade on either side. Note here, all other values left aside, that this is about trade and money. It is not about jobs lost in the manufacturing industry or about representatives of workers. It is not about farmers’ worries about quarantine. It is not about the environment, social justice, our health system, our Pharmaceutical Benefits Scheme or intellectual property. No, it is about the trade representatives from each country. Under the current system, Mr Vaile will become joint chair with Mr Zoellick, from the United States—or their respective designees. So they can name anybody they like.

The minister, without reference to parliament, can name anybody he—or in the future it may be a she—likes to head up this all-powerful arbitration system outside our courts, outside our parliament and outside the reach of Australians. Article 21.1(b) states that the joint committee—that is, those ministers or their respective designees, whomever they appoint:

… may establish and delegate responsibilities to ad hoc and standing committees, working groups, or other bodies, and seek the advice of non-governmental persons or groups.
This is dynamite stuff. We will have people whose primary interest is trade right in the thick of it, who are faceless to this parliament and unknown to this country, who are appointed by the trade minister of the day, setting up and delegating a whole range of other organisations to what is called under the agreement ad hoc ‘standing committees, working groups, or other bodies’. And they may ‘seek the advice of non-governmental persons or groups.’ Who are they? They are people interested in trade and people in the corporate sector. The joint committee will:

(a) review the general functioning of this Agreement;
(b) review and consider specific matters related to the operation and implementation of this Agreement in the light of its objectives;
(c) facilitate the avoidance and settlement of disputes arising under this Agreement …

There we have it: ‘facilitate the avoidance and settlement of disputes’. So, if you cannot avoid it, the joint committee, these faceless designees, will facilitate—that is, will set up the arbitration system for the settlement of disputes. They can:

... consider and adopt any amendment to this Agreement or other modification to the commitments therein, subject to completion of necessary legal procedures by each Party …

I do not know what ‘subject to completion of necessary legal procedures’ may mean, but these faceless, outside people, who are non-elected—there will be no input by Australians—will be able to ‘consider and adopt any amendment to the agreement’ subject to whatever legal proceedings there are. If there are legal requirements to bring those before the parliament, I hope the minister will explain those requirements when I sit down.

The faceless, unelected person or persons may ‘as appropriate, issue interpretations of the agreement’. That is, they may interpret all the fuzz words and fuzz provisions of this agreement that have been the centre point of the debate. They may also:

... consider ways to further enhance trade relations between the Parties and to further the objectives of this Agreement …

There is no mention there of social justice, of Indigenous concerns, of quarantine, of intellectual property or of cultural enhancement. Then we come to point (g), which says the committee may ‘take such other action as the parties may agree’—that is, as the executives outside the parliament may agree. They may take any action. The free trade agreement also says:

Unless the Parties agree otherwise, the Joint Committee shall convene:
(a) in regular session every year to review the general functioning of the Agreement and such other issues as the Parties may agree—

that is, the executive governments—

with such sessions to be held alternately in the territory of each Party—

that is, in Australia and the US. Point (b) continues:

... in special session within 30 days of the request of a Party, with such sessions to be held in the territory of the other Party or at such location as may be agreed by the Parties.

Now comes section 4:

The Joint Committee shall adopt its own rules of procedure.

There is nothing in here about what this joint committee is going to do or how it may proceed. This unelected, faceless, unnamed aytollah of trade will be setting the rules, with no reference to parliament and no reference to the people of Australia. Senator Conroy’s reaction to that says—

Senator Conroy—I was laughing at your terminology.

Senator BROWN—It is serious terminology. You may laugh, but I do not think
there would be many Australians laughing with you if they understood it.

Senator Conroy—Ayatollah of trade? You’re having too good a time there, Senator Brown.

Senator Brown—Ayatollah of trade, tsar of trade—that is what is happening here. They are going to be appointed outside the reach of this parliament. What is more, the all-powerful body to be set up sets its own rules—we do not determine them in this parliament. The Labor Party is about to give the government the right to do that through this process. *(Time expired)*

Senator Harris (Queensland) *(10.20 a.m.)*—I seek leave to table a document relating to the chapter 11 cases under NAFTA.

Leave granted.

Senator Harris—Having tabled the document, I draw to Senator Hill’s attention the contents, which relate to the cases that I raised earlier on. In fact there are 15 cases, not the 19 that I indicated earlier on. I would like to draw Senator Hill’s attention to section 17 of article 11 on the page noted 11-10 in the document. Under the definitions it says:

For the purposes of this Chapter:

... ... ...

4. *investment* means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;
(b) shares, stock, and other forms of equity participation in an enterprise;
(c) bonds, debentures, other debt instruments, and loans;
(d) futures, options, and other derivatives;
(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
(f) intellectual property rights;
(g) licenses, authorisations, permits, and similar rights conferred pursuant to the applicable domestic law; and
(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges ...

That is what an investment covers under that section. The next definition states:

5. *investor of a non-Party* means, with respect to a Party, an investor that seeks to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party ...

My question to Senator Hill is: taking into account the document that I have just tabled, can you provide for the chamber an understanding of the difference between NAFTA and the Australia-US free trade agreement in that the Australia-US free trade agreement will exclusively exclude the types of actions listed in the form that I have just tabled?

Senator Hill (South Australia—Minister for Defence) *(10.24 a.m.)*—As I understand it, the major distinction is that, under the NAFTA, the investor has a right of action against the state. Senator Harris has listed a range of cases that have been pursued under that provision. In the Australian agreement, there is no right for an investor to bring an action against the state. This could only occur if both state parties agreed. What I have sought to argue this morning is that, from an Australian perspective, that gives us both an advantage of, in some circumstances, maybe being able to assist an Australian investor and, at the same time, a protection in terms of ensuring that the unequal weight of the two economies is not brought to play against an Australian investor. We do that through the Australian state having to agree to any process of arbitration, conciliation or whatever. I am told that the NAFTA type
provision is in many Australian trade agreements and we have not had the unhappy experiences to which Senator Harris refers. We may not have had unhappy experiences if it had been included in this agreement, but that is really academic, because the provision is not there.

Senator Harris referred to the definitions and read out the definition of ‘investment’. I have no quarrel with that. He refers to the definitions covering investors of a non-party and investors of a party. The provisions under article 11.16 that deal with consultation on an investor-state dispute settlement do not cover investments of a non-party. They only relate to investments of a party, which would be an investor of either Australia or the United States. I am advised that the reference to an investor of a non-party refers to other provisions in that chapter, for example article 11.9, which covers performance requirements. They are requirements as agreed between states. Even that provision does not give rights to the investor of the non-party. This agreement does not give rights to the investor of a non-party. I hope I have clarified Senator Harris’s matters.

Senator Brown has moved back onto the role of the joint committee, which we debated several days ago. I might take this opportunity to remind the Senate that we are on the fourth amendment of about 30-odd amendments and we must be at least into our seventh hour of debate. Senator Brown is obviously intent on a filibuster to demonstrate how angry the Greens are with this particular issue. Despite the fact that there have been two very lengthy parliamentary inquiries and months of deliberation and debate, Senator Brown, nevertheless, has decided that he is going to repeat each of his issues many times for the benefit of this committee. He has now returned to article 21.1, relating to the role of the joint committee, which, as I said, we debated the day before last.

I do not think he introduced anything new today. It is just commonsense that there is a mechanism put in place to assist the parties in the implementation of the agreement. That is set out in article 21.1 on the establishment of the joint committee, the roles of the joint committee and the provisions in relation to its meetings and the like. There is nothing extraordinary about that; it is just a commonsense provision in the agreement to assist the parties in the implementation of what is, as everyone would accept, a very complex agreement. It has to be complex because of the range of different circumstances that it is designed to cover.

We can spend more days simply repeating philosophical positions, including the Greens’ objection to economic growth and the evils that they believe flow from economic growth, but we will not get closer than recognising that there is a fundamental disagreement across the chamber on this particular matter. The Australian government went into these negotiations to support economic growth and to open up market opportunities for Australian investors and traders, because we think that is a critical part of the future growth opportunities for this country. We think we have achieved that in this agreement in a way that protects what is fundamentally important to Australia. That is why we would argue that we have achieved a win-win outcome.

What we are debating here today—you would not believe it from the debate—is the implementation legislation, which has hardly had a mention. We are on our third day of debate and the Greens are still simply restating their objections to the agreement and debating once again the detailed provisions that are included within the agreement. This committee debate is not about the agreement;
the committee debate is about the legislation— the bills which are before the chamber, which seek to implement an agreement which has already been reached and agreed between the state parties. Senator Brown does not like the Australian system; he prefers, in this instance, the United States system. That is interesting but it is not relevant either. We have a system of government that is well tested and has served the interests of this country well. The executive has certain responsibilities under it and one of those responsibilities is to enter into treaties. To implement the treaty requires action of the Australian parliament. Those bills are before the committee at the moment and, with respect to Senator Brown, it is those bills that we should be debating. I would therefore urge the committee to return to the task that is before it rather than spend day after day in the Senate on a matter that has been trawled over so many times already.

Senator RIDGEWAY (New South Wales) (10.33 a.m.)—I find that quite an extraordinary response from the minister to what are legitimate questions in relation to not only the amendment put forward but also the enabling legislation as it relates to the operation of the free trade agreement with the United States. The minister may consider this a philosophical or academic argument; the reality is that he keeps avoiding the question of what the free trade agreement talks about in terms of the consultation process being triggered. I do not believe he has provided any explanation at all, and the amendment goes to the extent of the enabling legislation to deal with that particular issue.

Presumably the officials sitting there can provide some advice. If they were involved in talks or negotiations on this particular article they must have had something in mind. Could they please explain what it is that they had in mind so that the parliament at least has some confidence in the consultation process that has been provided in the event that there might be a dispute? I acknowledge that the minister keeps saying that there is no right for an investor to an investor-state dispute resolution mechanism in this free trade agreement as compared with the North American Free Trade Agreement. But he still has not answered the question about article 11.16.1, which deals with triggering a consultation process.

I want to ask him some very specific questions, because he seems to think that the Australian Democrats have taken a very negative view. He has relied upon some of the real examples—not alarmist, not fanciful—that are happening in North America under NAFTA but he refers to Australian corporations. I would ask him and those who wrote up the agreement as it currently stands, which this amendment tries to deal with: in the context of Australian corporations, how does he envisage this particular consultation process working in practice? Can he give any examples that the officials or negotiators may have had in mind at the time? Is it possible and does he envisage that, under the triggered consultation process, US law, regulation, procedure, requirement or practice at all levels of government are challengeable in some form?

Isn't this proposed body, the joint committee, just another way of having private enforcement of a right granted to the US or for that matter an Australian corporation? How open and transparent will that arbitration body be, given that in many respects it is to the exclusion of the Australian people and therefore not within reach of the Australian government? I think Australians deserve to know how open that process will be. He believes that Australian corporations can talk to the Australian government and therefore the US counterpart in resolving a dispute. But how open and transparent will that process be?
I ask this question as well: in many instances aren’t we going to find possible disputes concerning public policy being resolved in a private rather than a public way? How does the public get to contribute to that process? Ultimately we are talking about a body being established to deal with disputes that may arise concerning the way in which our laws, regulations and policies work in relation to the Australian people, so isn’t that a fair and legitimate question to ask? Why won’t the minister answer the real question, which is about article 11.16.1, in relation to a consultation process being triggered? Does he envisage—and did the negotiators envisage—that something might occur in the future? If so, what examples did they have in mind? It is a legitimate question and I think the government is obliged to answer it.

Senator HILL (South Australia—Minister for Defence) (10.38 a.m.)—I did answer that question. I said that the way in which the consultation will take place—the detail of the form and the structure—has not been predetermined. It will be determined by the state parties in the circumstance of a particular issue that comes before them.

Senator BROWN (Tasmania) (10.39 a.m.)—The minister gave a very telling reprimand to the Senate a while ago when he said that this Senate committee should not be discussing the free trade agreement and that it was something for the Howard government executive and the Bush administration to deal with. How dare the minister come in here and tell this Senate that it should not be discussing the free trade agreement and its impact on Australians. What an arrogance it is of Minister Hill, representing Prime Minister Howard, to tell this Senate that it should get on with the enabling legislation here and ignore the free trade agreement. What a licence it is—and an affront to democracy—that the government should be lecturing the Senate about its responsibilities in such a way as to say, ‘Drop them, leave them and confine yourselves to what we want.’ The arrogance of this government is becoming insufferable. I am talking not only of its arrogant attitude towards the people of this country but of its pompous arrogance towards the Senate because it does not want the free trade agreement to be debated in this place. How dare the government!

If the government believes that it is going to coerce the Greens—or, I suspect, other members of the crossbench—into desisting their questioning on matters which are important to the whole community in that free trade agreement then it is picking on the wrong people. I can tell the committee that there is no intention by the Greens to filibuster here at all. We want to get on with other matters. The difficulty here, of course, is the failure of the minister to provide answers to very simple questions. If you come back to it and try again, then so be it. If the government were providing answers here to questions about what this free trade agreement means and how it is going to work and defining the fuzzy provisions which are riddled through this treaty then we could move on.

The treaty is a huge document. What troubles me greatly is that in the next couple of
days we are not going to even touch on many of the issues. Look at copyright of simple things like CDs. There are piracy provisions in here which mean that citizens who simply copy things without any commercial intent are subject to draconian retribution. We are not even going to get to discuss things like that or to ask what, specifically, the provision means. That has all been decided by this government in secret meetings with the Bush administration. And the government comes in here now and says to the Senate: ‘You mustn’t discuss this free trade agreement. We’re the authority here. This parliament doesn’t count.’ Well, they are talking to the wrong people.

Then the minister—verbally, as ever—gets up and says, ‘The Greens oppose growth.’ Growth is a beautiful thing. You only have to look at any child to know that. But when you get uneven growth, when you get one component of society growing disproportionately to the rest, in medical terms that is called a tumour, and it can be fatal. The Greens are very much in favour of even, healthy growth—not unbridled growth favouring the already powerful in society—but keeping some restriction on that while encouraging free enterprise.

We make no apology for that. That is what parliaments are about. If you believe in unbridled growth, which is ultimately self-defeating in the way I have just described, then you abolish the parliament. That is effectively what the minister is arguing at the moment: this parliament should be abolished as far as this free trade agreement is concerned; it is subsidiary and it does not count. As I said, tell that to somebody else.

Coming back to chapter 21 of the free trade agreement and the dispute resolution mechanism, section B—which is headed just that: ‘Dispute Settlement Proceedings’—article 21.2 says that the US administration and the Australian administration will set up a process for the settlement or the avoidance of disputes to look at what the dispute is and then to establish penalties if either side has been found remiss in carrying out the provisions of the free trade agreement. The chapter says that a panel will be set up. Article 21.3, ‘Administration of Dispute Settlement Proceedings’, paragraph 2 says:

The Joint Committee—that is, the faceless appointees of the executives—shall establish the amounts of remuneration and expenses to be paid to panellists.

Who is going to pay for that? It is the taxpayers. The very people who are being sidelined, who should have no role in this process, are being asked to pay for it. We have a court system which is paid for gladly by the Australian people because they have access to it. But here we have a fake court, a fabricated court, set up to make these almighty decisions affecting the people of Australia and the ordinary folk in the United States which is paid for by them but to which they have no access.

Chapter 21 says a little further on that the panel will consider whether or not to accept requests by nongovernmental entities to have an input to the dispute. So, if the panel wants to, it totally ignores everybody. You can put up a submission, but do not expect a hearing and do not expect that submission to be listened to. Then it goes on to talk about the choice of the forum, saying:

Where a dispute regarding any matter arises under this Agreement and under another trade agreement to which both Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

So whoever complains—and I can assure you that, because of the disparity between the sizes and the numbers of companies, it
will largely be a United States entity—will select the forum in which to settle the dispute. It goes on:

Once the complaining Party has requested a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others.

Most of these hearings are going to be in the United States, not in Australia.

The chapter goes on to talk about consultations and about the establishment of the panel. It says:

Unless the Parties agree otherwise:
(a) The panel shall have three members.
(b) Each Party shall appoint one panellist, in consultation with the other Party, within 30 days after the matter has been referred to a panel. If a Party fails to appoint a panellist within such period, a panellist shall be selected by lot from the contingent list established under paragraph 4 to serve as the panellist appointed by that Party.
(c) The Parties shall endeavour to agree on a third panellist who shall serve as chair.
(d) If the Parties are unable to agree on the chair within 30 days … the chair shall be selected by lot …

So we now have a lottery entering into this dispute resolution system. No rules are set down; whoever draws the long straw is selected. It says:

The date of establishment of the panel shall be the date on which the chair is appointed.

And on it goes. There are rules of procedure, which include the protection of confidential information. That raises the question: what about the reach of freedom of information into this complex, unestablished, undefined, arbitrary arbitration system? Will the freedom of information law of the United States, established way back in 1963—the Swedes were there long before, but nevertheless it was a trailblazing piece of legislation—have reach into this free trade dispute apparatus and indeed into the whole apparatus set up here? The same goes for the Australian freedom of information set-up. I ask the minister: does the complex apparatus being set up here come within the reach of the freedom of information laws of this country or of the United States?

**Senator HILL** (South Australia—Minister for Defence) (10.51 a.m.)—I would need to take legal advice on that. As it is a mechanism set up between states, I think—without taking that legal advice—there would be significant limitations on the application of the Australian freedom of information legislation. But I will take some formal advice and advise the committee in a while of what I am told.

**Senator BROWN** (Tasmania) (10.51 a.m.)—I look forward to that advice. Of course we should have the answer to that but what I am concerned about here is that neither the Australian freedom of information legislation nor the US freedom of information legislation will have reach into this extraordinarily powerful process being set up under the free trade agreement to determine a whole range of things which affect this nation and, of course, the people of United States as well. A mutual knock-out situation has been set up here and I am amazed that the minister does have to seek legal advice about it. It is a very important point and I look forward to getting the result on that.

When we go to the rules of procedure of the panel set up for a dispute it says:

The Parties shall establish by the date of entry into force of this Agreement model rules of procedure, which shall ensure:

(a) a right to at least one hearing before the panel and that, subject to subparagraph (f)—that is, ‘the protection of confidential information’—any such hearings shall be open to the public ...

The protection of confidential information, which is what triggered my previous ques-
tion, is totally ill-defined. But we know that when it gets to discussing corporate matters the commercial-in-confidence clauses come into play in almost all cases. I take it from that that in many, if not most, cases here the public will be locked out. The rules of procedure continue:

(b) an opportunity for each Party to provide initial and rebuttal submissions;

(c) that each Party’s written submissions, written versions of its oral statement, and written responses to a request or questions from the panel shall be made public within ten days after they are submitted, subject to—

that all-powerful clause (f), the protection of confidential information. The rules continue:

(d) that the panel shall consider requests from nongovernmental persons or entities in the Parties’ territories—

that is, in Australia or the US—

to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties and provide the Parties an opportunity to respond to such written views ... 

So if you are an Australian and you do get to hear about this panel set-up, you may write in—you cannot appear before them—and they may deign to accept your written view and, if so, you are then helplessly left while the disputing parties, the corporations involved, respond to that written submission. The rules of procedure go on:

Unless the Parties otherwise agree, the panel shall follow the model rules of procedure and may, after consulting … adopt additional rules of procedure not inconsistent with the model rules.

On request of [one or other country] or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

Then there is the ‘Panel Report’. It says it will come ‘within 180 days after the chair is appointed’. The governments will be presented with an initial report containing ‘findings of fact’—that is, within 180 days—and its determination as to whether ‘the measure at issue is consistent’ with the agreement, a party has ‘failed to carry out its obligations’, the measure at issue causes a ‘nullification or impairment’ of a complainant’s rights, and any other determination that the parties jointly request, as well as reasons for its findings and determinations. There is quite a lot there. Far from filibustering and hurrying here, I feel it is really remiss that we are not discussing each of these points. They are so critical in a proper evaluation of what is going on.

Let me hurdle right down to 21.10, ‘Implementation of the Final Report’, which is on page 21.6. It says:

On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations … 

That is, the panel rules. If a party does not agree with the panel then we move on to the ‘Non-implementation’ clause, the next one, which says that if the parties are unable to agree—if Australia is not able to agree with the findings of this faceless panel on the compensation that comes out of a finding:

… within 30 days after the period for developing such compensation has begun, or

(b) or have agreed on compensation or on a resolution pursuant to Article 21.10 and the complaining Party considers that the other Party has failed to observe the terms of such agreement, [the complainer] may at any time thereafter provide written notice to the office … and so on down we go until we get to section 4 on page 21.7 which says:

The complaining Party—

let us take this to be the US for the sake of this—
may suspend benefits up to the level the panel has determined …
that is, the penalty the panel called for—
or, if the panel has not determined the level, the level the Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity, or the nullification …

In other words, the US in those circumstances, where it felt that Australia had infringed one of its corporation’s rights, may suspend benefits—that is, impose a penalty, and we get to that. It is quite complicated stuff but, effectively, it is saying that it imposes sanctions. It can extract forcibly through sanction by penalising Australia the amount that the panel says is owed to the US corporation. There is no appeal on that. There is no reference to the Australian courts or the US courts, none at all.

I ask the minister: ought not something so serious as that to be a matter for debate in this parliament? Ought not there to be reference back to the parliament? Does he not agree that such an extrajudicial system, fabricated under this agreement, should not be allowed to take over the role of our courts? Is it not fair enough that the Greens propose a clause which says that you should try to work out disputes, if you are going to have your free trade agreement, but you do not go to arbitration—that that should be left to our courts? If an American corporation has got a problem with some decision Australia has made, let it go to the Australian courts under Australian law to seek a remedy, the same as any Australian company would do. That is our argument and so we maintain the strength of our support for this amendment.

Senator NETTLE (New South Wales) (11.01 a.m.)—I would like to ask some questions about the manufacturing components of this legislation, and given that there are no amendments before the committee that relate specifically to manufacturing industries and potential job losses in this area—

The TEMPORARY CHAIRMAN (Senator Cherry)—Is that relevant to this amendment?

Senator NETTLE—There is no amendment in this entire debate that deals with the issue of manufacturing.

Senator Ridgeway—Senator Harris has one.

Senator NETTLE—I am sorry; I have been informed there is one coming up later. I can discuss those issues now or we can wait until we get to that point in the committee’s consideration. I am happy to take direction from the chair.

Senator Brown—Mr Temporary Chairman, on a point of order: it is relevant to this proposed section because if there is one area likely to lead to disputation it is manufacturing. The free trade agreement removes Australian barriers to imports of manufactures
from the United States; it does not do the reverse in all cases. Therefore, it is very likely to be a matter of dispute and therefore very likely to go to arbitration. I think Senator Nettle is quite pertinent in wanting to look at the potential for dispute here, in wanting to look at the potential for aggrievement in the manufacturing industries in Australia under this process and in wanting to find out what the process is for settlement of aggrievement if it occurs.

The TEMPORARY CHAIRMAN—I call Senator Nettle but do note there are an awful lot of amendments that other senators are keen to get to.

Senator NETTLE—I note likewise. The question I want to start out by asking in relation to manufacturing jobs is: what studies have the government done on the potential impact of job losses in the manufacturing sector as a result of the Australia-US free trade agreement?

Senator HILL (South Australia—Minister for Defence) (11.03 a.m.)—The Greens are all about doom and gloom. We see this agreement producing an extra 30,000 jobs. We see it producing up to $6 billion of economic growth. The issue of particular sectors, as I understand it, was looked at in the CIE report, and I assume that Senator Nettle has read that report. We believe that the improved access for Australian manufacturers into the United States is something to be applauded; it gives competitive producers the chance for a major growth market. The CIE modelling suggested that the agreement would add to employment—about 0.3 per cent of total employment by 2012, which is, as I said, an extra 30,000 jobs. It is true that the Australian Manufacturing Workers Union has argued to the contrary, but that is not surprising. So the Greens and Doug Cameron have a common position, it would seem. The further you go in trying to reduce the modelling to particular sectors or subsectors, the more difficult it becomes. But an agreement that is going to result in 30,000 extra jobs is something that this government is very pleased about.

Senator NETTLE (New South Wales) (11.06 a.m.)—The latest CIE report predicts, on page 85:

... employment losses in a large number of manufacturing industries including: textiles; wearing apparel; wood products; paper products, publishing; petroleum, coal products; chemical, rubber, plastic; mineral products (other); ferrous metals; metal products; transport equipment; and machinery.

So I am interested to hear the minister saying that is the report on which the government is relying in saying that there will be 30,000 new jobs created. The Victorian Department of Premier and Cabinet commissioned a study from the Centre of Policy Studies which came to the conclusion that, with respect to Australia’s auto and component industry, the US-Australia free trade agreement will lead to over 1,100 full- and part-time jobs being lost from the motor vehicles and parts industry in the long run and that around 800 of these will come from Melbourne and almost 200 from the Barwon region. Modelling commissioned by the South Australian government from the Allens Consulting Group also found there would be likely job losses and contraction in South Australia’s automotive and auto component industry.

The University of Michigan analysis of the free trade agreement between Australia and the United States predicted a reduction of output and employment in many Australian industries, including agriculture; mining; leather products and footwear; wood and wood products; chemicals; non-metallic mining products; metal products; transportation and equipment; machinery and equipment; other manufactures; electricity, gas and water; construction; and government services.
So I am wondering whether the government has any view other than that of the CIE report, which predicted employment losses in all of these areas. Is that the only study that the government is relying on as to whether or not there will be job losses as a result of the US-Australia free trade agreement?

Senator HILL (South Australia—Minister for Defence) (11.08 a.m.)—This government is proud of its achievements in the job market. We have now got unemployment in this country down to around the lowest levels in the last 20 years. We have achieved that through sound economic management and increasing growth opportunities—and that is what this agreement is all about. The GTAP modelling that is referred to in the CIE report suggests that manufacturing exports will increase by more than $2.2 billion. I would have thought that would be a very positive thing. Look at what the automotive industry has said about the agreement. The Australian industry sees ‘new export opportunities’ flowing from this agreement. Just think of the potential that comes from opening up the US government procurement market to exporters of Australian manufactured products.

The potential for growth in this area is great. True, it requires Australian industry to seize the opportunity. It has got to compete in a very competitive global environment but these days the Australian manufacturing industry is demonstrating that it is able to do that. In a dynamic economy there will be changes between the sectors and within areas of employment. Certainly, I have only to look within my own immediate area of responsibility, Defence, to see that. The Australian defence industry is now much more outward focused, recognising that it can compete in the global marketplace, that it has areas of expertise that are as good as, if not better than, those anywhere else in the world. What it needs are more opportunities to sell that to the world.

This agreement is all about opening up markets to enable good Australian businesses to grow. We did it through the Singapore free trade agreement, we have done it through the agreement with Thailand and we will do it through this agreement with the United States. We will do it through an agreement with ASEAN. It is very difficult to predict firmly job consequences because job consequences simply do not flow from one agreement. But if a series of agreements has the effect of opening up massive market opportunities which were hitherto closed, it gives Australian industry an opportunity that it has never had before. That is why we are not at all surprised to see these advices that are coming out telling us that the agreement has the potential to result in 30,000 extra jobs in Australia. That is what this government is all about, and producing jobs for Australians and all of the benefits that flow from economic growth are what this negotiation has been all about.

Senator BROWN (Tasmania) (11.12 a.m.)—I note that Mr Ken Asano, the Chief Executive of Toyota Australia, was quoted in the Age in December last year as saying:

“A free-trade deal between Australia and the US that cut automotive tariffs quickly would be ‘suicide’ for the local industry.”

There are somewhere between 11,000 and 22,000 jobs at stake in Mitsubishi in South Australia, and we have got a Russian roulette of figures here which the government puts up and asserts are the right ones but has had drawn up for its benefit. There are equally compelling assessments of the impact on jobs which say that an even greater number will be lost by our smaller economy trying to compete in manufacturing with the much bigger American economy. What I want to ask the minister now is: what are the protec-
tive mechanisms in the free trade agreement for jobs in Australia and what are the compensation mechanisms for people whose jobs are lost as a result of the impact of the free trade agreement?

The TEMPORARY CHAIRMAN (Senator Cherry)—Senator Brown, is that relevant to this amendment?

Senator Brown—Yes.

The TEMPORARY CHAIRMAN—I have looked at this amendment. This is really about arbitration—

Senator Brown—that is right.

The TEMPORARY CHAIRMAN—and what you are talking about is economic effects. There are a lot of amendments here, and I am just wondering about this. If you think it is relevant we will continue but I wonder if this is the best place to debate it.

Senator Brown—Would you prefer it debated under a different amendment, Chair?

The TEMPORARY CHAIRMAN—that is up to you.

Senator Brown—No; I am just seeking your guidance on the matter. If there is a ruling from the chair that this debate is out of order—

The TEMPORARY CHAIRMAN—I am not suggesting that. What I am doing is drawing your attention to the standing orders on relevance and I am just noting the large number of amendments which are before the chair and the need for the debate to move on. But if you want to debate it now as you think it is relevant then that is your call at this stage.

Senator Brown—I do, thank you.

Senator IAN MACDONALD (Queensland)—Minister for Fisheries, Forestry and Conservation) (11.15 a.m.)—Mr Temporary Chairman, thank you for your intervention. I think all of us here, and those who might be listening to this debate, understand that what Senator Brown is talking about has nothing to do with this particular amendment—and your question was quite right, Mr Temporary Chairman. However, under the rules of the Senate we are obliged to humour Senator Brown, who is trying to filibuster on this issue, as we know he is capable of doing and which he has done on most of the important legislation that has come before this chamber. We all know this leads us to the conclusion, Senator Brown, that the issues you are talking about—as the Temporary Chairman said—quite clearly have nothing to do with this amendment. They are just part of your normal approach of trying to delay the real consideration of matters of great importance.

Senator Conroy interjecting—

Senator IAN MACDONALD—Senator Conroy suggests that I have been sucked in and am being provoked by Senator Brown. Senator Conroy, as you know, it will make absolutely no difference to the outcome of this debate. At some time the chamber will grow tired of Senator Brown’s contributions, which are nothing more than filibustering. The Temporary Chairman has quite clearly—and correctly, in my view—pointed out that what Senator Brown is talking about has absolutely nothing to do with the amendment before the chair. But we will play the game. Senator Brown spoke about compensation for those who might find themselves without a job as a result of this. We have all heard Senator Hill explain, time after time—I do not know how many more times Senator Brown has to be told—that we have gone into this whole process because we believe it will be good for Australia, it will create jobs for Australia and it will give Australia access to the world’s largest market. It is not just a question of what we think; it is a question of what the people who have carefully looked into this believe—that is, it will be good for Australia, good for our economy and good
for job prospects in this nation as well. I know that the Labor Party have eventually, if somewhat belatedly, come to the same conclusion.

This is a good deal for Australia. It is tremendous for Australia’s exports. It is tremendous for job creation. It will, in fact, reinforce our economy—which allows us to enjoy as a nation one of the best lifestyles in the world, one of the best health systems in the world, one of the best education systems in the world and one of the best transport systems in the world even though we are a small country with a huge transport network. Particularly in the area I am involved in—agriculture, fisheries and forestry—it will be a huge boost to our primary industries in that we will have better and more immediate access to the biggest market in the world. You do not need to take my word for that; see what the experts say—see what the National Farmers Federation are saying and see how keen they are to ensure that this free trade agreement with the United States goes ahead.

Senator Brown, I suspect that you would rarely talk to any of the productive people in our society—the people who produce for our country, who actually make the wealth of this nation that others of us are able to enjoy and who allow us to be the most environmentally conscious government in the world. We are able to do that because we have a good economy.

Senator Conroy—Sit down.

Senator IAN MACDONALD—Senator Conroy is again concerned that I am opening up issues for debate that will allow Senator Brown to go on talking. But Senator Brown will talk for the allocated period of time, Senator Conroy, as you well know.

Senator Conroy—Yes, but you don’t have to.

Senator IAN MACDONALD—Well, what is the difference? You might as well hear my dulcet tones as Senator Brown’s. The points I am making are particularly relevant for those who might be listening to this debate. This free trade agreement is good for Australia and very, very good for Australia’s primary producers. Those primary producers who are going to benefit are very keen to see this adopted at the earliest possible time. In fact the people involved in the canning of tuna in South Australia are looking at an immediate 35 per cent reduction in tariffs into the US. That is very significant and they are very keen to see this go ahead.

Senator Conroy—Have you got those avocados in yet?

Senator IAN MACDONALD—For avocados we increased access to 4,000 tonnes immediately, if my memory serves me correctly. We did not have that access before.

Senator Conroy—Have you solved the quarantine problem yet?

Senator IAN MACDONALD—As we have always said, our quarantine regime—the strictest quarantine regime in the world, which Australia is renowned for—will not in any way be compromised, Senator Conroy, as you well know. That is why your party is, at the death, supporting this. You understand that this is very good for Australia’s primary producers, very good for workers and will contribute very significantly to jobs. Senator Brown, you asked about compensation. We think that the job prospects are better. The CIE report has said that there may be some structural adjustment required in some areas. If that occurs, this government will look at that, as we have done in structural adjustment where it has been necessary in other parts of the Australian economy. That will occur as appropriate should it turn out that it is required—whether it will be is yet to be seen.

You also asked about the automotive components industry. While Senator Hill has
mentioned that, let me say that this free trade agreement does provide the key to Australia’s access to the largest automotive market in the world. The US has agreed to eliminate customs duties on almost all automotive products from day one of the agreement, and that includes the 25 per cent US customs duty on utilities and pick-up trucks. The fact is that the US is the single biggest export market for Australian automotive components. It is pretty good, isn’t it, Senator Brown? You know how good our automotive components industry is in Australia. It is a great industry, and it employs a lot of people. The Labor Party would be well aware of that through their connections with the unions. The automotive industry has increasing export potential for Australia. I hope that the issues in the two questions you asked have been explained, Senator Brown, and that you can understand that this is good for Australia, good for employment prospects and good for all of our industries.

The TEMPORARY CHAIRMAN (Senator Cherry)—Order! I draw the attention of all senators to the question before the chair and the standing orders on relevance.

Senator BROWN (Tasmania) (11.23 a.m.)—The minister has effectively demolished Mr Ken Asano from Toyota and his statement that a free trade deal between Australia and the US that cuts automotive tariffs quickly would be suicide for the local industry. I will inform the minister that I spoke to the Australian Industry Group in this parliament two days ago, and that was a very productive session. The minister has no mortgage on talking with industry groups, and that includes the captains of industry. Of course, that is part of a healthy discourse, from whichever point of view we come.

The question I had asked was: in view of the fact that corporations can take legal proceedings for compensation if their interests are infringed under the free trade agreement, why can’t workers do the same? There is no mechanism here for workers. Tens of thousands of people are facing loss of jobs under the free trade agreement, and there is no mechanism for the ordinary Australian to get compensation if their interests are infringed to the advantage of the other country. That is the problem here. Having said that, let me say that we will come back to that under an amendment further down the line. I know you are anxious to move on. The minister is not here, Chair, and the quality of the presentation coming from his deputy has not been very informative. I am happy that we do indeed move on to other amendments.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (11.25 a.m.)—Briefly, in response to Senator Brown’s comment on the general bill, it is important for other senators and those who might be listening to understand that United States automotive tariffs will be zero from day one. That is pretty good for Australia. But, in reverse, Australia is going to phase in the tariffs on the finished passenger motor vehicles to 1 January 2010. So, for vehicles coming in, it is a phased-in reduction; for Australian vehicles going out, it happens from day one. What a fabulous deal for Australia.

Senator BROWN (Tasmania) (11.26 a.m.)—This goes some way to ameliorate the concern of Mr Asano, of course, but not to ameliorate the concern of the unions representing the thousands of Australians who, the studies show, from whichever side they come, will lose their jobs as a result of this arrangement.

Question negatived.

Senator RIDGEWAY (New South Wales) (11.27 a.m.)—I move Democrat amendment (5) on sheet 4361 Revised 2:

(5) Page 4 (after line 11), after clause 3, insert:
5 Review of operation of Act

(1) The Minister must cause an independent review of the operation of this Act to be initiated annually by the Free Trade Agreement Review Board (FTARB), on the anniversary of the day on which this Act receives the Royal Assent.

(2) The FTARB is to be selected and appointed in accordance with subsection (3).

(3) The Minister must, before the first annual review required by subsection (1), by writing determine a code of practice for selecting and appointing the FTARB members and acting FTARB members which sets out general principles on which selection and appointment is to be made, including but not limited to:

(a) merit, including but not limited to:
   (i) experience in assessing economic impact of free trade agreements;
   (ii) experience in assessing social impact of free trade agreements;
   (iii) experience in assessing cultural impact of free trade agreements; or
   (iv) experience in assessing environmental impact of free trade agreements;

(b) independent scrutiny of appointments;

(c) probity;

(d) openness and transparency.

(4) The persons undertaking the review required by subsection (1) must consult:

(a) the Commonwealth and the States; and

(b) a broad range of persons with expertise in or experience of relevant disciplines;

and the views of the Commonwealth, the States and the persons mentioned in paragraph (b) must be set out in the report to the extent that it is reasonably practicable to do so.

(5) Each review required by subsection (1) must be completed within 3 months of the initiation of that review.

(6) The Minister must cause to be tabled in each house of the Parliament a written report of the review within 5 sitting days of that House after receipt of the report.

(7) The report must contain analysis of and, if required, recommendations to, the Parliament as to the impact of each chapter of the Agreement on Australian interests.

I was beginning to wonder whether we would get to this today. I will begin by outlining the reasons for the Australian Democrats moving an amendment to review the operation of the act. For those who have not had a chance to look at sheet 4361 Revised 2, let me say that amendment 5, about the review of the operation of the act, is about making sure that the way in which we deal with the enabling legislation and therefore the free trade agreement is through a process of both accountability and parliamentary involvement.

The specific amendment essentially seeks to instruct the minister to establish a free trade agreement review board and require that board should report annually to parliament on the operation of the agreement and certainly, for very good reasons, on the impact of the agreement. The debate today, and certainly last night, indicated quite clearly that one of the things that we are not debating on this occasion, and should be, is the free trade agreement itself. The government keeps reminding us that we are talking about two bills—the enabling legislation, essentially, to make sure that we can deliver on our pact with the United States. It is ap-
palling and an indictment that this parliament is excluded from the process of debating this particular issue. It is probably the most significant issue that this parliament has dealt with in a long time—certainly during my time here in parliament. Quite frankly, it should have come down to the free trade agreement being put on the table so that we got to debate the details of that. Unfortunately, it is having to be looked at in other ways.

The amendments are put forward to improve the enabling legislation so as to make the agreement more reflective of the wishes of the Australian people and—to more importantly—to protect the national interest, the interests of Australians. In regard to the benefits of the agreement—we had this discussion yesterday when the debate started—the minister was very clear in his view that any sort of analysis of environmental, social and cultural benefits and so on could not be dealt with in any sort of quantifiable way. But this applies also to any analysis of the economic benefit. A number of reports give very different understandings of the net benefit.

I am mostly concerned about the broader question. If we put a balance sheet in front of us, we seem to have only one column, and that is the column that talks about the net benefit. There is no column that talks about the net environmental, cultural or social losses we could expect. Why is that? It is because, way back in March, the government was not interested in instructing the consultants it engaged to undertake analysis of the possible net losses or net gains in relation to the social, environmental and cultural policies of this country. What sort of national interest test is it when the only thing the government looks at is the economic bottom line? Hence the amendment that is being put forward is about instructing the minister—and, more importantly, the government—to look at being accountable, not just to the Australian people, but also to the parliament, in giving the parliament a role in reviewing how the free trade agreement is implemented over the coming years.

The result is a foregone conclusion because the ALP has decided—disgracefully—to cave in on this issue. The Australian Democrats feel that it is necessary to put in place some safeguards to ensure that the free trade agreement has as little impact as possible, particularly on social, environmental and cultural policies, as I mentioned. We are proposing the establishment of a board to monitor the impact of this dreadful agreement and its likely consequences while it is in place. Under the amendment, the minister must cause an independent review of the operation of the act to be initiated annually by the new review board, and the members of the review board will be selected according to a strict process that will ensure independence, transparency, and appointment on merit.

This amendment has been drafted according to standard Democrat ‘appointment on merit’ terms. We do not want another situation where the government just appoints the people it knows, those on whom it can rely to give it the result it wants. There must be a proper process to ensure that the best qualified people are appointed to undertake a thorough, detailed and objective annual review of the impact of this agreement.

It is worth restating some of the comments by my colleague Senator Murray regarding appointment on merit, because it is an important issue. In proposing that there be a review board, it is also essential that we do the right thing and ensure that the review is conducted by the right people for the job. Every Democrat senator has at one time or another called for an end to jobs for the boys. Essentialy, wherever appointments are made to the governing organs of public authorities—
whether they are institutions that are set up by legislation or independent statutory authorities or quasi-government agencies—the processes by which these appointments are made should be transparent, accountable, open and honest. I think the public deserves to see how this process operates in practice.

One of the main failings of the present system is that there is no empirical evidence to determine whether the public perception of jobs for the boys is correct—and, as the appointments themselves are not open to sufficient public scrutiny and analysis, it is no wonder. It is still the case that appointments to statutory authorities in this country are largely left to the discretion of ministers with the relevant portfolio responsibilities. There is no umbrella organisation that sets out a standard procedure regulating the making of appointments and, perhaps most importantly, there is no way to have external scrutiny of the procedure and the merits of the appointment by an independent body.

On well over 23 occasions in this chamber, and certainly over the last few years, the Democrats have put up amendments designed to compel ministers to make appointments on the basis of merit. Every time those amendments have been put up, not only have they been opposed by the government, but Labor has joined the government to block this important reform. So why do we keep doing it? We do so because appointments on merit is a principle that should be accepted. We are committed to ensuring that appointments to governing organs and public authorities are based on merit and that the process by which these appointments are made is transparent, accountable, open and honest so that the public gets to see what is going on.

An independent body should be given the responsibility of scrutinising government appointments against a set of established criteria. This is a system that works well in the United Kingdom. Lord Nolan headed the 1995 Committee on Standards in Public Life and managed to persuade the UK government to accept that appointments should be based on merit. In many respects this process would go a long way to ending the privilege and patronage associated with government appointments in Australia.

The key principles Lord Nolan set out at that time to guide and inform how such decisions are taken are as follows. A minister should not be involved in an appointment where he or she has a financial or personal interest. Ministers must act within the law, including the safeguards against discrimination on grounds of gender or race. All public appointments should be governed by the overriding principle of appointment on merit, except in limited circumstances. Political affiliations should not be a criterion for appointment—a very important principle. Selections on merit should take account of the need to appoint boards and include a balance of skills and backgrounds. Finally, the basis on which members are appointed and how they are expected to fulfil their roles should be explicit and the range of skills and backgrounds that are sought should be clearly specified. In response to the committee’s recommendations, the UK government subsequently created the Office of the Commissioner for Public Appointments. That office has a similar level of independence from the government as has the Auditor-General, to provide an effective avenue of external scrutiny.

We have used the Nolan committee’s recommendations in our amendments for the last five years because they are tried and tested. I think the government ought to take that on board in this particular case. But meritorious appointments are the essence of accountability, and until the notion of jobs for the boys or jobs for the girls—whatever
the case may be—is nipped in the bud there is not that much moral difference between our system and the political patronage that is prevalent in countries where nepotism and favouritism run rife.

Again, it is a question of being able to get the government to see the wisdom in the creation of a free trade agreement review board to not only report annually but provide some accountability in identifying what the problems are going to be. I think it is wise for the government to do this on a regular basis so that we know up front what the problems of the free trade agreement are going to be, instead of waiting for a disaster to happen somewhere down the road and, as usual, for the government to announce after the fact that we will provide compensation.

Compensation does not provide assistance to people out there who have a mortgage, who have to feed the kids and who have to send their kids to school. Quite frankly, as Senator Hill mentioned earlier, if we are talking about creating more jobs then, as part of an admission that the free trade agreement may well lead to structural change, we ought to know well beforehand what those structural changes are going to be and we ought to be building mechanisms into the enabling legislation to ensure that that occurs and that we can identify those changes fairly quickly and respond to them as quickly as we need to—not leave many of our industries, and certainly the environment and social policy in this country, open to being changed or exposed to the pressures being brought to bear by the largest economy in the world.

That is essentially what we are doing in relation to the free trade agreement. Some may see it as a great boon, but when the Australian economy is only the size of the economy of Pennsylvania state it does raise some questions about whether or not we will have equal weighting when it comes to consultations and the resolution of disputes. I previously raised with the minister the issue of the consultation process being triggered, and he was not able to provide any answers. I hope that we do not go down the path of just dealing with that but that we identify readily and up front what the consequences are going to be and that the parliament is involved in the process. It cannot just be left to the executive government.

We are not dealing with the free trade agreement; the executive government got to deal with that. What we get to deal with is the enabling legislation. This parliament is effectively being told to stay out of the debate in relation to the free trade agreement. What a cop-out that has been. I think the parliament, which represents the Australian people, ought to be involved in this important debate. If the government is not going to change its ways then it ought to make sure that there are amendments in the enabling legislation that guarantee that the parliament will be involved and that we can identify what those consequences are and respond as appropriate.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (11.40 a.m.)—The government will not be supporting this amendment. As in all matters, the government submits itself and its actions to the scrutiny of parliament and the Australian people. Senator Ridgeway will well know, far better than I, the processes that are available in this parliament to inquire into any action of the government, be those processes the special committees, the regular committees or the estimates committee processes. This government is the most accountable, I would suggest, of any government anywhere in the world, with the number of committees and the opportunities for parliamentarians to consider, investigate and question the executive on any aspect of any government activity,
and that certainly will include the free trade agreement with the US.

We expect that any issues with the operation of this bill or the agreement will be raised with the Minister for Trade or his department on an ongoing basis throughout the life of the agreement. Where relevant, these issues will be pursued with the United States in the annual joint committee process. In addition, the government will be able to consider whether there is any value in undertaking specific reviews of the operation of the agreement. Senator Ridgeway may be aware that the Joint Standing Committee on Treaties has recommended that the Productivity Commission undertake a review in five years time. There have also been recommendations about a more detailed environmental review. These recommendations can be considered in the light of experience with the agreement, and any reviews conducted could be tailored to any particular concerns raised about the operation. I think there will be ample opportunity for any parliamentarian to raise any issue in the normal processes of this parliament. For those reasons, the government will not be supporting the amendment.

Senator RIDGEWAY (New South Wales) (11.43 a.m.)—I note the minister’s response and his reference to the various committees that have made recommendations. I want to ask the minister a number of questions about the government’s response in relation to those recommendations. An argument made during the Senate inquiry was that there need to be detailed sectoral studies done of impacts on particular industries. The two industries that the committee had in mind—and the minister has already mentioned the automotive industry—are industries with slightly higher levels of protection in this country: the clothing, textile and footwear industry and the vehicle industry.

As the minister would know, both industries employ large numbers of people in regional areas of high unemployment and the people that they employ are largely from non-English speaking backgrounds. It has been argued from the start of this agreement that there should be studies done of the potential sectoral impacts that the free trade agreement will have on these regional areas and there have been inquiries as to whether or not this is known. That has not come through at all in any analysis that has been done by the government—certainly not in engaging CIE to conduct its analysis of the economic benefits. At the very least, the Productivity Commission should have been involved in that event in looking at the impact on regional sectors and, more particularly, on these two industries that I have mentioned.

Given that many people believe that the reductions in tariffs in those areas will result in the loss of jobs, does the minister have a view on what the social impacts are going to be? Particularly given that there is already ample evidence to show that, for example, women from non-English-speaking backgrounds working in the clothing, textile and footwear industries usually have great difficulties with job security, how is the government going about reviewing that in order to come up with some response? I note that we are dealing with another bill on that issue, but quite frankly it is also going to be affected by the free trade agreement and the enabling legislation.

Given that many people believe that there could be quite severe impacts in those industries, certainly in regional areas, is the minister prepared to detail the mechanisms that have been put in place to address these concerns? He has touched on some things, but I would argue that this is an ideal reason why we should have an annual review of the operation of this agreement. It has been demonstrated that none of the economists can agree
on the impact of the deal. That is why we have conflicting reports that say very different things. The Productivity Commission was not asked its opinion, so we just do not know what is going to happen.

To my mind, at least there should be an annual review conducted and a properly constituted board to ensure that, if jobs are going to be lost and industries or particular sectors are going to do it tough, we find out sooner rather than later. Does the government have particular views on whether or not sectoral studies should be done for particular industries and for regions that will be most affected, particularly relating to the automotive and clothing, textile and footwear industries?

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (11.46 a.m.)—The government are particularly concerned about rural and regional Australia. It is one of our high priority areas, as Senator Ridgeway would be aware. We do have a genuine interest in that. It is an interest re-enforced by the fact that most of the representatives in this parliament from rural and regional Australia are from the Liberal Party or the National Party. We are very aware of the needs of rural and regional Australia. Senator Ridgeway will be aware that something relating to the free trade agreement that personally disappointed me was that sugar was not able to be included—but then I do not think anyone ever seriously considered that it could be. But we have helped out the sugar industry with a support package.

More importantly—and this is of particular relevance to this debate—we have continued to pursue the international rules under the World Trade Organisation. The result of that has been that we got some pretty good news last week. Admittedly it was only an interim ruling, but it was a ruling that does seem to give a glimmer of hope to our sugar industry and to the sugar industries of all the developing nations around the world that the WTO might at last be moving on the huge subsidies, which I think I probably have to say are alleged to be said to be paid by the European Union to their sugar producers.

This is a small first step. It shows the value of involvement in international trade issues. It is something that I know Senator Harris has a view on, which is not a view that I agree with. This does prove that these international rules and the WTO do actually work. I look forward to the day when trade in sugar is free and fair. It is a long way off, but we have made a start on it. I think that ruling—interim and subject to appeal though it is, and despite the fact that it is against some fairly entrenched interests—is a start. It proves the necessity of continuing with these sorts of deals.

Senator Ridgeway particularly mentioned the impact on rural and regional Australia and whether adjustment will be necessary. Rural and regional Australia is going to be one of the big beneficiaries of this agreement. That is because rural and regional Australia depends to a large degree on the primary sector for its very existence. The primary sector are the big beneficiaries. There are many big beneficiaries. I am very familiar with and involved in this. I live in an area, and visit other areas, where this is so important. The big winners will be rural and regional Australia. I am not sure whether the CIE report focused on this, but let me give you my prediction. Knowing rural and regional Australia, I think that there will be greater security, greater job availability, more progress and more prosperity in country towns as a result of the free trade agreement.

Structural adjustment may be needed in some areas, as I have mentioned before. Structural adjustment these days is a fact of life. Look at the structural adjustments that
we have had to make in the Great Barrier Reef, with the fishermen who have been doing it tough since the green zones came in. Green zones were good for the nation, as is the free trade agreement. The green zones have impacted upon some people, so the government have brought in a very generous structural adjustment package to help out. That is what we do. It is a fact of life in a modern, dynamic economy. Responsible governments do take appropriate action when and if those adjustments do require specific intervention.

Senator Ridgeway mentioned the textiles, clothing and footwear industries. The government are not constrained in its ability to provide industry assistance to the textile, clothing and footwear sector so long as any scheme or form of assistance is consistent with our international treaty obligations under the WTO. Anything we do in Australia, be it for the sugar industry, which I have just mentioned, or any other industry we have assisted, is done bearing in mind and remaining very consistent with our international treaty obligations. We are great believers in the WTO. As Senator Ridgeway knows, seven out of 10 of our farmers across Australia only exist because we can trade. We only need 30 per cent of our farmers to feed and clothe Australia. The rest will only exist if we can trade. That is why trading arrangements, World Trade Organisation regimes and the US free trade agreement, as well as the agreements with Singapore, Thailand and others that we are looking at, are so important to Australia—because Australia needs trade to continue to survive.

This is not a fact that is often emphasised but it should be emphasised more. Australia stands to benefit more out of a freer trading regime than most other developed nations in the world. As I say, we are not constrained by our ability to provide assistance where it is needed and we have demonstrated this as a government. I have to say, although the previous government were not terribly good in government and there were a lot of adjustments needed because they ran the economy so terribly that businesses and industries fell over right, left and centre, even they understood that, at times, a structural adjustment package was needed. As I say, it is not new to Australia; it is something that is fairly commonplace in a modern, dynamic economy.

