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Thursday, 12 August 2004

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

PETITIONS

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

Trade: Live Animal Exports

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

This petition of the undersigned citizens of Australia draws to the attention of the Senate the stress and extreme suffering caused to cattle, sheep and goats during their assembly, land transportation and loading in Australia, shipment overseas, and then unloading and local transportation, feedlotting, handling, and finally slaughter without stunning in importing countries.

Further, we ask the Senate to note that heat stress, disease, injury, inadequate facilities, inadequate supervision and care, and incidents such as on board fires, ventilation breakdowns, storms and rejection of shipments contribute to high death rates each year, e.g. 73,700 sheep and 2,238 cattle died on board export ships in 2002. Many thousands more suffer cruel practices prior to scheduled slaughter.

We the undersigned therefore call upon the Senate to establish an inquiry into all aspects of live animal exports from Australia, with particular reference to animal welfare, to be conducted by the Senate’s References Committee on Rural and Regional Affairs and Transport.

by Senator Bartlett (from 6,831 citizens).

Trade: Live Animal Exports

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

We, the undersigned demand the halt to live animal export to any country with animal welfare laws of inferior standards than Australian animal welfare laws.

We ask the Senate to be aware of the high death rates each year (73,000 sheep and 2,238 cattle died on board export ships in the year 2002) due to disease, injury, heat stress, inadequate supervision, care and facilities, fires on board, ventilation breakdowns and occasional rejection of shipments.

We, the undersigned call upon the Senate to establish an inquiry into all aspects of live animal exports from Australia, with particular reference to animal welfare, to be conducted by the Senate’s References Committee on Rural and Regional Affairs and Transport.

by Senator Bartlett (from 987 citizens).

Defence: Involvement in Overseas Conflict Legislation

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

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

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

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

by Senator Bartlett (from 13 citizens).

Trade: Live Animal Exports

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

This petition of undersigned citizens of Australia calls on the Australian government to end the export of live animals from Australia to the Middle East.

Australia has strict laws to protect the welfare of animals—based on sound scientific research and community expectation. It is therefore ethically
and morally unacceptable to export Australian animals long distances to countries where they will endure practices and treatment that would be unacceptable or illegal in Australia.

We, the undersigned therefore call on the Australian government to end this trade and in doing so restore Australia’s reputation as a compassionate and ethical nation.

by **Senator Bartlett** (from 2,135 citizens).

**Medicare: Services**

To the Honourable President and Senators assembled in Parliament the Petition of the undersigned draws to the attention of the Senate:

- That the City of Palmerston is the fastest growing city in Australia with a current population of more than 40,000 persons.
- That Medicare is a valued service of the community and the ability to access this service is vital for all people within the City of Palmerston.
- There is no Medicare office within the boundaries of the city.
- The nearest Medicare offices for persons within the City of Palmerston are in Darwin and Casuarina, located 20kms away.

Your petitioners believe that not having a Medicare Office within the boundaries of the City of Palmerston persons are being deprived of this important and vital service and urge the Senate to immediately request the Minister consider a Medicare office for the City of Palmerston.

by **Senator Crossin** (from 2,580 citizens).

**Workplace Relations: Paid Maternity Leave**

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

We the undersigned citizens believe that paid maternity leave is a workplace entitlement for Australian women. It overcomes the disadvantage and inequity women face as a result of the biological imperative for women to break from the workforce when they have a child.

We recognise that the International Labour Organisation (ILO) Convention 183 on Maternity Protection provides women with the right to 14 weeks paid maternity leave and Australia is now one of only two OECD countries without a national scheme of paid maternity leave.

Your petitioners request that the Senate should at the earliest opportunity pass legislation to provide a national system of Government-funded paid maternity leave which provides at least a 14 week payment for working women at least at the minimum wage, with the ability to be topped up to normal earnings at the workplace level with minimal exclusions of any class of women.

by **Senator Stott Despoja** (from 20 citizens).

**Education: Educational Textbook Subsidy Scheme**

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

The Petition of the undersigned draws to the attention of the Senate, concerns that the expiration of the Educational Textbook Subsidy Scheme on June 30 will lead to an eight percent increase in the price of textbooks, which will further burden students and make education less accessible.

Your petitioners believe:

(a) a tax on books is a tax on knowledge;
(b) textbooks—as an essential component of education—must remain GST free;
(c) an increase in the price of textbooks will price many students out of education, particularly those students from disadvantaged backgrounds; and,
(d) the Educational Textbook Subsidy Scheme should be extended past June 30.

Your petitioners therefore request the Senate act to extend the Educational Textbook Subsidy Scheme indefinitely.

by **Senator Stott Despoja** (from 950 citizens).

**NOTICES**

**Presentation**

**Senator Greig** to move on the next day of sitting:

That the Senate—
(a) recalls that on 2 December 2002, a proposed agreement between Australia and the United States of America (US), pursuant to which Australia would agree not to surrender US nationals to the International Criminal Court without the consent of the US (the proposed agreement) was referred to the Joint Standing Committee on Treaties for inquiry and report;

(b) notes correspondence from the secretary of the committee to the Clerk of the Senate, dated 16 July 2003, which:
(i) stated that ‘as far as the Committee is aware, there is no such proposed agreement’ and that it had ‘therefore decided to defer commencing the inquiry into the matter referred until the text of such an agreement is made available to the Committee’, and
(ii) however, acknowledged that ‘the Committee is empowered to inquire into any question relating to a treaty or other international agreement, whether or not negotiated to completion, referred to the Committee by either House’;

(c) further notes:
(i) the report on ABC Radio’s PM program of 28 August 2002, that the US had written to the Australian Government, requesting it to enter into the proposed agreement and that, according to the Minister for Foreign Affairs, the Government was ‘sympathetic’ to the request,
(ii) the report on Network Nine’s Sunday program of 8 September 2002, in which the then Attorney-General indicated that the US had requested Australia to enter into the proposed agreement and that the Australian Government had no objection to the proposed agreement, and
(iii) evidence from Department of Foreign Affairs and Trade officials on 19 February 2004 that negotiations with the US were ongoing and that, at that time, the most recent meeting had been in December 2003; and

(d) calls on the committee to commence the inquiry into the proposed agreement as soon as practicable and report to the Senate no later than 20 December 2004.

Senator Bartlett to move, four sitting days after today:

That Schedule 1 to the Migration Amendment Regulations 2004 (No. 5), as contained in Statutory Rules 2004 No. 223 and made under the Migration Act 1958, be disallowed.

Senator Bartlett to move, three sitting days after today:


Senator TCHEN (Victoria) (9.31 a.m.)—On behalf of the Standing Committee on Regulations and Ordinances, I give notice that 15 sitting days after today I shall move:
1. That the Broadcasting Services (Events) Notice (No. 1) 2004 made under subsection 115(1) of the Broadcasting Services Act 1992, be disallowed.
2. That the Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 1) made under subsection 5(1) of the Military Superannuation and Benefits Act 1991, be disallowed.

I seek leave to incorporate in Hansard a short summary of the matters raised by the committee.

Leave granted.

The document read as follows—

Broadcasting Services (Events) Notice (No. 1) 2004

The Notice revokes and remakes the pay TV antisiphoning list to apply until 31 December 2005,
and provides a revised anti-siphoning list to apply from 1 January 2006 to 31 December 2010. The Committee has written to the Minister seeking further advice on the following matters.

First, the list in Schedule 1 (which applies until 31 December 2005) does not refer to the 2004 Olympic Games. The Committee notes that future Olympic Games do appear in the second list in Schedule 2. Secondly, the Explanatory Statement indicates that the list in Schedule 2 (which applies from 1 January 2006 to 31 December 2010) removes Australian Football League State of Origin matches from the anti-siphoning list. In fact, these matches are included in the list. The item which appears to have been removed from the list of Rugby League Football events is “Any other match involving the senior Australian representative team selected by the Australian Rugby League, whether played in Australia or overseas”.

Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 1)

This amendment to the Trust Deed provides for the introduction of family law superannuation splitting provisions for the scheme members and their former spouses. New rule 88 applies where a person who has an associate benefit dies. Where that person is survived by more than one spouse and/or child, rule 88 provides for the payment of the benefit to those spouses and/or children. The rule does not indicate whether such payments are to be in equal shares, or whether this is a matter for the discretion of the Military Superannuation and Benefits Board of Trustees. A similar point arises in connection with rule 39, which is amended by this instrument. The Committee has written to the Minister seeking advice on this matter.

BUSINESS

Rearrangement

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

That government business order of the day No. 10, Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002, be considered from 12.45 pm till not later than 2 pm today.

Question agreed to.

Rearrangement

Senator RIDGEWAY (New South Wales) (9.32 a.m.)—by leave—I move:

That business of the Senate order of the day no. 1, relating to the presentation of the report of the Rural and Regional Affairs and Transport Committee on rural water usage, be postponed till a later hour.

Question agreed to.

Rearrangement

Senator HUTCHINS (New South Wales) (9.33 a.m.)—by leave—I move:

That business of the Senate order of the day no. 5, relating to the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on the performance of government agencies in the assessment and dissemination of security threats in South East Asia in the period 11 September 2001 to 12 October 2002, be postponed till a later hour.

Senator BROWN (Tasmania) (9.33 a.m.)—This matter is of considerable interest. I presume that by postponing it until later in the day the mover of the motion has a time in mind. It would be helpful to senators who participated in the committee and I am sure to other people taking an interest in this matter if we could have an indication as to when the ‘later hour of the day’ is thought to be.

Senator Hutchins—I understood it to be some time after question time. That was my understanding.

Senator Brown—I would question that a little further. There are other motions listed on the business sheet which say we may be sitting all night. If the report is to be presented after question time I will support the motion, but if it is to be some time later in the evening I want to know when so that I
can make a determination as to whether we should support the motion.
Question agreed to.

Rearrangement

Senator HUTCHINS (New South Wales) (9.35 a.m.)—by leave—I move:

That business of the Senate order of the day no.7, relating to the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on current health preparation arrangements for the deployment of Australian Defence Forces overseas, be postponed till a later hour.

Senator BROWN (Tasmania) (9.35 a.m.)—As with the last motion, I think we need to know when the report is to be presented. Everybody is very busy in here. We have important legislation. We have a jam-packed schedule. It is not fair that we are having motions put to us which simply say ‘a later hour of the day’. I will have a talk with Senator Hutchins in a short while about the Bali inquiry, but I think we need to have it established when this ‘later hour of the day’ is so that we can be properly prepared for it and able to feed into it. I was expecting that these reports would be presented now. If they are being put off to a later hour of the day then I think it is unfair to the Senate that that later hour is not specified when this is, presumably, the last day of sitting and a lot of important matters are coming up. It would be good if Senator Hutchins could tell the Senate what the expected later hour of the day is. If it is after question time, I presume that means 3.30 p.m. But, if it is to drift off further into the evening, we need to know so we can have a debate about it.

Senator HUTCHINS (New South Wales) (9.36 a.m.)—I have been advised by one of the powers that be that we are looking at a period between ministerial statements and government responses. I have got to say that there has been a delay in the other report because of commentary coming in and not from the major parties. That is when I understand we will be discussing it.

The PRESIDENT—My understanding is that the reports will be presented as soon as they are available. I do not know any more than that.

Question agreed to.

COMMITTEES

Economics Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (9.37 a.m.)—by leave—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I move:

That the time for the presentation of the following reports of the Economics Legislation Committee be extended to 30 August 2004:

(a) provisions of the Textile, Clothing and Footwear Strategic (Investment Program Amendment (Post-2005 Scheme) Bill 2004 and a related bill; and

(b) Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 2) [Statutory Rules 2004 No. 84]

Question agreed to.

WOMEN: DOMESTIC VIOLENCE

Senator ALLISON (Victoria) (9.39 a.m.)—I move:

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 part-
ner 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.

Question agreed to.

EDUCATION: HIGHER EDUCATION CONTRIBUTION SCHEME

Senator STOTT DESPOJA (South Australia) (9.39 a.m.)—I move:
That the Senate—
(a) notes that 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 finding 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.

Question agreed to.

FOREIGN AFFAIRS: SUDAN

Senator STEPHENS (New South Wales) (9.39 a.m.)—I move:
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; and

(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.

Question agreed to.

COMMITTEES

Rural and Regional Affairs and Transport References Committee

Extension of Time

Senator FERRIS (South Australia) (9.40 a.m.)—At the request of the Chair of the Rural and Regional Affairs and Transport References Committee, Senator Ridgeway, I move:

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.

Question agreed to.

Rural and Regional Affairs and Transport References Committee

Extension of Time

Senator FERRIS (South Australia) (9.40 a.m.)—At the request of the Chair of the Rural and Regional Affairs and Transport References Committee, Senator Ridgeway, I move:

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.

Question agreed to.

ELGIN MARBLES

Senator RIDGEWAY (New South Wales) (9.40 a.m.)—I move:

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.

Question agreed to.

EDUCATION: HIGHER EDUCATION CONTRIBUTION SCHEME

Senator STOTT DESPOJA (South Australia) (9.41 a.m.)—I move:

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 underfunding 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.

Question agreed to.

BUSINESS

Consideration

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (9.41 a.m.)—I 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.

Question agreed to.

PARLIAMENTARY ZONE

Approval of Works

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (9.42 a.m.)—I move:

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

Question agreed to.

IMMIGRATION: DETAINEES

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.42 a.m.)—I move:

That the Senate—

(a) notes that:

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

(ii) the ruling showed that there is a lack of any statutory provisions for stateless people within the jurisdiction of Australia, resulting in the possibility of lifetime detention for any stateless person who was not granted a protection visa but cannot be deported to any other country, and
(iii) the ruling also showed that there is a lack of legislation relating to conditions of administrative detention that must be met for that detention to remain lawful; and

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

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

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

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

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

Question put.

The Senate divided. [9.46 a.m.]

(The President—Senator the Hon. Paul Calvert)

AYES

Noes.…………… 43

Majority……….. 32

AYES

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

NOES

Boswell, R.L.D.
Buckland, G.
Campbell, G.
Chapman, H.G.P.
Crossin, P.M.
Eggleston, A.
Ferguson, A.B.
Fifth, M.P.
Harris, L.
Hogg, J.J.
Hutchins, S.P.
Kirk, L.
Lightfoot, P.R.
Macdonald, J.A.L.
Marshall, G.
McGauran, J.J.J.
Moore, C.
Ray, R.F.
Scullion, N.G.
Tchen, T.
Watson, J.O.W.
Wong, P.

* denotes teller

Question negatived.

JAMES HARDIE INDUSTRIES:
COMPENSATION

Senator NETTLE (New South Wales) (9.50 a.m.)—I move:

That the Senate—

(a) notes:

(i) that James Hardie Industries was a significant producer of asbestos products in Australia, and

(ii) preliminary reports that James Hardie Industries may have deliberately under-funded its compensation scheme and moved its headquarters offshore to avoid or minimise its future compensation liabilities;

(b) calls on the Government to:

(i) take all possible steps to ensure that James Hardie Industries pays full and fair compensation to the victims or the families of victims injured or killed by the asbestos products that James Hardie Industries produced, and
(ii) join local councils in boycotting all James Hardie Industries products and services until it is satisfied that all of James Hardie Industries’ current and future compensation liabilities are met; and

(c) calls on all political parties to redirect any donations they have received from James Hardie Industries into a trust fund for these victims and their families.

Question agreed to.

COMMITTEES

Publications Committee

Report

Senator FERRIS (South Australia) (9.51 a.m.)—At the request of Senator Colbeck, I present the 19th report of the Standing Committee on Publications.

Ordered that the report be adopted.

BROADCASTING SERVICES AMENDMENT (ANTI-SIPHONING) BILL 2004

First Reading

Bill received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (9.52 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) (9.52 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

On 7 April this year I announced changes to the anti-siphoning provisions of the Broadcasting Services Act 1992.

With these changes, the Government reaffirmed its commitment to the anti-siphoning scheme.

The scheme continues to protect the access of Australian viewers to events of national importance and cultural significance by giving priority to free-to-air television broadcasters in acquiring the broadcast rights to those events.

This remains an important policy objective for the Government.

With fewer than one in four households having access to subscription television at this time, the rationale for the anti-siphoning scheme remains valid.

However, after extensive consultation, the Government determined that the anti-siphoning scheme did need updating to better reflect the attitudes of Australians and the commercial realities of the sporting and broadcasting sectors.

The Government has therefore developed a new anti-siphoning list which will protect listed events which take place between 1 January 2006 and 31 December 2010.

On 11 May 2004, I signed the Broadcasting Services (Events) Notice (No. 1) 2004, which gave effect to these changes.

The Government’s package of reforms to the anti-siphoning scheme also included a decision to extend the automatic de-listing period from six to 12 weeks.

This requires a legislative amendment to the Broadcasting Services Act 1992.

And this Bill seeks to give effect to that decision.

Automatic de-listing of an event currently occurs six weeks prior to the start of the event.

The responsible Minister can stop the automatic delisting if, in the view of the Minister, the free-to-air broadcasters have not had a reasonable opportunity to acquire the relevant rights.

This Bill amends the Broadcasting Services Act 1992 to extend the automatic de-listing period from 1008 hours (or six weeks) prior to the start
of an event, to 2016 hours (or 12 weeks) prior to its start.

This amendment will improve the efficiency of the operation of the de-listing provisions of the anti-siphoning scheme to the benefit of sporting bodies and viewers, by allowing subscription television operators a reasonable opportunity to acquire those rights not taken up by the free-to-air broadcasters, arrange coverage and market the programs to viewers.

This change, together with the removal of some events from the anti-siphoning list, will provide subscription television broadcasters with access to the broadcast rights for an increased range of sports, to the benefit of both sporting bodies and viewers.

The Bill also contains a transitional rule which applies to events that start between six and 12 weeks after commencement of the Bill.

The effect of this rule is that events of this kind are de-listed upon commencement of the Bill.

This provision aims to provide certainty to sporting bodies and broadcasters in relation to events that are on the anti-siphoning list and that start during the first 12 weeks after the Bill’s commencement.

Debate (on motion by Senator Mackay) adjourned.

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

WATER EFFICIENCY LABELLING AND STANDARDS BILL 2004

VOCATIONAL EDUCATION AND TRAINING FUNDING AMENDMENT BILL 2004

TAX LAWS AMENDMENT (2004 MEASURES No. 4) BILL 2004

NEW INTERNATIONAL TAX ARRANGEMENTS (MANAGED FUNDS AND OTHER MEASURES) BILL 2004

CUSTOMS TARIFF AMENDMENT (OIL, GAS AND OTHER MEASURES) BILL 2004

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (9.54 a.m.)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (9.54 a.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

WATER EFFICIENCY LABELLING AND STANDARDS BILL 2004

Managing Australia’s fresh water resources effectively and efficiently is one of our most important environmental and resource management challenges. Without secure and high quality water resources we would be unable to sustain our regional economies or urban communities. The long-term health of our fresh water ecosystems also depends on us minimising the negative impacts of agricultural and urban water consumption.

The emerging urban water problems in Australia are looking increasingly serious. One only needs to look at Melbourne, Sydney, Perth and South
East Queensland for a graphic illustration of the urban water issues. High rates of population growth, the strong economy, increasing demands for environmental releases and prolonged drought conditions are continuing to offset the gains from conservation programs and increasing the pressure on available water supplies.

Reduced rainfall and inflows to storages have resulted in much lower sustainable yields from available storages than had been projected as recently as 5 to 10 years ago. The Gold Coast, for example, will be past the sustainable yields of its existing dams in only a few short years. Previous estimates of the potential water available from unexploited dam resources are being revised downward as a result of the recent drought at a time when the population is growing at a tremendous rate. As a consequence the Gold Coast is now in the process of planning a new regional pipeline to collect water from a dam near Brisbane. Unfortunately this solution will only provide temporary relief and the Gold Coast is now looking at recycled water, desalination and rainwater as part of its future water supply strategy. Water conservation has become more than a noble idea for the Gold Coast, but is now an integral part of meeting future water needs.

The Howard Government has taken this challenge very seriously by committing significant resources to improving water management across the nation and by working in partnership with the State and Territory Governments.

Today I am introducing a Bill for the introduction of a national Water Efficiency Labelling and Standards Scheme that will require water efficiency labels to appear on a range of common water-using products like washing machines, dishwashers and toilets and also establish a regime for the setting of minimum water efficiency standards. But before I explain the detail of the Bill, I would like to provide the House with the broader context of the initiative.

At the 1994 Council of Australian Governments (COAG) meeting, COAG agreed to implement a strategic framework for the reform of the water industry. Through the implementation of water reforms over the last ten years, Australian governments have made some real progress towards efficient and sustainable water management. The recognition of the need for environmental water provisions, the separation of water entitlements from land, and pricing reform, have all been significant steps forward.

At the COAG Meeting in August last year, the Government agreed to develop a draft National Water Initiative for COAG’s consideration at its 2004 meeting. It was agreed that opportunities for a cooperative national approach to further progress water reform exist in four key areas, which form the basis of the National Water Initiative. The four key areas encompass water access entitlements, water market institutional and administrative arrangements, the specification of environmental flow regimes, and a new generation of urban water reforms.

The urban water reforms are aimed at improving water-use efficiency and demand management and making better use of stormwater and recycled water. There has been a lot of activity in this area over the last ten years, including in the reform of water pricing in urban areas. This Bill—the Water Efficiency Labelling and Standards Bill—is a key initiative in support of the urban water reform agenda.

The Government is also working with States and Territories to develop National Guidelines for Water Recycling—managing health and environmental risks. The new Guidelines will cover water recycling and water sensitive urban design and be a part of the National Water Quality Management Strategy. The Guidelines will increase the uptake of water recycling opportunities in Australia to provide new sources of supply in a way that protects public health and the environment.

So the Water Efficiency Labelling and Standards Bill must be seen in the context of the Government’s very significant achievements in relation to water reform and as a contribution towards achieving efficiency improvements under the National Water Initiative.

At just under 1,800 gigalitres per year, that is, 1,800 billion litres per year, household water use accounts for about 16 percent of the consumption of the mains-supplied water in Australia. This is the second largest share of mains water use after agriculture, which at around 8,400 gigalitres per year, accounts for around 75 percent of consumption. Clearly whilst the “main game” in water
consumption will always focus on agricultural use, urban and household water use cannot be ignored, especially as our main urban centres are experiencing significant water supply problems. The dual effects of increasing population and the emerging impacts of climate change make efforts to manage urban water use ever more important. Indeed, between 1996 and 2001, the supply of water to households in the main urban areas increased by 13 percent since 1996-97 to 2000-01.

The purpose of the Water Efficiency Labelling and Standards Bill is to establish a water efficiency Scheme for a range of important water-using products. Through the Scheme, the Government wants to empower consumers with by providing them with information about the water efficiency of products so that they can contribute to water conservation directly through the purchase of more water-efficient products. This information will predominantly come in the form of labels on products covered by the Scheme, but also from the associated website and promotional material.

The net savings to consumers are forecast to be substantial. By simply choosing more efficient appliances, by 2021 the community stands to save more than $600 million through reduced water and energy bills. And these savings are achieved without any compromise in product performance or convenience or any major adjustment in user behaviour. A water-efficient washing machine performs its function just as well as an inefficient one, as does a water-efficient urinal. So the scheme will promote clever design that benefits both consumers and the economy.

The water efficiency Scheme will be the first of its kind in the world. Given that pressure on freshwater resources is emerging as a truly global problem, the potential for Australia to position itself as a leading exporter of water-efficient technologies and expertise is significant. Underpinned by a robust technical regime, our exporters will be able to use the label as a platform for marketing the water efficiency of their products to a growing global market.

The Government estimates that by 2021, water efficiency labelling will cut domestic water use by five per cent or 87,200 megalitres per year. A total of 610,000 megalitres—more water than in Sydney Harbour—will be conserved by 2021. Nearly half the water savings will come from more efficient washing machines, about 25 percent from showers and 22 percent from toilets.

The Scheme will also deliver substantial energy savings and greenhouse gas abatement through a reduction in hot water use. The reduction in greenhouse gas emissions for Australia is projected to reach about 570 kilotonnes of carbon dioxide equivalent per annum by 2021, with a cumulative total of around 4,600 kilotonnes of carbon dioxide equivalent by 2021.

The Water Efficiency Labelling and Standards Bill establishes a national legal and administrative structure for the Scheme. And yet, in the true spirit of federalism, the Scheme provides for working in partnership with the States and Territories, which will enact complementary legislation. This mirror legislation will fill in the small constitutional gaps in the Commonwealth’s powers. Importantly, the States and Territories have also agreed in principle to assist with funding the program using the usual population-based funding formula for any program costs that cannot be recovered through industry registration fees.

The Government expects the Scheme to commence in 2005. Initially, six appliances will be required to carry water efficiency labels: washing machines, dishwashers, toilets, showerheads, taps and urinals. Flow control devices will be covered on a voluntary basis. In addition to labelling, it is proposed that toilets will be required to comply with a minimum efficiency standard so that inefficient toilets with an average flush volume of more than five and a half litres can no longer be sold in Australia.

Under the framework set out in the Bill, it will be possible in future years to introduce minimum water efficiency standards for additional water-using or water-saving products other than toilets, where the need for this can be established. Minimum water efficiency standards will ensure that inefficient products can no longer be sold.

The Bill will also allow the product range covered by labelling requirements to be expanded if this is found to be appropriate in future years. Whilst the Scheme will initially cover washing machines, dishwashers, toilets, showerheads, urinals, taps and flow control devices, there is every reason to
believe that further research and development will reveal that other products would benefit from labelling and minimum standards. For example, evaporative air-cooling systems and hot water systems are potential candidates for inclusion in the Scheme.

Industry has been consulted on the detail of the proposal and I am pleased to advise that the Scheme enjoys broad support.

The water efficiency Scheme will help consumers make informed decisions about what products to purchase and the water, energy and financial savings that are possible. Industry will also benefit from the Scheme because it will create a level playing field in relation to claims about water efficiency and provide for nationally consistent product standards.

In conclusion, in this Year of the Built Environment the water efficiency labelling and standards initiative provides another important way that all Australians can conserve water and so help to make our urban communities more sustainable.

VOCA TIONAL EDUCA TION AND TRAINING FUNDING AMENDMENT BILL 2004

The Vocational Education and Training Funding Amendment Bill would appropriate a total of $1.148 billion as the Australian Government’s contribution to the States and Territories for vocational education and training in 2005.

Vocational education and training underpins the competitiveness of our industries in an increasingly global market and is vital for our economic growth. Since 1996, the Australian Government has reinvigorated vocational education and training—with record numbers in training, record numbers in New Apprenticeships and significant progress made towards developing a high quality, truly national system.

The latest figures show that in 2002 there were close to 1.7 million students in VET. This represents more than 10% of Australia’s working age population.

New Apprenticeships have grown to almost 416,800 in training at March 2004—more than three times the number in training in 1995. Today New Apprenticeships are available in more than 500 occupations, including emerging industries such as aeroskills, electrotechnology, information technology and telecommunications.

This growth has not been at the expense of the traditional trades, however. At March 2004, 147,100 New Apprentices were in training in traditional trades. This is 35% of all New Apprentices in training, and encompasses trades such as carpenters, plumbers and electricians. Over the last five years, while employment growth in trades and related occupations grew at an average annual rate of 0.8%, New Apprentices in training in trades and related occupations grew at an average annual rate of 2.7%.

Under the Australian Government’s New Apprenticeships strategies, women are benefiting significantly. Since 1998, there has been a 98% increase in the number of female commencements in New Apprenticeships. There has been a 72% increase for males.

We are also seeing record numbers of people completing New Apprenticeships. There were 132,500 completions in the twelve months to March 2004, up 13% from the previous year. Australians of all ages are benefiting from the Government’s successful vocational education and training policies. In 2002, 27% of vocational education and training students were aged 15 to 19 years. The number of 15-19 year olds in training has grown by 24% since 1998, reflecting the success of vocational education and training in schools programmes, now available in more than 95% of Australia’s secondary schools.

At the same time, older people are very well represented in vocational education and training. 61% of vocational education and training students were 25 years and over and 20% were 45 and over. It is particularly worthy of note that the participation rate for people 40 years and over in all education, at 6.6% of the age group in 2001, is the highest of all OECD countries.

Record levels of Australian Government funding are contributing to these achievements. In 2004-05 this Government will spend a total of $2.1 billion on vocational education and training, of which more than $725.5 million will go to supporting New Apprenticeships through pro-
grammes including New Apprenticeships Incentives.

The Australian Government is also working directly with industry on tailoring strategies to address areas of skills shortages, particularly in traditional trades, and emerging skills needs. In April 2004, the Government launched its National Skills Shortages Strategy, committing $2 million this financial year and up to $4 million in subsequent years. In addition, the Government provides more than $510 million in incentives each year to employers opening up opportunities for training-related employment through New Apprenticeships.

In December 2003, the States and Territories rejected the Australian Government's offer for a new funding agreement of $3.6 billion over three years to 2006, which included an average real increase of 2.5% per annum. If they had accepted the ANTA Agreement offer, up to 71,000 additional places over three years would have been created.

The Australian Government has applied the additional funding which was not taken up by States and Territories to purchasing 7,500 training places for priority groups—older workers, parents returning to work and people with a disability. In this way the Australian Government has fully maintained its level of commitment to vocational education and training in 2004.

Negotiations for a new ANTA Agreement will resume later this year and I look forward to a successful outcome. This Bill would provide funds for vocational education and training in 2005 under an ANTA agreement and would be subject to update for the outcome of negotiations on a new agreement. If, for example, an outcome of the ANTA Agreement negotiations is to return the priority places funding to the agreement, an amendment to the Vocational Education and Training Funding Act will be required.

This Bill provides the Commonwealth funding required to support Australia’s world class vocational education and training system in 2005. I commend it to the Senate.

TAX LAWS AMENDMENT (2004 MEASURES No. 4) BILL 2004

This bill makes amendments to the income tax law and other laws to give effect to several taxation measures.

Firstly, after listening to the concerns of business, the Government is implementing, in Schedule 1 further refinements to the consolidation regime.

The refinements provide greater flexibility and certainty to the consolidation membership and loss rules. The bill clarifies the consolidation cost setting rules with respect to finance leases, certain types of mining expenditure, and low-value and software development pools. The refinements also reduce compliance costs by alleviating the notice requirements under the inter-entity loss multiplication rules during the consolidation transitional period for entities that are in the same consolidatable group and in other circumstances approved by the Commissioner of Taxation. Generally, these amendments take effect from the 1 July 2002, which is the commencement date of the consolidation regime.

Secondly, this bill ensures that copyright collecting societies are not taxed on income they collect on behalf of members.

Broadly, the provisions will ensure that copyright collecting societies that are appropriately structured and administered, are exempt from income tax on certain types of income that they derive and hold pending allocation to recipients. The provisions will also ensure that any amounts of income that are exempt at the society level, are included in the assessable income of recipients once these amounts are distributed to them.

The third measure ensures further implementation of the simplified imputation system, including anti-avoidance rules in relation to exempt entities that are eligible for a refund of imputation credits; and consequential amendments to the income tax laws to replace references to the former imputation system with those of the simplified imputation system and to update terminology of the former imputation system to equivalent provisions of the simplified imputation system.

Schedule 4 to this bill amends the lists of specifically-listed deductible gift recipients in the Income Tax Assessment Act 1997. This includes
adding certain fire and emergency services bodies as specifically-listed deductible gift recipients. Deductible gift recipient status will assist these organisations to attract public support for their activities.

Lastly, this bill will extend an existing transitional rule in the debt/equity rules for at-call loans to 30 June 2005. This will give business extra time to assess existing loans and adjust their arrangements if need be.

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

I commend this bill.

NEW INTERNATIONAL TAX ARRANGEMENTS (MANAGED FUNDS AND OTHER MEASURES) BILL 2004

The bill I am introducing today further modernises Australia’s international tax regime, as part of the government’s ongoing review of international tax arrangements. It builds on legislation directed at the superannuation and funds management industries, which passed Parliament last week. It also follows legislation for a participation exemption and important reforms to Australia’s tax treaty policies reflected in the new tax treaty with the United Kingdom signed in August 2003.

This bill focuses on making the Australian managed fund industry more attractive to foreign clients. Australia has a significant managed funds industry facilitated by strong economic performance, a highly educated workforce, low-cost infrastructure, advanced regulatory systems, and sophisticated financial markets.

Schedules 1 and 2 make changes designed to reduce taxation impediments to further growth in this area. These changes will allow Australian managed funds to become more internationally competitive, increasing their attractiveness to non-residents.

Under current capital gains tax arrangements, non-residents investing in assets through an Australian managed fund may be taxed more heavily than if they invested directly in those assets or through a foreign fund. Measures in Schedule 1 will eliminate these distortions. Complementing this, measures in both Schedules 1 and 2 will reduce taxation of foreign source conduit income earned by non-residents via interposed Australian managed funds.

Schedule 1 makes three key changes to the income tax law.

It amends the law to disregard a capital gain or capital loss made by a foreign resident from disposing of its interest in an Australian fixed trust if the underlying assets of the trust are not Australian assets. A second amendment will disregard a capital gain made by a foreign resident in respect of the taxpayer’s interest in a fixed trust, if the gain ultimately relates to an asset of the trust which is not an Australian asset. In both cases, had the underlying asset been directly held by the foreign investor, Australian capital gains tax would not apply.

Reflecting the conduit principle of international taxation, foreign source income flowing through an Australian trust to non-residents is not taxed in Australia. However, under current arrangements when a trust interest is sold, previously distributed foreign source income is, on a delayed basis, subject to Australian capital gains taxation. On the other hand, non-residents investing directly, or through an offshore managed fund, do not pay Australian capital gains tax in respect of the foreign source income. A third amendment will eliminate this distortion.

Schedule 2 amends the rules for determining the source of income derived by certain residents of treaty partner countries. The interaction of treaty source rules and other treaty rules relating to non-resident beneficiaries of income derived by business trusts operating in Australia has implications for the managed funds industry. This interaction may result in foreign source passive income derived by those foreign beneficiaries through an Australian trust being treated as sourced in Australia and therefore taxed in Australia.

For example, if a New Zealand resident invests in an Australian managed fund investing offshore, this interaction inappropriately exposes the New Zealand beneficiary to Australian tax on conduit income. The amendments ensure the domestic source rules rather than treaty source rules (which have a wider potential reach) apply in this case. The effect of this amendment would be to relieve the conduit income from Australian taxation.
The amendments will align the tax treatment of foreign residents investing through managed funds that derive income from sources outside Australia with the tax treatment that would apply if those foreign residents made such investments directly.

Schedule 3 implements three measures fine tuning interest withholding tax arrangements, consistently with other recent developments in the tax law. These changes will allow Australian businesses generally to take advantage of global opportunities to lower their cost of debt and to facilitate efficient business structures.

The first measure broadens the range of financial instruments eligible for interest withholding tax exemption by adding ‘debt interests’. The second treats payments of a non-capital nature made on certain Upper Tier 2 hybrid capital instruments issued by banks, as interest for interest withholding tax purposes. Finally, the bill facilitates the transfer of additional assets and debts from Australian subsidiaries of foreign banks to their Australian branches without losing interest withholding tax exemptions.

The size of Australia’s funds management pool and its prospects for continued growth, are drawing global firms to establish operations in Australia. The resultant clustering of activity and the concentration of expertise has created a robust domestic industry. This infrastructure provides a framework for Australia to become the funds management hub for the Asia-Pacific region and these reforms will remove impediments to achieving that goal.

I note the strong business support for the bill. The business community has played a valuable and constructive role in helping develop the proposed legislation. This bill again demonstrates that the Government has listened and been responsive to industry calls for specific tax reforms to remove distortions from the tax system and allow Australian businesses to grow.

The future of the Australian economy is fundamentally linked to global prosperity and to Australians being a part of that prosperity. This bill is an important part of modernising Australia’s international tax system, to make the most of Australia’s potential to market financial products to foreign investors.

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

CUSTOMS TARIFF AMENDMENT (OIL, GAS AND OTHER MEASURES) BILL 2004

The Customs Tariff Amendment (Oil, Gas and Other Measures) Bill 2004 contains several amendments to the Customs Tariff Act 1995 (the Tariff).

First, the Bill creates a new item 22 in Schedule 4 of the Tariff. The item replaces the existing item 22, which relates to goods for use in oil and gas exploration, to reflect changes in technology in the oil and gas industries and to extend the coverage of the item.

The new item, and the new by-law that will be made for it, will reduce the cost of certain goods imported for use directly in connection with the exploration for, and discovery of, oil and gas deposits and the pre-production development of wells on those deposits, by allowing duty-free entry of those goods, provided that substitutable goods are not available from Australian manufacturers.

These amendments not only address industry concerns but also, by reducing the costs of imports, maximise the recovery of Australia’s petroleum resources, which is consistent with the Government’s objective of encouraging a supportive environment for investment and enhanced productivity.

Secondly, the Bill amends Additional Note 3(a) to Chapter 22 in Schedule 3 of the Tariff by inserting a 22% upper limit on the alcohol content of grape wine which is defined by the Note.

This amendment will ensure that the customs duty payable on imported grape wine with more than 22% by volume of ethyl alcohol is the same as the excise duty payable on comparable locally produced grape wine.

The Bill will also correct the country code abbreviations for Poland and Wake Island, specified in Schedule 1 to the Customs Tariff, to align those codes with those used by the International Organization for Standardization.
The above corrections will have no effect on the duty applicable to goods imported from Poland or Wake Island or on the margins of tariff preference accorded those countries.

Debate (on motion by Senator Mackay) adjourned.

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

CRIMINAL CODE AMENDMENT (SUICIDE RELATED MATERIAL OFFENCES) BILL 2004

First Reading

Bill received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (9.55 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) (9.55 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

CRIMINAL CODE AMENDMENT (SUICIDE RELATED MATERIAL OFFENCES) BILL 2004

This Bill introduces important new measures that will criminalise use of the Internet, where the intention of that use is to counsel or incite suicide, or promote or provide instruction on a particular method of committing suicide.

The offences will cover use of a carriage service, including the Internet, to access, transmit or make available material that counsels or incites suicide, or promotes or provides instruction on a particular method of committing suicide. The possession, production or supply of such material, with intent to make it available on the Internet will also be covered.

Currently there are a range of easily accessible Internet sites and Internet chat rooms that provide explicit instructions on methods of committing suicide and, in the case of Internet chat rooms, sometimes contain actual discussions where one person or even a group of persons urge another to commit suicide. Studies have shown that in some cases such Internet chat room discussions have lead to a person attempting suicide, sometimes successfully.

The proposed offences reflect the harm that can be done by those who use the Internet with destructive intent and they will assist in preventing the use of the Internet in this way to encourage vulnerable individuals to take their own lives.

Advocacy of, or debate about, law reform on voluntary euthanasia or suicide related issues that takes place on the Internet will in no way be affected by the proposed offences, because these types of communications would not carry the requisite intention. For the same reason the offences are unlikely to capture material such as research papers dealing with suicide related issues, or suicide prevention or support material.

These offences are intended to complement existing Customs regulations prohibiting the physical importation and exportation of suicide kits and information related to those kits. They will carry the same maximum penalty as the Customs offences of $110,000 for an individual.

The offences will also complement the proposed new telecommunications offences in the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004 (the Telecommunications Offences Bill No. 2). Amongst the range of measures in the Telecommunications Offences Bill No. 2 are new offences addressing Internet child pornography, use of the Internet to ‘groom’ or procure children for sexual activity, and menacing, harassing or offensive use of a carriage service.

This Bill contains important measures that will protect our most vulnerable and help to prevent the Internet from being used for destructive purposes towards those individuals.
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.

COMMITTEES
Rural and Regional Affairs and Transport Legislation Committee
Report
Senator FERRIS (South Australia) (9.56 a.m.)—At the request of the Chair of the Senate Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I present the report of the committee on the administration of AusSAR in relation to the search for the Margaret J, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator O’BRIEN (Tasmania) (9.56 a.m.)—by leave—I move:

That the Senate take note of the report.

I want to make a few remarks on the Rural and Regional Affairs and Transport Legislation Committee report into AusSAR’s role in the search for the Margaret J. This is yet another unanimous report of this committee, and I think the fact that so many reports of this committee have been unanimous indicates how well this committee has worked over the life of this parliament. I want to thank the staff for the good work they have put in on what has been a very difficult and, at times, emotional matter.

The Margaret J was a Tasmanian fishing vessel that went missing in bad weather in April 2001. It had three men aboard—Mr Ronald Hill, Mr Robert Kirkpatrick and Mr Kimm Giles. Tragically, all three lost their lives. The national search and rescue agency, AusSAR, was made aware of the missing boat soon after its failure to return to port and later became involved in the search operation. AusSAR’s role quickly became a matter of public controversy. For many Tasmanians, the incident rekindled memories of AusSAR’s role in the 1995 search for the Red Baron, a fishing vessel.

I moved for the establishment of the committee inquiry to examine AusSAR’s performance in June 2001. I did so in the face of vociferous criticism from the minister responsible for AusSAR, the Deputy Prime Minister, Mr Anderson. Mr Anderson did not understand why a committee of the Senate might examine the performance of the national search and rescue agency in the failed search for three missing Tasmanian fishermen. Thankfully, the committee did not share the minister’s desire to shield AusSAR from the sort of scrutiny Australians expect their parliament to provide.

I know that the participants in an online forum following a Four Corners program about the search for the Margaret J welcomed the committee’s work. I know the people of Tasmania thought it fit and proper that the parliament should examine the performance of AusSAR in the failed search. The committee never sought to duplicate the work of the state coroner who conducted the inquest into the deaths of the three men aboard the Margaret J. We acceded to a request from Tasmanian authorities to delay public hearings until the conclusion of the coronial inquiry. The report has been delayed to minimise the creation of difficulties for any legal proceedings arising from the failed search. This report contains a sober review of the evidence presented to the inquest into the deaths of the crew, the coroner’s subsequent findings, and the submissions and oral evidence received during the course of the committee’s inquiry. The committee have made some considered findings about the timing of AusSAR’s assumption of responsibility for search coordination.
The committee notes that the first effective request for transfer of responsibility was made by Tasmania Police on 15 April 2001—more than two weeks before AusSAR ultimately accepted responsibility for search coordination. And despite telling Tasmania Police in mid-April that it was not feasible to search for the missing men, a much delayed and restricted search on 30 April did happen to find the boat’s life raft and it also led to the recovery of the bodies of two crew members. On this matter, the committee found:

The success of the restricted search activity on 30 April 2001 leaves the committee unwilling to accept that earlier similarly targeted search activity would not have yielded a similar result.

The committee noted the coroner’s findings on the estimated time of death of the three men—that is, the coroner found the men had died before the missing boat was reported to Tasmania Police on 13 April 2001. The committee also notes expert evidence to the coronial inquiry, recounted in the coroner’s report, estimating Mr Hill’s time of death as being between 9 April and 16 April and Mr Giles’s death as being between 16 April and 27 April 2001. A local marine expert, Mr Jim Hooper, gave evidence to the committee and was adamant the men would have lived beyond 11 April 2001 based on his technical and local knowledge.

One of the terms of reference of the inquiry was the effectiveness of communication between AusSAR and Tasmania Police. The report finds that AusSAR thwarted the transfer of responsibility from state search and rescue and notes deficiencies in information recording procedures and mishandling of important information. The transcripts of relevant calls to AusSAR were received into evidence by the committee. I want to refer to extracts from those transcripts to highlight my concern about aspects of AusSAR’s handling of this matter and to support the committee’s view that the agency can do better.

The extracts relate to AusSAR’s involvement near the beginning and at the end of the search for the Margaret J. I will not name the people involved because I do not want to highlight individual lapses. Instead, I want to question whether the language is indicative of wider problems in AusSAR’s operations, at least at the time the Margaret J went missing. On 15 April 2001, four days after the Margaret J left port and two days after the boat was reported missing, an officer from AusSAR returned a call from Tasmania Police and started the conversation this way:

I’m just looking at this bit of a problem you’re creating here.

The coroner was critical of this exchange, and found that the AusSAR officer’s manner caused the Tasmanian police officer to back down on a planned request to transfer responsibility for search coordination. On 30 April 2001, Tasmania Police finally determined to seek a formal transfer of search responsibility. The police officer managing the search called AusSAR to make sure he got the request right. He said:

I’m just giving you a call because I’m not exactly sure of the protocol myself. My boss seems to think that we put a phone call through and forward it to you if it’s too big for us.

AusSAR replied:

Right. OK. I think for something this size and the political pressure on board we might have to go to the Manager of the Operations Centre here.

Later, after establishing the right fax number, the police officer asked:

How would you prefer me to word/broach the final paragraph ... I mean my OIC seems to think that we’ve got some protocol where we just actually direct you to do it—

he is talking about the search—

Do I just sort of say it’s beyond our resources and can you please?

AusSAR replied:
Yes. Yeah. It is beyond the Tasmanian authorities resources.
The Tasmania Police said ‘yep’. AusSAR replied:

And I’m not sure myself actually because I’ve never taken anything over from Tassie Police.
The AusSAR officer found the relevant sections of the National Search and Rescue Manual after what the transcript records as ‘music playing on hold for almost two minutes’. After agreeing an assertive final paragraph was appropriate, the AusSAR officer said:

But I don’t know how far we’ll run with it. I don’t think we’ll run with it at all to be honest.

Later, two AusSAR officers considering the Tasmanian request agreed it would be prudent to review information previously considered. Officer 1 said:

I suppose what I’m trying to get us to do is to take a look at the problem, not necessarily mount a search but look at the problem and then review what was said by [another officer] before. I’ve got no reason to believe what he said was wrong in any way. Review it and say well we’ve done all that. We’ve gone through all of that. We’ve re-looked at the search area. We are even more impressed that it is unrealistic and unreasonable and we don’t believe there’s any prospect of success or whatever we want to say. OK?

Officer 1 went on to say:

Review all of the information that the police may be able to provide us, which might be absolutely zip. And then taking all of that into account we can then say we’ve looked at all of this and we are convinced that there is no actual reasons to continue with the search, to reinitiate the search. We have to have some basis for saying no.

Officer 2 agreed, and suggested he should ask the Tasmanian officer with the necessary details to go back to his office and collect the information. Officer 1 said that would not be necessary, advising:

If that takes him two weeks that’s his problem.

It may have been a very big problem—not for an off-duty Tasmanian police officer, but for three Tasmanian fishermen missing at sea. I do not want AusSAR officers worrying about the things they were clearly worried about in these circumstances. I do not want them worrying about whether a state jurisdiction is causing them a problem by asking for help. I do not want them worrying about political pressure from above. I do not want them worrying about how to accept responsibility for search coordination because they are inexperienced or have not received adequate training. And I do not want them to worry about reasons for not recommencing a search that may, one day, save someone’s life.

When Mr Anderson attacked this committee’s inquiry in August and September 2002, I reminded him that he was the minister responsible for AusSAR during the failed search for the Margaret J and that he was responsible for improving AusSAR’s performance. I urged him to cease using the deaths of three Tasmanian fishermen to attack the Labor Party and asked him to work with me and the committee to ensure that identified deficiencies in our search and rescue system were rectified. I renew that call today. Instead of instructing his staff to draft an incendiary media statement, I urge him to sit down and actually read this committee’s unanimous report. Once he has done that, the minister ought to get to work implementing its recommendations.

Question agreed to.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.06 a.m.)—by leave—

I move the motion as amended:

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 reports 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.

I would like to make a short statement about the logic of doing that. The government has made it quite clear that it wants to complete debate on the free trade agreement implementation legislation. We would like to have that done this week. Clearly that is achievable but it may well not be achievable within the hours we are currently constrained by. That is the reason for this motion. It is also the government’s intention—and I have communicated this to all parties this morning—to have consideration of, and a vote on, the Marriage Amendment Bill 2004. I am currently in negotiations over one other bill, the Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004. I will continue those discussions but I want to make it absolutely clear to all senators what the government’s intentions are.

This motion would have the effect of allowing the Senate to debate government business until a time when we move for an adjournment of the Senate, and it will enable us to deal with those bills: the free trade agreement legislation, which we have been considering for some time over the last week or two, the Marriage Amendment Bill 2004 and possibly one other bill. I have just started discussions about perhaps having the second reading debate on the Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004 during the luncheon break. That would not preclude anyone who wanted to speak on that bill speaking at another time but it would mean that anyone who wanted to speak on it could do so. There would, of course, be no votes and no quorums called, as usual. I commend the motion to the Senate.

Senator HARRADINE (Tasmania) (10.09 a.m.)—I rise to seek some clarification. Could the minister, in his response, deal with this. His motion says:
(d) the routine of business from not later than 4.30 pm shall be government business only;
Is it anticipated that there be non-government business until that particular time?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (10.09 a.m.)—It is usually the time when general business is dealt with.

The PRESIDENT—Minister, could you clarify that question for Senator Harradine?

Senator IAN CAMPBELL—I will.

Senator BROWN (Tasmania) (10.09 a.m.)—We need to be assured, before we agree to this motion, that there will not be a truncation of the time for discussing committee reports at that hour. What a remarkable thing for the parliament: we are going to sit here until midnight again. This morning the Prime Minister revealed why that is so. I thought it was because there was some delay. Last night we got up to the opposition amendment in relation to the Pharmaceutical Benefits Scheme on the free trade agreement legislation but the amendment was not here. Senator Conroy said he did not want to put it forward. It turned out that the negotiations with the government had not been completed. All the very complex but very important amendments that came from the Democrats, One Nation and the Greens—despite their limited
staff—had been delivered, debated and intelligently put to the committee, with the government or the opposition being unable to give any response to these amendments which would save Australia’s national interest. But when we came to the single amendment about the Pharmaceutical Benefits Scheme, Labor could not move it because it was not ready and they had not completed talks with the Prime Minister.

We thought Mr Latham and Mr Howard together had not completed their talks but this morning the Prime Minister made it clear that the real reason there had not been progress here was that he had rung President Bush and President Bush had not given agreement to this amendment. So we are going to sit until midnight tonight and the whole thing has been delayed because we are waiting for President Bush to make up his mind. We will not get the response from President Bush so the Prime Minister said today that the Americans could say that the amendment we were going to deal with is inconsistent and that they may not accept the free trade agreement—and it would be Labor’s fault. Doesn’t that give the game away?

By the way, the Prime Minister said—and isn’t this a thought-provoking statement from our Prime Minister?—that no Prime Minister in his right mind would agree to any agreement which weakened the PBS, the Pharmaceutical Benefits Scheme. Hear, hear to that! It makes you think, doesn’t it? This free trade agreement will weaken our Pharmaceutical Benefits Scheme. The Prime Minister is saying, ‘We can’t guarantee the Pharmaceutical Benefits Scheme because the Americans won’t allow an amendment that Labor has proposed.’ It is a very tiny amendment. The Americans will not give it approval. They have to think about it after our parliament has considered the matter. If the US administration does not like the amendment—that means, if the drug corporations do not like the amendment—the free trade agreement is off.

The Prime Minister might think that that would be a spectacular potential win with the Australian electorate but he wants to be very careful. Australians have a great relationship with Americans but their relationship with the American administration is a different matter, and if there is one thing Australians will not like it is having the shots for this country called from the White House. This is an independent nation. This is Australia. This is not the 51st state of the United States, and we expect our Prime Minister to be telling, not asking, the United States that if there is an amendment in this parliament which goes a small way towards protecting the Pharmaceutical Benefits Scheme—and Prime Minister Howard says that at worst it does not hurt—then this parliament will rule. In Australia it is not, ‘The US rules okay’ but ‘Australia rules okay.’

The Greens object to our being delayed all the way down the line while the Prime Minister makes his phone calls to George W. Bush to see if it is all right if we have an amendment to a law in this country to defend the Pharmaceutical Benefits Scheme. Whatever the conversation between Prime Minister Howard and George W. Bush was, the deputy sheriff was left hanging on the end of the phone with no clear answer. We will have to wait and see. Mr Bush in his inestimable, predictable way has handed the matter across to the drug companies, of course, and their lawyers are going through it over there in California at the moment, determining whether it is in their interests or not. If it is not in their interests the free trade agreement will be held off until some other session of parliament, until we get it right here in Australia—until we fall into line.

How could the Prime Minister of this country have a press conference this morning
and say that he does not know whether the free trade agreement is on or off because George W. Bush will not tell him whether he can accept this tiny amendment to ensure the Pharmaceutical Benefits Scheme? George W. Bush is not the elected head of state of this country. You would expect that the elected Prime Minister would have the gumption to say that he has told the US that this amendment, if it goes through this parliament, stands—that is it, full stop. Not only is parliament being delayed at the pleasure of George W. Bush but we are also getting a very clear indication here of why this free trade agreement is not in this nation’s interest. It does not matter whether it is the Pharmaceutical Benefits Scheme, quarantine, jobs in manufacturing, the environment, cultural content or intellectual property, but in future when we determine these matters in this parliament, Mr Howard or Mr Latham, first of all—because Mr Latham is going to vote for this as well if he is Prime Minister—is going to ring George W. Bush and say, ‘Is this okay?’

Come off it! It is time the big parties here—the Labor Party as well as the government—got some spine. George W. Bush said in this parliament last October that ‘fair dinkum’ meant ‘man of steel’. It shows you how much he knew about Australia. Where is the man of steel now? This quivering Prime Minister has to ring up the White House to see if we can put an amendment through the Senate to defend the Pharmaceutical Benefits Scheme. Really! Has it come to that?

We are dealing here with an arrangement of sittings of the Senate to deal with this free trade agreement, which is being held up by the inability so far of the US drug corporations to determine whether or not they will accept this very weak amendment from the Labor Party. I object. We should not be sitting here tonight. This should have been dealt with on our terms, on Australia’s terms, in this Australian parliament. The Prime Minister said today that it does not matter what we do in the Senate—or what they do in the House of Representatives, for that matter. This matter is not going to be resolved by the debate; it is left to some drug company lawyers in America. We will await in the coming weeks their determination as to whether the free trade agreement is on or off. What is the point of us having a debate in here? What is the point of us making a determination when both of the big parties are handing sovereignty not just to the White House but also to drug company lawyers in the United States? The Prime Minister tells us that we can get our amendment through—it is not going to affect things much—but that the free trade agreement might be off if he gets a message from George W. Bush in the next couple of weeks saying: ‘We have decided that we will not have that amendment. It is not going to help the profit line of one of the big companies.’ What a way to treat this parliament.

We object. And the least we can do is to oppose this motion as a symbol of the fact that we object to the sitting hours here being rearranged at the pleasure of people over in United States working out whether or not legislation in here is good enough for them. And we object to the whole idea the Prime Minister introduced into Australian democracy this morning that it does not matter what parliament does on matters like pharmaceutical benefits—and add to that quarantine, intellectual property, cultural identity, the environment and jobs—because the final determination is going to be made over there in Washington. Not with us it won’t be! We will be voting against this motion and we will be voting against this free trade agreement.

Senator ALLISON (Victoria) (10.20 a.m.)—The Democrats will also vote against this motion. We think it is an outrage that the
minister has come in here this morning and talked about having negotiated the number of bills that will be dealt with before the Senate adjourns. Negotiated? I have yet to have a conversation with the minister about why it is that marriage, for instance, is on the list. What is the urgency on marriage? At our last sitting we had a bank-up of bills and there was some negotiation—it is called a leaders and whips meeting. That is where we get together and the government explains to us why certain bills are necessary and urgent for debate and must be passed within a given period. There has been no leaders and whips meeting still. The minister came across a moment ago and said: ‘We are not now listing bills at all. However, we are going to deal with marriage and electoral legislation.’ Neither of those bills, as far as we can see, has any urgency. I ask the minister here and now, since we did not have a leaders and whips meeting and since we are wasting the time of the Senate in this debate about what we should be dealing with before we finish today or tomorrow or whenever it is, to explain why it is that the marriage bill and the electoral bill are urgent. Otherwise, it is very difficult for us to know exactly what we are going to stay here for, how long we are going to stay, why the Senate is being held up in this way and why the other bills dropped off. They were there yesterday and early this morning. Why have they suddenly disappeared? We do not have any answers to any of those questions.

We will get into the debate on the FTA shortly. I agree with Senator Brown that we are here talking about this now because over a period of a week, from when the amendments first came out, agreement could not be reached between the two major parties. Obviously the lawyers in the United States—or George W. himself—might have held up the process. That needs to be explained to us, but we are being left in the dark. The minister says there has been negotiation. Let me explain that there has been no negotiation with the Democrats. We do not know why we are doing these bills and we do not know why we are going to be here until late tonight. It is quite provocative on the part of the government. If they want the free trade agreement legislation to be dealt with then this is not really a good way of handling business, because it requires the cooperation of the Senate.

We had the absurd situation last night where the debate stopped because we did not have this agreement and yet there are a lot of complaints on the part of the government about how this is taking too long. It has been more than 20 hours—I do not know what it adds up to now—but it has all been a waste of time, effectively, because we are not ready to deal with the only two amendments which apparently will make the difference between the legislation passing and not passing. I would very much like to think the government would consider our amendments seriously, but obviously they will not. That does not mean that we will stop talking about the amendments and stop advocating for them. I have a lot of questions to ask about these new amendments, so the minister can look forward to a proper exploration of the issues that arise out of them—but we will get onto that. In the meantime, we deserve an explanation as to why it is that there are now three bills to be dealt with where previously there were 11.

Senator LUDWIG (Queensland) (10.24 a.m.)—We will not be opposing this motion, but let me say that the motion that has been moved by Senator Ian Campbell provided a substantive list of bills that the opposition does not agree with and moved that we should sit until their completion. I think, Senator Allison, that you were right when you said yesterday that it is not an end of session. The problem might be that an end of
session turns up about every 20 days, unfortunately. But this is not one of those points in time when we would finish each job. We would not consider a list such as that, seek to complete it and then pack up our bags and go off for a recess. This is not the time of the year for that to occur. So the opposition will not be agreeing to the list that is specified in the Notice Paper that originally was in the motion put by Senator Campbell.

What we want to see today is the FTA debate continuing. I think everybody wants that—and the longer I talk the less time is available for that debate to proceed in committee. Our position is that we are prepared to continue with the US free trade agreement—I understand that the amendments are ready—and we are ready to proceed with that debate today. We will monitor the progress of that debate today before we consider any other proposals as to what bills may or may not be required to be dealt with, given the time available. It is not a case of our thinking that there should be an open-ended period of time available. We are unsure of how long the free trade agreement debate will continue. No-one wants to not ensure that everyone has a full and frank debate on the relevant amendments. I am sure everyone wants to be able to do that and, as I have said, the longer I talk the further out we get from allowing that to occur.

In respect of the matter of bills that we might deal with, much depends on how long it takes to do the free trade agreement. I am not sure. Senator Brown might be able to tell the Senate how long the process might take. But we can come back and revisit that this afternoon. There are other matters on the Notice Paper today that we need to deal with—I think there are a couple of committee reports this afternoon. After that point, maybe we can have another assessment of the program to see where we are at with the free trade agreement amendments in committee. If necessary, Senator Campbell can come back and consult with the minor parties and the opposition about how he sees progress going. That is the way the opposition sees the matter at the moment.

Senator ALLISON (Victoria) (10.27 a.m.)—by leave—I thank Senator Ludwig for explaining where the negotiations are at. Again I say that negotiations in this place about what we deal with and the hours of business should be undertaken with everyone in this place, including Senator Harradine, Senator Harris, the Democrats and the Greens. We would all like to know what is going on instead of being told: ‘It’s been negotiated; this is it. We’ve taken the bills off the motion but, informally, it’s agreed that we’re going to do the free trade agreement, marriage and electoral.’ Now Senator Ludwig says that we will assess the situation as the debate goes on—but at what time? Are we going to have a leaders and whips meeting so we can work it out or is it just going to be negotiated between the two major parties with us being told the outcome of the negotiation? I can understand that you have the numbers and you can do this, but it is not the way we do business in this place—at least, it has not been since I have been here, since 1996. The smooth operation of this chamber depends on cooperation and communication with all of us, and it is best done in a more formal arrangement than discussions going on across the chamber.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.28 a.m.)—I would like to respond to some of the issues that have been raised. We had this sort of furphy of saying, ‘Let’s have a leaders and whips meeting.’ The leaders and whips meeting is something that we initiated so that we could—particularly in the closing weeks, usually the closing fortnight of a session, which we are not in at the moment—
negotiate the sorts of bills to be finished before what is normally a five- or six-week adjournment. We are not in that situation. We are in a two-week on, two-week off session, and of course there is speculation about when the election will be so there is a heightened atmosphere that we are at the end of the session.

Where are we today? I will explain so that people can understand this. We put out a legislative program, as we always do, at the beginning of the session. Some time, usually a week or two, before the session we put out what is called the public list. That lists, for the whole world to see—I think we publish it on the Internet—all of the bills that the government seek to enact or have debated and considered by the Senate during that session of sittings. We then put out a program for the sitting fortnight. That program listed, back on Monday, 3 August, as item No. 1 the US Free Trade Agreement Implementation Bill 2004 and an associated bill. Then it listed the surveillance devices legislation; the crimes legislation amendment bill; the telecommunications interception bill; the customs tariff amendment bill; an industrial relations bill; the tax laws amendment bill relating to reform of the WET, as it is known out there in wine producer land; the Indirect Tax Legislation Amendment (Small Business Measures) Bill 2004; an anti-terrorism bill; and a trade practices legislation bill. That was the program for last week.

Last week the Senate, for probably the first time in many years—it may be the first time ever and was certainly the first time in my memory—passed no legislation at all, not one bill. It passed nothing at lunchtime on Thursday and nothing for the rest of the week from that publicly available program for last week. That meant that the Senate sat here and debated. We had an important debate. We had, and are still having, one of the most important debates in Australian history, about the free trade agreement. It is a fantastic debate about Australia’s future. Do we engage with the world? Do we engage with the strongest economy in the world? Can we do it on our own terms? Can Australians negotiate an agreement with the greatest economy and one of the greatest democracies in world history and pull off an agreement that is good for Australia? It is good for the world, in fact, because when you get two strong democracies and strong economies working together it is good for a whole range of other reasons. It is, in fact, terrific for the environment. So it is a very important debate, but we thought that we could spend a few days on this debate on the US free trade agreement and then get to all of these other bills like customs bills and tax reform bills.

This week we came in having not passed any legislation last week from the list that is put out to the world—even the Democrats can look it up on the Internet and read it. This week we put out the next list, on Monday, 9 August—a week later. We listed the US Free Trade Agreement Implementation Bill 2004 and one related bill. We listed the Marriage Amendment Bill, the telecommunications interception bill, the surveillance devices bill, the trade practices bill, the schools assistance bill, the states grants bill, the family and community services bill, the Indigenous education bill, occupational health and safety measures, crimes legislation amendments and higher education legislation. We listed the tax laws amendments to the WET, which industry has been screaming for for years and we want to do this week. But, no, a couple of people at the other end of the chamber have decided that it is in their political interest to have an endless debate about the free trade agreement—not a long debate but an extraordinarily long debate.

What did we do in this place yesterday? We said: ‘Let’s have a long debate about the free trade agreement. Let’s sit and talk about
it all night.’ So yesterday we spent two hours debating because Senator Brown wanted to oppose the proposition that we had a longer debate about the FTA bills. We spent two hours of yesterday because Senator Brown wanted to have the night off. He did not want to debate the free trade agreement bill; he wanted to go out to dinner. What an absolute farce! One day he says he wants to have a debate about the free trade agreement but when we say, ‘Let’s have it,’ he says: ‘Not on a Wednesday night; they’re sacrosanct. I want to go out to dinner. I want to sip some chardonnay and have a latte afterwards.’ What a joke! We say, ‘Let’s have a debate,’ and he says, ‘No, I want to go out to dinner.’

Why are we in the situation we are in at the moment? Because the program the government put out and published to the world said that we wanted to deal with all this. We can deal with the free trade agreement. We can have a long and important debate about it, we can discuss amendments and we can come to a vote—because ultimately that is what democracies are about. Let us have a vote and deal with all these other measures. What do I do, as the Manager of Government Business in the Senate? I am faced, at the end of a fortnight of sittings—and it is costing taxpayers millions of dollars to run this place—with the fact that we have not done a single bill in two weeks.

That is what Senator Brown wants. He does not want the free trade bill. The Democrats do not want the bill. Let us be honest about this. They have made it clear that they do not like this bill and they do not want it and so they will talk about it till Christmas if they can. We want the bill and Labor, to their credit, want the bill. Labor have been constructive. We have sought to negotiate an amendment, and it has been a constructive process. But the Greens and the Democrats have decided to be destructive. They do not want a democratic outcome here; they want to filibuster this out. They do not want a long debate; they want to filibuster. They do not want to vote or debate; they just want to talk endlessly about everything else. But we want to deal with the bill and with a whole range of other bills.

At the end of a fortnight’s sitting here am I with, as the Manager of Government Business in the Senate, the job of trying to get the government’s program before the Senate and have some votes on it. So I thought yesterday, ‘Perhaps we will sit the Senate, pick bills off the list that we published three weeks ago and put to the Senate a list of bills that we might seek to do this week.’ It became clear to me that not even that forlorn hope is likely to occur, so we are saying to the Senate: ‘Let’s sit today. Let’s try to do what we can do.’ I have been very honest and open by going to the other end of the chamber and saying to all of the Independent senators, the minor party senators, the Greens and the Democrats that this is our intention. We have effectively given up on all of the other bills we listed three weeks ago. We have given up on any hope of getting the public list up, because two or three senators have wanted to talk endlessly and repetitively about the free trade agreement. That is their right, but please do not criticise me for having some secret agenda, not having leaders and whips meetings and not having negotiations.

I went down to the end of the chamber to say: ‘Perhaps we could do the electoral bill at lunchtime. There is only one bill that is uncontested, so perhaps we could use the spare hour we have at lunchtime to discuss the electoral reform bill.’ That is the negotiation I was seeking to have, and I am getting criticised for it. All I am trying to do is allow the Senate to debate some bills—and important bills they are, for schools assistance packages, grants to the states for primary and secondary education assistance, family and
community services and veterans’ affairs legislation, Indigenous education—

Senator Allison—Put them on instead of marriage.

Senator IAN CAMPBELL—That was an inane interjection from the Democrat Whip. They are on the list. They have been on the list for two weeks.

Senator Ludwig—Let’s get on with it.

Senator IAN CAMPBELL—Yes, let’s get on with it. I am not taking them off the list. The Democrats and the Greens, through their actions, have made it impossible to deal with them. They are on the list, they are on the Notice Paper and we are ready to deal with them; so let us get on with the legislation and stop this absolutely mindless time wasting that the Democrats and the Greens seem to take inordinate pleasure in.

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

The Senate divided. [10.42 a.m.]
(The Acting Deputy President—Senator L.J. Kirk)

Ayes…………… 40
Noes……………. 10
Majority………. 30

AYES

Barnett, G.  Brandis, G.H.
Buckland, G.  Campbell, G.
Carr, K.J.  Chapman, H.G.P.
Culbeck, R.  Crossin, P.M.
Denman, K.J.  Eggleston, A. *
Ferguson, A.B.  Ferris, J.M.
Fitfield, M.P.  Forshaw, M.G.
Harradine, B.  Harris, L.
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.  McLucas, J.E.
Moore, C.  Payne, M.A.
Ray, R.F.  Santoro, S.
Scullion, N.G.  Stephens, U.
Tchen, T.  Watson, J.O.W.
Webber, R.  Wong, P.

NOES

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

* denotes teller

Question agreed to.

US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004

US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF) BILL 2004

In Committee

Consideration resumed from 11 August:

US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004

The TEMPORARY CHAIRMAN (Senator Kirk)—Order! The committee is considering the US Free Trade Agreement Implementation Bill 2004, as amended. The question is that the bill, as amended, be agreed to.

Senator CARR (Victoria) (10.46 a.m.)—I would like to take this opportunity to speak to the Labor Party’s amendments to this agreement, particularly those that relate to the cheaper medicines proposals.

The TEMPORARY CHAIRMAN—Senator Carr, you cannot speak to those amendments unless you move them first. They have not been moved.

Senator BROWN (Tasmania) (10.47 a.m.)—I will explain to Senator Carr that last night we all had to go home because Labor could not move the amendments because the government had not agreed, because George W. Bush had not agreed. This morning the
Prime Minister said that we will not get agreement from George W. Bush until after the Senate is finished and that that will be the final arbitration on the matter. So we are now left to hear the Labor amendments put, presumably with the government going to a debate on those. I just want to clarify that—far from the Greens, the Democrats and One Nation delaying the chamber—the opposition and government could not bring forward the amendments last night. We have now got them and we should debate them.

I will also say this about the amendments while we are waiting for the opposition to get ready to move them. I can foreshadow that the Greens will be moving an amendment to the Labor amendments to toughen them up a bit. We believe they are inherently weak—I do not know what Mr Howard and Mr Bush are worried about. I want to point out that, while they move on evergreening, the test is too weak and we will be moving an amendment to them to strengthen it. We believe even the penalties are very modest when compared to the potential billions of dollars that drug companies get from the processes we are discussing.

But the really important thing is to look at what is not in the Labor Party amendments. There is not an amendment here to deal with a process which could lead, through arbitration under the free trade agreement, to a challenging of the decisions of the Pharmaceutical Benefits Scheme board when it makes a determination to either not allow a drug to be listed or not give it the price that a drug company wants. Let us make no mistake about this: the US pharmaceutical industry wants to undermine the Australian Pharmaceutical Benefits Scheme. The scheme, which came in way back in the prime ministership of Ben Chifley, is now recognised as the best in the world. It delivers cheaper medicines, and I have seen figures that they are from a half to a quarter of the price that people have to pay in the United States. It makes expensive drugs universally available to everyone in Australia, including the poor who are sick. Its costs have been increasing, of course, but taxpayers have been prepared to fund it, even given what it costs, because people getting sick because they could not afford the drugs would end up costing us a lot more money through the medical system.

What an extraordinary system it is in the United States, with 30 million people not having access to hospitals. Just last week we saw on the Four Corners program the story of an elderly lady in one of the New England states who goes to Canada once or twice a year to buy her suite of drugs because that saves her thousands of dollars, because the Canadians have at least got some moderation of drug prices compared to the rip-off of the pharmaceutical corporations in America—and it is a rip-off. They are making extraordinary profits out of the illness of people. Nobody cavils at the wonder of pharmaceutical science in this age and its ability to cut across illnesses which were once irremediable, but the talk by the Republican senator on the Four Corners program—indicating that Australian prices are too low and should be raised and that Australians, as users of drugs, should have to pay more for what he claimed was the research into and development of drugs—sent a chill down my spine, as I am sure it did with many other viewers.

The pharmaceutical companies in the United States are out to get our Pharmaceutical Benefits Scheme. It is not about the cost of development; it is about lining their pockets. That is what we are dealing with here today. The Greens, the Democrats and One Nation have already moved amendments in committee which would vouchsafe our Pharmaceutical Benefits Scheme. What those amendments have said in brief is that nothing under this free trade agreement will affect
our right, through the system we have, to determine prices and listings on the Pharmaceutical Benefits Scheme in Australia. And guess what? Labor went across and voted with the government against those amendments. Labor had the opportunity to make absolutely sure and watertight that the Pharmaceutical Benefits Scheme would not be undermined by the free trade agreement and then several times last night went across and voted with the Howard government.

Senator Conroy—Get the egg-beater out!

Senator BROWN—Senator Conroy, coming in late, can make his claims about egg-beaters, but the froth is with Labor when it comes to a real test here: over they go and vote with the government—and they did it repeatedly. The press gallery has gone into overdrive about this jousting between Mr Latham and Mr Howard over this amendment. I am sure there will be another stack of it today about who caved in—did John Howard undermine or are the Labor Party undermining the free trade agreement? The fact is that this amendment is pathetic. It does not address—

Senator Conroy—Are you going to vote for it?

Senator BROWN—The answer to that is, yes, because anything—

Senator Conroy—Now you sound like John Howard.

Senator BROWN—Why?

Senator Conroy—It is unnecessary, it is hopeless, but you are going to vote for it.

Senator BROWN—Yes, because, Senator Conroy—through you, Madam Temporary Chairman—the Labor Party sold out on the Pharmaceutical Benefits Scheme last night. So the best we can get at this stage are the weak and pathetic—as you described them—amendments from the Labor Party. But even with the weak and pathetic amendments, we had the Prime Minister ringing George W. Bush, as he explained to the nation this morning, and he has not been able to get an answer out of him. Mr Bush has not made up his mind as to whether or not he will accept this amendment. Why won’t he? Because the lawyers of the pharmaceutical companies, the big corporations, have not decided whether they will accept this amendment in the Australian parliament. If they do not, the free trade agreement is off.

What an appalling affront to Australian democracy this is. What has happened serially in this debate is that the Labor Party have been supporting the Howard government in removing the ability of this parliament to determine these matters in the interests of the country. Now an amendment is going to be put forward. It has not been moved yet, and they could not move it last night: they were not ready because Prime Minister Howard had not made a determination because President Bush had not made a determination—and he still has not. It just makes you angry that the Labor Party have caved in on so much in this free trade agreement.

Basically, what is frustrating about this debate is that, with a few honourable exceptions in the Sydney Morning Herald, the Age and a few other outlets, the debate going out to the public is not explaining how we are losing our democracy here. We are losing our right to determine what is or is not good for this country to a new system set up, outside the reach of our courts and our parliament, called a joint committee, with a dozen other subcommittees, with people appointed not by this parliament but by Prime Minister Howard and George W. Bush, who then appoint others. You bet the pharmaceutical companies will have a say on that. You bet the big corporations will have a say on that. And when you get to that arbitration commission, guess what? Can the average Australian take
part in the arbitration? No, they can send a letter—that is it; full stop—and if the commission does not want to read their letter, it does not. When it makes a decision about the Pharmaceutical Benefits Scheme, intellectual property, cultural amenity or the environment in this country, where is the appeals mechanism? There is not any. We are disempowered.

Worse still, last night the Labor Party voted against a Democrat sunset clause which would mean this parliament would have to review this in three years time to see how it is going—further disempowering the parliament. Prime Minister Howard got on the airwaves this morning to say that Labor have sought technical amendments to reduce the possibility of the free trade agreement succeeding—and that is what we are about to hear moved now. The Americans could say, ‘It is inconsistent and will not be acceptable.’ Well, isn’t that the pits?

The amendment we will be dealing with here will not end here: the Americans will say whether or not it is acceptable. George W. Bush, when he gets the call from the pharmaceutical companies’ lawyers, is going to ring John Howard, Prime Minister of this country, and say, ‘The FTA is off,’ if they do not like the amendment we are about to deal with, or, ‘It’s on,’ if they can accept it. That is horrendous. Defending the national interest? This Prime Minister is pulling the rug from under it. What is worse, the Leader of the Opposition is tugging with him. It has been left to the crossbench to defend the national interest here—right across the spectrum. Let us hear the Labor amendment.

The Greens will move to amend the amendment to make it less pathetic, Senator Conroy. That is all we can do. As the Leader of the Government in the Senate said a while ago, this is one of the great issues we will deal with in this parliament, but in my book the government and the opposition are pulling the rug from under the right of this parliament, in an elected democracy, to determine what is good for this country on a whole range of matters into the future. We will have this debate many years from now, as the Canadian, Mexican and American interests are doing over NAFTA, on issues which are not determined.

This agreement is determinedly vague. We must leave it to the faceless ayatollah of trade yet to be appointed by the Howard government to determine what gets through and what does not on the Pharmaceutical Benefits Scheme, on jobs, on manufacturing, on quarantine—on the whole lot of it. It will not be determined by this parliament. The ayatollah of trade will not be answerable to this parliament in a process which is not determined by this parliament and which is out of reach of the Australian people and out of reach of the average American as well. That is what is wrong with this process. Fiddling at the edge by the Labor Party brings the whole thing into doubt, says Prime Minister Howard. It is time Prime Minister Howard got a backbone. It is time Prime Minister Howard respected democracy in this country. It is time Prime Minister Howard recognised that this parliament should run the affairs of this country—not his executive, not his phone line to George W. Bush and certainly not the pharmaceutical corporations in California.

Senator CONROY (Victoria) (11.01 a.m.)—by leave—I move opposition amendments (1) to (4):

(1) Schedule 7, item 6, page 82 (lines 19 to 22), omit paragraph 26B(1)(a), substitute:

(a) a certificate to the effect that the applicant, acting in good faith, believes on reasonable grounds that it is not marketing, and does not propose to market, the therapeutic goods in a manner, or in circumstances, that would in-
fringe a valid claim of a patent that has been granted in relation to the therapeutic goods; or

(2) Schedule 7, item 6, page 83 (after line 8), after section 26B, insert:

26C Certificates required in relation to patent infringement proceedings

(1) This section applies if:

(a) a person gives a certificate required under subsection 26B(1) in relation to therapeutic goods; and

(b) another person (the second person) intends to commence proceedings under the Patents Act 1990 against the person referred to in paragraph (1)(a) for infringement of a patent that has been granted in relation to the therapeutic goods (the proceedings).

(2) The second person, before the date upon which the proceedings are commenced, must give to the Secretary and to the person referred to in paragraph (1)(a) the certificate required by subsection (3).

(3) The certificate required by this subsection is a certificate to the effect that the proceedings:

(a) are to be commenced in good faith; and

(b) have reasonable prospects of success; and

(c) will be conducted without unreasonable delay.

- The certificate must be signed by, or on behalf of, the second person and must be in a form approved by the Secretary.

(4) For the purpose of paragraph (3)(b), proceedings have reasonable prospects of success if:

(a) the second person had reasonable grounds in all the circumstances known to the second person, or which ought reasonably to have been known to the second person (in addition to the fact of grant of the patent) for believing that he or she would be entitled to be granted final relief by the court against the person referred to in paragraph (1)(a) for infringement by that person of the patent; and

(b) the second person had reasonable grounds in all the circumstances known to the second person, or which ought reasonably to have been known to the second person (in addition to the fact of grant of the patent) for believing that each of the claims, in respect of which infringement is alleged, is valid; and

(c) the proceedings are not otherwise vexatious or unreasonably pursued.

(5) The person referred to in paragraph (1)(a), with leave of the court, or the Attorney-General, may apply to a prescribed court for an order that the second person pay to the Commonwealth a pecuniary penalty if the second person gives a certificate required under subsection (3) and:

(a) the certificate is false or misleading in a material particular; or

(b) the second person breaches an undertaking given in the certificate.

Maximum penalty: $10,000,000.

(6) When determining the extent of a pecuniary penalty to be ordered pursuant to subsection (5), the court must take into account:

(a) any profit obtained by the second person; and

(b) any loss or damage suffered by any person;

by reason of the second person exploiting the patent during the proceedings.

(7) For the avoidance of doubt, subsection (6) does not limit the matters the court
may take into account when determining a pecuniary penalty ordered pursuant to subsection (5).

(8) If:

(a) the second person has sought and obtained in the proceedings an interlocutory injunction restraining the person referred to in paragraph (1)(a) from infringing a patent; and

(b) section 26D does not apply; and

(c) a prescribed court declares that the second person has given a certificate required under subsection (3); and

(d) a prescribed court declares that:

(i) the certificate is false or misleading in a material particular; or

(ii) the second person has breached an undertaking given in the certificate;

the prescribed court may, pursuant to this section, order that the second person pay to the Commonwealth, a State or a Territory compensation for any damages sustained or costs incurred by the Commonwealth, a State or a Territory as a result of the grant of the interlocutory injunction.

(9) In this section:

prescribed court has the same meaning as in the Patents Act 1990.

(3) Schedule 7, item 6, page 83 (after line 8), after section 26B, insert:

26D Requirements for interlocutory injunction

(1) This section applies where:

(a) an applicant gives notice to a patentee in accordance with subparagraph 26B(1)(b)(iii); and

(b) the patentee and/or its exclusive licensee (in this section the party or parties is or are referred to as the patentee) applies to a prescribed court for an interlocutory injunction to restrain the applicant from marketing the therapeutic goods the subject of the application on the ground that such conduct will constitute an infringement of its patent.

(2) An application for interlocutory relief in accordance with subsection (1) may not be instituted unless the patentee has first notified the Attorney-General of the Commonwealth, or of a State or of a Territory in writing of the application.

(3) The Attorney-General of the Commonwealth shall be deemed to be a party to any proceedings commenced in accordance with subsection (1) unless the Attorney-General gives written notice to the prescribed court that he or she does not desire to be a party.

(4) If an interlocutory injunction is granted pursuant to an application made as described in subsection (1) and:

(a) the patentee subsequently discontinues the principal proceedings without the consent of the other parties thereto; or

(b) the principal proceedings are dismissed; and

(c) in either case, the prescribed court declares that:

(i) the patentee did not have reasonable grounds, in all the circumstances known to the patentee or which ought reasonably have been known to the patentee:

(A) to believe that it would be granted final relief by the prescribed court against the person referred to in paragraph (1)(a) for infringement by that person of the patent; or

(B) (in addition to the fact of grant of the patent), for believing that each of the claims, in respect of
(ii) the application for the interlocutory injunction was otherwise vexatious or not reasonably made or pursued;

the prescribed court may, in addition to any other relief which it believes should be granted to any person, make any of the orders described in subsection (5).

(5) If the prescribed court makes a declaration pursuant to paragraph (4)(c), the prescribed court may, pursuant to the usual undertaking as to damages given by the patentee to the prescribed court to obtain the interlocutory injunction:

(a) assess and award compensation to the applicant referred to in sub-section (1) against whom the interlocutory injunction was made:

(i) on the basis of an account of the gross profits of the patentee arising from the sale by it in Australia of the therapeutic goods the subject of the interlocutory injunction, during the period of the interlocutory injunction, without requiring the said applicant to establish or quantify its actual loss; or

(ii) on such other basis as the court determines to be appropriate; and

(b) award to the Commonwealth compensation for any damages sustained, or costs incurred, by it as a result of the grant of the interlocutory injunction.

(6) In this section:

prescribed court has the same meaning as in the Patents Act 1990.

(4) Schedule 7, item 7, page 83 (after line 12), at the end of the item, add:

(2) The amendments made by item 6 apply to legal proceedings commenced on or after the day on which this Schedule commences.

When the government announced on 8 February this year that it had concluded negotiations with the United States on the text of a free trade agreement, it made many claims about the potential benefits of the deal for Australia. The minister put out a press release claiming the virtues of the deal. The Australian public were expected to take on trust that this was a great outcome for our country. The minister initially put out a two-page release but the United States released a great deal more information, claiming their victories in negotiations. It was immediately obvious that the two stories did not stack up. Who was telling the truth? What was the Australian public expected to believe?

Release of the text was another month away, and yet the government expected the public, the Australian Labor Party and the Australian parliament to fall in line and support the deal. It was not good enough. The US government was claiming victory on the PBS and audiovisual services, while the Australian government was claiming that these areas were fully protected. The Australian public, this parliament and the Labor Party were expected to support a deal that ultimately ran to more than 1,000 pages, sight unseen. The cabinet ticked off on it, sight unseen. Labor was not prepared to do that.

The FTA has broad-ranging implications for so many areas of Australian public policy. Australia’s economic, trade, foreign,
health, media, industry, agriculture and quarantine policies are all affected by aspects of the FTA. It extends even further to our intellectual property laws and copyright, customs and telecommunications, investment, financial services, government procurement, and electronic commerce. These are substantial issues requiring careful consideration. They should not have been forced onto the parliament or the Australian public without the opportunity for them to be considered and assessed on their merits. It was up to Labor to establish a mechanism to give the public an opportunity to have its say on the FTA. In the interests of transparency and proper parliamentary processes, Labor established the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America. The committee received over 500 submissions and held public hearings on 13 occasions in Sydney, Melbourne and Canberra.

It was through the committee process that the parliament was able to bore down into all of the detail contained in the FTA. Those in business who strongly supported the deal gave evidence on the benefits they believed would arise. Those who had concerns about aspects of the deal gave evidence supporting their arguments. The government’s negotiating team sat through many hours of the committee’s hearings, providing us all with a greater understanding of how the deal was developed and how it would impact on current public policy. May I take this time to thank the negotiating team for their great cooperation and assistance throughout the FTA inquiry and their willingness to explain in great detail the implications of the deal. Expertly led by Mr Stephen Deady, the Australian officials have worked under enormous pressure over the past 12 months to conclude a deal to fit in with the Prime Minister’s timetable, a timetable that was rushed purely for political reasons but a timetable that Australia’s officials met through great professionalism and dedication to the task at hand.

Of the many issues raised during the Senate inquiry there were two notable ones of great interest to many Australians. These were in relation to the capacity of future Australian governments to regulate for local content on current and future media mechanisms. In this regard the US claimed:

In the area of broadcasting and audiovisual services, the FTA contains important and unprecedented provisions to improve market access for U.S. films and television programs over a variety of media including cable, satellite, and the Internet.

But Minister Vaile claimed:

Our right to ensure local content in Australian broadcasting and audiovisual services, including in new media formats, is retained.

To address these concerns, Labor said it would only support the FTA if our local content laws were legislated to ensure that any change to these laws could only be agreed to by the parliament. Once again, Labor set the agenda—it set the policy to protect the great Australian way of life—and the government followed. Labor set the policy to protect Australian local content and the government responded by drafting the amendment and filling out the paperwork to enable the Senate to pass the amendment last night. Labor set the policy to protect local culture and to ensure Australian voices continue to be heard and Australian faces continue to be seen on Australian TV. These were Labor demands, and the government followed.

Another key issue raised in the inquiry was the potential impact of the deal on our Pharmaceutical Benefits Scheme—a great Australian health scheme established in 1948 by the Chifley government. Chifley amended our Constitution to ensure this program could provide affordable medicines for the health and wellbeing of the Australian com-
munity. Labor has always said that it would not support the FTA if it in any way undermined the PBS—that if the FTA in any way undermined community access to cheap, affordable drugs it would be a deal breaker. What did the US say with regard to the outcome on the PBS? The US claimed:

... Australia will make a number of improvements in its Pharmaceutical Benefits Scheme (PBS) procedures—including establishment of an independent process to review determinations of product listings—that will enhance transparency and accountability in the operation of the PBS.

But Mr Vaile claimed:

The Pharmaceutical Benefits Scheme (PBS), in particular the price and listing arrangements that ensure Australians' access to quality, affordable medicines, remains intact.

Once again, that was not good enough for the Labor Party. The Australian community was not confident in the government's assurances, medical and academic experts on the PBS were not satisfied with the government's assurances and Labor was not in any way convinced by the government's assurances. We have to be absolutely certain the FTA will not in any way undermine or delay community access to cheap medicines. Labor will not allow cheap drugs to be delayed by dodgy patent claims. Companies trying to pull that stunt face severe financial penalties if a court determines that their claims were initiated without a reasonable basis for believing that their claims would be successful. Labor has moved these amendments on that basis to protect the PBS.

Amendment (1), on claims in good faith, amends the legislation to reduce the burden of proof on the generic company in certifying what is covered by a registered patent. The current legislation is too strict. The bill needs to be qualified to reduce the risk to the generic company making the certification. As amended, the generic company will now be giving a certificate on the basis of good faith and on reasonable grounds. The insertion of the words 'valid claim of' is necessary because not all claims in the patent might validly apply to the proposed drug of the generic company.

Amendment (2) requires that if the patent-holding company wants to commence litigation against a generic drug company then it too must fill out a certificate at that same basic standard. This certificate requires the patent-holding company to contest the case in good faith, have a reasonable chance of success and proceed without unreasonable delay. If the certificate filled out by the patent-holding company is false or misleading or an undertaking given under the certificate is broken, the patent-holding company can be penalised by up to $10 million and the court can order compensation to be paid to the Commonwealth, states and territories for losses sustained as a result of the injunction, including any additional costs incurred by the PBS and public hospitals.