Senator HARRIS (Queensland) (11.53 a.m.)—I rise to support Democrat amendment (5) relating to the review of the operation of the act. I also indicate that on the current running sheet the second and third last items are One Nation’s amendments pertaining to the commencement of the act. I indicate that I will not formally move those. I will speak briefly to them now because they fall within the context of Senator Ridgeway’s amendments relating to a review. I indicate that I will not move amendments (3) and (4) on sheet 3470 either.

Prior to commencing my comments in relation to the Democrat amendment before the committee at the moment, I want to respond to a couple of comments from Senator Macdonald. He spoke earlier about more progress and more implementation and the benefits for the rural areas. I disagree vehemently with Senator Macdonald in that the progress and the implementation that will arise from this agreement will go to very large corporations and big businesses. Yes, there will be sectors of the Australian economy that will benefit, but they most certainly will not be our small family farmers and small businesses, particularly those in the rural areas.

Senator Macdonald also spoke of a structural adjustment program for fishing as a result of the government’s implementation of the green zones. One Nation looks at these things in an interesting way. We have the
present Australian government and the present US government agreeing that the US will open their markets to Australia in relation to seafood products. So what happens to our fishermen? The government closes the green zones. Surprise, surprise. At the point when our fishing industry does get access to the US markets, our own government axes one-third of the areas where they can actually fish. Then the government turns around and says, ‘But we’ll fix that up; we’ll give you a structural adjustment program.’ All I can say is: tell that to a fisherman in north Queensland.

I want to go back to Senator Ridgeway’s amendment—a review of the operation of the act. It is very soundly based and definitely required. One Nation concurs with it and supports it word for word, especially the assessment of the economic, social and cultural impacts. As I said earlier, One Nation circulated a commencement and review process. I believe what One Nation was putting forward would have been a step forward for Australia, for the people we represent and for this chamber. One Nation was proposing that, prior to the commencement of this act, each senator in this chamber representing their respective state would form a panel—12 senators per state, seven senators on the panel. The members of that panel would then go around their respective states consulting with the people they have sworn to represent in this chamber. They would, in that review, look at the economic, social, cultural and environmental impacts of this agreement. It would be, I believe, for the first time a process where all of the senators for each state parked their political affiliations off to the side and worked as a group to consult with the people they represent. I believe, based on the tone of the debate in the chamber, that that would not in all probability receive a favourable hearing from either the government or the opposition. I would ask both the government and the opposition to consider that and, if they so wish, to comment on the proposal.

The proposal is that each of us within our respective states consults with the people we represent and comes back and reports to this chamber on the concerns—or the support. I am quite happy to say that through the public consultation process there will be support for this agreement but I believe it needs to come through an assessment by each and every one of us as senators. That would show a step forward in democracy in Australia. I believe it would be a process that could be applied to the many and varied functions of this chamber. I look forward to the minister’s and the opposition’s comments as to the possibility of setting up such a process. I place on record One Nation’s support for Democrat amendment (5).

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.01 p.m.)—Senator Hill, who is quite clearly an expert on these trade matters, has returned and will be taking over the committee stage again on behalf of the government. Senator Harris has raised the proposal of a committee of all the senators but, Senator, you already have that opportunity in our parliament. As I said before, Senate committees rule the Senate. There is no reticence at all among senators to set up another committee or refer to an existing committee any aspect of government administration that needs to be looked at. I am quite sure that in the future there will be opportunities created by the Senate and the House of Representatives to investigate any aspect of this piece of government work, as there have been for other pieces of government work.

Senator Harris, before I leave I want to comment on the fisheries matter you raised. As you appreciate, it is directly related to my portfolio. I have seen the conspiracy theory
floating around the east coast of Queensland that the green zones were only brought in because then we would not have any fish to export to America and that means we could sign the free trade agreement. There are these sorts of quite profound and bizarre theories. I can assure you, Senator Harris, the Representative Areas Program on the Great Barrier Reef had nothing to do with the free trade agreement or any trading issues. In fact, it had nothing to do with fisheries management either. That is an issue that I try to stress.

Fisheries are well managed in Australia and will continue to be well managed. This decision on marine parks was purely and simply, and quite rightly, a decision on the marine ecosystem of an icon of Australia—indeed a world icon—and that is the Great Barrier Reef. There was a concern that the reef was faltering. I do not think anyone in the world would like to see that hasten. The government took what action the Great Barrier Reef Marine Park Authority, an independent statutory authority, believed on the best scientific advice was necessary to ensure that that icon will remain forever. It is one of the steps that the government endorse and it really does cement our credentials as the most environmental government ever to exist in Australia. I am still waiting for the Greens to congratulate us on the green zones, but I do not think they have even noticed. They are too busy looking at Iraq, attacking the Americans or doing things like that. It is a great step.

It was not a fisheries management decision. It never was and never was intended to be. From a fisheries point of view, as a government we have sensibly and responsibly recognised that there are some people who will be severely impacted upon financially as a result of the Representative Areas Program. The government have a view that if you do something for the greater public good, like saving this natural world icon, then it should be the greater public good, that is, the Australian taxpayer, who pays the cost and not individual fishermen, businesses or small country towns that you and I and others in this chamber represent. That is why we have come out with a particularly generous adjustment package to make sure that the cost of this environmental step forward is borne by all Australians and not by the individuals concerned. I have heard a lot of stories and, like Senator Harris, I have been quite distressed by some of the stories I have heard from fishermen. We cannot change the green zones; we do not want to change the green zones. But we do want to make sure that those who are financially or socially impacted upon are looked after. That is what the government will do.

Senator Harris, while Australia is not a well-endowed fishing country—we do not have the cold water upwellings that are needed for us to be a hugely productive fishing nation—we do have good niche markets and we manage our fisheries as well as, if not better than, most other fisheries in the world. In fact, you will be pleased to know that I cannot stay very long because I am going to address a Crawford Foundation meeting in Parliament House very shortly, which is looking at fish, aquaculture and food security. We are very determined to make sure that Australia does manage the fish stocks it has very well. Our fishermen are very innovative and they do look forward. They will find other resources that will ensure that we always have plenty of fish for Australians and for productive exports.

Senator RIDGEWAY (New South Wales) 
(12.07 p.m.)—I would like to ask the government—either minister—a number of questions about the notion of a review and accountability back to the parliament. I think the minister mentioned that the Joint Standing Committee on Treaties conducted a review of the free trade agreement and made
several recommendations. I want to find out from the government what action it has taken, or is intending to take, with respect to the JSCOT recommendations on the FTA. I think some of the recommendations are good and I want to know what progress has been made on their implementation. In particular, Senator Ian Macdonald, who has just left, mentioned the Productivity Commission and I want to clarify that the government supports a review of the operation of the free trade agreement by the Productivity Commission every five years.

How will the government implement the JSCOT recommendation that consultations with the state and territory governments should be improved in future negotiations? I think the consultation has been a disastrous mess in relation to the negotiation of the free trade agreement. Senator Macdonald also mentioned issues in relation to promoting increased market access for sugar and I wonder what measures the government is taking to make sure there is increased market access. What action is the government taking to improve the recognition of qualifications and the movement of business people? That was also raised with the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America as well as with JSCOT. That is a most important question. The government has not given any indication of the review process and of what other actions are being taken to deal with these particular issues.

Senator HILL (South Australia—Minister for Defence) (12.09 p.m.)—I am told that my colleague Senator Ian Macdonald indicated that the government is still considering the more general recommendations of the report of JSCOT. A lot of these matters relate to the future implementation of the agreement. In one instance a recommendation is taken up in the government’s amendments before the chamber. But on the issue raised by Senator Ridgeway regarding Productivity Commission reviews, that is a matter upon which the government will make a decision and will report that decision to the parliament when it responds to the JSCOT report.

Senator NETTLE (New South Wales) (12.10 p.m.)—The Australian Greens will be supporting these amendments that seek to bring the free trade agreement under the oversight of the Australian parliament rather than put it into the hands of appointed individuals from this government and the government of the United States. The mechanism that is being proposed is a review after one year of the trade agreement coming into play. It is interesting to note that of the 42 recommendations put forward by the Labor senators on the Senate select committee on this trade agreement, 26 were reviews. They were reviews to look at the impact of the Australia-US free trade agreement once it had come into play, as is being proposed by Senator Ridgeway.

The Greens support review mechanisms that look at the impact of this trade agreement because we can see that five or 10 years down the track the information may come to light which will prove the negative impacts of the trade agreement—as has occurred in relation to other trade agreements with the United States. The greatest safeguard that we can put in place to ensure that one, five or 10 years down the track we will not be looking at reviews which tell us about the job losses that have resulted from this trade agreement, the increases in drug prices as a result of the undermining of our Pharmaceutical Benefits Scheme or the lost job opportunities for people in the cultural industries, would be not to proceed with the free trade agreement. We support these reviews because it is important that we look at these issues, but the very greatest safeguard that we could put in place would be to not go
ahead with this preferential trade agreement that has so many disadvantages for a range of different sectors across the board.

Senator RIDGEWAY (New South Wales) (12.12 p.m.)—I want to ask a specific question of the government, in relation to the broader question of review, about the appointment of people for the state-to-state dispute resolution mechanisms. I think the minister mentioned earlier in the debate that he thought the joint committee would be made up of government officials. Is the government considering the possibility of a measure that would look at how appointments are made in that particular case, whether criteria would be used and whether industry representatives would be involved in the process? Will there also be a review of the mechanism itself, of whether or not it is achieving what the negotiators and the government think it will achieve? We were told this morning that it is being applied in a flexible way, not in a predetermined way. Will the government explain how that will be reviewed as well so that the parliament at least has some oversight with respect to that issue? I think we have an obligation to review the consequences of the free trade agreement in relation to the workings of our own industry and certainly in relation to social, environmental and cultural policy, but there is also the question of the review of mechanisms in relation to the free trade agreement. I wonder whether the minister might respond.

Senator Conroy—Thank goodness you are back, Senator Hill.

Senator HILL (South Australia—Minister for Defence) (12.14 p.m.)—It is very nice of you to say so. Article 21.1 says:

The Joint Committee may ... seek the advice of non-governmental persons or groups.

So my interpretation would be that you would not have industry people on the joint committee but you may well seek advice from industry people and others with particular relevant knowledge or experience. I regret that I missed the second part of the question; I did not quite understand what was being asked. Would Senator Ridgeway mind repeating it?

Senator RIDGEWAY (New South Wales) (12.15 p.m.)—The issue I raised was in relation to the review of that particular mechanism as to whether or not it is achieving what the negotiators or the government may believe is an effective way of resolving disputes, particularly in terms of some of the principles I spoke about earlier—the question of openness, transparency and accountability. I understand that it was raised earlier in the debate that much of the discussion of this joint committee will be done in private, as opposed to being open. Will a review look at whether or not it is more suitable to have a public and open process and even look at having non-government members involved in the process—whether or not that might also include public input from people commenting on social or health policy, for example, in terms of that mechanism being effective?

Senator HILL (South Australia—Minister for Defence) (12.16 p.m.)—That would obviously be up to the state parties. They have an interest in the joint committee that they establish working effectively. No doubt if they felt that its processes could be improved they would address the issue. Certainly the spirit of this particular article encourages transparency and openness. In fact, article 21.1.6 specifically recognises the importance of transparency and openness. That is the provision that talks about the value of seeking public input. Having said that, I am
sure there will be many occasions when the confidential nature of the work that the joint committee is addressing will require it to not be an open deliberation; but, as I read this part of the agreement, there is certainly an emphasis on openness wherever that can be appropriately achieved.

Senator BROWN (Tasmania) (12.18 p.m.)—What hopeless gobbledygook that is—that it will be open ‘wherever it appropriately can be achieved’. The provisions here leave it wide open for all the proceedings to be closed down where the commercial entity, the corporation, says it is a matter of confidence. That is why I asked the minister earlier whether freedom of information had reach into these committees. He went to seek legal advice on that; he did not know. Senator Hill said a while ago that he would expect that corporate personnel would not be appointed to the joint committee. He might expect whatever he likes. The fact is that the committee is set up to have appointments made without reference to the parliament by the Minister for Trade.

A whole raft of other committees are then set up under this joint committee to look at the implementation of the agreement on a whole range of things, from quarantine through to manufacturing. Their members are appointed down the line by this unknown person, the ayatollah of trade, who is appointed by the trade minister—the government, the executive—outside this parliament. The ayatollah has the ability to appoint a whole raft of other judge adjudicators, referees, who may or may not meet in secret—they have no real impediment to not meeting in the open if they do not want to; who may or may not receive written submissions from ordinary Australians and ordinary Americans who have no other avenue of access to this process; and who make deliberations based on the trade imperative, not on other matters that are equally important to Australians, like social outcomes or the impact on the land. And the whole thing is outside the reach of parliament. This Democrat amendment moves towards remedying that situation. We are simply getting no information from the government on the matter. We would be foolish to support a situation in which there is no definitive information coming from the government on these very important matters.

There is no good time to do this, but I ask the government what is happening with the Labor Party’s amendments on the Pharmaceutical Benefits Scheme regarding evergreening. Has an agreement been made? When is the Committee of the Whole going to be informed about that matter? Talk about delay and holding up the whole procedure; here are the government and the opposition doing so in abundance. The crossbench have to be able to look at carefully at these matters, with ample opportunity to seek our own expert advice on them. This is not just a sweetheart arrangement between Labor and the government, between Mr Latham and Prime Minister Howard; this is a matter to be put before this committee. It has obviously attracted a great deal of public attention. Unfortunately, the hugely important matters we are discussing with regard to this amendment are not going to get that public attention, but I congratulate the Democrats and Senator Ridgeway for moving the amendment and having this debate. At least it will be on record in the years to come. However, we have a right to hear from the government and/or the opposition what the state of play is regarding the amendments that, so late in this debate about the free trade agreement, have not yet been brought before the committee.

Senator HILL (South Australia—Minister for Defence) (12.22 p.m.)—As much as I would like to blame the opposition for delay in reaching its amendments, I have to acknowledge that in this instance the responsibility lies with the crossbenches and in
particular with Senator Brown who has engaged in a filibuster—

Senator Brown—Where’s your amendment?

Senator Hill—We have not got to Labor amendments on the list. We are way off that because we have spent three days debating four amendments—three from the Greens and one from the Democrats—and we have repeated the same arguments over and over again. With regard to the issue of the Freedom of Information Act, the advice that I have received is much as I expected. Obviously an action under that Commonwealth legislation would be limited to information held on the Australian government side, that is, by the Commonwealth, or to information that the Commonwealth could reasonably be expected to have access to. The normal exceptions under the FOI Act obviously apply. They include: section 33, national security damage or damage to international relations; section 42, legal professional privilege; section 43, commercial-in-confidence; section 44, national economy. So the act applies but the extent to which access would be given would depend on the detail of the request, what is sought, and whether any of those specific exceptions would be relevant to the request.

Senator Brown (Tasmania) (12.24 p.m.)—What an extraordinary response! Let me interpret that. It just means that this process is going to be beyond the reach of people seeking to open it up to public gaze. It is all in the hands of the ayatollah of trade and the people that are appointed at his or her whim on either side of the Pacific. When it comes to people wanting to reach into, for example, the proceedings of this joint committee, they will not be able to under freedom of information. It is not just the fact that any minister will be able to block it because it might have an adverse impact on the economy or there might be some professional infringement involved; there is the commercial-in-confidence issue. No corporation going to argue its case before the secret panel is going to do anything other than claim confidentiality and no corporation would want the case being put forward, insofar as it might affect it, open to public reach. This effectively establishes that the proceedings of the whole range of the committees, not just the joint committee but also committees set up to arbitrate on disputes in all the areas that this free trade agreement reaches into, are going to be beyond the reach of the freedom of information law of this country. The process is going to be beyond the reach of the parliament of this country and beyond the reach of the average citizen of this country. That is what we are dealing with here.

Question negatived.

Senator RIDGEWAY (New South Wales) (12.26 p.m.)—On behalf of the Australian Democrats I move amendment (6) on sheet 4361 Revised 2:

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

6 Cessation of operation of Act

This Act, unless sooner repealed, ceases to operate at the expiration of four years after its commencement.

Our second amendment is in relation to a sunset clause to cease the operation of the act after four years. I think that the debate has highlighted so far that there is a great deal of disagreement about the benefits of the free trade agreement. The government have been prepared to acknowledge that they did not get what they wanted. The Labor Party have said in effect that the whole thing has been rushed and they gave us 42 reasons why the free trade agreement was flawed in the first place and how the national interest would be compromised. But at the same time they were happy to turn around and say to the government, ‘We will pick up two of the 42
issues and join with you and support the free trade agreement because we think that it is in the interest of Australia.’

We are proposing this amendment as a solution, and God forbid that there might be some divine intervention to enable the opposition to see its way clear to understand what it is that they are doing and the path that they are embarking this nation upon. If the government and the ALP are going to join together to support the free trade agreement then we want a guarantee that a safeguard is built in that ensures that the terms of the deal do not bind us indefinitely into the future. There is no time frame for this; this thing seems to go on and on and on—hence, the reason for the last amendment for a review. I think that it is morally incumbent upon the government to review on an annual basis not just the impact upon regions and sectoral industries but also whether or not the free trade agreement as a whole is working for or against Australia’s interests. Mind you, I think that we would have been far better going down the path not of a preferential trade deal but of one being dealt with in the multilateral arena. I note the comments by Senator Ian Macdonald in relation to sugar that, whilst he might claim credit there in terms of access to other markets, the reality is that we are talking about the WTO and the multilateral arena. Perhaps it is, as the Labor Party have said, far too rushed.

The amendment is really about a sunset clause that will ensure that we are not bound indefinitely into the future. It ensures that the terms of the deal must be renegotiated after four years, given the significant impact the deal is going to have on the Australian economy. Who knows what the difference might be then? The minister has been fairly loose in his language, speaking about ‘not predetermining’ and ‘providing flexibility’—a whole range of language that suggests ‘let’s just see how the whole thing unfolds’. If we are going to take that path, I think it is right that we have safeguards and mechanisms in place that deal with review, that deal with the possibility of a sunset clause, because we do not know what the future is going to hold. There could be a change in the political climate or a change in economic circumstances; there might even be many more opportunities to improve the free trade agreement. We ought not to be bound by a dud deal indefinitely; we ought to reserve ourselves a right to renegotiate it down the track. It makes good business sense to me because, at the end of the day, one of the things the Australian Democrats are supportive of is fair trade that is in the national interest. That fair trade means that we recognise that trade does have a global impact and that we have a duty to consider not just what is best for the whole world but what is best for Australia.

I know that in a debate such as this one the term ‘national interest’ is thrown around in a fairly loose way. What I believe is that the ‘national interest’ is much more than just the basic economic considerations that have come up time and again in the CIE report as dealing just with that part of the balance sheet, that column, that deals with net economic gain. All of the other columns to do with the environment, social policy, culture and so on in this country are blank because the government did not bother to get that analysis done.

When we talk of the national interest, we must keep reminding ourselves that it is much more than the basic economic bottom line. It is about social and labour standards, about the preservation and improvement of our environment and about our national cultural identity. These all have to be taken into account in any trade decision because wide-ranging trade agreements, such as this one, will have a direct impact upon our culture, our environment and many industries. We have called on the government to go further.
than merely analysing the economic effects and to use the triple bottom line approach to consider the other aspects. We know that the FTA has fallen far short of what the government promised. Quite frankly, I think they ought to have taken their time, instead of rushing into it, to come up with something much better for Australia. Certainly that was shown in relation to sugar—that was not on the table in negotiations with the US. We had completed our agreements, and then it was back on the table for the Thailand agreement. What does that say about what we got?

The danger all along has been that important social policies and, more particularly, the PBS and our Australian content and media would be sold out in order to get a better deal for farmers. What has happened in this case is that the PBS has been surrendered—and thankfully there is support from the opposition about this aspect. Australian culture has been compromised, and our ability to provide essential services has also been compromised because of a lack of predetermination, if you like, or the lack of ability on the part of the government to give some ironclad guarantees about how public services might be delivered. We did not even get a good deal, anyway, when it came to the farmers. So in terms of making concessions, the FTA locks in future governments so that they cannot regulate in the public interest—and for loose change, when you look at what our benefits are going to be compared with the benefits for the largest economy in the world. Even if we analyse the deal from a purely economic perspective, it does not add up because, first of all, any benefit Australia is likely to receive is highly questionable and, secondly, we already have a huge trade deficit with the United States which is now likely to get worse. So this FTA does set a dangerous precedent for the future.

It is completely unacceptable that the cabinet could conduct secret negotiations. Again, I remind the committee that we are not negotiating the free trade agreement—that was done over on the blue carpet. The green carpet and the pink carpet in this place do not even get to debate the free trade agreement; what we get to debate is the enabling legislation. It is right that a series of amendments ought to be put forward because it really highlights the fact that the government’s approach shows many deficiencies and that there are flaws in the free trade agreement. These amendments are meant to address that—most of all, the way in which the parliament ought to be involved in scrutinising, reviewing and analysing what is put before it, in much the same way as the US Congress does. Unfortunately, the government does not see the benefit in that. It has decided over there on the blue carpet that it will make the decision about what is in the best interests of the country, to the exclusion of parliament itself.

We believe that a key factor in ensuring that a free trade agreement does not have an unnecessarily detrimental impact is a retention by government of its right to regulate in the national interest. I think there are good arguments for why we ought to hold onto our national sovereignty and have the flexibility to amend our laws as we see fit, without having to consider the interests of another nation or, possibly in the future, of a multinational corporation with no democratic mandate in Australia and certainly with no mandate to privately enforce changes in public policy in this country. So the role of the parliament is particularly important. I want to emphasise again that while the executive does have the power to make treaties under our Constitution, it must respect the role of parliament in scrutinising its actions and in making recommendations to further the interests of the Australian people. I know Senator Hill will probably stand up and say we have had a range of inquiries that have looked at those
particular issues; that is going to be the stock
standard response. But he still will not an-
swer us on the net benefits or the net losses
in relation to that balance sheet that talks
about social, cultural and environmental out-
comes because they did not bother to do the
analysis. They did not think that was impor-
tant.

The amendment that has been put up is
really about stopping the operation of the act
after four years so that whichever govern-
ment or party is in office at that time,
through an annual review such as the one
that we proposed previously, will have a
much better idea of what exactly happened
under the free trade agreement and of the
impact upon our nation. It will provide a bet-
ter way of being able to make informed deci-
sions to either proceed with the deal or rene-
gotiate with our friends in the US. I think we
ought to reserve the right to take stock in
four years time and work out exactly what
we have got ourselves into. It is not enough
to say that we are stuck with the text of the
agreement. There ought to be room to rene-
gotiate that, and having a sunset clause at
least provides the incentive for that to occur.

Senator HILL (South Australia—
Minister for Defence) (12.37 p.m.)—
Obviously we do not agree to it. This attempt
to bring this all to an end in just four years,
when the benefits would be flowing, would
be obviously counterproductive. We want to
see, over a period of time, Australia taking
full advantage of the opportunities that are
presented by this agreement. We recognise
that will take time. We want to see the bene-
fits grow and if in the future the opportunity
is there to negotiate further extended access I
would hope the government of the day would
take that opportunity as well. This govern-
ment has shown that when there is a chance
to provide new markets for Australia it is
prepared to enter difficult negotiations, and it
has demonstrated it can achieve a very good
outcome. The challenge now is for Austra-
lian industry to seize those opportunities and
maximise the benefits that flow from them.

Senator BROWN (Tasmania) (12.39
p.m.)—The Greens support the amendment.
The minister is quite wrong in saying that
this would bring a halt to it in four years
time; that is not the intent. The intent is to
ensure that before four years are up there
will be a parliamentary debate to reiterate
that all the good things that the minister is
saying are true. If the government were confi-
dent about the propaganda it is putting for-
ward about the free trade agreement, it
would have no trouble with it. But the prob-
lem here is that it brings the parliament back
into play.

Senator Hill—The act ceases to operate
in four years.

Senator BROWN—Yes. Senator Hill is
reading from the Democrat amendment
which says the act would cease to operate
after four years. But, Senator Hill, the inten-
tion of any sunset clause like that is to con-
centrate the minds of those who are involved
in the agreement on getting around such an
injunction by the parliament four years from
now. Logically, a government would sit
down and say, ‘Aha! This will end in four
years. Let’s bring in the legislation to enable
it to keep going and to have the debate in
parliament which would justify that.’ The
alternative to this mechanism and the alter-
native to voting it down simply says, ‘No,
we don’t want the parliament to review it.’

That is how sunset clauses work. It does
not mean the end of things at all. It is a pro-
vision to insist that parliament revisit this
matter three years from now, and it is very
reasonable that parliament should do that.
The problem underlying this, Senator
Ridgeway, is that the government and the
Labor Party do not want parliament to be
involved with this down the line and that is
why you are not going to get support for this amendment other than from the crossbench. They and the corporate sector know that this agreement ought to be kept outside parliamentary scrutiny in the future.

Senator Hill—Parliament can scrutinise it at any time it likes.

Senator BROWN—But there is no sunset clause in it.

Senator Hill—You don’t need a sunset clause in it.

Senator BROWN—So clever and bland—a typical statement from Senator Hill.

Senator Hill—I am stating the obvious.

Senator BROWN—‘It can scrutinise it anytime it likes’, except for this: it cannot do anything about it once it has scrutinised it; that is in the hands of the Prime Minister only. That is first up. Secondly, it cannot get the information that it wants to establish that scrutiny, because there is, from the joint committee down, a whole range of operative overseers of this free trade agreement which do not respond to parliament, are not transparent and, as we have just found, are beyond the reach of the laws of this country, including freedom of information.

Senator Hill—This government is very responsive—just look at the days and days of estimates committees. There are so many opportunities to ask about it.

The TEMPORARY CHAIRMAN (Senator Cherry)—Order! Would senators please speak through the chair.

Senator BROWN—I agree that the interjections from Senator Hill are disorderly and I should not respond to them, so I will respond to you, Mr Temporary Chairman. Let me make it clear though that the insouciant way in which Senator Hill just leans back in his chair and sends out word pictures saying, ‘Parliament will be able to look at this anytime it wants to’—

Senator Hill—That is correct, isn’t it?

Senator BROWN—No, it is not because it is a disempowered parliament that looks at it. That is correct, isn’t it, Senator?

Senator Hill—No, I think this parliament is very empowered.

Senator BROWN—Well, that is the problem. We have an intellectual disjunction here, Mr Temporary Chairman. Senator Hill says he thinks this parliament is empowered. The Democrats have brought in an amendment which says, ‘Let’s make sure of that so that in three years time there will be a review,’ and he says, ‘No, I’ll vote that down because that would empower the parliament.’ That is the whole point here.

Question put:

That the amendment (Senator Ridgeway’s) be agreed to.

The committee divided. [12.48 p.m.]

(The Chairman—Senator J.J. Hogg)

Ayes………… 11

Noes………… 36

Majority…… 25

AYES

Allison, L.F. * 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

Abetz, E. Bishop, T.M.

Brandis, G.H. Buckland, G.

Campbell, G. Campbell, I.G.

Carr, K.J. Colbeck, R.

Collins, J.M.A. Conroy, S.M.

Crossin, P.M. Denman, K.J.

Eggleston, A. * Fifield, M.P.

Hill, R.M. Hogg, J.J.

Humphries, G. Hutchins, S.P.
Wednesday, 11 August 2004

SENATE

26127

Kirk, L.  Ludwig, J.W.
Lundy, K.A. Macdonald, J.A.L.
Mackay, S.M. Marshall, G.
McGauran, J.J. McLucas, J.E.
Moore, C.  Payne, M.A.
Santoro, S. Stephens, U.
Tchen, T. Tierney, J.W.
Troeth, J.M. Watson, J.O.W.
Webber, R. Wong, P.

* denotes teller

Question negatived.

Progress reported.

MATTERS OF PUBLIC INTEREST

The DEPUTY PRESIDENT—Order! It being past 12.45 p.m., I call on matters of public interest.

Former President Ronald Reagan

Senator EGGLESTON (Western Australia) (12.51 p.m.)—The former President of the United States of America, Ronald Reagan, passed away on 5 June 2004. Today I would like to make some observations about the man who I think deserves the title of peacemaker of the latter part of the 20th century. Those Australians born after 1980 probably do not remember very much at all about the Cold War. These days, with the United States of America as the world’s sole superpower and with a cooperative and peaceful Russia, it is hard to imagine a time when we had two mutually suspicious and hostile superpowers—the United States and the communist Soviet Union—facing off against one another. It was a time when we had a world that was composed of two diametrically opposed camps—the free Western world and the communist bloc—and when we had an ‘iron curtain’ dividing Western and Eastern Europe which had been in place since the end of World War II.

Such was the secretive nature of these communist regimes in Eastern Europe that we could never be entirely sure what was going on, and it was only after the end of the Cold War that the true nature of the horrors which characterised their countries became widely known. The communist bloc, which was claimed to be a workers’ paradise but was in practice anything but, was a world eerily reminiscent of George Orwell’s prophetic novel 1984, with its omnipresent Big Brother syndrome.

The communist bloc was composed of a series of totalitarian, one-party states, each without any respect for the human, political or civil rights of the individual, in which all manner of vile human rights abuses could be justified on the basis of being for the collective good. It was a world that had no respect for individual freedom, that tolerated no dissent and where the population was kept in check by a brutally repressive state apparatus, and those who refused to follow the rules risked a late night visit from the secret police to be ‘disappeared’ or sent off to a prison or a psychiatric hospital. It was a world of central planning, where market forces were held in contempt and where the ordinary population endured chronic shortages of everyday necessities, but where, remarkably for a supposedly classless society, the party hierarchy enjoyed a life of rarefied privilege.

Let us bear in mind George Orwell’s Animal Farm as a metaphor. By the end of the novel, the pigs had become indistinguishable from the repressive human farmer that they had helped to banish from the farm. The slogan ‘four legs good, two legs bad’ had by the end of the novel metamorphosed into something completely different: ‘four legs good, two legs better’. One of the seven commandments, ‘all animals are equal’, had been perverted in a classic case of the doublespeak that characterised communist regimes and became ‘all animals are equal but some animals are more equal than others’.

The threat represented by the Cold War was only too real. Every day the world faced the possibility of a deadly nuclear conflagra-
tion. In a world with two superpowers, each with their finger on the nuclear trigger, just one small mistake could prove fatal. In the case of nuclear war, there could have been no learning from mistakes. In the nuclear age it is a truism that there is no room for mistakes, because the first is the last. Just one mistake would have brought thousands of intercontinental ballistic missiles raining down from the heavens on the United States of America, the Soviet Union and their allies, including Australia. Australia would undoubtedly have been a nuclear target, with the north-west radio base, the Harold E. Holt base and other places in Australia being targets for nuclear weapons. A nuclear holocaust would have occurred which would in all likelihood have spelt the extinction of life on earth, certainly of all human life.

This was the high-stakes environment in which President Ronald Reagan assumed office on 20 January 1981. As it happened, I was in East Berlin as a tourist in July of 1980 and was disturbed by the drabness of the city, the long queues of sad looking people outside shops and the grey, bullet-pockmarked buildings which had remained untouched since the end of World War II. The only colour in the city was in the form of huge banners proclaiming the people’s thanks for their liberation by the forces of the Soviet Union nearly half a century before. Given that it was so many years after the end of World War II that these banners were still on display in the streets, there was a sense that the whole of East Berlin had been caught up in some kind of weird time warp.

My bus driver warned repeatedly that were Ronald Reagan, that well known enemy of the working class, to be elected President of the United States of America, the world would face nuclear disaster. How wrong that old communist bus driver proved to be. President Reagan was a Republican, an avowed anti-communist and a champion of freedom, liberty and democracy. His eight-year presidency was to alter the course of the Cold War and change the world for the better. As another old Cold War warrior, former United Kingdom Prime Minister Margaret Thatcher, observed—

Senator Abetz—A great lady.

Senator EGGLESTON—Senator Abetz has observed that Margaret Thatcher was a great lady, and indeed she was. A few years ago, Margaret Thatcher observed in relation to Ronald Reagan that he won the Cold War without firing a shot, and that was in fact the case. Ronald Reagan’s policy of peace through strength hastened the collapse of the communist bloc and accelerated the end of the Cold War. President Reagan identified the stagnation of the Soviet Union’s economy and the fact that it had fallen behind the USA technologically as the Achilles heel of the communist empire. Reagan’s response was to ramp up the pressure on the Soviet Union via an arms race, knowing full well that it would economically cripple the Soviet Union. Between 1981 and 1986, President Reagan increased the defence budget of the United States by over 50 per cent, from $178 billion to $367 billion.

On 8 June 1982, President Reagan addressed the British parliament and said:

In an ironic sense Karl Marx was right. We are witnessing today a great revolutionary crisis, a crisis where the demands of the economic order are conflicting directly with those of the political order. But the crisis is happening not in the free, non-Marxist West but in the home of Marxism-Leninism, the Soviet Union. It is the Soviet Union that runs against the tide of history by denying human freedom and human dignity to its citizens. It also is in deep economic difficulty. The rate of growth in the national product has been steadily declining since the fifties and is less than half of what it was then.

Reagan went on:
The dimensions of this failure are astounding: a country which employs one-fifth of its population in agriculture is unable to feed its own people ... Overcentralized, with little or no incentives, year after year the Soviet system pours its best resources into the making of instruments of destruction. The constant shrinkage of economic growth combined with the growth of military production is putting a heavy strain on the Soviet people. What we see here is a political structure that no longer corresponds to its economic base, a society where productive forces are hampered by political ones.

However, President Reagan was no inflexible ideologue, as my East Berlin bus driver had thought. Although in 1983 he had derided the Soviet Union as the ‘evil empire’, he reached out to the Soviet Union when Mikhail Gorbachev came to office in 1985. These two presidents had a series of summit meetings, culminating in the signing of an intermediate nuclear force treaty in 1987 which eliminated an entire class of nuclear weapons. On 12 June 1987, President Reagan stood at the Brandenburg Gate in Berlin and called on Mr Gorbachev to tear down the wall which separated East Berlin from West Berlin. He said:

General Secretary Gorbachev, if you seek peace, if you seek prosperity for the Soviet Union and Eastern Europe, if you seek liberalization: Come here to this gate! Mr. Gorbachev, open this gate! Mr. Gorbachev, tear down this wall!

It was in November 1989 that the Berlin Wall finally came crashing down. In many ways, President Reagan’s greatest achievements occurred after his presidency had ended. In 1989 the communist bloc imploded and, in the space of 10 months, freedom was achieved in six countries. It was at the end of 1991, after Reagan had left office, that the Soviet Union collapsed, spelling the end of communism in eastern Europe and bringing the Cold War to a close. Following Reagan’s death, Mr Gorbachev paid tribute to him. He said:

I deem Ronald Reagan a great president, with whom the Soviet leadership was able to launch a very difficult but important dialogue ...

He continued:

Reagan was a statesman who, despite all disagreements that existed between our countries at the time, displayed foresight and determination to meet our proposals halfway and change our relations for the better.

Apart from his foreign policy achievements on the domestic front, Ronald Reagan was renowned for his optimism and is credited with restoring American pride after the grim toll in American lives from the foray into South-East Asia in the sixties and seventies. President Reagan was an unapologetic proponent of the free market and small government, lending his name to ‘Reaganomics’. His extensive tax cuts, the largest in American history, brought the top marginal rate of taxation down from 79 per cent to 28 per cent and played a major part in ensuring a sustained period of economic growth in the United States.

President Reagan was underestimated for most of his presidency. He was derided as being a simpleton, too old and a mere B-grade actor. He was renowned for his ability to connect with the American people, to the extent that he became known as the ‘great communicator’. In fact, for many years before and during his presidency, Reagan reached out to people all over the United States with a weekly radio broadcast to which literally tens of millions of Americans tuned in. In these broadcasts Reagan espoused his version of American philosophy and values, which grew out of his small town, middle-American background and which obviously resonated with his countrymen. The great esteem in which he was held by the American people was evident by the many thousands of them who visited his coffin as it lay in state in Washington and who lined the streets during his funeral.
Undoubtedly his most significant contribution to the world was to hasten the collapse of the communist bloc and accelerate the ending of the Cold War. President Reagan helped to bring the world a sense of peace and security, unknown for nearly 50 years, so that today we can live in a world no longer under the constant threat of nuclear annihilation. President Reagan well deserved the epithet of peacemaker.

**Government Purchasing Policy**

Senator CARR (Victoria) (1.06 p.m.)—Today I would like to raise the way in which the Howard government has managed to shift overseas jobs, millions of dollars and great training opportunities with regard to apprenticeships and the way in which it has succeeded in securing a rather questionable tender process which has led to the loss of jobs and training opportunities of workers within the Hunter. The Newcastle engineering company Varley missed out on an $18 million contract for the manufacture of high-tech rescue vehicles for Australian airports. Since that time the region, up in arms at the result of the government’s failures with regard to this tender process, has raised serious concerns about the treatment of the local manufacturer Varley.

Today I would like to raise some very serious concerns of my own about the way the Airservices Australia contract was let and the way this government has failed to develop an adequate government purchasing policy. From the information available, legitimate questions are being raised. It is not clear to me at this point whether or not the government is able to answer those questions. I have as a consequence placed on notice a series of questions in a bid to seek answers on the circumstances which have led to the loss of this particular contract.

We can assert this with clarity: Airservices Australia has failed to use the contract process to promote regional development, industry development or jobs growth in the Hunter region. As a result, 60 direct jobs and 180 indirect jobs that otherwise would have gone to the region have been lost. Opportunities have also been lost for high-skilled, high-wage jobs in this particular area of engineering. Equally, 10 to 15 apprenticeship opportunities have been lost. Everyone now understands just how serious the issue of skills shortages in this country has become—everyone, it would appear, except members of this cabinet. Important opportunities are being lost as a result of the government’s desperate bid to export jobs and training opportunities. That opportunity has once again been missed, which in my judgment leaves the Howard government indicted for its neglect.

There are a number of questions that I believe ought to be answered. I would like to know why the local company lost its contract when the bids were so close. I would like to know why the tender documentation favoured the overseas company. We all understand the debate in this country about whether or not we should have local preferences, but I do not believe it is acceptable where tender documents appear to favour foreign firms. The government tendering arrangements have led to the security deposit being set at $6 million, or 30 per cent of the project cost, instead of the 10 per cent that is required under normal circumstances—quite clearly a deterrent which would lead to smaller Australian companies not opting to pursue these sorts of contracts.

I would like to know why Airservices Australia’s officials failed to visit Varley to inspect their site, capabilities or products. I would like to know why Airservices officials visited Austria, on the other hand, for a four-day tour to look at the Rosenbauer International Aktiengesellschaft site. Why was it that the alternative bidder, the foreign bidder,
got such attention when the local manufacturer was not able to attract the attention of the government in this way? I would like to know why the government chose to go for a fully imported product with no opportunity for Australian companies to contribute—they were effectively locked out of the operations of the successful tenderer. I would like to know why the contract for maintenance and afterlife support was also given to the foreign firm rather than looking at the domestic arrangements that could be made. I would like to know what the additional costs associated with making that foreign firm a successful tenderer were. We are entitled to know what processes were set in train to address complaints about the processes undertaken in the awarding of this particular contract. I would like to know what action the government has been taking with regard to the request for the reissuing of this particular tender.

The decision by Airservices Australia to award the contract to the Austrian company has seen the creation of a great many jobs in Austria and demonstrated a complete lack of understanding by the government about the value of government purchasing. It follows a pattern which has only got worse over recent years under this government. The Howard government has a purchasing policy unit, but it is hidden away in the department of finance. Airservices have let a contract to an Austrian company, but they do not seem to have any maintenance facilities for that foreign contractor to perform services on the product they are purchasing that is supposed to service Australian airports. I would like to know how that circumstance could be allowed to develop.

I would like to know whether or not the whole-of-life costs were actually built into the price of this project. I would like to know why the government seems so intent on running down the Industry Capability Network. For instance, the ICN has suffered funding cuts. It has been under enormous pressure to undertake a program of cost recovery for the provision of services to industry, and it has no funding certainty under this government at the moment. The government is doing all that it can to undermine commitments to give preference to Australian manufacturers. It is doing all it can to encourage the shipment of jobs offshore.

We now are entitled to ask whether the government is producing a policy outcome directly counter to the interests of Australian manufacturers. The Howard government has a long and sorry record in this regard. Through its Supplier Access to Major Projects program it has sought to effectively move away from any commitment to providing basic information to purchasers when it comes to major projects in the country. So it has no real commitment to even provide information, let alone to Australian manufacturers for the provision of services to the Australian government. Ensuring value for money for Australian government projects is fundamental. But the question of price needs to be measured across the life of the project, not just at the beginning of the project. If you do not build in considerations of the cost of maintenance then you are not getting a true reflection of the price of services that are being provided. Programs that have been run by the government in the past have produced major successes with regard to government purchasing. In the past, the Supplier Access to Major Projects program has supported 65 major projects and has provided advice to businesses, which I am told led to the creation of contracts of some $876 million.

It seems to me that it is possible. There is potential to make big improvements in this area and that is why I say a Labor government will support Australian enterprises, will be in the business of creating Australian jobs and will ensure that services are maintained within Australia. I think it is important that
the Australian government understands that the $75 billion program of government expenditure across the three levels of government in the country is more effectively mobilised to support industry development in this country, ensure local manufacturers have opportunities to secure government procurement, encourage research and development in Australian manufacturing and ensure there is a commitment to Australian manufacturers and to Australia.

We have a circumstance developing in this country whereby manufacturers are constantly being told, ‘There is effectively no future for you.’ We have a government that seems deadset on encouraging people to look offshore—and I do not mean look offshore in terms of exports, which is something that should be encouraged. The truth remains that you cannot have a serious export program unless you have a strong domestic market. That is the foundation stone. This is a government that seems determined to ensure that we import as much as possible. It is a government that seems determined to see us, essentially, as parasites on the international research and development food chain and our economy as a derivative economy, a branch office economy. It is obviously not committed to making sure that the greatest possible opportunities are available for the growth of the domestic market.

When it comes to government purchasing, it is quite clearly an avenue that is available to government which is not currently being used effectively. The example of the fire trucks provides us with a window to what is occurring more broadly with the government purchasing programs within this country. It would be appropriate for the government to give a full explanation for why a contract of this type, which could produce such good outcomes for a region such as the Hunter, has been allowed to go offshore in the way it has. It could be that there is a perfectly reasonable explanation. We are yet to hear what it is.

The advice to me suggests that all of the actions that have been taken have been aimed at assisting the foreign competitor. If that is not right, let the government come down and explain itself. Let it explain it in terms of the position that we have put forward and explain why the contract for that product was awarded offshore when the price was so close. We would like to know why the documentation appeared to be so prejudicial to local manufacturers. We would like to know why government officials had time to travel halfway around the world to examine the foreign competitor’s facilities but did not have time to go to Newcastle. I cannot quite follow how that occurred. If it did occur, we are entitled to an explanation.

We are entitled to know what action has been taken to protect the maintenance arrangements. We cannot have a situation where a contract is given to a foreign firm on the basis of its immediate price value without regard to the long-term cost to the Australian budget. I think we are entitled to know why that happened and what process is available for the resolution of people’s complaints on these matters. We have not seen any of those answers. The people of the Hunter are entitled to answers from the government on this issue. The opposition will be pressing for answers to these questions and, if there is a change of government at the forthcoming election, what I have argued today is the sort of position that we will put forward.

It is totally inappropriate that government purchasing programs are so ineffectually used to advance the interests of Australian manufacturers and consumers. The approach that is being taken at the moment is not about providing jobs here. It is not about providing training opportunities here. It is not about value for money. We as citizens of this coun-
try are entitled to expect the Commonwealth to lead on all those fronts. We are entitled to expect that there will be commitments to research and development. We are entitled to expect that companies that are tendering for government work will have an understanding of the social value of the work they are undertaking, and that can be done on the basis of value for price. It can be done with a commitment to the broader prosperity of this country. Frankly, at the moment, that is not being done.

Racism

Senator TCHEN (Victoria) (1.20 p.m.)—On Thursday last week Mr Jim McGinty, the Western Australian Attorney-General, abruptly left a Commonwealth ministerial meeting and flew home to Perth, fearing for the safety of his family after an allegation of a neo-Nazi plot to harm him. The alleged threat was made by a Mr Jack van Tongeren, head of the Australian Nationalist Movement, which is described as a white supremacist organisation. A number of its members are facing court charges over a spate of racist graffiti attacks in Perth against Jewish and Chinese businesses and offices. It was reported that alleged threats were also made against a number of other prominent Western Australian and national leaders—including the Western Australian police commissioner; the Western Australian Premier, Dr Gallop; and the Prime Minister—for ‘crimes against Australia’ because of their support of multiculturalism.

Mr van Tongeren, a convicted felon who has spent 12 years behind bars for a series of firebombing and other racially motivated crimes committed in the eighties around Perth, apparently believes that no-one who came to Australia after 1868—when transportation ceased—is entitled to be a citizen of this country. He is against not only migrants but also Indigenous Australians. He is especially against the idea of a multicultural Australia. But, unlike others of his kind, Mr van Tongeren is prepared to resort to violence to realise his prejudice. After an intensive hunt for him, the Western Australian police apprehended Mr van Tongeren last week and have charged him with various offences related to both his and ANM’s activities. I congratulate the Western Australian police on their diligence and effectiveness against those who conspire against the safety and security of Australian society.

Although, in reality, Mr van Tongeren is no more than a small-time operator, and the Australian Nationalist Movement is a poor shadow of al-Qaeda and Jemaah Islamiah, his notoriety is still a timely reminder that every society, however prosperous and harmonious, will always contain an element of discontent. We must be vigilant that such discontentedness does not turn to maliciousness. The likes of Timothy McVeigh are no less of a threat to stable and civilised societies than Osama bin Laden and his followers, and are likely to be just as prevalent.

Of course, Mr van Tongeren is not alone in his dislike of a multicultural Australia. Less than a decade ago, Mrs Pauline Hanson shot to national prominence with her opposition to Asian migration, Indigenous social equity and multiculturalism. When I came to this chamber from Victoria, representing the Liberal Party, Senator Len Harris came here from Queensland, representing Pauline Hanson’s One Nation Party. In my first speech I reflected on the many changes—including the adoption of a non-discriminatory migration policy, together with multiculturalism, as a basis for building a tolerant, harmonious and mutually supportive society—that have occurred, mostly for the better, in Australian society since the end of the Second World War, while Senator Harris stated his opposition to the concept of multiculturalism.
It was my belief then, as it still is, that the opposition by Mrs Hanson and Senator Harris to multiculturalism was because they—and many others in the community who might have agreed with them to varying degrees—did not really understand what ‘multiculturalism’ meant and did not have the chance to gain such an understanding. I am pleased to say that Senator Harris quickly came to realise that multiculturalism is a description of a process of nation and society building, based on mutual respect, shared experiences and human values and acceptance of a common destiny. It is not the description of an end state of a society of diversity, so he had no reason to oppose it. In the five years since entering the Senate, Senator Harris has indeed proved himself to be a dignified and valuable member of the Senate, and I am delighted to have shared this experience with him. I also note that Mrs Hanson soon came to realise that, while there are many evils in this world, multiculturalism is not in fact one of them. I was pleased by that also and wish her well in her life.

Let me briefly recap for the Senate the history and rationale of multiculturalism as practised in Australia—at least as far as I understand it and how I believe the Howard government perceives it. As I noted earlier, multiculturalism is a description of a process of nation and society building, based on mutual respect, shared experiences and human values and a common destiny. It is not the acceptance of a society of diversity, simply for the sake of diversity. As a concept, multiculturalism developed in the 1960s in the wake of large-scale immigration from non-British European sources, which had commenced after the end of the Second World War. At the beginning of the post-war migration waves, the newcomers were simply extra pairs of hands. Who they were and what they knew did not matter—indeed, the less talked about the better. The only concern the government of the day had was that the influx did not trigger the innate distrust of these ‘foreigners’ in what then would have been called the ‘native’ population. The call was to assimilate to the Australian way of life and as soon as possible.

By the 1960s it had become obvious that it was both inequitable and wasteful to demand that all migrants must ignore and discard their knowledge and experiences of their own societies and simply become Australians with all its implications of social history and social skills. It was also obvious that this was an impossible demand and that enclave communities, each with their distinctive characters, were already springing up all over the country, with the development of a collection of ghetto societies an unacceptable but real possibility.

By this time, it was also obvious to forward thinkers that future migration would be coming from an ever broader range of countries with different cultures and linguistic histories. The Holt government had not only opened migration access to Asian countries but signed formal immigration arrangements with Turkey in 1967. This was an amazingly liberal and far-sighted move, given that 37 years later the Europeans—those marvelously progressive and enlightened folks that the Democrats and the Greens in this chamber are forever holding up as role models for us backward Australians—are still baulking at accepting Turkey into the European Community.

After briefly trying the idea of integration, an idea somewhat less severe than assimilation, the concept of multiculturalism as the foundation of a growing Australian society—especially since it was obvious that migration would continue to be a major force in the building of this society—came to be adopted as national policy by the Fraser government. Since then, multiculturalism has
enjoyed all-party support in politics—except for that brief period in Mrs Hanson’s early political career, but that period has ended, except for a brief period during the Hawke government when the industrial and organisational wings of the Labor Party, having initially opposed the arrival of Vietnamese boat people supposedly because of their association with the Vietnam War and the South Vietnamese government, discovered that migrant communities could be a rich field for political power base building and that multicultural funding from the Commonwealth government provided a good recruiting tool. Apart from that little hitch, multiculturalism has been a low-key but effective and consistent force in bringing harmony and prosperity to the Australian community.

The Howard government has been forward looking and inclusive in pursuit of productive implementation of multiculturalism to further the aim of harmony and prosperity through diversity, built on a foundation of mutual respect and acceptance. The simple fact that we came through the aftermath of international terrorism acts and the difficulties of dealing with the victims of large-scale people-smuggling, without any overreaction from the community generally—a mere five years after the explosion ignited by Mrs Hanson—is testimony to the success of the Howard government’s diligence.

The creation of the citizenship ministerial portfolio to accompany the multicultural affairs portfolio was a clear signpost for the future direction of Australia. The fact that Prime Minister John Howard took this action before the tragedy of Bali shows that he and his government have a commitment to an Australian future in which all Australians can and will proudly play their part. It concerns me greatly that the opposition leader, Mr Mark Latham—incidentally, he is not on Mr van Tongeren’s list of people that he thinks have sold out Australia—said in his speech to the Global Foundation on 20 April this year that multiculturalism has passed its use-by date and that we should move on—move on to what?

Australia will continue to be a country of large immigration intake. Our future growth is the key to our ability to continue to attract migrants to participate in our development. Although historically the United Kingdom has been Australia’s top migrant source, the spread of our migrant sources will continue to diversify, and increasing numbers of new migrants will come from countries and communities with cultural heritages distinctly different from ours. The only tool we have available to us is this idea and acceptance that whatever they bring has a potential place in our future society. On that basis, we can build a future society that we can all share in. However, should we jettison multiculturalism, as Mr Latham says, because he thinks it has already given us a ‘community of communities’ and we have nothing further to prove? In a radio interview with Mr John Laws on the following day, 21 April, Mr Laws commented:

... multicultrism is a failed experiment I’ve got to tell you. That’s my feeling about it. But we’ve seemed to have promoted ourselves social division by encouraging people from other cultures to come here and hang onto those cultures.

In response, Mr Latham said:

Well that’s where we’ve got to move on.

If Mr Latham shares Mr Laws’s views of what multiculturalism is about, we all have real reason to be concerned. However, to be slightly charitable to Mr Latham and the Labor Party, perhaps Mr Latham confused multiculturalism and multiculturism. Certainly on the Labor Party web site, where these media items were listed, he used the two terms interchangeably, but they are quite different. Multiculturism is a society of many
cultures. Multiculturalism describes a process which is based on different sources and where something entirely new is built. Perhaps Mr Latham’s description of a community of many communities demonstrates his confusion about this.

Mr Latham’s offhand attitude alarmed me even more than his actual words, and it would alarm every Australian who believes that, notwithstanding his or her cultural heritage, they have contributed and will continue to contribute with advantage from that background to Australia’s future, and who believes that future Australians who join us and who have their own cultural heritage will and should be able to contribute in the same way.