The current law requires that a court cannot grant an interlocutory injunction unless the applicant provides an undertaking as to damages. Amendment (3) enhances the entitlement to damages for the generic company and for the Commonwealth, states and territories. If the patent-holding company wants to take injunction proceedings after being notified by the generic company that it is bringing a generic drug onto the market, it will be liable for damages: if the case is discontinued by the patent-holding company, if the case is dismissed and the court determines the patent-holding company did not have reasonable grounds to believe it would succeed in the overall action or to believe that each of its claims was valid, or if the basis of the injunction was vexatious, not reasonably made or unreasonably pursued. The court can award damages to the generic company, including on the basis of the pat-
ent-holding company’s gross profits on its drug during the period of the injunction.

Let us be clear: if a court finds that a drug company has got a bodgie patent and has been deliberately keeping generic drugs off the market, the court can order that all profits made by that company on that drug be taken from them. This is a seriously punitive penalty. That is what is necessary to make sure that this practice, prevalent in the US, does not come to Australia. It is not something that the Labor Party wants and it is not something the Australian community wants. This amendment puts in place a serious disincentive for companies to engage in this bodgie practice.

Our final amendment, amendment (4), makes it clear that the legislation will not apply retrospectively. It is encouraging that the Prime Minister indicated earlier this morning that his government supports the amendments. The Prime Minister claims these amendments are unnecessary. He claims that the penalties that could be imposed will deter innovation and impact unfairly on Australian companies. This amendment puts in place a serious disincentive for companies to engage in this bodgie practice.

These amendments are consistent with all of Australia’s commitments with regard to the WTO and the free trade agreement. The only person who has changed his position on this issue is the Prime Minister. It was a fascinating press conference this morning. It reminded me of that iconic Australian film The Castle. The fly-by-night solicitor, Dennis Denuto—if you remember that—is stuck in the court in a legal quagmire and he says to the presiding judge: ‘It’s the Constitution; it’s Mabo; it’s the vibe.’ That is what we saw this morning from the Prime Minister. It was not anything to do with the words, the legal advice. He was worried because of the vibe. That is the argument that he put up.

Today John Howard has had a Dennis Denuto moment. Unable to say what was wrong with Labor’s amendments, the Prime Minister bumbled and blustered and grasped at straws. He said that the US may object to the text of the enabling legislation. He also said that Labor’s amendments were unnecessary. If they are unnecessary, how can they be objectionable? If they are objectionable then Labor is here to tell you that they are necessary. If these statements are true, you have to wonder why the Prime Minister has agreed to these amendments. The truth is that Labor’s amendments will protect the PBS. Australians should see the Prime Minister’s statements this morning for what they are: creating a straw man and knocking it over, just to cover for the fact that he did not do his job. He did not get a tough enough agreement that protected the PBS. Labor has delivered. Labor has stuck to its position from day one; if the FTA undermined the PBS it was a deal breaker. Today we made sure that we protected the PBS.

**Senator Hill** (South Australia—Minister for Defence) (11.17 a.m.)—Labor has always been deeply divided over this free trade agreement. In actual fact, it is deeply divided over the issue of bilateral agreements per se. I can remember, when Labor was last in government, there were suggestions that it might be possible to negotiate a trade agreement with the United States or it might be possible to, in some way, be part of what were then the NAFTA negotiations to put an Australian perspective and get opportunities for larger markets. The mere concept was condemned by Labor. I can remember Mr Keating in particular, as the Labor Prime Minister, condemning it and arguing for multilateral trade instead. Then, of course, we
had trade minister Senator Cook, who maintained that position in subsequent years.

When Labor went into opposition, through the Senate committees and within this chamber its constant line was that bilateral agreements are evil and that the only way to seek broader trade opportunity is through the multilateral round. This government always had a different philosophical approach. It said that we have a responsibility to facilitate the growing of the Australian economy. Apart from getting the domestic fundamentals right—which was another area that Labor got so fundamentally wrong when it was in government; it made it impossible for Australia to export competitively because of domestic interest rates and inflation rates—this government also should take whatever opportunities present to broaden the market opportunity. It was legitimate to do that through bilateral and multilateral negotiations and it was not a matter of either/or.

Then, of course, as time went by Labor saw the Howard government successfully negotiate a bilateral agreement with significant benefits for Australia with Singapore and another with Thailand. It saw Australia exploring with other countries—China and a number of Middle Eastern countries—the potential for bilateral agreements and, to Labor’s astonishment, it then saw ASEAN approach the Australian government to talk about the prospects of a trade agreement between ASEAN and Australia. Labor, in effect, got left totally behind and where it now stands philosophically on these issues is very difficult to read. Having lost the philosophical debate, Labor has sought to gain whatever short-term political benefit it could out of the detail of the bilateral agreements that have been negotiated by the Howard government.

This agreement, which has been negotiated with the United States of America, is, of course, the big one, because the US is by far the largest economy in the world and offers by far the largest market opportunity for a whole range of Australian products and services. Therefore, it becomes the primary focus of the Labor Party. It is also a primary focus under Mr Latham, I would suggest, because of the anti-American stance he has taken on other matters, particularly in relation to national security. If you bag the President of the United States on national security matters, it will be very difficult to endorse him on bilateral trade matters.

But anyway, for its own domestic political purposes, it always had a prejudice against a bilateral agreement with the United States no matter what benefit that agreement might provide for Australia—no matter that it might provide a benefit of an extra 30,000 Australian jobs. I guess that is not surprising, because Labor is the party that lifted unemployment in this country to one million. By contrast, the Howard government has reduced unemployment to the lowest levels in the last 20 or 30 years.

Senator Carr—This is humiliating.

Senator HILL—I am not surprised that Senator Carr is disturbed about our successes in reducing unemployment. We on this side of the chamber are proud of the fact that we have reduced unemployment by so much that we have been able to create another 1.3 million jobs, and we want to create more. We want all Australians to benefit. We want them to have the opportunity of employment. We want the Australian economy to grow. We will keep concentrating on the fundamentals that allow Australian exporters to be competitive and we will keep working on ways in which we can grow the Australian market opportunity. We do not mind whether it is with the United States or whether it is with some other party. We do not mind whether it is done multilaterally. Where we
can get in and negotiate a benefit for Australia in terms of market access then we will do so. We have done so on this occasion in this agreement. That is why this agreement is so important for Australia and that is why it is so important for the Howard government. We are not going to easily forgo this unprecedented opportunity for market expansion. The opportunities offered to Australia—simply to get into the United States government procurement sector at both the federal and state level, for example—are enormous. We are not going to easily give away that opportunity.

Turning to the current debate, Labor have been prejudiced against a negotiation with the United States from the very first day and against this agreement in principle. What happened then? As time went by, more Australians started to realise that this agreement could, in fact, bring real benefits for our country. Yes, there is probably a certain amount of trust in Mr Howard on that. Why is there trust? Because his management of the Australian economy has been so successful. It is very difficult, even for Labor, to argue to the contrary when you look at the great economic successes of this country in the last 8½ years. Senator Carr might fold his arms, but that is the reality. If you read the international journals and look at what has been said by the IMF, the World Bank, the OECD and other authorities—and I invite Labor senators to go back and look at the OECD reports on Australia of recent years—you see that they all applaud the economic management of the Howard government and they all applaud the incredible economic successes of the last 8½ years.

Is it surprising that the Australian people have faith in Mr Howard and his leadership in taking them towards further economic benefits? No, it is not surprising at all, but it is embarrassing for the Labor Party. As the Australian people came to realise that this agreement with the United States could offer such tremendous opportunities for Australia, Labor domestically started again to be squeezed. The position became that perhaps they should not oppose the agreement in principle; perhaps they should search for a detail upon which they could distinguish their position—look for a fine detail or two on which they could go out and say, ‘Okay, we are no longer opposed to the agreement, but we are opposed to certain details.’

As I have said in the last three days in this place, the government were never prepared to negotiate an agreement with the US on any terms. There were always a number of no-go areas. We wanted the expanded trade opportunities, but there are aspects of our society and of our system that we are not prepared to sacrifice. Of course the US went into the negotiations on the same basis. There has to be give and take to get the extended trade benefits, but there were no-go areas. Those no-go areas for us included areas in the cultural sector and in the PBS. We are strong supporters of the PBS system. We have put an enormous amount of extra government money into the PBS system to ensure that it continues to work within contemporary Australia, particularly as new medicines and more expensive medicines become available. It is a critically important safeguard for the Australian community. We respect that and we support that. So this negotiation included a no-go area in relation to the PBS.

The Labor Party, however, whilst having to acknowledge that politically they had no choice but to support the agreement, decided that they would develop an argument that, in some way, the PBS was not adequately protected by this agreement. So we had Mr Latham and Senator Conroy coming out last week and focusing on the American system of patent registration and using the American experience to say that, in some way, there
could be spurious patent claims within Australia that would threaten generics. Our position is that the Australian government supports the generic industry. Generic medicines play a significant part in keeping the prices of the whole system down in this country. We recognise that.

We also recognise, although the Labor Party are not prepared to acknowledge it, that the major pharmaceutical companies that invest enormous amounts in new medicines also have an important part to play. They have a right to reasonable protection. But a line has to be drawn that does not provide a disincentive for the generics. You have to get the best of both sides. The PBS system has given the best of both sides. Labor came in and, using the American patent experience rather than the Australian patent experience, argued that in some way there could be spurious—or, to use Mr Latham's language, bodgie—claims which would mean that generics would be threatened.

In the negotiation of this agreement, one of the principal concerns we had was to ensure that the generic industry and growth within the generic industry—because there has been significant growth in recent years and significant growth in the number of generic products that are on the PBS—did not suffer any disincentive as a result of this agreement. It was something about which we negotiated hard and which Mr Vaile negotiated successfully. Yet Mr Latham, rather than using the example of the Australian patent system, picked up deficiencies in the American patent system and said to the Australian people, 'There is a flaw in what the government has negotiated.' Of course, what we have learnt in the last week is that he has had to come to realise that the Australian patent system actually works well; it protects against abuses. He has had to realise that spurious claims will not work, and that the application of the patent system in Australia is not a threat to generic medicines. So, having recognised that—and it took a week for him and Senator Conroy to recognise it—they were forced to move to another area of argument. The area they chose was injunctions, and they have brought forward amendments to put heavy penalties upon injunctions.

The position is, as I said, that generics are protected within the agreement: it was an important part of our negotiation. We argue that these amendments are unnecessary. We argue that they are also risky because it may be put—and there has been some suggestion of this—that they are inconsistent with the agreement. But the Labor Party does not care if that risk is taken because half the Labor Party wants the FTA to fail. We will agree to the amendments because of all the benefits—

Senator Carr—Finally, he announces it! After 14½ minutes he finally coughs.

Senator HILL—No, because of all the benefits that flow from the FTA. And if we do not agree to the amendments, we lose the opportunity for another 30,000 Australian jobs. But why, for a political stunt—which is what the Labor Party is up to in this exercise—would they even contemplate the chance of another 30,000 Australian jobs at risk? It is very difficult to comprehend. (Time expired)

Senator RIDGEWAY (New South Wales) (11.32 a.m.)—On behalf of the Australian Democrats I want to outline our response to this issue. It is quite extraordinary that Senator Conroy could come in here and make such a pathetic argument for why the Labor Party have gone down the path they have. They have lost sight of the big picture on the free trade agreement, when in many respects it presented Australia with a unique opportunity to carve out those things that are relevant to the national interest, particularly social policy as it relates to the Pharmaceutical
Benefits Scheme but also, just as importantly, on questions of cultural and environmental policy.

I heard the minister giving the government response to the opposition’s amendments this morning and I agree with him in one sense. What he was saying was they are not needed in the first instance, because the free trade agreement is not really being altered to any great extent. So what we have got here is bodgie and dodgy getting together to give us a sweet FTA. The reality that Senator Conroy ought to understand is that all he has done is give us a sugar pill; it is a placebo. It does not give us any real answers for protecting the PBS in this country. If the Labor Party in opposition are serious about this then they should vote against the free trade agreement. They should have been seeking that the PBS be removed from the free trade agreement right from the very start.

From looking at the particular amendments that have been put forward, I think that Senator Conroy well understands that all he is seeking to do is affirm what already exists in Australian law. In particular, the first two amendments simply codify what is already dealt with and what is standard practice, as I understand it, in the Federal Court. I note that at the media launch Mr Latham and Senator Conroy said they were going to release some legal advice. I still have not seen the legal advice being tabled in public. I do not know whether it has been circulated in this chamber. The reality though is that it is quite easy to get any lawyer to give the client an opinion letter that suits the reasonable prospect of success—in other words, you can get what you want. But proving bad faith will require strong evidence, and well-advised clients will not leave any trail of bad faith. I would predict that no major pharmaceutical company will ever pay under this amendment, most of all because it does not achieve what Senator Conroy on behalf of the opposition says it will. It simply is not going to, and it is fanciful to suggest that the cost of medicines in this country will not increase.

The reality is that, in focusing on one or two things, they have lost sight of the bigger picture on the implications of the free trade agreement in respect of allowing US multinational pharmaceutical companies to be able to have a say in social policy in this country. The free trade agreement, through the various clauses that allow consultation processes to be triggered, allows the US government and more particularly US corporations to have a greater say in Australian policy. This is at the heart of the issue. These are the things the Labor Party ought to have been standing up for.

Senator Conroy trumpets the success of the opposition amendments that have been put forward. I think it is important to remind ourselves that Australia’s Pharmaceutical Benefits Scheme is world’s best practice. It is one that is the envy of many other countries who would like to replicate it. US pharmaceutical companies of course have attacked it consistently—especially their Australian subsidiaries—because it delivers some of the lowest patented drug prices in the developed world. This has been affirmed by the Productivity Commission, who say that the cost of our drugs is three to four times lower than drug prices in the United States. We do this through a system of pharmo-economic analysis and reference pricing that determines the benefits of new drugs and their national bargaining power. So it is not surprising that the pharmaceutical industry, both here and in the United States, has been calling for changes to the free trade agreement that would strengthen their capacity as part of their industry to increase drug prices themselves.
These are the things that need to be kept in mind. Why, under the free trade agreement, have we accepted another process of review for what is on the Pharmaceutical Benefits Scheme list? If we have a system that already works—and the government know that—why should we allow the Americans to have a second choice? Isn’t that just a clause that would allow US corporations to put their foot in the door and force a deal on the question of higher priced drugs entering the Australian marketplace? Wouldn’t it force drug prices up both for the PBS system and, inevitably, for Australian consumers?

Senator Conroy also spoke about the $10 million fines that the opposition are proposing. That is pretty laughable. Those fines are loose change when you consider the size of US pharmaceutical companies and the amount of money that is being spent in the United States. Those pharmaceutical companies represent the most profitable and influential industry in the United States—and they have been that way for the past 10 years. In 2003 and 2004 it was reported that the industry spent $US150 million to influence public policy. That is the trend for US pharmaceutical corporations. That is what they already do. Why do the opposition fancifully think that these corporations are all of a sudden going to change their ways and not try to influence health policy in this country?

There are 675 pharmaceutical lobbyists in Washington alone. They spend their time going in and out of congress trying to influence policy. In 1999-2000, during the US election cycle, the pharmaceutical industry spent $20 million on campaign contributions, of which $15 million was provided to the Republican Party. In October 2003 it was reported that President Bush told Prime Minister Howard that raising Australian prices for US pharmaceuticals was important to ensure that consumers in all countries—not just the United States—paid for the high research and development costs. This is telling about what the opposition have come to accept. There is an illusion that they are going to keep the cost of medicines down; the reality, of course, is otherwise.

It is also galling that during this debate we heard, one after the other, Labor Party senators come into the chamber to talk about how bad this deal is, yet today they arrive to sanction the enabling legislation for the free trade agreement. I remind the chamber again that the House of Representatives did not ever get to debate the free trade agreement or even the enabling legislation. The legislation was just passed through to the Senate. What did we get? We got the enabling legislation but we did not get to debate the free trade agreement because the guys over there in blue carpet land—the executive of government—decided what the free trade agreement would be. They signed off on it and sent us the enabling legislation—and we were expected to rubber stamp it.

Senator Boswell—You can vote against it.

Senator RIDGEWAY—Don’t worry, we will be voting against it. Thank you for that interjection because it highlights the contradictions here. Senator Boswell ought to be defending the rights of the sugar industry instead of just paying them compensation. Labor senator after Labor senator came in here and talked about how bad this deal was. Senator O’Brien said:

... this government acted unilaterally and pursued a free trade deal which was more to do with politics than with free trade and with what we describe as an unrealistic negotiating time frame imposed on us by the US electoral cycle ...

Senator Conroy said:

Expert evidence from the departmental officials who negotiated this deal—some of them are in the chamber today—was quite clear: there was absolutely no imperative for this to be signed or rushed. It was quite clear. We could wait until
31 December to vote this bill into legislation and make a decision to support it.

That is laughable because yesterday we changed the hours and routine of business in order to facilitate an expeditious way of dealing with the enabling legislation. We got to the eleventh hour last night and the opposition were not even able to put forward their amendments that were on the running sheet. Why? Because they had not reached any agreement with the government—or, presumably, they were waiting for the sun to come up in Washington so that President Bush could say that it was okay. It is quite laughable to think about that because the Labor Party are talking about being able to wait until 31 December, and this agreement does not come into being until 1 January, so you have to wonder why it is being rushed and why the opposition would support that.

Senator Kirk said:

But the facts of the matter are that this government has failed to negotiate the best deal possible for Australia and in a couple of areas there are serious flaws. The government no doubt could have achieved a better deal for Australia if it had pushed harder at the negotiating table, especially on behalf of our farmers.

I am sure that Senator Boswell would agree with that. Senator Kirk continued:

The government sold out many important Australian industries that were counting on the Prime Minister and his government to look after their interests. This free trade agreement has been incompetently negotiated.

That is pretty much at the heart of the matter. The Labor Party know that of the 42 grounds for qualification on the free trade agreement, they have chosen to make two amendments. They have neglected the other 40 and said, ‘When we’re in government we’ll look at those things.’ As I said to Senator Conroy yesterday, ‘If you can look into that crystal ball, tell me what mechanism you are going to use in six months, eight months or a year’s time when you are in office, to trigger a process to renegotiate the free trade agreement.’ That is all rhetoric because the decisions—and the drawing of a line in the sand—have to be taken now. The opposition will not be able to renegotiate the free trade agreement. If they do renegotiate it they will just be dealing with some of the window dressing on the edges while the substance will remain the same.

People ought to be reminded that the free trade agreement effectively removes the parliament from being able to deal with social and public policy in this country particularly as it deals with health, the environment and culture. That is the reality and in effect it is done to the exclusion of the Australian people. In the case of the PBS we would have thought that the Australian public would have been permitted a greater say in what happened to the PBS. Instead, we have been given assurances from the government and have had to rely upon them. As for the opposition—if you can call them that—it would have been an opportunity for them to represent the interests of Australian people. That is what it comes down to.

We will not be supporting the amendments that are put forward by the Labor Party because the free trade agreement is fundamentally flawed. It is not a free trade agreement and I do not believe that anyone can say that it is a fair trade agreement. I note the flagging of amendments that are going to be put forward by the Greens. We certainly will not be supporting those either, because the reality is that no matter how much you tinker around the edges to try to even marginally move it ahead, those things in and of themselves, without looking at the bigger picture of the free trade agreement, will simply not fix the problem that the government have put before us and which the opposition are prepared to accept. Quite frankly, it is a shameful day when the oppo-
sition have been prepared to do this. I would hope that they are able to give some explanation on the issues that I have raised and how they see themselves distinguished from the government. All I see at the moment are smoke and mirrors in terms of what they are saying about the cost of medicines in this country not increasing. The cost of medicines will increase. Everyone knows that. Everyone out there has got that gut feeling; you can go with it yourself. Nothing is going to change as a result of these amendments.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Before I call Senator Boswell, I advise Senator Ridgeway that the memorandum of advice that he alluded to at the beginning of his contribution was tabled in the Senate on the evening of 9 August, last Monday, and can be found in the Journals of the Senate, No. 58, on page 3,850.

Senator Carr—Mr Temporary Chairman, I raise a point of order. I have been seeking the call for some time. It is quite apparent that you find it difficult to look to this side of the chamber. I suggest that it would be more appropriate if you were able to look to this side of the chamber. If the opposition has been discriminated against in this matter, can you give us an explanation?

The TEMPORARY CHAIRMAN—There is no discrimination, Senator Carr, and I am not disposed to accept that criticism. The rules of debate in the Senate are that the call goes from one side of the chamber to the other.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (11.47 a.m.)—I have listened to this debate. In fact I have spent many hours listening to it and many hours in a Senate committee where we went through all these issues like the PBS very thoroughly. I want to say that no-one appreciates the Pharmaceutical Benefits Scheme more than I do as a way of giving relatively cheap medicines and equalising the ability for the less well-heeled to have the same medicines as the well-heeled. There is a bipartisan view of that across both sides of the chamber. No-one with any political brains, with any sense, would interfere with the Pharmaceutical Benefits Scheme. It is the Holy Grail of Australian politics.

That is why I went to extraordinary lengths with Mr Deady to have him explain that there was going to be absolutely no chance that there could ever be any influence exerted from America, from any drug company in America or from anywhere else on the Pharmaceutical Benefits Scheme. If anyone wants to go back and examine Hansard they will find his explanations to committee. So I have no fear of the Pharmaceutical Benefits Scheme being influenced by any people other than ourselves. There is a committee set up that makes the decisions, and that particular committee will be unable to be influenced by any other process. That is why I am confident that the Pharmaceutical Benefits Scheme is quarantined. It cannot be interfered with and will not be interfered with; and anyone that does interfere with it, woe betide them. Any political party that makes a decision allowing that to happen will not be welcomed by the Australian public. That is why I have no fears about this. I listened to the evidence and I am quite capable of understanding the explanations that were given to the committee—the committee that you were on, Senator Ridgeway—and so I am confident in that area.

This has been a fascinating debate for those who are students of politics. It is where the Left meets the Right. I have always said that politics is a circle, and if you go around the Left will meet the Right. You have got an amalgam of the League of Rights and every other lunatic fringe group, and Senator Harris, agreeing wholeheartedly with the Left of the parliament. It is quite extraordinary. You
have got the two extremes—the ultimate extreme to the Right, which is totally unacceptable to Australians, and the ultimate Left—coming together in unanimous agreement. It makes a very interesting study.

We have the opportunity to access an open market of 300 million people. When I was a salesman and I had my own manufacturer’s agency business, the difference between what I sold in Queensland and what was sold in New South Wales was always extraordinary, because New South Wales had a much bigger population. But now we are getting access to a market of 300 million people, and that must increase jobs. The prospect of another 30,000 jobs should excite everyone in this parliament. We should be saying to people that 30,000 jobs are coming onto the market assisted by this free trade agreement. But what do we have? We have all the obstructions by the Labor Party. They knew they would vote for this, but they were looking for a fig leaf to cover themselves with so they came up with a couple of spurious amendments. We will accept the amendments in the interests of providing another 30,000 jobs and access to 300 million people.

A friend of mine, a woodcarver by trade, is into astronomy. He made himself a little dome so that he could study the stars. He put it in an American magazine and he has been inundated with orders from people in America who are interested in astronomy. He produced a good product, a better product than anywhere else in the world, and he has developed his own business providing America with astronomy domes. That is just one tiny little, minute, aspect of the free trade agreement that I know of that I can personally point to. This friend of mine was a woodcarver—it is a bit like being an arrowsmith: there is not a large demand for arrows or woodcarving—but he had the ability to work with his hands and he developed a market that has taken off in America. As a matter of fact, he was promoted somewhat in the Australian Weekend Magazine about eight or nine months ago. He cannot meet the demand; he cannot get enough workers where he is, in a small country town. That is just a tiny little aspect of it—one person developing a market in America that employs three or four people on the north coast of Queensland. We will now get access to that market of 300 million people, and I am sure there are going to be many more small businesses developed when they can ascertain what is required in America.

Our dollar is always going to be under the American dollar. On my side of politics—the National Party—we always like to see a particularly low dollar because it assists the farmers. Even if it is not terribly low, it is always going to be lower than the American dollar, and that gives us special entry into the American market. We in the National Party have been criticised for not standing up for farmers on this free trade agreement, but it would be an absolute betrayal of every farmer in Australia if we did not enthusiastically endorse this free trade agreement. Yes, the sugar industry did miss out. But let me say this about the sugar industry: they issued a press release and said, ‘We are not dogs in the manger; if the sugar isn’t in it, we’re not going to veto it, because it is better for all the other agricultural industries.’

Senator Carr—‘Just pay us half a billion’: it is openly public bribing!

Senator BOSWELL—Why do you hate the sugar industry on that side of politics? Why are you always against the farmers? We assisted the sugar industry. I was one of the people who actually went in there and asked the Prime Minister. I encouraged him to go out and meet the sugar industry, which he did, and he was very well accepted there. So
do not come in here, Senator Carr, and say that the National Party have walked away. We stuck with the sugar industry.

The fishing industry, for one, think they have won the lottery. They get a 35 per cent removal of tariffs. The free trade agreement is worth $4,500 to every dairy farmer in Australia because it gives access for cheese and milk powders and many by-products that have not been able to access the market. The cattle industry immediately lose a 4.4c a kilogram tariff, and in two years time they pick up another $15 million. Bear in mind that they have only once been able to meet the quota and they will not be able to meet the American quota this year. In 10 and 15 years time that goes up to around $260 million. Why would I come in here and rubbish the free trade agreement? It is the greatest thing since sliced bread for the farming community, and I would brutally betray them if I walked away from it.

There is a big scream that we will lose the single desk, but we have not lost the single desk and we are not going to lose the single desk because our negotiators negotiated that the single desk stays. It stays on sugar, it stays on wheat, it stays on rice and it stays on barley. We have had a win-win on this.

Senator Carr—So what’s your view on drugs? That’s what this amendment is about.

Senator BOSWELL—You ask me my view on drugs. My view is: this amendment is not necessary. It is a fig leaf for the Labor Party. That is all it is. It is not necessary.

Senator Brandis—Senator Carr just doesn’t like the fact that he was rolled by Senator Conroy.

Senator BOSWELL—What this debate is all about is the Left being absolutely rolled. They were not only rolled on marriage; they got rolled on the free trade agreement. They stand in here and say they are standing up for their constituents. They have been comprehensively rolled every time. I do not know how you can go back and face your Lefties in Melbourne, Senator Carr, because you must say: ‘We are pretty useless but just give us another go; we’ll try, we’ll do something. We don’t kick too many goals for you but we keep the Right honest; we don’t let ’em go too far. We have been comprehensively rolled on all social issues and all economic issues.’

Senator Carr—Not known as the doormats for nothing!

Senator BOSWELL—‘Yes, we’re the doormats for the Right. They walk all over the top of us, but we won’t let the Right go too far on this one. We’ll pull ’em back into line next time.’ This is a great day for Australia. It is a great day for rural Australia and a great day for small business. I am very glad that we have been able to negotiate this opening to the biggest market in the world. I am excited about it. I think it is going to produce huge amounts of revenue for small business. I gave you the illustration of my friend up in Queensland who has one tiny slice of a very minute market, employing three or four people when he can get them—because it is pretty hard to get anyone; we have full employment in Australia for most people who want to work. This is where the Left meets the Right. The Left of the Labor Party meets the extreme Right of Australian politics—the League of Rights, the LaRoucheans and the whole lot who band together under One Nation—

Opposition senators interjecting—

Senator BOSWELL—No, the National Party do not go down there. They are all happily singing from the one hymn sheet—the League of Rights, the Democrats, the Greens and the Left all together, all one big happy family. Hooray for the Liberal and National parties for producing this tremendous economic advantage! I congratulate the Prime
Minister and my colleague Mr Vaile for producing such a great result for rural Australia and for Australia generally.

Senator CARR (Victoria) (12.01 p.m.)—I welcome the opportunity to speak to the amendments—and I do actually want to speak to the amendments. What we have heard today is a rerun of second reading debate speeches. We have heard from the doormat party of this government, the National Party, a proposition about the great benefits of these arrangements. What the National Party fails to point out is that our biggest trade deficit is with the United States. Nothing in this agreement is going to change that proposition. I want to talk about what is actually before us: the four amendments to the Therapeutic Goods Act which have been proposed by the Labor Party. They are important, tough amendments which, I note, the government is now obliged to support. We heard 14½ minutes from the Leader of the Government in the Senate, and it took 14½ minutes to say, ‘We support these amendments.’

This is after the humiliating press conference by the Prime Minister this morning when he revealed that he had to ring up the United States in a grovelling manner and ask for permission to support these amendments. The United States is not certain, so the Prime Minister is not certain. He quivers. The doddering position he takes is based on a dithering attitude because he has not got his instructions right. He has not got permission, so he is worried—‘What will I do? I do not know whether or not the United States will accept my word on this.’ How pathetic! How miserable! The Prime Minister of Australia has to ring up and get permission to support Senate amendments to this arrangement. This demonstrates the value of these amendments and points out their necessity. If the government has to get permission to support the amendments, it is quite clear why they are necessary. These are tough amendments. These four amendments are necessary to ensure the protection of the PBS. You cannot rely on the government to do that. It has to get permission—to find out whether or not it is allowed to support the PBS. How incredible that the national government of Australia should humiliate itself in that way.

With these amendments we propose a requirement that companies holding a patent make sure that they issue a certificate when they seek to use the courts to block a generic drug from coming onto the market. This will ensure that companies certify that their intended action is in good faith and that they believe the action has a reasonable chance of success. Here we are proposing a clear signal to the companies that evergreening or vexatious patent applications will not be tolerated in Australia. Yet the Prime Minister has to get permission; he has to ask whether or not he is allowed to support these amendments. We are saying that a certificate has to be issued and that, if the certificate is later found to be misleading or the undertakings are broken, the company will be liable to a civil penalty of up to $10 million.

Further action will be taken to give the courts the power to order that compensation be paid to the Commonwealth and the states and territories if such undertakings are not presented in good faith. This compensation will take into account losses sustained as a result of any injunction obtained by the patent company. That gives the lie to the claim that these are weak amendments. They are actually very tough amendments. They are legitimate amendments and they are necessary. This second amendment means that if a generic medicine is held up from being listed on the PBS the subsequent cost to the taxpayer can be recouped. The third amendment is a minor one which is necessary to reduce the burden of proof on generic companies issuing a certificate regarding the patent
status of a drug. This will mean that the burden of proof for certificates will move from absolute to reasonable grounds.

These amendments are necessary. I repeat: the fact that the Prime Minister has to ring up and get permission highlights why it is necessary to ensure that these measures are taken to protect the PBS. The amendments make sure that safeguards are imposed on these matters in the Therapeutic Goods Act to give a level of comfort to all Australians. The subtle changes to the PBS through the free trade agreement are matters of great concern. We all know that there are reasons why drug companies and the US negotiators wanted to modify the regime in the free trade agreement. Patent holders want notice of when generic manufacturers are going to manufacture a drug. It stands to reason that they probably want the notice so that they can take steps to avert the manufacture of generic alternatives. Of course they want to avoid losing profits. You would expect that to be how things work. It is therefore necessary to ensure that protections are built into the legislation to prevent the practice of evergreening.

We all understand that evergreening is effectively a mechanism of litigious activity employed to delay the introduction of generic drugs. Evergreening will increase the cost of the PBS. It is accepted practice in the United States and it cannot become accepted practice in this country. These amendments are important because they will protect the taxpayer. They will ensure that our PBS and our health system remain affordable and sustainable. Let us think about just two examples of drugs coming off patent in the next four years—statins, which treat cholesterol problems; and serotonins, which are antidepressive medications. I am advised that the estimated savings for those two drugs alone are $900 million. It strikes me that in those circumstances it is absolutely critical that these measures be undertaken.

These amendments are important for the generic medicines industry in Australia. Our generic medicines industry comprises six large manufacturing companies. Together they employ 1,500 Australians. These companies undertake significant research and development, they enjoy sustainable growth in Australia and they are increasingly able to develop export markets. The government’s own action agenda on pharmaceuticals states that generic medicines have saved Australian taxpayers $850 million since 1995 by reducing the benchmark price of medicines. We want to see the generic industry grow. We want to ensure that their work is not hampered by costly court actions, that they employ Australians, that they manufacture drugs in this country and that they provide drugs at a cheaper rate, which of course forces down the prices and protects the PBS.

I also want to take this opportunity to highlight why the pharmaceuticals industry in this country is particularly important, from the research elements right through to the production elements. The industry has a strong scientific, statistical and clinical research base. The industry spends $450 million a year on research and development and has a turnover of $12 billion per annum. It is our second largest exporter after the automotive industry. It employs 30,000 people across the value chain—and that of course includes the generic manufacturers. I believe that we have to stimulate partnerships across the value chain to build on this very substantial industrial base. Labor’s amendments will in no way impede the development of the whole industry. They are about safeguards.

Senator Hill—you’re a bit worried.

Senator CARR—they are about ensuring that our patent laws are not in fact weakened.
Senator Hill—There’s a little bit of nervousness coming through now.

Senator CARR—They are, of course, consistent with the agreement that has been negotiated with the United States.

Senator Hill—You think you might have gone too far.

Senator CARR—Senator Hill seems quite animated about these matters. I ask him: where has his colleague the minister for industry been on these matters? The Australia-US free trade agreement has enormous implications for Australian industry, yet not one piece of formal advice was prepared by the industry department. There was no analysis or understanding of what the implications of this agreement are for manufacturing in this country. There was no work done on those questions. We have had a few little home truths from Senator Boswell about pencil-sharpeners and various other things. We are talking about a very serious question in terms of our trade relations with the United States, and the industry department do not think it is worthy of their consideration or any detailed analysis. What we have got are back-of-the-envelope calculations undertaken by the government’s favourite modellers, which of course produced ridiculous, laughable estimates of what consequences there are.

Intellectual property is squarely within the portfolio responsibility of the minister for industry. What has he said on these matters? Nothing. The policy that assists to strengthen and grow the generic medicines industry is essential for the creation of jobs and the development of wealth in this country. What has the minister said about these things? Nothing. He is missing in action. This is a government that signs up to a deal sight unseen. We have no analysis being undertaken by the industry department and no real interest in the consequences—that is the only measure you can draw from the public statements that have been made.

It is essential that all Australians do have access to medicines. It is equally important that we have a viable pharmaceutical industry in this country. It is extremely important that generic alternatives provide both cheaper drugs and employment opportunities for Australians. I urge the government to understand how important these things are and not continue with this quivering, dotty approach we have seen from the Prime Minister, who is so uncertain and so lacking in leadership when it comes to these matters that he has to ring up and get permission. I think the government ought to understand how critical these questions are and full-heartedly support these matters. So far they have failed to do that, because they are really quite worried that the permission from their great powerful friends, the United States, will not come forward. It is a tragedy and it is pathetic that the government find it necessary to behave in this way.

There is an opportunity here to actually support the generic medicines industry in Australia. Labor support the pharmaceuticals industry, from research right through to production, and we want to see it grow and prosper. We want to make sure production in this country is protected. That is why I urge the Senate to support this. Despite the awkwardness and the nervousness of the Prime Minister and the government, reflected here by Senator Hill today, I think it is important that we appreciate that this is an opportunity to strengthen the PBS and to defend Australian interests, not the American drug companies’ interests.

Senator NETTLE (New South Wales) (12.12 p.m.)—We have had two Labor speakers try to justify what they are doing. The Labor Party in this public debate claim these amendments seek to protect our Phar-
maceutical Benefits Scheme. Our Pharmaceutical Benefits Scheme is undermined by this US-Australia free trade agreement in a raft of different ways. The Labor amendment deals with one component of one of the areas in which the PBS is undermined by the free trade agreement. It is not a fix-all; it is not an opportunity to take it off the table. Right from the outset the Greens—and the Labor Party, too, in the Senate inquiry I was part of—called for the PBS to be exempt from the negotiations, to be completely removed from the negotiations. That has not happened, and the Labor Party no longer support removing the PBS from the free trade agreement.

The PBS is going to be undermined, and not only by this issue of evergreening, which is occurring in Australia and proliferating in the United States. Evergreening happens when brand name manufacturers of pharmaceuticals take out exorbitant and spurious patents to stop generic manufacturers from being able to get their products onto the market. That is one of the ways the Pharmaceutical Benefits Scheme will be undermined through this free trade agreement.

There are two other main areas in which this free trade agreement will undermine our Pharmaceutical Benefits Scheme. The agreement will bring in a review mechanism under which US pharmaceutical companies can appeal decisions that our Pharmaceutical Benefits Advisory Committee has made about the cost-effectiveness and medical effectiveness of a drug before it chooses to list it on our Pharmaceutical Benefits Scheme. The United States have made it quite clear, both through the members of congress and the pharmaceuticals industry, that they consider this to be an appeals mechanism. It is a mechanism that this government looked at in 2000. Senator Grant Tambling looked at this issue and recommended that the government not introduce a review mechanism as is proposed in this trade agreement. The government took that advice from its own senator at the time and rejected the proposal. What has changed for the government now that, all of a sudden when the request is coming from George W. Bush and the US pharmaceutical companies, they are prepared to accept a review mechanism they rejected on their own advice four years ago?

The other area in which the Pharmaceutical Benefits Scheme is impacted on and undermined by this free trade agreement is the setting up of a medicines working group that explicitly has, in its terms of reference, providing opportunities for US pharmaceutical companies to get more revenue for their innovation, research and development. That is what the United States have been trying to do through their negotiating. They have made that quite clear from the outset. The Australian government has known about that. The Australian government was aware of documents printed in the Australian in December last year marked ‘Australian confidential information: to be treated as US confidential information’ in which the pharmaceuticals industry and the US negotiators made it quite clear that they sought to use intellectual property issues as a backdoor route for dealing with and undermining the Pharmaceutical Benefits Scheme. That has been clear from the outset and has been put on the record by the Americans. The Australian government and the Australian negotiators have known of that and ignored it. They have allowed the United States to continue putting in all of these extra parliamentary committees and processes in which pharmaceutical industries can have their concerns heard over and above our own determination about what is in our public health interests and what is in the interests of Australians in being able to get affordable and effective medicines. The Australian government has ignored those and
has signed on to a deal that we will see undermining our Pharmaceutical Benefits Scheme.

The Labor Party have said: ‘Oh, no, that is an issue. We are supposed to be a party that stands up for public health and for our Pharmaceutical Benefits Scheme, regardless of the fact that we just increased the price of essential medicines in the Pharmaceutical Benefits Scheme the last time we were here in the Senate debating this particular issue. But, because we have got to try to maintain that perception within the community, let’s come up with some fiddly little amendment that makes minor changes which we can portray as being a great win for the Labor Party in standing up for public health.’ That is not good enough. That is not fooling anyone. That does not convince us.

If the Labor Party were genuine about wanting to protect public health, they would have continued with the commitment they made last year to exempt the Pharmaceutical Benefits Scheme from the US-Australia free trade agreement negotiations—full stop, from the start, take it off the negotiating table and don’t put it in the trade negotiations. Over the last few days there have been several opportunities for the Labor Party to continue with that position through amendments that have been put up by the Greens, the Democrats and One Nation about these issues to say: ‘Let’s take it off the table. Let’s make sure it is not undermined.’ But that is not the approach that the Labor Party have taken. That is not the path that they have gone down. They have said: ‘We want to have this trade agreement. We do not want a government to wedge us on this issue, so we will sign up and let’s see if we can run a public relations campaign which tries to convince a few people that we really care about these issues.’ Well, that is not convincing the people who know about these issues.

Let us have a look at some of the comments that experts in this area have made about the effectiveness of the amendments that the Labor Party are proposing. Professor Peter Drahos is one of them. He is an intellectual property law expert at the Australian National University. He said on Tuesday:

... these rules are not attacking the actual ability of the company to get a patent in the Patent Office, but simply placing restrictions on what they can do once they have them.

So they are not actually stopping the process of evergreening from occurring, a process we are already seeing occur in Australia, but simply putting in place penalties that may deter some companies from being involved in this. But they are not about stopping the process of evergreening that is occurring in Australia and is proliferating in the United States. Over the last few days the government’s and the opposition’s lawyers have been arguing about the effectiveness of the amendments that are being put forward. What we will see from the amendments that are being proposed is that more lawyers will have the same debates that the government’s and opposition’s lawyers have been having over the last few days. More lawyers will be having debates about what is good faith and how good faith is defined. This is a real opportunity for the large-scale manufacturers—the brand name manufacturers of pharmaceuticals—to get their way. On Monday, in an interview with the ABC, Peter Drahos said:

... lawyers will argue over the meaning of words like good faith and what is the reasonable prospect of success ... complexity ... is the friend of the large pharmaceutical company.

Complexity is not the friend of the generic manufacturers trying to get their products into the marketplace. Peter Drahos was asked on The Law Report on Tuesday:

In your view, if these amendments are passed, will they prevent evergreening?
He answered ‘no’. He described the situation in these terms:

[In] eliminating ever-greening patents you need a system of weed control. All Labor have is like a hoe. You know, you are being asked to tackle a field of weeds with a hoe. You ... need a system of weed control to do the job.

Kevin Outterson, who is Associate Professor of Law at West Virginia University in the United States, was shown prominently on last week’s Four Corners program talking about these issues. His comments in the media this week about the Labor amendments were:

... it’s too easy for a law firm to give an opinion to a pharmaceutical company—‘Yes, there is some reasonable prospect that your patent to be upheld’. That could be a one in ten chance, or a one in five chance. It won’t take much for a law firm to be able to give that ... opinion.

He was asked by a reporter on an ABC program:

You have a reasonably good understanding of the way so-called big pharma works. How do you think it would be reacting to these amendments here in Australia?

He replied:

I think they would find this to be something they could live with. I think they probably would fear something that was more stringent.

We have a similar law in the United States—

and he described the provision in the Therapeutic Goods Act, and then added:

and we have a similar provision—

which is called the Hatch-Waxman Act—

in the United States, and for a decade our Congress has been trying to change that law, in order to stay one step ahead of big pharma and to allow generics in more aggressively, to stop this ever-greening practice.

He continues:

Every time our Congress puts in a complex law, big pharma has found a way to get around it. So I suspect that with this law we’ll see the similar thing that the pharmaceutical companies may complain, they may throw up some smoke screen, but at the end of the day, I’d be very surprised if any company ever has to pay one dollar under this amendment.

That is the view from an associate professor of law at West Virginia University who specialises in these areas of evergreening patents and who lives in the country that has seen the greatest proliferation of evergreening patents from pharmaceutical companies in the United States. I will read from an article in Saturday’s Age by Thomas Faunce, who is a senior lecturer in the medical school and a lecturer in the law faculty at ANU in Canberra. He says:

In 2002, an extensive inquiry by the US Federal Trade Commission found that as many as 75 per cent of new drug applications by generic drug manufacturers were the subject of legal actions under patent laws by the original brand-name patent owner. These were driving up US drug costs by keeping the cheaper generic versions off the market.

In Canada, similarly extensive investigation by the Competition Bureau revealed similar problems with drug patent evergreening.

He continues:

The evergreening article in the Australia-US FTA ... is far worse than the US or Canadian versions. For the first time it links the operations of our Therapeutic Drug Administration ... with supervising patent law.

It requires that the TGA drug marketing approval be “prevented” indefinitely (not for the 30-month and 24-month periods as in the US and Canada) whenever any type of patent (including a speculative evergreening patent) is merely “claimed”.

He describes Labor’s proposed legislative penalty for evergreening as the ‘lowest common denominator solution’. He also says:

The generic drug industry in the US and Canada has the financial resources and independence to fight evergreening patent claims. The profit
margins of generic companies in Australia are extremely fragile. Most are subsidiaries of the multinational pharmaceutical companies. As a result, it will be much harder for them to resist the threats posed by evergreening. These are the so-called safeguards that the Labor Party believes it will be putting in place. This is not going to protect our Pharmaceutical Benefits Scheme. It is not going to protect us from the process of evergreening. We are already seeing evergreening in this country—and not just one instance. Several instances have occurred. There are court cases that continue about the issue of evergreening. There are law companies based in Sydney that I know of that are doing extremely well out of the process of evergreening as big brand-name manufacturers try to stop generic drugs from getting onto the program.

The United States have a coup in getting this free trade agreement, not just by getting the government to come on board but also by getting the opposition to come on board in Australia. They have set an international precedent that they have not been able to negotiate in international trade negotiations through the WTO. They have set a precedent which allows them to then negotiate free trade agreements with, for example, African countries, where these evergreening patents will be able to stop generic drugs for the prevention and cure of HIV, which is a growing epidemic in Asia and in Africa, from being able to come on board. They will prevent these generic drugs being available for people in those communities where they are most needed.

This is the international precedent that is being set by the opposition and by the government today. Australia is signing up on the back of John Howard’s and Mark Latham’s ride to say: ‘We will undermine a system of allowing generic drugs to come on board early. We are going to draw up a system which ensures generic manufacturers are disadvantaged. By doing so, we will make it easier for the US pharmaceutical companies to be able to bring in a similar system in each of the individual free trade agreements that they negotiate with poorer and weaker countries.’ They have not been able to negotiate that in the international trade agreements, but now a precedent has been set for them. They can set up this, ensuring that women who are in African countries or in South-East Asia, suffering as a result of HIV, will not have access to timely and affordable generic drugs at a time when they need them. That is the precedent that has been set. It is not just about undermining our Pharmaceutical Benefits Scheme here in this country; it is setting an international precedent to ensure that people across this world who need fast access to these cheaper and therefore more affordable medicines will not be able to get them. Thank you for nothing. The Greens will not be standing for this at all.

Senator ALLISON (Victoria) (12.27 p.m.)—I do not often agree with Senator Boswell, but I do agree that these amendments are a fig leaf and spurious. They have also been described as ‘bizarre’ by people who have had a look at them. Senator Carr says they are tough. They are all about writing out a certificate that says: ‘We’ve been good. We’ve done all this in good faith. We’ve got reasonable prospects of success in this case that we are mounting and we’ll conduct it without unreasonable delay.’ It is my understanding that if you get a lawyer to write a letter that says: ‘Yes, pharmaceutical company X is taking this action in good faith, of course we’ve progressed this as quickly as possible,’ that’s it. That is about as much as you need in order to get rid of this spectre of a $10 million fine for doing the wrong thing on evergreening. That is how ludicrous this amendment is.
This will not work because there are 50 or so provisions in the free trade agreement which enable evergreening to take place one way or the other. I am going to highlight a few of those today. Some of them have not been mentioned so far in this debate.

This is why Labor’s amendment will have absolutely no effect. For one thing, the principles of the agreement specifically recognise the rights of innovative drug manufacturers but nowhere in the agreement are there any references to the principle of negotiating the lowest prices for consumers. There is nothing in the free trade agreement about the public interest. There is no requirement for negotiations or for disputes to take into account that the most important and fundamental principle of our PBS is that it enables the government to deliver low prices.

The review process has already been mentioned. It is going to be largely about challenges to the non-listing of slightly modified drugs at the end of the patent period, the so-called ‘me too’ drugs. Article 17(10)(4) takes the radical step of linking and indefinitely preventing market approval by the TGA if any type of patent has been claimed over the relevant drug. In the United States and Canada patent owners endeavour to protect their big-selling pharmaceuticals with speculative claims.

Another provision which has hardly got a mention—we certainly have not seen an amendment from Labor to overcome this one—allows the advertising of pharmaceuticals on the Internet. Drug advertising is banned in this country, and it is banned for very good reason. Drug manufacturers advertise their latest, most expensive brand—the ‘me too’ drug—and people go running to their doctors, saying, ‘Doctor, we’ve got to have this one. The ad says this is going to solve the problems that I’ve got and my current conditions.’ It is critically important not to have advertising in this agreement, but there is no sign of an amendment by Labor to get it out. Of course, advertising on the Internet is just the first step. Next it is going to be, ‘We need to advertise in the press,’ or, ‘We need to advertise on the radio or on television.’ We will see full-scale advertising in this country, advertising that has seen the price of drugs in the United States and elsewhere rise enormously.

In this agreement there is a clause which prevents our generic drugs industry from providing cheap drugs to neighbouring countries that might have a health crisis. HIV would obviously be one of those crises, but there are plenty of other examples. There are specific measures within this agreement which would stop us coming to the assistance of neighbouring countries. There is no amendment from the Labor Party to deal with that. Article 17(9)(8) locks in preferential patent term extensions. Nothing has been put forward so far by Labor that stops that. Article 17(10)(4) takes the step of linking and indefinitely preventing market approval by the TGA if any type of patent has been claimed over the relevant drug. Why is locking in the five-year data exclusivity period for pharmaceutical test data of benefit to this country? Why are any of those measures within the trade agreement of benefit to Australia? The answer is they are not.

Requiring the PBAC to publish the reasons for non-listing decisions opens the way for successful challenges through review or in the courts. Once you get the PBAC to spell out precisely what its reasons are for refusing to list a drug it puts pressure on the PBAC in preparing its decisions for non-listing, because it knows that every single word in the reasons for not listing will be open to challenges in the courts. We do not have that level of transparency in the drug industry. There is no requirement that clinical trials, for instance, be made public, often
for the spurious reason: ‘This is all about confidentiality.’ Where is Labor’s amendment that would deal with that? It is missing. We also have the medicines working group, which has already been discussed here.

The ALP amendments are simply window-dressing. They do not go to the nub of the issue. Furthermore, pharmaceutical companies are already evergreening. I know that senators will have seen evidence of this. I know that it was brought before the committee. There are many cases currently in our courts. Clayton Utz has circulated a speech which was given that talks about patent law and how the pharmaceutical companies are using our courts right now.

Good faith is arguable. It is not a clear-cut matter. You can say you have done this ‘in good faith’, and it is up to someone who is challenging you to prove that you have not. Unless you are a pharmaceutical company that has left a trail of memoranda all over the place saying you are doing this because you simply want to extend the patent or evergreen—and who would be stupid enough to do that?—then you are going to be able to say, ‘We did it in good faith,’ hand on heart. It is a ridiculous notion to rest your case that you have improved or protected the PBS. This is a sham. You are pulling the wool over people’s eyes. It is awful to watch the Labor Party do this—to give up on 50 provisions within this agreement, all of which damage the PBS. Its amendment goes to one very small, highly ineffective and unlikely to succeed way of dealing with this problem, and it is useless.

There is the question of whether the principles in this agreement will mean that the pharmaceutical companies can challenge anything which goes on in this country to do with putting up market barriers or any barriers at all to stop generics coming on the market. Those principles are critically important, because they will be the basis on which the legal arguments are conducted. It would have been a lot simpler for the ALP to have rejected the PBS measures in the FTA—all of them, to get rid of the lot. Let us maintain the status quo. That is bad enough. As I said, the pharmaceutical manufacturers already have so many cases in the courts. We should be protecting the PBS on the basis of what is already happening, let alone worrying about all of the provisions in this agreement which are going to damage it more.

At the end of the day it means higher costs for the PBS for all Australians, and I want to know what will happen at that point. We have had advice that we could see an increase in prices of three to four times the current level. That means that the PBS will collapse, because the government of the day, whether it is Labor or Liberal, will say: ‘We can’t afford the PBS anymore. Let’s go to a system like the United States has and let people pay for their own medicines.’ That is where we are heading. That is what all the best advice that we have been given tells us.

It was very disappointing that in Senator Carr’s speech he talked very quietly and very briefly about this certificate. Most of his speech was haranguing the Prime Minister for going back to President Bush. I agree that that is pretty ludicrous and pretty farcical, but what we want to know is: how can this work? It is my understanding that it has not worked anywhere else. Canada has an Office of Patented Medicines and Liaison and they look at evergreening cases. It is my understanding that they are never used. They are never used because the drug companies put injunctions on anyone who seeks to use them. The generics do not take action, because half of the time they are
owned by the big pharmaceutical companies anyway and the rest of the time they supply the big pharmaceutical companies with goods. They are not a separate industry. They are entirely part of the whole sector. It is ludicrous.

Senator Conroy—That is why the Commonwealth and state governments can take action!

Senator ALLISON—Getting onto the subject of state governments, Senator Conroy, I have actually seen a suggestion that the state governments probably have not realised that this agreement is going to boost the cost of pharmaceuticals to hospitals and that there will in fact be a direct cost. I think the estimate is $134 million by 2008. That is what the states are likely to have to shell out in extra costs because of the increases in pharmaceuticals that are dispensed in hospitals—because the states negotiate in a similar way to the government. That $134 million is an estimate of a research group at the Australian National University. They say:

New research presented in this paper demonstrates that these changes—meaning the free trade agreements—will raise drug expenditures in State public hospitals required to purchase products outside the PBS system. While many State Premiers have given support to the free trade deal on the basis of the limited agricultural gains in the agreement, these new findings threaten such support, as the deal may undermine the public hospital system in Australia. The authors, who are part of a research group analyzing the impact of international trade agreements on health systems at the Australian National University, estimate the impact of the FTA to state budgets to be in the order of $134 million per year.

So the state premiers, I think, are wrong in coming out and saying that this is a good deal for them. They obviously have not read that advice, which suggests that in fact it is going to cost them a great deal of money. I think there are a lot of questions that need to be asked on this whole matter and I propose to do that. I also suggest to the ALP that they seriously consider supporting our amendment removing schedule 7 altogether from this bill and tell the government that the free trade agreement should never have had the PBS in it. The government promised us, after all, that it would not. The minister even said today that there is no impact on the PBS. Well, what is with all of these provisions? What do they do? What effect will they have on our PBS? I think we need to know that. I have spelled out a few, but there are many more in this agreement. They are not there for fun; they are there because the United States wants more money out of Australia. Innovative pharmaceutical companies’ rights are being acknowledged and will be very important at the end of the day in decisions about whether or not we will pay more.

Senator HARRIS (Queensland) (12.41 p.m.)—I rise to place on the record that One Nation will support Labor’s amendments to the FTA. But we would like to spell out very clearly that the reason we are supporting the amendments is that they in some way ameliorate the undesirable sections of the free trade agreement, particularly in relation to the Pharmaceutical Benefits Scheme.

The Pharmaceutical Benefits Scheme should not be part of the free trade agreement. In commencing my contribution I would like to quote from a document from the Executive Office of the President of the United States of America. It is headed ‘US-Australia Free Trade Agreement—Questions and Answers About Pharmaceuticals’. These are questions and answers that were given, I understand, in Congress in the United States. I will be quoting verbatim from the document, because the document raises so many issues that have been raised as concerns by Australians. This document actually gives the United States interpretation of what gains
or what commitments the United States has made with regard to pharmaceuticals in the free trade agreement. All of these comments are questions and answers from the American perspective. The first question is:

What guidance has Congress given about pharmaceutical trade issues?

The answer is:

For decades, Congress set trade negotiating objectives that called for increased foreign market access for U.S. innovative medicines through tariff cuts and strong protections for U.S. intellectual property. In the Trade Act of 2002, Congress provided additional guidance with negotiating objectives that call for increased transparency in the pharmaceutical regulatory process, consultative mechanisms, and addressing non-tariff market access issues such as reference pricing.

They go on to say:

How has the U.S. been dealing with international pharmaceuticals issues in trade agreements?

This is quite a profound statement:

In earlier trade agreements, the USTR worked to achieve congressional negotiated objectives with provisions that eliminated or reduced duties on U.S. pharmaceutical products, and with strong IPR provisions protecting patents for pharmaceuticals and other innovative U.S. products.

Progress reported.

OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) AMENDMENT (EMPLOYEE INVOLVEMENT AND COMPLIANCE) BILL 2002

Second Reading

Debate resumed from 30 March, on motion by Senator Ellison:

That this bill be now read a second time.

Senator FORSHAW (New South Wales) (12.45 p.m.)—I rise to speak on the Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002. I do so with the understanding that the government will be moving amendments in the committee stage which have been agreed should be passed and that is why we are able to deal with it today as non-controversial legislation. Speaking first in the second reading debate, let me say Labor have always said that there was an opportunity with this bill to achieve some valuable reform in respect of health and safety for Commonwealth public servants. We have acknowledged that the bill contains some useful provisions. The approach, of course, goes right back to the year 2000, when a very similar bill was proposed by the government. We made it clear then that we supported the bulk of the bill but were opposed to those blatantly anti-union parts of the legislation which sought to restrict the role of unions in occupational health and safety.

Until today, the government has forsaken the opportunity to re-present this bill in a form which would be acceptable to all parties. I am pleased that today this divisive, unhelpful approach has been set aside by the government to allow the positive aspects of the bill to progress through the Senate with our support. It is a shame that it has taken so long to get to this point. Indeed, the government’s lack of commitment to the positive aspects of the legislation is shown by the fact that it has sat dormant for almost two years since its introduction in June 2002.

Recently a Senate Finance and Public Administration Legislation Committee inquiry considered this bill. We certainly found serious deficiencies, mainly in schedule 1, which sought to limit the role of trade unions in workplace health and safety. The anti-union provisions in the bill were not surprising in the light of this government’s secret plans to cut unions out of public sector bargaining altogether. Those plans were revealed in a leaked cabinet submission in December 2002 under the previous Minister for Employment and Workplace Relations. The
then minister was developing a proposal to require that all new Public Service positions and all promotions be subject to the acceptance of AWAs. This would have thrown the long-established merit principle right out the window. It would have meant that you do not get a promotion if you are the right person for the job; you get a promotion if you agree to accept an AWA. Part of the same proposal was that the government was going to ban all union collective agreements—it would only agree to non-union agreements. So much for choice! Employees could not choose under such a proposal to be represented by their union if that proposal became policy.

The provisions in this bill that would have restricted the involvement of unions in health and safety issues are just another part of that same strategy. As we have made clear in our comments in the legislation committee’s report, we do not support those provisions. I also want to draw to the attention of the Senate the fact that, in the government’s own report, the government senators on the committee recommended that the Senate pass the bill. But in the last four paragraphs of their comments before they made that recommendation they actually drew attention to the lack of substance, the lack of any real argument or factual basis for the government’s proposals with regard to removing or severely truncating the role of unions being involved in the development and maintenance of health and safety policies and processes within the Public Service. For instance, they said:

The Committee considers that, while enabling employees to have a more direct say in addressing OH&S matters in their own workplace may be a desirable outcome in its own right, this simply addresses part of the process by which measures might be developed to achieve OH&S outcomes. It does not of itself ensure that better OH&S outcomes will result.

To paraphrase, the government’s proposals were very much directed at removing unions as a collective body from having much say in the development of decent occupational health and safety processes and promoting the role of individual employees. As the government senators noted, there was no real backup for that proposition. They went on to say:

When pressed on the issue, departmental witnesses were unable to demonstrate how the bill in general or the provisions on workplace arrangements in particular would lead to OH&S improvements. Instead, the department’s evidence suggests that it is assumed that OH&S improvements will flow from changes to the way HSRs are to be elected. Further, they state:

3.31 The Committee also notes that the department did not take the opportunity in supplementary evidence after the hearing to demonstrate how the bill will achieve improvements in OH&S matters.

3.32 The Committee is disappointed that the department was not able to do more than simply assert that the proposed measures would lead to improvements, rather than show, by way of elucidation or relevant examples, how the bill would achieve this end.

They were the observations, very strong observations, of government senators on this committee. They recognised that there was not only a lack of real substance and valid argument behind the proposals from the government in the legislation at that time but also they ignored the evidence that unions had played a very constructive role both in terms of organisation and in terms of education in the development of decent health and safety policy. I am pleased that the government has now recognised the wisdom of those remarks, and of our position, and is going to amend the legislation to remove those rather draconian provisions.
We have made it very clear that we support those parts of the bill that strengthen the enforcement aspects of occupational health and safety for Commonwealth employees. These are the provisions that will ultimately be passed today in this non-controversial legislation debate. We agree with the government that there is merit in increasing the levels of penalties in the act and in introducing civil pecuniary penalties for Commonwealth employers in addition to refining existing criminal penalties. This dual criminal and civil system of enforcement is also consistent with state occupational health and safety systems. We accept that introducing a civil stream of enforcement can expedite prosecutions.

Under the current criminal-only system, very few prosecutions are brought at all. The Senate inquiry into the previous bill back in 2000 found that, of 50,000 reported accidents and 1,770 investigations, only nine prosecutions had been brought. This is exacerbated by the immunity of the Commonwealth and most Commonwealth authorities from prosecution. It therefore appears that criminal penalties alone, as under the current act, have little deterrent effect. An important aspect of this new dual system is that the bill will add a new provision, which was not in earlier legislation in 2000, to make it possible to secure a pecuniary penalty order against the Commonwealth or a Commonwealth authority. We are pleased to support the bill as it will be amended, by agreement, in the committee stage. We therefore support the second reading of the bill.

Senator MURRAY (Western Australia) (12.54 p.m.)—The Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002 is similar to the one introduced in 2000, which was the Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2000. That bill was also sent to a committee. However, the 2000 bill lapsed with the prorogation of parliament for the 2001 general election. The bill before us, in its totality, aims to amend the Occupation Health and Safety (Commonwealth Employment) Act to remove the automatic right of unions to provide OH&S representatives, in line with state OH&S regimes, and to establish a new penalty and enforcement arrangement. As stated in my two minority reports on these two bills, there are a number of useful advances in the proposed legislation.

The bill is, in many respects, in line with state and territory OH&S laws. It is obviously desirable to harmonise legislation in OH&S wherever possible. The Senate knows that the Democrats support and have vigorously lobbied for a unitary industrial relations system. A harmonised system is the next best thing. Having six different sets of OH&S laws—or nine, as it is in this situation—is, frankly, crazy for a country of this size. However, we have concerns with the bill with respect to the provisions relating to OH&S representation. As stated in my minority report:

A key area of concern to us is the place of unions in the maintenance and advancement of workplace health and safety. Unions supplement the regulatory and inspectorial roles of State H&S departments in an irreplaceable way. Unions as a whole sometimes get criticised as a result of the actions of some unionists in misusing the provisions of the various State health and safety Acts. Such unionists raise non-existent H&S issues to achieve other industrial objectives, and misuse entry and search provisions under the pretext of H&S. Such behaviour needs to be addressed. However the way to deal with those abuses is not to clamp down on legitimate useful or effective union H&S activity.

Evidence was strongly expressed on this issue, and the Democrats will need to assess whether the intentions of the Bills goes too far in this respect. In my view union officials with expertise in H&S...
should continue to be involved as appropriate in workplace health and safety.

I am also acutely aware of concerns raised by the unions with respect to the proposed changes to the election process of OH&S representatives. I believe that an independent process would be a better alternative to the one proposed by the bill and should address concerns of both employers and unions. We have raised those concerns with the government and have suggested some alternative provisions. As I understand it, the government have undertaken to consider our suggestions.

For the sake of facilitating the passage of the remaining provisions in the bill, this is now a non-controversial bill because the government have agreed to set aside the contentious provisions and have circulated the amendments and the supplementary explanatory memorandum to achieve that aim. This leaves us with the provisions to establish a new penalty and enforcement regime. We consider the new penalty and enforcement regime an improvement on the current system. As outlined in the supplementary explanatory memorandum circulated, the bill provides for: civil penalties, as far as possible reserving criminal penalties for more serious breaches; new offences where an employer breaches its duty of care and exposes an employee to a substantial risk of death or serious harm; and a wider range of remedies and substantial increases in penalties. New remedies of enforceable undertakings, injunctions and remedial orders are included. These will enable Comcare, the regulatory body under the act, to work with employers and others to remove risks to the health and safety of employees before an injury occurs.

The bill also extends the liability for the imposition of civil pecuniary penalties to Commonwealth employers. The CPSU did suggest that the lifting of the shield of the Crown to allow the prosecution of individuals employed by the Commonwealth for breaches of the act should be extended to agencies and ministers. The problem with this suggestion is that the Commonwealth would essentially be suing itself. In discussions with the CPSU they expressed a view that the Safety, Rehabilitation and Compensation Commission does not have the power to instigate proceedings for breaches under the act. The CPSU argued that good public policy demands that the SRCC, as the regulator, must have the power to instigate proceedings without having to rely on the agreement or good grace of its administrator, and that, because the SRCC is at arm’s length from the government and independent of the bureaucracy, it is therefore in the best position to be the decision maker on the institution of proceedings.

We raised this issue with the government and they explained that the SRCC, as it currently operates, is a tripartite body which meets four times a year. It does not have any staff, it is supported in its functions by Comcare, and it is not a separate legal personality that is able to be sued or to sue. It appears then that giving that power to the commission, as it is presently structured, would not be appropriate. However, the government did note that, in its report entitled National workers’ compensation and occupational health and safety frameworks, March 2004, the Productivity Commission recommended that the current regulatory framework for the oversight of the Australian government’s workers compensation schemes and OH&S regimes be strengthened by progressively developing the SRCC to be controlled by a board of independent directors appointed for a fixed term on the basis of their expertise and skills, to have a full-time director appointed as chairperson and to be provided with its own staff and funding.
In its response, the government supported further examination of this recommendation and said that there is merit in examining in more detail the commission’s recommendation that the SRCC become a small stand-alone regulator. Based on the government’s response to the Productivity Commission, there appears to be scope for the government to pursue in the future the CPSU’s views on this matter. For a good outcome in this area, it would of course be best for those two bodies to agree on the direction that should be undertaken. The CPSU have indicated to us that they are prepared to await the government’s examination and to pursue the matter when we revisit, in the next parliament, the bill’s provisions now being set aside by the government. On behalf of the Democrats, I look forward to discussing the issue further.

On one final point, I note that the unions, in their submission to the Senate inquiry into this bill, raised their belief that the offence of industrial manslaughter should be introduced at the Commonwealth level for cases of death caused by the negligence or misbehaviour of individuals. I also note that my ACT colleague MLC Rosalyn Dundas supported the industrial manslaughter bill in the ACT earlier this year. The ACT legislation, not surprisingly, has been met with concern from business, to the point where the federal government is looking to pass legislation to overturn the ACT legislation. I and the Democrats will be watching closely how the legislation operates in the ACT; what impact, if any, it has on employers who currently cut corners with respect to occupational health and safety; and whether there will be a positive impact, with fewer deaths and injuries through workplace accidents.

As noted by the CPSU, the penalty and enforcement provisions in this bill are an improvement on the current system. We acknowledge that there is possibly room for further improvement and law change, and I look forward to the outcome of the government’s further examination of the Productivity Commission’s report National workers’ compensation and occupational health and safety frameworks. Until then, the Democrats are pleased to see progression in this matter and improvement to the current system. We support the bill with government amendments as being non-controversial.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Industry, Tourism and Resources) (1.03 p.m.)—The effect of the government amendments will be to remove the provisions in the Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002 concerning changes to a Commonwealth employer’s duty of care and to the privileged role of involved unions in a Commonwealth workplace. The bill, as introduced, would have recognised the primacy of direct employer and employee relationships by enabling employers and employees to develop suitable health and safety arrangements which take account of the circumstances of their enterprise. However, the provisions in the bill that would introduce a new enforcement and compliance regime, including civil pecuniary penalties, injunctions, remedial orders and enforceable undertakings as well as a general increase in criminal penalties will be retained.

While it is disappointing that the provisions to remove the privileged role of unions in Commonwealth occupational health and safety will not proceed, the government believe it is very important to send a strong message that we, as a government, are concerned and are leading the way in strengthening OHS compliance, particularly in Commonwealth workplaces. It is also imperative to align OHS penalties and breaches with those that currently exist in the states and territories. In moving these amendments, the
government are demonstrating their commitment to improving health and safety in their own workplaces as well as their willingness to negotiate and compromise with other parties in the Senate to this end. I thank the Australian Democrats on behalf of the government for their constructive approach to the negotiations on the amendments and to the other parties for agreeing to deal with the bill as non-controversial.

The government remain committed to further improvements in occupational health and safety in Commonwealth workplaces and to providing a greater opportunity for all employees to be actively involved in OHS matters at the workplace. It is imperative that Commonwealth employers be required to consult with all employees, not just unions, about the development and implementation of occupational health and safety arrangements. Safety in the workplace is important, and employees should have the opportunity to be involved in a manner best suited to their individual circumstances. Currently, where a union is involved, only employees nominated by the union can be candidates for election as a health and safety representative. This limits individual worker’s rights. Employees should have access to the type of representation that they want in consultation with their employers on OHS matters. Best practice in occupational health and safety should enable those in the workplace to work together to make informed decisions about workplace safety, including about who they want as their occupational health and safety representative.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

The CHAIRMAN—The government amendments which have been circulated include opposition to a number of items. Unless the government wish to take the amendments one at a time, I suggest that they be taken in two groups: amendments and items to be opposed. This would mean taking amendments (1), (8), (14), (16), (19) and (24) together and putting a second question to leave out the items set out in the other numbered amendments. There being no objection, it is so ordered.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Industry, Tourism and Resources) (1.07 p.m.)—I table a supplementary explanatory memorandum relating to the government amendments to this bill. The memorandum was circulated in the chamber on 12 August 2004. I seek leave to move amendments (1), (8), (14), (16), (19) and (24) on sheet PJ231 together.

Leave granted.

Senator TROETH—I move:

(1) Clause 2, page 2 (table item 3), omit the table item.

(8) Schedule 1, item 38, page 11 (line 25) to page 12 (line 8), omit the item, substitute:

38 Subsection 20(1) (penalty)

Repeal the penalty.

38A At the end of subsection 20(1)

Add:

Note: A person who breaches subsection (1) may be subject to civil action or a criminal prosecution (see Schedule 2).

(14) Schedule 1, item 74, page 21 (line 27) to page 22 (line 8), omit the item, substitute:

74 Subsection 43(3)

Repeal the subsection (including the note).

(16) Schedule 1, item 105, page 28 (line 31) to page 29 (line 18), omit the item, substitute:

105 Subsection 50(1) (penalty)

Repeal the penalty.
105A At the end of subsection 50(1)
Add:

Note: A person who breaches section 50 may be subject to a criminal prosecution (see Schedule 2).

105B Subsection 50(2)
Repeal the subsection (including the note).

(19) Schedule 1, item 141, page 33 (line 10) to page 34 (line 8), omit the item, substitute:

141 Section 77
Omit “an offence against” (wherever occurring), substitute “a breach of”.
Note: The heading to section 77 is altered by omitting “prosecutions” and substituting “proceedings”.

(24) Schedule 1, Part 2 heading to Division 3, page 53 (line 30), omit the heading.
Question agreed to.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Industry, Tourism and Resources) (1.08 p.m.)—The government opposes items (2) to (7), (9) to (13), (15), (17) and (18), (20) to (23), and (25) and (26) in the following terms:

(2) Schedule 1, item 3, page 3 (lines 19 to 23), to be opposed.
(3) Schedule 1, item 8, page 5 (lines 1 to 14), to be opposed.
(4) Schedule 1, items 11 to 14, page 5 (line 28) to page 6 (line 10), to be opposed.
(5) Schedule 1, items 19 to 21, page 7 (lines 19 to 28), to be opposed.
(6) Schedule 1, items 26 and 27, page 8 (line 8) to page 9 (line 18), to be opposed.
(7) Schedule 1, item 29, page 9 (line 21) to page 10 (line 33), to be opposed.
(9) Schedule 1, items 41 to 46, page 12 (line 15) to page 16 (line 20), to be opposed.
(10) Schedule 1, item 53, page 17 (lines 5 and 6), to be opposed.
(11) Schedule 1, items 57 to 63, page 17 (line 20) to page 20 (line 14), to be opposed.
(12) Schedule 1, item 65, page 20 (lines 17 and 18), to be opposed.
(13) Schedule 1, items 67 to 71, page 20 (line 21) to page 21 (line 16), to be opposed.
(15) Schedule 1, items 101 to 104, page 28 (lines 8 to 30), to be opposed.
(17) Schedule 1, items 122 to 124, page 31 (lines 4 to 19), to be opposed.
(18) Schedule 1, items 132 to 136, page 32 (lines 8 to 30), to be opposed.
(20) Schedule 1, items 142 and 143, page 34 (lines 9 to 12), to be opposed.
(21) Schedule 1, items 152 and 153, page 35 (lines 5 to 8), to be opposed.
(22) Schedule 1, items 156 and 157, page 35 (line 20) to page 36, to be opposed.
(23) Schedule 1, Divisions 1 and 2, page 51 (line 4) to page 53 (line 29), to be opposed.
(25) Schedule 1, items 172 and 173, page 54 (lines 6 to 15), to be opposed.
(26) Schedule 2, page 55 (lines 2 to 12), to be opposed.

The CHAIRMAN—The question is that items, divisions and schedules set out in government amendments (2) to (7), (9) to (13), (15), (17) and (18), (20) to (23), and (25) and (26) stand as printed.
Question negatived.
Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Industry, Tourism and Resources) (1.09 p.m.)—I move:

That the bill be now read a third time.
Question agreed to.
Bill read a third time.
BUSINESS
Rearrangement

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Industry, Tourism and Resources) (1.09 p.m.)—I move:

That consideration of the government business order of the day relating to the Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004 be called on to enable second reading speeches to be made till not later than 2 pm.

Question agreed to.

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

Debate resumed from 11 August, on motion by Senator Coonan:

That this bill be now read a second time.

Senator BUCKLAND (South Australia) (1.10 p.m.)—I seek leave to incorporate a speech by Senator Faulkner in relation to this matter.

Leave granted.

Senator Faulkner’s speech read as follows—

The Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004 is not a controversial Bill. It contains measures designed to sort out a number of unintended consequences following the passage of recent electoral legislation.

Before the recent amendments to the Commonwealth Electoral Act, a prisoner serving a sentence of five years or longer could not enrol, stay enrolled or vote in Federal elections.

In the Electoral and Referendum Amendment (Enrolment Integrity and other measures) Bill 2004 the Government proposed to stop all prisoners from voting, irrespective of their sentence. Labor opposed that measure because it was not only unjust, it was also unworkable.

During debate of the Enrolment Integrity Bill in the Senate on Friday, 25 June 2004, Labor’s long-standing amendments relating to prisoner voting were carried.

And when I say Labor’s amendment was “long-standing”, I am of course referring to the fact it has been on the table for more than five years.

As some Senators may remember, the Opposition moved the amendment in 1999 when a similar proposal was put forward by the Government. The amendment was circulated and no issues were raised about it.

I’m not 100% sure, but I think Labor’s amendment was also discussed in the media.

Labor’s long-standing amendments provided that a prisoner whose sentence commenced on, or before, the return of the writs for an election and whose sentence continued until after the issue of the writs for any succeeding election would not be entitled to be enrolled. In essence, we were trying to tie the restriction on prisoner voting to a logical rather than an arbitrary period of time.

The amendments were supported by the Government and were passed unanimously by the House of Representatives in late June 2004.

However, according to the AEC—somewhat belatedly—this approach may not achieve the intended outcome.

This was a surprise to me and to the Opposition, as the amendments had been around for more than five years and no-one had raised any concerns about them. Nevertheless, the AEC has now flagged a problem and we are duty bound to address the problem they have raised.

The Commonwealth Electoral Act, as amended in late June 2004, only allows for the removal of prisoners from the roll by objection action.

As a prisoner would only be ineligible for enrolment on the issue of the writs, objection action could not commence until that time. We are advised objection action takes at least 20 days, which would be after the close of the Roll—possibly having the unintended effect of all prisoners remaining enrolled to vote.

Given this was not Parliament’s intention, we now have the Prisoner Voting Bill before the Senate.
The Prisoner Voting Bill requires the States and Territories to provide the AEC information on prisoners who are serving a sentence of imprisonment of three years or more. The AEC will then undertake objection action to remove these prisoners from the Roll.

Of course, we would also like to see the AEC following up people once they are released to get them back on the Roll as part of their reintegration into society.

In the Prisoner Voting Bill the Government has, in effect, adopted Labor’s approach and proposes a model for excluding prisoners from enrolling and voting based on Labor’s three year time frame. Labor supports this measure and also supports the other tidying-up amendments relating to the closure of the Roll and the review of new voter identification procedures.

Senator MURRAY (Western Australia)
(1.10 p.m.)—We are debating the Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004 on what is possibly the last sitting week before an election. I say ‘possibly’ because it is not a certainty but, because of that possibility, I reiterate the same sentiments I made in my second reading contribution to the electoral bill in late June. Those remarks were about process. It is my opinion that the next government, of whatever complexion, has to change its approach to the way electoral bills are introduced into and dealt with by the Senate chamber. It is bad form to rush important bills that affect an election process when the deadline of an election is over the horizon, and we have not had the opportunity to debate and to consider many of the very important views of senators from all the various political parties and the Independents around the chamber.

It would seem that, throughout the period of the three-year electoral cycle, electoral bills not only are few and far between but always come at the end of the electoral cycle. That is a perennial problem. It means that significant matters which the Joint Standing Committee on Electoral Matters raise or that individual senators wish to raise do not have or seldom have the opportunity to be aired and debated. Electoral bills are not only matters of passion but matters which go to the heart of our concern to have a well-functioning democracy, not least because every single senator and member of the House of Representatives has a self-interest attached to those bills.

Turning to this bill, we have to debate this issue of prisoner voting all over again due to the unworkability of Labor’s amendments, which stated that a person is not entitled to enrol and vote if the person:

(b) is serving a sentence of imprisonment which:

(i) commenced on or before the return of the writs for an election for the House of Representatives or Senate; and
(ii) continues at the issuing of writs for any succeeding election for the House of Representatives or Senate; …

That amendment was passed in June by the coalition and the Labor Party, with the Democrats opposing. That amendment is now law but has been found to be unworkable. It effectively required the Australian Electoral Commission to strike off the roll prisoners serving a sentence of three years or more. It is interesting that Labor’s amendment had the unintended consequence of almost delivering the Democrat policy of allowing all prisoners the vote. Because the section applies only to those who continue to serve a sentence at the issuing of the writs for any succeeding election, and that can only be determined when those writs are issued, it follows that all prisoners are presently entitled to enrolment.

This is the case even if a prisoner is serving a sentence exceeding five years, or even life, because it is conceivable that such a prisoner could be released on parole or even...
pardoned prior to the issue of the writs for the second election. Under the act, there is a 20-day objection period before someone can be removed from the roll. The writs condition means the AEC will be unable to carry out the new law. If Labor’s amendment went unchanged, it appears that, for the reasons outlined in the explanatory memorandum to the bill, prisoners who had enrolled could not be removed from the roll and so would remain on the roll.

This does not automatically re-enfranchise prisoners, because under the act such persons would still not necessarily be entitled to vote. Entitlement to be placed on the roll does not connote an absolute entitlement to vote where there is a qualifying condition. Hence, unfortunately it is not correct to say that prisoners have been re-enfranchised under Labor’s amendment. Rather, that amendment creates the anomaly that, whilst all prisoners are able to enrol prior to an election and their names cannot be removed from the roll prior to the election, they are nevertheless not entitled to vote—that is, if the AEC know they are prisoners. It does seem, if Labor’s amendment goes uncorrected, that more prisoners are likely to be able to vote than were formerly.

Prisoners who are entitled to vote will not necessarily, and do not usually, vote in the electorate in which the prison is situated. Section 96A of the Commonwealth Electoral Act provides that a person who is serving a sentence of imprisonment is entitled to remain enrolled for the subdivision, if any, for which the person was enrolled when he or she began serving the sentence. The AEC confirm that most prisoners cast postal votes for their pre-prison home electorate and that very few prisoners, if any, are enrolled in the electorate in which their correctional facility is located. I got all excited and thought, ‘Ooh, this change will really influence the election.’ I looked up where all the prisons were based and saw how many marginal seats might be affected, but it does not work out that way.

It is arguable that provisions purporting to disenfranchise prisoners are invalid by reason of an implied right to vote in the Australian Constitution. In fact, similar provisions have been held to infringe constitutional provisions in Canada and in Europe. The voting entitlement of prisoners has always been controversial, and the Joint Standing Committee on Electoral Matters have a somewhat chequered history of dealing with this thorny issue. What that committee have never properly addressed is why this double penalty should come through the Commonwealth Electoral Act. If a government were ever to consider that there should be a penalty of not voting then that should be part of the Criminal Code. It is our view that it is a judge who should decide whether or not you deserve to have your right to vote taken away. If a judge is going to decide that the nature of a crime is such that you deserve to have your right to vote taken away then that should be part of the Criminal Code. It has no place in the Electoral Act because essentially it is a double penalty imposed without regard to the crime itself.

It is important to understand that, although prisoners are deprived of their liberty while in detention, they are not deprived of their citizenship of this nation other than by the measures that are in the Electoral Act. As part of their citizenship, convicted persons in detention should be entitled to vote, although I must point out that the Democrats do agree that someone who has committed treason should lose the right to vote. I think that is a logical continuation of a principle because treason is a denial of citizenship.

There is no logical connection between the commission of an offence and the right to vote. For example, a journalist who is im-
prisoned for refusing on principle to provide a court with the name of a source might be denied the vote if he were imprisoned. To complicate this further, there is no uniformity amongst the states or between the states and the Commonwealth as to what constitutes an offence punishable by imprisonment. In Western Australia, for example, there is a scheme whereby fine defaulters lose their licence rather than go to prison, yet this has not been introduced uniformly in Australia. Why should an Australian citizen in Western Australia who defaults on a fine but is not jailed retain the right to vote, whilst an Australian citizen in another jurisdiction who is jailed for the same offence loses the right to vote? This would be inequitable and unacceptable, and that is what government policy seeks to do.

Senator McGauran—But you’re only talking about parking fines!

Senator Murray—No, you’re not, Senator McGauran. You need to study the subject a bit. Australia is a signatory to the International Covenant on Civil and Political Rights. Article 25, in combination with article 2, provides that every citizen shall have the right to vote at elections under universal suffrage without a distinction of any kind on the basis of race, sex or other status. The existing law discriminates against convicted persons in detention on the basis of their legal status, and it is discriminatory between types of prisoners. This clearly runs contrary to the letter and the spirit of the covenant. A society should tread carefully in this area. All citizens of Australia are entitled to vote. It is the most fundamental tenet of our society and should not be undermined or restricted.

To summarise: where do the Democrats stand on this matter? We believe that people should not be entitled to vote if they are too young, if they commit treason, if they are not citizens or if they are mentally incapable of exercising a vote. We believe that if the right to vote is to be taken away as a result of a crime that a person has committed then that should be done by determination of a judge. This is a matter for the Criminal Code and not for the Electoral Act. That is our position and remains the reason we are disturbed about this form of legislation and this type of approach.

Senator Troeth—(Victoria—Parliamentary Secretary to the Minister for Industry, Tourism and Resources) (1.20 p.m.)—I would like to thank honourable senators for their contributions to the debate. The Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004 is a demonstration of the government’s commitment to ensuring the integrity of the electoral system. When it passed the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004, it was the parliament’s intention that people who commit offences against society sufficient to warrant a full-time prison term for an electoral cycle or longer should not have any entitlement to vote and elect the leaders of this society.

Debate (on motion by Senator Troeth) adjourned.

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

Sitting suspended from 1.21 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE
Veterans’ Affairs: Home Care Program

Senator Mark Bishop (2.00 p.m.)—My question is to Senator Hill, the Minister representing the Minister for Veterans’ Affairs. Can the minister confirm the details of advice from the Department of Veterans’ Affairs that the average hours approved under the Veterans Home Care Program by service type have been reduced, with only one ex-
ception—namely, residential respite care? Isn’t this official confirmation that average hours of assistance for domestic assistance, personal care, home and garden maintenance and in-home respite have been reduced across the board simply through the failure of the Howard government to properly fund this valuable program of support to ageing veterans at the time of their lives when they need it most?

Senator HILL—I would be very surprised if that were the case because this government has got a proud record of support for veterans. The Senate would be well aware of the major increases in funding for Veterans’ Affairs in recent years by this government, reflecting our respect for the veterans community and, as they age, a growing responsibility for the rest of us to provide them with the sort of security they deserve. In relation to the details of the respite care program, I will refer that to the Minister for Veterans’ Affairs. I have no doubt I will be able to come back and give detail regarding the error that lies within the question that has been asked.

Senator MARK BISHOP—Mr President, I ask a supplementary question. Is the minister aware of the findings of the evaluation of the Veterans Home Care Program undertaken by Access Economics in January 2003 which show that this program successfully achieves its goal of reducing the cost of institutional care by keeping ageing veterans in their homes for longer? More importantly, in light of this independent review of this successful program, why did the government cut funding for the home care program by $4 million in the last budget?

Senator HILL—I will give you some evidence that suggests there must be error within the question. The first piece of evidence I will give you is that the last budget included the ninth consecutive increase in expenditure for veterans and war widows—an increase of $4.1 billion since 1996. That is an average annual increase of 6.1 per cent over the past nine years. The 2004-05 budget included $328.9 million over four years for new initiatives in the Veterans’ Affairs portfolio.

Senator Mark Bishop—Mr President, on a point of order: the minister does not appear to understand the question. The question was not directed to the totality of the Veterans’ Affairs budget; the question was directed to spending in the home care program. I would ask you to direct the minister to answer the question.

The PRESIDENT—I think I explained yesterday that I cannot direct a minister on how to answer a question. I remind the minister that he has 17 seconds left for his answer.

Senator HILL—I am demonstrating why the honourable senator must be wrong. In this last budget over $300 million extra in new initiatives, which was in addition to $289 million over five years, was provided in response to the Clarke report of March this year. So this government is not only committed in principle; it is committed in practice and is putting money behind it. (Time expired)

Defence: Policy

Senator SANDY MACDONALD (2.04 p.m.)—My question is to the Minister for Defence, Senator Hill. Will the minister advise the Senate of the steps the government has taken and will continue to take to protect Australia’s national security and also to boost our defence capabilities? What can the minister say of possible alternative policies that could impact on our national security?

Senator HILL—I will start with the second part of the question. Labor has a new defence spokesman; he was defence minister 20 years ago. Labor decided it was time to
return to the old days, to return to its era of 20 years ago, to sack poor Senator Evans and bring Mr Beazley back into the tent. But of course it was grossly unfair on Senator Evans because we on this side of the chamber thought he was doing a pretty fair job.

Opposition senators interjecting—

**Senator Hill**—Well, we are a generous lot. We all know he did not get sacked for not doing his job; he got sacked because Mr Latham had got himself into such a mess with the United States over the Australia-US security policy that he had to bring Mr Beazley back in order to present a different image. So here we have Mr Beazley suddenly having the opportunity to present Labor defence policy. I have to say that we had not heard a lot of defence policy from Senator Evans. We heard about the chocolate bars out of the ration pack policy but we had not heard a lot more. So we listened yesterday in great anticipation as Mr Beazley headed off to the Press Club, as he used to do year after year as Leader of the Opposition, to hear what was new. Do you know what he said he was going to do? His new policy is that he is going to sack defence officials across the country.

**Senator Lundy**—That’s not true.

**Senator Hill**—That was interesting, Senator Lundy, coming from the Labor spokesman on his first day at the Press Club. His answer is to sack the bureaucrats. But what has happened that he does not understand—

**Senator Lundy**—Don’t misrepresent what he is saying.

**Senator Hill**—No, he did say that. And he said ‘across the country’. He said there were 3,000 too many bureaucrats, Senator Lundy.
Senator SANDY MACDONALD—Mr President, I ask a supplementary question. Minister, do you have any further policies to boost our defence capabilities?

Senator HILL—Our first policy is to respect defence officials who have been doing a fantastic job. The ADF would not have been able to perform in Afghanistan, Iraq, East Timor or the Solomon Islands without the support they got from defence officials. What does Labor say? They say, ‘We’ll sack them.’ Senator Lundy, have you seen the press release today? It says, ‘CPSU concerned over Beazley’s Defence jobs comment.’ The Labor Party’s own union is attacking Mr Beazley in his first attempt.

What is the contrast? Twenty years ago Mr Beazley left us with ships that were not armed and submarines without combat systems. Is that why he has been brought back—to return the Australian Defence Force to the old ways? The ADF is performing better than ever under this government. The last thing it wants is a 20-year-past recycled defence minister.

Defence: Standard Defence Supply System

Senator CHRIS EVANS (2.10 p.m.)—My question is to Senator Hill, the Minister for Defence. Can the minister confirm that under his management, because of major deficiencies with supply management and personnel information systems, Defence is unable to account for $6 billion worth of assets and unable to fund over $700 million worth of leave entitlements for ADF personnel? Why is it that these problems continue to be experienced even after the government has spent $80 million trying to fix the problems with the supply management system? Doesn’t this waste come on top of other failures on the minister’s watch, including the Auditor-General’s refusal to approve Defence’s financial statements for two years running, and the finding that 10 of the 11 most serious financial risks across the Commonwealth are in the Department of Defence? Can the minister now provide a guarantee that Defence’s financial statements will not be qualified by the Auditor-General once again this year?