It is okay for Mr John Laws to have a misconception about what multiculturalism is about. But Mr Latham, who has the pretension to be Prime Minister of Australia, should really have a much clearer idea about this. Mr Latham delights in the claim that he will inherit the mantle of Gough Whitlam. That is not fair to Gough Whitlam. Gough Whitlam had the grand vision, though perhaps he did not see the trees so well. Mr Latham would be more at home in claiming the mantle of Graeme Campbell.

Social Welfare: Pensions and Benefits

Senator HARRIS (Queensland) (1.34 p.m.)—I rise to speak on a matter of public interest and to raise an issue of deep concern in Queensland. I would like to place it very clearly on the record that I am using an example, but the primary role of that example is to raise the issue that the then Department of Social Security could override and ignore the decision of a judge in a review tribunal. Let me outline very quickly the particular case I am referring to. A customer, Mr Wise, had been in receipt of an age pension from 1975. At that time, there was no income assets test for such a pension. On 21 March 1985, the assets test was introduced. An ARO document provided from the then Department of Social Security office in Nambour said:

All customers that were not means tested were sent a form similar to an income and assets review form.

That is the statement from the department. I bring to the attention of the chamber and the people who are listening to this broadcast that, in 1992, Mr Wise was 91 years of age and, obviously, in 1998 he was 97. In 1991, Mr Wise was in complete control of all of his personal affairs and had responded to the department’s communications over a number of years—in 1981, 1982, 1984 and 1985. The department provided the minister with a document headed ‘Response to Senator Harris regarding recovery of an age pension debt’ which was tabled yesterday. Yesterday the minister said:

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.

So, in 1992 and 1998 the department, on its statement, sent a form to Mr Wise to fill out. The original document, from the department in Nambour, contains some profound statements:

Have checked old records for a copy of assets collection form. None on file and possibly batch or centrally stored—either way now destroyed.

Called policy who suggested I contact Retirements Help Desk and have them check with DFACS as they should have anything stored by Social Security.

Called Retirements Help Desk who are following up for me and will get back to me.

190100 Help Desk phoned back. They have spoken to DFACS who advise there is no information relating to the introduction of the assets test or data collection available.

I repeat:
... there is no information relating to the introduction of the assets test or data collection available.

They said they may be able to obtain something by going through archive but it would be a very expensive exercise. I advised that it would not be necessary.

So the officer, who lives in Nambour, made the decision that there was no need to provide the documentation that the department relied upon to base its claim for the repayment of this pension. At that stage, the pensioner was 91 years old. Geographically, the office that this person sat in was within 10 kilometres of the residence of Mr Wise. One of the forms that were sent from that office to Mr Wise asked for contact details. Mr Wise filled it in and said he did not have a phone. So the social security employee, who worked in Nambour less than 10 kilometres away, knew Mr Wise did not have a phone and that he had not responded on two forms that the government deemed—I stress 'deemed'—he had received, but they did not have the courtesy to drive 10 kilometres to visit a 91-year-old man and ask him whether he got the forms. It is a gross dereliction of either social duty or moral duty.

Around that period, the department changed from paying pensions by cheque to paying them automatically into bank accounts. If there was a problem with Mr Wise being ineligible to receive this pension, why wasn’t it raised then? The Social Security Appeals Tribunal handed down a decision on 14 June 2000. Some alarming statements were made as findings of fact. One finding was:

Mr Wise had not responded to these notices in so far as they related to the land value issue.

Mr Wise had not responded because Mr Wise had not received the forms. The department has verbally confirmed that it assessed those that it sent the forms out to. One of the questions that need to be answered by Centrelink is that, if it got it wrong back in 1985—if it did not make the right assessment and send the form out to the person who ultimately turned out to have assets above the limit—what processes did it have in place to correct that process? I believe the statement of fact that appears in this document from the Social Security Appeals Tribunal is nothing other than a statement of convenience to protect the department. In the tribunal’s document, it says:

Section 73 of the Act provides that if a person does not respond to the Notice then the person ceases to be entitled to Age Pension.

Directly under it it says:

Automatic termination—recipient not complying with section 68 notification obligations.

So the act is abundantly clear. When they sent the notices to Mr Wise, to which he did not respond, the department should have terminated the pension. They did not. The Social Security Appeals Tribunal decision was then taken to the Administrative Appeals Tribunal, which published its reasons for decision, in which item 5 states:

The applicant was born on 19 November 1901. He had been on an age pension for many years before the relevant dates in this case. There is a scarcity of documents.

There was not a scarcity of documents; there was no document because the very documents asking Mr Wise to provide details of his assets were never sent. And here we have it: the department have admitted that they cannot provide the details of when those documents were sent. As I said earlier, we know that Mr Wise responded to the documents from the local office in 1980, 1981, 1982, 1983 and 1985. Why is there not a process which would show up differences when there is an incompatibility in a person’s file? Item 8 of the reasons for decision states:

The applicant indicated a negligible income confined to bank interest. While he disclosed interest from a bank account, he denied any other assets.
That is manifestly incorrect. How can a member of the Administrative Appeals Tribunal make such a statement? Mr Wise did not refuse to fill in his assets. What Mr Wise did do was answer every question on every form he received. I am not going to table them, but I have the documents here and all the forms sent out by the Nambour office carrying Mr Wise’s signature. But the documents they are claiming he received were sent out centrally from Brisbane, and that is where the problem lies. If we look further, item 30 in the decision states:
However, the fact remains that the Applicant was paid pension which was not payable because of the assets test. Both parties contributed to the error but I am satisfied it is likely that neither of them did so knowingly.

I have no problems with that in relation to the department. The department did not knowingly fail to send the forms but the department have to accept that the accrual of the pension paid was their fault. Item 34 states:
This is not a case where administrative error by the Commonwealth is the sole cause of the over-payment. Omission by the Applicant played a part.

That is another convenient set of words to cover the department. In item 35, they go on:
... but he did unwittingly omit to comply.

He did not unwittingly omit to comply; he did not know about it. The important part is item 36, which states:
However, the circumstances of the Applicant are such that there is no capacity to repay this debt until the subject land is sold.

The land has not been sold. Therefore, Mr Wise’s relatives believe that the department should honour the decision of the judge and cease harassing this family.

**Immigration: Detainees**

Senator BUCKLAND (South Australia) (1.49 p.m.)—I begin by quoting the United Nations Universal Declaration of Human Rights 1948, the preamble to which, in part, says:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people ...

Those are profound words. They represent something which, until recently, Australians believed in and were encouraged to believe in by their political leaders. But, sadly, through the actions and attitudes of the Howard government, many have allowed these great principles to slip from their consciousness and allowed prejudice and fear to contaminate the views of those less fortunate people from foreign countries looking for refuge on our shores.

Our modern society has been founded upon the principle of individual freedom motivated by the atrocities of the Second World War. This leads me to ask the question: was the High Court finding on 6 August 2004 a conscious attempt to revert to the pre-war confinement of socially stigmatised people or a downright mean and dirty ploy master-minded by the federal government in the lead-up to an election? I will leave that for the Senate and the people of Australia to judge.

International law is based on the fundamental notion of individual freedom. Over recent years we have seen the Howard government erode the core values of Australia’s psyche and cut away at the edges of what most nations now regard as common law—a common law that most countries respect and that a Labor government would embrace. We should be looking to reverse the recent oc-
currences by acknowledging the valuable role that international law can play in shaping common law. It is time to bring the Prime Minister’s arrogance to an end.

The High Court’s finding on 6 August makes me think that we need a rider for refugees like al-Khafaji and al-Kateb, who are of no threat to the Australian community or to our national security. We have to ask ourselves whether they still warrant permanent detention. Commonsense, common law and good conscience lead me to believe that these people, who have committed no crime against Australia, should not be detained behind razor wire or electric fences. Some refugees have been living in the Australian community since November 2002, and during that time they have surely proven that they do not pose a threat to our community. Yet they now face indefinite detention through no wrongdoing of their own. This is simply un-Australian. I have to say that I am proud to be a member of the Australian Labor Party, which does not support the indefinite detention of refugees who have proven that they are no threat to our community or national security.

The federal government has simply ‘cocked up’—to use a purely Australian term—and made a fundamental mistake in the deportation of Iraqi nationals to Syria. Take the case of al-Khafaji and al-Kateb: the federal government demonstrated a complete lack of concern for those individuals and a lack of understanding of their situation. Rather, the Howard government simply chose to persecute them. It showed a lack of concern for their welfare, a lack of concern for their human rights, a lack of concern for international law and a complete lack of concern for common decency.

Unlike al-Khafaji and al-Kateb, many other refugees in their position have been afforded temporary protection visas and allowed to live in the community. For these two people, being shifted around the South Australian outback detention centres has meant that they have had no means to appeal the original decision. Others who have appealed have largely been granted TPVs, but al-Kateb and al-Khafaji have not. Due to the limited appeal time frame and the lack of resources available in the former Woomera and now Baxter detention centres, al-Khafaji will not be afforded a new appeal, although if he were afforded a new appeal in all likelihood he would be granted a TPV.

Where is the fairness and honesty from the federal government? This is just another example of the outright meanness and trickery being displayed by the Howard government towards boat people and legitimate refugees as determined by international law. The government has chosen not to do the right thing for these unfortunate and desperate souls. The government’s approach towards refugee applications has seen regressive policies such as the costly Pacific solution and long-term detention in places like the South Australian outback. The term served in a detention centre, in which these unfortunate souls are required to serve their sentence for crimes they have not committed or for crimes that they have not been charged with having committed, is inhumane. This is good reason to reflect on those opening words from the UN Universal Declaration of Human Rights. The ongoing costs to the Australian taxpayer have been immense, unnecessary and offensive to all reasonable, thinking Australians. Labor believes that, once a decision can be made that these people are not a threat to Australia’s national security, they should not be behind bars. Given the great turmoil occurring in the homelands of these people, the choice to flee to Australia has to be seen as a reasonable but hardly easy choice. It is a choice fraught with danger, often putting those fleeing at
risk of losing their own lives or the lives of their families and loved ones. They do this and accept the risk in the hope of gaining a better life and freedom, but what do they get? They get Baxter—a jail.

Leaving your house in the middle of the night to escape detection, leaving your belongings behind and leaving the people you have grown up with, family and friends, cannot be a light choice. Genocide and war should not be wished upon anybody, yet people who flee their homeland to escape such events are, upon reaching Australia, treated like the very criminals they are fleeing from. Where has our humanity gone? Joseph Welch, lawyer for Marx during the McCarthy witch-hunts, said, ‘Sir, have you no decency?’ If we put that question to our Prime Minister, the answer would have to come back as: ‘Decency doesn’t convert into votes.’ Decency, like statesmanship, has to be earned. The Prime Minister has failed on both counts.

QUESTIONS WITHOUT NOTICE

Iraq

Senator FAULKNER (2.00 p.m.)—My question is directed to the Leader of the Government, Senator Hill, representing the Prime Minister. Is the minister aware that members of the audience at the candidates’ forum in Bondi, at which Mr Turnbull spoke on Monday this week, swear that he said, ‘History will judge Bush’s invasion of Iraq as an unadulterated error’? Is the minister aware that Mr Turnbull has now denied making such a statement and has issued a clarification? Is it true that the Prime Minister’s office demanded the retraction and clarification from Mr Turnbull? Isn’t the Turnbull incident just another illustration of the Howard government’s complete intolerance of dissent?

Senator HILL—I have to confess that I have heard a number of interpretations of what was said at this candidates’ meeting. I heard a journalist—I think it was from the Bondi Courier—this morning expressing his—

Senator Faulkner—Was it the Wentworth Courier?

Senator HILL—I don’t think it was the Wentworth Courier.

Senator Faulkner—Well, there is no Bondi Courier.

Senator Robert Ray—The Bondi Bugle.

The PRESIDENT—This is a serious question time. Let’s get back to question time. I had a lot of letters and emails yesterday about the behaviour in here, and I just hope that it improves today.

Senator HILL—It is a serious question time, but I do not think it is a serious question. It is certainly not addressing the big issue of the time. I did hear Mr Turnbull saying that he supported the coalition operation in Iraq. This government is proud that Australia joined with coalition partners to address a failure of the Security Council to provide the security that it was intended to provide and to take hard but important decisions to provide the security to which Australians are entitled. So I was pleased to hear that from Mr Turnbull.

I also heard a number of interpretations of how the operation in Iraq will be regarded historically. That is all very interesting, but I do not think it is particularly pertinent to the issue as to whether it was the correct operation to undertake at the time when decisions had to be made. Nobody can confidently judge the determination of history in terms of the outcome for Iraq, which was what was being spoken about. My view—and the government’s view—is that not only was it the right decision to take at the time given the threats associated with weapons of mass destruction but also it has given the Iraqi peo-
ple the opportunity for a better future. They are now rid of one of the most horrible dictators of our generation, someone who we believe was responsible for the deaths of at least 300,000 innocent Iraqis. The Iraqi people are now rebuilding their country, putting in place democratic institutions and giving themselves the chance of a more prosperous and better life. I am certainly pleased they have that opportunity, and I am pleased that Australia has played a part in giving them that opportunity.

Senator FAULKNER—Mr President, I ask a supplementary question. I note that the minister—deliberately, I suspect—did not answer the question I asked. Let me ask a supplementary question: Minister, isn’t Mr Turnbull’s embarrassing backdown just another example of the Howard government’s standard operating procedure of demanding retractions and clarifications when anybody dares to differ from the government line, as was typified by the case of AFP Commissioner Keelty? Or perhaps it can just be explained away because, as Mr Downer said in his extraordinary comments a short time ago, ‘Turnbull is nothing more than just a candidate.’ Why don’t you now explain to the Senate whether this is just another illustration of the way the Howard government deals with dissent?

Senator HILL—That was a very odd supplementary question, written before listening to the answer, of course. As I said, Mr Turnbull has said that he supported the government’s operations in Iraq. On behalf of the government, we are proud of the contribution that has been made by Australia and that we continue to make. We are pleased that the Iraqi people now have a chance for a better future, and we are pleased that the region and the world are a safer place as a result of the coalition’s operations.

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 Sri Lanka, led by the Speaker, the Hon. W. J. M. Lokobandara, MP. I warmly welcome the delegation to Canberra and, with the concurrence of honourable senators, I invite the Speaker to take a seat on the floor of the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE
Employment: Mature Age Workers
Senator HUMPHRIES (2.07 p.m.)—My question is to the Minister for Family and Community Services, Senator Patterson. Will the minister update the Senate on how the Howard government is providing greater opportunity and choice for mature age Australians, and is the minister aware of alternative policies?

Senator PATTERSON—I thank Senator Humphries for his question, because it gives me the opportunity to talk about the way in which the Howard government has taken very seriously the need to create opportunity and choice for mature age Australians. In particular, mature age Australians should have the opportunity and choice to continue to participate in the work force or to re-enter the work force. It is about choice and it is about opportunity to do either of those two things. Work force participation by Australians in their mature years assists them in a number of ways. It assists them to maintain their social networks and it also assists them in regard to their health and in being able to accumulate greater resources for their full retirement. We have introduced a range of measures for mature age people. We have reduced the tax burden on people over 65 through the senior Australians tax offset. Single older Australians are now able to earn
up to $20,500 and a couple are now able to earn up to $32,000 without paying income tax. If they choose to work beyond age pension age, they may be eligible for a tax-free lump sum of up to $28,000 under the pension bonus scheme.

The Attorney-General introduced the Commonwealth age discrimination legislation. It is very important that Senator Humphries asked me this question. I introduced private member’s bills in two parliaments in an attempt to get rid of the compulsory retirement age for Commonwealth public servants. What happened? Labor said it was too hard to give older Commonwealth public servants the opportunity to continue working. We have been able to do that, but Labor said it was too hard—that they could not work out the compensation, they could not do it. I introduced two private member’s bills and you did nothing. I attempted to do it from opposition, but you did nothing. Senator Humphries, public servants who might be thinking about who they will vote for in this coming election ought to know that we are about supporting them so that they can continue to work if they choose. We have given older people earlier access to superannuation. We have also given anyone who is on a lower income an opportunity to contribute to their superannuation through the co-contributions scheme. In fact this will help older people to accumulate superannuation benefits at a much faster rate, for the time when they fully retire.

The Prime Minister’s business community partnership is now looking at how we can encourage and inform business about the importance and the value of employing more mature age workers. But the most important way to give older workers opportunity is to create jobs. We have created nearly 1.3 million jobs to give jobs to all Australians, including older Australians. In fact 983,800 jobs have been created for those over 45. It is very informative to look at a breakdown of the figures. In 1996, the unemployment rate for males aged between 55 and 59 was 8.9 per cent. What is it now? It is 4.2 per cent. Under Labor, one in 10 people aged between 60 and 64 were unemployed—9.9 per cent. It is now 3.6 per cent. If you look at the figures for women, they are very similar. If you take women aged between 45 and 54, the unemployment rate was 5.3 per cent in 1996. It is 3.2 per cent now. The best way to give older people an opportunity is to give them a job. Through our personal advisers through the Australians Working Together initiative, we have assisted people who have been on benefits for a long time, including older unemployed people. We have just undertaken a recent survey of Centrelink customers. (Time expired)

Former Parliamentarians: Business Appointments

Senator GEORGE CAMPBELL (2.11 p.m.)—My question is to Senator Coonan, Minister for Communications, Information Technology and the Arts. I refer the minister to question time yesterday, when she claimed that Richard Alston would not have any knowledge of the outcome of the government’s digital radio study group report. Given that the former minister Richard Alston formed the study group in mid-2003 and was still in the parliament when the study group reported to the then minister, Daryl Williams, late last year, on what basis does the minister assert that Richard Alston has no knowledge of the contents of the report and the government’s long awaited response to that report? Has the minister ordered comprehensive inquiries to be undertaken to ensure that Richard Alston has no knowledge of the contents of the report and the government’s long awaited response to that report? Has the minister ordered comprehensive inquiries to be undertaken to ensure that Richard Alston has not had access to either the digital radio study group 2003 report or the government’s draft response to that report?
Senator COONAN—On my understanding, the report was received in May 2004. Mr Alston was not in the parliament then. I doubt very much that my predecessor, Mr Williams, would have shared with Mr Alston the contents of a confidential report that is currently being considered by government.

Senator GEORGE CAMPBELL—Mr President, I ask a supplementary question. I refer again to the minister’s statements that Richard Alston would have no knowledge of the digital radio trials. Given that these trials began in December last year, when Richard Alston was still in parliament, has the minister also made full inquiries to ensure that Richard Alston has not at any time had access to confidential government information regarding the government’s plans for digital radio trials? Can the minister also assure the Senate that Richard Alston has not profited from his inside knowledge of the government’s radio broadcasting policies in his new role at Austereo?

Senator COONAN—I will not deal with the imputations in that question, which I think are entirely improper. To imply that Mr Alston would somehow or other behave in any kind of improper way traduces the reputation of someone who has conducted himself throughout his long parliamentary career, and no doubt in his life as a private citizen, with the utmost integrity. There is absolutely no basis on which to be making those kinds of imputations. However, Mr Alston left this portfolio, I think, in October last year. That is almost a year ago. The results of the digital radio trial had certainly not been concluded by then. They were concluded and, as I understand it, handed to my predecessor fairly recently. There are some ongoing trials. I would doubt very much whether Mr Alston would have any way of having access to any of the information in connection with those trials. (Time expired)

Indigenous Affairs

Senator KNOWLES (2.15 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone. Will the minister inform the Senate how the government’s new deal for Indigenous Australians will offer better outcomes and better futures? Is the minister aware of any alternative policies that would affect these people?

Senator VANSTONE—I thank Senator Knowles for her question. Coming from Western Australia, one of the states that does have a significant Indigenous population, she is understandably particularly interested in these issues. Much has been made recently of the government’s decision to abolish ATSIC, whereas in fact that is just a small part of our reforms. It is worth commenting that it is Labor policy to get rid of ATSIC too. You would think, therefore, that it would not be a problem. The matter was referred to a committee, though, so that further investigation could be made. We have heard the chairman of the committee saying there is not much support for ATSIC out there. So you would think the Labor Party, given that it is their policy and that their committee has found not much support for ATSIC out there, would be happy to support a bill that simply gets rid of ATSIC. But no, the committee is dragging itself out, looking at a whole range of issues. It is welcome to look at those. I encourage people to look at a range of issues associated with Indigenous Australia, but the key issue of whether to get rid of ATSIC should be resolved. Not doing so is costing the taxpayer $65,000 a week.

You can visit remote communities, Mr President, and ask any one of them, from Ampilatwatj to Fitzroy Crossing to Oom Bulgurri, what they could do with $65,000 for a whole year. Let me help you with what they could do: they could employ a youth
worker, if they had high suicide rates; they could get more computers for their kids. We are not letting them miss out, because we are finding this additional money that is now required, but the point is that that money could be spent on something else of value. When we know that it is Labor policy to get rid of ATSIC, that it is our policy and that the committee has not found support for ATSIC, why not get on with it?

One of the reasons that Labor do not want to get on with it is that they have not been entirely frank with the electorate. They said they would get rid of ATSIC. That was the headline they wanted. They are out there saying, ‘Don’t worry; when we get into power you’ll have Son of ATSIC—you’ll have a bigger ATSIC board.’ There will be more bureaucracy standing between Indigenous communities and the Australian government. What we are going to do is shift the Indigenous specific programs. The people and the programs are being retained and they are being shifted into mainstream departments. Mainstream agencies will manage Indigenous programs. There will be better access to programs and services and they will be more accountable for the outcomes than ATSIC was. Mr President, you may have heard some criticism of mainstreaming from senators opposite.

Senator O’Brien—Yes, lots!

Senator VANSTONE—I see Senator O’Brien nodding yes. I did not see Senator O’Brien or anybody on the other side criticising mainstreaming when Labor did it with Indigenous health. It is one rule for Labor and another rule for everybody else. I do not see federal Labor members going up to the Northern Territory criticising Clare Martin for saying mainstreaming is a good thing—in fact, writing to the Prime Minister advocating mainstreaming. We are going much further than this. Senator Knowles, there is a lot more I would like to say on this issue. We are not simply, however, going to the old mainstreaming. We are doing a much better job than that. We are making it easier for Indigenous communities to deal with us.

Opposition senators interjecting—

Senator VANSTONE—For example, before senators opposite think it is so funny, think about someone in a community applying for domestic violence grants. They have to go to the Office of the Status of Women and to the Department of Family and Community Services. They may have to go to the Attorney-General’s Department, to the Department of Transport and Regional Services and then to the old ATSIC. Then they have to do the same thing at a state level. These are the communities least equipped to deal with the complex and fiddly bureaucracies that we have. While the mainstream departments are responsible for it, we are bringing those together. As for giving Indigenous people a voice, we are going and listening directly to the local communities about what they want. (Time expired)

Senator KNOWLES—Mr President, I ask a supplementary question. Can the minister further expand on the benefits that this new deal will provide for the Indigenous communities?

Senator VANSTONE—It will be my pleasure to expand on the benefits that this new deal will provide for local communities. They do not need more bureaucracy between them and government; they need government listening directly to them, and that is exactly what we will do. We can look forward to seeing even more improvements than those that the government have already delivered. Look, for example, at the year 12 retention rates. When we came to government they were 29 per cent; now they are 39 per cent.

Senator Crossin—Tell us about the gap!
Senator VANSTONE—Before Senator Crossin keeps interrupting, she might like to draw her attention—

Senator Crossin—Tell us about the gap!

Senator VANSTONE—Senator Crossin might like to look at what the year 12 retention rates were under Labor. I will save her—

Senator Crossin—Tell us about the gap between Indigenous and non-Indigenous—

The PRESIDENT—Order! Senator Crossin, come to order.

Senator VANSTONE—They were 32.5 per cent in 1994. They went down in 1995 to 30 per cent and in 1996 they went down to 29.1. So, if we want to have a discussion about giving people opportunities and giving them education, let us compare the record: year 12 retention rates down under that lot and up under this lot.

Former Parliamentarians: Business Appointments

Senator MACKAY (2.20 p.m.)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer to the minister’s failure yesterday to answer whether the minister or the minister’s staff has had any discussions with Richard Alston since she assumed responsibility for the communications portfolio. Given that Richard Alston has other business interests beyond radio and in information technology, I ask the minister again whether she or any of her staff has had any contact whatsoever with Richard Alston in the short time that she has had the portfolio. If so, what was the purpose of that communication? In the interests of transparency and accountability, can the minister please answer this question today?

Senator COONAN—The answer is no.

Government senators interjecting—

The PRESIDENT—Order! Senators on my right! If senators were to have a look at a copy of question time yesterday, as I did last night, I do not think they would be very pleased at how it came out.

Veterans: Health Services

Senator BARTLETT (2.22 p.m.)—My question is to the Minister representing the Minister for Veterans’ Affairs, Senator Hill. I ask the minister whether he is aware of a survey by the Australian Medical Association that has found that 60 per cent of general practitioners who are signed up to the Department of Veterans’ Affairs Local Medical Officer Scheme are on the verge of withdrawing their services to veterans because of the inadequacy of the rebate that is provided to them. I also ask the minister whether he is aware that the same survey found 86 per cent of those GPs said that the funding of the scheme by the government does not reflect the special care and time that veterans need to have their health issues addressed. Can the minister assure the parliament and, indeed, veterans that proper funding will be provided by this government to ensure that the significant and special health needs of veterans are properly addressed or does this government’s commitment to veterans only extend as far as the photo opportunity at the welcome home parade?

Senator HILL—In the 2003 federal budget the government committed $61.7 million over four years to continue the Local Medical Officer Scheme. Under the new scheme, eligible GPs now receive a veteran access fee of $3.05 for each item of service for gold and white cardholders. This is in addition to 100 per cent of the Medicare benefits schedule fee paid for the treatment of veterans. At present about 15,700 GPs are registered under the LMO Scheme, which is approximately 2,200 more than were in the scheme prior to 1 July 2003. This is a sign of the great support being offered by GPs, which does not surprise me. All my anecdo-
tal experience has been that doctors are very supportive of the veteran community, and the government appreciates that. It does mean that veterans and war widows can be assured of free, comprehensive health care. As I said, the government values this longstanding and successful partnership with GPs and welcomes their continued support. As with all our veteran health arrangements, the government keeps a close eye on the delivery and impact of the scheme and the government stands by its record on veteran health care—a massive increase from $1.7 billion in 1996 to $4.4 billion in 2004 and 2005.

Senator BARTLETT—Mr President, I ask a supplementary question. I ask the minister: how can he possibly say that the government says to veterans and war widows that they can be assured of receiving full medical care when the majority of the people who are providing that care are saying that they are likely to withdraw from the scheme that provides it? How can the minister expect anything other than such a situation when the rebate paid to general practitioners for a number of items, including level A consultations, is actually less than what they would receive through the MedicarePlus rebate for non-veterans, despite the significant complexity of the health needs of many veterans? Does the minister also recognise the concerns expressed by Dr Graeme Killer, the Principal Medical Adviser to the Department of Veterans’ Affairs, who acknowledges the concerns of general practitioners and acknowledges that the MedicarePlus incentives actually make the package for GPs no more attractive? (Time expired)

Senator HILL—As I said, the government is very sensitive to these issues. It understands and appreciates the significant contribution made by GPs and accepts the importance of providing quality health care to our veteran community. I hear what the honourable senator says about some GPs being unhappy with the payment but, as I said, as opposed to the survey results, in fact 2,200 additional general practitioners have joined the scheme since July 2003. So, despite what appears from the survey results, in actual fact more GPs are coming on board and offering their valuable services to the veteran community. I will refer the points made by Senator Bartlett to the minister. At least I think the Senate can be confident, on the basis of what is happening in practice, that the medical community continues to support the scheme and continues to provide quality health care for the veteran community. (Time expired)

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of two distinguished members of the United States parliament, Senator Richard Shelby and Congressman Bud Cramer, accompanied by our good friend the ambassador. Welcome to the Senate and I hope you enjoy your stay in Canberra.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Herron, Former Senator the Hon. John: Appointment

Senator CHRIS EVANS (2.28 p.m.)—My question is directed to Senator Hill in his capacity representing the Prime Minister and the Minister for Foreign Affairs. Will the minister confirm that the Howard government will appeal the decision by the Administrative Appeals Tribunal to allow for the public release of documents relating to the attempted appointment of former Senator John Herron as High Commissioner to Canada and documents relating to Mr Herron’s eventual appointment to Ireland and the Holy See? Don’t these documents prove conclusively that the Howard government did, in fact, take steps to appoint Mr Herron to Can-
ada, pursuant to a commitment by the Prime Minister, and that the Prime Minister’s statements to the parliament denying such an appointment are false and misleading? Will the minister come clean and confirm that the government initiated steps to appoint Mr Herron as High Commissioner to Canada?

Senator HILL—I have to confess that I am relying on newspaper reports that the government has decided to appeal the decision. I will refer that to the PM if it is important and check that that is the case. The government is, of course, perfectly entitled to appeal questions of law if it does not accept the judgment that has been made thereon. In relation to Dr Herron’s appointment, from all reports I have had—although I have been unable to visit him in Ireland—he is doing a fantastic job working diligently in the interests of the Commonwealth and is proving to be—

Senator Patterson—Better than Burke!

Senator HILL—Certainly a lot better than at least one of his predecessors. I would not want to embarrass the Labor Party by reminding them of that appointment. He is doing a good job for Australia. He is a great ambassador for Australia and a great representative. Certainly it shows that parliamentary service should not be a disqualification. Some of the best ambassadors that we have had have provided service to the parliament.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I do not understand that slur on Senator Tate—it seemed most unwarranted given his excellent service as ambassador to Ireland. Is it not the case that the Howard government’s claim that disclosure of these documents would damage relations with Canada was completely undermined by the evidence that the former High Commissioner to Canada, Mr Greg Woods, provided to the AAT—that the release of the documents would be ‘absolutely inconsequential from the point of view of the other country’? Minister, is it not true that your government attempted to appoint Senator Herron to the post of High Commissioner to Canada in 2001 but cancelled the appointment at the last minute because of your disastrous result at the Ryan by-election? Will you confirm that there was an attempt to appoint him as High Commissioner to Canada?

Senator HILL—I guess it is not surprising: here we are a matter of weeks from a federal election and we still have not had one question on policy today—not one question on policy. We had Mr Beazley go to the Press Club today. He has just taken over as defence spokesman from Senator Evans. He promised policy. He said he was going to announce another battalion for the Army. He floated it with the press. He told them to listen to what he would have to say at the Press Club today. What did we hear? Nothing. Just an hour of waffle.

Senator Faulkner—So why did you lie?

Senator HILL—I have to say to Senator Evans, seeing as he has asked the question, I am sorry that the Labor Party has gone back 20—

The PRESIDENT—Order! Senator Faulkner, I believe you are stepping outside parliamentary guidelines. I ask you to withdraw those accusations.

Senator Faulkner—I do not think, ‘Why did you lie?’ is unparliamentary.

The PRESIDENT—It is.

Senator Faulkner—I do not think it is.

The PRESIDENT—You know it is and I would ask you to withdraw.

Senator Faulkner—It is to accuse someone of being—

The PRESIDENT—I would ask you to withdraw.
Senator Faulkner—I am happy to withdraw it, but I take a point of order now.

The PRESIDENT—Resume your seat. Thank you.

Senator Ian Campbell—Mr President, I raise a point of order.

The PRESIDENT—I have dealt with the matter, Senator. I do not think there is any point in going on with it.

Senator Ian Campbell—The point of order is that I have been trying to listen to my leader answer a question but I cannot hear him because this rabble opposite have been continuously interjecting, led by their so-called leader. He should be told not to interject.

The PRESIDENT—Senator, as I indicated earlier today, there is a lot of noise from both sides of the chamber and we cannot pick out just one side of the chamber for interjecting; it happens on both sides. I ask the Senate to come to order.

Senator Faulkner—Mr President, can I take my point of order now?

The PRESIDENT—Senator Faulkner.

Senator Faulkner—The minister has made no attempt at all to answer this important supplementary question that has been asked by Senator Evans—none whatsoever. My point of order is that I ask you to draw his responsibilities to his attention and ask him to address the question that has been asked about Dr Herron. That is the question that has been asked; it is not a question about Mr Beazley or anybody else or about the defence portfolio. It is a question, Mr President, in relation to Ambassador Herron. That is the requirement on the minister, and if he does not answer the question he should be asked to sit down.

The PRESIDENT—Senator, you know and I know that I cannot direct a minister how to answer a question. He has 12 seconds. I refer the minister back to the question.

Senator HILL—I was just saying that I was disappointed for Senator Evans because I thought it was most unfair that the Labor Party went back 20 years to find a defence spokesman. I thought Senator Evans was doing a fair job. After this question and supplementary, I am not so sure. (Time expired)

Health: Asbestos Related Disease

Senator NETTLE (2.35 p.m.)—My question is to the Minister representing the Attorney-General and it relates to the attempts by James Hardie to avoid paying compensation to the victims of asbestos related disease. Has the Australian government formally asked the government of the Netherlands to sign a treaty to ensure that Australian court judgments are enforceable in the Netherlands so that the victims of asbestos related disease will get their compensation from James Hardie?

Senator ELLISON—The government take this issue very seriously and the Prime Minister is on record as saying that the government do not endorse the actions of any employer which rearranges its affairs to avoid its obligations to its employees. There is an inquiry into this matter which has been ordered by the New South Wales government and we are awaiting the outcome of that inquiry. We think it is inappropriate for the federal government to be making any move whilst the outcome of that inquiry is not known.

In relation to the Netherlands, we will assist in whatever way we can. If there has been any breach of any law, we will use our good offices with that country to take whatever steps are needed. We do believe that, in relation to the inquiry into this matter, the New South Wales government’s approach is an appropriate one and we should await that outcome. In relation to whether we have an
agreement for mutual assistance, the taking of evidence and such, I will take that on notice and get back to the Senate with any further information if that is necessary. This is a serious issue and one which the government take seriously. We do not condone any employer rearranging its affairs to avoid its obligations to its employees. That applies across the board.

Senator NETTLE—Mr President, I ask a supplementary question. I thank the minister for his offer to take part of that question on notice. Is the minister aware of comments by the Attorney-General’s spokesman that there has not been much of a response from the Netherlands government? Isn’t it true that the Netherlands government cannot act to sign a treaty if there has been no formal approach from the Australian government? Will the Attorney-General clarify the misleading statement that the Netherlands government are not cooperating? Will the government formally ask the Netherlands to sign a treaty so that asbestos victims can get their compensation? Further, will the Liberal Party be putting the $100,000 that it has received in donations from James Hardie into a trust fund for the victims of asbestos related disease?

Senator ELLISON—In relation to the question concerning James Hardie and its affairs in the Netherlands, of course we will look at what has gone on in relation to that company. If there is any transgression of federal laws we will take the necessary action. In relation to discussions with the Netherlands government, I will take that up with the Attorney-General and the Minister for Foreign Affairs, if that is appropriate.

Sport: Drug Testing

Senator LUNDY (2.38 p.m.)—My question is to Senator Coonan representing the Minister for the Arts and Sport. Is the minister aware of the launch this week in Sydney of the ABC television program—to screen tonight—titled Dope: The Battle for the Soul of Sport, which addresses difficulties in the fight against drugs in sport, particularly those issues highlighted in recent times by the Howard government’s mishandling of allegations in cycling. Given the fact that this program received some funding from the Film Finance Corporation, an agency within the minister’s Arts portfolio responsibilities, can the minister inform the Senate why Senator Kemp attempted to apply pressure to the Film Finance Corporation to have me not launch the program this week?

Senator COONAN—I am aware of the proposed program—and also one on Foxtel or Fox Sports. I think that is right: there is a program on both the ABC and Foxtel. The ABC program Dope: The Battle for the Soul of Sport says that there can be no doubt that this government is tough on drugs in sport. I think that is a very clear message that is conveyed in the documentary. It is very unfortunate, as I am sure Senator Lundy would agree, that recent events appear to have the potential to overshadow our achievements and to impugn, to some extent, Australia’s commitment to fight against drugs in sport. The fact that that has been called into question is a matter of great regret.

The Australian government remains vigilant on this issue through our support for the Australian Sports Drug Agency, the Australian Sports Commission, funding for research into detection methods for banned substances and methods, and support for the World Anti-Doping Code. I am advised that the ABC program Dope: The Battle for the Soul of Sport deals with the issues of drugs in sport and what is being done around the world to combat the problem. It shows that more is being done than ever before to eradicate doping from sport. This government has a very fine reputation for tackling the very unfortunate issue of drugs in sport. I think
the documentary very clearly shows that the government is very tough on drugs in sport. My advice in relation to the Foxtel program is that it examines whether or not performance enhancing drugs really work. My advice on this is that it has received ethics approval from Southern Cross University. I am further advised that no Australian elite athlete or Australian coach participated in this documentary.

In answer to Senator Lundy’s question: to the extent that these documentaries deal with a serious issue, I think that is a good thing. The extent to which they may not properly highlight the way in which this government has introduced world-class standards in dealing with the dreadful problems of drugs in sport is very unfortunate. I have absolutely no information about the launch of the documentary. It is an issue that no doubt Senator Lundy can take up with Senator Kemp when he is present in this chamber.

Senator LUNDY—Mr President, I ask a supplementary question. As part of my supplementary question I ask that the minister take on notice my original question about why Senator Kemp attempted to apply pressure to the Film Finance Corporation and I ask the minister: isn’t Minister Kemp’s attempt to misuse his position as Minister for the Arts and Sport to heavy the Film Finance Corporation just another example of this government’s well-known mean, tricky and deceptive approach to public administration in this country, as identified by the group of 43?

Senator COONAN—Mr President, I utterly reject the spurious claims and imputations in Senator Lundy’s question. I do not think the Labor Party, after 7½ years in opposition, even had a policy on drugs in sport. Unless I am much mistaken the Labor Party did not ever turn their minds to the very serious issue of drugs in sport.

Senator Lundy—Mr President, I rise on a point of order. There is about 20 seconds to go. The minister has not turned her mind to the question. I should also point out that Labor introduced the Australian Sports Drug Agency.

The PRESIDENT—There is no point of order. Senator Coonan has 30 seconds left for her answer.

Senator COONAN—The Howard government has developed a comprehensive sports policy for all Australians and it has also developed a very comprehensive policy and program in relation to the handling of drugs in sport. The suggestion that the government has done anything to the contrary is utterly without foundation.

Environment: Great Barrier Reef

Senator SANTORO (2.44 p.m.)—My question is to the Minister for the Environment and Heritage, Senator Ian Campbell. Will the minister advise the Senate of the Howard government’s commitment to the protection of the Great Barrier Reef? Is the minister aware of any alternative policies?

Senator IAN CAMPBELL—I thank Senator Santoro, who I know takes a close interest in Great Barrier Reef Marine Park issues and in fact travelled to Townsville to be briefed on these issues only a few days ago. The Great Barrier Reef Marine Park—which was proclaimed by Malcolm Fraser, an Australian Liberal Prime Minister, nearly 30 years ago—is of course one of Australia’s and the world’s most important environmental assets. This government have a very proud history of protecting the reef. Under Senator Robert Hill’s stewardship of the portfolio we introduced the first dugong protection area within the marine park.

Under the most recent rezoning plan within the park, we have increased the level of protection from just under five per cent of the reef to in excess of 33½ per cent of the...
marine park. That is an outstanding outcome not only for protecting the environmental values of the Great Barrier Reef and the marine park within which the reef is situated but also for providing long-term financial sustainability for all of the industries within the marine park area and, of course, for those who service those industries. It also provides some financial security going forward in terms of access to resource for commercial fishermen and clarity as to access to areas for recreational fishermen—who, we know, care deeply about the reef and its future.

We have also increased the budget resourcing of the Great Barrier Reef Marine Park by $20 million over three years. We have incorporated a further 28 new areas within the marine park. These are areas that were excluded and were not acted on under 13 years of Labor, who basically did nothing in this regard. So it is a tremendously successful story of environmental protection by the Australian government—with, I might say, excellent cooperation from the Queensland government. Can I also say that my visit to the areas around the reef showed me that not everyone is happy with the plan. Commercial fishermen, in particular, have some major concerns about it and about their future livelihood—concerns which I am addressing through changes to the structural adjustment package and a number of other measures. Recreational fishermen and the industry that supports them also have some concerns. But none of them are seriously saying, ‘We want you to reopen the plan.’

Senator Santoro asks about the alternative policies. There is a party—the Australian Labor Party—putting forward an alternative policy that would in fact seek to reopen the plan. The Australian Labor Party, through their candidate for Hinkler and through the high jinks of Senator Jan McLucas in this place, are playing Labor politics with the protection of the Great Barrier Reef Marine Park. They are saying one thing in Gladstone, another thing in Mackay and of course another thing to the environmental groups down in the southern states, and they think they can get away with it. It is like that with the marriage bill—they are saying one thing to gay and lesbian couples about their support for gay and lesbian marriage and then going to Christian seminars and saying, ‘No, we really support marriage and we do not want that.’ (Time expired)

Senator SANTORO—Mr President, I ask a supplementary question. Following the minister’s recent extensive tour of North Queensland and, in particular, Great Barrier Reef sites, would he be able to further acquaint the Senate with the contradictory attitudes and remarks of ALP candidates and the deceitful policies of members opposite?

The PRESIDENT—Senator Santoro, that supplementary question is out of order.

Senator Ian Campbell—Mr President, I raise a point of order. It is clearly supplementary, because I was asked about alternative policies of Labor. It is the Labor Party that has a policy to overturn the plan. I have been asked, flowing from my answer, about that policy. I would like the opportunity to describe how that policy puts reef protection at risk.

The PRESIDENT—There is no point of order. The fact of the matter is, Senator Ian Campbell—as you are well aware—that you
I am not surprised that they were convinced because he was one who not only had weapons of mass destruction but also used them against his own people and against his neighbours. Furthermore, weapons of mass destruction when linked to a record and to aspirations in a regional sense were really amounting to a threat and in the instance of Saddam Hussein they led to an invasion of his neighbours as well. There was ample evidence at the time to justify concern about the threat. The decision was justified under the UN Security Council resolutions and the removal of Saddam Hussein, incidental though it was, means that the Iraqi people now have the chance of a better future. They will no longer get the knocks on the door in the middle of the night and be dragged off and never heard of again. The world is a better place now that Saddam Hussein is in prison.

Senator HUTCHINS—Mr President, I ask a supplementary question. Isn’t it true that the government told the Australian people that Saddam Hussein possessed weapons of mass destruction and that these weapons could fall into the hands of terrorists? Isn’t it also true that the government told the Australian people that the risk posed by Saddam’s possession of weapons of mass destruction was such that it warranted joining in a war against Iraq? Isn’t it therefore true, as asserted by 43 eminent Australians, that the Australian people were misled?

Senator HILL—The 43 eminent Australians are permitted to enter the political debate; there is no doubt about that. If they want to participate in the political process like all other Australians they have the opportunity to do so. But at the time the Austra-
lian government made its decision the whole world believed that Saddam Hussein had weapons of mass destruction. The United Nations believed it. The intelligence services across the world believed it. The Australian Labor Party believed it. Mr Rudd their spokesman said there was no doubt about it. Isn’t it easy to be wise so long after the event, Senator Hutchins? It is so easy to be wise, but the real test is the state of mind at the time the decision was made, and the decision was well justified by the facts as known at that time.

Immigration: Detainees

Senator BARTLETT (2.54 p.m.)—My question is to the immigration minister. I refer to the minister’s answer to my question on Monday regarding the prospects now of people being indefinitely detained despite there being no prospect of their being removed from the country. In that answer she described the ministerial discretion that she has as a safety valve which is the ‘opportunity for people to be given relief and stay in Australia’. Minister, how can ministerial discretion be an adequate protection or safety valve when there is no way of requiring a minister—you as well as any future minister—to exercise that discretion regardless of the circumstances? Can the minister advise of any other modern democratic nations that enable the government to indefinitely detain a person without charge or trial when they present no threat to public safety?

Senator VANSTONE—I thank the senator for the question. Senator, you raised this question, if not exactly then at least an indirect reference to it, in your question earlier in the week. I think the point that is missing from your question—to give those people who are not as interested in these issues as you are a fuller picture—is that you are dealing with people who have already been through processes of review. You look to the concept of ministerial discretion and say, ‘It is not good enough because you can’t be forced to use it, or there isn’t an appeal mechanism from it.’ On that theory there would never be an end, a resolution, to any of these issues. Whereas ministerial discretion is there as the final chance. It is when you have had a primary decision, when you have been to the Refugee Review Tribunal or the Migration Review Tribunal, when you have accessed possibly the Federal Magistrates Court, the Federal Court, the full Federal Court, the High Court and then the High Court in its original jurisdiction. And when you have lost on all of those counts, and had every other appeal mechanism available, to then say, ‘I am sorry, there is no appeal or no way I can force the minister to make a decision,’ does not seem to show an understanding of the processes that are available prior to that. It is meant to be the last port of call. It is never alleged to be anything other than that.

Senator, in my answer to you during the week I referred to a case as an example where someone alleges to be from one place, the department does not accept that they are from that place, and they therefore say that they are stateless but we cannot get them home. The particular case that I have in mind is worth putting as a hypothetical. You have someone who consistently gives you information, you check the information, and every time it turns out to be wrong. So you go back and you get another bout of information and you go and check that and that turns out to be wrong. This goes on for a period of time until you finally realise that this person is determined to stay in Australia come what may and will continue to give you incorrect information, so that in a game, if you like, of chicken—‘How long will you keep me here?’—they hope you blink and give in.

If it is the Democrats’ policy to give in and allow those people who choose to be-
have in this fashion to stay in Australia, then you should put that on your web site. It is not our policy. There are very few people in those circumstances who either claim to be stateless or have difficulties of return. I have given an undertaking that I will look at the High Court judgment; I cannot do more than that. I have given an undertaking that I will look at the cases individually on their merits. Bland generalisations such as those you offer might be helpful in a political sense but in a substantive sense, to get better policy, are no use at all.

Senator BARTLETT—Mr President, I ask a supplementary question. To follow up the minister’s answer, can the minister now or subsequently provide the Senate with information on exactly how many people who are stateless are in Australian detention or are in the community but are now at risk of re-detention? In relation to her self-described safety valve of ministerial discretion, which I do not think was a bland generalisation but a specific statement, is it not the case that that safety valve has already failed in a number of instances when we have people in detention in Australia who have for many years said, ‘Please, deport me,’ and are not able to be deported and who have been locked up for two to six years? Isn’t that an example of that so-called safety valve having failed to provide the very relief that the minister says it is there to provide?

Senator VANSTONE—I will step aside from what I do think are the bland generalisations at the end about a category of people you purport exist that fit those criteria, with no other relevant information to be added, where I would say there is other relevant information to be added. I do not have the specific figures with me—and they may be difficult to categorise because, as I said, in some cases there is a dispute as to whether someone is stateless or not. That is not necessarily an easy matter to resolve. In fact, that might be the very nub of the issue that is in disagreement, so which column you put that person in would be a subject of debate. I can say that I am looking at about 30 cases, although they are loosely described as long-term detention cases or people who are out now, not necessarily fitting into the stateless category nor, on their own behalf, alleging to be. So there are not many. (Time expired)

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Health: Asbestos Related Disease

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.00 p.m.)—Senator Nettle asked me a question about our arrangements with the Netherlands. I can confirm I have advice from the Attorney-General, who has indicated that we have had discussions with the government of the Netherlands in relation to the enforcement of Australian orders in that country. The Attorney-General has indicated that if the current situation is not able to meet requirements then he would look at the benefit of a treaty but, at the moment, we are still ascertaining the legal position with authorities in the Netherlands.

Telecommunications: Interception

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.01 p.m.)—During question time on 5 August 2004, Senator Greig asked me a question in my capacity as the Minister representing the Attorney-General regarding telecommunications interception. I undertook to provide further information and now seek leave to incorporate my answer in Hansard.

Leave granted.

The answer read as follows—
The 2002-2003 Annual Report on the Telecommunications (Interception) Act 1979 records that 1535 arrests were made on the basis of intercepted material. This figure represents a small increase over the 1479 arrests effected the previous reporting year, and a substantial 48 per cent increase above the number of arrests for the year ending 30 June 2001. A total of 3058 telecommunications interception warrants were issued during the reporting year.

The Annual Report also shows a 59 per cent increase in the number of prosecutions commenced on the basis of information obtained through the execution of a telecommunications interception warrant and a 31 per cent increase in the number of convictions secured using intercepted material.

The Annual Report includes all instances where a telecommunications interception warrant has been sought. If emails, voicemail or SMS are accessed under the authority of a telephone intercept (TI) warrant, that warrant is included in the figures reported in the annual report.

Not all access to email and SMS will amount to interception. Where an email has been retrieved by the intended recipient a TI warrant is not required and recovery of such data can be lawfully obtained under a Crimes Act search warrant or some other lawful authority.

As access in these circumstances is not obtained under a telecommunications interception warrant, figures for access in this manner are not included in the statistics reported in the annual report prepared under the Telecommunications (Interception) Act. However seizure of such evidence is documented in a property seizure record which is provided to an owner or occupier of a premises or person being searched if seized under a Crimes Act warrant.

The Telecommunications Interception (Stored Communications) Bill addresses the question of lawful access to stored communications, allowing police to access SMS, email and voicemail and other stored communications without the requirement for a telecommunications interception warrant where those communications are stored.

**Former Parliamentarians: Business Appointments**

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (3.01 p.m.)—by leave—I would like to clarify my response to a question asked by Senator Mackay. I have had a note from a member of my staff to say that, since I took over the communications portfolio, one of my staff has spoken to Mr Alston, I think on two occasions last week, in relation to some general information on CSIRO’s commercialisation activities. Subsequently, a member of my staff forwarded a publicly available press release from the CSIRO that outlined its success in the previous year in increasing revenue from its intellectual property. My staff provided this information, as they would endeavour to do for any member of the public.

Senator MACKAY (Tasmania) (3.02 p.m.)—by leave—I thank the minister for providing that information to the Senate and I ask: have you taken any further steps to establish that that is the entire extent of the contact between you or your office and ex-Minister Alston?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (3.02 p.m.)—by leave—That was the message that I received. I will check if there were any others.

**QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS**

**Iraq: Military Involvement**

Senator HUTCHINS (New South Wales) (3.03 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Hutchins today relating to Iraq and comments made by Liberal Party candidate, Mr Malcolm Turnbull. Malcolm Turnbull must be one of the most embarrassing Liberal candidates we have
seen for some time in the safe Liberal seat of Wentworth in Sydney. I do not know why people should be at all surprised about Malcolm Turnbull trying to slither out of comments he made at a Bondi community centre. When asked by people he probably did not think were taking note of what he was saying, he clearly said that he thought history would judge as a mistake the decision of the Howard government to take this country to war in Iraq. There must be something in the water out there in the eastern suburbs because we should not be at all surprised about Malcolm Turnbull. You only have to look at how he has got to the position he is in now: he shafted the current member for Wentworth, Peter Thomson, with Senator Heffernan’s assistance, I have to say.

Government senators—Who’s Peter Thomson?

Senator HUTCHINS—I meant Peter King. Then there is Andrew Thomson. You are right: he got shafted as well. Dr Hewson was shafted by his colleagues in the Liberal Party. Dr Hewson, of course, was shafted by the Prime Minister. But the one thing about all this, Mr Deputy President, is this: as you know, Dr Hewson has not given up shafting the Prime Minister. On any day you can see in the Australian Financial Review any number of words written by Dr Hewson, trying to square up with the Prime Minister. As I said, contrast that—where someone is trying to slither out of the comments he made at what he thought was a forum that would not be reported—to the upfront comments made by 43 loyal and dedicated servants of this country, men and women who served this country in peace and war, who dedicated their adult lives to making sure that the policies enunciated by the government were carried out. On that day this week, they said the decision that was made by this Prime Minister was clearly wrong and dangerous.

So how did we get to this stage of having a situation where the member-who-wants-to-be for Wentworth, Malcolm Turnbull, has made these comments? As I said, it should be no surprise to anybody that Malcolm Turnbull said this. The only surprise for the coalition side should be for them to have to question whether Malcolm Turnbull really wants them to win. Think about it: this man believes he was born to be king. It is not in his interests if the coalition win the next election. We know from all the gossip that goes on among the other side that they are a very fragile coalition. If they lose this next election, they will splinter all over the place. As the leader said the other night, we will probably get 18 months of Peter Costello and maybe 18 months of Tony Abbott after that, but we do know that they will splinter. Think about it: if you are Malcolm Turnbull, you are not going to come in here and sit on the back bench like a number of people have done in the last few years; you want to get straight into the main action. It is not in his interest to have a bit of stability in this fragile coalition that we have facing us. So think about it: this man goes out to Bondi and thinks he can make some sort of comment that will not be reported or passed on—and to an audience that is somehow not all that sympathetic—so he tells them what they want to hear. He thinks he can go home to Point Piper, tuck into a gin and tonic with his wife and then it will all be forgotten. Well, it has not been forgotten.