Senator HILL—I know I have been saying some nice things about Senator Evans recently but I was surprised that he was prepared to reciprocate by sending me a copy of his question in advance. If he does not believe me I will read his supplementary: Was the Minister aware of the severe problems with SDSS— are you following it?—when he personally approved $23 million of extra spending ... I will come clean. He did not send it to me. He sent it to a friend who sent it to me. It is good that the Labor Party has some friends. To be fair to Senator Evans, I decided not to read it carefully. Let us address the issue.

Senator Faulkner—Off to the Privileges Committee.

Senator HILL—that is typical of Labor: ‘Off to the Privileges Committee.’ They are all about process and pressure. Let us talk about the SDSS system. It is true that it is the backbone of the Defence logistics pipeline and it manages an impressive workload: $1.89 billion of inventory, $4.2 billion worth of assets and 1.7 million catalogue items. It operates across the globe in over 1,000 warehouses. As a logistics system it has worked well. The proof of that is in the effectiveness of the operations. If the logistics system is not working the operations will not succeed. But when we look at our experiences in Iraq, Afghanistan or the Solomon Islands we see that the logistics has been first-class. The best example in recent times is the last I mentioned—the Solomon Islands. Brought together at very short notice was a highly unusual operation involving a
coalition of Pacific states. It was a major organisational job for the ADF because they led the force and the logistics support was excellent. So for its primary purpose—its original purpose—it has served Defence well.

In recent years in terms of new levels of accountability it has had to serve other objectives as well. In particular it has had to help meet the requirements of accrual accounting. That has required significant upgrades to the systems. Those upgrades, which have been carried out by the leading companies in the field in Australia, have been highly complex. The cost and the complexity, I think it is fair to say, were underestimated. The government has had to agree to put in new funding to complete the job, and that task is still continuing. The best and latest advice that I have got is that it is about 90 per cent complete now and, in an operational program within the department not requiring new capital expenditure, that task is being completed. It is easy to knock systems that are now having to account to new levels of accountability that were not dreamt of at the time that the system was put in place. It is not as if the ADF is alone in this; every major defence organisation in the world—

Senator HILL—All I can say is that the Defence accounts are now better than they have ever been.

Senator Chris Evans—That is not what the Auditor-General said.

Senator HILL—No, if you read the Auditor-General’s reports I think you will find that he does not dispute what I have just said. There are now ever more requirements of the accounting system—and I mentioned accrual requirements as the most demanding of all—and that is proving to be a very difficult task. But as the systems are upgraded, as the staff are trained to properly utilise those systems, the results in terms of information that is available, the accountability to the public and to the parliament, are constantly improving, and that is why I can confidently say at the moment that it is better than it has ever been before. Through this more demanding process it is not surprising that we also identify particular areas that need more attention, and when they are identified they get that attention. (Time expired)

Social Welfare: Reform

Senator COLBECK (2.17 p.m.)—My question is to the Minister for Family and Community Services, Senator Kay Patterson. Will the minister update the Senate on how the Howard government has reformed the welfare system to the benefit of all Australians? Is the minister aware of any alternative policies?

Senator PATTERSON—I thank Senator Colbeck for his question. One of the most important things we have done in this area is to introduce the Australians Working Together package, which has involved programs like the personal support providers, people who assist those who are in very difficult circumstances, who are not job ready and who need a lot of assistance. They have been very positive in working with those people who, under Labor, would have been
on the scrapheap. Personal advisers have been working with young mothers and also with older workers to reconnect them with the community either through work or through voluntary organisations. We have had some tremendous outcomes from the program. We have introduced working credits which enable people who have been on unemployment benefits to keep some of their benefits as they go back to work and to make it easier for them to go back onto benefits if they go into casual or part-time work and it does not last long. So it makes it easier for them to get engaged and possibly stay engaged. We have introduced participatory requirements for people on welfare—Work for the Dole—and I can remember how much Labor opposed that when we suggested it. That program has reconnected young people and you see people working on those projects feeling a sense of responsibility and of being able to give back to the community when the community has assisted them.

We are now saving, as I said yesterday, $49 million per week by cracking down on welfare fraud. That is $12 billion over 8½ years. We have cut taxes, not once but a number of times—unlike Labor that had l-a-w tax cuts which they did not bring in. With the latest tax cuts in the recent budget we now have 80 per cent of taxpayers facing a tax rate of 30 per cent or less. We have increased incentive to return to work by, despite what Labor says, reducing the effective marginal tax rates for low- and middle-income families from 84 per cent on average under Labor to 50 per cent on average under us. That represents a 40 per cent cut in effective marginal tax rates. The greatest thing that we have done for people is provide 1.3 million opportunities—1.3 million jobs for people.

We could have done more had we had some cooperation from senators in this chamber, particularly from the Labor Party, on disability support pension reforms. If they had passed the unfair dismissal laws there would have been a greater effect on welfare. I read with great interest in the *Sydney Morning Herald* today that we are going to have a ‘courageous’ family and tax policy. The Australian public has been waiting for a tax and family policy—any tax and family policy—not necessarily a courageous family and tax policy. It is 91 days since Mr Latham said he was going to give us a family and tax policy. Today we have heard the shadow Treasurer, Mr Crean, saying that he will be giving a speech in a fortnight in which he will develop a tax policy framework—not a policy, but a framework. Here we have got Mr Latham still standing with his kaleidoscope, twisting it around, and every time he twists the kaleidoscope there is another policy that pops out of his head. He gives the public the wisdom of his thoughts on the kaleidoscope on a radio program or on some sort of interview. But Captain Courageous Crean is out there on deck looking into his telescope for a family and tax policy that we have been promised. The shadow minister Mr Swan is nowhere to be seen. I am sure if Mr Crean got his telescope out he would not find Mr Swan in the telescope. He would not find the policy-free zone Mr Swan. Mr Swan would be missing in action—MIA. He is a policy-free zone, the shadow minister for family and community services. What we are going to have is Captain Courageous out there looking for a policy. *(Time expired)*

**Telstra: Mass Services Disruption Notices**

*Senator MARSHALL (2.22 p.m.)*—My question is to Senator Coonan, Minister for Communications, Information Technology and the Arts. Does the minister support Telstra’s use of mass service disruption notices to exempt itself from normal customer service standards? Is the minister aware of the Australian Communications Authority telecommunications monitoring bulletin for
March 2004 which shows that Telstra tripled the percentage of its services which are exempt from customer service standards due to mass service disruptions from three per cent in the June 2003 quarter to nine per cent in the March 2004 quarter? Is the minister concerned that, for almost one in 10 services, Telstra is using bad weather as an excuse for not meeting standard customer service requirements? What is the minister going to do about Telstra blatantly using mass service disruptions to avoid providing all Australians with decent telecommunications services?

Senator COONAN—I do not accept at all that Telstra are blatantly misusing notices, although it is true, as no doubt those opposite would be aware, that between approximately 1.30 and 3.30 this morning Telstra did initiate a software upgrade and it was not anticipated to have an adverse effect. In fact, there has been an outage on customers. Once the upgrade was completed, Telstra became aware of some other authentication issues. But, basically, as soon as Telstra became aware of this, they began working with vendors to isolate the cause of this issue and resolve it. It depends on what the problem is as to whether or not there needs to be a notice or whether Telstra can take action to fix it.

The universal service obligation and the way in which Telstra deal with their customers and with service complaints are appropriate. If you look at the announcement today, you will find that Telstra give great attention not only to service upgrades but to trying to make sure that all services, particularly to rural and regional Australia, are appropriate. There is certainly no evidence—at least, none that has been brought to my attention—to suggest that Telstra are using outage notices inappropriately, nor that they would do so. Obviously Telstra have to cover a huge network and there are, from time to time, some difficulties. On my understanding, Telstra will move to fix those as soon as possible. The suggestion that, through some perverse way, they just simply use an outage notice inappropriately is, I think, not borne out by the evidence.

Senator MARSHALL—Mr President, I ask a supplementary question. I was actually asking the minister about disruption notices and about the growth from three per cent in the June 2003 quarter to nine per cent in the March 2004 quarter. I also refer the minister to last week’s Senate communications committee’s Australian telecommunications network report and recommendation 11, which states that mass service disruption notices should not be used by carriers to avoid their obligations to consumers. Isn’t the government’s mass service disruption policy just a rort for Telstra to avoid providing regional Australians with decent telecommunications services? Will the minister now accept majority recommendation 11 and stop Telstra’s widespread use of mass service disruptions to exempt itself from basic customer service standards?

Senator COONAN—Thank you for the supplementary question. The government does not run Telstra. That seems to be something that escapes the attention and purview of the opposition. Telstra deal with outages when they need to and they deal with repairs to service lines when they can. There is a suggestion by the opposition that, inappropriately, outage notices are used simply to avoid making repairs and providing the services that Telstra have undertaken to do. There is no way in which the government can direct the way Telstra operationally conduct their repairs. It is a matter about which the government obviously has a concern to ensure that regional and rural services are appropriate. *(Time expired)*
Greece: Bilateral Social Security Agreement

Senator RIDGEWAY (2.27 p.m.)—My question without notice is to the Minister for Family and Community Services, Senator Patterson. On the eve of the Athens Olympics, why is it that Australia still does not have a social security bilateral and reciprocal agreement with Greece? Given that Greece and Australia enjoy a close and constructive relationship, is the minister aware that a bilateral social security agreement with Greece would provide coordination between our social security system and that of Greece and help prevent the lost benefit protection that can occur when workers divide their careers between two countries?

Senator PATTERSON—I thank Senator Ridgeway for the question. We have a number of social security agreements with various countries, and some have been a little happier than others. I take this opportunity to say that enormous work has been done by former Senator Newman and by Senator Vanstone. I have made some attempts to have some sort of move from the UK government on indexing their pensions for pensioners when they come to Australia. If you go from the UK to America as a pensioner, it is indexed; if you come to Australia, it is not. If you go to Canada, it is not indexed; if you go to some other countries, it is. We have challenges when we work with various governments in establishing agreements.

We have in fact been working with Greece over some period of time in establishing and resolving the issues with Greece. Various governments have done that in order to resolve a social security agreement with Greece. We have made several approaches to Greece since 1996 but they have been rejected. Australia’s proposals have been designed to take into account the fact that most Greek-Australian residents were not covered by the Greek social security system.

We believe that the current offer we have on the table is a very generous one, given the circumstances—the disparity in the flow of benefits between the two countries. Last year the Prime Minister appointed my parliamentary secretary, Christopher Pyne, to try to progress this important matter. As you know, a new government was elected in Greece on 7 March. Discussions between the two governments will continue as soon as is mutually convenient. An offer is there. If the Greek government elected on 7 March wishes to take it up with us, Mr Pyne would be only too pleased to progress it.

Senator RIDGEWAY—Mr President, I ask a supplementary question. I thank the minister for her answer. I make reference to the meeting that took place on 4 July 2002 between the Prime Minister, Mr Howard, and the then Greek Prime Minister, Mr Simitis, which Mr Howard said was going to bring the matter of a joint social security agreement to a head and achieve a ‘speedy and satisfactory resolution’. Whilst I accept that there has been work going on behind the scenes, can the minister give any indication as to when this matter will be dealt with speedily and satisfactorily and brought to a head? Is it going to be in the foreseeable future—perhaps during, or soon after, the time when the Olympics are held?

Senator PATTERSON—I think I gave Senator Ridgeway the answer to his supplementary question in my first answer. We have a generous offer on the table, and negotiations will start when the Greek government elected on 7 March wishes to continue the discussions. They do have implications for Australia and, as I said, there is a disparity in the flow of benefits between the two countries. The offer we have made is very generous. There have been some discussions,
as I said. They were interrupted as a result of the Greek election and I presume they will be interrupted as a result of our election. We will work towards it, but we have to take into account the fact that we do have a generous existing offer on the table.

Environment: Plastic Shopping Bags

Senator WEBBER (2.31 p.m.)—My question is to Senator Ian Campbell, the Minister for the Environment and Heritage. Does the minister agree with the comments of the Minister for Science when he launched the 48-hour Plastic Bag Famine yesterday that plastic bags are ‘like nuclear waste—it goes on and on, a life beyond many, many continents’ own lifetimes’? Is the minister aware that the Australian Conservation Foundation estimates that the large supermarkets have only reduced their plastic bag consumption by a mere seven per cent and that, under the government’s national voluntary code arrangement, a massive 6.7 billion plastic bags continue to be used by Australians every year? If plastic bags are as detrimental to the environment as nuclear waste, why won’t the minister now agree to Labor’s policy to legislate to ban plastic bags by 2007?

Senator IAN CAMPBELL—I thank Senator Webber for the first question on the environment from the Australian Labor Party. It is good to see that at least someone in the Labor Party cares about the environment. I do agree with the comments of the Minister for Science. That is why, after 13 years of inaction on plastic bags under Labor when we saw plastic bag use rising year after year—more plastic bags flowing into the stormwater, into the rivers and down into the oceans, getting sucked into tortoises’ gullets and wrapping themselves around dolphins’ noses and ibis’ beaks—we see some action from this government. It is to the great credit of former environment ministers David Kemp and Senator Robert Hill that this government has provided leadership to ensure that plastic bags are phased out, and phased out as quickly as possible.

Only this morning I met with Jon Dee from Planet Ark and discussed further strategies to build on the tremendous success of this government in getting people to say no to plastic bags, to use reusable bags. I commend the major supermarket operators, Coles and Woolworths, and the Independent Grocers, the SupaValus and the Farmer Jacks across Australia who are saying to their customers: ‘There is a better way to go. You can get your groceries home safely and securely without putting plastic into the environment.’ Only two weeks ago I was able to present the first audited reports by KPMG on the reduction of plastic bag use in Australia—a 29 per cent achievement anticipated for the first year, on track to outdo the first goal.

But Senator Webber is right, and so are Planet Ark and Ian Kiernan from Clean Up Australia—we do need to go a lot further. A lot of shoppers go to smaller retailers—to delicatessens and a range of other shops—and to fast food outlets. Unfortunately a number of the fast food outlets in Australia have not followed the lead of companies like McDonald’s by going to recyclable materials to package fast food. We will be working, through a roundtable which I am establishing with smaller retailers and people outside the retail grocery sector, to ensure that the leadership provided by major retailers in Australia to encourage people to say no to plastic bags and move to recyclable and reusable bags for packaging becomes pervasive and that we can phase out plastic bag use in Australia.

The Labor Party have the policy approach of: ‘Let’s just legislate it. Let’s wipe it out through legislation.’ We want to do it in a way that ensures that shoppers, particularly
people on low incomes, are not whacked by Labor’s ‘nanny state knows best’ approach to all of these things. Senator Webber and Mr Latham would have us impose enormous costs on shoppers in Australia. What we are trying to do is change the culture of Australia, keep the costs down and phase plastic bags out. What they want to do is use the old centralist ‘nanny state knows best’ way of doing things and legislate them away. We know that the practice around the world shows that that does not work. They would say to all of the Australians who have made the decision to say no to plastic and move to reusable and recyclable bags that they know best. They will not even applaud the millions of Australians who have said no to plastic over the last few months and moved to recyclable and reusable bags. They are saying: ‘That’s not good enough. You’re all mugs. We know better than you.’ What they will do is put the price of groceries up and hurt people on low incomes. (Time expired)

Senator WEBBER—Mr President, I ask a supplementary question. Given the minister’s keenness for reusable bags, I refer to the minister’s interview last month on the Insiders program when he indicated his plan to introduce blue recycled bags so consumers could ‘have a choice of colours’. Can the minister also confirm, when asked in that same interview what message a blue bag would send, that he said:

The blue bag will be the same as a green bag, Barrie, but it’s going to be blue.

Isn’t it time for the minister to stop focusing on the colour of the bag and start focusing on real strategies to eradicate the current 6.7 billion plastic bags used by Australians every year?

Opposition senators interjecting—

The PRESIDENT—Order! When senators on my left cease interjecting I will call the minister.

Senator IAN CAMPBELL—This morning Jon Dee delivered to my office about 100 blue Planet Ark bags. What I will do right now is ask my staff to deliver one to Senator Webber’s office immediately. Planet Ark endorsed my strategy today. What you have got to do is reinvigorate people about reusing reusable bags. We want people to understand that, if they use plastic and it goes into the ocean and kills a dolphin or a turtle, that is bad. So we do want blue bags to represent the importance of our oceans. We are going to have white bags to represent the importance of Antarctica. We are going to have calico bags. We are going to allow freedom of choice. What we want to do is encourage all Australians to make that choice to say no to plastic bags, because we think they are smart enough to make that choice for themselves and not be told by a nanny, state-knows-best, Latham government what is good for them. (Time expired)

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left! The din and noise coming from that side of the chamber today is disgraceful.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw attention to the presence in the President’s gallery of a delegation from the parliament of Canada led by Mr Derek Lee, MP, who is chair of the interim committee on national security. I warmly welcome you and the delegation to the Australian parliament, and in particular to the Senate chamber. I trust that your visit is both informative and enjoyable.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Environment: Mandatory Renewable Energy Target

Senator HARRADINE (2.39 p.m.)—My question is also to the Minister for the Environment and Heritage, Senator Ian Campbell.
Is the minister aware that in Tasmania up to 2,000 new jobs, and investment in manufacturing and regional development, depend upon improved mandatory renewable energy targets? Investment in areas such as the Vesta plant in north-west Tasmania and by Hydro Tasmania is made uncertain by the government’s new policy. What is the government going to do to improve investment in renewable energy in Tasmania, a state that already gets the large majority of its power from renewable sources and that is an example to the rest of Australia?

Senator IAN CAMPBELL—Thank you to Senator Harradine for a very important question about Australia’s energy future. As Senator Harradine would know, because he is Tasmanian and because Tasmania is in fact a world leader in the use of renewable fuel, the Howard government was in fact responsible for bringing in the mandatory renewable energy target policy. Not only is that a world-leading policy; it is a policy that has in fact delivered a significant boost, as Senator Harradine recognises in his question, to the renewable energy industry in Australia. This government brought that policy in because we believe deeply and strongly that climate change is an issue that confronts Australia probably more than any other country. It is probably—and you could have long arguments about this—the single environmental issue that is most important and most challenging to Australia. Because of our unique geography, because of our climate and because of where we are placed on the globe, climate change is a massive challenge to this country that we have to get right.

It is why this government has brought in a whole range of greenhouse gas policies—such as greenhouse gas reduction and the greenhouse gas abatement policy. It is why the white paper focuses so heavily on trying to reduce emissions from all of our different sources, but particularly stationary sources. That is why it focuses very heavily on investment where you can get the biggest reductions in greenhouse gas emissions at the very best value. It matches that with a very significant investment in renewable energy technologies. For example, Senator Harradine will probably be aware that we are going to invest $75 million in the solar cities program, which will ensure that Australia is recognised around the world for integrating solar energy technology into everyday communities right across the country.

Senator Harradine, in his question, made the point about there being some uncertainty as to investment within the renewable energy sector. I have deep respect for the fact that the wind power generation industry would have preferred an increase to the mandatory renewable energy target. I have met with them, I have discussed their concerns with them and I do understand that in Tasmania, the home state of Senator Harradine, the industry is particularly concerned because of the perception of the investment impact in that state. I am going to work very hard with that industry to, firstly, understand those concerns.

The bigger issue is uncertainty about the investment future. The policy is certain; it is quite clear. The mandatory renewable energy target policy in the white paper seeks to improve that program. It does not seek to increase the mandatory renewable energy target, but it seeks to increase the efficiency of that process. What this government wants to achieve is world leadership in reducing greenhouse gas emissions. What that takes is a focus on all of the different options that we need to invest in from both the public point of view and the private point of view. We do need to ensure that renewable energy plays a large part in that. We need to ensure that emerging technologies, such as the hydrogen economy and hydrogen fuel cell technology, are advanced. We need to ensure that exist-
ing power stations convert to far more efficient generation with a much lower greenhouse signature. We do need to invest in all of those areas. *(Time expired)*

**Senator HARRADINE**—Mr President, I ask a supplementary question. In view of what you have said, Minister, why did the white paper only increase the MRET to one per cent of what it was in 1997?

**Senator IAN CAMPBELL**—It did not seek to do that. The reason that the mandatory renewable energy target was not increased is that we made a decision as a government to invest the greatest amount of public resources and to encourage the greatest private investment in the best outcomes for greenhouse gas reductions. Australia will in fact be one of the few parties to the UN Framework Convention on Climate Change which will meet its Kyoto targets. We are, in fact, on target as a nation to reduce emissions by something like 67 million tonnes by the end of 2009. To put that into context, that is the equivalent of taking every single vehicle, every truck, every bus and every car off the road before the end of this decade, so we are making big strides. But we will only continue to do that if we make sure that government investors, private sector investors and the household sector make decisions to get the best greenhouse gas reductions at the best price—and we believe that renewable energy has a huge role to play there. *(Time expired)*

**Sport: Drug Testing**

**Senator LUDWIG** *(2.46 p.m.)*—My question is to Minister Coonan, the Minister representing the Minister for the Arts and Sport. Is the minister aware that Mr Dick Pound, the head of the World Anti-Doping Agency, has announced overnight that WADA is considering launching an appeal to the Court of Arbitration for Sport regarding the allegation of drug use in Australian cycling because it believes the investigative process into AIS cycling ‘could have been compromised’? Can the minister confirm that Sports Minister Kemp has been called to a please-explain meeting with WADA chiefs today in a vain effort to explain the government’s botched handling of the investigations into the alleged injecting practices of Australian cyclists?

**Senator COONAN**—What I can say is that Senator Kemp has had a number of meetings with a number of people since he has been in Athens and that Senator Kemp will no doubt be conveying the message that the Australian government is tough on drugs in sport. That would be the message that Senator Kemp would be conveying in Athens. Recently there have been a number of allegations that have come to the fore in Australia, many of which have been actually unjustified allegations which have been peddled by Senator Faulkner and were largely criticised in the Johnson report, which said that there was absolutely no foundation for some of the claims that Senator Faulkner made, some of the allegations that people were holed up in a room and all shooting up drugs. That is certainly not what was found through the Johnson report.

It is not surprising that Australia is very well regarded for its antidoping practices. It has one of the most rigorous antidoping programs in the world and it is supported by research, education, testing, legislation and, of course, a number of regulatory initiatives to fight the use of drugs in sport. So WADA is well aware that Australia takes its obligations as to doping in sport very seriously. We have been pleased to receive, as recently as in January this year, advice from WADA that ‘it continues to regard Australia as one of the foremost leaders in the world in the fight against doping’. I am sure that if Senator Kemp were having any conversations at all it would be to share experiences as to how you
do have a rigorous and first-class antidoping regime in sport.

I am sure that the chair of WADA, Mr Dick Pound, is well aware of how important it is to balance the rights of athletes with the need for transparency in these matters. These include the consideration of privacy and confidentiality matters and in fact testing the allegations, which Senator Faulkner did not do. Senator Faulkner made an allegation and, of course, the subsequent investigations have shown that the substance of the allegation that Senator Faulkner made about a number of people all locked in a room and all shooting up is absolutely false.

Senator LUDWIG—Mr President, I ask a supplementary question. Can the minister tell us what the Johnson report is? Also, is the minister aware that Mr Dick Pound has stated that he is awaiting copies of all the information regarding investigations into the cycling case from Minister Kemp in order to make an informed decision as to whether or not WADA will appeal directly to the Court of Arbitration for Sport? Can the minister confirm that Minister Kemp will immediately provide copies of the highly secretive Stanwix report, together with the Anderson report appendices, which are assumed to hold vital information pertinent to this case? Can the minister also tell the Senate why these appendices have been hidden for so long and when they will be made available to the Senate so that a full analysis of all the information of these investigations can in fact be made?

Senator COONAN—I am indebted to Senator Ludwig for reminding me that in fact I was meaning to refer to the Anderson report, not the Johnson report. What I was saying and will continue to say is that what the report refers to is that a lot of the allegations that were made, in particular the allegation that room 121 was used as a shooting gallery by up to six cyclists locking themselves in several nights a week, were not found by the report to have any credence. Senator Kemp has answered a number of questions about certain parts of the report, which contains confidential information. I would assume that the opposition would not actually disagree that athletes are entitled to some privacy. When Senator Kemp gets advice, he will—as he said in an earlier answer to this question—inform the Senate as to what parts of the report can be made available. (Time expired)

International Criminal Court

Senator GREIG (2.52 p.m.)—My question is to the Minister for Justice and Customs, Senator Ellison. I ask the minister: is he aware of media reports which allege sexual and physical abuse by US marines against villagers in central Afghanistan? In light of this, does the government still maintain its position that US citizens should be granted immunity from investigation and potential prosecution by the International Criminal Court? Is it still the case that the Australian government is negotiating an agreement with the US so that its citizens would be immune from such an agreement?

Senator ELLISON—We have always respected the United States’ stance in relation to the International Criminal Court. I am not aware of those recent reports that Senator Greig refers to. I will certainly have a look at those reports. In relation to the International Criminal Court, I will take it up with the Attorney-General to see if there is anything further I can add in relation to any negotiations or discussions we have had with the United States in that regard. But I am not aware of any.

Senator GREIG—Mr President, I ask a supplementary question. Is the minister aware that, during estimates on 19 February this year, DFAT confirmed that the govern-
ment was conducting ‘ongoing negotiations’ towards a bilateral immunity agreement with the US at least as recently as December 2003? I ask the minister: is the refusal by the Joint Standing Committee on Treaties to begin this inquiry, which was referred in December 2002, in any way due to political pressure from the government?

Senator ELLISON—We have had a longstanding approach to this issue. As to the foreign affairs estimates committee, I do not participate in that; that is not in my area. I will take that on notice and, if there is anything further to add, I will get back to the Senate.

Communications: Television Sports Broadcasts

Senator CONROY (2.54 p.m.)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. Is the minister aware that SBS has shown a live match from the English Premier League once a week for a couple of years and a highlights package for close to a decade? Is the minister also aware that Australian soccer fans may soon be denied the opportunity to view these programs on SBS and will have to pay hundreds of dollars a season to watch Socceroos Mark Viduka, Harry Kewell and Mark Schwarzer on television if all coverage of the English Premier League moves to Foxtel? Given that soccer is one of the most popular sports in the country, will the minister step in to assist negotiations between SBS and Foxtel to encourage SBS and Foxtel to reach an agreement and to do everything possible to ensure that some premier league soccer remains on free-to-air TV?

Senator COONAN—I thank Senator Conroy for his question. My approach to these matters is that it is a matter for commercial negotiations between SBS and Foxtel as to how they will in fact deal with programming. I am aware that there is a lot of interest in the broadcasting of sports, and there is certainly a lot of interest in the government’s rationale behind changes in the antisiphoning list, but that matter has been recently dealt with by the government. It has been well canvassed and it is not something that should be revisited in the context of the question that Senator Conroy asked.

Senator CONROY—Mr President, I ask a supplementary question. I refer the minister to the new sports broadcasting antisiphoning list released by the former minister in April this year. Minister, why does the list, which runs from 2006 to 2010, include the 2006 FIFA Soccer World Cup but not the 2010 FIFA Soccer World Cup? Is it the intention of the government to deny soccer fans the opportunity to watch the Socceroos at the 2010 Soccer World Cup on free-to-air television? Will the minister now join with Labor and guarantee to restore the 2010 FIFA Soccer World Cup to the antisiphoning list so that Australian soccer fans can continue to watch the World Cup on free-to-air television—and, if not, why not?

Senator COONAN—As I said in my earlier answer, we have reviewed the current arrangements. The government has determined that, with less than one in four Australian households currently having access to pay television services, the rationale for the antisiphoning scheme still exists. The government has developed a list which will protect listed events which take place between 1 January 2006 and 31 December 2010. The new list retains nationally significant sporting events and adds new ones—specifically, the Olympic and Commonwealth games, both of which are obviously important to the Australian public. It is important that as many people as possible can have access to these events, and that is the rationale for the antisiphoning list: that as many people as possible can see these events without paying.
Forestry: Management

Senator LEES (2.57 p.m.)—My question is to Senator Ian Campbell, the Minister for the Environment and Heritage. I ask the minister: has he read the proposal by WWF called a Blueprint for a forest industry and vegetation management in Tasmania? Does he support the four key recommendations? In particular, does he support an end to clearing existing native forests for other use such as plantations? Is the federal government prepared to insist on improved forest management practices right across Tasmania? Finally, does he support the full protection of the Tarkine area, which is listed on the Register of the National Estate and is Australia's largest remaining temperate rainforest?

Senator IAN CAMPBELL—I thank Senator Lees for a question on Tasmanian forests. It is an issue that a lot of Australians are very concerned about. I have seen the WWF blueprint. I do admit to not having read it from cover to cover. I notice that the Wilderness Society and, I think, the ACF brought out a further document this week which, again, I have seen. I thank all of the people involved in both of those documents—the World Wildlife Fund, the Wilderness Society, the ACF, the scientists and the members of the community that have helped create those blueprints—for making an important contribution to the debate.

Tasmanian forest issues have been at the centre of the forest debate in Australia for many years, as you would know, Mr President, being a Tasmanian yourself. The important thing—I am sure this view is shared equally by me and by the Minister for Fisheries, Forestry and Conservation, who sits in the Senate with us—is that the Australian government are well aware of the public interest in the forests and how they are managed and conserved. This government, probably more than any other, has sought to strike a balance. Through the national forest policy process that was established under the previous government—when Senator Faulkner was the minister for the environment, so long ago—and the implementation of the regional forest agreement processes, we have, without any doubt, improved forestry practices around Australia and in Tasmania. Our government are committed to continuous improvement in forestry practices as a critical element of ecologically sustainable management.

The commitment to continuous improvement in forest practices applies to Tasmania. Under the Tasmanian Regional Forest Agreement, some 440,000 hectares were added to a reserve system that results in protection within reserves of 2.74 million hectares. That is roughly 86 per cent of old growth forests on public land, 95 per cent of high-quality wilderness being reserved and something like 40 per cent of the Tasmanian land mass. In anyone's language, we have as a government, with the cooperation of the Tasmanian government, and as a nation achieved historic levels of protection for Tasmanian forests.

It is fair to say that there are some very genuine, committed conservationists and scientists who would say that the process has not gone far enough and that forestry practices need to be improved. The RFA process includes regular five-year reviews. Senator Ian Macdonald and I have before us at the moment a review of the RFA, which I will be looking at in some detail. In developing the Australian government's response to that review, we are considering how ongoing forest management issues can best be addressed. The Australian government recognise that, like any other natural resource management issue, there needs to be continuous, open and informed community discussion about the decisions that affect the people and the environment in the long term.
Senator LEES—Mr President, I ask a supplementary question. I am pleased to hear the minister note that there is enormous public interest in these issues. I certainly agree that substantial parts of the significant areas have been protected, but the problem in the Tarkine is that the very centre of it, the heart of it, is due very shortly to be logged. So I ask the minister: apart from buying back those logging rights from the Tarkine, which are there by agreement—estimated at between $12 million and $20 million—and then going through the processes to extend the World Heritage area to include the Tarkine, what are the other barriers to making some decisions to protect this important area?

Senator IAN CAMPBELL—I appreciate the fact that Senator Lees has a sensible and balanced approach to this issue. She recognises, as do many Australians, that the Australian government, under the leadership of John Howard, have brought more protection to Tasmanian forests than any other government in Australia’s history. We also recognise that there needs to be continuous improvement in the process. I think the government, through cooperation with the Tasmanian government, will need to address the review. I know that the Tasmanian government stands ready to do that. I will work cooperatively with Senator Ian Macdonald, the Minister for Fisheries, Forestry and Conservation, to look at the review and consider how we can best balance the interests of the regional forest agreement, World Heritage values and the interests of the logging and forestry industries and, very importantly, how we can protect the long-term interests of this crucial part of the Australian environment. (Time expired)

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

DISTINGUISHED VISITORS

The PRESIDENT—Once again, I welcome Ambassador Schieffer to the public gallery. He is accompanied by a large delegation of congressmen from the United States of America. Welcome to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Telstra: Mass Services Disruption Notices

Communications: Television Sports Broadcasts

Senator GEORGE CAMPBELL (New South Wales) (3.05 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Communications, Information Technology and the Arts (Senator Coonan) to questions without notice asked by Senators Marshall and Conroy today relating to the provision of services by Telstra and free-to-air broadcasting.

The answers given by the minister today clearly demonstrate that, in the 26 days she has been in the portfolio, she has failed to grasp any knowledge at all to do with the issues for which she has now been given responsibility. She has proven once again her total incompetence in running this portfolio area. Asked today, for example, about mass service disruptions, which have tripled in number over the last year, the minister referred to a Telstra ADSL outage, which has nothing to do with mass service disruptions. She then said that the government does not run Telstra’s operation, when the mass service regime has nothing to do with Telstra, as it is a government regulation managed by the Australian Communications Authority. The mass service disruption policy is a hard government regulatory rort for Telstra to avoid its obligations to consumers, but this minister does not even know what it is. With regard to the antisiphoning list, she could not answer specific questions about events on the list and referred to generalities provided by the
department about the list—another fantastic gaffe from the minister.

Who can forget the events of the last few days? Certainly the minister should not. On Tuesday the Australian revealed that former Minister Richard Alston had dug his snout even further into the trough through a new consultancy with the national radio network Austereo. In the House, the Prime Minister said that there was no problem. He said the government would not be joining with Labor in implementing a 12-month ban on these activities. But, again, Senator Coonan just could not catch up with the game. She just could not get her lines right. She said:

... the principle is correct. It is a sound principle that recently retired ministers should not take up positions that will conflict with their prior duties, if in fact that is what is occurring.

Again, the minister was quite clearly contradicting the Prime Minister in his response to that issue. She in fact had lent tacit support to Labor’s sound policy to put an end to these sorts of rorts. The Prime Minister must be tearing out his hair—or what little he has actually got left—looking at the performance of Senator Coonan in this portfolio in the short period of 26 days. It is a short period of 26 days and she has been an absolute fiasco. Yesterday we had the piece de resistance from Senator Coonan, when she managed to mislead the Senate. Asked a very clear question about whether she or her office had been in contact with Richard Alston, she said simply:

The answer is no.

Less than an hour later, she had to come back and correct the record. She had to make it clear that a staff member had in fact had conversations with Richard Alston about the commercialisation of the CSIRO. It was made clear that, despite the minister’s earlier denial, Richard Alston has unfettered access to the minister’s office and that the minister’s staff are more than happy to converse with and provide research for Richard Alston. Again, the Prime Minister must have choked on his cornflakes when he awoke this morning to an Australian headline: “Minister ‘misled parliament’”. This is an absolute disgrace. The minister is an absolute joke. She has no idea what she is doing in the portfolio. She had no idea what she was doing in her previous portfolio. She has been promoted and, of course, the fact that she has been promoted to a senior portfolio only means that the gaffes are getting bigger. In the 26 days she has been in the job, she has simply lurched from crisis to crisis. She is in fact challenging Richard Alston’s mantle as the world’s worst communications minister, less than a month into the job. We will continue to watch this minister’s roller-coaster ride and draw attention to her incompetence.

(Time expired)

Senator EGGLESTON (Western Australia) (3.10 p.m.)—I am sure the ALP will continue to watch Senator Coonan’s performance, because Senator Coonan will be administering the very effective and successful telecommunications policies of the Howard government. As we said the other day, those policies have not changed. It is a straight line from Richard Alston through Daryl Williams to Helen Coonan. Our policies remain the same. They have been very successful policies in the whole broad area of communications. To suggest that Helen Coonan is doing anything other than administering the well-established policies of the Howard government is just utter nonsense. As Senator Campbell has said, Senator Coonan has been in this portfolio for 26 days. It is a very complex and broad portfolio. I think she is doing a good job in presenting the issues which are important in the portfolio.

Let us just look at the record of the Howard government. As I have said before, we believe in competition in telecommu-
tions. The ALP does not. Early in the period of the government, competition was introduced into telecommunications, which means that we now have over 100 telcos in this country providing a wide variety of services to the Australian people. As a result, we have seen dramatic drops in the prices of telecommunications and improved services in regional Australia. If we go back to the dead days of the ALP, when there was just one single telecommunications company—

Senator Mackay—What is the market share of Telstra? It hasn’t changed.

Senator EGGLESTON—things were very different, as Senator Mackay well knows. Under the telecommunications policies of the ALP, for example, there were no customer service guarantees and there was no universal service obligation. We have introduced regulations into the whole telecommunications industry which require that a basic telephone service to the community should include certain specific kinds of service. That did not exist under the ALP. We have introduced customer service guarantees, which set very strict time lines and very heavy penalties if repairs and installations are not carried out within defined limits.

If we look at other areas of the telecommunications portfolio, we introduced a regime for the introduction of digital television. That is something that I suspect the ALP never even considered doing during their term of office, even though it was obvious that telecommunications was proceeding into an era of digitalisation. We have now set up the Australian television industry to go digital on 1 January 2008. We have introduced digital radio. In the area of cross-media ownership, the Howard government have been very progressive and have sought to relax the cross-media ownership regulations so that the Australian people have access to a wider variety of ownership of media, which will produce a better quality of product and a better service to the public. The Howard government’s record in telecommunications has been very good.

When it comes to the question of antisiphoning—which is relevant at the moment because we have the Olympics coming on—the government has revised the antisiphoning provisions to ensure that free-to-air television stations do not warehouse programs and that the public can have access to them. This government, as I have said, has a very good record in telecommunications policy. Senator Coonan, as the minister of the day, is administering that policy and doing it very effectively and very well.

Senator WEBBER (Western Australia) (3.15 p.m.)—I too wish to take note of the answers given by Senator Coonan today because those answers reminded me of a very bad parody of the television show Yes Minister. As Senator Campbell said, when asked about outages from the previous year all the minister could talk about was ADSL outages from last night—she does not understand the difference. I was particularly reminded of that episode of Yes Minister where it was explained that government departments actually deal in the opposite of what they are named. Do you remember the episode? The department of employment deals with unemployment. Today we have had a very bad parody of that with the minister for communications—or should I say miscommunications? Remember those convoluted, tortuous explanations that we had from the minister on superannuation, insurance and taxation? They were bad enough, but now we have her inability to provide clear answers to simple questions in her new portfolio responsibilities.

You have to wonder why Richard Alston is such a hard act to follow. His performance as minister was, by any objective, pretty or-
dinary really. He was more concerned about his allegations of bias against the ABC than actually doing anything. He was more concerned about his access to flat screen TVs from Telstra. And when Richard Alston left the portfolio what did we get? We got the member for Tangney—or dazzling Daryl, as he is affectionately known by the WA media. He should have his time in the portfolio recorded as the invisible man. It took six months to go from Richard Alston to Senator Coonan via the invisible man.

Here we have a minister who cannot get even the simplest things right. As Senator Campbell said, she is 26 days into a new portfolio and the minister has already had to correct an answer that she provided to the Senate. True to Liberal Party operating procedures, when asked whether Minister Alston had any contact with her or her office she replied no. But not an hour later she was back in here to correct that answer. The minister herself had no contact but she was forced to reveal that one of her staff had. Those good old Liberal Party firewall procedures are still working well. I sit here often and listen to the responses and wish that the invisible man was here instead. It would be a lot better.

This minister for miscommunications cannot use one word where it is possible to use 100. I remember those good old flummoxing days in her previous portfolio. It is little wonder that those of us on this side get no further with finding out the important information about her portfolio when the minister rambles all the way through the thesaurus, dictionary or anything else to say absolutely nothing. Sir Humphrey himself would be proud of her. However, the people of Australia and those of us on this side of the chamber are not proud of her performance.

Let us be clear about importance of this portfolio. This is not a portfolio where government should be allowed to just park any old underperforming minister. This is a portfolio with responsibilities for things that are of vital importance to each and every Australian. Telecommunications is of vital importance to every Australian person, particularly those in non-metropolitan areas. There are important issues that are held up by this government’s ideological obsession to sell the rest of Telstra. This is a policy that is not supported by the majority of Australians but the latest proponent of that policy is this minister, who has to correct her own answers within one hour of being in this place. A minister who cannot even correctly pronounce the name of the new chair of Telstra is then going to try to convince all of Australia that we should sell Telstra—except, of course, there is no noise from her on the issue of selling Telstra now but that is because we are close to an election. The minister and the rest of the government will lie doggo on that issue for a while, at least until after the election. This is a minister who has key responsibilities to address our ageing communications infrastructure, to make decisions about digital radio—(Time expired)

Senator COLBECK (Tasmania) (3.20 p.m.)—It is interesting that rather than doing what Labor should be doing at this point, which is developing and expressing some policies, all they can do is come into this place and essentially just drop out a good old Labor slag—pick somebody out and spend all of the take note motion trying to run down a minister. This is someone who has been in a complicated portfolio for only 26 days, as has been put on the record by members on the other side, yet all they do is come in here and play the person. At this point in the electoral cycle I would have thought that Labor would be much more interested in doing something constructive such as devel-
oping policy. Where is the Labor policy on telecommunications?

Senator Mackay—We won’t sell Telstra.

Senator COLBECK—That is a great policy. Just one policy: don’t sell Telstra. That is all there is to the Labor policy; there is no policy on rolling out ADSL to regional communities. It is interesting that one of the local members in my neck of the woods is trying to make a name for himself on rolling out ADSL in regional communities. Interestingly enough, he is sending out out-of-date information. Someone who claims to be an expert on ADSL in regional communities is sending out information that does not have any bearing anymore. He is trying to get people to respond and telling them that he is going to give assistance to get ADSL hooked up to their properties and yet the information that he is sending them is out of date.

They come in here and slag off at the minister, yet they are running around giving out information that is out of date. They have no policy themselves. They try to make mileage out of good government policy to increase telecommunications to the community. They cannot get it right. They do not know what is going on. This government has a very strong record with respect to telecommunications in regional areas. The rollout of the HiBIS program that is being undertaken at the moment is a great example of that. The threshold for getting ADSL into a regional community used to be something in the order of 150 expressions of interest. The HiBIS program has enabled that to be cut in half. To some of the smaller communities in regional Australia, that means a great deal. It means that they can have access to affordable, high-speed broadband communications at a reasonable cost. They have been assisted by that excellent policy put in place by the federal government.

The Labor Party do not have a policy except for saying, ‘Don’t sell Telstra.’ That is the extent of their policy—just don’t sell Telstra. Do not expand services; do not provide services to people in regional Australia; just don’t sell Telstra. It takes a lot of imagination to come up with that! All they can do is come in here and slag off at the minister. I would have thought that their time would have been much better spent understanding what the government’s programs really are. If they want to improve on them, let them have a go. I do not have a problem with that; I would welcome it. That is just too difficult—all they can do is come in here and play the person. They have no policy and show no initiative. Instead they slag off at the current minister and, in the process of doing that, have a go at the former minister as well. Why not? They have nothing else to talk about—they have no policy and they have nothing that they have developed. It really becomes a fairly fruitless exercise. They waste the parliament’s time by having a personal run-off at somebody.

They do not have anything positive to say. They do not have any policy—nothing like the government is doing, which is providing ADSL high-speed broadband connections to every doctor’s surgery in the country. That is a constructive initiative—something that is positive. The medical profession are quite excited about the fact that they are going to have low-cost access to broadband right across Australia—whether it be satellite, ISDN or ADSL. They are quite excited about that. Think about what that will mean for health outcomes for people across the country. Again, that is something that has been put in place by a positive policy from the Australian government. Of course the Labor Party are only interested in making personal attacks. They do not have any positive policies—just don’t sell Telstra. That is really imaginative. It takes all of a couple of sec-
onds to think that one up. They do not have anything positive to offer or any initiatives to present. They just come into this place and slag off at the minister. \(Time \text{ expired}\)

Senator CONROY (Victoria) (3.25 p.m.)—I rise to speak in the debate on the motion to take note of the answers by the Minister for Communications, Information Technology and the Arts, Senator Coonan, in question time today. I want every soccer fan in this country to read the answers that Senator Coonan gave in question time today. Soccer is included in the Olympics and is getting free-to-air coverage right now. When Senator Coonan was asked whether or not she would support putting the World Cup in 2010 back on the antisiphoning list—an event which this government has taken off the list—she was silent. We saw her exposed for the hypocrite that she is. She cried crocodile tears over the British Open golf being lost from free-to-air television. She should have been crying, but it has been proved today that they were crocodile tears. Like many Australians, I flicked over to watch the British Open golf on the last Sunday night to find a Clint Eastwood movie instead. What is going to happen in 2010? We are not going to get any World Cup soccer.