We have had the opportunity, and rightfully we have taken the opportunity, to raise with the Prime Minister and his party leaders what they are going to do about this man, because if he gets here—that is, if it remains a safe Liberal seat and King does not run—they should watch it. Peter Costello should watch it; Tony Abbott should watch it; and so should Brendan Nelson. I think they are the three possible contenders for leadership, so
they would all get shafted. This bloke has form, so I urge my colleagues in the coalition not to let him get away with it. I think he should be reprimanded severely. Maybe he himself should get shafted. Maybe we should get the Prime Minister to recall the preselection and get Bill Heffernan and all those other blokes that voted against Peter King, the sitting member, to put someone else in. I tell you this: if you get him down here, you will regret it because you will not be able to trust him, as he has already proven time and time again amongst the Liberal Party set in Sydney.

Senator BRANDIS (Queensland) (3.08 p.m.)—It has got to be that time of the day and it has got to be that time of the electoral cycle for us to hear a mischievous speech like that from Senator Hutchins. I could see that even you, Mr Deputy President, were concealing a wry smile at the sound of Senator Hutchins—in the presence of his leader, Senator John Faulkner, whom he stabbed in the back during the New South Wales Labor Party Senate preselection earlier in the year, producing a memorable speech from Senator John Faulkner, which I will return to in a moment—upbraiding the Liberal Party. Senator Hutchins, of all people, was upbraiding the Liberal Party about it being a loose coalition! Look at where Senator Hutchins comes from. He comes from the New South Wales branch of the Labor Party, the most notorious, most splintered and most bizarre coalition of opposing political forces of any political party in the country. It even outdoes the Victorian branch of the ALP.

Senator Hutchins, with faux sincerity—because Senator Hutchins is a dowdy bird; he has been around politics for a long time; he was not taking it seriously and he knew we were not taking it seriously—was just having a go on a sleepy Wednesday afternoon at doing a bit of freelance rabble-rousing by giving a speech about party unity. And there sat poor Senator Faulkner, who was stabbed in the back by Senator Hutchins during the New South Wales Labor Party Senate preselection. How well we remember the speech that Senator Faulkner gave to the delegates at the New South Wales Labor Party state conference on the afternoon that he was rolled, albeit he is one of the great figures of the modern Labor Party—which you are, Senator Faulkner; I do not always agree with you, but you are one of the great figures of the modern Labor Party. So we had the leader of the Labor Party in the Senate and a former cabinet minister rolled for the No. 1 position on their Senate ticket by this political minnow, Senator Hutchins, who now gives us this pious little lecture about political unity. But I was going to remind you, Mr Deputy President, of Senator Faulkner’s speech when Senator Faulkner, having been rolled by Senator Hutchins and his faction, the New South Wales Right—that rag-tag group of people—stood up and said words to the effect: ‘Well, what would you expect of them? You expected nothing better of them.’ Senator Faulkner, do you know what? You were right.

So Senator Hutchins stands up and decides to have a bit of fun at the expense of a much greater Australian than he is: Mr Malcolm Turnbull, who the Liberal Party is proud to say is its candidate for the seat of Wentworth. Mr Turnbull, unlike Senator Hutchins, is a Rhodes scholar. Mr Turnbull, unlike Senator Hutchins, is a barrister. Mr Turnbull, unlike Senator Hutchins, is a distinguished company director. Mr Turnbull, unlike Senator Hutchins, is a person who led one of the most important community political movements that this country has seen in our lifetime—the Australian Republican Movement. Mr Turnbull is a person who is successful in his own right and who has now made a commitment to serve the Australian people in the House of Representatives.
Unlike Senator Hutchins, he is a man whose career has been distinguished by success, eminence and very high achievement.

Senator Hutchins comes in here this afternoon to have a bit of fun—having stabbed his leader, Senator Faulkner, in the back—at Mr Turnbull’s expense. So what does he do? He engages in the oldest political trick in the book: he misattributes something to him. He picks up as if it were gospel something that Mr Turnbull is alleged by an unknown person to have said at a public meeting and which Mr Turnbull has specifically denied and corrected the record on. He attributes that to Mr Turnbull, in the face of his specific denial, on no grounds at all. That is the sort of politics that the New South Wales Right of the Australian Labor Party plays, and I do not hear Senator Faulkner, the victim of Senator Hutchins’ machiavellian manoeuvrings and political assassination, disagreeing with me. If that is the best that you lot can do, then bring it on.

Senator ROBERT RAY (Victoria) (3.13 p.m.)—I have been cogitating on the curse of Wentworth. I cannot remember the theme from Tales of the Unexpected but I have just been running my memory back over the great Liberal members for Wentworth. Remember Mr Peter Coleman? He lost his seat in a state election when he led the Liberal Party. What a flop he was in this federal parliament. He was followed by Dr Hewson, another great Liberal Party flop and no longer ever mentioned in the Liberal Party, and then by Mr Andrew Thomson—so bad that they had to dump him—and then by Mr King—so bad that they dumped him. Now we have the latest candidate, Mr Malcolm Turnbull. How much lower could you go—Bill Heffernan maybe? I am not sure. They have had this succession of flops. It is the curse of Wentworth.

Let us listen to what the Liberal Party have had to say about Mr Turnbull over the last day. When all these questions were put to the Prime Minister, we got the petulant one-word answer, ‘No’—no rushing by the Prime Minister to defend Mr Turnbull, just a trembling of the shoulders and the one word, ‘No.’ Then, of course, the foreign minister was asked today about Mr Turnbull. He described Mr Turnbull as ‘just a candidate’. What a slap in the face. It does not matter that at one stage he was national treasurer and fundraiser for the Liberal Party; today he becomes ‘just a candidate’. However, Mr Costello, when asked about Mr Turnbull, said:

If he was properly quoted, his comments do not embarrass the government at all.

That has been parroted by the acolyte of the Treasurer in this chamber. Mr Costello never misses a chance to try to line up a vote. I have some advice for Mr Costello. When he is in the leadership ballot, Mr Turnbull is not going to vote for him; he will vote for himself—of course he is going to be in the ballot. Maybe this is a ploy by Mr Costello to get his second preferences. What have the other Liberals said about this? Mr ‘doorstop interview’ himself, who is on the news every day—and this is the only way he can get publicity—Mr Warren Entsch, says of Mr Turnbull:

He’s wrong, it is as simple as that.

He says that he has ‘all the qualities of a mongrel dog except loyalty’. Then we have another government MP, another recidivist, Mr Alby Schultz, saying:

Instead of getting himself a physical trainer he should get someone who could teach him a little about politics.

Finally, the coup de grace comes from Senator Ron Boswell. He says:

He’s going to go on a steep learning curve when he gets down I think.
I think he means when Mr Turnbull gets down here to Canberra. Clearly Senator Boswell will not be his grammatical coach. We have heard all this comment today on Mr Turnbull. The curse of Wentworth continues. I have been pondering this: why would Mr Turnbull try to work both sides of the street? Was it just his inexperience and indiscretion?

Senator Faulkner—He certainly did it in his branch stacking—he worked both sides of the street.

Senator ROBERT RAY—Well, of course. It cost a lot of money to buy this seat—2,000 memberships paid, all the research, all the television stuff and the production of leaflets. This cost an absolute motser. Then I thought, ‘No, this is Sydney politics. This is something that is alien to me.’ What Mr Turnbull is looking at—

Senator Brandis—Ask Senator Faulkner about Sydney politics.

Senator ROBERT RAY—I will; in fact I often do. I thought, ‘I think I know what this is. Mr Turnbull has worked out that Mr King may disloyally ignore his traditions in the Liberal Party and oppose him at the next election.’ So what this is about—it is very cunning. I think, and I respect it—is Mr Turnbull making a pitch for Labor Party preferences. There is no question about that. I have to respect that. I have always had something to do, as has Senator Faulkner, with the allocation of preferences. So I say to comrade Turnbull, ‘This is a good start—attacking the government over their Iraq policy.’ This will give points in the bank. You have earned brownie points here. No, we can’t promise you our preferences today, but keep up the good work. Keep up the good fight. If you’re obsequious enough to us, we might just allocate our preferences to you.’ I do not think they will be of much use because I think we will finish first or second in the electorate, but just in case we slip into third place, we have a choice. And what a horrible choice we have: Turnbull or King. (Time expired)

Senator FIFIELD (Victoria) (3.18 p.m.)—I certainly was not aware that Mr Turnbull was part of the administration of the Commonwealth, having regard to the questions asked of ministers today and the speeches made in the take note of answers debate, and I was not aware that Mr Turnbull was seeking a seat in this chamber either, but it is great that senators opposite take a broad interest. Be that as it may. I was quite touched by Senator Hutchins’s concern about the political welfare of our frontbenchers in the other place and how Mr Turnbull entering the parliament would affect them. That was quite endearing. Labor do not want to talk about the issue at the heart of why we went to war in Iraq: weapons of mass destruction. We went into Iraq because Saddam Hussein would not allow verification that there were no weapons of mass destruction. We did not have the capacity to verify that because Saddam Hussein would not allow UN verification that there were no weapons of mass destruction. Despite that, Hans Blix, the UN chief weapons inspector, thought there were weapons of mass destruction. Richard Butler, former governor of Tasmania and former chief weapons inspector, thought that there were weapons of mass destruction. He went into the caucus, as senators opposite know, and said that there were weapons of mass destruction. Kevin Rudd was convinced there were weapons of mass destruction. Senators opposite, members of the Labor caucus, were told and did believe that there were weapons of mass de-
None of us were in a position to categorically know because Saddam Hussein would not allow us to go in. That is the whole reason we went into Iraq in the first place: to verify that there were indeed no weapons of mass destruction. As a by-product of that, Saddam Hussein is no longer president of Iraq. Senators opposite say time and again that things have not really improved in Iraq. What they do not want to say out loud, which is what they really think, is that it would not be such a bad thing if Saddam Hussein was still there.

Senator Robert Ray—That is an absolute lie, and you know it.

Senator FIFIELD—It would be great to hear more of that from senators opposite—that they are pleased that he has gone and that it is a change for the better that he is not there. What we have seen yesterday and today in relation to Malcolm Turnbull is part of the ‘find a character a day to smear’ campaign of the Labor Party. They also have Richard Alston in their sights. Was there any allegation of wrongdoing by Richard Alston?

Senator Robert Ray interjecting—

Senator FIFIELD—Senators opposite do not want to hear about Richard Alston because they know there was no allegation of wrongdoing against him, there was no breach of the law and there was no breach of a code of conduct. Richard Alston did absolutely nothing wrong. Richard Alston did nothing which was unprecedented. He is a private citizen and is entitled to earn income.

Senator Faulkner—Mr President, on a point of order: I wonder whether you would give consideration to calling the senator on his feet to order, because he has been desperate to try to deliver his prepared speech on former Senator Alston, and the matter before the chair is a very different matter. Different questions have been taken note of here.

Senator Robert Ray—Rubbish; we’re talking about two carpetbaggers. Sit down.

The DEPUTY PRESIDENT—Order! Senator Ray, Senator Faulkner is trying to take a point of order.

Senator Faulkner—Even though the interjection that Senator Ray has made is a fair one about carpetbaggers—and those who read it in *Hansard* can make that judgment—my serious point of order goes to the fact that poor old Senator Fifield, who is new at the game, prepared a good old speech on former Senator Alston, but the issue is not about Mr Alston; it is about Mr Turnbull. You cannot go more than two minutes on trying to defend Mr Turnbull, so call Senator Fifield to order, please, and get him back on what we are supposed to be debating.

Senator Hill—On that point of order, I am not surprised that Senator Faulkner is having trouble hearing the speech from the honourable senator, because Senator Faulkner himself has constantly interjected and constantly disrupted the senator’s speech. To simply have the nerve after having been totally disorderly for the last nearly five minutes to stand up and take his own point of order is a cheek beyond that which is usually the case in this place. I would suggest to you, Mr Deputy Speaker, that you invite Senator Faulkner to take his seat and listen to the presentation of the honourable senator.

The DEPUTY PRESIDENT—Firstly, Senator Faulkner, there is no point of order, but I draw Senator Fifield’s attention to the question before the chair. Secondly, in respect of Senator Hill’s point of order, there has been too much noise in the chamber from both sides, and I draw the honourable senators’ attention to the fact that senators are entitled to be heard. During the debate there has been too much interjection on both sides, and I draw honourable senators’ attention to the fact that speakers are entitled to be
heard, and those who want to have a say in the debate always have that opportunity to be heard.

Senator FIFIELD—I must say that I am truly flattered by the attention that is being paid to me by two such eminent senators. They have actually stayed in this chamber for my speech, and I look forward to this continuing in the future. But I can certainly understand why Senator Faulkner does not want to hear anything in relation to former Senator Alston. I merely mention the former Senator Alston as an example of a pattern of smear and as a pattern of denigration of prominent Australians. The Labor Party want to choose a figure a day. Be it former Senator Alston or Mr Turnbull, they want to choose a person a day as a distraction from the fact that they do not have any policies—no tax policy, no family policy, no health policy and no education policy. It is a case of choosing a different person each day whose character they can assassinate to avoid addressing these policy issues. (Time expired)

Senator MARSHALL (Victoria) (3.26 p.m.)—It really does surprise me that we can come into this chamber and have a senator from the government so casually rewrite history in terms of truth and honesty in government and the war in Iraq. Senator Fifield should understand that weapons inspectors were in Iraq prior to the coalition of the willing going to war in Iraq, and the weapons inspectors clearly asked for more time to complete their work before they could make a determination on whether or not there were weapons of mass destruction. I am somewhat surprised that on such an important decision you can so casually ignore the facts before us, which have been well debated here and which you should have been aware of.

I am surprised that the government senators find this issue so hilarious. When we are talking about truth in government and honesty in government, all they can do is make a joke of it. They have not taken any of this seriously. A leading candidate of the Liberal Party, Mr Malcolm Turnbull, was at a candidates’ forum very recently—in fact, it was on the very same day that we received a statement by 43 concerned former chiefs and Australian diplomats criticising the Howard government for its actions in Iraq and its constant failure to tell the truth to the Australian people. On that very same day Malcolm Turnbull, the candidate, was also telling the truth as he sees it in respect of the war in Iraq. Of course, his position is very clear. He is quoted as having said at the meeting that it was an error, an absolute failure, and that history would judge it so.

I know that Mr Malcolm Turnbull, supported by Senator Brandis, initially said that he was misquoted. But, as a result of the claims that he was misquoted, we hear of person after person who was at the meeting and heard what Mr Turnbull said coming out in the press and giving us their version of what he said. It seems that the consistency of all those versions clearly lines up with and supports what was originally reported by Mr Malcolm Turnbull. Take Robert Henry, for instance, a resident who attended the meeting and who is quoted in today’s Sydney Morning Herald. He said that Mr Turnbull prefaced his answer with a general observation that history judged all wars on the basis of their outcomes. Mr Henry said:

But then he said: ‘History will judge Bush’s invasion of Iraq as an unadulterated error.’

He cannot be plainer than that. We also have Lee Cass, Barry Du Bois and others supporting the general thrust of that position. Everyone knows that Malcolm Turnbull is looking for a quick promotion to the Liberal Party parliamentary frontbench if he happens to be successful in the forthcoming election. I guess what he is trying to demonstrate is that he has the one serious quality that you need
to get on the Liberal Party frontbench—that you can be very loose with the truth; and he is proving that he can be. He can say that he believes in something and he can make that statement. But, when he is brought to account and it gets into the national press, he wants to claim that he has been misquoted. But when you test that evidence with people who were actually there, he gets caught out.

One would have to wonder what prompted Malcolm Turnbull to make such a statement in the first place. If he is the Liberal that he claims to be, is it that he truly believes, like most Australians do, that the war in Iraq was an unadulterated error? Whether or not he believed in the statement he made, does Mr Turnbull recognise the mood of the electorate and the feelings of the constituents in Wentworth and was he merely emphatically reflecting those views with his answer? Or were his comments really a bid to differentiate and distance himself from the Prime Minister and Mr Costello on the issue of Iraq and therefore offer himself as the next Liberal leader, someone not tarnished by the current government’s poor and unpopular decision to go to war in Iraq? Possibly that is the case. That may be why he has done it.

By Mr Turnbull’s comments at Monday night’s ‘meet the candidates’ forum in Wentworth he not only distanced himself from the government and his colleagues on the issue of Iraq; he also distanced himself from the Prime Minister’s poor record with Indigenous Australians and reconciliation. Mr Turnbull told the meeting that, if he were Prime Minister, he would apologise to Australia’s Aborigines. ‘It was a free-for-all, I tell you,’ Mr Turnbull was quoted as saying after the meeting. In today’s Australian Financial Review—(Time expired)

Question agreed to.

---

**Immigration: Detainees**

**Senator BARTLETT** (Queensland—Leader of the Australian Democrats) (3.31 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) to a question without notice asked by Senator Bartlett today relating to detention of asylum seekers.

The question I asked Senator Vanstone today related to the law that stands in Australia now that allows the government to keep a person detained indefinitely, even when that person has indicated a willingness to be deported but where the Australian government has been unsuccessful in doing so and where there is no likelihood of their being able to be deported. People can, and indeed are, being detained for years, after they have indicated a willingness to be deported, because nowhere else will take them.

The context and the flavour of the minister’s answer might cause people to forget what we are talking about here, so I remind the Senate that we are talking about people being denied their freedom. The right of people to be free—not to be arbitrarily locked up by a ruler, an executive or a government without recourse to some judicial process, to some independent oversight—is one of the fundamentals people fought for over many years that in many ways led to parliamentary democracy. Yet in Australia today there is a group of people who are lawfully able to be locked up for years at the discretion, and on the decision, of a government minister without any recourse to the courts—regardless of their circumstance, regardless of their age, regardless of the length of time, regardless of their health. It is totally in the hands of the minister. The minister may use her discretion to release them, but she does not have to. The minister has said, ‘It is okay. It doesn’t matter. People won’t be locked up for life because there is
discretion. It is a safety valve’. But the fact is that the safety valve was already failing before we had the High Court decision which set in stone the power to indefinitely detain people.

It should be emphasised that this is not a criticism of the High Court. The High Court is charged with interpreting the law and the Constitution as it sees it. It was a 4-3 decision, so obviously there were varying views. But before that decision it was not lawful to detain people indefinitely. There were decisions in the Federal Court and the Full Federal Court that held that it was not lawful—it was against the law—as the courts interpreted it, to keep people locked up in administrative detention when there was no reasonable prospect of their being deported in the foreseeable future. That is now lawful as a result of the High Court’s decision. The only way it can be made unlawful is for the law to be changed. That is what the Democrats commit to. We would draw the Senate’s attention to a protest out the front of Parliament House earlier this afternoon involving hundreds of people expressing concern that Australia has now become a nation that indefinitely detains people without charge and without trial.

This is a major undermining of the rule of law. It is a precedent that cannot be allowed to stand. We all know that, once something stands as a precedent and a government has the power and the right to do something to people, it seeks to get that power in other areas. Every government does it. It is a natural tendency of governments, the longer they are in power, to seek to get more power for themselves. That is why it is absolutely essential to have the strongest possible Senate, as the only parliamentary counterbalance against the absolute power of the government of the day. It is also why we cannot allow this precedent to stand—a law that enables administrative detention without charge, without trial, for an indefinite period.

So all of the minister’s blandishments about a safety valve and about discretion providing an opportunity in certain circumstances are simply not good enough. It is great that the minister is looking at cases. The Democrats will certainly implore her to act to free people. But it is not good enough, and it is not right, to have a law that gives a minister that power, which the minister cannot be required to use. We must ensure that the basic right to freedom is not undermined in such a graphic and repugnant way. There are people now in detention who have been locked up for years. There are people from Afghanistan who for two years and more have said, ‘Send me back’. They have been stuck. Mr Qasim, in Baxter, said four years ago, ‘Send me back—anywhere, 80 different countries. Anyone take me—please!’ He is still stuck. He has been in jail now for six years. (Time expired)

Question agreed to.

PETITIONS

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

Military Detention: Australian Citizens

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

The Petition of the undersigned shows:

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

Your petitioners ask that the Senate should:

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

• immediately send an official deputation to George W. Bush asking that Mamdouh Habib be returned to Australia
• ensure that if Mamdouh Habib is charged with a crime he has a civil trial in Australia
  by Senator Faulkner (from 16 citizens).

Media: Content
To the Honourable the President and Members of the Senate in Parliament assembled:
The Petition of the undersigned shows in view of slanderous and offensive statements appearing in the mass media we the undersigned would like the following statement to be read in the Senate: “That slanderous, defamatory and offensive statements, oral or in writing, made about a community or a Nation or its Armed Forces, which are untrue and unsubstantiated are unacceptable, offensive and must not be made.”

Your Petitioners therefore request that the Senate should request the Federal Commissioner of the Human Rights and Equal Opportunity Commission to exercise his powers to stop such mass media publications, oral or in writing or in electronic media, to be made in the future.

by Senator Humphries (from 58 citizens).

Education: Higher Education
To the Honourable President and Members of the Senate assembled in Parliament:
The petition of certain citizens of Australia draws the attention of the Senate to the need to increase the number of places at TAFE for the people of the communities of Moore. We therefore pray that the Senate oppose cuts in the number of places.

by Senator Webber (from 166 citizens).

Medicare: Bulk-Billing
To the Honourable the President and Members of the Senate assembled in Parliament:
The petition of certain citizens of Australia draws to the attention of the Senate:
• that under the government’s changes to Medicare, only people with concession cards and children under 16 will be eligible for the bulk billing incentive and doctors will increase their fees for visits that are no longer bulk billed;
• that the rate of bulk billing by GPs has plummeted from 80 percent to 68 percent under John Howard;
• that’s more than 10 million fewer GP visits were bulk billed this year compared to when John Howard came to office;
• that the average out-of-pocket cost to see a GP who does not bulk bill has gone up since 1996 to $14.92 today;
• that public hospitals are now under greater pressure because people are finding it harder to see bulk billing doctors.

We therefore pray that the Senate takes urgent steps to restore bulk billing by general practitioners and reject John Howard’s plan to end universal bulk billing so all Australians have access to the health care they need and deserve.

by Senator Webber (from 115 citizens).

Petitions received.

NOTICES
Presentation
Senator Ridgeway to move on the next day of sitting:
That the Rural and Regional Affairs and Transport References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Friday, 13 August 2004, from 9.30 am, in relation to its inquiry into forestry plantations.

Senator Ridgeway to move on the next day of sitting:
That the time for the presentation of the report of the Rural and Regional Affairs and Transport References Committee on forestry plantations be extended to 2 September 2004.

Senator Ian Campbell to move on the next day of sitting:
That, on Thursday, 12 August 2004:
(a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
(b) if the Senate is sitting at midnight, the sitting of the Senate shall be suspended till 9 am on Friday, 13 August 2004;
(c) consideration of general business and consideration of committee reports, government responses and Auditor-General’s re-
ports under standing order 62(1) and (2) shall not be proceeded with;
(d) the routine of business from not later than 4.30 pm shall be government business only;
(e) divisions may take place after 4.30 pm; and
(f) the question for the adjournment of the Senate shall not be proposed till after the Senate has finally considered the bills listed below, including any messages from the House of Representatives:
US Free Trade Agreement Implementation Bill 2004 and a related bill
Anti-terrorism Bill (No. 3) 2004
Marriage Amendment Bill 2004
Telecommunications (Interception) Amendment (Stored Communications) Bill 2004
Surveillance Devices Bill (No. 2) 2004
Trade Practices Legislation Amendment Bill 2004
Family and Community Services and Veterans’ Affairs Legislation Amendment (2004 Budget Measures) Bill 2004
Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004
Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004
Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004

Senator Ridgeway to move on the next day of sitting:
That the Senate, noting that the Games of the XXVIIIth Olympiad will commence in Athens, Greece on Friday, 13 August 2004:

(a) notes that the Elgin Marbles were removed from Athens during the occupation by the Ottoman Empire;
(b) recognises that the Parthenon is the most important symbol of Greek cultural heritage and according to the declaration of universal human and cultural rights, Greece has a duty to preserve its cultural heritage in its totality, both for its citizens and for the international community;
(c) acknowledges that the Elgin Marbles, or more precisely, the Parthenon Sculptures, are not freestanding works of art but integral architectural features of the Parthenon;
(d) notes that the Parthenon was erected in the 5th century BC to celebrate the victory of Athenian democracy, which encouraged the creation and development of all the arts as well as politics, philosophy, theatre and science as we know them today;
(e) is of the view that it is inappropriate that over half of the Parthenon’s celebrated sculptural elements should be exhibited 2 000 miles away from the remaining elements and from the monument for which they were expressly designed and carved;
(f) finds that the request by the Greek community for the reunification of the sculptural elements of the Parthenon in Athens is a rightful and a legitimate request;
(g) is of the view that returning the Elgin Marbles to Greece would be a key move in promoting Europe’s common cultural heritage; and
(h) calls on the Government of the United Kingdom to give positive consideration to Greece’s request for the return of the Elgin Marbles to their natural site.

Senator Carr to move on the next day of sitting:
That the Senate condemns the Howard Government for its failure in education and research policy, and in particular:
(a) a schools policy that has seen inordinate increases in Commonwealth funding to
the wealthiest, high-fee private schools at the expense of public schools and of disadvantaged non-government schools;

(b) the failure to secure a new Australian National Training Authority agreement and to accord priority to vocational education and training in a climate of growing unmet demand for vocational courses and serious skill shortages in traditional trade and technical areas;

c) higher education policies that have brought an ever-increasing burden of fees and charges, so that fees at Australian public universities are now higher than at any time since 1939 and the highest of all developed countries;

d) the failure to adopt a coherent national research strategy, undermining innovation and exacerbating the shortage of highly-skilled researchers; and

e) the failure to lift private investment in research and development.

Senator Stephens to move on the next day of sitting:

That the Senate—

(a) notes:

(i) the reports of many independent observers, including those sent by the African Union, that the so-called Janjaweed militias have carried out numerous massacres, summary executions, rapes, burnings of towns and villages, and forcible depopulations in the Darfur region of western Sudan,

(ii) reports by Human Rights Watch that the Sudanese military regime has armed, supported and supervised the militias, and that Sudanese government forces have directly participated in some of these actions,

(iii) estimates by reputable sources that at least 300 000 people have already been killed or died as a direct or indirect result of this campaign, that more than a million people have been made homeless, that more than 100 000 have been forced to seek refuge in Chad, and that an unknown but large number of women have been raped in the course of these attacks, and

(iv) reports that the militias have destroyed mosques, killed Muslim religious leaders and desecrated Qurans in the course of their attacks;

(b) condemns the military regime in Sudan for instigating a policy of forcible depopulation of areas considered disloyal to Khartoum, which has led to massive social dislocation and deaths of innocent civilians, in particular, the Fur, Masalit and Zaghawa ethnic groups in Darfur;

c) holds the Sudanese regime responsible for the crimes committed by its armed forces and by the militias under its control;

d) welcomes the decision by the Australian Government to allocate $20 million for relief in Darfur, but calls on the Government to make a significantly greater commitment to aid the people of Darfur through appropriate international agencies;

e) notes that United Nations (UN) Security Council Resolution 1556 has imposed an arms embargo on Sudan and authorised the creation of an international protection force for Darfur;

(f) calls on the Australian Government:

(i) in the event that this force does not succeed in preventing further armed attacks on the people of Darfur, to take immediate action at the UN to ensure that the UN force is given a mandate to disarm the militias, secure the withdrawal of Sudanese government forces from the area, protect the people of Darfur and enable all refugees to return to their homes,

(ii) to make a contribution, proportionate with Australia’s military capacity, of Australian forces to any peace-keeping force dispatched to Sudan under a UN mandate, and

(iii) to take action at the UN to secure the prosecution for war crimes at the appropriate international tribunal of
President Omar Bashir and other officials of the Sudanese military regime responsible for the massacres of civilians in Darfur; and

(g) urges the Minister for Foreign Affairs (Mr Downer) to visit Sudan and gain a first-hand understanding of how Australia can most effectively contribute to the alleviation of this humanitarian crisis.

Senator Allison to move on the next day of sitting:
That the Senate—
(a) acknowledges that violence against women has serious consequences for reproductive outcomes;
(b) notes that:
(i) the Australian Longitudinal Study on Women’s Health has found that young women with violent partners are more likely to become pregnant, miscarry, have a stillbirth, premature birth or an abortion than are women who do not have violent partners, and
(ii) the Women’s Safety Australia study found that 42 per cent of women who reported physical violence from a partner experienced that violence during pregnancy, with half of these women stating that violence occurred for the first time while they were pregnant; and
(c) calls on the Government to:
(i) provide funding to raise awareness of the links between violence and pregnancy and to train primary health care professionals to routinely assess pregnant women for possible exposure to violence, and
(ii) improve systems of care for pregnant women who are experiencing partner violence.

Senator Stott Despoja to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) to date, 26 universities have announced that they will increase their higher education contribution scheme (HECS) fees, most of them by the full 25 per cent across all disciplines,
(ii) increasing HECS fees will further deter students from low socio-economic backgrounds,
(iii) all three South Australian universities will increase HECS fees by 25 per cent in 2005, severely affecting student choice in South Australia, and
(iv) by 2008, the Government’s policy ‘Backing Australia’s Future: Our Universities’ will have shifted more than $1.2 billion of the costs of higher education to students through HECS fee increases and increases in domestic full-fee paying student numbers; and
(b) condemns the Government for under-funding universities for the past 8 years to such an extent that universities are now turning to students to provide a short-term increase in funding.

Senator Stott Despoja to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) on 19 August 2004, there will be national action by university students who will be protesting against the Government’s ‘Backing Australia’s Future: Our Universities’ policy and in particular, against higher education contribution scheme (HECS) fee increases and the under-funding of universities:
(b) supports students in their non-violent attempts to seek the repeal of HECS fee increases and increased public funding for education; and
(c) condemns the Government for under-funding universities for the past 8 years, to such an extent that universities are now turning to students to provide a short-term increase in funding.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and
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 Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 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 amends the Commonwealth Electoral Act 1918 (the Electoral Act), the Referendum (Machinery Provisions) Act 1984 (the Referendum Act) and the Electoral and Referendum Amendment (Enrolment Integrity and other Measures) Act 2004 (Enrolment Integrity Act) to address the operational problems identified with the amendments made by the Senate during debate on 25 June 2004 of the Enrolment Integrity Act.

The Enrolment Integrity Act provides that a person who was serving a sentence of imprisonment on, or before, the return of the writs for an election and who continues to serve a sentence of imprisonment when the writs for the following election are issued will not be eligible to enrol or to vote for any Senate or House of Representatives election.

There would be insufficient time to complete the process of objecting to the enrolment of prisoners in the above category prior to the close of the rolls in order to remove them from the roll and make them ineligible to vote. As a consequence, all prisoners would be eligible to enrol and vote at an election, regardless of the term of their imprisonment.

The proposed amendments relate to prisoner voting, commencement, sunset and review clauses for the proof of identity provisions and other minor amendments.

The measures will:

- amend the Electoral Act to prevent prisoners serving a sentence of three years or longer from enrolling to vote;
- amend the Referendum Act to repeal early close of rolls provisions for referendums; and
- amend the Enrolment Integrity Act to clarify the commencement of the name and address evidentiary requirements for enrolments and changes to enrolment details, including the review by the Australian Electoral Commission of these requirements, and the cessation of the requirements.

Reasons for Urgency

The Bill requires introduction and passage in the Spring sittings 2004 to allow the measures to be implemented in advance of the next federal election. Failure to implement the provisions in the Bill will mean that all prisoners, regardless of the sentence served will be eligible to enrol and vote.

(Circulated by authority of the Special Minister of State, Senator the Hon Eric Abetz)

COMMITTEES

Selection of Bills Committee

Report

Senator FERRIS (South Australia) (3.37 p.m.)—I present the 11th report of 2004 of the Selection of Bills Committee and move:

That the report be adopted.

I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 11 OF 2004

1. The committee met on Tuesday, 10 August 2004.
2. The committee resolved to recommend—

That the following bills not be referred to committees:

- Australian Passports Bill 2004
- Australian Passports (Application Fees) Bill 2004
Wednesday, 11 August 2004

SENATE

26169

- Australian Passports (Transitionals and Consequentials) Bill 2004
- Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill 2004
- Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004
- Parliamentary Service Amendment Bill 2004

The committee recommends accordingly.

3. The committee considered a proposal to refer the provisions of the Higher Education Legislation Amendment Bill (No. 3) 2004 to the Employment, Workplace Relations and Education Legislation Committee, but was unable to reach agreement on whether the bill should be referred (see appendix 1 for statement of reasons for referral).

4. The committee deferred consideration of the following bills to the next meeting:
   Bill deferred from meeting of 10 February 2004
   - Racial and Religious Hatred Bill 2003 [No. 2].
   Bill deferred from meeting of 23 March 2004
   Bill deferred from meeting of 30 March 2004
   - Flags Amendment (Eureka Flag) Bill 2004.
   Bill deferred from meeting of 22 June 2004
   Bill deferred from meeting of 10 August 2004

( Jeannie Ferris)
Chair
11 August 2004
Appendix 1
Proposal to refer a bill to a committee

Name of bill(s):
Higher Education Legislation Amendment Bill (No. 3) 2004

Reasons for referral/principal issues for consideration
1. To establish the broad implication of the bill
2. to establish the impact of the bill on similar associate entities, for example the Victorian College of the Arts

Possible submissions or evidence from:
University vice-chancellors, business, research and industry groups, student groups

Committee to which bill is referred:
Employment, Workplace Relations, and Education Legislation Committee

Possible hearing date:
Possible reporting date(s): 9 September 2004

Senator Sue Mackay
Whip/Selection of Bills Committee Member

Senator CARR (Victoria) (3.38 p.m.)—I move:

At the end of the motion, add “and, in respect of the Higher Education Legislation Amendment Bill (No. 3) 2004, the bill be referred to the Employment, Workplace Relations and Education Legislation Committee for inquiry on 19 August 2004 and report by 2 September 2004”.

It is an extremely unusual event in this Senate when a senator seeks to refer a bill to a committee and that request is denied. For the first time in living memory, according to the clerks, that occurred last week with a proposition to refer the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004 to a committee. Now we have the second occasion in this regard with the Higher Education Legislation Amendment Bill (No. 3) 2004.

I raise this because I think it is a matter of deep concern to the Senate that the government should seek to frustrate the work of this place in its normal function, and that is the proper scrutiny of government legislation. A proposition has been advanced here that we
should examine the details of a bill which covers some 20 matters concerning higher education in this country. A proposition has been advanced here by the opposition today that that bill ought to be the subject of a Senate inquiry with the reporting date of 2 September 2004. The consequences of this are that we lose not one day of sitting time in this chamber, but the government is proposing to try to stop this action.

As I said, this bill covers 20 separate matters, some of which are highly controversial and ought to be subject to proper scrutiny. The reason we have 20 different matters in an amendment bill is that this government failed to properly deal with these matters last December. Last December, when we were dealing with the changes to the higher education measures, the government refused to consider amendments from the opposition or from the crossbenches. As a consequence, we now have a bill before the chamber that seeks to address those mistakes made last December.

We were told last December that the bill was perfect. We were told last December that the government measures were, without question, beyond criticism, yet we now discover a few months later that 20 separate issues need to be corrected. If they were wrong in December, what makes them suddenly right now? That is why I think we are entitled to examine these issues and that is why I am asking the chamber to support this proposition. There are measures buried deep in this bill that go beyond the question of just cleaning up the mistakes from last year when, in the middle of the night, the government tried to ram through a bill—and were successful—which failed to address these fundamental questions.

Tucked away in the additional matters we have in this proposition before us today is a proposition whereby the parliament is being asked to add Melbourne University Private to the list of higher education institutions that will be funded by the Commonwealth. The proposition is that Melbourne University Private, a commercial entity, a wholly owned subsidiary of the University of Melbourne, an institution that is not self-accrediting—that is, it operates under the act of the University of Melbourne—that does not issue its own degrees, that does not even have its own students and that does not employ its own staff, should be treated as a separate institution. The AVCC, the Australian Vice-Chancellors Committee, just last week refused the same entity membership of its august organisation, yet we are asked by this government to fund it. This is an institution that has only a five-year licence to operate in Victoria—no separate act of parliament like other universities. It is in fact on a rotational approval process, just like any other vocational college. (Time expired)

Senator STOTT DESPOJA (South Australia) (3.43 p.m.)—I rise to support Senator Carr on this particular issue. The Australian Democrats think it is a matter of good business of the Senate to ensure that bills that require scrutiny, especially bills that are introduced with such short notice, should be allowed to go to a committee for inquiry. However, unlike the date originally put forward by the opposition—that is, 9 September—the Democrats believe that the Higher Education Legislation Amendment Bill (No. 3) 2004 could be dealt with a little more expeditiously.

Senator Bartlett interjecting—

Senator STOTT DESPOJA—No, not because it is my birthday, thank you, Senator Bartlett. We thought 2 September would be a more realistic date. That way we would not eat into that second week of the parliamentary session—if, of course, we are back in September for that sitting fortnight. We be-
lieve that, with a minimum of fuss, we could have a public hearing, if required, and also have time to allow the sector to provide submissions to the committee to investigate the issues in this bill. Senator Carr has made it very clear to the chamber—and I agree with him—that this bill is not a light-handed, simple bill as some would have us believe. It does canvass up to 20 separate matters that deserve some scrutiny.

Many of these matters arise as a consequence of a flawed and hasty debate that we were part of in December last year. It is ironic that amendments moved by me at the time, on behalf of the Democrats, and others were not supported—in fact, in some cases not even debated—and yet we might not have had to deal with the same need to introduce legislation to correct mistakes had we actually had a proper debate and not one of those hasty late night sessions such as we had in December last year as a consequence of a flawed and dodgy deal between four Independent senators and the government.

That aside, there are also quite substantial matters contained in this legislation. I think it is important to note for the record, before the government suggests that we have had adequate time to analyse or assess this legislation, that I found out about this particular bill from the Australian Vice-Chancellors Committee last week. They were the ones informing me that such legislation was going to find its way onto the Notice Paper. It was not on the forward program. My suggestion was that they should encourage the minister’s office to get onto my office immediately to let us know whether this legislation was going to take place. So we have had a minimum of time.

The Democrats do not seek to postpone this process unnecessarily, but we do seek to exercise the democratic and proper right of this parliament and the Senate in particular to allow us to refer a bill to committee as required. It is required in this case, and I look forward to majority support of the Senate on this occasion to ensure that it can be done. As I have said to Senator Carr, I suggest a compromise date of 2 September. I hope that is agreeable to the chamber.

The DEPUTY PRESIDENT—To clarify, I understand that the amendment that is before the chair relates to 2 September.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (3.46 p.m.)—Thank you, Mr Deputy President. That last clarification is of interest to the government because the problem we were faced with was that we had a bill that had an early start date. I want to correct a couple of things. Firstly, the bill was on the forward program. I think Senator Stott Despoja said it was not; but it was on the forward program.

Senator Stott Despoja—No, it wasn’t last week.

Senator Carr—It was not distributed last week.

Senator IAN CAMPBELL—I am told by my adviser who puts out the forward program that it was on the forward program. I am happy to have that dispute somewhere else. Can I also say that the proposition—Senator Carr did not make this point, because it clearly did not suit him to do so—that was put to the Senate Selection of Bills Committee was a request, signed by him, for a report at the end of the next sitting fortnight. I congratulate Senator Stott Despoja, because it has become clear from the interchange that has just taken place that she has successfully negotiated a reporting date that will in fact allow the government and the parliament to deal with the bill in the next fortnight. Senator Carr’s proposal would
have ensured that the legislation could not have been dealt with until 27 September. I congratulate the Australian Democrats for playing a constructive role. One of the prime reasons we said that we did not want to have this inquiry was that putting it off until the very end of September would have upset the legislative program and the policy outcomes that the government sought. Senator Carr did not want to compromise, and we were told that the 9th was going to be the reporting date.

Senator Carr—You did not approach us; you just rejected it.

The DEPUTY PRESIDENT—Order! Senator Carr, you have had your say.

Senator IAN CAMPBELL—I also make the point that the Senate Selection of Bills Committee always tries to work by consensus, but there are occasions where it is quite clear that there will not be a consensus and there will not be an agreement. What happens time and time again when that takes place is that these matters come to the floor of the chamber, they get worked out and the majority prevails. Today we will have a better outcome because it has come to the floor of the chamber, they get worked out and the majority prevails. Today we will have a better outcome because it has come to the floor of the chamber, because Senator Stott Despoja has brought sense to the matter and said, ‘Let’s have the hearings in the non-sitting fortnight and deal with it in the next sitting fortnight.’ A resolution that cannot get an agreement in the committee comes to the floor of the Senate. It may not suit Senator Carr, but that is actually a democratic outcome. He would prefer not to have this put on the record either, but we actually left that meeting and said—

Senator Mackay—We didn’t refuse a compromise on the date.

Senator IAN CAMPBELL—No, we left that meeting and said we would get the Minister for Education, Science and Training to talk to the shadow minister and try to find a way forward and a compromise. That is what we sought to do. Clearly, that was not possible. We were going to talk about briefings and try to provide information to interested senators, so we were trying constructively to find a way forward. We know that this legislation came in late—Senator Carr and Senator Stott Despoja were right with that reference—but we are trying to get the legislation dealt with and trying to ensure that senators who were not informed enough about the contents of the legislation could get that. What really troubled us was that, if Senator Carr’s initial proposition for a reference to report to the chamber on the 9th were in place, that would mean that the Senate could not deal with it until the 27th, the next sitting day after the 9th. I think the compromise that has been worked out is a constructive one, and I thank all senators who have contributed to finding a constructive way forward.

Question agreed to.

Original question, as amended, agreed to.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.51 p.m.)—I seek leave to move a motion to vary the hours of meeting and routine of business for today.

Leave not granted.

Suspension of Standing Orders

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.51 p.m.)—Pursuant to contingent notice, I move:

That so much of the standing orders be suspended as would prevent Senator Hill moving a motion to provide for the consideration of a matter, namely a motion to give precedence to a motion to vary the hours of meeting and routine of business for today.

Leave not granted.
The government has a program that it has sought to have votes on during this fortnight. We are still on the first item on that legislative program, the enabling legislation for the free trade agreement. We have an enormous number of amendments to that bill. There has been very slow progress made with that bill and the government seeks to get passage of that bill and to allow the Senate to deal with other legislation in the time remaining during this fortnight. Clearly, based on the time that has been taken on the free trade agreement legislation to date, that legislation needs far more time than we would have ever imagined. The proposal is simply to seek to conclude debate on those pieces of legislation which enable the free trade agreement with the United States to have passage this evening. The proposal is simply that the Senate sit late tonight to enable that.

Senator BROWN (Tasmania) (3.53 p.m.)—The Greens will not be supporting this motion. It is an extraordinarily rare event for the parliament to sit late on Wednesday night. It has happened but I do not think it has ever happened at this time of year. We are back from the winter break, we have extended sittings, we have another fortnight’s sittings coming up at the end of this month—

Senator Ferguson—How do you know?

Senator BROWN—The government member interjecting opposite says, ‘How do we know?’ I know we have had a couple of members from the government side indicating that the Prime Minister might call a September election this weekend. But that is the whole point of this motion coming from the government. It is not here to facilitate debate in the Senate; we have plenty of time to do that. There does not need to be an election until next March, if the government is going to extend the time as much as it might. Certainly, if we are going to take the three-year rule then we will not have an election until well into October or early November. This motion is here to leave open the options for the Prime Minister to call an election at his leisure if he decides to or not on the coming weekend or at some other time in the next fortnight.

The Greens are not going to facilitate that. The Greens moved a motion in here yesterday for fixed three-year terms for this parliament. Extraordinarily enough, the opposition went across and voted with the government against that motion. But I can tell you that, out there in the real world, Australians are fed up with this ability of politicians to manipulate when elections are held and when they are not. We should have fixed three-year terms of parliament.

Senator Ferguson—What about four-year terms?

Senator BROWN—The government member interjecting opposite says, ‘What about four-year terms?’ Let me explain that, because he does not know about it. It requires a referendum to change the terms of the Senate from six to eight years. Let the government, if that is what it wants, put that before the people. But we can have an election every three years without a referendum, because the Constitution provides for six-year terms of the Senate and half the Senate to be elected each time. That is what we should have. Australians would very much back that. But this is for the convenience of the Prime Minister and the opposition as well. They want to be able to manipulate election dates to suit themselves to try to get the jump on the democratic process. That is what this motion is about. It is not about facilitating debate on an urgent matter. This free trade agreement, as you know, Mr Deputy President, is due to come in—even if we were debating it in the Senate and we are not; the Congress did but we cannot. We have enabling legislation here and it will go through, backed by the opposition.
By the way, the government and the opposition have not got their amendments in here yet. They complain about it being a long and slow debate but where are their amendments? It will go through. It should do so when we come back for the next two weeks if we do not get through it tomorrow, Thursday—the appointed day for sitting. If the opposition wants to give up tomorrow afternoon, so be it and if it wants to withdraw the rule that there will be no divisions after 4.30 on Thursday afternoons, which the Greens have opposed, let us have that. There is provision under the standing orders, without changing anything, for this debate to be had. I am not going to support a move to facilitate the manipulation by the Prime Minister of an election date. That is what this is about. I would expect that the opposition will not either. Let us sit properly tomorrow and let us come back at the end of the month, on 30 August, when we will have two weeks sitting. Let us deal with the legislation in the time-ordered, proper way which is laid down and not simply have our session interrupted at the whim of the Prime Minister.

Senator ALLISON (Victoria) (3.58 p.m.)—The Democrats will not be supporting whatever this motion is. We have not seen it yet. It has not been circulated in the chamber. There has been no leaders’ and whips’ meeting. We do not know why there is a necessity to sit late tonight. Is it to finish the free trade agreement legislation debate or is it to deal with all the other bills that are on the list for today? There has been no suggestion that the government has some pressing bill that must be dealt with this evening.

As Senator Brown says, it is unprecedented for us to suddenly have long sitting days in the middle of a sitting session. We are used to it at the end of sessions, of course, but those agreements to sit late and to sit extra days are taken after we have had a proper process. Leaders and whips get together, they work through all bills that are yet to be dealt with and they typically decide that not all of them are urgent and so we tip some off and we deal with others. We get through the agenda—whatever we and the government negotiate will be dealt with. We do it and we do it cooperatively.

Senator Ian Campbell has informed Senator Bartlett informally that the proposal is to sit until midnight and that there will be a suspension of the sitting for dinner. What is the purpose? I ask: do we have to come back tomorrow and have another late night sitting? Why? What is the reason for our sitting late tonight? I acknowledge that the debate on the free trade agreement is taking a long time. Many hours have already been put into it—probably more than 20 by now. But it is important legislation and it deserves proper debate. If this proposal is just a threat to make us stop speaking on this subject—particularly those on the crossbench—let the government tell us that. Let us have some level of cooperation outside this chamber. Let us talk through exactly why it is that we are being asked to sit late. Let us understand the reasons and have a proper plan, a program, ahead of us. Or, as Senator Brown suggests, is this all about the Prime Minister wanting the flexibility to call an election this weekend? As I said, the Democrats are not interested in doing business in this way. We will oppose the motion once it finally reaches us. We want to know what this means for the rest of the week. What are we heading towards for the rest of the week and the rest of today?

Senator LUDWIG (Queensland) (4.01 p.m.)—The opposition has considered the motion and will not be opposing an extension of hours today.
Senator Brown—Mr Deputy President, I rise on a point of order. I wonder whether the government and/or the opposition would be kind enough to provide a copy of the motion to the crossbench.

Senator Ludwig—It should have been circulated.

Senator Brown—It should have been circulated, Senator, but it hasn’t been.

The DEPUTY PRESIDENT—The motion will be copied and circulated in the chamber. I am sure that it will be available in the next couple of minutes.

Senator Ludwig—Senator Allison mentioned a precedent. I remind Senator Allison that in the last sitting fortnight we considered the Workplace Relations Amendment (Codifying Contempt Offences) Bill. If my recollection is correct, we sat until midnight to consider that bill. So it is not unprecedented to have an extension of hours, at least this year. As Manager of Opposition Business in the Senate, my recollection is that we can probably go back a little further. I do know that the Senate sat late to consider the codifying contempt legislation, and it was not the end of session.

I do not take issue with Senator Allison’s statement, other than to indicate that in recent times there have been requests by the government for an extension of time to deal with bills that the government considered necessary or urgent or that were required to be dealt with. That is a fact of life. The opposition looks at each proposal on its merits and determines a position. It considers the position that has been put by the government, the bill that needs to be considered and the opposition’s position on the bill. Copies of the amendments to the free trade agreement legislation have been circulated in the chamber and there is a running sheet. A bit of clear air might allow progress to be made and the parties to deal substantively with the issues at the committee stage.

The DEPUTY PRESIDENT—Senator Brown, you asked a question earlier about the motion. I understand it is now in the process of being circulated.

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

The Senate divided. [4.08 p.m.]
(The Deputy President—Senator J.J. Hogg)
Ayes............. 46
Noes............. 11
Majority........ 35

AYES

NOES
Allison, L.F. * Brown, B.J. Greig, B. Lees, M.H. Nettle, K. Stott Despoja, N.

The Senate divided.
* denotes teller

Question agreed to.

Procedural Motion

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (4.12 p.m.)—I move:

That a motion to vary the hours of meeting and routine of business for today may be moved immediately and have precedence over all other business today till determined.

Senator BROWN (Tasmania) (4.12 p.m.)—The Greens oppose the motion. It is outrageous that the Labor Party has decided to facilitate this extraordinary sitting of the Senate for the legislation on the free trade agreement to be put through the parliament when the Labor Party and the government have not even agreed on their amendment to the bill.

Senator Carr—There’s plenty of time.

Senator BROWN—Fine. I know that there is some sort of function going on in the parliament tonight which facilitates this but it is absolutely rude that the government and the Labor party—

Senator Carr—We haven’t been invited!

The DEPUTY PRESIDENT—Order! Senator Carr, come to order!

Senator BROWN—I suggest that the Labor Party makes itself better informed when it makes these cosy arrangements with the government and leaves the crossbench out of them.

Senator George Campbell interjecting—

Senator BROWN—Yes, even some Labor Party frontbenchers do not know what is going on. The fact is that this is a rude arrangement. It is a usurping of the general goodwill of the Senate. We have leaders and whips. If we are going to change the hours like this, we should have a proper debate about it. But some cosy arrangement has happened in a backroom between the Labor Party and the government, because they both want the free trade agreement, which they have both agreed to—the Howard-Latham free trade agreement—to get through the Senate. They do not want a more expansive debate and they do not want more public input into it. So they do not want to wait another fortnight to allow it to be debated properly. The Labor party has decided it will allow the Prime Minister to get this legislation through at the expense of proper Senate process. That is what this is about.

Senator George Campbell interjecting—

The DEPUTY PRESIDENT—Senator George Campbell! Senator Brown, address your remarks through the chair and ignore interjections to my right.

Senator BROWN—That is if you can hear me, Deputy President—

The DEPUTY PRESIDENT—I can hear you, Senator Brown. That is one of the advantages I do have.

Senator BROWN—and, yes, there are a lot of interjections—and I am totally ignoring them. Nevertheless, they point out that there is a great deal of embarrassment in the Labor Party about what is happening here. It is just facilitating the programming by the Prime Minister—that is what it is doing. There should have been a proper debate about this. There should have been proper communication with all parties, but the Labor Party has decided it would cave in to the Prime Minister and his wish to have the weekend free to call an election if he wants to. Both the government and opposition want this legislation through, to get past the tidal wave of embarrassment they have—particularly the Labor Party—having had fed back to them the shortcomings of this free trade agreement and how it is inimical to Australia’s interest. We will get back onto the debate about that, but the Greens—and quite clearly I speak for other members of
the crossbench as well—object to this process.