The minister will not be able to run and hide on this one. She has to decide whether or not she wants Australians to be able to watch the Socceroos in 2010 when we qualify for the World Cup. We need to make sure that we get the coverage that this sport desperately needs in this country. It is enormously popular. It has a massive youth following—people who cannot afford to put Foxtel on for the privilege of watching the Socceroos. It is not good enough. Let us think back to a year or so ago when the World Cup was held in Japan and South Korea. We finally had the World Cup held in our time zone. Hundreds of thousands of Australians were captivated by the romance of the World Cup. They wanted to watch Japan qualify for the next round. They wanted to watch South Korea storm into the semifinals. There was a huge buzz all over the country. They wanted to watch that opening match when Senegal knocked over the World Cup holders, France. That is why it is important to Australians: because it is a world game. For the minister and this government to allow it to be dumped from free-to-air television is a disgrace. There will be a campaign and an outcry over this. The government should understand that Australian soccer fans will not be treated as second-class citizens. They deserve better.

In between when the minister answered and when I came back into the chamber, I put this to the real test. This is the real test, and everybody in this chamber should be very worried about this. I was at Aussies, the little cafe here in Parliament House, and I was speaking to Dom—who makes all our cappuccinos and hot chocolates. I said, ‘Did you know they’ve dumped the 2010 World Cup off the antisiphoning list? You won’t be able to see it on free-to-air TV.’ He could not believe it. He will not be making cappuccinos and hot chocolates for any politician who will not put the World Cup back on free-to-air television. That is how passionately soccer fans feel about it. And he is dead right. That will be the sort of backlash we will see right across Australia from soccer fans if we do not get this fixed—if we do not get the government to back down, to stop listening to the corporate interests in this country and to put it back onto the antisiphoning list. The World Cup is the world game. The Socceroos are an Australian national team and Australians should be able to watch them on free-to-air television. The minister has washed her hands of this again.

The weekly roundup of the English Premier League on a Monday night was a fixture on the ABC for years—free to air. It has
been a fixture for 10 years on SBS. What are we seeing now? We are seeing the minister duck and weave on this issue. She does not want to step in. She does not want to phone Foxtel or SBS, knock a few heads together and get this sorted out so that Australian soccer fans watching free-to-air television are not robbed. She was prepared to stand up after the golf tournament went to pay television and cry crocodile tears. It is not good enough this time. She knows in advance that there is a problem. Let us see some proactive behaviour from the minister, not more crocodile tears after the event. Put the World Cup in 2010 back on the antisiphoning list and let us see soccer on a Monday night on SBS like we should.

Question agreed to.

Social Welfare: Reform

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

That the Senate take note of the answer given by the Minister for Family and Community Services (Senator Patterson) to a question without notice asked by Senator Colbeck today relating to social welfare.

The minister claimed that welfare reform and employment have been successes of the Howard government. The difficulty with the issue of employment and welfare is that that success is not shared equally across our country. If you look at the unemployment rate for Indigenous Australians, it currently stands at 20 per cent, nearly four times the national average. But if you take into account CDEP correctly, as equating to unemployment, the unemployment rate of Indigenous Australians rises to 41 per cent. What that means is that for those Australians who are stuck in a cycle of boredom and despair, there is—particularly in more remote communities, such as those in Cape York—very little chance of getting employment in a community and very little chance of new economic opportunities being created under current government policies.

That cycle of boredom and despair which comes out of chronic unemployment in the communities inevitably leads, for too many people, to substance abuse. Our Queensland Premier, Mr Beattie, is touring the cape today, and I think it is worth noting, as we talk about questions of welfare dependency and alcohol abuse, that both state and federal governments need to do better by the Cape York communities. What we need in Cape York is not governments going in and telling the communities how they can and cannot deal with their problems and claiming successes where there are no successes; rather, what we need is government working with the communities to find solutions and work their way through to get programs and service delivery which will help on the ground.

Mr Beattie has made a great play in particular about imposing alcohol management bans on the communities of Cape York. I visited nine communities of Cape York in late July, talking with community leaders and with justice groups, trying to get an idea of those plans. In all of the communities I met with, there was a firm belief that there must be alcohol management plans and that they must deal with the issues of substance abuse. What also came through quite strongly in all of those communities was an anger about having that imposed on them by the state government in a way that did not take into account their community concerns. What one of the communities said to me was that, as so often happens with government policy, they had gone for the cheap, populist, easy option; that rather than dealing with what happens next after imposing a ban, they dealt only with the issue of the alcohol bans but did not take it further.

What the Cape York communities now need from the Beattie government and from
the Howard government is an idea of what is going to happen post the imposition of an alcohol management plan. Where are the treatment programs and the alcohol rehabilitation programs? True, the federal government has tipped in some money but there has been not a single cent from the Beattie government for alcohol rehabilitation on the cape. Where are the plans to not only get tough on alcohol but also on where it is coming from? What we need in the cape is a government committed to getting tough not just on alcohol abuse but also on the causes of alcohol abuse, and that means addressing issues like overcrowded housing, the lack of employment opportunities, the lack of training opportunities and the lack of activities for young people of the cape to engage in. In particular, the Beattie government can afford, as can the Howard government, to deal with the issues of overcrowding on Cape York, which currently has the highest rate of housing stress of any region on the east coast of Australia. In fact, there are up to 25 people living in houses in some parts of Cape York, such as Aurukun. If we are going to deal with the traumatic stress that is inherent in those communities and that is leading to substance abuse then we need to deal with the causes as well as with the substance abuse itself.

We need to ensure there are support mechanisms for people on the ground to do good things. If welfare reform is going to be successful in the cape, if we are going to see reform of alcohol management programs, if we are going to see reform regarding the stresses and violence in those communities then we need government programs which are more supportive, better housing, better health, better education, more employment opportunities and a government that is prepared to listen to the community and work with them rather than imposing solutions from outside. Community development must go hand-in-hand with alcohol management. You cannot have success in one without having success in the other, and that is the bit that is missing from the Beattie government’s policies and also those of the Howard government. It is time to put the element of community development back in and get tough on the causes of alcohol and not just on alcohol itself.
for quality assurance on the final calculations of offsets.

**Response: Agree in principle.**

However, there are significant logistical problems to be overcome before expertise could be concentrated in a single national location.

**Recommendation**

That the Department must ensure that all potential recipients of lump sum compensation understand the implications for their pension of accepting a compensation lump sum; that upon accepting a lump sum, their pension will be offset for life.

**Response: Agree**

In cases where a pension is already in payment and lump sum is subsequently sought. However, in some cases a lump sum payment may have been made by a private insurer before the Department is advised.

**Recommendation**

That comprehensive and expert information be given to potential recipients once claims have been accepted, detailing the MCRS lump sum and VEA pension, with a complete cost schedule, including the rate of offset; and

**Response: Agree**

However, due to variations in interest rates and inflation factors over time the information can only be indicative and will not be an exact cost schedule.

**Recommendation**

That this information be provided to potential recipients before they are required to make a decision about whether to accept a lump sum or a pension. It should also include any other likely payments that will impact on recipients’ future payments (for example, CPI increases).

**Response: Agreed**

In cases where a pension is already in payment and lump sum is subsequently sought. However, if a lump sum has been granted first, and a claimant subsequently seeks a disability pension for the same condition under the Veterans’ Entitlements Act 1986, the condition would have to be first accepted and an initial pension assessment made before the effect of the lump sum on the pension could be calculated and a final pension entitlement advised.

Yours sincerely

DANNA VALE MP

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**Government Response to Report 56 of the Joint Standing Committee on Treaties**

**Recommendation 2**

Where the provision of accurate information on the status of State and Territory legislative compliance cannot be provided at the time of the public hearing, the Committee must be provided with updated evidence as it is available, up until the tabling of the Committee’s report.


The Committee’s inquiry into ratification of International Labour Organization Convention No. 182: Elimination of the Worst Forms of Child Labour occurred in unusual circumstances, in that Australian law was not fully compliant with the Convention at the time of the inquiry. These circumstances represent an exception to the standard practice under the Government’s treaty making policy pursuant to which treaties are not brought before the Committee until all necessary domestic implementing legislation is in place. The Department of Employment and Workplace Relations (DEWR) and the Attorney-General’s Department (AGD) presented the Committee with the most accurate information on State and Territory legislative compliance available at time of the public hearing, i.e. 13 October 2003.

Subsequently, the AGD completed a formal review of the compliance of State and Territory legislation (including Western Australia) with the Convention. The review determined that, in addition to New South Wales and Queensland, Western Australia and South Australia also fully complied with the Convention. Formal advice to this effect was issued by the AGD on 26 November 2003 and made available to all States and Territories (including Western Australia) by DEWR the same day.

In relation to any future inquiries by the Committee that may be conducted under similar exceptional circumstances, the Government will endeavour to ensure that the Committee is provided with the most accurate information available at time of the public hearing.
with any updated evidence as it is available following the public hearing, up until the tabling of the Committee’s report.

**Appropriations and Staffing Committee Report**

The DEPUTY PRESIDENT—I present the annual report for 2003-04 of the Standing Committee on Appropriations and Staffing.

Ordered that the report be printed.

**DOCUMENTS**

Department of the Senate: Travelling Allowance

The DEPUTY PRESIDENT—I table documents providing details of travelling allowance payments made by the Department of the Senate to senators and members during the period 1 July to 30 June 2004, and travel expenditure for the Department of the Senate during the period 1 July 2003 to 30 June 2004.

**COMMITTEES**

Community Affairs References Committee Additional Information

Senator FERRIS (South Australia) (3.36 p.m.)—At the request of the Chair of the Community Affairs References Committee, Senator McLucas, I present further additional information received by the committee on its inquiry into Hepatitis C and blood supply in Australia.

**NUCLEAR ENERGY:**

**WASTE STORAGE**

**Return to Order**

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (3.37 p.m.)—by leave—This statement is made on behalf of Senator Nick Minchin, the Minister for Finance and Administration. The order arises from a motion moved by Senator Allison, as agreed by the Senate on 11 August 2004, and it relates to a request for a document containing Commonwealth sites, including offshore islands and territories, listed as potential sites for the storage of nuclear waste.

On behalf of Senator Minchin I wish to inform the Senate of the reasons why it is not possible to table a return to order. Last month the Prime Minister announced that the government had decided to abandon the establishment of a national low-level radioactive waste repository at site 40a, which is near Woomera in South Australia. This announcement was made in light of the recent Federal Court decision and the effective failure of the states and territories to cooperate with the Australian government in finding a national solution for the safe and secure disposal of low-level radioactive waste. Instead, the government will build a Commonwealth radioactive waste facility on Commonwealth land for the management of both low-level and intermediate-level radioactive waste generated by Australian government departments and agencies.

At this stage the government does not have a short list of possible locations for the Commonwealth’s low- and intermediate-level radioactive waste management facility. Assessment of possible sites on Commonwealth land, both onshore and offshore, is required before the government makes any further decision about sites that may be considered potentially suitable for such a facility. Given the government’s pre-existing commitment not to locate the national intermediate waste store in South Australia, the new radioactive waste management facility will not be located in South Australia.

In April 2003, following assessment of Commonwealth land around Australia for suitability for the national store for intermediate-level waste, the National Store Advisory Committee, a group of experts advising the government on site selection, provided the Minister for Science with advice on sites
for further consideration. This consideration of sites was in the context of the national store for intermediate-level waste alone, and was prior to the Prime Minister’s announcement last month to co-locate the Commonwealth’s low- and intermediate-level radioactive waste facilities. It is now likely that the National Store Advisory Committee’s advice on the national store for intermediate-level waste will be used in the new site selection process which is currently under way. I therefore consider the committee’s advice to be in the nature of opinion, advice or recommendations for the purposes of the government’s deliberative processes and that tabling the advice would not be in the public interest at this stage.

COMMITTEES
Rural and Regional Affairs and Transport References Committee
Report

Senator RIDGEWAY (New South Wales) (3.40 p.m.)—I present the report of the Rural and Regional Affairs and Transport References Committee entitled Rural water resource usage, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator RIDGEWAY—I move:

That the Senate take note of the report.

I am pleased to present the report of the Rural and Regional Affairs and Transport References Committee entitled Rural water resource usage, together with the Hansard record of proceedings. In considering the issues surrounding use of water in rural areas, the committee sought to bring together and assess a diverse range of interested parties and information on rural water and management, and to take into account the recent intergovernmental agreement on a national water initiative. On behalf of the committee I thank those people who shared their valuable expertise with the committee during its deliberations on this issue. Complex issues relating to water access entitlements and water trading were examined by the committee and the report reflects the committee’s findings on these matters.

As everyone would know, over the last two decades there has been a growing awareness of environmental problems such as salinity and river health. A need for a national approach to solutions saw the development of the 1984 water reform framework and, subsequently, the Murray-Darling Basin agreement, the Living Murray initiative and the national water initiative. The committee has recognised in this report that the intergovernmental agreement on the national water initiative is a reaffirmation of the political commitment to water reform. We hope to see this political commitment continue and to translate into real long-term gains on sustainable use of water in rural areas.

The committee considered at length the need to give users more secure rights to water, and the complex problems associated with the separation of water rights from land. The committee holds that the intergovernmental agreement has resolved some of the contentious issues in water management—for example, the definition of entitlements as a perpetual share of the consumptive pool, and the issue of who should rightly bear the costs of water allocation and reallocation. We welcome the establishment of a national water commission to provide advice to COAG on water issues. I am left with no doubt that increasing competition for scarce water resources within catchment areas will mean that the national water commission will have a broad and challenging job in achieving sustainable management of water resources.
The committee’s report draws attention to the importance of coordinating regional water sharing plans over the broadest area of a catchment and the need to retain a close watch on the operation and behaviour of a water market in order to satisfy the need for national consistent regulation of trade. The committee recommends that the Council of Australian Governments must move forward in developing a policy on rules to control the water market. The committee also asks that loopholes which may result in profiteering or speculation by non-users, including foreign interests to the detriment of local water users or the environment, be closely scrutinised and appropriately policed.

Through the course of the hearings it became evident that water in rural areas, especially in light of more intensive and widespread agricultural development, is a more and more precious resource. Governing and regulation of the use of the resource, however, appear to have fallen behind development requiring large-scale irrigation, as is evident in examples such as the practice of bunding in Queensland’s portion of the Murray-Darling Basin.

The committee has recommended that, as a matter of urgency, a cap for water extractions in the Queensland part of the Murray-Darling Basin should be implemented. An appropriate cap would alleviate the severe pressures that are currently placed on this stressed system. I personally welcome today’s announcement from Queensland’s natural resources minister, Mr Stephen Robertson, who has said that his government intends to implement a water resources plan for the Condamine-Balonne catchment area in the state’s south-west. Whether a 10 per cent reduction will mean sustainable use of water in the region and throughout the river system remains to be seen, but I welcome the speedy implementation of this important step in Queensland.

With regard to the national water commission, the committee also suggests that coordinating research to best inform implementation of the intergovernmental agreement should be a responsibility of the national water commission. The committee sees an important need for the national water commission to consult with interested parties within the scientific community on this issue. The committee recognises that, despite the beginnings we have seen, substantial progress is still to be made on this issue through COAG’s National Water Initiative by the national water commission within regional catchment management bodies and certainly by the community at large. The committee considered that the most effective way of speeding up such a process must be through the establishment of clear milestones, both temporal and with regard to the physical needs of the environment.

Progress of difficult and controversial issues surrounding use and allocation of water in rural areas will depend on continuing political motivation. It is vital we solve problems surrounding trading over water across state lines, the harmonisation of water pricing and the designation of rules for trading which reflect hydrological realities and ecological needs. Both surface and ground water issues must be taken into account in future planning for rural water resources, as is illustrated in concerns that were aired in the hearings over the effects of Commonwealth licensed oil drilling on the La Trobe aquifer.

It is also important to consider the effect of water-intercepting land uses on catchments and river systems and, more importantly, that all decision making is based on a solid scientific knowledge base. Only with solid information can appropriate decisions be made on the amount of water available to rural communities in order to ensure downstream users and the environment are not compromised or disadvantaged. Finally, it is
important to ensure that water is used efficiently at every opportunity. In considering this issue, the committee heard a number of examples of irrigation sectors that have improved their efficiency of water use in recent decades. However, we did note that there is still much potential for improvement. In our investigations into the effects of farm dams on water in a catchment area we were made aware of substantial discrepancies between the policies of the New South Wales and Victorian governments particularly, and we would encourage those governments to ensure a harmonised position is reached in the new future.

I would like to take the opportunity to thank all the people involved in this exercise. The review the committee has undertaken in the course of this parliament I think has highlighted the need for further and substantial work on rural use. Progress towards sustainable management of water resources is of vital importance for the health of rural communities, for Australia’s primary industries as a whole and certainly for the Australian environment as well. I thank Ms Maureen Weeks, the secretary of the committee, and the staff of the secretariat. It has not been an easy process getting to this point but I think the results have paid off after the many hearings that were held across the country and certainly in the production of the report. It is one that I hope the government will take up. There are some key recommendations that ought to be adopted. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Foreign Affairs, Defence and Trade References Committee

Report

Senator HUTCHINS (New South Wales) (3.49 p.m.)—I present the report of the Foreign Affairs, Defence and Trade References Committee entitled Taking stock: current health preparation arrangements for the deployment of Australian Defence Forces overseas, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator HUTCHINS—I 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—

I am pleased to table the report, Taking Stock, by the Foreign Affairs Defence and Trade References Committee.

The report examines the quality of health services provided to deployed personnel, including the information provided on a range of hazards and potential exposures, and the quality of the data collected about these exposures and other health. It also examines the extent to which necessary information was collected in respect of past deployments, and the accuracy and completeness of other data on personal medical records of veterans. As we all appreciate, this type of information is often essential in order for a veteran to make a successful claim for a disability pension relating to war service.

The terms of reference further required the Committee to look at a number of other matters, including the relevance of research programs on health and how much these have affected the ability of veterans to make claims, as well as identify health problems that may affect quality of life.

The report considers the work of both the ADF and the Department of Veterans’ Affairs in the context of substantial changes to defence forces overseas and to the nature of combat itself. Increasingly, Australia is sending relatively small forces as part of larger missions to areas of conflict. It is also heavily involved in a range of
peacemaking and peacekeeping missions, which have their own impact on personnel.

All modern defence forces have as a major priority the deployment of trained and healthy personnel. However, they also know that deployments will often be to areas subject to disease, that there is a high risk of exposure from various substances, and that many events experienced will be difficult to deal with. They are therefore required to plan effectively in order to minimise the impact of all these factors as much as this can be done. Effective post deployment health services are therefore just as important, so that issues can be identified and addressed.

The Committee found that the ADF has undergone considerable change in respect of its health services. In particular, there is clearly an effort to provide sound information on processes, to help personnel become involved in their own health care, and to overcome resistance to mental health services. These measures are very much in accordance with community standards and changes in community perceptions. The Committee commends the ADF for its considerable progress in these areas.

Nonetheless, there is some concern about the extent to which these intentions can be fully implemented because of problems with personal medical records and a lack of integrated data. We recognise that there is a commitment to a new IT system which will eventually be able to provide more complete records, measure patterns of disease and injury, and provide overall reports on various types of deployment.

Such records will be substantially enhanced if we have access to other data collected on deployments which has accurately measured chemical and other exposures. All this will help the ADF and DVA work in a much more pro-active way in identifying potential health problems and required services.

Yet, however promising this is, we remain concerned that current information on personnel cannot be incorporated into the new system. This means that there will be no integrated electronic record of those who are now serving.

We do not believe this is adequate, and have recommended that all deployed personnel have access to their medical records prior to discharge so that they can identify missing material and incomplete data and have such problems rectified. This will at least avoid the problems experienced by older veterans who have often been unaware of incomplete records for decades until they have come to make a claim.

We also believe that some form of electronic record should be made of current files to facilitate service provision by the Repatriation Commission in the future.

We have further found that health files retained by the UN or other forces who have provided higher level medical services must be copied. This is useful for veterans from older deployments. It may be crucial for veterans of recent deployments who require follow-up treatment.

We also commend the recognition given to the short and long term psychological effects of warfare and related services. It is apparent that there was a limited recognition in the past both of the effects of hazardous substances and of combat stress itself.

Many veterans, including those from the First Gulf War, have felt insufficient attention was paid to their concerns, and that they were expected to deal with matters on an individual basis. The approach of the ADF and DVA in the past has been reactive. Research programs and other services have lagged behind needs. There has not been a ready provision of detailed information.

Over the past decade in particular there has been a change towards the proactive approach. The Australian Centre for Posttraumatic Mental Health was established and has gained a deserved high reputation. The new Centre for Military and Veterans’ Health is expected to provide an equally high level of service to personnel and veterans.

Both the ADF and DVA have become more aware of the wide range of health issues experienced by veterans and serving personnel. DVA in particular consults widely and seeks to provide innovative programs.

Mental health is now an issue much more commonly discussed, and the ADF has many more services and information projects in this area than previously.
There is always room for improvement. There still remains some resistance to the idea that everyone, however well trained, may be vulnerable to pressures, and much work remains.

We are unclear about the use of doctors as opposed to other ‘medical’ personnel, and would like to see this clarified. We would also like to see more obvious use of psychiatrists in mental health services, although we acknowledge the difficulties in obtaining such staff.

There have also been beneficial changes in administration. The Links Program has facilitated co-ordination and planning between the ADF and DVA. It is hoped this program will continue so that there can be greater rationalisation and an easier transition for personnel from the ADF to DVA services if required.

In particular the Committee considers the research program of both agencies has improved. We recognise that lack of appropriate methodologies and absence of data often prevented effective research in the past. Shortage of funds and lack of political will may also have been contributing factors which limited the development of basic data collection and even completion of nominal rolls.

We are all now much more aware that there can be short term as well as long term effects from deployments. Even when looking at long term outcomes it is better to establish systematic data collection processes early to avoid the problems experienced by much recent research which has had to recreate records and identify those who participated in deployments.

In assessing all these issues we also bore in mind that Australia has committed itself to a medical-scientific determination of injury and disease as far as the payment of a disability pension is concerned.

We have compared this approach with that operating in other countries, but only in order to show that the way our law operates makes the collection of accurate and detailed health information from deployments essential. Because there is less reliance on presumptive cause, it is vital that current and future personnel do not experience the same difficulties that earlier veterans have.

This inquiry was not established to find fault. It arose from a wide range of concerns that different groups had, especially a feeling that many problems were not heard or addressed. Some of these, such as delays in research, have been referred to above. We have found also that there have been some problems with the communication of information, and have made some suggestions on improving access to relevant information that will help veterans and serving personnel keep up to date with those issues of most concern to them.

I would also like to thank those organisations who made submissions and who made many useful suggestions. Their experience provides them with valuable insights into problems and we are grateful that they have raised these on behalf of their members.

Overall, we have been impressed with many changes and we look forward to further improvements.

I seek leave to continue my remarks later.

Leave granted.

Senator KIRK (South Australia) (3.49 p.m.)—I seek leave to have a speech by Senator Mark Bishop on the Foreign Affairs, Defence and Trade References Committee report Taking stock: current health preparation arrangements for the deployment of Australian Defence Forces overseas incorporated in Hansard.

Leave granted.

Senator Mark Bishop’s speech read as follows—
The health and welfare of Australia’s defence forces is an issue of some prominence. As a country we have always promised those who are sent away to defend Australia’s interests overseas that they and their dependants would be cared for should anything go wrong.

In general we as a nation have honoured that promise. In sponsoring this inquiry by the Foreign Affairs, Defence and Trade Legislation Committee, we in the ALP were acutely aware of one thing.
That is, there’s been a degree of dissatisfaction within the veteran community at their inability over the years to obtain compensation and treatment for what they believe were service caused injuries and illnesses.

There has also been concern at the health care provided to those about to be deployed and those recently returned.

For the record, and for the benefit of those listening, this is an excellent report.

It is titled a “stock take” which was its intention.

Let me iterate the terms of reference because they effectively summarise all the concerns.

The Committee was charged to examine:

- The adequacy of current arrangements within the department of defence for the deployment of the ADF overseas
- The adequacy of record keeping of individual health and treatment episodes of those deployed, and access to those records by the individual
- The adequacy of information provided to individual ADF members,
- Pre-deployment, of the likely health risks and anticipated remedial activity required
- The adequacy of current administration of preventive vaccinations, standards applied to drug selection, quality control, record keeping and the regard given to accepted international and national regulation and practice
- The engagement in this process of the Department of veterans’ Affairs and the Repatriation Medical Authority for the purpose of administering and assessing compensation claims, and
- The adequacy of the current research effort focussing on outstanding issues of contention from the ex service community with respect to health outcomes from past deployments, and the means by which it might be improved.

May I also add that in addition to the long standing concerns of veterans who have been unable to obtain either health care or compensation, the events of the deployment of troops to Iraq were also part of the picture.

This especially concerned the effects and processes of anthrax vaccinations.

This issue alone serves as a useful case study in the examination of these terms of reference, and has been one attracting most media attention.

By way of perspective may I say it is a pity that some of that concern has not been focussed on the past where long term effects of exposures remain equally important.

Time prevents me from doing justice to all the detail of this very thorough and detailed report.

I did provide some context for this report in the Senate on 3 August last, and I will supplement that commentary in the near future if an opportunity arises.

Let me therefore simply summarise the findings.

- The concern of veterans at the unknown long term health effects of their exposure to hazardous material were confirmed.
- Governments of all persuasions over the last 50 years have been reluctant to accept veterans’ views due to the lack of medical scientific evidence on the cause and effect of that exposure
- Policy in Australia with respect to the need to properly establish public liability has been strengthened with respect to that medical scientific evidence - as opposed to policy in the US and NZ for example, where a more presumptive, discretionary approach is applied.
- Australian veterans would like to see that presumptive policy applied more liberally in Australia through Section 180 of the Veterans’ Entitlement Act
- Nevertheless the Committee found that the current attitude to presumptive policy and the need for public liability to be based on sound medical scientific evidence, is appropriate — and so recommended.

Mr Acting Deputy President, with respect to veterans’ concerns at the long history of denial of liability for disabilities of long gestation, but where medical science has been inadequate, the Committee found as follows:

- Research by successive Australian governments into the long term effects of exposures to various substances may have been inade-
quate until the last decade, but this reflected the state of research internationally, and the long gestation time of many disabilities, particularly cancers.

• Australian governments in the last decade have been much more active in collecting baseline health data through surveys of various veteran populations, with the result that veterans can feel more assured that their concerns are not being ignored.

Having so found however, the Committee recommended that thorough data collection become an integral part of DVA and ADF assessment of deployed personnel, to facilitate research.

Continuing through these very important findings, the Committee found that:

• The long term separation of medical research between the Departments of Veterans’ Affairs and Defence has hindered a more holistic consideration of veterans’ concerns

• But that the creation of the new Centre for Veterans’ and Military Health is a positive move which will lead to better prioritisation, and bring greater focus to the need for better scientific knowledge.

Without going to all findings may I make special reference to the availability of health risk and treatment information to serving personnel and veterans.

The popular issue of note here was the anthrax vaccination program.

The Committee in particular found that:

• While some aspects of the anthrax vaccination issue were exaggerated, the lack of pre-deployment information coordination demonstrated flaws in the deployment preparation process.

• Pre-deployment health checks have improved, but more attention needs to be given to psychological briefing, preparation and assessment prior to embarkation.

• Information on health protection and treatment services, including vaccination regimes, needs to be better communicated to all personnel.

• Pre-deployment health checks, debriefing and assessments need to be given continued emphasis, with record keeping of assessments being given priority.

• Defence is committed to improving the health status and recording of data on personnel to be deployed—though I add personally there is a long way to go.

The next set of findings concern the administration of OH&S policy within Defence, and in particular the keeping of records.

Records in particular have been a serious defect in the compensation area for many decades. Necessarily in times of war, records are incomplete and indeed are lost.

The legislation allows for that.

But in a modern electronic age, the continuation of that is intolerable. In short the Committee found that:

• The importance of OH&S policy and administration is receiving more priority within Defence, but that a significant level of concern remains at the promulgation of those policies, the lack of accountability, and the need for incentives to do considerably better.

• Maintenance of health records for serving personnel in recent years has become chaotic due to incomplete information and divided responsibility

• Defence is aware of the particular health needs of women, but that it should demonstrate this by reporting on an annual basis.

The recommendations follow these findings and in my view should be accepted by defence as a useful way forward.

To this I would simply add that something needs to be done urgently about expediting the implementation of the proposed new Healthkeys electronic recording system.

Finally I would like to summarise the findings on research. The Committee found as follows:

• DVA has become much more proactive in its research and more aware of the importance of obtaining as much data as possible, rather than waiting for veterans to identify needs later.
There has been improved rationalisation of research projects because of effective liaison between relevant agencies.

Recent efforts have been excellent, but more needs to be done to in communicating processes and outcomes to the veteran and ex service community.

Priorities for research need to be considered consultatively with the ex service community leadership.

Mental health projects should continue to receive priority, including where appropriate, specific projects on problems arising from peacekeeping and peacemaking.

There are more findings of an administrative nature going to the management of health service delivery within Defence, and of course a number of recommendations for implementation of change which are well worth considering.

Management of health services in Defence both by way of operational support and routine health management has long been a very difficult issue. That though is also the broader community experience as expectations increase and medical science rapidly develops.

No doubt better solutions will be found, but from the point of view of this report, the downstream consequences post retirement and discharge must be better incorporated.

In essence the summary of findings I have just made covers much of the terms of reference. As a stock take this report serves a very useful purpose because it both vindicates the long held views of veterans, but also notes that government at last has responded.

All is not well though—there is much to be done, but there at least is no doubting the bona fides of hose in Defence and DVA seeking to pull it together.

In conclusion may I compliment the secretariat again for a job well done, and in particular the key researcher Ms Pauline Moore.

The research had to be taken beyond the transcript and submissions, but nevertheless does address the terms of reference very fully.

I commend the report to the Senate.

Debate adjourned.

**Foreign Affairs, Defence and Trade References Committee**

**Report**

*Senator HUTCHINS* (New South Wales) (3.50 p.m.)—I present the report of the Foreign Affairs, Defence and Trade References Committee entitled *Bali 2002: security threats to Australians in South East Asia*, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

*Senator HUTCHINS*—I move:

That the Senate take note of the report.

*The DEPUTY PRESIDENT*—Before you begin, I understand that an agreement has been reached on the allocation of times in this debate and I ask clerks to set the clock accordingly.

*Senator HUTCHINS*—To open my remarks I would like first of all to thank the previous chairman, Senator Peter Cook, for presiding over this committee up until 25 March this year, and also to commend the herculean efforts of the committee secretariat, in particular the secretary, Brenton Holmes, and his staff. Mr Deputy President, this report on the tragedy that was Bali opens with an important quote:

“There is, I think, a tendency for us all to forget the self-evident truth that you cannot look forward with certainty, only backwards. Knowing an end point, it is easy to interpret, or reinterpret, the past.

There is, I think, a tendency for us all to forget the self-evident truth that you cannot look forward with certainty, only backwards. Knowing an end point, it is easy to interpret, or reinterpret, the past.

This has been a very difficult task for the committee. We are conscious that for everyone involved, particularly the Bali victims, but also the government officials involved, the experience of the Bali bombings has been
a life-changing one. It is one that all those affected will continue to reflect upon, often in anguish, for a long time to come. That Bali was a disaster is a cruel but simple fact of contemporary history. It was not so as a result of some culpable lapse by Australian government agencies or individual officials. Yes, there was a ‘failure of intelligence’, but limitations on intelligence do not necessarily imply limitations on the skill and integrity of intelligence agencies.

The committee is satisfied that, on the basis of the evidence we received, there was no specific warning of the Bali attack. ASIO had, from September 2001 onwards, assessed the threat to Australian interests in Indonesia as high. Throughout 2002 there was a persistent escalation of advice as agencies came to better appreciate the capacity and intent of JI. This advice was variously conveyed in widely disseminated formal written ‘product’. The committee considers that travel advice about Bali being ‘calm’ and with tourism ‘normal’ reinforced the view that Bali was safe exactly when the terrorist threat to Westerners in Bali was the highest it had been. The advice sent the wrong message but was strictly correct and was deliberately included by DFAT in response to many questions about the state of affairs in Bali.

While it would be reasonable to assume that anyone reading the travel advice would understand that there was a generic terrorist risk—that bombs had exploded in the past, including where tourists gathered, and that further explosions may be attempted—what the travel advice reader may not have appreciated was that Bali was no safer than any other part of Indonesia in terms of the terrorist risk or the likelihood of a bomb going off. Bali has a special place in the minds of Australians as a safe, relaxing place where they can let their hair down. Travel advice should have taken that into account. Appropriate advice would have been along the following lines: ‘Bali has long been considered a safe haven, but the risks of terrorism are as high there as elsewhere in Indonesia.’

Given that prior to the bombings around 200,000 Australians visited Bali each year, that sort of advice would have sent the right message. While this suggestion benefits from hindsight, it is also a properly contextualised, relevant and measured piece of factual advice, entirely consistent with ASIO’s uniformly high threat assessments and the general intelligence picture at the time, and it also takes into account the mind-set of Australian visitors to Bali.

For DFAT, threat assessments produced by ASIO were a key consideration in the formulation of travel advice. Both ASIO and DFAT have stated to the committee that, notwithstanding the solid relationship and good communication that existed between the two agencies prior to Bali, their roles were ‘too compartmentalised’ when it came to the preparation of travel advice. That situation was reviewed immediately after Bali, and new arrangements were put in place which integrated ASIO into the process whereby DFAT’s Consular Division, its South and South-East Asia Division and its Jakarta embassy formulate travel advice. ASIO is now required to tick off on travel advice pertaining to any region where the ASIO threat assessment is high.

The committee is mindful of the fact that it has been unable to have access to the underlying intelligence assessments which gave rise to the threat assessments and travel advisories constructed by DFAT on that basis. Further, the committee is also mindful of the fact that the only previous inquiry conducted into these matters by the Inspector-General of Intelligence and Security did not have any terms of reference empowering him to examine the correlation between underlying intelligence assessments, threat assessments and travel advisories. For these reasons, the
committee is of the view that the country’s future arrangements in these areas may be advantaged by an independent commission of inquiry with specific terms of reference to address these and related matters.

During the year before the Bali bombings, DFAT travel advice contained generic threat advice. In July 2002, the travel advices were strengthened to convey to travellers the need to ‘monitor carefully developments’ and to ‘maintain a high level of personal security awareness’. The advice also warned that bombs had been exploded ‘including in areas frequented by tourists’ and that ‘further explosions may be attempted’. This language and warning level was appropriate to convey the level of this generic threat but, in the committee’s view, the formation, information and warnings contained in the travel advisories for Indonesia during the month or so before the Bali attacks, while warning of an increased generic terrorist threat, nonetheless did not adequately reflect the content of the threat assessments that were available by that time that specifically warned that Australians in their own right were now seen as terrorist targets in Indonesia. (Time expired)

The DEPUTY PRESIDENT—Senator Hutchins, I understand you want to seek leave to incorporate the rest of your speech.

Senator Hutchins—Yes, Mr Deputy President.

Leave granted.

The speech continued as follows—

The Committee agrees that ASIO properly assigned a threat level of HIGH to the situation in Indonesia (and thereby Bali). The Committee notes that ASIO, along with other agencies, was assiduous in the production of intelligence advice throughout the period as it came to better understand the nature, capabilities and intentions of JI. The Committee also appreciates that at no time was it appropriate for ASIO to issue a threat assessment at the top of its threat scale—something which would have required the threat to be confirmed by specific, reliable information about an attack.

But the majority of the Committee has somewhat different views from those held by the intelligence agencies about the particular vulnerability of Bali at least so far as these were conveyed to the Committee by agency heads during the Committee’s hearings. Agency heads repeatedly told the Committee that the concentration of Australians in Bali, of itself, did not render Bali a more likely target than elsewhere. The majority of the Committee does not share that view.

DFAT has made major efforts to enhance the dissemination, accessibility and intelligibility of its Travel Advice, and to ensure that it works in close partnership with the travel industry to optimise the information flowing to intending travellers. The Committee commends the agencies on these initiatives.

The Committee has, however, recommended that the government, in consultation with the travel industry further develop and oversee a code of practice which would, among other things, make it mandatory for travel agents/advisers to provide to overseas travellers, at the time a booking is made, a copy of both DFAT’s Travel Advice for the destination concerned and ASIO’s threat assessment for the country itself. Travellers must be advised to consult the DFAT Travel Advice 24 hours prior to their departure.

During the inquiry, reference was made to various reports in the press and elsewhere claiming, for example, that relevant information from foreign intelligence agencies had been made available to Australian authorities, and that threat advice had been ignored. These reports and allegations were either simply erroneous or lacked foundation, or were highly contestable opinions.

In relation to the Blick Report, although the Committee did not have access to the classified material that informed the Australian intelligence agencies’ assessments at the time, the Committee is in no doubt that there was no specific, actionable intelligence related to the bombings of 12 October 2002. This was the consistent evidence of the intelligence agencies and was the conclusion reached by the statutorily independent Inspector-General of Intelligence and Security, who did have access to all the relevant material.

CHAMBER
The Committee has no reason to (and does not) call into question Mr Blick’s conclusions.

The terms of reference under which the Inspector-General operated did not require him to examine areas such as the formulation and accuracy of threat assessments, and their relationship to, and commensurability with, the travel advisories issued over that period. The Committee does not doubt in any way the professionalism and efficiency of the officials carrying out these duties within their respective agencies. Because the Senate Committee has not had access to the original intelligence, it has not been able to assess for itself whether the published threat assessments were congruent with the intelligence available. As well, given that such an assessment was also outside the terms of reference of the Blick inquiry, there is little the Committee can do to prevail against public criticism that this aspect of ASIO’s work has not been subject to independent scrutiny.

This difficulty has not been overcome by the July 2004 report of the Flood inquiry which, by its own account, ‘did not inquire into ASIO per se because that would not have been justified by the terms of reference. For this reason, domestic security and intelligence arrangements are not the focus of this [Flood] report’.

Again, the Committee can only assess the commensurability of Travel Advice against what were the published threat assessments or what was otherwise revealed publicly to the Committee by the agencies. Nor was the Inspector-General required to make such a judgement. While the Committee is perfectly satisfied that its assessments are justified on the basis of the evidence placed publicly before it, the Committee concedes that this is unlikely to be enough to satisfy those who insist that such assessments are impeded by lack of access to the detail of the intelligence reporting.

As this Report conveys, it is not as though a terrorist action of some kind was entirely unexpected. There was, however, no clear warning in the form of specific intelligence which, if identified and acted upon, would have provided an opportunity to prevent the Bali bombing or to act to protect those there at the time.

Intelligence agencies had reported that Indonesia-based terrorists had the intention and capability to mount attacks against Western interests, and that Australian interests could not be regarded as exempt from such attacks.

In December 2001, from the interrogation of operatives involved in the Singapore bombings, emerged the unequivocal presence in the region of Jemaah Islamiyah (JI) as a terrorist organisation, certainly inspired by and probably with substantial links to al-Qaeda. Within six months, few people with an interest in regional security were in any doubt that JI cells were active in Indonesia, that the US and its allies, including Australia, had been declared the enemy, and that JI strikes could include ‘soft targets’.

During 2002, Australian intelligence agencies intensified their efforts to secure better information about the structure, capabilities and intentions of JI and other militant groups. In Australia, ASIO, ONA, DIO and others reported regularly on the progress of their understanding. While there was some variation in these assessments, the overall picture was consolidating rapidly around a high threat level, a domestic security situation in Indonesia that was becoming increasingly violent, and the existence of terrorist groups with both the capacity, resources and intention to target Western interests, both ‘soft’ and ‘hard’. Australian interests could not be considered exempt.

Meanwhile, tens of thousands of Australian tourists roughly 20,000 per month continued to flock to Bali, the vast majority of them ignorant of the assessed level of threat, with very few of them apparently having consulted the DFAT Travel Advices pertaining to Indonesia, and probably not one of them aware of ASIO’s view that the level of threat across Indonesia was ‘high’, and that Bali could not be separated out from that assessment.

The Committee has not had access to classified intelligence material, and has relied on the evidence provided in public by agency officials, and on the publicly-released findings of the Inspector-General of Intelligence and Security (the Blick Report). The Senate Committee’s Report attempts to deliver an account of this period which is faithful to the record of activities of Australian agencies as they presented it to the Committee, that is...
fair to both the intelligence services and to DFAT in its analysis and critique, and which avoids as far as possible the risks of judgements made in hindsight.

This is not to say that there is no wisdom to be found in hindsight otherwise any examination and reflection after the event would be redundant. The Committee scrutinises judgements that were made; it compares and contrasts advice produced by different sources and considers carefully the interpretations and emphases conveyed in that information and advice. The Report presents these in order to assist with an appreciation of how the agencies acted and why, and whether the reasons were sufficient and the decisions robustly grounded. The comments do not imply or infer blame, let alone apportion it.

This Report rehearses at length the sequence of intelligence reporting relating to the terrorist threat in Indonesia in the twelve months leading up to the Bali bombing. In short, the threat was high—officially so from September 2001; Australia’s profile as a supporter of US action was growing, and Australia was being increasingly portrayed as anti-Islamic; it was increasingly clear that JI had the intention, capability and resources to mount terrorist attacks including against soft targets and Australians could not be considered exempt.

Other factors were also at play. It became more apparent during 2002 that JI had links with al-Qa’ida, and that Osama bin Laden–inspired jihadism was energising Indonesian militants. The Indonesian authorities were either unable or unwilling to act against them. Indeed, the secular Muslim government was held in almost as much contempt by the radicals as their nemesis the West.

Osama bin Laden had identified Australia as a crusader force and within Indonesia there had been a surge of militancy against Westerners and their activities especially tourist and recreational activities that had long been regarded as decadent and offensive by Muslim activists. To terrorists like JI, nursing their potent grievances, and looking for suitable soft targets against which to exact their revenge, it is likely, in the view of a majority of the Committee, that Bali (along with other sites) would have been drawn into focus on the terrorists’ strategic landscape.

Bali also enjoyed some qualities that distinguished it from other tourist destinations. It was renowned as the tourist destination of choice in Indonesia for Westerners who wanted to let their hair down. It was regarded as a safe holiday destination, with a Balinese (largely Hindu) population that seemed more tolerant or indulgent of Western tourists’ mores and behaviour than their Javanese Muslim counterparts.

Westerners gathered in large numbers in the clubs and bars that were concentrated in Kuta, and there was virtually no security presence. The relatively small number of Muslims inhabiting Bali reduced the likelihood of collateral Muslim casualties should a strike be mounted. In the background was a strong sentiment amongst Indonesian radicals, notably Laskar Jihad, that non-Muslim communities should be cleared out of the region.

In the light of all these considerations, the majority of the Committee finds it difficult to agree with the assessment of agency heads that Bali was not any more vulnerable than any other part of Indonesia. It was, in the Committee’s majority view, more vulnerable than many if not most parts especially given the fiercely anti-Western, jihad-inspired and self-righteous anger of Indonesia’s extremists.

These views about Bali’s vulnerability in no way detract from the legitimacy of ASIO’s assessed threat level for Indonesia being placed at HIGH from December 2001. The Committee acknowledges that, in the absence of credible, specific information confirming a threat, ASIO could not have issued a threat assessment any higher than the penultimate level at which the assessment already stood. It is not in the ‘headline’ threat assessments, but in the more general intelligence reports about terrorist threats in Indonesia that more consideration should have been given to the question of the vulnerability of Bali, especially given that around 200,000 Australians visited there each year. This might have also resulted in more appropriately crafted Travel Advice.