The DEPUTY PRESIDENT—The question before the chair is in respect of a matter being given precedence. Then there will be a further motion which will be moved in respect of the hours of sitting.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (4.16 p.m.)—Thank you for that elucidation, Mr Deputy President. I will at this stage just put on the record the Democrats’ opposition to any need to give precedence to this matter. I will expand slightly more fulsomely on the substantive motion.

Question agreed to.

Motion

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (4.16 p.m.)—I move:

That, on Wednesday, 11 August 2004:

(a) the hours of meeting shall be 9.30 a.m. to 6.30 p.m., and 7.30 p.m. to 12.40 a.m.;

(b) the routine of business from 7.30 p.m. shall be the US Free Trade Agreement Implementation Bill 2004 and a related bill; and

(c) the question for the adjournment of the Senate shall be proposed at midnight.

There has been some attention paid to an attack on the process here. I asked the Parliamentary Liaison Officer to inform all minor parties, Independent senators and the Labor Party of the proposal to sit late tonight. I am informed that all parties were communicated with on that. It is absolutely standard practice, if we need to extend hours, to inform other parties and bring it into this place.

Senator Brown—Have a meeting about it—that’s standard practice!

Senator IAN CAMPBELL—We do not always have leaders’ and whips’ meetings. Having a meeting to discuss something that is so blindingly obvious to most people would be a farce. We are into our seventh day of debate on the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004, and tomorrow will be our eighth day on what are obviously very important bills that are taking a long time. We have made it quite clear as a government that we would like to see the passage of this legislation during this fortnight, and the opposition, I think, have made it clear as an opposition that they would like to see the passage of this legislation during this fortnight as well. Sitting around a table and having a meeting would, of course, be a farce. We are not into having meetings for meetings’ sakes; we are into trying to run a successful legislative chamber and program.

It is well known to everybody in Australia who shows any remote interest in what is happening in the parliament that the Australian parliament is debating the US-Australia free trade agreement, and it is now clear that some senators are seeking to have a filibuster. Senator Brown makes the point that he thinks we should facilitate an expanded debate. I put it to all senators that, by seeking to expand the hours of sitting, we are in fact expanding the hours available to debate this legislation. So we are actually proposing to do exactly what Senator Brown would have us do. We want to have more time available to enable senators who have an interest to discuss this legislation. The motion says, ‘Let’s have an expanded time. We’ve had seven days; let’s have a long night. Let’s keep talking about it, but let’s bring it to a vote.’ It is not a democratic representation of the people of Australia to endlessly—and mindlessly, in some cases—filibuster a bill. At some stage, having a vote on a bill is in
fact a democratic representation of the people of Australia. So, at some stage after a debate—and this is already a very long debate—it needs to be brought to a vote. As a rebuttal of the accusation that we in some way have abused a process or done things without consultation, we informed all of the minor parties and Independents that it was our intention this afternoon to move that we sit late tonight. I have had no feedback, requests or discussion from the minor parties. We are doing it in the normal way—the way we do very regularly.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (4.20 p.m.)—I think this is a shabby, shonky set-up by the senators, which should be given short shrift. It is simply not acceptable. I will not go into the details of the process; Senator Allison has said what needs to be said about that. But clearly Labor and the Liberals decided that they want to sit a few more hours to get the US Free Trade Agreement Implementation Bill 2004 and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 through, came to agreement and basically said, ‘Oh, by the way, guys, we’re going to sit late tonight.’ If they think that is an adequate degree of consultation, I guess that is for them to indicate, but it is worth emphasising that—whilst we all want to ensure that the overall will of the Senate prevails—there is still a general need to recognise the desirability of cooperation on all the different processes and procedures that operate in the Senate.

If there is a lack of interest or willingness in taking a generally cooperative approach across the board, it is certainly a lot more likely that things will occur more slowly—not out of any desire to cause difficulty, but simply because, unless you can be sure that you are being fully informed, you need to take your time to make sure that things are not being slipped through as part of agreements that you have not heard about—so that they can be properly looked at. It is the same reason that the Senate insisted on ensuring that a contentious piece of legislation went to a committee. We do have a convention in this chamber that, even if just one senator wants to send a bill to a committee for a brief examination, we allow that to happen unless there are extraordinary extenuating circumstances, because proper examination can reveal flaws—even when the rest of us think everything is fine. I do think we need to reinforce that basic principle.

The other thing is that the motion will put in place over four extra hours of sitting so that the Senate will sit through until midnight to debate the US free trade agreement legislation. As has already been said, there are still further amendments that have yet to see the light of day and the Senate will have to consider those. Yet we are being expected to sit until midnight—to make people more tired, to reduce the sharpness of their critical faculties—to examine this agreement. The people who are in favour of this agreement are themselves saying it is very complex, very technical and very difficult, yet they are trying to make us sit and pass the legislation by exhaustion. We are to examine matters we have not even had a chance to look at yet, let alone question the government or the Labor Party on. We need to examine how they are supposed to work and whether they will do what they say they will do, particularly in an environment where we have an unprecedented degree of concern across the community.

There has been a lot of recognition of the unprecedented action of the 43 eminent Australians who expressed concern about the lack of honesty and the lack of openness there is and the lack of trust that people can have in the political process in general in Australia. I saw Air Marshal Funnell on Lateline a couple of nights ago. He was at
pains to say that that letter was not just an attack on the government but an expression of concern about democracy and the political process in general in Australia. He thought that things had got to such a stage that there was a growing degree of dissatisfaction, despair and apprehension amongst informed people as well as the general community, who felt that they could not trust the democratic process any further and that they could not trust their political leaders to tell the truth. That is why these sorts of rush jobs are completely unacceptable; that is why the Senate’s role is important.

The Senate’s role is to ensure that the government of the day is held to account, to ensure that proper scrutiny is done and to ensure that an amendment that appears in the dead of night—after the media have gone home, when everybody is tired and sick of it all—with no notice is not agreed to without being properly explained. When necessary, the Senate needs to hold the main opposition party to account as well. That is our job. That is why the Senate’s role is as important at the upcoming election as the decision about who ends up as Prime Minister. As this whole free trade agreement debate shows, either option—Labor or Liberal—in government will kick up lots of examples of trying to get away with diverting attention from some of the main issues. It is the Senate’s job to reveal the truth and to look in detail at the whole range of issues—not just at a little, manufactured, artificial disagreement about pharmaceutical benefits that does not even go to the core of that issue. It is the Senate’s job to actually look across the board at all of the components of the free trade agreement.

Sitting through until midnight is not something the Democrats believe is appropriate or necessary. I concur with and reinforce the points made earlier about fixed terms. I think those need to be emphasised as well. The role of the Senate is not to get caught up in pre-election positioning by the major parties. The role of the Senate is to hold all of them to account. We cannot do our job properly if there is this continual ‘maybe we will, maybe we won’t’ hinting, faking and smoke-screening about an election date. We should not have to tailor our debates and our examination of legislation to the electoral agenda of the Prime Minister or, frankly, the electoral agenda of the opposition. It might suit both of them to sweep the free trade agreement off the agenda and turn the spotlight onto something else. It does not suit the Australian people, and it does not suit the Senate because it would be an abrogation of our responsibility to examine such a major agreement, one we will be locked into for potentially decades to come.

If we had a fixed election date, we would know how long we had and we would not have to have these artificial extensions just to give a little bit more flexibility. Maybe the Prime Minister will call an election on the weekend; maybe he will not. We will pass this now and get it out of the way, and we will sit for as long as it takes just to give him the extra flexibility. I do not think the Senate should be tailoring its activities to ensure electoral flexibility for the Prime Minister or the Labor Party. Certainly the Democrats are not part of that.

I also make a general plea. In my period in this place, which is getting close to seven years now, and my involvement in a behind-the-scenes capacity before that, there was not what I would say a rock solid precedent but there was a general recognition that we should not sit Wednesday nights at least if we are to have extended sitting hours. That seems to be another convention that is going by the board, along with other far more important conventions such as a non-political Public Service and an honest democracy. It is not just a matter of senators not wanting to sit until midnight or wanting to have a night
off; I am thinking particularly of the staff, the advisers, the clerks, the draftspeople, the attendants and the other people who have to work in this building. At least we have a dinner break in this motion, but the late sitting does impact on all of those people as well.

There is no doubt that there is less public and media scrutiny of things that happen at 11.30 at night. Sometimes it is necessary to sit extended hours; I acknowledge that. But this is not an adequate excuse for us to start doing it just a few weeks into a new session, let alone on a Wednesday night. For a range of reasons—both the specific ones in relation to the bill before us, particularly as there are amendments we have not seen yet, as well as the broader ones—this is not a good approach and it is not one the Democrats support.

I reject the suggestion—certainly from the Democrats’ point of view—that we are involved in a filibuster here. This free trade agreement is hundreds and hundreds of pages long. It should be remembered that the bills before us deal with only part of the free trade agreement. Large parts of the agreement are not able to be touched directly through legislation because the legislation only enacts those components that require changes to the law. There is a whole raft of it that we are not able to even touch. That is a flaw in the process that the Democrats believe should be changed. Parliament should have a say on entire treaties, as they do in the United States and many other jurisdictions.

This is not just some small matter. It is incredibly broad. It is incredibly comprehensive. It is incredibly complex, and there are large areas of it that I know the government and the Labor Party do not want to have exposed, do not want to have debate on and do not want to have to answer questions on, but that is the Senate’s job. I have not even spoken at all in the committee debate, so I reject the notion of filibustering, given I have not spoken. The other Democrats have contributed when and where appropriate, but it is clearly a matter that is of major public concern. The larger parties might want it off the agenda and out of the spotlight. I do not think the public do—I think they want to know more about it. That is what the Senate’s job is. Having more hours to do it in in one sense enables us to do it, but doing it at midnight is not the best way to do it, particularly when we still do not know the full detail and the full amendments that we are supposed to be examining.

Question put:

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

The Senate divided. [4.35 p.m.]

(The Acting Deputy President—Senator H.G.P. Chapman)

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

AYES

Barnett, G.  Bishop, T.M.
Boswell, R.L.D.  Brandis, G.H.
Buckland, G.  Campbell, G.
Campbell, I.G.  Carr, K.J.
Chapman, H.G.P.  Colbeck, R.
Collins, J.M.A.  Conroy, S.M.
Crossin, P.M.  Eggleston, A.
Evans, C.V.  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.  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.  Santoro, S.
Scullion, N.G.  Sherry, N.J.
Stephens, U.  Tchen, T.
Tierney, J.W.  Troeth, J.M.
Watson, J.O.W.  Webber, R.
Wong, P.

NOES

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

* denotes teller

Question agreed to.

NOTICES

Postponement

Items of business were postponed as follows:

General business notice of motion no. 959 standing in the name of Senator Harris for today, proposing the establishment of a select committee on the commercial ‘rape’ of small business by Telstra, postponed till 1 September 2004.

NUCLEAR ENERGY: WASTE STORAGE

Senator Allison  (Victoria)  (4.39 p.m.)—I move:

That there be laid on the table by the Minister for Finance and Administration, no later than 1 p.m. 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.

Question agreed to.

HUMAN RIGHTS: BURMA

Senator Allison  (Victoria)  (4.39 p.m.)—by leave—At the request of Senators Ridgeway and Stott Despoja, I move the motion as amended:

That the Senate—

(a) notes that:

(i) Burmese refugees in Thailand may be increasingly at risk as a result of a curtailment in the activities of non-government organisations (NGOs) working on the Thai-Burma border, and

(ii) as a result, there is an increased number of Burmese being subjected to imprisonment, forced portage and sexual harassment by soldiers of the Burmese Government, the State Peace and Development Council (SPDC), upon their return;

(b) calls on the SPDC to:

(i) end the human rights abuses being carried out on a systematic basis by the Burmese military, and

(ii) immediately release Aung San Suu Kyi and her deputy Tin Oo, who remain under house arrest;

(c) urges the relevant governments to:

(i) facilitate the activities of NGOs working to assist the refugees, and

(ii) not allow the deportation of Burmese asylum seekers and refugees where there is a risk to their physical safety; and

(d) calls on the Australian Government to:

(i) respond to the appeals from the United Nations High Commissioner for Refugees to provide, within the annual offshore refugee and humanitarian intake, resettlement opportunities for those Burmese who cannot return to their country due to likely persecution by the SPDC, and

(ii) reconsider the policy of full diplomatic relations with the Burmese military government in light of these recurrent human rights abuses and the continued detention of Aung San Suu Kyi.

Question agreed to.

INTERNATIONAL DAY OF THE WORLD’S INDIGENOUS PEOPLES

Senator Allison  (Victoria)  (4.41 p.m.)—by leave—At the request of Senator Ridgeway, I move the motion as amended:

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, 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; and

(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.

Question agreed to.

COMMITTEES

Electoral Matters Committee

Extension of Time

Senator FERRIS (South Australia) (4.43 p.m.)—On behalf of the Chair of the Joint Standing Committee on Electoral Matters, I move:

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.

Question agreed to.
Rural and Regional Affairs and Transport Legislation Committee

Meeting

Senator FERRIS (South Australia) (4.43 p.m.)—On behalf of the Chair of the Senate Rural and Regional Affairs and Transport Legislation Committee, I move:

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.

Question agreed to.

Scrutiny of Bills Committee

Report

Senator MARSHALL (Victoria) (4.44 p.m.)—I present the 10th report of 2004 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills Alert Digest No. 10 of 2004, dated 11 August 2004.

Ordered that the report be printed.

BUDGET

Consideration by Legislation Committees

Additional Information

Senator FERRIS (South Australia) (4.44 p.m.)—On behalf of the Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee, Senator Eggleston, I present additional information received by the committee relating to hearings on the 2003-04 additional estimates.

COMMITTEES

Foreign Affairs, Defence and Trade Committee: Joint

Report

Senator FERRIS (South Australia) (4.45 p.m.)—On behalf of the Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade, Senator Ferguson, I present a report entitled Review of the defence annual report 2002-03 and move:

That the Senate take note of the report.

I seek leave to have a tabling statement incorporated in Hansard.

Leave granted.

The statement read as follows—

Mr President, the period between July 2002 and June 2003 covered the tragic Bali Bombings, the release of the Defence Update and the review of the Defence Capability Plan which was made public in November 2003. The terrorist attacks of 11 September 2001 resulted in a range of national security initiatives and commitments to coalition operations in the war against terrorism. The Bali Bombings on 12 October 2002 demonstrated that Australia cannot relent in its fight against terrorism.

The Defence Update sought to raise the prominence of terrorism and the spread of weapons of mass destruction together with the challenges faced by countries in our region. These priorities have signalled changes in Defence's strategic objectives and the capabilities with which they are delivered.

Mr President, the topics selected for examination as part of the review of the 2002-2003 Defence Annual Report are linked to some of the new challenges facing the Australian Defence Force (ADF). Topic one focuses on Australia's continuing involvement in the Middle East. The Annual Report stated that 'about 800 Defence personnel remain in the Middle East area of operations under trying and difficult circumstances to contribute to Iraq’s stability and reconstruction.'

One of the most sensitive matters examined as part of the review was the decision by Defence to retire the F-111 in 2011. The 2000 Defence White Paper previously stated that the F-111 would be retired in the 2015-2020 timeframe. Defence indicated that the F-111 ‘will be a very high cost platform to maintain and there is also the risk of losing the capability altogether through ageing aircraft factors.’

Mr President, the 2000 Defence White Paper states that ‘air combat is the most important sin-
gle capability for the defence of Australia. Australia’s air combat capability is provided through a fleet of F/A-18 Hornets. Australia’s strike capability, consisting primarily of our fleet of F-111s, is also an important element of Australia’s military posture because it provides us with the flexibility to destroy hostile forces before they are launched towards Australia.

Accordingly, the decision to retire the F-111 in 2010 was given significant attention by the committee and was the subject of intense examination during a series of public hearings. A concern was raised by some groups in their evidence that retiring the F-111 in 2010 could leave Australia with a capability gap which could ultimately undermine Australia’s ability to maintain air superiority.

The committee in addressing matters relating to the decision to retire the F-111 in 2010 has recommended a range of measures that will provide reassurance to the parliament and the Australian public. The committee recommends that, in 2006, the Government should make a statement focusing on:

- the most accurate delivery date for the replacement combat aircraft;
- the implications this date will have on the decision to retire the F-111 in 2010;
- the need to ensure that key upgrades and deep maintenance on the F-111 continues through to 2010 with the possibility of extending the lifespan should the need arise; and
- the measures the Government will take to ensure that Australia’s superiority in air combat capability in the region is maintained.

The committee also recommends that, at the start of the next Parliament, the Minister for Defence requests the committee to conduct an inquiry into the ability of the Australian Defence Force to maintain air superiority in our region to 2020.

Mr President, the committee concludes that the implementation of these measures will help to provide reassurance and coherence to managing Australia’s air combat capability as Defence seeks to manage the transition from ageing to new aircraft platforms.

In addition to the previous matters, the committee also focused on aspects of the ADF’s National Support Tasks. The role and effectiveness of the Army ATSIC Community Assistance Program (AACAP) was examined. Through this program, Defence together with ATSIC and the Department of Health and Ageing provide assistance to a number of remote indigenous communities to improve environmental health and living conditions. On 2 October 2003 the committee visited Palm Island and received a briefing and inspected progress with AACAP’s achievements in that community.

The committee encourages the continuation of the AACAP program, and recommends that in 2005 Defence should undertake another review of the conditions of service for ADF members on AACAP projects to ensure that there are no anomalies in conditions of service and that they are commensurate with the work performed.

In conclusion, and on behalf of the Committee, I would like to thank the range of groups and individuals that contributed to this inquiry.

Mr President, I commend the Report to the Senate.

Question agreed to.

Public Works Committee

Reports

Senator FERRIS (South Australia) (4.45 p.m.)—On behalf of Senator Ferguson and the Parliamentary Standing Committee on Public Works, I present report No. 3 of 2004, Mid-life upgrade of existing Chancery building for the Australian High Commission, Wellington, New Zealand; and report No. 4 of 2004, Provision of facilities for headquarters Joint Operations Command, New South Wales. I move:

That the Senate take note of the reports.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—
Mid-Life Upgrade of Existing Chancery Building for the Australian High Commission, Wellington, New Zealand

The first of the two reports addresses the provision of essential refurbishments to the building interior and engineering services of Australia’s permanent mission to New Zealand. There has been no significant refurbishment of the Chancery since its construction 26 years ago and the building no longer provides an appropriate level of service and amenity.

The Department of Foreign Affairs and Trade expects that the upgrades will fulfil the requirements of the Wellington post for the next 25 years. The estimated cost of the proposed works is $9.309 million.

The works proposal includes:

- modernisation of building services and the removal of hazardous waste material;
- improvement of security provisions to meet the needs of Australia’s overseas agencies;
- consolidation of functions and occupation into the basement, ground, second and third floors; and
- refurbishment of the first floor as an office shell suitable for future tenancy or moth-balling to minimise costs.

At the public hearing, the Committee questioned the Department of Foreign Affairs and Trade on a range of issues, including:

- the removal of hazardous asbestos;
- security arrangements;
- structural requirements relating to local seismic activity; and
- consultation with the Australian Greenhouse Office regarding energy conservation provisions.

The Department explained that asbestos sheeting in the eaves needed to be replaced with non-hazardous material, and assured the Committee that these works would be carried out by a licensed operator to the highest safety standards.

Further, the Department explained that a detailed structural audit had been undertaken and that the building would satisfy local standards for seismic stability. Details of this audit were provided to the Committee subsequent to the hearing.

The Department added that while it had not consulted with the Australian Greenhouse Office, energy conservation was a priority. The Department expects to achieve a saving of 20 per cent in energy costs by moth-balling the first floor, and installing intelligent lighting and a state-of-the-art building management system.

Having considered the evidence before it, the Committee recommends that the proposed mid-life upgrade of the existing Chancery building for the Australian High Commission, Wellington, New Zealand proceed at the estimated cost of $9.309 million.

Provision of Facilities for Headquarters Joint Operations Command, New South Wales

The Committee’s fourth report of 2004 examines the provision of facilities for Headquarters Joint Operations Command, near Bungendore, New South Wales. The work was referred to the Committee by the Department of Defence at an estimated cost of $318.08 million.

This inquiry was something of a landmark for the Committee, as it was the first entirely privately-funded project presented for consideration. This posed some difficulties for the Committee, as the project was referred at a very early stage of development. This occurred because Defence requires Parliamentary approval for the work before it can seek tenders from private finance consortia. Detailed design, therefore, will be undertaken only after the selection of the successful tenderer.

In view of this, the Committee recommends that Defence provide it with reports on the progress of works and associated costs at each stage of completion of the project.

The inquiry generated considerable local interest, particularly in respect of the anticipated traffic impacts of the development. It is estimated that, once operational, the facility will generate some 800 additional traffic movements to and from the site each day. Having heard evidence from both the Greater Queanbeyan City Council and the
New South Wales Roads and Traffic Authority on this matter, the Committee recommends that Defence liaise with both these organisations in respect of traffic management and road safety issues arising from the proposed development.

The Committee also received evidence from the University of Sydney’s Molonglo Radio Observatory, a significant scientific facility located some five kilometres from the site of the proposed work. The University outlined the potential for radio frequency interference from the new Headquarters to impact negatively on its operations. The University explained that, should the Molonglo Radio Telescope be forced to move from its hitherto radio-quiet location, this would disrupt research programs and incur large costs. The Committee was pleased to note that Defence intends to enter into a Memorandum of Understanding with the Observatory, and recommends that this close consultation continue. Furthermore, the Committee recommends that Defence implement all possible radio frequency interference mitigation measures, during both the construction and operation of the new command facility, to ensure that the Observatory can continue to operate without interference.

In keeping with its continued efforts to ensure the ecological sustainability of Commonwealth building proposals, the Committee questioned Defence on its intentions with regard to the minimisation of waste and the reduction of energy consumption for the new Headquarters. Defence stated that it aims to have no waste leaving the site, and intends the new Headquarters to be a five-star Green Building. Having received a submission from the New South Wales Department of Environment and Conservation Sustainability Programs Division outlining a number of waste management and energy use reduction strategies, the Committee recommends that Defence and its private consortium partners liaise with that agency to ensure that the Headquarters Joint Operations Command Facility meets the highest possible standards for the minimisation of waste production and energy use.

Other issues investigated by the Committee in respect of the proposed development included:

- the selection of the preferred site for the facility;
- impacts on social infrastructure;
- impacts on neighbouring properties;
- consultation; and
- project delivery.

The Committee also received a comprehensive in-camera briefing from Defence on the financial particulars of the project. Having satisfied itself on these matters, and having received assurances from Defence that further reports will be provided as the project progresses, the Committee recommends that the proposed provision of facilities for Headquarters Joint Operations Command, New South Wales, proceed at the estimated cost of $318.08 million.

Mr President, I would like to take the opportunity to thank my Committee colleagues and all those involved in the inquiry process. I commend the Reports to the Senate.

Question agreed to.

Public Accounts and Audit Committee Report

Senator FERRIS (South Australia) (4.46 p.m.)—On behalf of Senator Watson and the Joint Committee of Public Accounts and Audit, I present the 401st report of the committee, entitled Annual report 2003-2004, and move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

Mr President, it gives me great pleasure to present the annual report of the Joint Committee of Public Accounts and Audit for 2003-2004 on behalf of the Committee. The tabling of the annual report is an important accountability mechanism by which Parliament and, through it the public, can conveniently assess the Committee’s performance.

The Committee had a productive year in 2003-2004 with the completion of 3 major inquiries: Report 395, Inquiry into the Draft Financial Framework Legislation Amendment Bill; Report 399, Management and Integrity of Electronic
Information in the Commonwealth; and Report 400, Review of Aviation Security in Australia. The Committee also tabled 2 reports with recommendations as part of its on-going statutory obligation to review all reports of the Auditor-General.

The Committee has received a continuing stream of responses by Government to the recommendations of previous reports. Nearly 90% of the Committee’s recommendations have been agreed to, which demonstrates the seriousness with which the Government takes the Committee’s recommendations. It also demonstrates the Committee’s success in influencing Government policy and agency activity. Many committees, I am sure, would envy the JCPAA’s success in getting its recommendations adopted.

Finally, the Chairman, Mr Bob Charles MP, wishes to thank members of the Committee, and in particular the Deputy Chair Tanya Plibersek, for their support and commitment to the Committee during the year.

Mr President, I commend the Report to the Senate.

Question agreed to.

PARLIAMENTARY ZONE
Proposal for Works

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (4.46 p.m.)—In accordance with the provisions of the Parliament Act 1974, I present a proposal for works within the Parliamentary Zone, together with supporting documentation, relating to the construction of permanent access ramps at the rear of Old Parliament House. I seek leave to give a notice of motion in relation to the proposal.

Leave granted.

Senator IAN CAMPBELL—I give notice that, on the next day of sitting, I shall move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being the construction of permanent access ramps at the rear of Old Parliament House.

ENVIRONMENT: GREAT BARRIER REEF

Return to Order

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (4.48 p.m.)—by leave—I would like to make a short statement in relation to a return to order. Yesterday, Senator McLucas successfully moved motion No. 58, which sought the tabling of certain documents by me no later than three o’clock this afternoon. The record will show that that motion passed some time around four o’clock yesterday afternoon. It sought documents relating to the Great Barrier Reef Marine Park Authority’s process, known as the Representative Areas Program. It relates, if I read it correctly, specifically to the Repulse Bay area. You may recall, Mr Acting Deputy President Chapman, that there was a question in relation to the Representative Areas Program on the reef during question time today. For the government it is a very important process. As I said in question time, it has increased the area of protection within the marine park well in excess of 33 per cent of a quite massive area. I am not sure whether you have been there yourself but, if you have not, I recommend it to you and all honourable senators. It is, of course, an absolutely awe-some and awe-inspiring part of the Australian environment—the reef, the park around it and the hinterland, much of which has been proclaimed as part of world heritage within the wet tropics.

This park was originally proclaimed under the leadership of former Prime Minister Malcolm Fraser. It was regarded as one of the great environmental achievements of that Liberal Prime Minister, who was regarded as a great environmentalist. The great achievement in the Great Barrier Reef protection...
stakes, amongst many other good pieces of work done by Senator Robert Hill and Dr David Kemp after him in protecting the reef, is this plan.

The plan, which Senator McLucas is seeking to get some documents about, involved a very comprehensive consultation process. In excess of 30,000 submissions were made to the authority throughout the process, and I am sure many were made to the minister at the time. Senator McLucas, who has an interest in Queensland, would know that there was not only significant interest from people involved in the process but also widespread interest across Australia, because it is an Australia-wide and world-wide recognised piece of heritage. There is an enormous number of documents relating to this. The request from Senator McLucas sought a response effectively in less than 24 hours. She may be aware that there are also freedom of information requests about similar documents, which are also being dealt with by the authority and by my department. We will be diligently seeking to respond.

I make the point that this plan protects through a series of zonings that are easily understood if you consider that the no-take zones are green zones. They effectively exclude all activities, including recreational and commercial fishing, other than conservation and protection activities. Roughly 33 per cent of the park has been zoned green. There are other zonings but a significant one that Senator McLucas would be aware of is the yellow zone, which reserves significant parts of the park for recreational fishermen only. This is the nub of a number of the issues up and down the coast. I had the enormous pleasure of visiting these areas a couple of weeks ago. The green zones and the yellow zones have removed access to commercial fishing from significant areas of the park.

The government has produced a structural adjustment package which seeks to fairly and equitably address the needs of people in the park zone and the industries that serve the park. These include training, counselling and business support needs. An example is the fish and chip shops. They get their fish from fishermen within the zone. I am working very hard to ensure that that structural adjustment package meets the needs of not only the commercial fishermen but also the recreational fishermen. Senator McLucas has identified with the recreational fishermen, who in some cases had some slightly conflicting interests with the commercial fishermen in Repulse Bay. I assume that Senator McLucas would have liked to have seen that bay made a yellow zone, thereby excluding commercial fishermen.

As a result of my trip, I will very shortly announce details of changes to the structural adjustment package as well as a number of other reforms to the process going forward to make it more fair and equitable to commercial fishing interests, to recreational fishing interests and to the industries that serve both of those very important activities in the park. I have already extended the date for tenders. The package allows commercial fishing interests to tender for the value of their licences, their fishing boats and anything else to effectively take the licences out of the park. It is very important to do it fairly and to ensure that, when they prepare their tenders, the people involved have a very clear understanding of what the future holds for them. I have extended the closing date for tenders to the second week in October—I think it is 13 October, but I do not have the date handy. It is very important for the commercial fishing interests, and ultimately for the recreational fishing industry—bait and tackle shops and others who supply the recreational fishing industry—to have a very clear understanding of the plan and the structural ad-
justment package. They will make a significant difference to the lives of hundreds of people along the Queensland coast.

I am very disturbed by the Australian Labor Party’s handling of this issue. We are seeking to create world-leading, historically large levels of environmental protection for a very fragile piece of the environment. In the lead-up to an election, there has been what I could only describe as very cheap political point scoring by a couple of Labor Party candidates and members on the Queensland coast. I was very disturbed to read a press release, on official Labor Party letterhead, by a Labor Party candidate that attacked the plan and attacked me for daring to say that the planning process should not be reopened. I will table this press release so that all in the world who have an interest in the park can read it. The candidate attacked me for saying that I was ‘intent on ensuring that the controversial closed zones stayed’. So I have been attacked for defending the plan. The press release says:

We have had our access to the reef slashed and we are not going to get it back under the Howard government.

This makes it quite clear to any reader in Gladstone that, under a Latham government, access would be returned to these areas. The candidate up in Gladstone—the official Mark Latham Labor candidate—is saying to the commercial and recreational fishing interests and the industries that serve them: ‘Tear up the plan. Let’s reopen it. Let’s stretch it out until after the election of a Latham Labor government.’ They are being cheered on by Senator McLucas and the putative Latham Labor candidate in Hinkler. They are saying to these people, ‘Let’s think carefully about what we do with this structural adjustment package.’ It throws the whole package up into the air. If you were a commercial fisherman or someone who owned a recreational fishing provisions shop—

Senator McLucas—Mr Acting Deputy President, I rise on a point of order. Senator Campbell’s words do not go to the return to order that I have asked for. I am asking for a discrete set of documents. If the minister has them, then let him provide them. If he does not have them, then let us know why. It is all very interesting to talk over what happened through the RAP process—I know it; I live there—but I do not think it is sensible to waste the Senate’s time in this way. It is a question of relevance. Could the minister address the point that he originally started to make?

The ACTING DEPUTY PRESIDENT (Senator Chapman)—It is not for the chair to judge what is or is not part of the documentation. I will listen carefully to the minister and attempt to ensure that he is being relevant. I understand that he is addressing the RAP, which is part of the documents you are seeking as a return to order, so in that sense it is relevant.

Senator IAN CAMPBELL—Thank you, Mr Acting Deputy President. I understand it is very awkward for Senator McLucas because she has been caught at the new Labor game of saying one thing to one constituency and another thing to the environment lobby. This is the nub of this motion: it is playing to a constituency around Repulse Bay, particularly recreational fishermen, by wanting to dog whistle to them and say, effectively, ‘We will, as a future Labor government, reopen this plan.’ That is what the Latham Labor candidate in Hinkler is saying. Labor are attacking the plan. They are attacking me for saying that I am going to stand by that plan and protect the reef, but down here no doubt Kelvin Thomson will be telling the environment movement that the reef is safe. You
could get away with this narrowcasting before the advent of electronic media.

In Hinkler, the Labor candidate is trying to appeal to the commercial fishermen and a few miles down the coast Senator McLucas is trying to appeal to SunFish and the recreational fishers. But down here in Canberra, they will sit around with the Wilderness Society, the ACF, the World Wide Fund for Nature and other people who care deeply about the reef and say, ‘It will be safe under Labor.’ You cannot have it both ways. Senator McLucas is seeking to table documents which my department will now work on instead of working on protecting the reef. The Great Barrier Reef Marine Park Authority and all the fantastic scientists and people up there will now turn to responding to Senator McLucas’s cheap political stunt—instead of protecting the Great Barrier Reef, working with the local community, commercial fishermen and recreational fishermen, working in a consultative way as I want them to, to restore trust between the communities and the Great Barrier Reef Marine Park Authority. Because of Senator McLucas’s cheap political point scoring, those people will have to hunt through thousands and thousands of papers. She comes into this place and seriously moves a motion which says that we should be required to do that in less than 24 hours. How can you possibly take her seriously? What a joke!

We take the Great Barrier Reef Marine Park and its protection seriously. Malcolm Fraser started it, Mr Hawke and Mr Keating ignored it and, of course, Prime Minister Howard has massively increased the protection of the reef. And do you know what we do? We do not sit in a little room with the commercial fishermen, wink, nod and dog whistle to them, make them false promises and say one thing to them and tell rec fishers another thing, and then tell the environment lobby even another thing. We look them in the eye and tell them all the same thing. I looked the recreational fishermen in the eye, and the commercial fishermen, the people who own the bait and tackle shops and the fish and chip shops and I said, ‘This plan is the law of the land and I would be holding out false hope to you if I said we are going to reopen it.’ That is what I said to every single one of those people up and down that coast. So this Latham Labor candidate in Gladstone is misleading the people she seeks to represent by saying that I did anything other than that. I challenge Senator McLucas or this Latham Labor candidate who wants to reopen the Great Barrier Reef Marine Park to find any one of the hundreds of people I have met who will contradict what I have said here today because they will not find one.

I told them, ‘Anyone who holds out hope to reopen the plan and overturn the law is really giving you false hope.’ We can give them lots of hope by sensible, sound, constructive discussion, addressing the structural adjustment package, addressing the Great Barrier Reef Marine Park Authority and its association with the communities, improving the consultation mechanisms and making sure that the mistakes that were made in the past, where the trust was broken down between the authority and various parts of the community, are not repeated. That can be done and that is what I am going to do, but it is not helped by Labor candidates and Labor senators stirring people up for cheap political point scoring, saying that the Great Barrier Reef Marine Park can be traded off in a political game. It should not be traded off. It is a disgrace for Labor to pretend to the environment movement and to the members of our community who care deeply about the Australian environment, particularly about their barrier reef, that people such as this candidate up in Gladstone will trade that away for cheap political reasons and think they can get away with it. We all know in
this place that there is absolutely no way that Labor should do that.

I call on Senator McLucas and I call on the Leader of the Opposition, Mark Latham, and their environment spokesman—whether he be Kelvin Thomson or Peter Garrett; it is hard to work out who it is—to make a clear public statement to the people of Queensland, Australia and the world saying, ‘Labor will not reopen this plan.’ That is what you need to say, and you need either to sack your candidate in Hinkler for misleading the people she seeks to represent in this place—you should sack her the way the Liberal Party had the guts to sack candidates who play these sorts of games—or you should call her in, dress her down and tell her what your policy is. You cannot have one environment policy in North Queensland and another one in Canberra and be taken seriously. The commercial fishermen will not believe you and the recreational fishermen will not believe you because they are smarter than that.

What is really at stake here and why it is so important that Labor makes the policy clear is that it is not a little Young Labor game or a trade union game, with a little bit of political gamesmanship. These are the lives of commercial fishing people and it is the future of recreational fishing and fishing industries and fish and chip shops—all of them good Australians. Over the next few weeks they need to be addressing how they are going to approach this, for their sake and for the sake of their children and families, the people who rely on them to put food on the table and shoes on their feet so that they can go to school. The efficacy of the structural adjustment package and the future of the plan are really important to all those people. If people are playing cheap politic games with it, holding open the prospect, as this candidate is doing—saying that the plan is going to be changed or reopened and attacking the government for the plan, a government that has had the guts and commitment to protect the reef and to help those people affected by it—then the structural adjustment package will be put in limbo.

If you want to have a structural adjustment package that delivers to people the fair and equitable support they need and deserve as a result of reaching these conservation outcomes, it is absolutely incumbent upon Labor to say that the plan will not change. Otherwise it will be very hard for my department, with the support of the Queensland structural adjustment commissioners, to carry out a structural adjustment package that has efficacy and that people can have faith in. It is well and truly time that Labor stopped playing games with this issue and stopped threatening the protection of the Great Barrier Reef.

I call on Kelvin Thomson, Peter Garrett, Mark Latham and Senator McLucas to say to this candidate in Hinkler that she is breaching policy, or to tell the people affected in the park and the people of Queensland what Labor’s true policy is on this, because there is now total confusion as a result of the game playing of Senator McLucas and the candidate for Hinkler. The people of Queensland and the people affected by the park deserve a lot better. Labor are playing with these people’s lives and they do not care about it. You cannot get away with saying one thing to one group of people in Queensland and another thing to another group of people down here. Just as you cannot have the shadow Attorney-General saying one thing about gay marriage to a bunch of Christians who care about marriage and another thing to gay and lesbian people who have a different view. You cannot get away with it forever. You have to make a decision and wear the consequences.

The production of these documents will significantly divert the resources of my troops in the Department of the Environment
and Heritage, who work to protect the environment and to protect the Great Barrier Reef Marine Park, and the work and resources of the great people of the Great Barrier Reef Marine Park Authority, who are paid to do that also. When she moved a motion less than 24 hours ago requiring these documents to be tabled Senator McLucas knew that there was no way we could comply. So this is a stunt; Senator McLucas wanted to force a debate about this today and she is going to have one. I would be happy to debate her anywhere on this stuff because what she is doing is a disgrace. She is playing with people’s lives; she is playing cheap little political games and diverting resources. We will go through this process and search for the documents and we will comply. But can we comply today? There is no way in the world and she knows that. We will respond to this return to order in due course.

Senator McLucas (Queensland) (5.10 p.m.)—by leave—I move:

That the Senate take note of the statement.

At the outset let me say that I live in North Queensland. For the last two years I have dealt with the proposal by the government to establish a stronger level of protection for the Great Barrier Reef and I have supported that continually, with one proviso: that the process of decision making was at arm’s length from the political process. I have to say that GBRMPA has done a reasonable job on that, but there are couple of places in North Queensland where that has not occurred, and Repulse Bay is one of them. That is why I had to do what I have done and call on the Minister for the Environment and Heritage to provide these documents to the Senate, because of the behaviour of the member for Dawson, Mrs De-Anne Kelly.

There has been considerable discussion and disquiet about the involvement of Mrs Kelly in the last-minute changes to the zoning in Repulse Bay in the Great Barrier Reef. That concern has been expressed to me for almost 12 months by a range of individuals and groups, and these people are not insignificant. The minister is correct in identifying recreational fishers, but they also include the Whitsunday Chamber of Commerce and the very respected Mayor of the Whitsunday Shire Council. The concerns held by these individuals have substance. For the minister to simply dismiss my request for documents as being mischievous, frivolous or political means that he does not understand the history of the zoning of Repulse Bay.

On 22 February this year Sunfish Mackay made an application under FOI to the Great Barrier Reef Marine Park Authority for some of the documents that I am asking for today. On 22 March this year, when they were advised by GBRMPA of the cost, they revised their application. On 9 June this year there was further correspondence which advised Sunfish Mackay that GBRMPA:

... has ... decided to release to you the documents identified within the scope of your request ...

However, pursuant to section 54 of the Freedom of Information Act 1982, a third party has 30 days in which to request that the Great Barrier Reef Marine Park Authority review this decision to release the documents.

GBRMPA were happy to release the documents, but a third party had an opportunity to respond. On 12 July, more than 30 days later, the third party requested ‘an internal review of the decision’ by the decision maker. We assume that the third party is Mrs Kelly, but we are not absolutely sure—so more than 30 days later another process was triggered. On 29 July, Sunfish Mackay wrote to GBRMPA expressing their frustration at the delay and obfuscation they perceived was occurring because of the third party. They said in that letter:
While the name of the third party has not been identified by yourself, Sunfish Mackay assumes the third party is in fact the Federal Member for Dawson, Ms De-Anne Kelly.

Accordingly we enclose for the benefit of the decision maker a transcript from ABC Radio, dated 19 July, 2004 where Ms Kelly has asked for an independent public enquiry into the Representative Areas Program, due to her claim of ‘lack of transparency’ of the process, and lack of scientific back up of the process.

It is not the Labor Party that is making mischief with the representative areas program; it is the member for Dawson and the member for Leichhardt, and Senator Scullion knows this. The letter goes on:

We would suggest that if it is Ms Kelly objecting to your release of the documents to Sunfish Mackay and now calling for a public enquiry due to a lack of transparency, then quite clearly she is being hypocritical.

In your letter of 12th July, you advise that the Great Barrier Reef Marine Parks Authority has 30 days in which to make a decision on the application for a review.

As this is dragging on and our wishes are to move on, can you please advise Sunfish Mackay on the decision and should there be a review, what time frame is involved, and when after that date we can expect the information sought.

They then go on to recognise that the federal election is looming and this information is being withheld. On 4 August, the marine park authority wrote back to Sunfish Mackay and said:

I am writing to inform you that the decision-maker has reconsidered this matter and has decided to uphold the original decision to release the two documents which are the subject of this request in their entirety.

GBRMPA has done the work. The minister comes in here and says, ‘It is an enormous amount of work we have to do.’ The two documents are on the FOI officer’s table in Townsville as we speak. This is not an enormous piece of work that I am requesting. This work has been completed. We are simply asking for the documents to be tabled. It is completely wrong and misleading for the minister to come in here and say that there is an enormous amount of work that GBRMPA would have to do. The work has been done. Here is the proof. Just table the documents.

The FOI officer goes on to say—quite rightly, and I am not being critical of the FOI officer of the Great Barrier Reef Marine Park Authority at all, because that person is simply following the rules:

... pursuant to section 55 of the Freedom of Information Act 1982, a third party has 60 days in which to file an appeal with the Administrative Appeals Tribunal regarding the decision to release the documents. If an appeal is not filed within that period—

60 days—then the documents will be forwarded to you at the end of that period.

Sixty days? I reckon the election might be over by then. I think the people of Mackay, Whitsunday and Proserpine want to know what their local member did in the time leading up to the changed zoning of Repulse Bay. It is evident from the time frame that I have just described that Mrs Kelly has taken every opportunity to prolong the process to her advantage. The only conclusion that I can draw and that the people of her electorate can draw is that there is something to hide—there is something that she wants to hide that is in the documents.

It is in that context that the residents and voters of Mackay and that region want to know what their member has been up to. They are being obstructed at every turn, not by GBRMPA but by the third party. It is in that context that I had to come into this chamber and make this return to order. I did that in order to cast some light on the actions of Mrs Kelly. The allegation is that on 26 September 2003 Mrs Kelly and the then
environment minister, Dr Kemp, had two meetings with 40 commercial fishers and one recreational fisher in two locations, Mackay and Bowen. It is said that on 15 October Mayor Demartini and members of Sunfish Mackay met a number of officers from the Great Barrier Reef Marine Park Authority—the month after the meeting that Mrs Kelly had—and were shown a changed map for Repulse Bay.

Sunfish Mackay was advised that, from a conservation point of view, GBRMPA preferred a yellow zone in Repulse Bay. That is what Sunfish wanted. The only reason given for the removal of the yellow zone was that it was a socioeconomic decision. I find that a very unusual response. The Great Barrier Reef Marine Park Authority is a natural resource manager, not a fisheries manager. You know that, Senator Scullion, don’t you? For GBRMPA to be saying that it was making a decision based on socioeconomic grounds is very unusual, to say the least, if not completely outside the charter.

Further, on Friday, 24 October the Mackay Daily Mercury, the local paper, ran an article where an officer of GBRMPA was quoted as having ‘confirmed that changes were proposed following very strong representations from the region’s federal member on behalf of commercial fishers’. They were made on behalf of commercial fishers—not on behalf of her community, but on the behalf of one sector of her community. The Sunfish people met Mrs Kelly on 27 October to put their point of view. She stated that she would pass on the information to Minister Kemp, but that she would not take sides on the issue.

That is what we want to get to the truth of. Is Mrs Kelly taking sides on this issue? Has Mrs Kelly written to the authority? Has she written to the minister on behalf of one sector of her community, suggesting that one course of action should be taken? I suggest that Mrs Kelly should have done the right thing—the thing that I did. I said, ‘The process will continue. Be part of the process.’ I said to the community, ‘Make sure your voice is heard and, providing the politicians can keep their fingers off this game, we will end up with an outcome that is scientifically based, fair and balanced.’

In most of the zonings across the region, I can say that that has almost happened. But at Repulse Bay there is evidence that it did not. That is why I and the people of Dawson need these documents. I easily tell the minister for the environment that Labor has consistently supported the representative area program—in Cairns, in Townsville and in Mackay. Wherever you want me to, I will say that. I will say it here in Canberra. But I know that the member for Leichhardt does not and I know that the member for Dawson does not. If we are talking about honesty, my record stands pure. I have said to the Sunfish people that I will not support an inquiry into the representative areas program—unlike the member for Dawson. They accept that. They understand that the race is lost on Repulse Bay. They want what is the truth. They want to know what their member did in order to change the zoning, working on behalf of one sector of the community against the others.

Senator Ian Campbell told a long story about the importance of commercial and recreational fishing, and the industry that hangs off that, including the tourism industry. I know that. I live there. For him to give me a lecture on that is outrageous, and that is the truth. But he actually got to the point when he said, ‘What we need to do is get to trust.’ There is no trust at the moment in a range of sectors in the communities of North Queensland. There is very little trust in the Great Barrier Reef Marine Park Authority and in the minister of the day. That trust has to be built so that faith in the management plan will deliver the results that we all want. The
way to build that trust is to put the docu-
ments on the table. I advise the minister that
I will not stop asking for those documents. If
I need to, I will put another return to order on
the table so that we in North Queensland get
the truth about the actions of Mrs Kelly in
the lead-up to the final zoning of Repulse Bay.

Question agreed to.

DELEGATION REPORTS
Parliamentary Delegation to Thailand,
Vietnam and Cambodia

Senator SCULLION (Northern Territory)
(5.23 p.m.)—by leave—I present the report
of the Australian parliamentary delegation to
Thailand, Vietnam and Cambodia, which
took place from 8 to 23 November 2003.

HIGHER EDUCATION LEGISLATION
AMENDMENT BILL (No. 3) 2004

ELECTORAL AND REFERENDUM
AMENDMENT (PRISONER VOTING
AND OTHER MEASURES) BILL 2004

First Reading

Bills received from the House of Repre-
sentatives.

Senator COONAN (New South Wales—
Minister for Communications, Information
Technology and the Arts) (5.25 p.m.)—I in-
dicate to the Senate that these bills are being
introduced together. After debate on the mo-
tion for the second reading has been ad-
journed, I shall move a motion to have the
bills listed separately on the Notice Paper. I
move:

That these bills may proceed without formali-
ties, may be taken together and be now read a
first time.

Question agreed to.

Bills read a first time.

Second Reading

Senator COONAN (New South Wales—
Minister for Communications, Information

I am pleased to be able to announce to honourable
members the final set of higher education legisla-
tion amendments for 2004.

This Bill makes two important funding adjust-
ments. It will amend the maximum funding
amounts under the Commonwealth Grant Scheme
for 2005 and 2006 to continue to provide places
for Commonwealth supported students in the area
of radiation oncology at the University of New-
castle and the Royal Melbourne Institute of Tech-
nology. This funding was previously made avail-
able by the Department of Health and Ageing and
will now be provided by my portfolio.

The Bill also updates the annual appropriation
under the Australian Research Council Act 2001,
to reflect revised forward estimates.

As part of the implementation and consultation
process for the new higher education reforms this
Bill is a final opportunity to make some technical
enhancements to the primary legislation and re-
spend appropriately to issues raised by the sector
before the end of 2004.

As part of the Australian Government’s ongoing
consultation with the higher education sector, this
bill will allow Higher Education Providers to
continue to operate their summer schools as they
do now. This is an important measure which al-

This Bill will also add Melbourne University
Private to the list of Table B providers under the
Higher Education Support Act 2003. This will
allow Melbourne University Private to access
Commonwealth funding for research and FEE-
HELP assistance.
This funding includes the Research Training Scheme, the Institutional Grants Scheme, grants from the Australian Research Council.

Melbourne University Private has been required to meet the quality and accountability requirements set out in the Higher Education Support Act 2003.

The Bill also makes amendments to the Higher Education Support Act 2003 to enhance the implementation of some of the higher education reforms. A number of these amendments are of particular benefit to students.

The Bill will extend access to assistance under the OS-HELP scheme. OS-HELP is an important new programme that will offer students loans of up to $5,000 per six month study period to finance overseas study. The Bill will extend eligibility for this programme to include study undertaken by students at an overseas campus of an Australian higher education provider. This will assist students undertake overseas study while also maintaining the continuity of their studies at their chosen institution. The Bill will also extend access to the programme to eligible Commonwealth supported students at all Australian higher education providers.

The Bill will also allow students more time to submit their requests for Commonwealth assistance by providing that such requests are not required until the census date.

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

I commend the Bill to the Senate.

———

ELECTORAL AND REFERENDUM AMENDMENT (PRISONER VOTING AND OTHER MEASURES) BILL 2004


The Bill addresses operational problems identified with amendments made to the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004, which was passed by the Parliament on 26 June 2004.

The provisions in this Bill will ensure that the legislation gives effect to the Parliament’s intention by amending several provisions in the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004 that will not otherwise achieve Parliament’s objective.

Under the Enrolment Integrity Act, prisoners serving sentences of imprisonment that commenced on, or before, the return of the writs for an election and which continue after the issue of the writs for any succeeding election are not entitled to be enrolled to vote. There is, however, insufficient time for the prisoners’ names to be removed from the roll between the issue of the writs and the close of rolls for an election. This clearly was not the Parliament’s intention.

This Bill will amend the Electoral Act to prevent prisoners who are serving a sentence of three years or more from enrolling to vote. The provisions will apply to all prisoners, including those whose sentences began before the commencement of the provisions.

For consistency with the removal of early close of rolls provisions by the Parliament, the Bill repeals items relating to the early close of rolls for referendums in the Enrolment Integrity Act that were overlooked during debate in the Senate.

Finally, the Bill clarifies the commencement of name and address evidentiary requirements for enrolment.

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

Ordered that the bills be listed on the Notice Paper as separate orders of the day.

COMMITTEES

Employment, Workplace Relations and Education References Committee

Report

Senator CARR (Victoria) (5.26 p.m.)—On behalf of the Chair of the Employment, Workplace Relations and Education Refer-
ences Committee, Senator George Campbell, I present the report of the subcommittee’s inquiry into Commonwealth funding for schools, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator CARR—I move:

That the Senate take note of the report.

At the outset of my remarks, I would like to thank the staff of the committee secretariat and the staff of my office for their hard work. I also thank my Senate colleagues who served on this subcommittee, which I chaired—Senator Allison, Senator Johnston, Senator Tierney and Senator Crossin. They all made important contributions to the work of the subcommittee.

This inquiry was undertaken in the shadow of the government’s new legislation, which has not yet been introduced into the Senate but which has been debated in the House, providing funds for the 2005-08 schools funding quadrennium. The committee looked at the bill and sought the reaction of witnesses to its various provisions. Our task, however, was to examine the principles underlying the bill in the light of the Adelaide Declaration on National Goals for Schooling in the Twenty-first Century. This historic agreement was reached unanimously by the states and the Commonwealth in 1999.

We asked how the current and proposed funding arrangements for the 2005-08 quadrennium matched the priorities that were established under the terms of that agreement in 1999. We wanted to examine whether or not the priorities set by the Commonwealth government affect the capacity of schools to deliver on the national goals. One of these goals, which is of particular significance to many people in the community, is the goal of equity and social justice in the outcomes delivered through schools.

We also assessed current arrangements, and the principles underlying them, from the point of view of quality of provision across all schools. We looked at efficiency and effectiveness in the allocation of public funds. The committee also looked at accountability arrangements and requirements as they affect public and private schools. This inquiry came at a point in time when it was useful to step back and review the impact of the sweeping changes in Commonwealth schools funding ushered in in the last quadrennium.

During debate on the legislation in 2000 and during the accompanying Senate inquiry into the bill, many stakeholders and commentators expressed dismay and alarm. They warned that the new SES funding arrangements to be implemented would increase inequity and exacerbate inequality of outcomes of schooling. Those dire consequences, forecast back then, have actually come about. That is precisely what the committee has found. Under this government, the outcomes of schooling have become more unequal. The levels of inequality have actually grown.

The government says it wants to give everyone a choice of school—meaning a public or a private school. But only those who can afford it have real choice. The new SES funding system has poured massive increases into private schools. This, we were told, was going to make the system more affordable. Nothing could be further from the truth. It has channelled the greatest increases of funding into the wealthy private schools—the kind that already have ample sports fields, several swimming pools, sumptuous arts facilities, state-of-the-art computers and even
indoor rifle ranges and equestrian centres. One of them, an exclusive boarding school, now has boarding facilities for children’s pets. The children are allowed to bring their dogs and ponies to stay with them at school. You can understand why they are suffering, can’t you—having to fund that increase in expense for the boarding arrangements for their pets at school?

And yet, since the introduction of the new funding regime, these schools have continued to raise their fees. While we were told that the increased funding to private schools would lead to a decline in fees, we have seen an increase in fees for private schools. We have seen rates of increase of between seven and 14 per cent annually—well above the inflation rate. They have not become more affordable. Increasingly, private schools are putting themselves out of the reach of ordinary Australians. This is despite the generous subsidies they have been receiving under these new funding arrangements.

I ask a simple question: what kind of family can afford the $15,000 or the $18,000 per year per child to send their children to schools such as these? The point is that this government has knowingly and deliberately adopted a schools funding policy that has thrown huge funding increases at schools like the ones I have referred to—the richest schools, the most privileged schools. They have cast precious little to those private schools at the bottom end of the social ladder. Many of those schools are struggling to stay open. In terms of priority, this government is no longer exercising its responsibility to ensure that all children get a quality education. The government has produced a situation where those who are already wealthy and privileged get increased assistance. The government is subsidising privilege. That is at the core of the government’s school policy. What is the government’s justification for this? It says that the new system is fair. It says that it is about making sure that struggling battlers get needed assistance. I say: how many struggling battlers can afford the $19,000 a year at Geelong Grammar? That is the situation we find in this country at the moment.

An Australian educationalist, Dr Barry McGaw, is the education director of the OECD. Dr McGaw has drawn the committee’s attention to Australia’s failure, by comparison with other developed nations, to ameliorate the effects of social background on educational achievement. Dr McGaw has said that Australia has one of the greatest levels of inequality when it comes to schooling. By international ranking in literacy and numeracy registration, Australia has a gap between rich and poor greater than any other country. What an achievement by this government! The levels of inequality in education have actually grown. There are significant differences and higher levels of inequality in Australia than in Finland, Canada, Ireland, Korea and Japan.

The education system is a critical part of any social democracy. In this country the levels of inequality are being reflected in the achievement of, and opportunity that goes to, all Australians. Frankly, this is a shameful situation. In this country the government panders to those who are already privileged and reinforces the distribution of wealth in such a way that those who are already getting a very good deal get an even better deal.

We are seeing a massive expansion of Commonwealth funding to the non-government school sector, which is higher than the total spending this government puts towards universities in this country. In the name of choice some people are being encouraged to remove their children from public education and from schools that are required to take all comers to the exclusive environment of those who are privileged, and
they get a subsidy for doing it. Many government schools are in fact underfunded. We have a similar situation with our public university system. It is a trend that is now being accentuated throughout the education system. In universities people are being asked to pay fees of up to $100,000 and that too is presented in the name of choice. The coalition policies, frankly, might be summed up as being about reinforcing privilege.

The SES system has been demonstrably proven to be flawed. It is a system that is calculated to advance those already doing well. Under this school system, schools such as the local Catholic parish school in Canberra have the same level of rating for distributional arrangements as Geelong Grammar. Frankly, that highlights just how grossly iniquitous it is. We had arrangements being put before this committee which demonstrate that in many respects Christian schools and Lutheran schools are put at great disadvantage. It is little wonder the Catholic education system does not use this system for its own allocations. It acknowledges the importance of private sources of income and, as a consequence, its distribution system does not rely on the government’s SES system. (Time expired)

Senator TIERNEY (New South Wales) (5.37 p.m.)—We are considering the report of the Senate Employment, Workplace Relations and Education References Committee entitled Commonwealth funding for schools. I thank Senator Carr and the Labor Party for their support of the schools bill in 2000. There is little change to that bill, except that the amount of funding going into the school system will be increased. The basic principles of the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004 are very much the same. The big change was made in the year 2000 when we went from the old corrupt ERI system—the Education Resource Index system of the previous Labor government, which no-one liked and which delivered unfair and badly distributed funding across the system—to the new SES system. Senator Carr and his colleagues voted for that system. We thank them for that, because the system of funding is a vast improvement on what we had before. It is four years since that bill was before us, and over the next four years there will be $32 billion in school funding from the federal government—based yet again on the SES model.

The way in which Senator Carr and the Labor Party have portrayed this debate is unfortunate; they are trying to push divisions within society that are not actually there. They have done that by misrepresenting the way in which the funding of schooling occurs in Australia. The basic, core point that they keep missing is the way in which the federal government funds schooling; the predominant amount of funding into the school system comes from the state government. Public schools are 88 per cent funded by the state governments. It is their legislative responsibility. If Senator Carr is unhappy about the level of funding of the state school system, he should talk to his colleague Mr Bracks, the Premier of Victoria. He should also have a word to Mr Carr, the Premier of New South Wales, who again is at the bottom of the funding league table and who is putting up funding at a rate that is barely keeping pace with inflation.

The core of the problem with the state school system is not the funding by the federal government, which goes up by six per cent a year—treble what the states put in in terms of percentage increase. The problem lies back with the state governments. The federal government is basically focused on the private sector in its funding. Let us remember that people who send their children to private schools make enormous sacrifices in the funds that they put into their children’s
education. They save the taxpayer over $3 billion a year because they pay those fees. For example, the Catholic system is 85 per cent funded by the taxpayer, state and federal, with 15 per cent of the fees paid by the parents.

Let us concentrate on the other end of the spectrum and the much maligned King’s School, which the Labor Party loves mentioning. The public funding, state and federal, of the King’s School is 31 per cent of its total funding, and 69 per cent—over two-thirds of the funding—comes from the private sector and from people who send their children there. If parents want to spend their money on private education rather than on a bigger house or a second car, in a liberal democracy they should be entitled to do so. But the reality is that, by and large, the people who send their children to private schools are not from some mythical, massively wealthy group of people—there are a few, obviously. The vast majority are like the example that the Prime Minister quoted today: both husband and wife work and the wife’s income goes to pay the school fees. Often people go into debt to do this and burn up their assets. Grandparents contribute. That is the reality. If people want to do that for their children’s education and the school decides to spend those funds on resources for education, in a liberal democracy why shouldn’t they be able to do that? That is the nub of this whole debate. As the issue of funding has developed, it has had the agreement of both sides. There is a lot of grandstanding in this debate by the Labor Party.

The thing that is a little different in this legislation relates to the changes we have made to the national school agenda. We have put certain requirements on the states. We have done this through an organisation called MCEETYA, which is the ministerial council of state and federal education ministers. The ministers meet to get agreement on funding. The government feel that, if we are putting in funding of $33 billion over four years and are increasing money to the state school system in particular at a much greater rate than the states are, we should have some sort of say in what happens in our schools. Indeed, as a nation, there is a leadership role for the Australian government in determining a broad school agenda. It benefits the country if things work in a more uniform fashion and move forward across the entire school system.

One of those matters relates to testing. There is now an agreed requirement across the system that testing should be made on certain benchmarks and key areas of learning, such as literacy and numeracy. The government do not want to do this to establish some sort of league table of schools. We want to do it because parents should receive reporting back on those things that are important in schooling. They should know how their children are going compared to their age cohort. That sort of feedback is of enormous value to parents. Now that we are funding private tutoring for children who need it, it is essential information for parents. Those are the sorts of changes that have come in under the national school agenda.

Finally, I would like to focus on what I see as the key and crucial change in this national agenda that we are insisting that the states move towards—that is, that they provide greater autonomy and decision-making power at the level of the school. What we have in Australia is a whole series of very centralised bureaucracies with things that are decided in head office in the capital cities; what we need is a much greater movement to decision making within the school in terms of a whole range of things on which the education of each child is determined. Parents should be very heavily involved in that. This will be the key secret to improving education in this nation: if we get more autonomous
schools with parents working with teachers to decide the educational outcomes and programs for their children, we will have a much more effective education system in this country. That is one of the fundamental bases of this bill. This is one of the most important changes. It is a significant amount of federal government funding, and the federal government, which has control of this funding, has a right to make such requirements in our school system in Australia.

**Senator ALLISON (Victoria) (5.45 p.m.)**—I rise to make some remarks about the report which has just been tabled by Senator Carr, *Commonwealth funding for schools*. I think this was a very important inquiry. It could have been longer and more comprehensive, perhaps, but it is a credit to the secretariat and the chair that we have produced a report in such a short time frame. The most important term of reference of this inquiry was the first, which involved looking at:

(a) the capacity of all schools to meet current and future school needs and to achieve the Adelaide Declaration (1999) on National Goals for Schooling in the Twenty-First Century …

In short, what this inquiry found was that there are many schools that can meet the national goals of schooling for many students, but that there is a big gap between those that can and those that cannot. I think that was spelled out by Barry McGaw, who said:

The Australian school system is one of the most inequitable in the developed world in terms of outcomes for students from high socio-economic backgrounds and those from the lowest socio-economic backgrounds.

This inquiry was about a lot of things but, for the Democrats, this was the most crucial aspect of our inquiry.

We explored the role of the Commonwealth in terms of leadership in schools and funding in schools. I think the government claim—which, gladly, has not been repeated in recent times, at least not so much by the minister, although I think Senator Tierney just did that—that state schools were a matter for the state governments and that the Commonwealth’s interest and responsibility were towards non-government schools was pretty soundly debunked in this inquiry.

Submissions pointed to the fact that there is nothing in the Constitution which would indicate that that was the case; in fact, our funding system for schools has grown like Topsy over some decades. There is no rationale for the extent to which the Commonwealth funds schools and the extent to which the states do—it has been largely political decisions for some decades in this country.

The first recommendation goes to the question of the divisiveness of recent decisions about funding which have seen enormous amounts of money going to some of the wealthier schools. The Democrats agree that that has been very divisive. We do not necessarily agree that we have ever had consensus on this question—at least not since non-government schools have been funded from the public purse—but I think it is fair to say that the vast majority of Australians do not approve of and do not like the fact that huge increases went to the wealthiest schools that clearly do not need them. For a funding system which is supposed to be based on need—needs based funding—I would like to suggest that it is anything but that, and the vast majority of Australians know this to be the case.

There was a lot of attention paid to the SES funding model. I must say that the inquiry’s submissions pretty much concluded what was said by the Democrats and others in this place when we dealt with that legislation: this is not a funding model which is sustainable, which has logic and which is needs based. For one thing, more than 50 per cent of non-government schools do not fall
strictly within the model and the Catholic sector, which will come into this system next year, is by agreement. Even though it is loosely based on the SES model, that SES model will not actually apply to the funding for those individual schools, and for good reasons. The Catholic sector recognises that it is not needs based, and it will redistribute that funding as a central system. There are also the ‘funding maintained’ and the ‘funding guaranteed’ schools. There were very few submissions that were able to demonstrate to the committee that this funding model was a good one, that it was needs based or that it was fair in any respect.

It was also clear to us that the SES model increased the inequities of outcomes. As I said, we support the recommendations and the text of this report, but one of the things we did want to go further than the ALP on was the question of needs based funding. This is a rather difficult concept to grasp in terms of what we mean by needs based funding. It has been interpreted as needs as defined by parents in order to pay fees for non-government schools. The Democrats would like to argue, through our report at the back of the main report, that needs based funding is a good concept but should not be confined to concepts of whether or not parents have the money to pay fees and how much they have money for, or the question of whether needs based funding recognises other income for schools.

Obviously this model is very different from the ERI model. The ERI model took into account the extra resources coming into schools from a range of sources. We agree that it is important to take resources into account when assessing that very narrow definition of need. What became clear to us was that there is another whole definition of need. It is about educational need. You can pick enormous fault in the needs based funding of the SES model, such as the fact that it is based on geographic districts of 250 households and the fact that it has not reduced fees, so there is no evidence that it has taken away some of that need. Louise Watson in her submission talks about those schools that have SES scores of 110 and more. She says they were given Commonwealth funds where they already had an excessive and unnecessary level of resources. She described it as ‘extravagance’. We would like to focus much more on the educational needs of students. That is what our recommendations go to.

We think it is important to recognise that government schools take the vast majority of children who are difficult to teach. The statistics are in this report and they deserve to be read. The SAISO funding, which is soon to be replaced by a program of another name, is totally inadequate in meeting the needs of students who do not make the grade. We are also dealing with a bill which will give vouchers of $700 to parents of grade 3 students that fail the reading tests. But it is about more than that. It is about learning disability, disability itself and a whole range of reasons why young people do not learn at the same rate as their peers. Those problems do not just finish in year 3, and they will not be paid for by the $338 million a year which goes to these students.

We were told that for some schools the costs of dealing with a student who is particularly disruptive or problematic—the reason could be ADHD or one of a whole range of disorders in learning—can be enormous. Accommodating these students can cost almost as much as paying a full-time staff member. None of that is recognised in any of the extra funding which goes to schools. The public sector is taking on an unfair, high burden of students who are difficult to teach. Those schools have populations which are very different to those in the non-government sector. That is across the board. It is perhaps
not quite as true for the wealthy schools as it is for, say, the poorer Catholic schools, but certainly there is a very big difference.

We have called for an adjustment of the SES funding levels so that those schools that charge fees alone in excess of the AGSRC would not be entitled to Commonwealth funds. We did not suggest that that should be redirected to low-fee schools. I think for the whole question of needs based funding we need to look at a much more complex formula than we currently have. Some would argue that if low-fee schools were given extra funding from the Commonwealth then we could expect the shift in public school enrolments to continue to go towards private education. There were lots of arguments put to us about the dangers of going down that path. (Time expired)

Question agreed to.

TAX LAWS AMENDMENT (WINE PRODUCER REBATE AND OTHER MEASURES) BILL 2004

Report of Senate Economics Legislation Committee

Senator SCULLION (Northern Territory) (5.56 p.m.)—On behalf of the Chair of the Senate Economics Legislation Committee, Senator Brandis, I present the report of the committee on the provisions of the Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

(Quorum formed)

Senator NETTLE (New South Wales) (6.02 p.m.)—I move Australian Greens' amendment (1) on sheet 4377:

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

4 Reservation to agreement

(1) Before the entry into force of the Australia-United States Free Trade Agreement (the Agreement), the Commonwealth is required by this section to make a reservation or interpretive declaration in the terms set out in subsections (2) to (10).

Pharmaceutical Benefits Scheme

(2) Nothing in the Agreement is contrary to, or is to be interpreted in a way which undermines the objectives of, the National Medicines Policy and in particular the first objective of that Policy which is to ensure timely access to the medicines that Australians need, at a cost individuals and the community can afford.

(3) Nothing in the Agreement is contrary to, or is to be interpreted in a way which undermines, the Declaration on
the TRIPS agreement and public health

Note: TRIPS refers to the Trade-Related Aspects of Intellectual Property Rights Agreement.

(4) Article 17.10.4 of the Agreement must not be interpreted so as to permit the practice of “evergreening” brand name pharmaceutical products.

(5) For the purposes of subsection (4), evergreening means the practice whereby a brand-name manufacturer stockpiles patent protection, for the purpose of extending the period of time for which patent protection is granted, by obtaining separate patents on multiple attributes of a single product.

(6) The review process set out in Article 2(f) of annex 2-C of the Agreement is to be interpreted as referring to a process which is not binding.

Environment and health laws

(7) Annex 11-B of the Agreement is to be interpreted so that regulatory actions by the Commonwealth, a State or a local government, designed and applied to achieve legitimate public welfare objectives, including the protection of public health, safety, or the environment, will not constitute indirect expropriations.

Local content

(9) Nothing in the Agreement is contrary to, or is to be interpreted as infringing, Australia’s right to ensure local content in broadcasting and audiovisual services, including new media formats, at or above the standard specified in section 9 of the Broadcasting Services (Australian Content) Standard 1999 or section 5 of the Television Program Standard 23—Australian Content in Advertising as in force on 4 August 2004.

Note 1: Section 9 of the Broadcasting Services (Australian Content) Standard 1999 deals with quotas for Australian television programs.

Note 2: Section 5 of the Television Program Standard 23—Australian Content in Advertising deals with quotas for Australian television advertisements.

Quarantine


Disallowance

(11) An instrument that gives effect to, or interprets, any provision of the agreement is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act.

(12) The minister must cause the terms of the reservation or interpretive declaration required by subsection (1) to be tabled in both Houses of the Parliament not later than two sitting weeks before the Commonwealth signs the Agreement.

(13) The reservation or interpretive declaration required by subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

This amendment sets out to reserve certain parts of the agreement to make it clear what
the agreement means. For example, the Greens’ amendment looks at the Pharmaceutical Benefits Scheme, environment and health laws, local content and quarantine as well as doing something an earlier Greens’ amendment did, which is allowing decisions made as a result of the free trade agreement to be ratified by the Australian parliament. That is the final part of the Australian Greens’ amendment. Now that Senator Brown is here I might let him explain it.

Senator BROWN (Tasmania) (6.04 p.m.)—I thank Senator Nettle. This amendment is titled ‘Reservation to agreement’. It is extremely important for empowering this parliament. As I said earlier in the day, it is very important that the Labor Party look carefully at it because it is putting forward a plan to improve the accountability to parliament within the terms of the free trade agreement. The free trade agreement gives both parties, Australia and the United States, the ability to make determinations, reservations—as the term is—or interpretive declarations under international form and law to clarify matters within the agreement before the agreement comes into effect.

The Greens’ amendment clarifies some of the critical matters that have been worrying the Australian public, business groups variously, the opposition and community groups. If the committee will bear with me, I will read the amendment out because it is self-explanatory. It states:

(1) Before the entry into force of the ... Agreement ... the Commonwealth is required by this section to make a reservation or interpretive declaration in the terms set out in subsections (2) to (10).

Here we go—first of all relating to the Pharmaceutical Benefits Scheme. This would be the interpretation set by Australia, by the Commonwealth, by this parliament, of what is now fuzz, indeterminate words and unexplained components of the agreement if we were to let it stand. The interpretation is set out in this amendment, and this is the interpretation that will stand as if the Labor Party supports this Greens’ amendment along with our friends on the crossbench. It states:

2) Nothing in the Agreement is contrary to, or is to be interpreted in a way which undermines the objectives of, the National Medicines Policy and in particular the first objective of that Policy which is to ensure timely access to the medicines that Australians need, at a cost individuals and the community can afford.

3) Nothing in the Agreement is contrary to, or is to be interpreted in a way which undermines, the Declaration on the TRIPS agreement—that is, the international agreement on intellectual property—


4) Article 17.10.4 of the Agreement must not be interpreted so as to permit the practice of “evergreening” brand name pharmaceutical products.

5) For the purposes of subsection (4), evergreening means the practice whereby a brand-name manufacturer stockpiles patent protection, for the purpose of extending the period of time for which patent protection is granted, by obtaining separate patents on multiple attributes of a single product.

Finally, under the Pharmaceutical Benefits Scheme interpretation, it states:

6) The review process set out in Article 2(l) of annex 2-C of the Agreement is to be interpreted as referring to a process which is not binding.

That means that if a ‘review process’—and, if I heard Four Corners properly the other night, in America that includes an appeal
The second interpretation subclause is to do with environment and health laws which are affected by the free trade agreement. Under the Greens’ amendment they would be interpreted this way:

(7) Annex 11-B of the Agreement is to be interpreted so that regulatory actions by the Commonwealth, a State or a local government, designed and applied to achieve legitimate public welfare objectives, including the protection of public health, safety, or the environment, will not constitute indirect expropriations.

That means that, where any level of government in Australia legislates for good health, safety or the environment, they cannot be sued by a United States corporation. That is pretty important and sensible stuff. It further states:

(8) Under Article 11.16 of the Agreement, consultations on investor-state dispute settlement, on any matter, will not include arbitration between an investor and a party.

In other words, as a result of a lawsuit against the government, again, Australian taxpayers cannot be forced to pay thousands, millions or billions of dollars to a US corporation that is aggrieved because representatives in Australia have made a law for the good of the country. We then come to the issue of local content. The interpretation in the Greens’ amendment runs this way:

(9) Nothing in the Agreement is contrary to, or is to be interpreted as infringing, Australia’s right to ensure local content in broadcasting and audiovisual services, including new media formats, at or above the standard specified in section 9 of the Broadcasting Services (Australian Content) Standard 1999 or section 5 of the Television Program Standard 23—Australian Content in Advertising as in force on 4 August 2004.

Then there are some explanatory notes. That interpretation is saying that nothing in this agreement will bind the hands of this parliament from legislating to protect or increase—even if it wants to in the future—requirements for local content in broadcasting in this country. Again, that is very sensible stuff, and this is a subclause that clears the air. We move to quarantine. The Greens’ amendment states:

(10) The Committee on Sanitary and Phytosanitary Matters established under Article 7.4 of the Agreement and the Standing Technical Working Group on Animal and Plant Health Measures established under Annex 7-A of the Agreement will adopt the precautionary principle when assessing bilateral animal and plant health matters, notwithstanding Article 4(a) of Annex 7-A of the Agreement.

That means that, where a determination is to be made under the free trade agreement about the quarantine safety of Australia, the precautionary principle is to be adopted. It has to be proven to be safe rather than the country having to prove it is safe or the inverse of the precautionary principle: ‘Let it happen and stop it after it has been shown to be unsafe and damaging and very often irreparable.’

Finally, there are disallowance subclauses in the Greens’ amendment. The first one states:

An instrument—that is, basically a decision—that gives effect to, or interprets, any provision of the agreement is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act.
That is so important. It means that a decision made by a joint committee, which is yet to be set up under the free trade agreement but appointed outside the parliament, with trade in mind—and there is no other value mentioned in the setting up of that committee—will not be able to bind this parliament. Hugely important decisions about Australia's future and its welfare, coming from unelected people who represent the two governments of the day, will have to first come to this parliament and be accepted by both houses of parliament before they stand. This is the democracy part in the Greens' amendment. It says that we will not have parliament usurped, we will insist on democracy, we will insist that these tribunals—these working groups—which are set up under the free trade agreement do not override the elected parliament of the day. If they do make a decision then it has to come before both houses of parliament and be adopted before it becomes law. The second disallowance subclause states:

(12) The minister—that is, the Minister for Trade—must cause the terms of the reservation or interpretive declaration required by subsection (1) to be tabled in both Houses of the Parliament not later than two sitting weeks before the Commonwealth signs the Agreement.

That means that the legislation, to give effect to parliamentary supervision of what comes out of the free trade agreement, must be brought before both houses of parliament before the Commonwealth signs the agreement. The final disallowance subclause states:

(13) The reservation or interpretive declaration required by subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

This is supremely democratic. It is democracy at work. It gives the elected representatives of this nation the ability to decide whether or not they are going to be ruled over by a free trade agreement that does not facilitate democracy. In fact, the free trade agreement steals it with the buzz words that are used and transfers it to an ayatollah for trade that is yet to be named, that is set up by the two governments working outside their parliaments to make hugely enormous determinations in the future. It can then appoint people right down the line to make decisions on everything from the future of manufacturing jobs in the country to the future of our environment, quarantine, intellectual property and local content. This is a very important amendment. It is pure commonsense. It is a declaration of democracy by the Greens and it needs to be thought about very clearly by the opposition. I appeal to the opposition to take it seriously and to join in this debate with the support this all-important amendment requires or, if it does not, to say why not.

Senator SHERRY (Tasmania) (6.17 p.m.)—I will just indicate to Senator Brown that we do take amendments seriously. We do listen to the debate and the arguments that are put forward. I can inform you that on this occasion we will not be supporting your amendment. You have made some comments about the protections necessary in respect of the Pharmaceutical Benefits Scheme, amongst other comments. There are other matters you touched on. The Labor Party have outlined the amendments we will be progressing to in respect of protecting the PBS, the Pharmaceutical Benefits Scheme, and ensuring we continue to maintain access to pharmaceutical benefits at affordable prices so that we have the continuation and delivery of cheaper medicines. We believe the amendments that Labor will move at a later time will be adequate and clear in respect of the protections that are necessary in this area. Therefore, we will not be supporting the Greens' amendment on this occasion.
Senator RIDGEWAY (New South Wales) (6.18 p.m.)—I just want to flag very quickly that the Australian Democrats will be supporting this amendment and what the Australian Greens are proposing with this reservation to agreement. I think it makes complete sense. As I understand it, it will ensure that the parliament has a role in relation to the laws, regulations and policies that are dealt with in Australia, particularly in terms of our capacity to regulate into the future. Whilst the ALP have indicated they understand the sense and the issues that are being raised, they ought to be taking this issue on board, particularly given that what we are talking about under the free trade agreement is, if you like, a derogation of responsibility in terms of the government not allowing the parliament to not only scrutinise but also deal with public policy as it affects issues, from the environment and health laws through to local content, quarantine and the Pharmaceutical Benefits Scheme, which have been named in the amendment put forward by the Greens.

We will support the amendment because the parliament must have a role in dealing with these particular issues. During the debate earlier today I think there was a part admission by the government that the existing laws, regulations and policies—particularly social and health policies, and policy concerning the environment and culture—are pretty much at a standstill as a result of the text of the free trade agreement. I would hope that there is an opportunity for that to change at some time in the future but, quite frankly, that hope is really just a random possibility that some dispute or issue may arise in the future that causes us to want to deal with domestic law and policy in a way that reflects the national interest. It may well be impeded by the text of the free trade agreement with the United States.

The amendment makes complete sense. It really is an affirmation that the way in which the free trade agreement is applied in domestic law is not about having an overarching superiority, if you like, in relation to how the parliament deals with laws that affect the Australian people. It guarantees that, as it is currently seen, the laws are not interfered with to the exclusion of the Australian people, and particularly not within reach of the Australian parliament. That has to be paramount in any consideration. As a result, the Australian Democrats will be supporting this amendment.

Senator HILL (South Australia—Minister for Defence) (6.21 p.m.)—The government oppose the amendment. It is our view, as I have said before, that the provisions of the agreement fully protect the PBS, Australia’s environmental and health laws, our ability to ensure local content on our media and our quarantine arrangements. Nothing in the legislation before the parliament in any way adversely affects Australia’s interests in these areas. The obligation on both sides is to implement the agreement in good faith. We believe this amendment is not only unnecessary but would also call into question Australia’s commitment to implement the agreement in good faith.

Senator BROWN (Tasmania) (6.22 p.m.)—That is an extraordinary statement. The government say that this amendment is redundant because they are going to protect everything. I have in front of me a press release from Minister Vaile, no less, that says: Our right to ensure local content in Australian broadcasting and audiovisual services, including in new media formats, is retained.

It says that the Prime Minister has said the Pharmaceutical Benefits Scheme will not be affected, and on it goes. The Greens put it in written form to validate those assurances in the parliament and to get the government to
vote for it, but the government said, ‘We won’t.’ The government are not believable, and the government know they are not believable. The minister said this would be outside the terms of the agreement or implies that it would in some way infringe the agreement. No, it does not. The United States government writes reservations like this, interpretive components, into about one in five of all the agreements it enters into.

It is not new for the Labor Party either. I have here a similar reservation that was written into such an arrangement by a former minister for trade, Peter Cook. The fact is that you would expect this from the government. The government is doing Australia in and it does not want an amendment like this, which would prevent that from happening and would make Australia’s interests safe. It is codswallop for the minister to say that this would be outside the terms of the agreement. If you accept that, what an indictment it is on the government that this parliament cannot make an interpretive arrangement which says, ‘All these faceless organisations, which are set up under the free trade agreement to arbitrate between the two administrations and on behalf of the multinational corporations, have to bring their judgments into this parliament and get them validated.’ The government hates that. This government hates parliamentary process. This government loves executive power—the Prime Minister adores executive power—but it will not empower the parliament. This is disempowering the parliament.

But what about the Labor Party? The Labor Party hopes to win the election in about a month’s time. This amendment says that the Labor Party will uphold what it has been fighting for in its argument about the free trade agreement. It might be all right for Senator Hill to say, ‘Trust us, none of these bad things will come to pass,’ but Labor Party supporters and members have been out there arguing about this for months. I have to put it to the Labor Party: why would you not support an amendment like this, which fully empowers a new Labor government, if there is one in the next month or two, to make the declarations that carry into effect Labor policy on local content, health, public safety, the environment and the Pharmaceutical Benefits Scheme?

In his one contribution, Senator Sherry said, ‘We are doing it through the evergreening amendment,’ which this chamber has not seen yet and which is being negotiated with Prime Minister Howard at the moment. The clause not only does that but also covers the other component of concern about the Pharmaceutical Benefits Scheme—that is, the free trade agreement sets up an arbitration system, a review system. In America—if I heard Four Corners properly—that is seen as an appeals system that will allow big American pharmaceutical companies to attack decisions by the Pharmaceutical Benefits Advisory Committee to either not adopt drugs or to limit the price on drugs. The Labor Party amendment being negotiated with Prime Minister Howard at the moment does nothing about that loophole. It does nothing about that potential threat to prices under the Pharmaceutical Benefits Scheme, but this Greens’ amendment does. How can Labor not support it?

This is Labor’s opportunity to put its stamp onto this free trade agreement in the wake of the election victory that Labor surely aspires to. The only other interpretation you can put on not supporting this interpretive clause amendment from the Greens is that the Labor Party—except for its evergreening amendment and its very restricted local content amendment that Prime Minister Howard has agreed to, because they do not fuss him—is heading, lock, stock and barrel with the Howard government into this free trade agreement with its eyes wide open and
disregarding the constituencies out there that are rightly worried about their disempowerment under this agreement not just now, not just 10 years from now but 100 years from now, with parliament unable to call it back.

Just today, Labor voted against a Democrat amendment which would have seen a review of this legislation, and therefore the free trade agreement, some years from now. The Labor Party stands indicted. The Labor Party is supposed to be a party of social justice and democracy. This amendment has social justice and democracy written into it against the powerful interests of the big end of town—the big corporate sector—which has everything going for it. We have a vulnerable Australia and a vulnerable democratic process—a sidelined democratic process—under the legislation and under the free trade agreement as it stands. Where is Labor on this? How could Labor be so cosy with Prime Minister Howard, the government and George W. Bush and his administration at the expense of the Australian people and our interests that it will not even support an amendment that says, ‘Where faceless organisations set up under the free trade agreement make deliberations, they shall come back to the parliament and this parliament will decide whether or not they are good for this country?’ This amendment is an Australian amendment. It is for Australia’s interests, and the Labor Party is going to vote it down. Labor senators should think about that over dinner.

Sitting suspended from 6.30 p.m. to 7.30 p.m.

Senator BROWN—I want to ask the Labor Party about Mr Latham’s commitment to fixing up this free trade agreement by saying that we will have two amendments now, one on part of the problem with pharmaceuticals and one on part of the problem with local content, and by saying, ‘We’ll fix the rest after the election.’ This Greens’ amendment is the prescription for fixing the rest after the election. I ask the opposition: if it is not going to support this amendment, what is its program and plan, its strategy for fixing all the other problems that it knows are in this free trade agreement?

Senator LUDWIG (Queensland) (7.31 p.m.)—I do not know whether we know there are any in the agreement—that is a little presumptuous, Senator Brown. In respect of the substantive issue, we are not going to support your amendment; that is clear. As you know, the matter is being progressed by Senator Conroy. I will certainly let Senator Conroy know your concern and he will be able to address that concern shortly.

Senator BROWN (Tasmania) (7.32 p.m.)—What about the assurance from the Latham opposition that Labor would attend to the other problems with the free trade agreement after the election? What are the problems you foresee and what is the method for fixing them?

Senator LUDWIG (Queensland) (7.32 p.m.)—As I said, we can get you an answer shortly. We will take the question on board and look at the issues you have raised. I am sure in a very short time we will be able to provide you with a response. You have had a significant time to explain the amendment, as I understand, but if there are any more issues you would like to expand on in relation to the amendment, you now have the time to do that.

Senator BROWN (Tasmania) (7.33 p.m.)—I would like the best possible attention to that. (Quorum formed) Senator Conroy, I was asking a moment ago about the opposition’s commitment to fixing up the free trade agreement after the election. There are matters not covered by the amendments on pharmaceuticals and the amendments on local content. The opposition is committed to
dealing with other things after the election. What are those other things? If you are not going to support this excellent Greens solution to your problems, what is the mechanism you envisage?

Senator CONROY (Victoria) (7.37 p.m.)—Mark Latham outlined that Labor would be moving and insisting on two amendments and that we would be introducing a range of other measures, which are outlined in an attachment to the press release. I am happy to go through them and put them on the record for the benefit of the Greens and everyone else. In relation to the PBS, transparency and independence, issues that I know are of deep concern both to you and to many Australians, we have said:

Labor will protect the viability, independence and transparency of the PBS by:

- Requiring that, all documentation submitted to the Independent Review Mechanism established to examine unsuccessful drug listing applications on the PBS be published on the internet with 48 hours, subject to commercial in confidence constraints.

- The Productivity Commission will be required to monitor and report annually on the impact of the FTA on the PBS, including the impact of the Independent Review Mechanism. If the differential between US and Australian drug prices is narrowing, then a Labor Government will change the Independent Review Mechanism.

- If the Independent Review Mechanism is used, each acceptance by PBAC and the Minister for Health of the recommendations of the independent review will be reported to Parliament in a Ministerial Statement.

- The Terms of Reference of the Medicines Working Group will include a commitment to the principle of universal access to affordable medicines. The Medicines Working Group will not consider any policy issue that could be seen to undermine the principle of universal access to affordable medicines. The Medicines Working Group will operate with appropriate transparency with regard to agenda items, minutes and recommendations.

Labor will facilitate Australian content by:

- Ensuring the FTA provides flexibility to regulate for local content on future media, Labor will legislate to ensure that the FTA definition of ‘interactive audio and/or video services’ includes, but is not limited to, future media already identified ...; and

- We list 14 services in attachment B, and they are: broadband web sites; datacasting; digital film distribution; digital film exhibition; digital television subscription; interactive television; electronic program guides; Internet content narrowband; Internet TV and walled gardens; satellite delivery; 3G cellular mobile services; video on demand; e-cinema; and T-commerce/interactive advertising. And they are just the 14 we have identified at this stage. The list is not inflexible; it can be broader than that. Also:

- Announcing a policy package to encourage further investment in Australia’s film and television industry before the next election.

Labor will ensure that the balance remains in copyright and intellectual property. We do accept the many concerns that the balance may tilt if it is left as is intended at the moment. We intend to do this by:

- Requiring the Attorney-General to report annually to Parliament on the impact of changes to the Copyright Act 1968 in relation to universities, libraries and educational and public research institutions, particularly with regard to any increased costs they may bear;

- Examining options for broadening the ‘fair dealing’ and copyright usage provisions of the Copyright Act 1968. In doing so, a Labor Government will draw on the recommendations from numerous government initiated reports addressing copyright issues that have not yet been acted upon; and

- Ensuring that it is permissible to sell, purchase and use legally manufactured video, DVD and related software items, including
components, equipment and hardware, regardless of place of purchase;

- Establishing a Senate Select Committee on Intellectual Property to comprehensively investigate and make recommendations for an appropriate IP regime for Australia in light of the significant changes required to Australian IP law by the AUSFTA;

- Implementing recommendations 7-9 made by Labor Senators on the Senate Select Committee on the USFT A.

I can keep going if you like, Senator Brown; I do not want to disturb your phone call.

Senator Brown interjecting—

Senator CONROY—Excellent; you have a few friends—phone a friend, is it? On manufacturing, we state:

Labor will boost enterprise, exports, growth and jobs in the Australian manufacturing sector through:

- A $25 million Centre of Excellence for Advanced Manufacturing;

- An Australian Manufacturing Council;

- A 10-year National Manufacturing Strategy to revitalise manufacturing;

- An Industry and Manufacturing Minister 100% committed to Australian manufacturing industries;

- A restructured and revived Industry Department with a renewed focus on manufacturing;

- A commitment to make AUSTRADE and the Australian Trade Commission work harder to promote Australian manufacturing in our region, deeper engagement with countries such as China and the world;

- New investments in training, especially through TAFE places and apprenticeships, to overcome skills shortages in manufacturing; and

- Establishing a Commission of Inquiry to look at the impact of the FTA on Australian manufacturing, particularly on automotive components, and the textile, clothing and footwear industries.

In relation to quarantine, we state:

Labor will deliver an import risk assessment (IRA) process with greater scientific integrity immune from inappropriate trade pressures.

Labor has already announced plans to strengthen Australia’s IRA regime by:

- Requiring that both qualitative and quantitative science based risk assessment processes are used in developing IRAs; and

- Enshrining the Import Risk Analysis Process Handbook in regulations that would require the consent of both Houses of the Parliament before the process could be varied.

So, Senator Brown, we want to make sure the fix is not going to be put in. We share your concerns that the existing system is becoming too politicised. We are very keen to ensure that we enshrine these protections. In relation to agriculture, we state:

- Labor will utilise the Annual Ministerial Meeting arrangements established under the FTA to seek an MFN provision from the US on agriculture.

- Labor will closely monitor the Government’s sugar compensation package to ensure it achieves significant reform in the cane farming and milling sectors.

- Labor will ensure that Australia retains control of its blood supply by:

  - Amending the Therapeutic Goods Act to ensure that any blood plasma fractionation products approved for use in Australia must be manufactured in accordance with Australia’s policy of self-sufficiency, using Australian blood, and in accordance with currently established Good Manufacturing Practice, which requires dedicated processing facilities; and

  - Ensuring transparency around the Plasma Fractionation Agreement currently being negotiated with the Commonwealth Serum Laboratory, the review of this agreement that the FTA requires by 2007, and any subsequent tender process for blood plasma products.
Having said that, I know a lot of concern has been expressed in this debate in this chamber about future trade agreements. We have a lot of big ones coming. It is not just the USFTA: we have China; we have Malaysia; we have a couple of countries in the Middle East; and we have the prospect of ASEAN inviting us to be part of an agreement. There is a whole web possible. What we have said consistently, and we enshrined this in the national platform of the Labor Party at the last national conference in January in Sydney—it is there on our ALP national website. We made significant changes to enhance the transparency of this process because it has been unsatisfactory. There is much common ground between the Greens, the Democrats, One Nation and us on the lack of transparency involved in this process. As I said, it is a pity that you were denied your opportunity on the committee, Senator Brown.

Senator Ridgeway—Do something about it.

Senator CONROY—As you know, we voted for the Greens. Unfortunately, those that are shouting the loudest at the moment in the chamber stabbed you in the back. You were not given the opportunity to participate, Senator Brown. You were not given the opportunity by the Democrats. We also state:

- Prior to entering FTA negotiations, a Labor Government will table in both Houses of Parliament a document setting out its priorities and objectives. This will include an assessment of the costs and benefits of any proposals that may be negotiated. The assessment will also consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise. Once the negotiation is completed, a Labor Government will table in Parliament the proposed treaty together with any implementing legislation.

We want to make it clear that we are very conscious of the concerns about the lack of transparency. We are very committed to ensuring that under a Labor government the Australian public will have much more of a say than they have had under this shonky process that we have all had to go through.

Those are the sorts of issues that were contained in the recommendations from the Labor senators in the Senate report. We are prepared to put them on the record and say that we will have this package and we will be running with this at the next election.

Senator BROWN (Tasmania) (7.46 p.m.)—This is Labor at its dodgy and bodgie worst. Here is a Labor Party which is full of weasel words, future commitments and statements of processes which have built-in failure mechanisms. And, after all that, as far as this free trade agreement is concerned, all it says is, ‘In future free trade agreements we will put a document on the table. We will let parliament know that we are going to do it and what the terms are.’ Is that going to be a disallowable instrument? I asked Labor to say that future trade agreements will be disallowable in the parliament. Let us hear it. Let us hear that there is better democracy from Labor than there is from the Howard government. We will not, because there is no difference when it comes to the approach on these free trade agreements and the selling out of Australia’s interests and its power to be able to ensure that its parliament can legislate in its own interests.

We have before the committee an extremely important Greens’ amendment which, as Senator Ridgeway said, reflects the amendments that the Democrats have been making. It is a here and now amendment which covers the multitude of things that Senator Conroy was just saying that Labor ‘might’, ‘will’, ‘could perhaps’ fix up—‘Trust us’—somewhere down the line.
Senator Conroy—You are seriously verbalising me here, Senator Brown, and I think you are better than that.

Senator Brown—I am good at it, but I am no match for you, Senator Conroy. Let me take bit by bit some of the things that you were just committing—

Senator Conroy—Yes, committing. Thank you.

Senator Brown—Yes, making commitments which are hollow because they do not have any power or they are too late. If Labor was committed here, it would be—

Senator Conroy—Some of that is in your hands, Senator Brown.

Senator Brown—I do not know. I think it is in your hands. If you want it to be in our hands, vote for this amendment, Senator Conroy. I will put it back to you. It is right in your hands. When it comes to the Pharmaceutical Benefits Scheme, what is Labor going to do? Our amendment would protect the Pharmaceutical Benefits Scheme totally. This parliament would protect our Pharmaceutical Benefits Scheme totally—not in one ‘perhaps’, ‘maybe’ evergreen opportunity provided the Howard government agrees with it. That is the Labor amendment which we have not even seen finalised in the parliament, which—according to the wires as of half an hour ago—is still being negotiated between Mr Latham and Mr Howard, and which then will not do the job if it is accepted. The Greens’ amendment does the job, but Labor is going to oppose it.

Labor is going to ensure that all documentation that comes from the overseeing group will be published on the Internet. Isn’t that great? We get to see what the outcome of the group looking into the impact on the Pharmaceutical Benefits Scheme will be. Labor is going to get the Productivity Commission to report annually. Isn’t that fantastic? We get a report. We cannot do anything about it but we get a report—at taxpayers’ expense, by the way; it is another of the many hidden expenses for taxpayers in the free trade agreement. The advantage is there for the corporate sector, but the taxpayers are going to pay for whatever assessment process—and it is minimal—is done.

There will be an independent review mechanism to report to parliament. Problem: when it reports to parliament, parliament cannot do anything about it. Its hands are tied. Why are the hands tied? Because Labor is going to vote down this amendment. Here is the power. There is the disempowerment. If parliament is not satisfied, it might do something about it. Problem: by the time this process has occurred, the free trade agreement is implemented and the sort of amendment that the Greens have here tonight can no longer be brought in and have effect. That would be outside the norms of finalising and bedding down free trade agreements. We have amendments here so that reservations and interpreted declarations are made and everything is clear: whether it is in the field of pharmaceuticals, local content, health, safety or the environment, the national interest comes first. Labor is going to vote that down.

When it comes to local content, Labor will legislate to cover 14 modes of broadcasting—everything they can think of at the moment. What about the things they do not think of? It was interesting to hear Senator Conroy talking about mobile communications. I would like to ask him whether he had ever heard of that word 20 years ago. I had not. Do we know what technology is going to be the burgeoning mode of mass communication in 20 years? Of course we do not. How are Labor retrospectively going to apply rules when the horses have bolted? The Greens say it does not matter what the mode of communication is, through this amendment this parliament’s right to insist that lo-
Let us look at film and TV. By gee, Labor is going to get the Attorney-General to report annually to parliament on copyright. Wow! When the report hits the parliament and there is very negative feedback coming from, for example, tertiary institutions that want something done about it, how will we get something done about it? We will be unable to. The horses will have bolted. The opportunity we have tonight to ensure that copyright is maintained in this nation’s interest will be gone. Why? Because Labor is going to vote the amendment down.

I am missing out a lot of Senator Conroy’s points because I could not write as fast as he can talk. He mentioned Australian manufacturing. What are Labor going to do as the manufacturing jobs go west in their thousands? They are going to set up a $25 million centre of excellence. I ask Labor: are you going to set that up if there is no free trade agreement, or is it just part of your policy along with the other things that were announced? One cannot help believe that it is part of Labor policy anyway and not contingent on the free trade agreement—it is a standard announcement. There is nothing Labor can do to protect those jobs in manufacturing vehicle components, textiles and footwear once the horses have bolted.

We have the opportunity to stop that. We can take the interpretive clause the Greens have put before the parliament, which covers all the doubtful areas that can be manipulated by committees that are yet to be set up outside the reach of parliament and in the interests of the corporate sector, against the interests of the average Australian. We should not allow that to happen; we should set the rules here tonight. That is what the Greens’ amendment is about. What is Labor going to do about that? Nothing. Well, worse than nothing—it is going to block the amendment.

What about the impact on jobs? What about the workers who have had the AMWU and the ACTU as their champions—although I notice the latter is accepting the inevitability of Labor caving in on this agreement—and who pretty much know they are not going to have a job 10 or 20 years down the line? Sure the government counter this by saying that there will be jobs created in other areas, although they cannot tell us where. That is great for those people who may get jobs, but it is very different for the people who have jobs now and know that because of this free trade agreement they are going to lose them in their thousands. What is Labor going to do because it is helping them lose their jobs and actually seeing them out the gate with this free trade agreement? It is going to establish a committee of inquiry to look at the impact on jobs. Isn’t that great! It is going to set up a committee—the oldest, most hackneyed, most transparently bereft political manoeuvre in the book.

In effect, Labor is going to do nothing and will not be able to do anything about those jobs. I suppose inevitably it will help ameliorate any big collapses along the way with taxpayers’ money and make some recompense to workers who would far sooner be in a job and have stability than have the rug pulled from under them and their families by this free trade agreement. One way or another every fix-it mechanism that Labor will be left with is going to cost Australians. It will not cost the American corporations; it will cost Australians as through government there will be an effort to undo the damage coming from this Latham-Howard free trade agreement, which is being shoved through the Senate in the next several hours.

Senator Conroy—Is that a promise?
Senator BROWN—That is an expansive use of the word ‘several’, Senator Conroy. Do not forget that we cannot do anything unless you finish your negotiations with Prime Minister Howard on your evergreening clause. I have no doubt that Mr Howard and Mr Latham are somewhere talking about that at the moment, trying to sort it out. Talk about delay.

Then there is the most favoured nation clause which the Howard government ‘forgot’ to put into the agreement—and I am being kind there. That means that despite Australia being short-changed as far as agricultural subsidies and tariffs are concerned—to name one, as the US put up a wall against sugar, beef, dairy and so on—there is the prospect of the US negotiating with Brazil, Argentina and other competitors to our agricultural and other sectors of the economy and giving them a better deal than us. They could become permanently advantaged against Australia, because the government forgot to put a most favoured nation clause in the agreement, which would have meant any advantage given to another nation in the future in a bilateral agreement with the US would be immediately given to Australia on the same terms.

Labor say, ‘We are going to ask George Bush whether we can negotiate one of those.’ Really—they are totally disempowered to do that. Here in this debate is the opportunity. The Senate is the one mainstay against the draining of the democratic power of this country to defend its interests into the future against the terms and conditions which are so Americo-favourable in this free trade agreement. On blood supplies, Labor are going to legislate. The question is: why not legislate tonight? Why not simply extend this preventative clause, this catch-all, this safety mechanism that the Greens are moving by way of this amendment?

Senator HARRIS (Queensland) (8.01 p.m.)—I rise to speak to the Greens’ amendment (1) on sheet 4377 headed ‘Reservation to agreement’. In brief, it covers the Pharmaceutical Benefits Scheme, environment and health laws, local content, quarantine and a disallowance process. Not inferring that any one of those issues is more paramount than another, it is the disallowance process that the Greens are putting forward that I would like to speak to briefly. To have a disallowance process in an act enabling a trade agreement brings all the regulations and the changes before this chamber for scrutiny. Bringing them into this chamber by way of a disallowance motion allows senators time to go to their respective states throughout Australia and consult the public on their support for or opposition to the particular instruments.

When looking at the Greens’ amendment in its entirety we have to have an understanding of what is happening here. The government has brought in the US Free Trade Agreement Implementation Bill 2004. What does it actually do? It brings to a conclusion only one of the stages in relation to this free trade agreement. The American side of the process required that a bill be passed by the Senate and Congress and then be signed by President George Bush. That ratified the agreement. That was the conclusion of the American side of the process—it is completed. In Australia, it is my understanding that all relevant enabling legislation that the executive deems necessary to uphold our good faith obligations under the agreement needs to be passed and granted royal assent. After that the executive government ratifies the agreement. That is the process we are gradually working towards. The actual date for ratification by Australia and the coming into effect of the agreement is 1 January 2005. That begs the question: why is it so
important to have this piece of legislation completed this week?

To get an understanding of that we need to look at broader issues. In Australia we are facing a federal election and that, obviously, is very clearly in the back of the government’s mind. They would like to see this legislation bedded down and passed before they go into this election. Why would the Labor Party, equally, be so eager to see this outcome? I believe the answer to that lies in some figures—and these are public figures; they are available on the Australian Electoral Commission’s web site.

The following figures are from receipts for donations to political parties in the year 2000-01. During that year, the government disclosed to the Electoral Commission a very healthy amount of $22,393,834 in donations. The National Party received $6,649,815. Collectively, the government—the Liberal and National parties—received, in round figures, $29 million. What is amazing is the amount donated to the Labor Party—it exceeds that of both the Liberal Party and the National Party. I believe that therein lies the eagerness of the Labor Party to assist in passing this legislation.

The Labor Party received $31,957,331. Every one of those dollars is a very good incentive for them to go into an election, saying to their corporate donators: ‘We delivered the FTA for you as well.’ We do not have converging politics in Australia; it is converged politics. The same people who are making these donations to the political parties are lobbying for the FTA. Is it any wonder that we have the government and the Labor Party concurring on the outcome of this bill?

Let us come back to the Greens’ amendment and its significance. It states:
Before the entry into force of the Australia-United States Free Trade Agreement (the Agreement), the Commonwealth is required by this section to make a reservation or interpretive declaration in the terms set out in subsections (2) to (10).

Whether it be the Liberal Party or the Labor Party in government after the next election, the amendment would require them to come into this chamber before 1 January and lay on the table the outcomes of this agreement. That is why tonight we have both the government and the opposition opposing the amendment by the Australian Greens.

Let us look at another document on this agreement. An article on USINFO.STATE.GOV—International Information Programs—titled ‘Trade pact: a milestone in US-Australian relations’ states:
The President signs the free trade agreement, eliminating most tariffs.
The article then goes on to quote President Bush:
That is the largest immediate reduction of tariffs on manufactured goods ever achieved in an American free trade agreement ...

That statement by the President of the United States of America is America’s view of what they have achieved in the Australian-US free trade agreement. I will repeat it: ‘... the largest immediate reduction of tariffs on manufactured goods ever achieved in an American free trade agreement’. Why wouldn’t they be pleased with the outcome? But the effect on Australian workers will be absolutely devastating—and I think in this chamber we have given enough examples from NAFTA. The article goes on to say:
America’s manufacturers estimate that eliminating these tariffs will increase the export of manufactured goods by nearly $2 billion per year. That will mean new jobs for American workers.

That is not an overall $US2 billion improvement for the life of the agreement. The Americans are claiming that they will achieve an additional $2 billion per year and
that it will mean new jobs for American workers. The article continues:

This agreement opens important sectors of Australia’s economy such as telecommunications, government procurements, express delivery, computers, tourism, energy, construction, financial services and entertainment.

Yes, some of those are currently open to America.

**Senator Conroy**—The President also said there were weapons of mass destruction in Iraq. Did you believe that?

**Senator Harris**—It is not contained in this document. The free trade agreement means more than eliminating tariffs on existing trade. The document goes on to say:

We must also work to open up new sectors of our economy to competition and trade.

On the American side, they have very clear impressions and anticipations of what they are going to gain from this agreement. That is why it is absolutely critical that the reservation contained in the amendment goes into the agreement. We have to get some protection for Australia’s sovereignty and for the jobs of Australian workers.

I will return briefly to the significance of the disallowance sections. The disallowance process was brought into this chamber—not this physical one—in 1901. Our forefathers saw the necessity to have the decisions that are made by both levels of government exposed to public critique. For 100 years—with some alterations, I must admit—the Acts Interpretation Act has done its job. One of the major sections of the Acts Interpretation Act is the disallowance section. It is absolutely paramount that these safeguards, these pressure valves, are placed into this agreement. One Nation place on record our support of the Greens’ amendments.