The Senate Committee has endeavoured to discharge its terms of reference thoroughly, and
believes that it has done so to the full extent of the evidence presented to it. The Committee has made every effort to ensure that the relevant government agencies were given every opportunity to place their views and judgements on the public record, and to respond to the array of questions, concerns and allegations that have animated the public debate since Bali.

The Committee is satisfied that important lessons have been learned from the tragic events of Bali, and hopes that this Report will illuminate and extend those lessons.

**Senator BRANDIS (Queensland) (3.57 p.m.)**—When the reports of Senate committees are tabled they generally attract little notice. Even those which do usually do so because they are concerned with controversial matters of public policy. But this report—Bali 2002: security threats to Australians in South East Asia—is different, because it deals with things which transcend politics in the sense that we ordinarily understand it. It deals with people’s lives and with their deaths. It deals with an event which, even if only vicariously, touched every Australian: one of the most searing and awful moments in our history which will forever remain part of our nation’s collective memory. For every member of the Foreign Affairs, Defence and Trade References Committee, the hearings have been a deeply emotional experience. It is with the victims of the Bali bombing and their families uppermost in our minds that we participate in this parliamentary debate this afternoon.

I said a moment ago that this event transcends politics—of course it does—and, fittingly, the committee did not approach its task in a political way. We strove to achieve bipartisanship and, at least as between government and opposition senators, we largely—although not entirely—succeeded in arriving at a common view and largely a common set of recommendations. The fact that this was possible is a great credit to the two senators who chaired the committee:

Senator Peter Cook and, after his retirement from that role to take on another demanding committee assignment, Senator Steve Hutchins.

This inquiry has not been about point scoring, scapegoat seeking or pointing the finger of blame. It has been about finding out what happened and what we can do to learn to make sure that the intelligence failure which led to the terrible events on 12 October 2002 never happens again. I said ‘intelligence failure’. It was a term which was much used by witnesses. Yet the moment you utter that term it discloses an ambiguity. Of course, in one sense, there was an intelligence failure, because we did not anticipate the Bali bombing. Yet, as the committee accepted, it is simply not possible to hold intelligence agencies to an absolute standard. The fact that a terrorist event occurs does not necessarily mean that somebody in the intelligence services has not done their job properly. It may simply mean that a fact—perhaps merely a clue—was not picked up in time, or at all.

So government senators join with opposition senators in the core finding of this report, arrived at after an exhaustive canvass of the evidence over 10 hearing days and having heard from over 50 witnesses, that there was no culpable failure on the part of any Australian agency or official in failing to anticipate the Bali bombing. In the words of Dr Hugh White, the head of the Australian Strategic Policy Institute, an independent witness with no position to defend and no axe to grind:

... there was no Pearl Harbor here—that is, there was no clear warning which, if identified and acted upon, would have provided an opportunity to prevent the Bali bombing. To that extent, I do not believe it is accurate to describe what happened in Bali as an intelligence failure in any sense.
But Dr White went on to observe, and government senators agree:

On the other hand, I do think, from what we know publicly, that some important lessons can be drawn from what happened about the intelligence capacities we have in relation to terrorism, the relationship between intelligence and policy and some of the policy operations we have in relation to terrorism.

Let me summarise some, though not all, of the key findings of the committee, in which government senators concur. It found that no Australian agency had any foreknowledge of the Bali bombing; that, to the extent there was an intelligence failure, it was not a systemic failure in the way in which our intelligence agencies operated or a failure to analyse the specific intelligence which they had; that there had been a growing awareness and appreciation within the Australian intelligence community—in particular from about early 1999—of the rising significance and militancy within South-East Asia of extremist Islamic groups, of their propensity to engage in terrorism and of the potential threat they posed to Westerners; and that in mid-December 2001 Jemaah Islamiah was first identified by Australian agencies as having developed a terrorist capability. I pause to say that one of the deficiencies which we discovered was the failure to identify Jemaah Islamiah as an organisation with terrorist capabilities until as late as December 2001.

We concur in the majority’s view that the assessments made by Australian agencies of the terrorist threat posed by JI were always of a generic character. At no time was any Australian agency aware of a threat posed by JI specifically in Bali or in any other particular locality in Indonesia. We accept the majority’s view that there were difficulties in the relationship between ONA and DFAT at critical times but that, nevertheless, those two agencies developed an increasingly close relationship as the new paradigm of international security focused on terrorism demanded ever greater cooperation between government agencies. We accept the finding that, at the most critical time in the months immediately preceding the Bali bombing, the agencies were carrying out analysis and delivering assessments that were optimal within the bounds of the information and evidence available to them.

We accept that, prior to the Bali bombing, neither DFAT nor ONA nor any other Australian agency was possessed of any specific or actionable intelligence that gave warning of an attack. Government senators observe that—as ONA itself conceded—of some 20 reports by the ONA between June and October 2002 concerning regional terrorism, not one mentioned Bali as a potential target. We accept that DFAT did not in this particular instance—nor does it as a matter of practice—temper travel advisories according to diplomatic considerations. There are many other findings which time does not permit me to direct my remarks to, but those are the core findings of the committee. They are findings of the majority, the opposition senators, which government senators concur in.

In closing, I want to make remarks about some individuals. I want to remark in particular on the witnesses, including the professional witnesses and the senior intelligence officers such as Mr Dennis Richardson, the head of ASIO, whose appearance before the committee was characterised by a candid, frank, self-critical honesty which deeply, I am sure, impressed us all. I want to thank all of my colleagues who sat on the committee and I want to acknowledge on our side the contributions of Senator Sandy Macdonald, the deputy chair, Senator David Johnston and Senator Santo Santoro. I want to acknowledge the tremendous work, under great pressure, of the secretary, Brenton Holmes.
We know that this report will not please everyone but we are quite sure that, as a result of this inquiry, Australia is in a significantly better position to ensure that such an event does not happen again. Sadly, in an ever more dangerous world, wicked men and women will do wicked things, and there can never be absolute certainty that men of goodwill will be able to stop them. But we can, and we must, always use our utmost vigilance. For, as an English statesman once famously said, ‘All that is necessary for evil to triumph is that good men do nothing.’

Senator STOTT DESPOJA (South Australia) (4.06 p.m.)—In conducting the inquiry into security threats to Australians in South-East Asia, the Senate Foreign Affairs, Defence and Trade References Committee undertook to take an objective assessment of the intelligence that was available to Australian authorities prior to the 12 October 2002 bombings. We needed to know if this was reflected in any of the travel advisories. Yet at the same time we have all been acutely aware of the human element associated with all these issues. As a consequence this inquiry was at times incredibly moving, emotive and difficult. At a public hearing in Adelaide we heard evidence from a number of victims of the bombings. We heard from David Marshall, son of Bob Marshall, who was killed in the bombings. We heard from Leanne and Samantha Woodgate, who were both seriously injured as a consequence of the bombings. We heard from members of the Sturt football team, who lost mates and suffered severe injuries. And we heard from Brian Deegan, who lost his son Josh. I acknowledge Brian Deegan’s presence in the gallery today.

These witnesses spoke from the heart, and their evidence was compelling. For them, this was not just another Senate inquiry; it was an opportunity for them to share their experiences, to tell their stories, and to express their frustrations, their anger and their search for some answers. As David Marshall told us, they were there ‘because none of our questions have ever really been answered truthfully’. As committee members, we were also searching for answers. But this inquiry was never intended as a witch-hunt. While the committee has not shied away from criticising those in responsibility, the primary objective of this inquiry was never to cast blame; it was to find out what went wrong and what changes needed to be made in order to prevent a similar tragedy in the future.

As the Democrat representative on this committee, I have considered all of the evidence and given careful thought to what conclusions can be drawn from that evidence and what recommendations, if any, should be made. While the chair’s report identifies a number of issues that do concern me, in the end I felt that it did not go far enough. For this reason, Senator Brown and I have prepared a supplementary report. Our report refers to intelligence indicating that, prior to 12 October, Jemaah Islamiah had developed the intention and the ability to attack soft targets such as hotels, bars and airports. Given the abundance of tourists, especially Australian tourists, at any given time in Bali, it was an obvious target. Indeed it had been identified as a possible target by an ONA official during a face-to-face briefing with the Minister for Foreign Affairs in June 2002. It had also been the location of a fictional attack in a training exercise involving Australian intelligence officers. The committee found that intelligence available to Australian authorities prior to 12 October suggests that Bali could not be seen as an exception to the high terrorist risk which applied to the rest of Indonesia.

Our dissenting report does go one step further. It finds that the intelligence demonstrated that Bali was an obvious target and presented a particularly high risk. This was
not reflected in any way in the travel advisory in force immediately before the bombings. That advisory failed to warn of the high risk associated with travel to Bali or even counter the prevalent view among tourists that Bali was a safe haven. More significantly, the advisory contained a misleading statement which fostered a misconception that Bali could be excluded from the high risk which applied in other parts of Indonesia. Our report also documents evidence of a lapse on behalf of the Minister for Foreign Affairs, where he failed to act on information conveyed to him in a face-to-face briefing that Bali was a possible target for a terrorist attack.

The report concludes that there is a need for a judicial inquiry into the Bali bombings and recommends accordingly. I would like to record that this is not a conclusion that I have reached lightly, but one which I have given careful and considered thought to. In reaching this conclusion I have been influenced by two particular considerations in addition to the evidence before the committee. First was the fact that this committee faced severe limitations in conducting this inquiry, which prevented us from getting to the bottom of some of the key issues. Second, I have been acutely aware of the responsibility which the committee bears in relation to the potential for this inquiry to help prevent further terrorist attacks in the future. Having heard incredibly moving evidence from those who were directly impacted by this tragedy, it is my strong conviction that we must turn every stone in the pursuit of information that might increase our understanding as to why we failed to detect the Bali bombings. I seek leave to incorporate the last paragraphs of my remarks.

Leave granted.

This is why I believe a Royal Commission is justified—indeed, necessary—in these circumstances. For the sake of the victims of the Bali bombings, and the entire Australian community, I hope that the Government will take this recommendation seriously.

I conclude by acknowledging that this has been a long and intensive inquiry. The preparation of this report has involved a meticulous analysis of the evidence by the Committee, with invaluable assistance from the Secretariat, in particular the Committee Secretary, Brenton Holmes.

(Time expired)

Senator KIRK (South Australia) (4.12 p.m.)—I rise also this afternoon to speak to the Bali report of the Senate Foreign Affairs, Defence and Trade References Committee. Like Senator Stott Despoja, I found this inquiry really quite moving. She mentioned the hearings we had in my home town of Adelaide, the numbers of victims and relatives of victims who attended that hearing, and the stories they told us of the heartbreak and grief that they have suffered as a consequence of the Bali tragedy, which of course was one of Australia’s most, if not the most, significant tragedies in recent times. I also wish to pay tribute to those persons who gave us evidence in Adelaide. It would have been most difficult for them to do so. I also would like to acknowledge the presence of Brian Deegan in the gallery, who lost his son Joshua in the tragedy.

In the very short time that I have available to me today I just wish to speak briefly to committee recommendations 3 and 4. During our hearings we were presented with evidence from a number of senior officials from ASIO, from ONA, from DIO and from other agencies—DFAT in particular—who of course conveyed to us that in their view the information that was available at the time in relation to Bali did not reflect any specific intelligence that could have been passed on to the travelling public. I think all of us in the
committee accept that and understand that that was in fact the case. From my point of view it was always a matter of how the intelligence that was available to officials was translated into travel advisories. In my view and in the view of the majority of the committee, the travel advisories that were in operation at the time of the Bali bombing did not adequately reflect the content of the threat assessment which was valid at the time—namely, the high threat assessment that ASIO had issued in relation to Indonesia.

It is for this and other reasons—and time does not permit me to expand upon these—that the committee has made a recommendation that DFAT subject a representative selection of its travel advisories to examination by an independent assessor with qualifications and experience in linguistics, literacy and communication. We state:

The assessor shall report to the minister on the intelligibility and accessibility of the language in which information is conveyed in travel advisories.

During the course of the Adelaide hearing, it was really brought home to me that those people who were travelling to Bali at the time simply were not aware of the existence of travel advisories and that, even if they had read the current travel advisory, they would not have been made aware of the fact that Bali, like the rest of Indonesia, was the subject of terrorist action and could well be the place where a tragedy might take place. Finally, in relation to the victims, recommendation 4 of our report recommends:

... the Commonwealth government prepare a green paper on the establishment of a national compensation scheme for victims of terrorism related crimes that fall within the Commonwealth jurisdiction;

I think this is an important recommendation for not only the victims of the Bali tragedy but also—heaven forbid—should there be a further tragedy which comes about as a result of terrorism, other victims who need to be compensated. (Time expired)

Senator BROWN (Tasmania) (4.16 p.m.)—I give great thanks to Brenton Holmes and the members of the Senate Foreign Affairs, Defence and Trade References Committee, who have put in so much work to facilitate this committee. I pay homage to and share my ongoing grief with and respect for all those who have lost loved ones in or who have been injured or damaged by the Bali bombings. I pay homage to all those who came to the aid of the sufferers and indeed to those who worked so hard to bring to justice—a process still unfolding—those responsible.

In the 12 months leading up to this disaster, it was known in the Australian intelligence services and to government that there was an escalating threat of an imminent attack and that there were terrorists who had the capability and the intent to attack a Western target in Indonesia in the near future. Indeed it was known that what turned out to be the ringleaders of the Bali bombings, people like Imam Samudra and Hambali, were abroad in Indonesia. They had already carried out or taken part in terrorist attacks on Christian churches and other facilities, and they had the intent, the money, the weapons expertise, the weapons and the wherewithal to make a further attack. So seriously was this taken by the intelligence agencies that on 18 and 19 June, four months before the Bali disaster, they—instead of being satisfied with putting it in writing—asked to give a special briefing to the minister responsible, the Minister for Foreign Affairs, and in sessions over two days that briefing, which alerted the minister to the danger, took place. Amongst other things, ONA says of that period that he was alerted to the potential for terrorist activity from JI in particular. It says:
We were trying to make the impact on the minister ... to explain the danger ...

... we knew that there was no shortage of explosives available to them in Indonesia ...

It says that, in the region:

... we knew there was no shortage of explosives and no shortage of weapons. We made these points clear. We said that basically they had the intention, they had the capability, and getting access to the kinds of equipment they needed would be no problem.

Bali was mentioned and the briefing alluded to possible 'soft targets', including hotels, nightclubs and the airport. There was no definitive description of an impending attack but there were the ingredients of the disaster about to unfold.

This question hangs in the air: what did the minister do? He was the responsible agent of government. We as a committee have no evidence of any action consequent to and commensurate with that awesome briefing as to the danger, in the face of the Australian government, that was confronting Australians and others in Indonesia, which is on our doorstep. Certainly there is no evidence that the information was taken and conveyed to government and no evidence that appropriate action was taken with the Indonesian authorities to track down the terrorists then known to be on the move. There was no action, beyond a question to the wrong department, taken at that briefing to raise the alert with Australians who intended to travel to Indonesia, particularly Bali, where on any given day 75 per cent of Australians in Indonesia were gathered, including some 7,000 on that fateful 12 October. We cannot overlook the failure to act.

There has to be a royal commission into the circumstances leading up to the Bali bombings, to help safeguard and improve the security of Australians into the future. This committee, with its inability to vet all the information available, did not have the wherewithal to carry out the task that is warranted. It is not a case of seeking to blame; it is a case of seeking justice and seeking answers for broken hearts. Mostly it is a case of preventing such a disaster from happening again. It warrants a royal commission. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004

US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF) BILL 2004

In Committee

Consideration resumed.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The committee is considering the US Free Trade Agreement Implementation Bill 2004 as amended, and amendments (1) to (4) on sheet 4371 moved by Senator Conroy. (Quorum formed)

Senator HARRIS (Queensland) (4.25 p.m.)—I will very briefly encapsulate the points I was making earlier in relation to Labor amendments (1) and (2) on sheet 4371. I reiterate that One Nation will support those amendments, but I clearly place on the record that the reason for supporting them is that they do, to a small extent, go towards resolving some of the glaring problems that are quite evident, particularly in annex 2-C, in relation to pharmaceuticals. Earlier today I was making some comparisons from a document from the Executive Office of the President of the United States headed ‘U.S.-Australia Free Trade Agreement—Questions and Answers About Pharmaceuticals’ dealing with what guidance congress received about pharmaceutical trade issues. Contained
within those questions and answers, there is one paramount issue in relation to how the US have been dealing with international pharmaceutical issues in previous trade agreements. The document says:

Over the past few decades, market access and pricing issues also have been part of the U.S. trade dialogue with Canada, Japan, Korea and China.

It then goes on to say:

What are the key provisions regarding pharmaceuticals in the U.S.-Australia FTA?

This is where the paramount difference is very clear. The document says:

Based on new guidance from Congress in the Trade Act of 2002, the Australia FTA was the first FTA to include specific provisions dealing with non-tariff market access issues related to pharmaceuticals.

But the profound statement is the closing sentence in this paragraph, which says:

These provisions are based in large part on the Australian government’s own studies.

So here we have a document directly from the Office of the United States Trade Representative clearly setting out that this US-Australia free trade agreement is the first agreement that carries a section in it relating to pharmaceutical benefits and that, at large, these provisions are based on the Australian government’s own studies. The document says:

These provisions are based in large part on the Australian government’s own studies.

The next question posed is:

Does the U.S.-Australia FTA block imports of patented pharmaceuticals?

The answer says:

The FTA imposes no new barriers to imports but reflects current U.S. law, which gives any patent holder the right to control sales (including by contract) of its product in the United States. This right, a core principle of U.S. Patent law for more than 100 years, applies to all U.S. patents, not just pharmaceuticals.

In the American document they are saying very clearly that their patent laws have been in place for more than 100 years and not just for pharmaceuticals. There is a further question:

Does the U.S.-Australia FTA prevent Congress from passing drug re-importation legislation?

The answer is:

No. The FTA reflects current law in the United States. Nothing in this FTA or any other trade agreement prevents Congress from changing U.S. law in the future. Even if a dispute settlement panel found the U.S. acted inconsistently with the FTA, it could not require Congress to amend the law. Importantly, provisions in the FTA protecting patent holders’ rights only apply to products under patent. This provision would have no impact on importation of non-patented (generic) prescription drugs.

I wish to make this point absolutely clear: there is a vast difference between the US parliamentary process and the one that we have in Australia.

Yesterday I asked Senator Hill if he would be able to give a guarantee that no Australians’ rights prior to the implementation of the changes to these 10 bills would suffer any impediment as a result of those changes. Senator Hill could not give that assurance. Yet we have here a document from the Office of the United States Trade Representative clearly saying that the free trade agreement in America does not bind their congress. They go even further to say that even if a dispute settlement panel found that the US had acted inconsistently with the free trade agreement it could not require congress to amend the law. That is absolutely astounding. These are the differences between what applies in America and what applies here in Australia. Interestingly, the next question is:

Will the U.S.-Australia FTA raise the price of medicines in Australia?
The answer is intriguing:

The Government of Australia retains the right and authority to set the prices of medicine under the PBS. The provisions of the pharmaceutical annex to the Agreement will help improve market access for pharmaceuticals in Australia by improving the transparency and accountability of Australia's PBS system.

There is something missing. We have a question that says:

Will the U.S.-Australia FTA raise the price of medicines in Australia?

That is the question. Was it answered? No, of course it was not. There is nothing in that response from America that says that in their interpretation of the free trade agreement there will not be an increase in pharmaceuticals. The next question is:

Are any existing or future U.S. health care programs subject to the pharmaceutical provisions of the U.S.-Australia FTA?

The answer is:

USTR has worked closely with all relevant U.S. agencies to ensure the FTA does not require any changes to U.S. health care programs.

It is as clear as that. We are not going to affect any of their health programs. The answer goes on:

Procurement of pharmaceutical products by the Veterans Administration (VA) and the Department of Defense (DoD) is excluded from the Pharmaceutical Annex of the agreement ...

In America, two of their major government departments are not even subject to the agreement. A very relevant question for Senator Hill is: has the Australian government excluded any of our pharmaceutical purchases from the agreement? They go on to say:

Procurement of pharmaceutical products by state Medicaid agencies is excluded because coverage and reimbursement decisions are made by state officials, not by federal health authorities.

Here is another question for Senator Hill: are the pharmaceuticals that our state governments procure in Australia excluded from the agreement? They are in America. This is the document from their trade representative. If you like, I will seek leave afterwards to table it. It says very clearly:

Procurement of pharmaceutical products by state Medicaid agencies is excluded because coverage and reimbursement decisions are made by state officials, not by federal health authorities.

It is a clear out for every state in America to protect their purchases of pharmaceuticals and put them outside the free trade agreement.

I asked a question of Senator Hill in question time on the 3 August relating specifically to the commitments that Australia had made in the exchange of letters on the PBS. In that answer Senator Hill made reference to paragraph 3, where it says:

3. In order to make its process of selection, listing, and pricing of pharmaceuticals and indications under its PBS more expeditious, Australia shall:

(a) reduce the time ...
(b) introduce procedures for more frequent revisions ...; and
(c) make available expedited procedures for processing of applications ...

The fourth paragraph was the one I put to Senator Hill:

Australia shall provide opportunities to apply for an adjustment to the price of a pharmaceutical under the PBS.

In his answer I do not believe Senator Hill addressed the issue of paragraph 4, because it clearly says it is a commitment by Australia under this agreement to provide opportunities to apply for an adjustment to the price of a pharmaceutical under Australia’s Pharmaceutical Benefits Scheme. It is there. It is absolutely clear. The Americans have protected the purchasing of their pharmaceuti-
cals by their state governments and two of their major agencies and put them outside of the agreement. My question to the minister is: why hasn’t Australia done the same?

Senator BROWN (Tasmania) (4.39 p.m.)—I thank the One Nation senator for that thought-provoking contribution, which I am sure the minister is going to answer in a short while. We have before us amendments from the Labor Party to enable a challenge to be made to head off evergreening—this process by which big corporations can delay the expiry of patents so that they can enrich themselves over an extended period of time through knocking out the opposition of generic, cheap drug producers.

I draw your attention to an interview on the ABC’s The World Today program just a couple of days ago with a world-famous expert on the matter of the delivery of pharmaceuticals to the public and an American patent law expert. Professor Kevin Outterson is an Associate Professor of Law at West Virginia University and has been mentioned earlier today. He said that the big pharmaceutical companies will find a way around the legislation—that is, the amendments—possibly by challenging them at the outset. I will come back to that. Associate Professor Outterson said:

It—

the amendment—

does have the potential of a large penalty that goes to the Commonwealth if a company improperly tries to block a generic, and it also has the potential for a part of the penalty to be paid directly to the generic company, which I think is an innovative step.

The difficulty I see with it overall though is that the standard for triggering this payment is whether they’ve been unreasonable in filing their application.

He said:

I think the language that they chose—

that is, the opposition—

saying is there a reasonable prospect of this pattern being valid, is just too soft, it’s too easy for a law firm to give an opinion to a pharmaceutical company—‘Yes, there is some reasonable prospect that your patent will be upheld’. That could be a one in ten chance, or a one in five chance. It won’t take much for a law firm to be able to give that easy of an opinion.

Professor Outterson went on to say:

If you took the same legislation and the same structure and implied a slightly higher standard, more likely than not it’s often used internationally in tax opinions, then you would have a more substantial piece of legislation.

I have had Margaret Blake in my office in contact with a number of people and now the Greens will bring forward amendments which take that very clear reasoning from Professor Kevin Outterson and raise the bar—the standard—in this easygoing Labor amendment. I therefore seek leave to move together Green amendments (1) and (2) to opposition amendment (2) on sheet 4371.

Leave granted.

Senator BROWN—I move:

(1) Amendment (2), omit paragraph 26C(3)(b), substitute:

(b) are more likely than not to succeed;

(2) Amendment (2), subsection 26C(4), omit “have reasonable prospects of success”, substitute “are more likely than not to succeed”.

There we have a change of wording to Labor’s amendment which I think Labor will see the good sense in. It probably raises the bar for the test for a renewed patent from ‘have reasonable prospects of success’ to ‘more likely than not to succeed’ from a 10, 20 or 30 per cent level to a 50 per cent level. It is a tighter wording and a better legal phraseology to ward off the evergreening pressure that will inevitably come to Australia as it has to North America.
By the way, it is worth noting that in Canada they also have an oversight body with professional expertise to assess patent applications and they knock out 50 per cent of them. It is called the Office of Patented Medicines and Liaison. It is something that we should have here—a public body to take action. We should not rely on the generic companies to do so, because in Australia most generic companies are subsidiaries of brand-name pharmaceutical companies anyway. The body, as with the Canadian one, would need both patent expertise and pharmaceutical expertise. That should be a matter of government action and I hope Labor will take that one up if its fortunes are realised and it gets to be the next government.

Stiff penalties are, of course, a second component to reduce the impact of evergreening. The millions of dollars that could be there are very small relative to the potential billions of dollars that drug companies could make from certain brand names. Then you could have a positive incentive for the generic companies to manufacture a drug, for example a 180-day exclusivity period for the first generic company to enter the market—that is, it would be protected from competition from other generic manufacturers for those 180 days. The ALP amendment only addresses one of those components and, of course, it does not address the appeal or review mechanism at all, which hovers now over the Pharmaceutical Benefits Scheme with the prospect of rising prices. Again, the Greens have come forward with an amendment to tighten up Labor’s amendment, which is not strong enough and which will be easy game for the big pharmaceutical companies.

I want to follow up on what Senator Harris had to say about the Prime Minister’s lunchtime press conference. First of all the Prime Minister says that you cannot see the legal advice. He will not show it to you—it would be a threat to the country and Mr Latham had better not show it to you either. We are debating this matter in the parliament and I think it is a matter that should be debated by all parties and it should be available to be seen by all parties. We can judge whether or not it is in the public interest. That aside, he does have this extraordinary letter from Mr Zoellick—read President Bush. It says that the United States is not going to intervene now and say what it thinks about this fairly trifling amendment that the Labor Party has brought in, which is causing so much domestic dispute and headlines in Australia. It says, ‘Put that through your parliament or whatever over there; we reserve the right to act on it later.’

This is John Howard at his most transparent. Here is the Prime Minister coming out for the second time today to talk about this issue and what he says is, ‘The Labor Party amendment, minor as it is, is a threat to society as we know it. It is a threat to our relationship with the United States.’ The United States, backed up by the Prime Minister—he says, ‘Good on them’—is reserving the right to take action further down the line. Instead of saying, ‘Go paddle your own canoe,’ he says, ‘Yes, you’ve got a right to take Australia on during the election campaign after parliament has put this legislation through and it might show the Labor Party up.’ Let me warn the Prime Minister, as a friend, about public opinion in Australia. Australians will not like to have the sword of Bushocles hanging over their heads in the run to an election, where President Bush is able to act and say, ‘We won’t have this free trade agreement if the amendment that the opposition put through is not taken off or ameliorated,’ or more particularly, ‘We won’t decide until after the election’s over; we’ll just leave everybody in a state of tension and apprehension.’
That is a Prime Minister John Howard special. Leave people feeling anxious in the run to the election. He does it every time. He is building it up now and his friend Mr Zoellick at the behest of the White House and George W. Bush is saying, ‘Hey, we can worry people over there in Australia. We’ll leave this all messy and you can blame the opposition.’ What a patently transparent, poor piece of politics this is. Instead of the Prime Minister defending this country, he is sending letters to the White House to enhance his election strategy. That is reprehensible, but it is getting a bit obvious, isn’t it? The Prime Minister might just come a cropper if he tries to hang the threat of the American drug companies running this country and its pharmaceutical prices over the head of the electorate in the run to the next election. Let him try it. As far as the Greens are concerned, we think that Labor has caved in. It is not just pharmaceuticals; it is all those other issues, from quarantine to jobs to cultural content.

But what this episode shows is that the United States corporations know that all they have to do is wait for a bit—wait until it is all out of the parliament, get the signatures on the paper and have the exchange of letters that finalises the matter—and then they can strike. They do not have to come to the parliament and they do not have to be worried by any legal systems in Australia. They go to what is called a joint committee—appointed, no doubt, with their assent, by the governments—this ayatollah of trade, and say, ‘We’ve got a dispute here. Here’s what our lawyers say. Settle it for us.’ The Australian people cannot stand in that court and put their point of view, and neither can the American people; it is just a corporate fight-out. At the end of the day, if Australia loses there then the taxpayers pay whatever the penalty is.

At lunchtime today, Prime Minister Howard held up a bit of paper from the White House and said, ‘There’s a penalty clause here if our democracy asserts itself.’ What he did not say is that taxpayers could have to fork out billions of dollars because he signed away our rights. It is extraordinary. He is saying, ‘Be anxious, everybody. This free trade agreement’s unsettling the relationship between us and the United States.’ What he should have been saying was, ‘Be anxious, everybody. You’re all locked out. If these drug companies and President Bush don’t like the decision made on the last day of sittings of the Senate, it ultimately could end up facing a dispute mechanism with millions or billions of dollars compensation required.’ Alarmist? Ask the Canadians. Alarmist? Ask the Mexicans who have been at the wrong end of suits brought under the North American Free Trade Agreement. The powerful corporate sector, in this case the pharmaceutical industry, are quiet. Have you noticed? The big corporations are not saying anything on either side. They have gone quiet on this issue because they know it is in their interest to get this legislation through this Senate, have the exchange of letters completed between President Bush and John Howard, and then strike—with this corporate-friendly, faceless joint committee which is out of the reach of the parliament and the people of both countries. (Time expired)

Senator Nettle (New South Wales) (4.54 p.m.)—Before we proceed any further, I have some questions for the minister. My first question is: what does the government believe is the public health benefit that is provided in these changes?

Senator Hill (South Australia—Minister for Defence) (4.55 p.m.)—This is now the fourth day on which we have been discussing this issue. The goal of the free trade agreement is to provide improved access for Australian goods and services—this
is from our perspective—to facilitate economic growth and to look towards our goal of employing a further 30,000 Australian employees. Senator Brown laughs at that. The Greens do not believe in economic growth; they just talk about redistribution. That is what we are seeking to do.

**Senator Brown**—Answer the question.

**Senator HILL**—Senator Brown is engaged in a filibuster. He is now putting down amendments to amendments, and so it goes on. I was answering the question. What I was about to say is that we are determined that the benefits that Australia can get out of the free trade agreement will not be achieved by sacrificing important protections and values within our existing system. In the aspect of public health that we have been talking about, the benefits that flow to Australians through our PBS system in relation to the cost of medicines, we have been saying that that will not be affected by the free trade agreement. It was an area that the Australian government were determined to protect, and it is an area which the Australian government remain confident we have protected. We therefore have a win-win outcome. We provide the opportunity for further economic growth, with all the benefits that flow to all Australians from that, whilst at the same time preserving and protecting a system designed to ensure that Australians have access to affordable medicines. I am very pleased that, out of a very long and difficult negotiation, we were able to achieve that win-win outcome.

**Senator NETTLE** (New South Wales) (4.57 p.m.)—I have a series of questions. They all relate specifically to the PBS component of the free trade agreement, not to the general benefits that the government’s spurious claims relate to, which are based on no analysis. They believe there will be an increase in jobs, even though the study they are quoting provides for a loss of jobs in a whole raft of about a dozen different sectors. These questions relate specifically to these changes. Does the government believe that there is any public health benefit to be provided by making these specific changes to the Therapeutic Goods Act?

**Senator HILL** (South Australia—Minister for Defence) (4.58 p.m.)—We are debating the opposition amendments. It remains our view that, fundamentally, the opposition amendments are not necessary—that the protections we pledged to maintain have been achieved through the agreement and the implementing legislation before the chamber. However, we are realistic enough to know that we are not going to be able to implement the free trade agreement without the votes of the opposition. The benefits of being able to achieve our goal of implementing the agreement as a whole are overwhelming. Therefore we are prepared to agree to the opposition amendments. We do have some concerns about their consistency with the agreement. We made representations to the opposition asking them to, in some way, improve their amendments so that that issue would be less likely to be a problem. But, because of where we are in the electoral cycle and their focus on wanting to demonstrate that they have confidence in their position, they were not prepared to accept the representations that we made to them.

**Senator NETTLE** (New South Wales) (5.00 p.m.)—I am trying to be really specific with the questions. I am just looking for answers; I am not looking for political speeches about your view and the Labor Party’s view on legal opinions and about putting in place arrangements that require more legal opinions to be got. I am actually looking for answers about the changes that are being made to the Therapeutic Goods Act by this implementing legislation, not the specific amendments that the Labor Party is putting for-
ward. I am looking for answers about the changes to the Therapeutic Goods Act that the government has agreed to that would be enacted in the implementing legislation we are being asked to pass. Does the government have a view as to whether there are any public health benefits from the particular changes to the Therapeutic Goods Act that we are being asked to vote on?

Senator HARRIS (Queensland) (5.01 p.m.)—I want to ask for clarification from the minister. But, before doing that, I will make it very clear that at the commencement of this committee stage the question was put to this chamber: is it the wish of the committee to take the bill as a whole? The answer was yes. So the inference that we keep on getting from Senator Hill that our questions are not related to specific amendments does not stand because it is the right of any senator to raise questions on the complete bill. My questions are in context because we are speaking about the Pharmaceutical Benefits Scheme.

I just want to draw your attention to something I find somewhat amusing. We have sections in the bill that refer to ROOs, the rules of origin. We have sections that have the alphabetical suffix of BAD. I am just wondering whether there is any link with the Prime Minister having his press conference in the blue room today. According to a document from the Prime Minister’s own web site, during that press conference the Prime Minister stated:

Can I start by reiterating that the Free Trade Agreement does not in any way weaken the Pharmaceutical Benefits Scheme. The Free Trade Agreement will not in any way lead to increases in the price of medicines or pharmaceuticals in Australia. ... I would never and Mr Vaile would never have agreed to the FTA if that had been the case.

I put this question to Senator Hill again: how do you reconcile the Prime Minister’s statement today with the commitment made by Minister Vaile in the exchange of letters between himself and the US Trade Representative, Mr Robert Zoellick, in paragraph 4, which says, ‘Australia shall provide opportunities to provide for an adjustment to the price of a pharmaceutical under the PBS’? If there was no intention of providing that legal avenue to apply for increases, why did Australia ever agree to that section being in the side letters?

Senator HILL (South Australia—Minister for Defence) (5.04 p.m.)—Whilst I take some advice on that particular issue, I will try to answer the previous question that Senator Harris put to me. As best I understood it, there was a concern about price. I want to draw Senator Harris’s attention to the very significant growth of generics within the PBS under the existing system—a growth that we believe will continue and that might even improve with the modifications that are included in this enabling legislation in relation to listing. There are now more than 700 generic products on the PBS, covering more than 180 different medicines. They already represent about 20 per cent of PBS-subsidised medicines. As I just said, the role of generic medicines is likely to expand over the next few years as the patents of several high-cost drugs are expected to expire. Somebody made mention of that this morning as if these changes would be a threat to that occurring, which is not correct.

As a matter of interest, the way price referencing works under the PBS is tougher than in most other countries. We have recently strengthened price referencing. We have improved the method for comparing monthly treatment costs within particular groups of drugs. The impact is that, when a generic product is listed on the PBS at a price lower than its branded counterparts, the list price for the branded counterparts comes down to the level of the generic. That is con-
sistent with our view that not only do we want the generics to get a fair opportunity because they provide downward pressure on prices but also we want to make sure that that flows through.

Also, where appropriate, generic drugs are fast-tracked onto the PBS in a matter of weeks and the changes I mentioned a moment ago, we believe, through greater transparency, are going to even further improve that listing process. They should be able to be fast-tracked because they are the same chemical entity as the branded version of the product and therefore do not need to be evaluated by the PBAC.

I would also like to remind Senator Harris of the changes that we included in the 2002-03 budget as a specific initiative to encourage participation by generic companies and uptake of generic medicines by consumers. These included changes to prescribing software to prevent software defaulting to the prescribing of branded product to the exclusion of the generic product, provision of generic medicines information for pharmacists and consumers and to increase awareness and understanding as part of the overall PBS awareness campaign. In exchange for these initiatives, generic companies offered price cuts on a wide range of generic products. As a result of that, the price of dozens of generic products was reduced and their branded equivalent price was referenced to them.

Contrary to what is being said by some, the government is very supportive of generics. It has a track record that demonstrates real efforts to assist the generic side of the industry and that assistance is being manifested in increased access and better price outcomes. As I have been saying for four days, there was nothing that the government was going to do in the free trade agreement with the United States that was in any way going to prejudice the benefits that we see from that growth in generics. We believe it is in the Australian national interest. That growth potential is something we will always determine to preserve.

I think it was Senator Harris who was talking about the purchase of drugs and asking why there seems to be a distinction. As I understand it, it is likely to flow from the fact that Medicade in the United States, I am advised, purchases the drugs and then resells them; whereas the PBS system in Australia is a subsidy rather than a purchase-reselling system. You may well find the language is different because it is being applied to differing systems. In neither case is the agreement intended in any way to reduce the capacity to obtain cheaper products through the generic options.

Senator HARRIS (Queensland) (5.11 p.m.)—I thank Senator Hill for that clarification of Medicade. I now understand that they purchase the drugs and use them for resale. The document also says:

Procurement of pharmaceutical products by the Veterans Administration (VA) and the Department of Defense (DoD) is excluded from the Pharmaceutical Annex of the agreement ...

I assume from the terminology that the Veterans Administration would appear to be a statutory body within the US and obviously the Department of Defense would be. How is it that there is an inconsistency that the purchase of pharmaceuticals for what I believe to be those two government departments can be excluded by the American government? Are there any equivalent exclusions in the agreement for Australia’s benefit?

Senator HILL (South Australia—Minister for Defence) (5.12 p.m.)—Again we are looking at two fundamentally different systems. As I understand it, the veterans body in the United States also purchases drugs. So you have different institutions—
and I am not sure of the structure—with different ways of delivering products to their constituency. In Australia, the PBS system which we have is a universal system. I am not quite sure what Senator Harris is getting at, whether he is now concerned for the interests of Australian drug producers in terms of their access into the United States, which is the flipside of what we have been talking about. We sought to negotiate an agreement that gave us the widest access, which is the trade benefit, but also did not sacrifice the price protection Australians have, which is the PBS. We got the best option we could negotiate in terms of the access without having to sacrifice anything under the PBS. That is what we sought to achieve and we are pleased that we were able to achieve that outcome.

Senator HARRIS (Queensland) (5.14 p.m.)—I make a final point. I understand from Senator Hill’s answer the difference between the Australian Pharmaceutical Benefits Scheme and the process in the United States. In the US the Veterans Administration and the Department of Defense can purchase pharmaceuticals and resell them. My question to Senator Hill was not so much about access for Australia but about our negotiating position. If America is able to exclude from the agreement purchases by those two federal departments, is Australia able to negotiate an equivalent protection of purchases for our consumption?

Senator HILL (South Australia—Minister for Defence) (5.15 p.m.)—That is the point I am making. On our side, the protection we needed was to maintain the PBS, to not have to make concessions under the PBS that could threaten the price protection that is inherent within it. That was a no-go zone as far as we were concerned, and we are satisfied that the outcome does not in any way threaten that system. I have heard nothing in the four days of the debate in here or before it that, in my mind, questions that reality.

Senator RIDGEWAY (New South Wales) (5.16 p.m.)—I want to follow on with some questions on the PBS. I note that the government have relied upon the claim by the Centre for International Economics that the PBS provisions themselves will not raise the price of medicines in Australia. I ask the minister: if that is the case, why did the government think a separate review mechanism was needed in the free trade agreement in parallel to what is already a good system of both assessment and pricing through the Pharmaceutical Benefits Advisory Committee? That seems an anomaly to me, unless there is some rationale as to why the government thought that it ought to be included in the free trade agreement.

If the government are convinced that the price of medicines will not increase, why have that provision in the free trade agreement in the first place? Is it not possible even at this late stage to have, for example, an exchange of letters with the United States to make it very clear and beyond doubt that the PBS or the review mechanism at least is to be removed? Doesn’t the review mechanism agreed to by the government provide an opportunity for US pharmaceutical corporations to exert pressure and influence over the way that the assessments are conducted and, I suppose, on pricing itself? If the end result is to push up prices, will that not mean an increase not only in the price of medicines but also in the cost of running the PBS in this country and the cost of the copayments arrangement?

Will the minister explain why it is that, if the government are convinced that the price of medicines will not rise, the review mechanism is there at all? You do not need a review mechanism when you have a very satisfactory system—one that already enjoys
the confidence of the Australian people. Why is the review mechanism there? If he could provide some information about that, that would be useful. It is not enough to say that the price of medicines will not increase. Why have the government allowed what are essentially foreign corporations to have an institutionalised arrangement to request reviews about the assessment of drugs put on the PBS list in this country?

Senator HILL (South Australia—Minister for Defence) (5.19 p.m.)—I guess the short answer is that it was something that was sought, and the Australian negotiators saw no downside in it. I remind the honourable senator that the review mechanism is available only in cases where the PBAC recommends that a drug not be added to the PBS. It gives an unsuccessful applicant an opportunity, but they would have to identify grounds for review and those grounds must relate to issues raised in the rejection of the drug for PBS listing by the PBAC.

Reviews will be conducted by an independent expert, who will make comments back to the PBAC. The review process will not have the power to overturn the listing decisions of the PBAC. The PBAC will remain the gatekeeper to the PBS. In fact, it is possible to argue that the review mechanism provides increased transparency, which is perhaps a good thing in the PBS listing decision-making process. I have certainly heard senators in this place argue for greater transparency within that process. The review mechanism has been developed in consultation with the PBAC, the pharmaceutical industry and other stakeholders. The review mechanism in no way affects the fundamental architecture of the PBS—that is, the listing and pricing mechanisms for the PBS remain unchanged.

Senator RIDGEWAY (New South Wales) (5.21 p.m.)—It is a very curious comment that the minister makes in respect of transparency. He would be aware of the confidentiality provisions in the National Health Act, which effectively prevent the Pharmaceutical Benefits Advisory Committee from being able to defend itself, particularly if there is a review. In terms of the review mechanism that the government are now agreeing can be put in place, the government have made no effort, from what I can see, to make suitable amendments to the National Health Act that would protect the integrity of the committee. Under that act, they essentially have no capacity to defend themselves because of commercial-in-confidence arrangements. I ask the minister, again, why he thinks the review mechanism needs to be put in place.

I also draw the minister’s attention to the behaviour of US pharmaceutical companies in relation to the US administration. Is he aware of the US Medicare Prescription Drug, Improvement and Modernization Act, which essentially commits the US federal government to purchasing some $US600 billion in pharmaceuticals over the next decade but, at the same time, prohibits the government from using its purchasing power to negotiate better prices for drugs? That is the attitude, practice and behaviour of US pharmaceutical companies as they currently exist, and in this context the government are agreeing on what they see as a very benign inclusion of a review mechanism in the free trade agreement—in parallel, I might add, to a very good system that works in the interests of Australians and is already in place in Australia.

Why have we allowed the door to be slightly opened for US corporations to seek those sorts of reviews? Isn’t it about the price of medicines or at least reviewing things in such a way that the size, power and influence of US pharmaceutical corporations will far outweigh what we would expect under our system? This is particularly pertinent given
my mention of the National Health Act. The Pharmaceutical Benefits Advisory Committee cannot defend themselves under commercial-in-confidence arrangements. It is one thing for the minister to talk about transparency, but the reality is that that can be done by those who seek a review. The PBAC will simply not be able to defend themselves, and nor have the government taken steps to ensure that that occurs.

Senator HILL (South Australia—Minister for Defence) (5.24 p.m.)—Senators have raised a whole range of questions that would have been far more appropriately directed to the two detailed parliamentary inquiries that examined this matter. When the experts were sitting across the table, you could have had a person-on-person exchange for hours, but I will do my best. I have taken questions now from three honourable senators and am having trouble keeping track of them, so I will stick to Senator Ridgeway’s questions for the moment.