**Senator Brown** (Tasmania) (8.16 p.m.)—Because it is such an important amendment that is being cast aside by the Labor Party here, I just want to reiterate the power of this amendment. The amendment used the international legal process to clarify the ‘constructive ambiguities’, as they are called, which appear in the free trade agreement. It did that by clearing the air on the fact that, for all the mechanisms that can be set up by government without the agreement of parliament, it could not do that in a way which would infringe on the best interests of Australia when it came to a whole range of issues from quarantine to local content, from the Pharmaceutical Benefits Scheme to health, safety and the environment. It did that by making it clear that, in each case, the reservation that Australia has that it might lose out here was to be clarified. For example, with the Pharmaceutical Benefits Scheme, there was to be no evergreening and the appeals mechanism was not allowed to interfere with the pricing and listing process that Australia has in place now which make it the best system in the world. Labor’s amendments do not do the latter; there is no assurance they do the former.

When it comes to cultural content, this would ensure that this parliament had the right to protect cultural content, not just on existing broadcasting modes but into the future with whatever might come up, and to increase local content if we want to—and, if we want to decrease it, it would allow us to increase it again after some government comes along. The opposition’s amendment is to prevent ratcheting, but it does not do anything about the prohibition on our having content rules for yet undiscovered broadcasting means which will come in and take over very quickly in the future. It does not allow for this parliament in future to increase the local content required on Australian broadcasting services.

Again, here is a mechanism for looking after the public interest and for those people who have campaigned long and hard in those
areas to make sure that this is the opportunity for parliament to ensure that we do not let it go—and Labor is voting this amendment down. If there is one thing that is going to be debated strongly in the coming election, it will be the free trade agreement. If there is one thing that we will have to tell everybody that asks us about it, it is that Labor—I think Senator Ridgeway had the statistics—is looking after two of the 42 areas of concern. That is a bit under five per cent of the problem. And there is doubt about one of those two mechanisms that Labor has got—so much doubt that the Prime Minister is out there twiddling the knobs on Labor’s amendment at the moment to make sure it fits in with the wishes of the White House, no doubt.

Tonight this amendment, perhaps more so than other amendments—although they are all so important—is an exemplar of the failure of this opposition in a matter as important as this to defend the national interest. Above all, the national interest has to be to defend our democratic system and the empowerment of this parliament; above all, that is what Labor is selling out to the executive heavy mindset of the Howard government. We are just about to get a division which shows that. Labor is going to go over, Chair—and I am very pleased you are in the chair, Temporary Chairman Kirk—and vote with the government to vote down this nation-saving amendment on these matters which have been so contentious in the public arena. It is appalling. The sad thing is that the folk out there who are concerned about all these areas are being disempowered by this next vote, if this amendment does not get up. There are not going to be opportunities further down the line. There will be inquiries, reports back and getting institutions to tell parliament how it is getting on further down the line, but this opportunity is gone and it is because Labor let it go—conspired to let it go. It is a pretty poor comment on the once great party of social justice and democracy that this is happening.

There is a great determination right across the crossbench to at least put on record moments like this that will haunt many people for many decades to come, because we cannot get back to rescue the situation. Labor is going to put the free trade agreement through, so why on earth not put in this safeguard? It is within the square; it is allowed by the free trade agreement. America does it all the time. Senator the Hon. Peter Cook has done it in an international agreement. In the scientific and technical agreement between Australia and the European Community in 1994 he made a unilateral declaration to make sure that it was understood that Australia’s interests were going to be protected. Ten years down the line, Labor is not up to doing that. It is not even going to put in a clause like Senator Peter Cook put in way back then, because it has drifted further and further away from being the guardian of the national interest. Some alternative government! Some alternative prospect to look forward to, isn’t it! Some alternative to the Howard years and the Howard philosophy! It is writ large in what is now this Howard-Latham Australia-US free trade agreement. We have to respect democracy, but the hardest time to simply abide by the rules of democracy is when democracy is being undermined. That is what is happening here tonight. The right of the people to elect representatives to in all cases look after the national interest is being frittered away by a failed opposition at this moment in parliamentary history.

Senator RIDGEWAY (New South Wales) (8.24 p.m.)—I want to reiterate the position of the Australian Democrats. We will be supporting the amendments put forward by the Australian Greens. It has been a lax response from the ALP opposition, when they had
such a great opportunity to deal with this issue. They might remember that the previous amendments put forward were voted against by the government, expectedly. Certainly there was an opportunity for the ALP to change their mind about their position on the amendments, which were about the review of the operation of the act and about the sunset clause. This one deals with the reservation to the agreement. Essentially the amendments are about making sure the free trade agreement is subordinate to the national interest.

The opposition seems to have lost sight of this issue. There seems to be some pretence that we are only talking about enabling legislation and that its effect is not as wide as people might believe. The reality is that we are talking about a 10-point plan for disaster. Ten pieces of legislation will be amended as a result of schedules in the bill. I want to name them to put them on the record so that people understand what the implications of the free trade agreement are. They are the Customs Act, the Agricultural and Veterinary Chemicals Code Act, the Australian Wine and Brandy Corporation Act, the Australian Wine and Brandy Corporation Act, the Life Insurance Act, the Foreign Acquisitions and Takeovers Act, the Commonwealth Authorities and Companies Act, the Therapeutic Goods Act, the Patents Act, the Copyright Act and the Telecommunications Act.

This issue highlights the reality that, unless the parliament reserves a right to make decisions in the national interest, the free trade agreement will be the overriding or superior instrument in interpreting industry policy, social policy, cultural policy and environmental policy in this country. The Labor Party do need to be reminded that this will be the effect of their failure to reserve a right to make changes. Quite frankly, it is not good enough to turn around and say, ‘We’re going to revisit this issue in the context of winning an election.’ I would have preferred to have heard from Senator Conroy, at least, on behalf of the opposition, about the mechanism to do that. I think he knows, and I think everyone else knows, that trying to revisit, even after an election, a free trade agreement that is locked in place is going to be near impossible. He may want to respond to that.

We have a debate going on about the enabling legislation, which deals with 10 pieces of legislation separately. There is no real debate occurring in relation to each of those, although issues will come up from time to time. The free trade agreement itself is not before the parliament; we do not get to deal with that, and we certainly do not get to scrutinise it. Granted, the government has spoken about the various committees that have met to consider this, but the committees have only looked at the narrow issue—the supposed net economic benefit for the country. We ought to remind ourselves of the far-reaching implications here, in terms of both the capacity of parliament to regulate in the national interest, which exists here at this time, and—if the opposition saw fit to support it—the capacity to affirm the right of parliament to deal with the range of policies in the Australian national interest. Most of all, supporting this amendment will make sure that there is the reservation of an Australian right to regulate in the national interest. That is what is being sold in this case.

No-one should think that when there is a problem in the future we can easily come back here and introduce a new bill, because any bill put in here is going to be subject to the text of the free trade agreement. No-one should kid themselves about that, because that is the reality. I think that the opposition know that and, quite frankly, it was an opportunity for them to stand up and distinguish themselves, given we are about to have a debate on a range of issues such as cultural content, the PBS and so on. All of these
things are useful, but it is not enough to talk about the rhetoric of what we might do in the future; it is also about the actions that we are prepared to take now. There have been a range of amendments put forward to improve and affirm the role of parliament and improve the way in which we debate these issues.

I also highlight the fact that people have forgotten the House of Representatives never got to debate either the free trade agreement or the enabling legislation because it went through so quickly. There has not really been any serious debate or public information about the full effects of the free trade agreement, let alone the enabling legislation. I would have thought that with 10 pieces of legislation hidden in this package—it really is a Trojan Horse, and things are hidden on the inside—we would have got a chance to deal with each one bit by bit. The reality is that the government, with the support of the opposition again, have made it clear that they want to deal with this in the shortest time frame possible. I think it is worth supporting the Australian Greens’ amendment for the reservation of a right to affirm the right of parliament to deal with these particular issues.

Senator Conroy might want to respond in terms of the mechanism that he thinks the Labor Party are going to have should they win government. How do they propose to sit down with the administration of the United States to revisit a trade agreement that will be locked in place? I do not think anyone expects that to occur, but perhaps he has some sort of crystal ball that he can gaze into and tell us how this is going to happen. The government knows that it is simply not a reality. It is simply not going to come about, and the time to make any improvements is here and now. It is just not going to happen in the future.

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

The committee divided. [8.36 p.m.]
(The Chairman—Senator J.J. Hogg)

Ayes…………… 9
Noes…………… 44
Majority………. 35

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

NOES
Barnett, G. Bishop, T.M.
Brandis, G.H. Buckland, G.
Chapman, H.G.P. Colbeck, R.
Collins, J.M.A. Conroy, S.M.
Crossin, P.M. Eggleston, A. *
Evans, C.V. Ferguson, A.B.
Fifield, M.P. Forshaw, M.G.
Hill, R.M. Hogg, J.J.
Humphries, G. Hutchins, S.P.
Johnston, D. Kirk, L.
Knowles, S.C. Lightfoot, P.R.
Ludwig, J.W. Lundy, K.A.
Macdonald, J.A.L. Mackay, S.M.
Marshall, G. Mason, B.J.
McGauran, J.J. McLucas, J.E.
Moore, C. O’Brien, K.W.K.
Patterson, K.C. Payne, M.A.
Ray, R.F. Santoro, S.
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 HARRADINE (Tasmania) (8.40 p.m.)—by leave—Mr Chairman, I had intended to vote for the amendment, but I was pipped at the post by about 30 seconds. Under standing orders I wish to have my name recorded.
The CHAIRMAN—Your intention will be recorded, Senator Harradine.

Senator NETTLE (New South Wales) (8.40 p.m.)—The Australian Greens oppose schedule 1 in the following terms:

2. Schedule 1, item 8, page 26 (lines 7 to 25), omit section 214BA, to be opposed.

We have already established during this discussion that the US-Australia free trade agreement will prevent current and future governments from regulating in the public interest. It will stop governments from protecting and nurturing Australian industries, such as culture, manufacturing and IT now and into the future. It will give US corporations and the US government disproportionate power and influence over Australia’s economy, society, culture and environment. US big business, the pharmaceutical companies, agribusiness and manufacturing, will have a field day. They will be able to use the text of the Australia-US free trade agreement to demolish hard-won protections for Australian farmers and manufacturers. An example of this is in chapter 5 of the agreement on textiles, clothing, footwear and rules of origin.

While Australia is moving to zero tariffs for textiles, clothing and footwear as a result of the free trade agreement, the United States has kept its complex rules of origin which will prevent Australian textile, clothing and footwear manufacturers from qualifying for zero tariff exports to the United States. An example is the yarn forward rule which exists in the United States and which will not be impacted on or changed as a result of the free trade agreement. The yarn forward rule allows for the make-up of garments overseas, as long as the home country made the fabric or the yarn that is used. Since up to 80 per cent of Australia’s textile and clothing industry sources its yarn from Asia, the majority of our industry will not be able to qualify for tariff-free status into the United States. The yarn forward rule also exists under and is maintained by the US-Singapore Free Trade Agreement. Singapore thought it had done well with its agreement, but then it could not get tariff-free status because of the yarn forward rule. Now it does not even bother to apply for tariff-free status; instead, it closed the tariff.

In opposing schedule 1 of the bill I want to talk not so much about the yarn forward rule but about how it is enforced in the agreement. Incredibly, this and other rules and non-tariff barriers set up by the United States in the TCF industry will be enforced in Australia by United States Customs officers. Item 8 of the bill proposes inserting a new section into the legislation dealing with the power to monitor and audit the US-Australia free trade agreement. It sets up powers for Australian free trade agreement verification officers. These officers have powers to search premises, take photographs and make sketches. The free trade agreement verification officers have the power to inspect, examine, count, measure, weigh, gauge, test or analyse and take samples of anything on a premises that they enter to search. They can inspect any document or record on the premises. They can take extracts from and make copies of any document or record on the premises. They have the power to take into the premises any equipment or material that they deem necessary for carrying out their duties. They have the power to test and operate record keeping, accounting, computing and other operating systems. They have the power to use equipment, they have the power to remove documents and they have the power to remove disks. They have the power to ask questions and to ask for assistance. They also have the power to disclose information to the United States Customs officials who are with them.
The Customs officials section of the free trade agreement—clause 214BAF in the implementing legislation—allows for US Customs officials to accompany Australia-US free trade agreement verification officers when they enter premises. It allows for our verifications officers to be accompanied by one or more US Customs officials at the time. This amendment removes the power of US Customs officials to be able to enter premises with FTA verification officers. I would like to ask the minister whether, in the trade agreement that has gone through the US Congress, similar arrangements have been made for Australian Customs officers to enter the premises of United States industries in order to verify their compliance with the free trade agreement.

Senator HILL (South Australia—Minister for Defence) (8.46 p.m.)—My advice is that the answer is yes, both parties have agreed to this provision and it is included in both parties’ legislation. I will take the opportunity, whilst I am on my feet, to say that I am really quite puzzled at the concern being expressed by the Greens in this regard. The concern seems to be that the Australian official—the verification officer—who is verifying an Australian export may be accompanied by an American Customs official if the occupier consents. If the occupier does not consent, the American Customs official cannot participate. Furthermore, that consent can be subsequently withdrawn, as I read the provision. So, such a provision is not an unreasonable thing, seeing as it is the Australian side that is verifying an action by an Australian exporter and on some occasions the other side—in this instance, the US—might request to have their Customs official attend the inspection as well. But, if the Australian exporter objects, that cannot occur. There seems to me to be little mischief in this provision. I cannot really see why the Greens wish to have it removed.

Senator NETTLE (New South Wales) (8.48 p.m.)—I will help explain that to the minister. The yarn forward rule is a rule which exists in the United States about the way textiles are manufactured. It is not Australian law. It is not based on what Australian textile and clothing manufacturers need to do. This trade agreement signs up Australia to having to comply with the yarn forward rule, which other countries have found extremely hard to comply with. Eighty per cent of Australian TCF manufacturers use overseas yarn or fabric and so will not be able to comply with the yarn forward rule. This trade agreement locks Australia into having to comply with the yarn forward rule if manufacturers want to have tariff-free access into the United States. No equivalent exists in Australia. It is a United States rule that is set up.

The trade agreement also allows for United States Customs officials to enter and inspect textile factories in Australia in order to ensure that the United States rules are complied with. So the Australian government is saying, ‘Even though it is not one of our rules, we will enforce this rule and ensure it is complied with, and we will do it with the assistance and accompaniment of United States Customs officials at the time.’ The legislation says that Australian officers checking for compliance with the yarn forward rule will be accompanied by one or more US Customs officials. Has the Australian government had any indication from the Bush administration of how many US Customs officials will be involved in these activities? Will they be stationed in Australia? Will they come over at times when required? Has there been any indication of how many US Customs officials would be going into textile factories in regional parts of New
South Wales, Victoria or other parts of Australia?

Senator HILL (South Australia—Minister for Defence) (8.50 p.m.)—I am advised that the answer is no, there has not been discussion on that. But, whilst I think it is possible to debate the inclusion of the yarn forward rule of origin, it does not seem to me that that specifically relates to the amendment before the chamber. The amendment being put by the Greens would not affect the yarn forward rule of origin. The amendment being put by the Greens would remove the possibility of a US Customs officer accompanying an Australian verification officer. I have been given some advice that I could share with the chamber in relation to the yarn forward rule of origin but it does not seem to be—

Senator Brown—Please do. I was going to ask about that so it would be good if you did.

Senator HILL—Why don’t we deal with the amendment that is before the chamber first? Then I will be happy to deal with a different issue.

Senator BROWN (Tasmania) (8.51 p.m.)—The issues are related, as we see it. It would help if Senator Hill was to acquaint the committee with the yarn forward provisions in the United States. It is something we want to understand. I do not think the minister is saying that it has no relevance to the agreement. As part of this particular debate, that is what we want to flesh out. It would help if the minister just gave an explanation of the relevance of the yarn forward provision to the agreement and how it does or does not tie in.

Senator HILL (South Australia—Minister for Defence) (8.52 p.m.)—In the spirit of goodwill and cooperation and all those sorts of things I will try to be helpful. The point I want to make to Senator Nettle and Senator Brown is that under the terms of the agreement we have to verify compliance with the rule, whether or not a US customs officer attends with the Australian verification officer. That is why I say that the US customs officer is a different issue. As consent is required from the occupier, it does not seem to me to be of great consequence. I am happy to acknowledge I am not an expert in these things, but I am advised that our industry was fully aware of the yarn forward rule of origin and it is able to meet the requirement in some cases. Where it cannot, industry requested phasing out our tariff over a long term, to 2015, which has been matched by the US. I am told that it is true that our industry sources its supplies mainly from South-East Asia and that it is unlikely to change supply arrangements to meet the yarn forward rule of origin, but the trade in textiles, clothing and footwear to the US is small and our industry is mainly interested in other markets. In relation to the US, our industry was mostly interested in Australia’s securing appropriate safeguards against a high volume of imports. The government was successful in securing a textile specific safeguard in the agreement.

Senator NETTLE (New South Wales) (8.54 p.m.)—The relevance of the yarn forward rule is that I have been using it as an example of a United States non-tariff barrier that Australian and US customs officials would enforce in their searches into premises. Other non-tariff barriers exist in the textiles industries in the United States, but I use the example of the yarn forward rule. In response to my first question, the minister said that he understands that there is a requirement in the agreement—and it is in the copy I have here—for equivalent legislation to be introduced into the United States, but my understanding of his answer to me was that there is a requirement in the agreement for Australian Customs officials to be able to
enter American premises. Is there a capacity in the United States implementing legislation that was passed by the congress to have Australian Customs officials inspect United States textile factories?

Senator HILL (South Australia—Minister for Defence) (8.55 p.m.)—I repeat: I have been told that the answer is yes. It is a mutual obligation.

Senator HARRIS (Queensland) (8.55 p.m.)—I would like to ask some questions of Senator Hill and to pre-empt them by identifying that I am speaking to the Greens’ amendment (2) to omit section 214BAF from the bill. I have a couple of fairly simple questions relating to the verification powers, and we are amending the Customs Act 1901. To help Senator Hill, page 23, clause 214 of the bill—I find it quite amusing that it is under the initials of BAD; I do not know whether this is a bad section!—refers to the appointment of verification officers. Can the minister identify for us the CEO referred to in that section? Line 31 says:

The CEO may, by writing, authorise an officer to enter premises, and to exercise AUSFTA verification powers ....

Can that CEO only authorise an officer who is an Australian citizen?

Senator HILL (South Australia—Minister for Defence) (8.57 p.m.)—I missed the second part because I was seeking some advice on the first part. You will need to refer that back to the principal act, the Customs Act, in this instance. It is the CEO of Customs, who I think is still referred to as the Director-General of Customs.

The TEMPORARY CHAIRMAN (Senator Brandis)—It is the comptroller-general.

Senator HILL—The chair is giving me some generous assistance here.

Senator HARRIS (Queensland) (8.58 p.m.)—The second part of my question is about line 31, which says:

The CEO may, by writing, authorise an officer to enter premises ...

Does that person have to be an Australian citizen? In other words, could the CEO authorise an American officer to enter premises, or does this specifically refer to an Australian citizen?

Senator HILL (South Australia—Minister for Defence) (8.58 p.m.)—We are referring to an Australian Customs officer, an Australian official.

Senator HARRIS (Queensland) (8.59 p.m.)—We might do a bit of bobbing up and down here, but I think it will be helpful because it will get some answers for us. Page 24 says:

An authorisation may apply:

(a) generally; or
(b) during a specified period; or
(c) in or on specified premises; or
(d) during a specified period in or on specified premises.

That is fairly succinct. We understand what that section is setting out to do, but it does not assist us with any guidance as to whether that entering or the specified period will be confined to what we would normally term ‘business hours’. Would the authorisation that is granted by the CEO to the Customs officer be effected only during normal business hours?

Senator HILL (South Australia—Minister for Defence) (9.00 p.m.)—We are unsure. This is a verification process. It is not like the police conducting raids or the like. I would be confident to say that certainly in normal circumstances it would be during business hours but I would be hesitant to say that there would be no circumstance in which an officer might be authorised to conduct an
inspection outside normal business hours. If it is important, Senator Harris, we can inquire of Customs as to their practice in this regard and report at some later time during the debate, but I am reasonably confident that what I have said is the case.

**Senator HARRIS (Queensland) (9.01 p.m.)**—The reason for asking for this information goes to my next question to the minister, because it becomes quite evident that the powers granted to these verification officers lead to quite significant powers. I would appreciate absolute clarity in answer to the question relating to (b) ‘during a specified period’. We need clarity for businesses that may be asked to grant access to these officers. It would help them, I am sure, in relation to the legislation. I will give a couple of examples. On page 27 of the bill, subclause (2) of clause 214BAH, ‘Verification officer may ask questions’, says:
The occupier is not obliged to comply with the request.

If we look at clause 214BAJ, ‘Verification officer may disclose information to US’, the question to Senator Hill is: will there be a formal process of the person being advised of that right? It is one thing for us to agree to grant a power to a Customs officer. There is also a responsibility on us. If the legislation shows an intention that a person is not obliged to comply with the request, there must be some form of process to ensure that that person is made aware.

Further back in the bill, there is a requirement for the officer to show the person their identification. That does not mean walking in and saying, ‘I’ve got a shoulder pad on my coat.’ It must be the officer providing their official ID. The bill is specific about that. If they are obliged in the legislation to ensure that the person sees their accreditation, it is also important that that person is made aware of that right. Clause 214BAK, ‘Operation of electronic equipment at premises’, states:

A person may operate electronic equipment at premises in order to exercise a power under this Subdivision only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

That clause does not carry the rider that is in the two preceding clauses. In other words, it does not carry a subclause which says, ‘The occupier is not obliged to comply with the request.’ Therefore, it is very clear, as set out in the previous two clauses, that a person is not obliged to comply with the request. As I understand the structure of this particular segment, not only does the occupier not have the right to object or refuse but the clause also empowers the officer to operate the equipment. This may have been a bit of a walk around, but I am concerned that, when the CEO has the power to authorise an entry, we have a very open wording in clause 214BAD, which on page 24 states:

(3) An authorisation may apply:

(a) generally—

that is totally open—

or

(b) during a specified period.

So we have the situation now where the CEO can authorise a Customs officer to enter a premises if it is outside business hours, and that authorised officer carries the ability under this clause to operate the computers in that business. That is where the real concern comes: whether the entry can be outside of business hours.

**Senator HILL (South Australia—Minister for Defence) (9.08 p.m.)**—I think Senator Harris is being unduly cautious. If he refers back to article 4.3 of the agreement he will see that the exporting state has an obligation to cooperate for the purposes of enforcing and assisting the enforcement of the
measures, ensuring the accuracy of claims of origin and matters of that type. Thus, there is a procedure for verification—that is, verification by an official of the exporting state. But that is our obligation to the importing state, and each has the same obligation.

If the exporter does not want to get the tariff preference, there will be no verification. This is not something being forced on all exporters, but if someone wants to gain a benefit it is not unreasonable that they might be asked to demonstrate that they are complying with the rules. Senator Harris, when you look at how that will apply in Australian law, which are the provisions in the implementation bill that we are discussing, I think you will find that they are very soft provisions indeed. Even the Australian verification officer cannot enter a premises without the consent of the occupier. That is why I suspect that in all cases it would be within business hours, because this is a process done with the consent of the occupier. Before obtaining a consent, a notice must be given in accordance with 214BAE(3), which says that the verification officer must tell the occupier that the occupier is entitled to refuse consent. These provisions are absolutely full of safeguards to ensure that there is no pressure upon the exporter.

As Senator Harris says, when you get to 214BAH, which says that the verification officer may ask questions, it is specifically stated that the occupier is not obliged to answer the questions. The verification officer may ask for assistance; the occupier is not obliged to comply with the request. So one can work through practically every provision within this part and see no potential for coercion on the exporter at all. If the exporter wants to get a tariff benefit, clearly they will want to comply and cooperate. That is what this part is all about.

I concede that 214BAK does not specifically say that the occupier can refuse to allow the operation of the electronic equipment, and I presume these are forms of data records et cetera. On the other hand, if the occupier does not want the officer to do that they will not give them consent to enter the premises and they will not agree to answer questions. This is a cooperative process. Therefore, whilst I understand that Senator Harris is looking for mischief within the provisions, and that is quite legitimate, I do not think he will find them in this part. I also say to Senator Harris that his area of concern is not actually relevant to the amendment that is before us, because the Greens are not objecting to verification by an Australian official; they are objecting to the fact that an American customs officer may, albeit with the consent of the occupier, accompany the Australian official.

Senator HARRIS (Queensland) (9.12 p.m.)—I thank Senator Hill for that detailed answer. I wish to encapsulate for clarification, and I ask for a brief response from Senator Hill. My understanding of his answer is that, under 214BAE, line 28, the occupier’s consent is required and there is no way that that can be circumvented. There is only one other area that I would like clarified. I want to place very clearly on the record that I am not looking in any way for mischief, and I am not inferring that there is any mischief. One of the things I believe does assist a piece of legislation is clarification in this chamber by the relevant minister bringing it through. So what we are doing is assisting the people who will work under this legislation, and in this case Senator Hill’s answers have clarified a lot of those issues.

The final question on this comes back to one of Senator Hill’s comments in relation to a person applying for a tariff. The clarity I am looking for is that any of these verification powers under this section of the legisla-
tion only relate to a person having applied for a tariff reduction. If there is no application for a tariff reduction, then none of the powers that are expressed in this section can be used in the Customs Act 1901 for any other purpose because we would be altering the act.

Senator HILL (South Australia—Minister for Defence) (9.15 p.m.)—I understand that it is only relevant to somebody who is seeking a tariff preference. And, if they are seeking the preference, the requirement to be verified is not an unreasonable one.

Senator NETTLE (New South Wales) (9.16 p.m.)—I have a couple more questions for the minister. The first is this. Can the minister point out where, in the United States implementing legislation, the section allowing Australian Customs officers to search premises is. At the moment I am having a bit of difficulty finding where that is in the US implementing legislation. Could the minister also give an indication of how many Australian Customs officials will be based in the United States in order to fulfil this requirement. And I do not think I was out of the chamber whilst the minister gave any answers to questions about defining who the committee CEO referred to in this section is and to whom the CEO can give verification powers.

Senator HILL (South Australia—Minister for Defence) (9.18 p.m.)—I will have to take the first question on notice. It seems that, because the US Congress approves the treaty as a whole, it may be the obligation within the treaty for verification that is being relied upon. In relation to the second question, we do not know the answer to that, which I do not think is surprising at this stage. As to the third question, we said earlier that the CEO is the CEO of Customs.

Senator NETTLE (New South Wales) (9.18 p.m.)—I think it is important that we find the section in the US legislation that gives Australian Customs officers the equivalent powers that the US Customs officers are being given in this section of the legislation. I would have expected to find that provision in section 206 of the US legislation, which is headed ‘Enforcement relating to trade in textile and apparel goods’. It does not seem to be there. If the minister or advisers are aware that it is in another section of the legislation, that would assist in determining whether equal powers are being given to Australian Customs officials in US legislation as are currently being given to US Customs officials in Australia in this section of the implementing legislation.

Senator HILL (South Australia—Minister for Defence) (9.20 p.m.)—We would need to do some searching to provide an answer to that question.

Senator NETTLE (New South Wales) (9.20 p.m.)—Can I suggest, then, that we move on, deal with subsequent amendments and come back to this issue. When we find the section in the US legislation, we can then proceed to the vote on the amendment we are debating now. I move:

That further consideration of this section be postponed.

I think it is appropriate that we check for the section in the US legislation giving equivalent powers before we vote on this amendment, but I am happy to proceed with the following amendments.

Question agreed to.

Senator RIDGEWAY (New South Wales) (9.21 p.m.)—The Australian Democrats oppose the bill in the following terms:

(7) Schedule 1, page 5 (line 2) to page 28 (line 23), to be opposed.

(8) Schedule 2, page 29 (line 2) to page 45 (line 23), to be opposed.
Democrat amendments (7), (8), (9), (10), (12) and (14) all relate to schedules in the enabling legislation. They deal with amendments to customs, agriculture and veterinary chemicals, geographical indications for wine, life insurance, Commonwealth authorities and companies and patent law. Through opposing these items we seek to remove text from each schedule of the bill and, in effect, remove these amendments entirely. We take this approach given that the government and the opposition have not seen fit to support any of the earlier amendments about review or to affirm parliament having a role in the way in which policy is dealt with in this country. We oppose these schedules of the bill so as not to enshrine the free trade agreement into Australian law.

Having said that, I do not expect for a moment that either of the major parties will support these amendments, given that the government is wholeheartedly selling the dubious benefits of the deal and the ALP have disgracefully decided to fall into line. The Democrats are committed to proper scrutiny through this debate. We are opposed to the deal not just because of the lack of public information and proper debate but because we do not believe it is in the national interest. The ALP have gone to great pains to demonstrate the flaws in the agreement, but they will support it in the end. The fact is that the terms of the free trade agreement go way beyond this legislation. Some of the more controversial aspects of the deal have been left out of the bill, which is important to note as part of this debate. I assume the government have done that because they know they would not get those aspects through the parliament.

The Parliamentary Library’s briefing notes on this bill make the observations that the government have not given significant consideration to legislative changes that might mitigate some of the potentially negative aspects of the Australia-US free trade agreement and that many of the bill’s proposals merely involve extension of the government’s regulation making power, which will involve less parliamentary scrutiny of the details. Those are significant points because not only is the free trade agreement a dud deal but the bill we are dealing with is a dud as well. It seeks to stop parliament from having any say on the range of legislation that is identified in the schedules. It seeks to take the role of parliament and put it into the hands of the executive of government.

The only opportunity parliament has to vote on this deal is through voting on the implementing legislation and, as it does not include the more controversial aspects of the free trade agreement, it raises questions particularly about the changes to the PBS listing process and the criminalisation of the use or sale of anticircumvention devices under our intellectual property law. I ask: how can this comprise proper accountability? At no point has this parliament had an opportunity to vote on these controversial aspects of the bill. In many respects, I think the government has thrown them in because we are all now expected to fall into line and tick-off these amendments.

Quite frankly, the Australian Democrats will not be supporting that approach not only because the parliament has been pressured in many ways to not debate this thoroughly, in an open way so that the Australian public gets to hear about the hidden details of the agreement, but also because the deal is not in
Australia’s best interests. It will do more harm than good to our social, cultural and environmental welfare. Given that this is the only opportunity we will have to oppose this deal, we have to do it.

My office has received many calls during the past few weeks. It received one from a constituent this evening. She said, ‘Is this what it feels like to sell your country for a couple of beads?’ I totally agree and want to inform that caller—and those out there listening to this important debate—that it feels pretty terrible. In many respects our country is being sold down the river, and the government and the ALP are doing very little to stop it. We will try to do what we can to make sure that this agreement does not become law.

The amendments oppose each schedule of the bill individually to remove the operation of the bill entirely. We will have more to say in respect of Democrat amendments (13) and (15) as the debate progresses. My colleague Senator Allison will also speak to these amendments, particularly those that relate to schedule 7, which amends the Therapeutic Goods Act.

We will also have a lot to say about intellectual property because the largest chapter in the entire free trade agreement is on intellectual property, and scant attention has been given in any debate to the implications of intellectual property and the consequences of what is proposed in the agreement. The opposition have a list of 42 qualifications. They say they are going to have a Senate select committee to review intellectual property. Quite frankly, that is not good enough when you consider that the free trade agreement is dealing with the issue here and now. It is probably one of the most significant things and there has been scant mention of it. It ought to be debated properly. We will be looking at that in terms of its relationship to the Copyright Act. We will be moving some amendments to this schedule later to try to address some of the major flaws in what the government has drafted without any consultation whatsoever.

I will repeat some of the comments I made in the chamber last week to emphasise the importance of these amendments and the implications of the Labor Party’s announcement that they will support what is a dreadful free trade agreement. Through these amendments we are trying to nullify the effect of this bill for one main reason: neither the government nor the opposition has seen fit to support any of the earlier amendments that would have affirmed that the free trade agreement is subordinate to the national interest and guaranteed that there is a role for the parliament to play. These amendments are a further attempt to ensure that this deal does not make it through the chamber because it is not in Australia’s interest. I again remind the committee that there were over 500 submissions to the Senate select committee inquiry from people from all walks of life. Many of those submissions said there was overwhelming concern in the community about the impact that this is going to have on individual lives and on our nation.

After listening to these concerns and studying the terms of the deal carefully and thoroughly we believe that the position we have reached is a reasoned and balanced one. The FTA cannot be said to be in Australia’s best interests, especially when we have not had enough debate. I have said time and again, and I will say it many times over, that the government have still left many columns blank on the balance sheet—the social, cultural and environmental costs. The FTA will do more harm than good and, even if we are to accept that it might bring some economic benefit to some sectors of the economy, the costs to our social, cultural and environmental interests are clearly too high. Accord-
ing to Dr Dee’s report, we should not be paying this price for a measly gain and perhaps a pat on the head from our friends in the United States.

In many respects this trade deal could have been a great opportunity. I personally am not against trade, and neither are the Australian Democrats. I do believe it is capable of bringing real benefit to our country. However, the deal as it stands is unbalanced, unfair and flawed. The government, quite frankly, have bowed to the pressure of US interests. We are accepting what is left over instead of being able to say that we have a great deal. I have already said what our concerns are so I will not put them on the record again. We must keep in mind that there is always the potential for the US government and certainly US corporations to apply pressure to make us change our laws. The minister spoke earlier in the debate about the agreement not having an investor-state dispute resolution mechanism. I am still not satisfied with the answer he gave in relation to the triggering of consultation processes and what the end effect might be, given that they are looking at flexibility and not predetermining what might occur. What that does is throw it up in the air. It takes the chance that things will always go in favour of the national interest. I do not feel that same level of confidence.

The ALP also know this. They sat on the same inquiry, they have heard the same answers from the witnesses and they know that it is a bad outcome. Otherwise, why qualify it with a list of 42 reasons why the free trade agreement will damage our country? I think they are 42 reasons not to support the deal. Quite frankly, I firmly believe that they are absolutely aware that the two amendments will achieve nothing at all. I think they know that the text will over-ride any decisions that are dealt with in the courts. I think they also realise that the promise that when they are in government they might revisit and renegotiate the terms of the trade agreement is absolute nonsense. This is the time to take action and not talk rhetoric about the future. Removing the schedules of the bills is probably the next best thing that can be done. I do not expect the government or the opposition, given their position, to be able to support the amendments.

Senator HARRIS (Queensland) (9.36 p.m.)—I concur with Senator Ridgeway’s comments and I raise an additional problem that we face in working our way through the implementation legislation—that is, we are being constantly reminded by the government of relevance. Unfortunately, Senator Ridgeway has moved a considerable number of Democrat amendments together which has reduced our ability to work through the individual sections of the implementation legislation. Each time we raise an issue we are told, ‘That’s not relevant.’

The difficulty that I see now is how to put some rigour into this debate. We need to test the rigour of the changes to the legislation at this initial stage. Senator Ridgeway’s amendments cover the Agricultural and Veterinary Chemicals Code Act 1994 and the Australian Wine and Brandy Corporation Act. I believe the amendments would encapsulate part of the Therapeutic Goods Act, plus the Copyright Act. All of those sections are bundled into one area of this enabling legislation and it becomes virtually impossible to address them in detail.
I have raised questions in relation to the Customs Act. The only saving grace that we have at the moment is that, having moved the One Nation amendments in the Customs legislation, at least when the Customs bill comes on for debate, I can address a lot of those issues. But it is going to be quite difficult now to address issues relating to the agricultural and veterinary chemicals code legislation and, as I said, the other sections that are now being condensed. I understand Senator Ridgeway’s reasons for moving these amendments together, but our concern is that it is restricting our ability to test the rigour of the amendments.

I mentioned previously the danger that I see here. If the bill stands as printed and the alterations are made to those 10 acts, we have to have some guarantee from the government that, aside from the effect on the free trade agreement, there will be no effect on the primary powers of that legislation. The last thing we want to find from altering any one of those 10 acts—to implement the commitments the government has made under the free trade agreement—is that at a later date the legislation is detrimental to someone who has to work in the domestic environment. That is a real concern I have.

We need a clear indication from the government that any right an Australian citizen has accrued under those 10 acts, prior to their alteration to accommodate the free trade agreement, stands. That is very clear and very concise. If we cannot get that assurance from the government, we will be walking into a situation where we may inadvertently alter the heads of powers of those 10 acts of parliament to the detriment of an Australian citizen who has to comply with that legislation but who has nothing whatsoever to do with exporting or importing.

Senator RIDGEWAY (New South Wales) (9.42 p.m.)—I want to clarify the comments made by Senator Harris. The effect of combining the schedules is really a structural change to facilitate debate. It does not mean that the debate itself cannot be had for as long you wish to have it. It is a question of whether you wish to go through them one by one or in the context of all of the amendments being grouped together and moved as one block. You are welcome to go through them one by one if you are prepared to debate those issues.

Senator HARRIS (Queensland) (9.43 p.m.)—I seek, through the chair, some clarification from Senator Hill. The point I raise is a very relevant one. With the implementation legislation, the government is making substantial alterations to those 10 acts—the Customs Act, the Agricultural and Veterinary Chemical Code Act, the Australian Wine and Brandy Corporation Act, the Life Insurance Act, the Foreign Acquisitions and Takeovers Act, the Commonwealth Authorities and Companies Act, the Therapeutic Goods Act, the Patents Act, the Copyright Act, and the Telecommunications Act. I am simply asking for reassurance from the government that, in altering the heads of power in those acts to accommodate the free trade agreement, we are not taking away a right that has accrued under those acts to an Australian citizen who will not be involved in any way shape or form with anything to do with the free trade agreement.

The changes to the acts change the fundamental acts. If we are taking away a right or a privilege that a person had under those acts before they were amended, that is a detriment to that person. The acts having changed, they must comply with all of those acts and they may never ever participate in anything remotely in relation to the free trade agreement. If we want an example, look at the Life Insurance Act. How many people in Australia have a life insurance policy? They need to know that the changes that the gov-
ernment is proposing to the Life Insurance Act 1995 are not a detriment to them.

Senator HILL (South Australia—Minister for Defence) (9.45 p.m.)—I do not think I can give the assurance that Senator Harris is seeking. The circumstances of each and every individual differ and, therefore, each and every individual will be differently affected by this agreement and its implementation. The way the Australian government have approached it is to seek improved access to the United States market and, in doing so, to secure a range of different areas that we are not prepared to compromise. In other words, it is a two-way agreement. Each side is seeking improved access and each side has got to give some concessions to achieve that, but each side has also determined no-go areas. We obviously think that the balance is not only fair but that there is significant benefit in the balance for Australia. We need look no further than the advice we have that there should be created, as a result of this agreement, an extra 30,000 jobs. But, as we debated earlier today, individual sectors of the economy will be differently affected.

I do not think that I can give an assurance in the terms that Senator Harris is seeking. I guess that the fact I cannot give it is part of the reason that he is voting against the bills. There is not much that I can do about that. I do emphasise that these are decisions that we have taken in what we assess to be the national interest. They have been taken with a lot of care, after long and complex negotiation and subject to extended parliamentary scrutiny, and we have seen nothing in all of that process to suggest to us that we have got the balance wrong.

Senator HARRIS (Queensland) (9.48 p.m.)—I thank Senator Hill for his answer. What I am trying to establish here is not casting any doubts or aspersions on the government at all; what I am trying to articulate, I believe, is a section of the Acts Interpretation Act. My clear understanding is that the amending, altering or repealing of an act does not affect a right, a privilege or an obligation that is actually accrued under the act. I am just talking about the average Australian person or the small business that is operating today under all of these pieces of legislation. If they can go about their daily business and not be affected by the changes in the act, that resolves or takes away a lot of the concern that I have in relation to the bill. My understanding is that their rights, their privileges and their obligations are protected, but we need to have that articulated very, very clearly.

I am not talking about a person who is exporting to the US or importing goods. I am talking about the average small Australian business—which, for argument’s sake, works under the Agricultural and Veterinary Chemicals Code Act 1994 today—and providing that their rights and the things that they do are not jeopardised by any of the changes the government is proposing. I think that would carry to the Australian people a lot of confidence.

Senator HILL (South Australia—Minister for Defence) (9.50 p.m.)—Again, when Senator Harris talks about rights, I am not sure exactly what he means. Obviously the Acts Interpretation Act stands. It is not affected by these changes. His interpretation of those provisions might not be the same as mine, but that is a different issue. There are protections in the Constitution in relation to expropriation of property. That is not affected by these changes. His interpretation of those provisions might not be the same as mine, but that is a different issue. There are protections in the Constitution in relation to expropriation of property. That is not affected by this. But I am sure there will be individuals that are affected in their businesses. One of the purposes of these very lengthy parliamentary inquiries is to drill down into the depths of individual industry.
sectors, professions and other occupations and make these judgments.

I repeat what I said when we were discussing the manufacturing industry earlier today: there are those who believe that sections of the manufacturing industry will be disadvantaged, and there are others who see huge new opportunities for other sections of the manufacturing industry in Australia and a significant net benefit to that sector in terms of jobs. If Senator Harris is asking me to give him an assurance that I can be confident that no single individual will find himself or herself in any way disadvantaged, I do not think I can do that. What I can say is that in the critical areas such as quarantine, the environment, the cultural sector—which we have talked about so much—and health care we believe that we have not only protected Australian interests but also not given anything up. These were our no-go zones, and we were able to hold to those no-go zones. We might not have got all the advantages we wanted to get out of the negotiation, but we did not have to concede a no-go zone. We refer to those as the critical areas where, if we had made concessions, Australians would have lost the significant advantages or protections that they have today. We are confident, as I have said so often in this chamber, that in those critical areas we have been able to protect all pre-existing interests of Australians.

Senator NETTLE (New South Wales)
(9.54 p.m.)—The Australian Greens will be supporting these amendments because they seek to remove some of the many objectionable components of the US-Australia free trade agreement.

Question put:
That schedules (1), (2), (3), (4), (6) and (8) stand as printed.

The committee divided. [9.59 p.m.]
(The Chairman—Senator J.J. Hogg)

Ayes............. 46
Noes............. 9
Majority........ 37

AYES
Barnett, G.  Bishop, T.M.
Boswell, R.L.D.  Brandis, G.H.
Buckland, G.  Carr, K.J.
Chapman, H.G.P.  Colbeck, R.
Collins, J.M.A.  Conroy, S.M.
Crossin, P.M.  Eggleston, A.
Ellison, C.M.  Evans, C.V.
Ferguson, A.B.  Ferris, J.M. *
Fifield, M.P.  Forshaw, M.G.
Heffernan, W.  Hill, R.M.
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.  Mason, B.J.
McGauran, J.J.J.  McLucas, J.E.
Moore, C.  O’Brien, K.W.K.
Patterson, K.C.  Ray, R.F.
Santoro, S.  Scullion, N.G.
Sherry, N.J.  Stephens, U.
Tchen, T.  Watson, J.O.W.
Webber, R.  Wong, P.

NOES
Allison, L.F. *  Brown, B.J.
Cherry, J.C.  Greig, B.
Harradine, B.  Harris, L.
Murray, A.J.M.  Nettle, K.
Ridgeway, A.D.  * denotes teller

Question agreed to.

Senator RIDGEWAY (New South Wales)
(10.03 p.m.)—I now propose to deal with Australian Democrat amendment (11), and I understand this is identical to Australian Green amendment (3) dealing with foreign acquisitions and takeovers. I want to say a couple of things about this amendment. The Australian Democrats oppose schedule 5 in the following terms:

(11) Schedule 5, page 71 (line 2) to page 78 (line 32), to be opposed.
The free trade agreement will remove our ability to regulate who gets to take over Australia. At the moment the Foreign Investment Review Board—I say that deliberately with tongue in cheek, but seriously—gets to review all of the proposed foreign takeovers of Australian companies to make sure they are done with our best interests in mind. If you consider the text of the free trade agreement, in many respects it throws that approach out the window. When this agreement comes into force, we will no longer have any ability to say no if somebody wants to come in and take over Australian companies.

Under the free trade agreement the parties agree to provide investors from the other party either national treatment—that is, the same treatment afforded to domestic investors—or most favoured nation treatment, whichever is the most advantageous to the investor. It also contains a number of provisions that are designed to reduce sovereign and other policy related risks that are associated with investors from each party investing in the economy of the other party. The agreement states:

Specifically, the Parties agree to:

- provide national treatment or most-favoured nation treatment to investors from the other Party (Articles 11.3 and 11.4);
- provide the protection of law to investors and investments, in a manner consistent with international law (Article 11.5);
- provide investors and investments with protection or restitution in the event that a civil or military emergency requires the requisitioning or destruction of the investment in question (Article 11.6);
- refrain from nationalising or expropriating investments from the other party, except in accordance with law, and with appropriate compensation (Article 11.7);
- allow the free transfer of funds connected to covered investments from one Party to another (Article 11.8);
- not to establish discretionary performance requirements in relation to import or export content, local content, preference for local inputs, transfer of intellectual property, or restrictions on sales (Article 11.9);
- refrain from requiring that senior managers or board members be of a particular nationality (Article 11.10); and—finally—
- reserve the capacity to implement policies which may be otherwise prohibited under the agreement, but which are necessary for environmental reasons (Article 11.11).

Not all of the investments fall under the free trade agreement. I draw the chamber’s attention to annex 1 and annex 2 of the agreement, which contain reservations allowing parties to maintain existing non-conforming measures. Both Australia and the United States have included measures relative to investment in those annexes. Any matter that is not mentioned in annex 1 or annex 2 is a result of default more than anything and subject to the free trade agreement. Such investments are referred to in the agreement as covered investments. The minister might want to respond to that and confirm that that is the case.

In Australia’s circumstance there are reservations, including: the preservation of current non-conforming measures that are undertaken by state and territory governments; the retention of assessment by the Foreign Investment Review Board, although with substantially increased financial value thresholds; investment in urban land; additional support for Indigenous involvement in enterprises; measures relating to leases on airports; the preservation of export requirements in the government IT outsourcing program; any measure with respect to primary education; authorisation and levying of for-
eign fishing vessels; wheat exports; foreign ownership and foreign director limits for Telstra; foreign ownership and control of media companies; and votes of foreign shareholders for board positions on the Commonwealth Serum Laboratories board and foreign interests in Qantas.

The United States, on the other hand, also made a number of reservations, and I think it is important to put them on the record. They include: regulation of atomic energy for industrial purposes, the regulation of leases that relate to mining and energy, preferential treatment for minority groups, access to overseas private investment corporation insurance and loan guarantees, the regulation of commercial aviation, security exchange registration and initial public offers, the ownership of broadcasting licences, the ownership of cable television facilities and the preservation of current non-conforming measures undertaken by states, the District of Columbia and Puerto Rico.

The central concern is clearly about determining what impact the free trade agreement will have on investment in Australia. On the one hand, the agreement may encourage additional investment in Australia by United States investors; on the other hand, it may encourage Australians to invest in the US, where previously they may have invested at home for whatever reason. Inevitably, because these situations will occur, a great deal of energy has been spent during the public debate on the free trade agreement in recent months trying to anticipate what the net effect on investment is likely to be.

There has been a great deal of disagreement about the potential benefit of the investment chapter of the free trade agreement, with economists from all sides unable to agree on the effect that the deal will have on Australia’s equity risk premium and the various dynamic impacts the agreement is likely to have. A particularly interesting point made in the majority report is that Treasury is usually very sceptical of using dynamic productivity gains as a basis for policy decisions and does not seek to estimate them in costings, yet when you look at the CIE study, which the government relies upon, it uses the dynamic productivity gains as the major contributor to the projected $6.1 billion benefit Australia supposedly will derive from this agreement. The Democrats believe that the evidence demonstrates further that the gains that have been cited by the CIE report are flawed and certainly overstated, especially given that the figures have been based on the assumption that Treasury itself refuses to use them in normal policy advice. Perhaps Treasury should have undertaken the analysis—we might have got a different result and we might not be in this situation.

In our view, the government rhetoric about the benefits of the deal cannot be taken seriously. Given the magnitude of the costs in areas of key social, cultural and environmental policy it is difficult to find any benefit at all for Australia in this deal. I am still waiting for the minister to fill in the blanks on this national balance sheet, if you like. We have filled in the column to do with net economic gains, but the columns are bare when it comes to looking at environmental, social and cultural policy. Quite frankly, there are no guarantees that there will not be losses in those areas. We have a deal that allows any American company to come over here and take over an Australian one. We will not be able to say no, even if it is not in our national interest. Essentially, we are giving away our rights under this agreement.

Another problem is the investment chapter. The issue of the rules relating to film investment was raised at the time with the negotiators. As we know, Australia has agreed to national treatment rules, which prohibit each party from discriminating in
any way against investors of the other country. Most of the support for the development and production of Australian feature films, TV programs and other projects in this country is provided through government assistance by way of investment rather than grants or subsidies. Agencies such as the Film Finance Corporation, for example, make their money by acquiring copyright interests and earn the returns on their investment. The Australian Democrats are particularly concerned—and these concerns were raised during the Senate select committee process during talks on the free trade agreement, even with representatives of the film and television industry—that this may mean that those agencies will not be able to invest exclusively in Australian films.

I wonder whether Minister Ellison might respond to that particular question about the investment rules, as it relates to investment in film and television production in this country. It was an issue that was raised. The industry was given certain assurances and, quite frankly, I think there has been a major oversight or neglect, if you like, in giving an answer to that question. When I asked about the issue in the parliament, the minister himself was unable to give a clear answer. The Democrats made it clear that we understood that direct grants and tax rebates were exempted from the free trade agreement. But I think the minister at the time was unable to prove to the chamber that public investment in domestic film production would be protected from the deal. In many respects it is unfortunate that the government did not take the same approach as they did to the free trade agreement with Singapore, where a very clear decision was made to exclude Australian culture. In this case, we now have our cultural industries open as the prey of Hollywood and the pressures that might be brought to bear there.

So I think that these are important things to keep in mind. I again refer to the talks that have taken place between representatives of industry and DFAT officials on this particular issue. When Mr Richard Harris from the Screen Directors Association raised this issue with negotiators, they said that they had taken it on board and that they were going to find out whether it was an issue and get back to him. The reality is that they never got back to Mr Harris. We are essentially on notice now that they are going to address it. They said that that was not the intention of the agreement.

An answer does need to be given—a clear and unequivocal statement that as far as investment in film and television production goes in this country there are guarantees in relation to the free trade agreement that this can be done, particularly given some of the figures that have been released in recent times about the industry being under all sorts of pressure and not producing the box office hits that we might expect overseas. I think they deserve support, not to be exposed in the way they have been in terms of the free trade agreement.

Certainly the representatives did the right thing and went into talks in good faith. They raised the issues but have not been given the answers. They are still waiting for those answers. From our reading of the free trade agreement, it is clear from the rules in relation to investment that the Film Finance Corporation may well be in breach of the free trade agreement. I wonder whether officials or the minister might be able to respond to that or give some guarantees or answers to the industry representatives. They are still waiting for answers. They have raised this issue on many occasions. Quite frankly, I think now is the time for an answer.

**Senator NETTLE** (New South Wales)

(10.16 p.m.)—As Senator Ridgeway said, we
are proceeding with the Democrat amendments but they are the same amendments that the Greens have proposed. They are seeking to remove the impact of the US-Australia free trade agreement on diminishing the capacity of our Foreign Investment Review Board to review foreign investments in Australia.

The free trade agreement, as has already been outlined, will undermine the government’s capacity to review and screen foreign investment in Australia. Under the agreement, US investment in Australia will be given national treatment, which means that United States investment must be treated in the same way as local investment. This is in article 11.3 of the agreement. Also, in article 11.9 of the agreement, it is clear that US investors cannot be required to use local products or local suppliers in the delivery of services. Some existing limits on foreign investment are retained for newspapers, broadcasting, Telstra, Qantas, the Commonwealth Serum Laboratories, urban leased airports and coastal shipping. However, these limits are subject to standstill provisions and cannot be increased, preventing future governments from addressing issues that might arise in the future.

The Foreign Acquisitions and Takeovers Act 1975 created the Foreign Investment Review Board, which is a crucial economic policy instrument of government. The Foreign Investment Review Board examines proposals by foreign interests to undertake direct investment, including company takeovers, in Australia. It makes recommendations to the government under its foreign investment policy. The government is able to veto investments that are not considered to be in the national interest. For example, the Foreign Investment Review Board advised the government to block Shell’s takeover bid for Woodside Petroleum, the operator of the North-West Shelf oil and gas project, in April 2001.

The current threshold of foreign investments at which the Foreign Investment Review Board looks at assessments is $50 million. Annex 1 of the agreement provides that the Foreign Investment Review Board will only keep its power to review and screen investments of over $50 million in so-called sensitive areas—that is, military equipment, security systems and the uranium and nuclear industries. The threshold for Foreign Investment Review Board review and screening for all other investments in existing businesses will lift from $50 million to $800 million. That is a significant increase in the threshold. According to the United States government’s own trade representatives, if these rules had been applied over the last three years, nearly 90 per cent of US investment in Australia would not have been reviewed. It is these changes that the government is seeking to enact in schedule 5 of the bill and that the amendment we are debating now seeks to remove from the trade agreement.

The way the changes are being made will not only allow the government to implement the new rules for US corporations under the agreement but also mean it can extend such changes to other countries. This is because the schedule allows the government to raise the thresholds not only for US corporations but also for corporations from any other country that the government chooses to list. Future agreements, such as the proposed free trade agreement with China, could lead to Chinese corporations being exempt from review by the Foreign Investment Review Board. It is a slippery slope that will eventually lead to all foreign investment effectively being excluded from the review and the reach of our Foreign Investment Review Board. This is a massive reduction in review powers and will mean that the government
may no longer be aware and therefore able to intervene to ensure important industries are not placed in the hands of global corporations or US multinationals.

The Greens are not opposed to investment, whether from Australia or from any other country, but we are opposed to removing the capacity of current and future governments to keep track of investments and therefore to intervene when necessary in the national interest. We already have many industries and companies in Australia where decisions about productions, jobs, workers conditions, environmental safeguards and consumer protections are made in countries other than our own. For example, decisions are made in cities such as Los Angeles and New York.

The changes proposed by the government and supported by Labor in this trade agreement are paving the way for more decisions about Australian workers and their environmental conditions to be made in United States cities. The Greens are saying that it is right and appropriate that this government and future governments should have the capacity to review and screen all significant foreign investments. This is why we proposed the amendment that is the same as the one we are debating now. It is the role of the government to protect the national interest. The Greens will continue to do so. I have two questions for the minister and the first is:

Senator CHERRY (Queensland) (10.22 p.m.)—I have pondered these provisions, and I have read the annex very quickly. I would like to ask some questions of the minister. The first is about my concern that these provisions to some extent set in stone Australia’s foreign investment policy ad infinitum. My question relates to the future of Australia Post. Whilst the annex and the schedules clearly state that the current foreign ownership provisions for Telstra are reserved, if Australia Post were privatised by government in the future, would a government be entitled to impose foreign ownership restrictions on Australia Post, or are our reservations related only to those provisions contained in these annexes?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.22 p.m.)—While a number of issues have been raised, it is important that the government put on record the position on schedule 5, which deals with foreign acquisitions and takeovers. Firstly, the negotiated outcomes on foreign investment screening in the agreement will deliver significant benefits to Australia by enhancing Australia’s attractiveness as a nation for foreign investment. The agreement, however, successfully preserves the core features of Australia’s investment policy. The government has retained the right to examine significant foreign investment proposals in all sectors to ensure they do not raise issues contrary to the national interest. I note that is an issue which senators opposite have raised.

Acquisitions of a substantial interest in an Australian business valued at over $800 million will need to be notified and examined. Foreign investments by foreign governments in urban land, including residential properties, will continue to be screened regardless of value. Foreign investments in sensitive sectors such as the telecoms, transport and defence related industries will continue to be subject to screening above the existing threshold of $50 million. Furthermore, existing foreign investment limits relating to the media, Telstra, CSL, Qantas and other Australian and international airlines, federal leased airports and shipping have all been preserved. Moreover, to address national interest concerns the government has re-
tained the right to impose conditions on screened investments. Australia’s strengthened environmental laws, introduced in 2000, mean the government no longer has to rely on foreign investment policy to address environmental issues. The Australia-United States free trade agreement will not affect the right of governments at both the state and territory level to require new investments, whether by foreign or domestic investors, to meet appropriate standards and requirements on issues such as environmental health and planning matters.

This section of the bill is essential to bring Australia into compliance with the agreement, and it must be passed. We cannot cherry pick aspects of this. This schedule is important for the agreement, and it has to remain for Australia to comply with the agreement. Senator Ridgeway asked a question about film and television. Existing and future measures in the film area, such as Film Finance Corporation activities, are fully protected. This advice has been provided to the industry. There are no limits on subsidies and funding for investment in full production. Senator Nettle asked a question about these provisions applying multilaterally. We will assess the merits of any free trade agreement with any country against the national interests of Australia. There are provisions in this agreement which might not be applicable to any particular agreement in the future. We are not saying that this is something that will apply willy-nilly across the board.

I think Senator Ridgeway asked a question about how this interacts with reservations. The investment chapter includes strong protections for investors from the two countries. Reservations in the chapter, as well as other safeguards in the chapter, fully protect areas important to the public interest. There are already strong two-way investment flows between the United States and Australia, and this strengthened framework will further enhance this. Australian businesses have significant investments in the United States. That is a fact; you cannot escape it. Our foreign ownership limits in the media sector and other areas have been fully protected. The provisions in this schedule that deal with foreign acquisitions and takeovers preserve the integrity of our investments screening in relation to investments in sensitive sectors, which I have outlined. The agreement will provide a strong framework for promoting high levels of two-way investment flows between Australia and the United States, and these have been strongly endorsed by the community.

Senator CHERRY (Queensland) (10.27 p.m.)—I have not entered this debate very often, but I did ask a question of the minister about organisations that are not listed in the schedules which might subsequently be privatised by governments. Whilst it is hypothetical, given that we are making law into the future it is a reasonable question. In relation to publicly owned enterprises which may subsequently be privatised, does this agreement or the schedules that we are currently passing limit, in any way, shape or form, the capacity of the government to limit foreign ownership of future privatised bodies such as a future privatised Australia Post?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.28 p.m.)—I have a note about that question. Nothing in the investment chapter changes the right of Australia to regulate in the public interest or to continue to maintain public services like Australia Post. Nothing requires us to privatise government entities. That remains a purely domestic issue. We have fully preserved all existing foreign ownership limits.

Senator CHERRY (Queensland) (10.29 p.m.)—Again I did not get an answer. I ac-
cept that is what it says but, if a future government decides to privatise a currently publicly owned enterprise, is it required to provide most favoured nation investment treatment for US investors, vis-a-vis Australian investors, or can it impose new foreign ownership restrictions on a subsequently privatised body?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.29 p.m.)—My understanding in relation to that question, which raises a slightly different aspect of most favoured nation status, is that it is not relevant to the issue Senator Cherry raises. I understand that is the situation. If there is another aspect of Senator Cherry's question which I have missed, perhaps he could enlighten me.

Senator CHERRY (Queensland) (10.30 p.m.)—I will ask the question for a fourth time: if a future government decides to sell a currently publicly owned enterprise such as Australia Post, can that future government, under this agreement, state—as the government does now for the privatised Qantas or Telstra—that there will be a certain percentage of Australian ownership or Australian control of that future privatised enterprise? I am seeking to establish, where an organisation is privatised—I keep saying Australia Post but it could be the Defence Housing Authority, Medicare Private or any government owned body—whether this agreement in any way, shape or form restricts the capacity of a future government to state that this particular privatised body will be majority publicly owned, as is the case now for Telstra and Qantas.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.31 p.m.)—For a start, any investment by a corporation from the United States is subject to the screening of foreign investment as contained in this agreement, but our reservations preserve the right to impose foreign ownership limits on government owned entities covered by our annex 2. As I said earlier, I think Senator Cherry is trying to say that this would give the United States most favoured nation status in relation to buying out a government instrumentality should it be privatised. That I think is the nub of the question.

In relation to the question of most favoured nation status, I understand that does not apply here and is not relevant. That has been my advice. In relation to whether or not they can simply invest in any acquisition, as anyone else would in that case of privatisation should it arise, there is still the question of screening that foreign investment as contained in the agreement. As I understand the advice I have, most favoured nation status does not apply and is not relevant. Any foreign investment from the United States vis-a-vis the proposed privatisation of the public entity or utility would be normal investment as per this agreement with the screening that applies.

Senator HARRIS (Queensland) (10.33 p.m.)—Perhaps I can articulate the question a little clearer, and I am not inferring that Senator Cherry has not been clear. We had the Commonwealth Bank as a statutory body. That has subsequently been privatised. We had Telstra as a statutory body. It has been privatised with a 51 per cent government ownership. We currently have Australia Post as a statutory body. It has been privatised with a 51 per cent government ownership. We do not know whether the minister is familiar with the fact that during the Senate inquiry Professor Drysdale raised an issue in terms of treaty obligations that
arise as a result of the free trade agreement, particularly in respect of the investment provisions. He also made reference to article 9 of the Basic Treaty of Friendship and Cooperation between Australia and Japan which requires that Japanese companies be accorded treatment no less favourable than that of other companies in their investment activities in Australia. These treaty obligations, the minister may be aware, have been invoked by the government to resist the extension of preferential treatment in respect of investment under the closer economic relations arrangements between Australia and New Zealand. As the minister would also know, the government has announced that it does not intend to multilateralise the investment provisions of the proposed agreement.

If the gains are as large as the government likes to trumpet based on the CIE report, presumably we would want to extend them to all countries as a matter of national interest. I wonder whether the minister might make some comments about that issue because it seems to me that, whilst there is a preferential trade agreement with the United States, does it not also invoke particular treaty obligations that we have with other trading partners, more particularly in relation to Japan, irrespective of whether or not they have made any approaches to the Australian government; if so, could he provide some explanation on that in terms of being accorded treatment no less favourable than any other country as we have done in this case with the United States? It has been a pretty special preferential deal for them. They get better treatment than others and so in terms of the investment provisions, does the minister have a response to that particular issue?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.37 p.m.)—I understand that Japan has not made any approach to Australia in that regard. It does not necessarily follow that, because this is such a beneficial agreement with the United States and has such a big impact, it must impact on other agreements with other countries—and Senator Ridgeway cited the Japanese example. You can have a number of free trade agreements with diverse countries that deliver great benefits to Australia without there being any conflict of interest, certainly from the point of view of Australia. We negotiate these agreements in our national interests, not in anybody else’s national interests. That is our point: it is their job to look after their national interests, and we look after ours. From this point of view there is no problem for Australia in either of those two agreements; neither is there any conflict therein.

Senator CHERRY (Queensland) (10.38 p.m.)—This will be my last contribution to this debate. I want to note for the record that, under this schedule in the agreement, Australia is giving investors from the United States most favoured nation treatment with regard to investment in Australia, and vice versa for us into the United States. Ultimately the benefit is primarily to the US because, whilst the flow of investment from Australia to the United States has risen quite substantially over the last 15 years, there is still a net flow into Australia rather than out. It is important that I also note for the record that the US has not given Australia most favoured nation treatment for farmers and for produce going to the United States. That reflects just how comprehensively dudged our negotiators were on this agreement, because the agreement is so imbalanced against the interests of Australia and against particular sectors of our economy. There are winners and there are losers, and certainly in this particular schedule we see winners—that is, we see US foreign investors getting most favoured nation treatment into Australia while Australian farmers are denied most favoured nation
treatment into the US in terms of farming produce.

I note that because, when the President of the United States signed the US free trade agreement last week, just after he said what a wonderful strong leader Australia has in Prime Minister Howard his next comment, which did not make the television news but thank goodness was picked up by *The Panel*, was, ‘This is a great deal for US farmers.’ I have to agree with that view. I think this agreement is a great deal for the US farmers because their negotiators successfully denied all the hard-nosed negotiating by Minister Mark Vaile. They managed to keep sugar out and they managed to minimise the changes to other produce, as Senator Conroy pointed out earlier. They managed to increase the quota on avocados without actually raising the quarantine restrictions on avocados. Senator Conroy has actually brought his face up from his computer, which is good; I notice that he is voting for this agreement, notwithstanding the problems with avocados and the quarantine system. It certainly disappoints me that when we go from trade minister Mark Vaile, who on the basis of this agreement I would call a dud trade minister, to trade minister Stephen Conroy, if there is a change of government, on the basis of his enthusiasm to pick up this agreement and run with it we will not see any great improvement.

It is pity that we are dealing with a schedule in which the most favoured nation treatment is being extended to capital flows but not to farming flows back across the Pacific Ocean. That disappoints me and it shows that the priorities of this government are to look after the capital end, the big end, of town. It does not really worry about sugar farmers in my home state of Queensland or other categories of farmers who were hoping to get more access to US markets, because those issues are too hard and it does not help in terms of the capital flows, the stock markets and the financial markets, which is what this deal is fundamentally about.

**Senator HARRIS (Queensland) (10.41 p.m.)**—We have before us Democrat amendment (11) on sheet 4361 revised 2. The purpose of the amendment is to oppose the printing of the entire section related to foreign acquisitions and takeovers. The purpose of the government’s amendment is to insert the section as it is printed into the Foreign Acquisitions and Takeovers Act 1975. If this section is to remain in the bill, and in all probability it will, what we need is some clarification from the minister. Mr Temporary Chairman, if we can find out who is going to answer the questions I will know whether to direct them to Senator Ellison or to Senator Hill.

**Senator Ellison**—You can direct them to the minister.

**Senator HARRIS**—I will proceed. On page 78 of the bill, at line 26, clause 17H talks about a ‘prescribed sensitive sector’ and it says:

(b) the conditions specified in the regulations are satisfied in relation to the kind of business activity.

The question is: are we referring to the regulations as they currently stand under the act, or are we referring to a regulation that will be brought in specifically to facilitate the free trade agreement?

**Senator HILL (South Australia—Minister for Defence) (10.44 p.m.)**—They will be new regulations.

**Senator HARRIS**—I know this is a little difficult for Senator Hill, but I come back to Senator Ellison’s statements—made in Senator Hill’s absence—pertaining to the screening process for the foreign acquisition board. He implied to the chamber—and I do not believe that I am misquoting him—that the current proc-
esses would stand, that the actual review process would be affected on any acquisitions over $50 million. My question is this: are there any sections of schedule 5 that would alter that trigger for the review board?

Senator HILL (South Australia—Minister for Defence) (10.46 p.m.)—I am advised that the new thresholds will be established by regulation.

Senator HARRIS (Queensland) (10.46 p.m.)—So now we have the real position—that we have a set of regulations. I do not know whether anybody else in this chamber has seen them; I most certainly have not. As part of the enabling of schedule 5, we have the ability to produce a new set of regulations. My question is this: will those new regulations be a disallowable instrument?

Senator HARRIS (Queensland) (10.47 p.m.)—Specifically in relation to schedule 5, do the government’s proposed amendments provide a nonpartner a benefit that did not exist prior to the proposed amendments?

Senator HILL (South Australia—Minister for Defence) (10.49 p.m.)—I move to page 74, under section 17B, ‘Asset thresholds for exempt foreign investments in prescribed corporations etc.—prescribed foreign investors’. At lines 9-15, item (c) says:

(c) for a corporation covered by paragraph 13(1)(d), (e) or (f) because the corporation, or another corporation or other corporations, held certain assets on a particular date—the value of those assets on that date, determined in accordance with section 13, does not exceed the amount ascertained in accordance with regulations made for the purposes of this paragraph.

Can the minister at this point in time indicate to the chamber what amount is referred to in the words ‘does not exceed the amount ascertained in accordance with regulations made for the purpose of this paragraph’.

Senator HARRIS (Queensland) (10.50 p.m.)—I thank the minister for that clarification.

Question put:
That schedule 5 stand as printed.
The committee divided. [10.57 p.m.]
(The Chairman—Senator J.J. Hogg)

Ayes............. 44
Noes.............  9
Majority........ 35

AYES
Barnett, G.  Brandis, G.H.  Buckland, G.  
Carr, K.J.  Chapman, H.G.P.  
Colbeck, R.  Collins, J.M.A.  
Conroy, S.M.  Crossin, P.M.  
Eggleston, A.  Evans, C.V.  
Faulkner, J.P.  Ferguson, A.B.  
Ferris, J.M. *  Fifield, M.P.  
Forshaw, M.G.  Heffernan, W.  
Hill, R.M.  Hogg, J.J.  
Humphries, G.  Hutchins, S.P.  
Johnston, D.  Kirk, L.  
Knowles, S.C.  Ludwig, J.W.  
Lundy, K.A.  Mackay, S.M.  
Marshall, G.  Mason, B.J.  
McLucas, J.E.  Moore, C.  
O’Brien, K.W.K.  Patterson, K.C.  
Ray, R.F.  Santoro, S.  
Scullion, N.G.  Sherry, N.J.  
Stephens, U.  Tchen, T.  
Troeth, J.M.  Watson, J.O.W.  
Webber, R.  Wong, P.  

NOES
Allison, L.F. *  Bartlett, A.J.J.  
Brown, B.J.  Cherry, J.C.  
Greig, B.  Harris, L.  
Murray, A.J.M.  Nettle, K.  

* denotes teller

Question agreed to.

Senator CONROY (Victoria) (11.01 p.m.)—I move:
That the opposition amendments be postponed.

Senator BROWN—I suspect that I might as well ask you, Chair. However, I will direct my question to the opposition. The question might be expanded from ‘why?’ to ‘hasn’t the Prime Minister yet tidied up your amendment?’ We have heard from the government—the opposition have not been in on this yet—about the delay in the chamber. There has been an absolutely excellent debate coming from the crossbench despite very little information forthcoming from the government. If you are outside this place you would not know that. In the main, from the press gallery you would think that there are two amendments that are going to change the free trade agreement to make it amenable to Australia’s interests. As Senator Ridgeway said, ‘No, that is not really true.’ There are 42 amendments required and Labor has dallied with two.

Those two amendments were announced not last week but the week before. The Prime Minister said, ‘I will take one of them on board but the other one’—and that is the one we are dealing with, pharmaceutical benefits—‘I will have to look at.’ He has been staring at it for a week. I noticed in one headline today that the Prime Minister had called Mr Latham in to deal with the matter. Whatever happened there, the fact is that the two parties—the government and the opposition—cannot get a single amendment into this chamber a week later. One Nation, the Democrats and the Greens, with our excellent but very small staff, have a raft of amendments before the chamber and are able to debate them. But Her Majesty’s opposition and the government together cannot get a single amendment in here in time for it to be debated.

Senator Ridgeway—And it’s the eleventh hour.
Senator BROWN—As Senator Ridge-way says, it is the eleventh hour and they are found wanting—all of them put together. What are Mr Howard and Mr Latham doing? They are sitting staring at each other across the table, and between the two of them they cannot get one amendment together. It is a charade. It is just silly. We are being kept here, by a vote of the Labor Party, late into Wednesday night to deal with this matter which is so important that it breaks all the rules of established sitting arrangements, which do not trespass on Wednesday night except in extraordinarily rare circumstances—before Christmas maybe.

We have had this pushed onto us by Labor saying: ‘Yes, we will vote with the government; we want to get this through. This is so important.’ And when it gets to the one amendment that the government and opposition together have worked on in this emergency situation which keeps the chamber up on Wednesday night, unscheduled until this morning, between the 60 or so of them they cannot get the amendment together. And it is not just the 60 or so of them, it is the Prime Minister and all his horses and the Leader of the Opposition and all his men and women. They cannot get an amendment into this chamber. It is a farce. We are here tonight because of politics; it is not for the good of the nation. We are here because the opposition wants to help the government get to an election. They are busting their braces to get to an election to see what will turn up.

Senator Ferris—And you’re not?

Senator BROWN—No, we have been ready for a long time. We got a three-word interjection out of the government. That is the best that we have got since I started this request on what has happened to the amendment. I might ask Senator Ferris if she can elaborate on it.

Senator Mackay—She probably can, actually.

Senator BROWN—She could, but she has a fairly hopeless look on her face, I have to say. Senators on both the government and opposition benches are shaking their heads. They are sitting there waiting for the phone to ring to get instructions from somewhere else.

Senator Greig—From America.

Senator BROWN—Thank you, Senator Greig, because I have a theory about this.

Senator Colbeck—Not another one.

Senator BROWN—Yes, and it is a pretty good one. It is called crossing the international time line. There is a time disjunction: it is night-time there when it is daytime here. I do not think the Prime Minister and the opposition leader together have quite worked that out. They cannot get the messages across to the Bush administration and back to here. They have not been able to get their amendment vetted properly yet. If you think it is the lawyers this side of the Pacific that are trying to work this out for Mr Howard and Mr Latham—wrong. It is the lawyers that side of the Pacific they have to wait on. There is this problem of time sync, or ‘dy-synchronicity’.

We are here at the behest of the opposition—because it was the opposition who gave the government the numbers—to get a piece of legislation through. The smaller parties at this end of the chamber have been able to get all their amendments put and debated thoroughly and intelligently—they were well worked out—but the opposition could not do that. What credentials to be headed for an election! They cannot put their amendments up because they might get attacked by the government. They await the pleasure of the Prime Minister. They have got to get his nod before they can bring this amendment on. It says a lot, doesn’t it?
Senator Conroy has indicated that he does not intend to proceed at this stage with his amendments. So I am in the hands of the committee. There are other amendments foreshadowed on the list, but at this stage the question that I should put is that the bill stand as printed, because no-one is moving an amendment and there are other amendments on the schedule.

Senator Hill (South Australia—Minister for Defence) (11.09 p.m.)—That is not the process that was adopted earlier tonight when there was a request to change the order. But if there is a different process to be adopted now, well and good. I am happy to move the government amendments that are on the sheet. We have had time made available to get on with the passage of these bills.

The TEMPORARY CHAIRMAN (Senator Ferguson)—As I said, I am in the hands of the committee.

Senator Hill—by leave—I move government amendments (1) and (2) on sheet QS266 together:
(1) Clause 2, page 4 (at the end of the table), add:
21. Schedule 10 The day on which this Act receives the Royal Assent.

(2) Page 163 (after line 27), at the end of the Bill, add:
Schedule 10—Broadcasting amendments

Broadcasting Services Act 1992
193 At the end of section 122
Add:

(5) The ABA must ensure that, at all times after the commencement of this subsection, there is in force under subsection (1) a standard that is, or has the same effect as, the standard in section 9 of the Broadcasting Services (Australian Content) Standard 1999 as in force on 4 August 2004.

Senator Hill—by leave—Under the FTA, Australia is able to maintain its existing 55 per cent local content quota on television programming and 80 per quota on television advertising. These provisions are subject to a ratchet provision. If they are lowered we are not able to increase them in the future. At present, local content standards are determined by the Australian Broadcasting Authority. While standards are amendable by parliament, a decision by the ABA to lower the quotas would, under the FTA, lock us into a lower regime.

Labor believe that the Australian public is entitled to an absolute guarantee that television local content quotas cannot be lowered without the consent of the parliament. Local content standards are too important to be left to the likes of David Flint. We are pleased that the government have now moved amendments which endorse Labor’s position.

Note: Section 9 of the Broadcasting Services (Australian Content) Standard 1999 deals with quotas for Australian television programs.

(6) The ABA must ensure that, at all times after the commencement of this subsection, there is in force under subsection (1) a standard that is, or has the same effect as, the standard in section 5 of Television Program Standard 23—Australian Content in Advertising as in force on 4 August 2004.

Note: Section 5 of Television Program Standard 23—Australian Content in Advertising deals with quotas for Australian television advertisements.

I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 10 August 2004.
The Senate Select Committee on the Free Trade Agreement between Australia and the United States of America, established by Labor, gave the parliament the opportunity to examine this issue in detail. Importantly, it gave the Australian people the opportunity to have their say on the FTA. Labor senators on the committee recommended that Australia’s local content standards be legislated. That was the basis for the Labor Party’s decision to make our support for the FTA conditional upon this amendment to the broadcasting act.

The government’s acceptance of this amendment is a great victory for Australian culture and will ensure that Australian faces and voices will continue to be seen and heard on television. This amendment allays community concern about any future reduction in local content standards by entrenching them in the broadcasting act. This is an important safeguard for the Australian community, and Labor will support the amendments. We have listened long and hard to the many submissions that were made during the Senate committee inquiry and to the expressions of concern about this area, and we believe that this is an appropriate mechanism to ensure that we protect Australian voices.

Senator Brown—Bunkum!

Senator Lundy (Australian Capital Territory) (11.13 p.m.)—The issue here is one of finding local content to be important enough to make the passage of this interim legislation conditional upon it. Labor reached that conclusion because, when we heard submissions through the Senate inquiry, when we took evidence and when we consulted far and wide in the Australian community, very clearly one of the greatest concerns was that we would not just lose the ability to legislate with respect to local content but we would be subject to a ratcheting down of those provisions.

That would have occurred under the legislation that we are now debating, because the wording in the agreement that the government negotiated clearly allowed for a lowering of the local content provisions in relation to commercial television and to advertising—55 per cent and 80 per cent respectively. The only way that we could prevent that ratcheting down and thereby ensure that the current levels were maintained was to put forward this amendment, which the government have accepted.

I would like to say that the fact that the government have accepted this amendment is an absolutely phenomenal concession from the Howard government that there was a problem. It was very interesting that, time after time, when I raised this issue both in and outside this chamber when we confronted the Howard government and Minister Kemp and asked them for assurances on local content, they were in fact forthcoming. The government consistently said: ‘It’s fine. Don’t worry—local content’s been preserved. It can’t be harmed; it can’t be reduced.’ And then—surprise, surprise!—when we look at the fine print, we see that it can be reduced via this ratcheting clause. This is one example of where the fine print of the free trade agreement betrayed the commitments and the rhetoric of the Howard government. It was the Labor initiated Senate inquiry process that drew out this fact, which in turn allowed Labor to move an appropriate amendment to address this particular issue.

It is worth traversing a little bit of the history of this particular amendment because, right at the start, when the Howard government started negotiating the free trade agreement, there was a clear indication from the Howard government that they would at least try to exclude cultural issues from this agreement—that they would at least have a go. On numerous occasions Senator Kemp stood up in this place, when asked by Labor,
and said, ‘Don’t you worry: culture will be just fine.’ In fact, it was not until I think Mr Vaile’s intervention—or it might even have been the Prime Minister’s—when asked towards the end of the year about local content that he implied there would be some flexibility. I have to say this sent the sector and the opposition into a new response which was, ‘Hang on a minute—they’re negotiating something different.’ The concept of a cultural exclusion clause, similar to that in the Singapore free trade agreement, clearly was not on the cards. The prospect of what was called ‘standstill’ started circulating. Standstill is effectively a freeze on the current local content provisions. Standstill was what the negotiators had already fallen back to at that point in the negotiation. We know that now, in retrospect. Standstill was effectively the position the government started to advocate—that they would allow the current local content quotas to be locked in place, albeit capped—and that was their rhetoric.

Then came the Senate inquiry, where the ratchet clause was discovered on the reading of the fine print. Let us get this clear: it was not until the government actually released the text of the free trade agreement that the truth of the ratchet clause actually became apparent. Nowhere before that was it mentioned. So it was only through that process and that insistence that the ratchet clause became apparent and led to a number of submissions reflecting on it throughout the Senate inquiry. Certainly the JSCOT formed the view that, if for some reason we were to lower those percentages in the future, that was acceptable on the basis of the terms and conditions that the Howard government had put forward. I think Labor’s attaching this condition is not only justified but has served the purpose of exposing an effort by the Howard government to specifically mislead about the effect of freezing or capping those local content provisions. That is the importance of this.

The other thing I would like to address is the role that local content plays and why it is important. One of the many reasons it is important is that we know that the economics of the purchase of content for commercial television stations now works against the production of Australian content. We know, whether it is by economies of scale or other labour market factors, that it is very difficult for Australian produced content—particularly new content—to compete with content produced in other markets. That being the case, and given that commercial television stations are not concerned with the source or origin of their content but instead with what rates—and second-hand programs and the equivalent of back catalogue in soapies can easily fill those spaces on weeknights—we know that, unless there was compulsion through these local content quotas, local content would not be produced. The local content quotas impose a rigorous discipline on our commercial television stations to make the effort to produce Australian content—Australian drama, Australian documentaries, Australian children’s shows et cetera—because without that we would not be able to see that work. We would not be able to see ourselves reflected in what we watch on our televisions.

Other jurisdictions have increasingly become aware of how important having local content, and the capacity to produce it, is to the whole sense of cultural or regional identity, particularly in the context of globalisation, which has many positive impacts as well as negative impacts. One of the important cross-references that national governments and federal governments can have is to ensure that communities have the ability to produce for themselves content that relates to their life and their life experiences. Beyond the need to do that for ourselves, I
would like to turn to a more far-sighted vision: the potential of Australian content. We need the local content provisions to make sure we have something there, but they will serve a dual purpose—they also maintain a general capability in the television and film production area. We have people with the skills, we have studios, we have commercial television stations making an effort and being required to so, and we have local talent being nurtured and provided with experience.

The far-sighted vision is that it is not just about fulfilling quotas but extending beyond that and looking towards the export opportunity that exists within the fact that Australia produces great content—not just because we have to but because it is in demand. The saddest reflection on the Howard government’s failings is that not only do they continually fail to recognise the basics, like preventing a lowering of our local content quotas, but they also forget about the potential of our film and television industry that would exist if there were a proactive strategy to invest in it as a nation. I believe that potential is great. Australian products, whether they are our drama series, our films or our short films—and we have seen recent success with *Harvie Krumpet*—are highly sought after and indeed form a critical element of the economics of sustaining our sector.

Far from being short-sighted in allowing local content to be ratcheted down, Labor’s amendment is now being supported by the government to prevent that ratcheting down. The opportunity for our content-producing sector to grow as digital technologies converge even further is there for the taking. That is why, as part of Labor’s policy statement on local content quotas, we will be putting together a package for the film and television industry. We know that there is untapped potential. That potential has been unable to be released by the Howard government, for a range of reasons—not least because of the downturn being experienced in, and the lack of attention being paid at a policy level to, the film and television sector but also because of other decisions that date back a few years relating to digital television, the lack of investment paid to the ICT sector and digital content production generally. It was only last year that the government discovered digital content and wrote an action agenda. It was about five years after the moment, although it was good to see that they finally acknowledged it existed.

We have gone through a dotcom boom period where every other developed country in the world mapped out a substantial plan for the future of their content and how they were going to build it within their own communities and seek export opportunities. Australia under the Howard government languished and did little to create an economic, cultural and social opportunity. This is the environment in which this free trade agreement has been negotiated. In this environment we will not now be able to expand those local content quotas. In this environment it will be a future Labor government that seeks to shore up the capability of putting local content quotas on the media, another area of neglect by the Howard government that we have identified. Why would you allow that sort of ambiguity in new media, when Labor know that new media is a big part of our future export opportunities in the production of content?

All of these issues form part of the challenge. That is why in moving this amendment Labor have not only exposed the Howard government’s trickiness and deceitfulness in allowing that downward ratchet clause but also identified the need to put in place a sure-fire mechanism to allow us to legislate for local content quotas in a variety of new media. It is hard to define, because
we do not know what those technologies will be. But should that fact alone prevent this parliament and a future Labor government from having the right to legislate to ensure that Australian content has a presence in those forms of media? I do not think so. We should have that right, and we have identified that as part of our plan. This local content debate has shown that the Howard government do not really care about it. They did not care enough to remove the ratchet clause. They did not care enough when they negotiated this agreement to make the exclusion of cultural content a high priority. It has been left up to Labor to fill in the gaps and fix this problem.

Senator HILL (South Australia—Minister for Defence) (11.27 p.m.)—I thank the Labor Party for their support for the government’s amendments. In negotiating the agreement the government successfully maintained the capacity to require Australia’s content quotas for free-to-air television. It is true that the Joint Standing Committee on Treaties recommended in its report that the government amend the Broadcasting Services Act to incorporate those elements of the Australian content requirements that are subject to the ratchet mechanism to ensure that they cannot be reduced in the future except through a deliberative decision of parliament. The government obviously reflected on this further and decided to accept that advice. The proposed amendments therefore amend the Broadcasting Services Act to incorporate those elements of the Australian content requirements that are subject to the ratchet mechanism to ensure that they cannot be reduced in the future except through a deliberative decision of parliament. The government obviously reflected on this further and decided to accept that advice. The proposed amendments therefore amend the Broadcasting Services Act 1992 to require the Australian Broadcasting Authority to maintain the current 55 per cent Australian content quota for television programs and the 80 per cent Australian content quota for advertising. Any reduction of those levels will therefore require a decision by the parliament.

The current levels have been in place since 1998. The government is committed to the current local content rules and is not considering any change to the existing levels. As I said, the amendment commits to legislation those parts of the Australian content standards subject to the ratchet mechanism. It also ensures that the 55 per cent and 80 per cent content quotas can never be reduced without parliament’s agreement. All of the other protections that were not subject to the ratchet mechanism are otherwise protected, which I think is not in dispute.

Question agreed to.

Senator HILL (South Australia—Minister for Defence) (11.30 p.m.)—I understand the Australian Democrats do not wish to move their further amendments tonight. In those circumstances I think we will give the chamber a half-hour break because I suspect that tomorrow is going to be a particularly long and challenging day.

Progress reported.

Senator HILL (South Australia—Minister for Defence) (11.31 p.m.)—I move:

That the committee have leave to sit again on the next day of sitting.

Question agreed to.

Senate adjourned at 11.32 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:


Customs Act 1901—Report for 2003-04 under subsection 233(6) on the conduct of customs officers under subsection 233(3A) of the Act.

Tabling

The following documents were tabled by the Clerk:

Civil Aviation Act—Civil Aviation Safety Regulations—Airworthiness Directives—Part—

107, dated 15 and 20 July 2004.

Customs Act—Approval No. TMRO 2004/1.

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Environment: Port Botany Container Terminal
(Question No. 3052)

Senator Brown asked the Minister for the Environment and Heritage, upon notice, on 30 June 2004:

With reference to the proposed expansion of the Port Botany Container terminal:

(1) (a) What has the Government done to assess the impact of this proposal on the nearby Ramsar site at Towra Point; and (b) what is the relationship between this site and the Penrhyn Estuary area.

(2) (a) What is the potential impact of the proposal on the Botany Wetlands and their wildlife, including species listed as rare or endangered or listed on treaties concerning international migratory birds; and (b) what are those species.

(3) (a) What is the process under which the Government will assess the proposal; and (b) what is the timetable for the assessment.

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

(1) (a) The proposed Port Botany expansion requires Commonwealth approval under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). The potential impacts of the proposal on the Ramsar wetland located at the Towra Point Nature Reserve on the southern shore of Botany Bay will be considered as part of the environmental impact assessment process.

(b) Penrhyn Estuary, located directly adjacent to the proposed port expansion area, provides feeding and roosting areas for migratory shorebirds listed under the EPBC Act. Many shorebird species known to occur in the Penrhyn Estuary area are also found at the Towra Point Nature Reserve.

(2) (a) The potential impacts of the proposal on the Towra Point Nature Reserve and listed migratory shorebirds are currently being assessed.

(b) Species of migratory shorebirds that are listed under the EPBC Act and are being considered in the assessment include:

<table>
<thead>
<tr>
<th>Curlew Sandpiper</th>
<th>Common Sandpiper</th>
<th>Eastern Curlew</th>
</tr>
</thead>
<tbody>
<tr>
<td>Curlew Sandpiper</td>
<td>Common Sandpiper</td>
<td>Eastern Curlew</td>
</tr>
<tr>
<td>Sanderling</td>
<td>Sharp-tailed Sandpiper</td>
<td>Great Knot</td>
</tr>
<tr>
<td>Greenshank</td>
<td>Grey-tailed Tattler</td>
<td>Bar-tailed Godwit</td>
</tr>
<tr>
<td>Black-tailed Godwit</td>
<td>Broad-billed Sandpiper</td>
<td>Marsh Sandpiper</td>
</tr>
<tr>
<td>Red Knot</td>
<td>Red-necked Stint</td>
<td>Ruddy Turnstone</td>
</tr>
<tr>
<td>Terek Sandpiper</td>
<td>Whimbrel</td>
<td>Little Tern</td>
</tr>
<tr>
<td>Grey Plover</td>
<td>Pied Oystercatcher</td>
<td>Double-banded Plover</td>
</tr>
<tr>
<td>Pacific Golden Plover</td>
<td>Mongolian (Lesser) Sand Plover</td>
<td>Large (Greater) Sand Plover</td>
</tr>
</tbody>
</table>

(3) (a) The New South Wales Government’s Environmental Impact Statement (EIS) process described in the NSW Environmental Planning and Assessment Act 1979 has been accredited for EPBC Act assessment purposes to streamline the assessment process as both EPBC Act and New South Wales State Government approvals are required. Upon completion of the NSW assessment process, the NSW Government will provide a report on its assessment of the environmental impacts of the proposal to the Commonwealth that will be taken into account in deciding whether to approve the proposal under the EPBC Act.

(b) The timetable for assessment of the Port Botany expansion proposal under the EPBC Act is dependent upon the completion of the NSW assessment process.
Environment: Renewable Energy

(Question No. 3061)

Senator Brown asked the Minister for the Environment and Heritage, upon notice, on 5 July 2004:

With reference to the Minister’s media release of 25 June 2004, which refers to a cost of $40 billion if Mandatory Renewable Energy Targets (MRETs) are increased to 10 per cent by 2010 and 20 per cent by 2020:

(1) (a) What is the source of this figure; and (b) if the source is a report, can a copy be provided.
(2) What evidence is there that increased MRETs would plunge Australia’s energy resources and economy into crisis.
(3) Does the Minister endorse the claims made by Senator Abetz that increased MRETs would cost 113 000 jobs nationwide and 2400 jobs in Tasmania; if so: (a) what is the source of the figures quoted by Senator Abetz; and (b) if the source is a report, can a copy be provided.

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

(1) (a) and (b) The economic modelling undertaken as part of the Tambling Review of the operation of the Renewable Energy (Electricity) Act 2000, which enacts the Mandatory Renewable Energy Target (MRET), demonstrates the significant economic costs of the measure, particularly for higher targets. The government did not analyse the economic impacts of a target increase to 10 percent by 2010 and 20 percent by 2020. However, extrapolation of modelling of impacts of the current target and other possible targets indicates that Senator Brown’s proposal would cost in the order of $40 billion.

(2) The Government has decided not to increase the target to 20,000 gigawatt hours as proposed by the MRET Review Panel. While providing a subsidised growth path for renewable energy, this would impose significant economic costs through higher electricity prices. A much larger target of 10 percent by 2010 and 20 percent by 2020, as proposed by Senator Brown, would substantially increase the burden on electricity users, with potentially significant negative economic impacts.

(3) Economic analysis carried out for the Tambling review of MRET clearly shows that higher MRET targets would lead to higher electricity prices, thereby increasing the burden on industry and resulting in lower GDP growth and lower employment growth. Projections of foregone future employment would depend on the size of target chosen and a range of other analytic assumptions. I encourage Senator Brown to address to Senator Abetz any questions relating to employment figures ascribed to Senator Abetz.

Drugs: Postinor-2

(Question No. 3066)

Senator Allison asked the Minister representing the Minister for Health and Ageing, upon notice, on 8 July 2004:

(1) What data, if any, is collected concerning the use of emergency contraceptive, Postinor 2.
(2) Is evidence being collected or research being conducted to assess: (a) the use of emergency contraception for avoiding unwanted pregnancies; and (b) the current effectiveness of emergency contraception as a means of avoiding medical abortions.
(3) What role does the Government consider emergency contraception to have in reducing: (a) unwanted pregnancies; (b) medical abortions; and (c) health costs in Australia.
(4) What efforts, if any, has the Government made to provide information to women about the use of emergency contraception.
QUESTIONS ON NOTICE

(5) What evidence is available to indicate whether women in Australia are well-informed about the use of emergency contraception as a means of avoiding abortion.

(6) What evidence is available concerning the extent to which cost and access are barriers to the use of emergency contraception.

(7) (a) What are the Government’s policy objectives for reducing the current abortion rate of one in four pregnancies; and (b) how will these objectives be met.

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

(1) The Department does not collect data on the use of the emergency contraceptive, Postinor-2. Additionally, the Department is not aware of such information being available in the public domain.

(2) (a) and (b) The Therapeutic Goods Administration (TGA) has independently assessed information on the use of levonorgestrel alone as a method of emergency contraception in the form of Postinor-2. The product’s sponsor submitted a package of information as part of the registration application for Postinor-2, which was initially made available in Australia on prescription on the advice of the expert Australian Drug Evaluation Committee. The sponsor’s package included reports of a number of clinical studies in women. Additionally, the National Drugs and Poisons Schedule Committee considered an evaluation of an additional submission from the product’s sponsor when it recommended the change from ‘Prescription Only Medicine’ to ‘Pharmacist Only Medicine’ for Postinor-2.

(3) (a) and (b) The Government supports the provision of a range of safe, affordable and accessible family planning services, including the option of emergency contraception, in order to reduce unplanned pregnancies and termination of pregnancies in Australia.

(4) The Government has not actively provided Australian women with information on the use of emergency contraception. Information for women is available through a range of options, such as through family planning organisations, general practitioners and community pharmacies. Additionally, information on the appropriate use of Postinor-2 is provided in the Consumer Medicine Information document.

(5) The Department is not aware of any available evidence that has investigated Australian women’s knowledge of emergency contraception.

(6) The Department is not aware of evidence on the barriers to the use of emergency contraception.

(7) (a) and (b) To reduce unplanned pregnancies and terminations of pregnancy in Australia, the Government funds the Family Planning Program to provide safe, affordable and accessible family planning services and a broad range of sexual and health education strategies that promote responsible sexual behaviour, rather than a focus on one particular strategy or program of action.

Weather: Endangered Species

(Question No. 3068)

Senator Bartlett asked the Minister for the Environment and Heritage, upon notice, on 9 July 2004:

(1) Is the Minister aware of plans by Taronga, Melbourne and Auckland zoos to import up to nine endangered Thai elephants for display and captive breeding.

(2) Do both Taronga and Melbourne zoos already have Asian elephants for exhibit.

(3) Are there any examples in Australia of the successful breeding of captive Asian elephants.

(4) Given that the elephant exhibit at Detroit Zoo closed because staff considered that no zoo can adequately cater for elephants, what assurances can the Minister provide that Taronga and Melbourne...
zoos have in the past, and will in the future, be able to provide for the behavioural and biological needs of elephants.

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

(1) Yes.
(2) Yes.
(3) No.
(4) The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) requires the proposed recipient zoos to demonstrate that they are able to meet the behavioural and biological needs of the elephants, that imported animals have been appropriately and legally sourced and that, if imported, they be part of an approved Co-operative Conservation Program. The Department is currently undertaking a careful and comprehensive assessment of the applications to import elephants to ensure that all Convention on International Trade in Endangered Species and EPBC Act requirements are met.

Medicare
(Question No. 3081)

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

(1) When will the roll-out of Medicare smartcards commence.
(2) Have the states’ and territories’ health ministers approved the draft National Health Privacy Code; if so, when; if not, when is this expected to occur.
(3) What progress has been made on developing mandatory national guidelines for ensuring privacy in relation to health information.
(4) What progress, if any, has been made on preparing specific e-health legislation to set out the rules governing initiatives such as the Medicare smartcards.
(5) What information will be provided to consumers participating in the Medicare smartcard initiative.
(6) Will the roll-out of Medicare smartcards be bound by the National Health Privacy Code and specific e-health legislation to ensure that individuals’ rights to privacy are safeguarded; if not, what legislation or regulations will ensure that individuals’ rights to privacy are safeguarded under this initiative.

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

(1) Implementation of the Medicare smartcard commenced on 29 May 2004. The official launch of the Medicare smartcard was held on Wednesday 28 July in Launceston, Tasmania.
(2) No, the Australian Health Ministers have not yet approved the proposed National Health Privacy Code. Health Ministers will consider the Code at their November 2004 meeting.
(3) The Information Privacy Principles and the National Privacy Principles in the Privacy Act 1988 outline mandatory requirements to ensure privacy in relation to all personal information, including health information, in the Australian Government sector and the private sector nationally. Most states and territories also have privacy arrangements (either legislative or administrative) in place for their public sectors. The proposed National Health Privacy Code is intended to provide health-specific privacy principles which, if adopted, would ensure a nationally consistent privacy regime for health information across Australia.
(4) The use of the Medicare smartcard as proposed does not require specific legislation. The Department is consulting with the Office of the Federal Privacy Commissioner to ensure that appropriate privacy safeguards are in place.

(5) Consumers in Tasmania will be invited via letter from the Health Insurance Commission (HIC) to register for a Medicare smartcard three months before their current Medicare card expires. As part of the invitation, consumers will be sent a brochure and some frequently asked questions and answers detailing the Medicare smartcard initiative.

The brochure and frequently asked questions will also be available in all Tasmanian Medicare offices as well as at www.Medicare.gov.au/smartcard/

In addition to the brochure and frequently asked questions, the Medicare enrolment and/or Medicare smartcard registration form used to enrol consumers for a Medicare smartcard contains information detailing privacy and security issues.

(6) The National Health Privacy Code is still to be agreed by Health Ministers. The roll-out of the Medicare smartcard is subject to privacy arrangements contained in existing legislation. Both the Health Insurance Commission and the Department of Health and Ageing are subject to the Information Privacy Principles contained in the Privacy Act 1988 as well as the secrecy provisions contained in the National Health Act 1953 and the National Health Insurance Act 1973. Private sector health care organisations are bound by the National Privacy Principles contained in the Privacy Act 1988, including restrictions on the collection, use and disclosure of Commonwealth assigned identifiers.

Health: Pharmaceutical Benefits Scheme
(Question No. 3082)

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

In the period since smoking cessation counselling was made a requirement for the prescription of Zyban under the Pharmaceutical Benefits Scheme:

(1) By month, how many Zyban prescriptions have been filled.

(2) In how many instances has counselling been conducted by the prescribing general practitioner.

(3) In how many instances has counselling been provided by GlaxoSmithKline – the ‘SMOKE FREE Clean Start’ program.

(4) In how many instances has counselling been provided by ‘Quit’ programs.

(5) How many and which other counselling programs have been provided.

(6) Can data be provided indicating the success of each counselling option in helping people to stop smoking; if not, why not.

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

(1) Attachment 1 provides a month by month breakdown, for the period February 2001 to June 2004, for the number of Zyban prescriptions which have been filled since smoking cessation counselling was made a requirement for the prescription of Zyban under the Pharmaceutical Benefits Scheme (PBS). This information is also available at HIC’s website – www.hic.gov.au. (Note 8465M is the Pharmaceutical Benefits Scheme and 8710K is the Repatriation Pharmaceutical Benefits Scheme.)

(2) The restriction for Zyban requires the patient to indicate that they are ready to cease smoking, and that they have entered a comprehensive support and counselling program. Authority approval would not be given to prescribe Zyban as a PBS benefit unless the prescriber indicated that the patient had taken this course of action.
As part of the authority approval process, the HIC asks the prescriber whether or not the patient has entered into a comprehensive support and counselling program. If the prescriber indicates yes, then the approval authority is granted by the HIC.

Therefore, the number of authority approvals that have been provided by the HIC corresponds to the number of prescriptions, which have been prescribed.

(3) GlaxoSmithKline advise that the rate of patients who are prescribed Zyban who then go on to enrol in the “SMOKE FREE Clean Start” program is approximately 30% which has increased since the change in pack arrangements (which replaced a single prescription for 120 tablets by two prescriptions, the first being for 30 tablets and the second for 90 tablets).

(4) Quit Victoria collates data on the number of calls received by State and Territory Quitlines. It should be noted that this is not necessarily people wishing to speak to a counsellor, as it may represent a call to request a ‘quit pack’. Since February 2001 approximately 259,939 calls have been made to the Quitline. During this time there was a change in the service provider and for several months there was no data collected or incomplete data.

(5) No data on other counselling services are collected at a national level. Other counselling services include a wide range of private psychological and other services.

(6) No, as there is no database maintained at a national level from which this information can be drawn.

Attachment 1

Zyban prescriptions processed - February 2001 to June 2004

<table>
<thead>
<tr>
<th>Item</th>
<th>Month</th>
<th>Total PBS Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>8465M</td>
<td>Feb-01</td>
<td>20,122</td>
</tr>
<tr>
<td></td>
<td>Mar-01</td>
<td>93,231</td>
</tr>
<tr>
<td></td>
<td>Apr-01</td>
<td>51,538</td>
</tr>
<tr>
<td></td>
<td>May-01</td>
<td>71,433</td>
</tr>
<tr>
<td></td>
<td>Jun-01</td>
<td>38,058</td>
</tr>
<tr>
<td></td>
<td>Jul-01</td>
<td>23,054</td>
</tr>
<tr>
<td></td>
<td>Aug-01</td>
<td>14,139</td>
</tr>
<tr>
<td></td>
<td>Sep-01</td>
<td>10,598</td>
</tr>
<tr>
<td></td>
<td>Oct-01</td>
<td>9,870</td>
</tr>
<tr>
<td></td>
<td>Nov-01</td>
<td>9,019</td>
</tr>
<tr>
<td></td>
<td>Dec-01</td>
<td>6,924</td>
</tr>
<tr>
<td></td>
<td>Jan-02</td>
<td>7,840</td>
</tr>
<tr>
<td></td>
<td>Feb-02</td>
<td>9,207</td>
</tr>
<tr>
<td></td>
<td>Mar-02</td>
<td>9,960</td>
</tr>
<tr>
<td></td>
<td>Apr-02</td>
<td>8,726</td>
</tr>
<tr>
<td></td>
<td>May-02</td>
<td>9,949</td>
</tr>
<tr>
<td></td>
<td>Jun-02</td>
<td>8,680</td>
</tr>
<tr>
<td></td>
<td>Jul-02</td>
<td>8,764</td>
</tr>
<tr>
<td></td>
<td>Aug-02</td>
<td>7,208</td>
</tr>
<tr>
<td></td>
<td>Sep-02</td>
<td>7,005</td>
</tr>
<tr>
<td></td>
<td>Oct-02</td>
<td>6,438</td>
</tr>
<tr>
<td></td>
<td>Nov-02</td>
<td>5,766</td>
</tr>
<tr>
<td></td>
<td>Dec-02</td>
<td>5,310</td>
</tr>
<tr>
<td></td>
<td>Jan-03</td>
<td>5,051</td>
</tr>
<tr>
<td></td>
<td>Feb-03</td>
<td>5,500</td>
</tr>
<tr>
<td></td>
<td>Mar-03</td>
<td>6,015</td>
</tr>
<tr>
<td>Item</td>
<td>Month</td>
<td>Total PBS Services</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Apr-03</td>
<td>5,370</td>
<td></td>
</tr>
<tr>
<td>May-03</td>
<td>5,567</td>
<td></td>
</tr>
<tr>
<td>Jun-03</td>
<td>6,117</td>
<td></td>
</tr>
<tr>
<td>Jul-03</td>
<td>5,973</td>
<td></td>
</tr>
<tr>
<td>Aug-03</td>
<td>5,505</td>
<td></td>
</tr>
<tr>
<td>Sep-03</td>
<td>5,316</td>
<td></td>
</tr>
<tr>
<td>Oct-03</td>
<td>5,523</td>
<td></td>
</tr>
<tr>
<td>Nov-03</td>
<td>4,967</td>
<td></td>
</tr>
<tr>
<td>Dec-03</td>
<td>4,988</td>
<td></td>
</tr>
<tr>
<td>Jan-04</td>
<td>4,349</td>
<td></td>
</tr>
<tr>
<td>Feb-04</td>
<td>6,065</td>
<td></td>
</tr>
<tr>
<td>Mar-04</td>
<td>7,497</td>
<td></td>
</tr>
<tr>
<td>Apr-04</td>
<td>7,259</td>
<td></td>
</tr>
<tr>
<td>May-04</td>
<td>6,516</td>
<td></td>
</tr>
<tr>
<td>Jun-04</td>
<td>6,698</td>
<td></td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td>547,115</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Month</th>
<th>Total PBS Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>8710K</td>
<td>Feb-04</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Mar-04</td>
<td>1,743</td>
</tr>
<tr>
<td></td>
<td>Apr-04</td>
<td>3,381</td>
</tr>
<tr>
<td></td>
<td>May-04</td>
<td>3,583</td>
</tr>
<tr>
<td></td>
<td>Jun-04</td>
<td>3,464</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td>12,183</td>
</tr>
</tbody>
</table>