Senator Ridgeway was developing an argument that there is evidence of drug companies being able to successfully exert power within the US system and was asking why that will not happen here. I think the answer to that is the one that I gave: we have a fundamentally different system. Yes, there can be a review of a decision not to list, but the review process does not have the power to overturn the listing decisions. Therefore, as I said, I certainly cannot see a downside in that or how that can lead to any unreasonable pressure. I would have thought the Democrats would say that, if it leads to greater transparency and more information on the table, it is probably a good outcome.

Senator Ridgeway—Why is it there?

Senator HILL—It is there because it was sought, and we could see no downside. That is the nature of this negotiation. Each side obviously tried to argue for the greatest transparency in the other side’s system. Within that there is a certain discipline, and that is probably a good thing. It is hard to quarrel against having the information on the table. The real issue for Australians is whether the Australian PBS and the benefits it provides in subsidised medicines will be under threat, and clearly they will not be.

Senator ALLISON (Victoria) (5.26 p.m.)—On that point, is it the case that, because the PBAC must make public all of its reasons for deciding not to list a drug on the PBS, there is a problem insofar as the agreement acknowledges the rights of innovative drug manufacturers but not the rights of government to negotiate the lowest price? It seems to me that a lot of the criticisms of what you have negotiated are that the principle is there which establishes and recognises the rights of innovative pharmaceutical companies but not the other right—which is part of the PBAC’s deliberations and is one of public good—to negotiate a product at the lowest price. Is it not the case that by making those reasons transparent you open up to challenge any decisions in which the rights of the drug manufacturers are not paramount?

Senator HILL (South Australia—Minister for Defence) (5.28 p.m.)—I welcome Senator Allison to the debate, but I do not understand that at all. Of course government has a big interest in negotiating the best possible price—government, on behalf of the people, pays the subsidy. I cannot understand that argument.

Senator ALLISON (Victoria) (5.28 a.m.)—So why was there not a principle included in the free trade agreement that acknowledges the government’s right, if you like, to recognise the need to deliver pharmaceuticals at the lowest possible cost? That is the big criticism. That is what all the academics are saying is wrong with this free
trade agreement—that you have recognised the rights of innovative drug manufacturers but you do not have written in the rights of consumers and taxpayers to low-cost medicines. Those rights are not written in. When it comes down to pharmaceutical companies taking action against the PBAC on the basis of their very transparent reasons for not listing, the argument goes that they are in a very strong position to take action because the decision by the PBAC not to list was weighted against them as innovative drug manufacturers and was taken on the basis of cost effectiveness and the need to deliver low-cost medicines.

Senator HILL (South Australia—Minister for Defence) (5.30 p.m.)—The issue as to how we determine our prices under the PBS was excluded from the agreement. That was our protection. We have a system; the criteria are well known. We believe it works well and ensures affordable medicines. I am amazed to hear Senator Allison’s argument. She is in effect suggesting that system should have been thrown into the negotiation. In this place, obviously I have heard arguments for us improving our PBS, and that is a debate that can always be had, but the debate today is about the PBS in relation to the free trade agreement with the United States, the opportunity for greater access into the US market. As I said, interference with our PBS was a no-go zone for us in this negotiation. We were not prepared to put that on the table. We did not have to. We got a reasonable outcome in terms of increased access without putting it on the table. That is why I say we achieved a win-win outcome.

Senator ALLISON (Victoria) (5.31 p.m.)—Again I ask why it is that the principle is there which recognises the rights of innovative pharmaceutical manufacturers as opposed to generic manufacturers or the public interest, in this case the interest of the Commonwealth, the government, in negotiating lower prices. Why was that corresponding principle not written in? That is what this agreement is most heavily criticised for by people who know much more about patent law and much more about the PBS than I ever will. For them, that is the key problem. What work have you done on that and why was there not a corresponding principle? As I understand it, that principle is in a whole lot of other treaties and in other documents. Documents on public health policy, for instance, have that spelled out explicitly as one of the principles of agreements that are entered into. Why was it not included in the FTA?

Senator HILL (South Australia—Minister for Defence) (5.32 p.m.)—It is difficult to compare this with other agreements unless you have the other agreements on the table and see what is being conceded on both sides. As I said, we were determined to keep the PBS and our listing criteria, pricing structures and so forth out of this negotiation. Now Senator Allison is seemingly saying that we should have added new provisions in relation to the PBS. It might be that these academics want different approaches to the PBS, and within the Australian domestic debate we can have those arguments. But, because we control the PBS, there is no value added in saying so. The issue is what you are conceding. We did not have to concede those matters. Our right to set the prices for our own medicines has not been affected by this agreement or by the implementation law that we have before the chamber today.

Senator ALLISON (Victoria) (5.34 p.m.)—Then can the minister explain what the advantage is in that principle being put into the free trade agreement—that is, the principle that recognises the rights of innovative drug manufacturers. Can you just explain the purpose, as you understand it. I presume that, if you have negotiated an agree-
ment and the other party has come along with this provision that it wants put in, you, as a responsible party, at least understand the implications and motivations behind it. It has to have some reason to be there. What is that reason?

Senator HILL (South Australia—Minister for Defence) (5.34 p.m.)—When I answered Senator Ridgeway, perhaps before Senator Allison came into the chamber, basically I said that the US companies want greater transparency in terms of why a product was not listed. We do not see a downside in that. In fact, as I said, it could even be argued that it provided some upside. That was the last question. Before that, I thought Senator Allison was leading me into a more general discussion of the key principles in relation to the pharmaceutical part of the agreement, in which case I was going to draw her attention to the agreed principles as set out in annex 2-C, which states:

The Parties are committed to facilitating high quality health care and continued improvements in public health for their nationals.

And it sets out the principles, one of which is:

... the need to promote timely and affordable access to innovative pharmaceuticals through transparent, expeditious, and accountable procedures ...

But you can read those as well as I can—and presumably have.

Senator ALLISON (Victoria) (5.35 p.m.)—It is quite right that they talk about innovative drug manufacturers, but they do not talk about generics and they do not talk about affordability or low cost. Those words are not mentioned. Minister, I did not talk about transparency. I am talking about the principle, which is nothing to do with transparency. That is another provision of the agreement that you have signed off on. My specific question was this: why was it necessary on the part of the US—why did the US negotiate—to have this principle inserted in the agreement? And why didn’t the government say, ‘If you are going to have that principle in, we want our principle in—the principle which is in so many of our other documents and which is about affordability, generic brands and lowest possible cost.’ It is an unbalanced agreement unless you do that. Did you argue that there needed to be a corresponding balancing principle?

Senator HILL (South Australia—Minister for Defence) (5.37 p.m.)—I guess this is a way to fill in a day; we can keep repeating the same points. But affordability is guaranteed by our existing system, which is protected under this agreement. It therefore does not need to be restated: we did not put the PBS system on the table. Why the American negotiators wanted a particular point made from their perspective is an issue for them. As far as we are concerned, we looked to see if there was any downside in their representation and, in this instance, we saw no downside. In fact, as I said to Senator Ridgeway—and I think I said to Senator Nettle—we even saw an arguable benefit to us in terms of greater transparency.

Senator HARRIS (Queensland) (5.37 p.m.)—Earlier I indicated that I would circulate the document that I quoted from. I have done that. It is the US-Australia free trade agreement—questions and answers about pharmaceuticals. I seek leave to table the document.

Leave granted.

Senator NETTLE (New South Wales) (5.38 p.m.)—The minister gave an answer a while ago when Senator Ridgeway was asking about why we ended up with a review mechanism. The minister said, ‘The short answer is it was sought.’ That makes me think what a stupendous group of people we have put in charge of negotiating an agree-
ment. The United States pharmaceutical companies put pressure on their government to ask, ‘Can we have this?’ and the Australian government’s argument why a review mechanism has been included in the trade agreement is ‘it was sought’. Can the minister explain what has changed since 2000, when the government rejected the idea, which was proposed at that time, for a review mechanism or an appeal mechanism to the PBAC? Former Senator Tambling, who was the parliamentary secretary at the time, reviewed and reported on the matter. He recommended to the relevant minister that it not proceed, and the government accepted that advice and rejected the idea of a review mechanism to the PBS. What, if anything, has changed since that time that has made the Australian government believe that it is an appropriate thing to do?

**Senator HILL** (South Australia—Minister for Defence) (5.30 p.m.)—I do not recall the detail of that recommendation. But if Senator Nettle is assuring me that it is in the same terms as the one in this agreement, which I presume is correct—I am sure that she would not seek to mislead me—it might not be the total answer but in part at least the answer is the very significant benefits that we get under this free trade agreement in terms of growing the Australian economy and providing jobs. Then we looked at specific requests from the party—and this, I am told, was the specific request from the US side—we assessed if there was any downside to that request and we assessed that there was not.

**Senator NETTLE** (New South Wales) (5.40 p.m.)—It is an answer, Minister, for you to say, ‘We were given the advice that we didn’t need it and we rejected it in 2000.’

**Senator Hill**—No, I didn’t say that.

**Senator NETTLE**—Your information is on the record. The answer that you have given is that you believe there were other benefits in the trade agreement which outweighed the argument of the Australian government continuing to stick to the position they held in 2000 that our Pharmaceutical Benefits Scheme does not need an independent review or appeal mechanism. That is an answer, and I thank you for giving that answer. You have made it perfectly clear why the Australian government changed their position from the position they held in 2000.

In an answer that the minister gave he put forward the argument that this review mechanism does not result in any changes of pricing for the pharmaceuticals involved. Can the minister explain why the side letter, at point 4 relating to the Pharmaceutical Benefits Scheme, says:

Australia shall provide opportunities to apply for an adjustment to a reimbursement amount.

If that is not about providing an opportunity to change the price that the Australian government pays to pharmaceutical companies in the United States, can the minister explain what that point refers to: ‘an adjustment to a reimbursement amount’ in the side letter on the PBS?

**Senator HILL** (South Australia—Minister for Defence) (5.42 p.m.)—My advice is that that is existing practice; it currently occurs. Pharmaceutical companies can seek an adjustment of price in changed circumstances.

**Senator NETTLE** (New South Wales) (5.42 p.m.)—But does the government believe that a US pharmaceutical company would request a reduction in the price that the Australian government is offering to pay for a particular pharmaceutical?

**Senator HILL** (South Australia—Minister for Defence) (5.43 p.m.)—It would be good news. They could be responding to competitive pressures. It is impossible for me to comment on the economics of individual
drugs in the marketplace. I guess it would be possible to get some historical advice on adjustments that have been sought over the years.

Senator NETTLE (New South Wales) (5.44 p.m.)—Have the government done any modelling about what they think will be the financial implications of a review mechanism being put in place? Do they believe that the US drug companies will be asking for a reduction in the price that they pay, or do they believe that perhaps the pharmaceutical companies will be asking for an increase in the price that they pay? Has any modelling been done?

Senator HILL (South Australia—Minister for Defence) (5.44 p.m.)—I am told that modelling has not been done and that is probably because, if there is a review, there is no obligation to change the previous listing decision.

Senator NETTLE (New South Wales) (5.44 p.m.)—I do not know whether the minister had the opportunity to see the Four Corners program on this issue last week. A former member of the Pharmaceutical Benefits Advisory Committee, Professor David Henry, from the University of Newcastle, was describing the great benefits—there are many—of the scheme that exists in Australia. One of the benefits that he described was that part of the cost-effectiveness, part of being able to keep down the price, is the fact that pharmaceutical companies put a case to the PBAC, the Pharmaceutical Benefits Advisory Committee, as to why their drugs should be listed and what the price should be. Often there is a process of back and forth negotiations where the PBAC rejects their application. They are provided with reasons and they do more research and put forward, based on the information they have received from the PBAC, a case as to why they believe they should get a different price. They make adjustments and put forward another case. One of the mechanisms that keeps down the prices that the Australian government pays for the drugs, and which maintains the cost-effectiveness of the model, is this back and forth process of negotiation, whereby the pharmaceutical company puts forward a case, the case is rejected and it then puts forward another case. An inherent factor of the way the PBAC operates is the maintenance of the cap on prices that the Australian government pays.

This review mechanism allows for a pharmaceutical company that has had its application to list a drug on the PBS knocked off at the first opportunity to be able to go to another independent review. Rather than the existing process, where they would rejig the application if they believed they had a case and an argument to put forward and it would be put back to the PBAC, they will now go to an independent review mechanism. Does the minister acknowledge the value of the current system, whereby part of that cost-effectiveness is ensuring that pharmaceutical companies go back, restate their case and put it to the PBAC? Does the minister acknowledge that that is part of what keeps the cap on the prices of pharmaceuticals?

Senator HILL (South Australia—Minister for Defence) (5.46 p.m.)—I did not see the program, but if the experts say that does contribute to downward pressures, I would not quarrel with that. The point I would make is that that option remains available. If the drug companies would prefer to proceed down that path, they will do so. I do not think you should immediately assume that they would choose the review that may be open to them under this provision.

Senator NETTLE (New South Wales) (5.47 p.m.)—It is a fair point from the minister that the company has the option of re-submitting an application to the PBAC or
going to the review committee. The side letters to the trade agreement on the PBS say explicitly that Australia is providing opportunities to apply for an adjustment in the reimbursement amount. The side letter describes what the review process will do. If you are a pharmaceutical company that has the option of putting back your claim to the PBAC, which makes decisions explicitly about the cost-effectiveness of the drug, or the option of going to a review mechanism that has terms of reference that include providing for an adjustment to the reimbursement amount and support for innovation and research and development, then to me that choice is clear. If you are a pharmaceutical company with the option of a system that rewards innovation and provides opportunities for price changes or the option of another system in which the principles for making that decision include cost-effectiveness as well as medical outcomes, the choice is clear. The minister is right to say they have a choice. Perhaps we have different views as to which path the pharmaceutical company would go down to achieve those outcomes.

I want to go back to the minister’s previous answer that the reason we have this review mechanism is that it was sought. Can the minister be any more explicit about who requested the changes—whether they came directly from Bob Zoellick, the trade representative, or whether the minister is aware of the US pharmaceutical companies putting pressure on the trade representative’s office to request those changes? Can the minister confirm that this was an issue that the President of the United States raised directly with the Prime Minister during his visit to Australia last October, as the Prime Minister commented on 2UE at the time? Maybe the minister can advise what the nature of those discussions was and whether any action was taken by Australian officials or ministers in response to the US President’s specific direction around this issue.

Senator HILL (South Australia—Minister for Defence) (5.50 p.m.)—I do not think that I can, and I really do not think this is the time to try to reconstruct the negotiating process. This was a position put to our negotiators by US negotiators. I think it is reasonable to assume that the relevant constituencies within each country are communicating with the administrations in each country. Even if I knew the answer, I do not think this is the place to canvass who said what to whom and when.

Senator NETTLE (New South Wales) (5.50 p.m.)—The minister said the government did no modelling on what the impact of these particular changes might be. Is the minister aware of modelling that has been done by the two academics at the ANU, Dr Tom Faunce and Dr Buddhima Lokuge, in which they predicted that the cost of drugs to state public hospitals would increase by 12 per cent by 2008? Does the government have any response to that modelling that has been put forward by the ANU?

Senator HILL (South Australia—Minister for Defence) (5.51 p.m.)—I am sorry, I was distracted as I was being provided information relating to a previous question. It is not an easy process that we are engaged in today. That is why I respectfully suggested there might have been a better process over the preceding five months. I got the start of the subject but I missed the punchline.

Senator NETTLE (New South Wales) (5.52 p.m.)—I had the opportunity to participate in one of the three inquiries that the Senate had into the free trade agreement with the United States. I did not have the opportunity to be a part of the select committee over the last three months, so this is an opportunity for me, as a member of the Senate, to
ask these questions of the minister. You have already answered one question by saying that there was no modelling done by the government on the impact of price changes on the Pharmaceutical Benefits Scheme. Is the government aware of studies done by ANU academics on the impact of higher prices as a result of the free trade agreement on the budgets of state public hospitals? The academics predicted that by 2008 there will be a 12 per cent increase in drug prices for state public hospitals as a result of a delay in generic drugs coming onto the system. Given the government has not done its own modelling, has it taken the time to respond to the modelling done by ANU academics on this issue?

Senator HILL (South Australia—Minister for Defence) (5.53 p.m.)—I am told that within the Senate inquiry there was a roundtable with all the specialists, and the government advisers put their arguments as to why they believed that modelling was invalid. The problem with the process that you have adopted is that you do not get to speak directly to the specialists. That is why we have parliamentary inquiries. As somebody who is on a rapid learning curve on this subject matter, I cannot see that this review opportunity for a non-listed product could be in any way relevant to the pace of getting generics onto the list. That is why we have parliamentary inquiries. As somebody who is on a rapid learning curve on this subject matter, I cannot see that this review opportunity for a non-listed product could be in any way relevant to the pace of getting generics onto the list. If it is relevant in any way, I would have thought that it would be beneficial. I am not going to go through all the statistics again, but we are already seeing rapid growth of generics onto the list. We believe that is a good thing and something that should be supported. We certainly were not prepared to negotiate an outcome where that would be in any way threatened.

Senator NETtle (New South Wales) (5.55 p.m.)—I am sorry, Minister, I did not make it clear. I had moved on to another area in which the government has negotiated to undermine the Pharmaceutical Benefits Scheme—that is, patents and the delaying of generics coming onboard because of evergreening processes. I have moved off the review section and am back on evergreening, which is the subject of the amendments we are dealing with now. I want to check the minister’s previous answer about representatives from the Department of Health and Ageing and the trade negotiators’ meeting with community groups. Are we talking about a meeting that happened in early March of 2004, which I understand were consultations by the Department of Health and Ageing with a raft of community groups? Is that the same meeting we are talking about?

Senator HILL (South Australia—Minister for Defence) (5.55 p.m.)—No, I am told that was another one. This was a PBS roundtable. I am more than happy if Senator Nettie wants to move onto the issue of the amendments before the chamber. Obviously, we have been very focused on the issue of the adequacy of our existing patent laws and whether there is any way in which practices that are sometimes utilised within the United States—and I think some argue Canada—could come into play in the Australian system. We are sure, as I have said earlier in this debate, that that could not occur.

I start to run into some personal experiences of sitting down with patent officials last week and others and discussing the operation of the system. I am satisfied that it is working well. The law is different to that in the United States, and I could go into that if it was really of interest to the chamber. The application of the law seems to be handled very efficiently. It seems to me that in the end even the Labor Party recognised that this would not become a threat to generics within Australia and that is why they switched tack onto injunctions from the patent listing procedures in this country.
Senator NETTLE (New South Wales) (5.57 p.m.)—I will continue questioning about the delay of generics. I was asking about the consultation the Department of Health and Ageing had with the negotiators and community groups in early March. My understanding from the community groups who were there—and indeed one of them talks about this in its submission to the select committee—is that representatives of the Department of Health and Ageing conceded that, as a result of the free trade agreement, delays in the introduction of generic pharmaceuticals can be expected. I understand that a transcript of the meeting was requested at the time and the individuals were originally told no. Subsequently, they were told they would be able to get one. To date, I understand it has not been supplied and I am wondering whether a transcript of that meeting is available and can be supplied to the chamber.

Senator HILL (South Australia—Minister for Defence) (5.59 p.m.)—We seem to be in doubt as to which meeting Senator Nettle is talking about. There was apparently one meeting for which there was a transcript and another meeting for which there was not.

Senator NETTLE (New South Wales) (5.59 p.m.)—I am looking at one that occurred in early March 2004. There were about 20 people there, including Stephen Deady, the chief negotiator; senior Department of Health and Ageing officials; representatives from—

Senator Hill interjecting—

Senator NETTLE—I was just trying to help with identifying which meeting it was.

Senator Hill—Give me a date.

Senator NETTLE—I do not have a date; I have early March 2004, and I have the representatives who were present.

Senator HILL (South Australia—Minister for Defence) (6.00 p.m.)—We think the one that Senator Nettle was referring to was a community consultation, of which there is not a transcript. It was not recorded. I am getting a lot of nodding to that answer. But the same people, I gather, appeared before the Senate select committee under the guise of a PBS roundtable, including at least one of the academics.

Senator Conroy—I think Tom Faunce was there.

Senator HILL—He is the one I had in mind. I am not sure about the other one. There were also health department officials and trade officials. I am told that they covered the same ground, that there was a transcript of that process and that transcript is available.

Senator NETTLE (New South Wales) (6.01 p.m.)—I move to another area of questioning now. Still within pharmaceuticals, annex 2-C5 headed ‘Dissemination of information’ says:

Each Party shall permit a pharmaceutical manufacturer to disseminate to health professionals and consumers through the manufacturer’s Internet site registered in the territory of the Party, and on other Internet sites registered in the territory of the Party linked to that site ...

My understanding is—and the minister can correct me if this is not the case—that direct marketing from pharmaceutical companies to consumers is prohibited under the law in Australia. Direct marketing to doctors is not prohibited, but direct marketing to consumers is illegal in Australia. This section of the annex talks about pharmaceutical manufacturers being able to put their information on the Internet. That would appear to me to be direct marketing to consumers because, clearly, we cannot limit access to the Internet only to doctors, who can currently be marketed to. Can the minister explain that issue and explain whether the agreement contravenes the current legal situation in Australia?
Senator HILL (South Australia—Minister for Defence) (6.03 p.m.)—The short answer, I am told, is that direct marketing is illegal in Australia except through the Internet, which is not illegal.

Senator ALLISON (Victoria) (6.04 p.m.)—On that point, it is my understanding that it is illegal in Australia at the present time to advertise pharmaceutical products on the Internet and that this was given up in the agreement. As I understand it, there is a blanket ban on pharmaceutical advertising, unlike in the US where there is plenty of it and it has driven up the costs of pharmaceuticals and the demand for the high-end, expensive pharmaceuticals as opposed to generics. Typically, people see expensive drugs advertised and go along to their GPs and say, ‘I must have those.’ So there is a lot of pressure on GPs to prescribe expensive brands. As I understand it, part of the FTA was to water down our advertising ban by allowing it on the Internet.

Senator HILL (South Australia—Minister for Defence) (6.05 p.m.)—Without the free trade agreement, the position would be as I have just said. You could argue that, if there was nothing in the free trade agreement, the position that existed beforehand that goods could be advertised through the Internet would still be possible. The free trade agreement recognises that situation but provides that, if there is going to be dissemination of information through the Internet, then it must include a balance of risks and benefits and encompass all indications for which the parties’ competent regulatory authorities have approved the marketing of the pharmaceuticals. It must be truthful, not misleading and so forth. So, in some ways you could argue that, if you were unhappy with this communication through the Internet, under the free trade agreement there is an attempt to provide conditions on it that I think most people would support.

Senator ALLISON (Victoria) (6.06 p.m.)—If we cannot prevent advertising on the Internet, how can we impose conditions? Aren’t they just as difficult to regulate as the advertising itself?

Senator HILL (South Australia—Minister for Defence) (6.06 p.m.)—I guess we all know that there are very considerable difficulties in regulating communications on the Internet. The Senate has addressed that issue before in different contexts; nevertheless, the agreement provides that, if this were to occur, there is an obligation on the states to ensure that what is being communicated is truthful, as well as the other conditions that I have mentioned. How effective the states will be in doing that is really another issue.

Senator ALLISON (Victoria) (6.07 p.m.)—I would like to clarify that answer. Minister, are you saying that the states will take action against US pharmaceutical companies that advertise on the Internet and that they will make sure they comply with those regulations?

Senator HILL (South Australia—Minister for Defence) (6.08 p.m.)—I am not sure why I am reading something that Senator Allison can just as effectively read. If a party is to allow it, it seems to me that it is to be on the basis that the information is truthful and not misleading et cetera.

Senator ALLISON (Victoria) (6.08 p.m.)—I would like to ask some questions about the independent review. Who will be involved in determining what material is to be kept confidential in the review process? What sort of criteria will be used to determine what material needs to be kept confidential?

Senator HILL (South Australia—Minister for Defence) (6.09 p.m.)—We are off the Senate amendment and back onto the review process. The company will presumably argue that certain information is com-
commercial-in-confidence. Until I get better advice, I think it would be the reviewer who would make judgment upon that, the independent expert conducting the review; but I would like my officials to reflect on that. I might need to modify my answer later.

Senator ALLISON (Victoria) (6.10 p.m.)—Again on the review, why is it only recommended, not mandated, that the convenor of the review process ensures that the nominated reviewer of an application does not have a conflict of interest?

Senator HILL (South Australia—Minister for Defence) (6.11 p.m.)—I would be very confident that the appointed independent reviewer would not be one who had a conflict of interest.

Senator Allison—So why not mandate it instead of only recommending it?

Senator HILL—You can mandate; you can write another text three times the length, if you like, but you do not necessarily write everything that is obvious.

Senator ALLISON (Victoria) (6.11 p.m.)—As I understand it, in terms of the selection of expert members as part of that review, the disciplines that are mentioned do not include public health. Can an explanation be provided as to why that would be the case, given the public health interest in the PBS?

The TEMPORARY CHAIRMAN (Senator Brandis)—I am sorry, Senator Allison, the minister was distracted. Do you want to ask your question again?

Senator ALLISON—The question was; in terms of the selection of expert members to the panel as part of that independent review, why does the list of relevant disciplines in which those members could have expertise not include public health?

Senator HILL (South Australia—Minister for Defence) (6.12 p.m.)—I am told that Senator Allison is jumping the gun and that these decisions have not yet been made.

Senator NETTLE (New South Wales) (6.13 p.m.)—I want to ask some questions about another area of the free trade agreement that will undermine the Pharmaceutical Benefits Scheme—that is, the medicines working group. Minister, can you provide to us any terms of reference that will exist for the medicines working group?

Senator HILL (South Australia—Minister for Defence) (6.13 p.m.)—I understand there is a consultation working group and that there are materials in relation to it on the web site of the Department of Health and Ageing. As Senator Nettle would know, the agreement makes reference to the medicines working group, that the parties agree to establish the group, and it sets out the objective, which is to ‘promote discussion and mutual understanding of the issues’. It says:

(c) The Working Group shall comprise officials of federal government agencies responsible for federal healthcare programs and other appropriate federal government officials.

I gather there is a process in place that is being led by the department of health on the Australian side to work out exactly how this will operate in practice.

Senator NETTLE (New South Wales) (6.14 p.m.)—Minister, can you inform the chamber of the time frame for determining how this will work? We are considering the enabling legislation for the free trade agreement and this is a significant component of the free trade agreement. It appears we are being expected to pass legislation whilst an ongoing process is occurring on how the implementation of this component of the free trade agreement will occur.

Senator HILL (South Australia—Minister for Defence) (6.15 p.m.)—I am told that Minister Abbott has already published a statement that the working group will in-
clude representatives of the PBAC, industry and consumers. The timeline that I understand they are working towards is September.

Senator NETTLE (New South Wales) (6.15 p.m.)—So the working group comprises members of the PBAC, Medicines Australia, the industry lobby group and a consumer representative. The document has called for comments to be presented to the Department of Health and Ageing by 20 August 2004. I am wondering why we are being asked to pass this free trade agreement before the date for determining how the implementation of this process, as a part of the trade agreement, is going to occur. We are still eight days away from the department’s deadline for receiving comment about how this committee under the US-Australia free trade agreement might operate. What is the rationale for having the vote eight days before comments are even received from the public about how the process of implementing the agreement will occur?

Senator HILL (South Australia—Minister for Defence) (6.17 p.m.)—I think the answer is that there are probably a lot of implementation processes that still lie ahead. That is not at all surprising. You negotiate a framework agreement, you negotiate implementation legislation and each party has to consider the other’s implementation. You move ultimately to bring the agreement into effect. I have not counted them, but I suspect there are many different bodies that are established to facilitate the operation of the agreement. I do not find that surprising at all.

Senator NETTLE (New South Wales) (6.18 p.m.)—I thank the minister for his answer. I suspect that you are right, Minister. I suspect that there are more and more. As we go through each of the different areas of the trade agreement, we find extra parliamentary committees that have been set up to make decisions about the implementation of the trade agreement for which terms of reference, membership and processes for public involvement have not been set. These are all for committees far outside the process, the scope, the ambit, the claim, the review of the Senate and the parliament.

Senator Hill—But not outside the scope of the agreement.

Senator NETTLE—No, they are part of the agreement. They are part of the agreement, which includes a large number of committees which sit outside of the scope of this parliament, to which the executive appoints a number of individuals who make decisions about how the agreement is implemented both in Australia and overseas. I agree that this trade agreement does that and provides that opportunity to the executive government to determine how the trade agreement will be implemented; this is another example of that. It is not something the Greens are supportive of. That is why we have had a series of amendments to try to bring that scrutiny, that sovereignty for decision making about our laws and agreements that have been made and implemented, back into the parliamentary process. This is another example of that and we are not supportive of it.

The TEMPORARY CHAIRMAN (Senator Brandis)—The question is that Australian Greens’ amendments (1) and (2) on sheet 4384 to opposition amendment (2) on sheet 4371 be agreed to.

Question negatived.

The CHAIRMAN—The question is that opposition amendments (1) to (4) on sheet 4371 be agreed to.

The committee divided. [6.24 p.m.]
(The Chairman—Senator J.J. Hogg)
Ayes…………  47
Noes……….. 6
Majority……  41

AYES
Barnett, G.  Bishop, T.M.
Brandis, G.H. Brown, B.J.
Buckland, G.  Campbell, H.G.P.
Carr, K.J.  Collins, J.M.A.
Conroy, S.M.  Denman, K.J.
Eggleston, A. *  Evans, C.V.
Ferguson, A.B.  Ferris, J.M.
Fifield, M.P.  Forshaw, M.G.
Harradine, B.  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.  McLucas, J.E.
Moore, C.  Nettle, K.
O’Brien, K.W.K.  Payne, M.A.
Ray, R.F.  Santoro, S.
Scullion, N.G.  Stephens, U.
Tchen, T.  Troeth, J.M.
Watson, J.O.W.  Webber, R.
Wong, P.

NOES
Allison, L.F. *  Cherry, J.C.
Greig, B.  Murray, A.J.M.
Ridgeway, A.D.  Stott Despoja, N.

* denotes teller

Question agreed to.

Sitting suspended from 6.28 p.m. to 7.30 p.m.

Senator ALLISON (Victoria) (7.30 p.m.)—The Democrats oppose schedule 7 in the following terms:
(13) Schedule 7, page 80 (line 2) to page 83 (line 12), to be opposed.

Amendment (13) effectively takes out schedule 7. Schedule 7, as we know, brings in a new certification scheme in which generic manufacturers must either certify that they will not infringe a patent or certify that they have notified the patent holder of their intention to market a drug. While this does not in and of itself delay the introduction of generic medications, we argue that it is likely to do so by deterring generic manufacturers from bringing the drug onto the market until all potential litigations have been dealt with. Our amendment simply strikes out all of the changes being proposed by the government and maintains the status quo.

We are essentially arguing with this amendment that we do not want to see any changes put in place as a result of the free trade agreement. Overall there are about 50 provisions within the legislation, not all of which are caught up with this legislation, that we say undermine the capacity of the Australian government to determine which drugs will be put on the PBS and which drugs can come off patent and be replaced by generics, and that undermine the capacity to promote affordability in drugs that are on the Pharmaceutical Benefits Scheme. So we see no reason whatsoever for this schedule. There are some arguments for transparency for this and that but we see no arguments at all that suggest that this is in our interests. We maintain the argument that changes to the PBS have been used as a trade-off for other changes under the free trade agreement, which may or may not be beneficial. Of course, there is certainly no agreement one way or the other on that.

We would rather not be dealing with any legislation relating to the PBS in this environment. There are unknown implications for our health system. The PBS should never have been on the table as part of a trade deal. The government promised us it would not be. It turned out to be. This amendment would effectively remove that important provision, as I said, which requires generic manufacturers to certify that they will not infringe a patent or certify that they have
notified the patent holder of their intention to market a drug.

It is pretty obvious that the pharmaceutical manufacturers very much want this. They have been talking about these kinds of amendments for a long time. It is obvious that they will put in place measures to try to delay so-called evergreening—to try to delay the generic brand coming on stream. It must be the case that this provision would give the pharmaceutical companies some advantage. I would be really appreciative of the minister giving us assurances that there will be absolutely no disadvantage to Australia from this provision. But I doubt he can do that. Until we are satisfied that this is the case, the Democrats are not interested in supporting schedule 7.

Senator HILL (South Australia—Minister for Defence) (7.34 p.m.)—We have been debating these issues at length under other amendments and in our general discussion of both the implementation bill and the agreement itself. The issue raised by Senator Allison is: are generics disadvantaged under the implementation provisions? We have said that we sought to ensure that generics would not be disadvantaged. In fact, we are very supportive of the growth of generics. Earlier today I outlined to the chamber the extent of that growth in recent years, the benefits of that growth in keeping prices down and also specific initiatives that the government has taken in recent years to assist the growth of generics. I would argue that that establishes a background of a government that is very committed to this sector. That is not surprising because the PBS system is a government subsidy system and a very expensive one. We have had long and difficult debates on that issue in other circumstances in the Senate in the last few years. It is obvious that it is in the interests of government to maintain a downward pressure on costs.

To that background, we put to the chamber again that we went into this negotiation with a determination to protect the generic sector. We believe we have achieved that. When you look at what is required of that part of the sector, you see that it is not in any way onerous and, I would suggest, not in any way unreasonable. To be required to certify that the applicant does not propose to market therapeutic goods in circumstances that would involve infringement of a patent or to certify that the applicant does not propose to market the therapeutic good before the expiry of a patent is certainly not unreasonable. That the applicant has notified the patentee about its application to include goods in the register does not seem to me to be in any way unreasonable either. It is simply ensuring that the proper information is given and the relevant administrative authority has the information before it in order to process the application.

Senator Allison asks me whether I can assure the chamber. I repeat: the government is confident that these provisions do not in any way prejudice a growth in this part of the sector, that that growth will continue and that those medicines will benefit Australian consumers. Basically, that is what the PBS is all about and it is that system that we designated as a no-go zone from the start of these negotiations.

Senator ALLISON (Victoria) (7.39 p.m.)—I would be grateful if the minister could explain exactly how this works to benefit Australian consumers.

Senator HILL (South Australia—Minister for Defence) (7.39 p.m.)—It ultimately benefits consumers in that it contributes to a more open system, one where special interests cannot be hidden, where full information is on the table and where the regulatory authorities are therefore best able to carry out their tasks in an effective way.
So you cannot argue that there is a specific dollar benefit; rather, you look at the ultimate effect of the provision that is put in place. Our argument in trying to deliver a system that is more transparent and accountable is that it has to be in the public interest.

Senator ALLISON (Victoria) (7.40 p.m.)—Perhaps the minister can take advice about examples where this advice might have been useful had it been available to the body doing the decision making. How is this useful to us as opposed to the United States pharmaceutical companies? That is the gist of my question. You say that the transparency helps the decision-making body to make the right decisions. Can we have examples of where, in the past, under the current arrangements, that has been a problem? How is that a problem for us now that can be overcome by this measure? How will we be better off?

Senator HILL (South Australia—Minister for Defence) (7.41 p.m.)—I cannot provide an answer in the terms that Senator Allison is seeking, but a system that is more transparent, that better reflects and that in a fair way recognises the interests of both parties—a patent holder and an applicant seeking to have a generic medicine registered—and that has within it greater accountability has to be in the public interest.

I made the point that I do not think the Democrats are prepared to accept—it certainly seems to me to be valid—that if we are talking about the bottom line being quality medicines at fair and affordable prices, we have an interest in encouraging both the pharmaceutical companies that are prepared to invest huge sums of money in new products whilst at the same time also encouraging those who are prepared to promote generic alternatives. Looking at the trend of the PBS in recent years, it seems to me that that has been basically heading in the right direction. Whether there will be a net benefit with the adoption of these amendments is difficult to say. I could try to develop an argument to suggest that there might be, but the test will be over time. However, I cannot see how the argument about what is unreasonable about it and how that could be translated into higher prices stands up at all.

Senator ALLISON (Victoria) (7.43 p.m.)—Why is it that this is just about generics? Why did Australia not negotiate as part of the agreement for, say, pharmaceutical companies to give notice prior to bringing in a new so-called ‘innovative’ drug—the so-called ‘me-too’ drugs where they change a molecule here or there or do a minor modification to that pharmaceutical—and claiming that it requires a new patent? Typically this happens at the end of a patent period. The pharmaceutical companies say, ‘This is coming off patent so we’ll create a new one which is just like the old one, except that we can argue under the patent laws that this is different.’ As I understand it, the majority of cases which come before our courts are related to the question: why was there not a requirement that any company whose drug was coming close to the end of the patent would need to advise whoever might be interested in the fact that they intended to replace that with a me-too type drug?

Senator HILL (South Australia—Minister for Defence) (7.45 p.m.)—This is moving away from the provisions that are included within the implementation bill and referring back to the effectiveness of Australia’s existing patent law, which is another debate we have had, and in effect expressing a concern that the experiences that have occurred in the United States under their law might translate to Australia. The best advice that we have is that that is simply not going to occur, largely because of the differences in law that does not facilitate it in this country and in the administration of the Patents Act.
In the circumstances that Senator Allison outlined, a new patent would simply not be given. Furthermore, under our legal system you do not have the same opportunity to hold up a generic whilst you debate it within the patent registration system. As I said, even the Labor Party after a week of agony have come to the conclusion that the Australian patent system is sound and that the sorts of abuses that Senator Allison outlined have not occurred historically within this country and are not going to occur under existing law.

Senator ALLISON (Victoria) (7.46 p.m.)—Minister, there are cases right now on this very subject in our courts. As I referred to earlier, the Clayton Utz paper—which was circulated to most senators a few days ago—demonstrates that this is precisely what the current arguments are. To suggest that there is no so-called ‘evergreening’ in this country already is quite false. It has already been established that these are the kinds of cases that are currently out there. I do not think you are able to assure us at all that this is not simply going to make it easier for those pharmaceutical companies to keep generics out of the scene. I would have to say that it is not very convincing. The reference in this document says:

Most of the Australian patent action in 2003—and there has been quite a lot—has been in connection with the introduction of bio-equivalent generic pharmaceuticals in challenge to the monopolies which are guarded jealously by the innovator pharmaceutical companies. In this regard, the Federal Court currently has litigation before it concerning omeprazole, paroxetine, epirubasin and other products. The "generic v big pharma" battles are very interesting because it remains to be seen whether Australian courts will follow the very firm lead given by the UK courts which are now effectively obliging generics entering the market to obtain declarations of non-infringement and/or challenge the big pharma patents before launching their products.

That last sentence seems to be precisely what this legislation is doing—to oblige the generics entering the market to obtain declarations of non-infringement. That seems to me to be going down the path of accommodating big pharmaceutical companies. The report goes on to say:

The power of the big pharmas is seen as well in the current free trade agreement negotiations between Australia and the US which involve the US seeking major concessions from Australia with respect to access to the Australian market ...

I repeat: major concessions with respect to access to the Australian market for US pharmaceutical companies. The report continues:

This is not some radical lobby group. This report was prepared by Clayton Utz, who do a great deal of work in intellectual property law and who did this analysis last year. That is what they say; I am not making it up. It is not as if the Democrats or the Greens or anyone else are imagining that this is a possibility. It is coming from academics, as we have already said. It is coming from lawyers and people who work in this field. It is certainly coming from advocacy groups, who are very worried about it. It is not coming so much from the generic manufacturers because, as we all know, they are mostly owned by the pharmaceutical companies. I think it is a real concern, Minister, and I do not know that you have satisfied us that it is not a problem.

Senator BROWN (Tasmania) (7.50 p.m.)—The Prime Minister this morning said: ‘No Prime Minister in his right mind would agree to any agreement which weakend the PBS.’ It is one of the most thought-provoking statements from the Prime Minister in a long while. That being so, one has to ask: what on earth is the PBS
doing on the ER table for the free trade agreement? What is it doing there at all? The best way to make it safe is to keep pharmaceuticals outside the reach of the free trade agreement. In fact that is the only way you can say that there is not going to be a change that might weaken the Pharmaceutical Benefits Scheme.

It was a classic statement from the Prime Minister who is so adept at saying: ‘Trust me. I’m making a decision for the nation. He’s got weapons of mass destruction,’ and, ‘Boat people could be terrorists and they throw their children overboard.’ In this case, he is saying: ‘The Pharmaceutical Benefits Scheme is totally safe because I say so. But I’ve put it into the reach of the free trade agreement, just the same.’ That is daft. I do not believe it. Millions more, I suspect, do not believe it either and will not when they see the results of this free trade agreement. The Democrats and the Greens have said: ‘Let’s make sure. Let’s take the Therapeutic Goods Administration amendments out of the reach of the free trade agreement.’ That action would achieve what the Prime Minister has assured us is the case anyway, but it would make it totally safe.

The opposition is going to join the government in voting down the Democrats’ and the Greens’ amendments. Why is that? The drug corporations have more than the Pharmaceutical Benefits Scheme in mind. They have a couple of countries now opened to them for maximising their profit lines, and they are amongst the most profitable—if not the most profitable—industry in the United States because they rip the tripe out of the wallets and purses of people who are sick. They charge three to four times the prices that people in Australia pay now for major drugs for curing or offsetting cancer and for treating chest disease, heart disease, arthritis and a whole range of other illnesses. That is not ethical or humanitarian; it is all about making big dollars.

One of the worries these companies have, of course, is the Australian Pharmaceutical Benefits Scheme which is about delivering affordable medicines to people who have those diseases. Instead of making those sick folk feel safe by saying, ‘The Pharmaceutical Benefits Scheme is out of the reach of the free trade agreement’—a very simple thing to do—the Prime Minister left it right in there. The Labor Party has decided to leave it right in there too. The Democrats and the Greens—and I guarantee One Nation, as well—would take it right out, but we do not have the numbers. It is not going to be much good coming back a bit later and saying, ‘The Prime Minister proved that he was not of right mind back in 2004’—waiting for this example to come true. I do not think the Prime Minister is in a right-thinking frame of mind in putting Australia under the thrall of this free trade agreement. But he just loves it. It does his heart good to be promoting trade in this way, at the expense of all the other values that are being sold out at the same time. Unfortunately, the Labor Party is going to support it.

This is a critical amendment. It would protect our Pharmaceutical Benefits Scheme 100 per cent—we would not have to trust somebody’s word or work out whether somebody was of sound or right mind by putting the PBS into this threatened zone. Unfortunately, we will have to wait to find out and, if the Prime Minister is shown not to have been in his right mind when he did this, it will be too late. We will not be able to back out. The question is: is the Labor Party in its right mind or will it vote down the amendment from the Democrats and the Greens? We are about to see.

Senator NETTLE (New South Wales) (7.56 p.m.)—Before the suspension of the
sitting for dinner I asked the minister a question about the legal status of advertising directly to consumers via the Internet. I have just gone on to the Therapeutic Goods Administration web site, and it indicates that advertising directly to consumers is not permitted, and that is also stated in a media release by the National Prescribing Service. I flag that as something that the minister could check and get back to us with an answer, or a clarification if needed.

Senator Hill—That’s what I said.

Senator Nettle—I remember the minister said that currently you can advertise directly to consumers via the Internet.

Senator Hill—Via the Internet you can, but not otherwise.

Senator Nettle—The Therapeutic Goods Administration web site says:

Advertising direct to consumers is not permitted (prohibited by the Act).

The caveat that the minister provided in his answer before was ‘except via the Internet’, so I seek clarification. Also, a media release from the National Prescribing Service mentions an article in the journal Australian Prescriber which says:

... advertising of prescription drugs to the general public is illegal ...

So I seek clarification on that.

Senator Hill (South Australia—Minister for Defence) (7.58 p.m.)—If Senator Nettle wants me to, I will get out the principal act and read the provision, but I am assured that the provision says that advertising to consumers is not permitted; it is prohibited. What is being said is that advertising on the Internet is not advertising directly to consumers.

Senator Nettle—Ha, ha!

Senator Hill—It is a question of interpretation. You do not have to believe me.

Senator Nettle—That’s why I want to find out.

Senator Hill—If you just want to laugh about it, you can laugh and go and read the act yourself.

Senator Nettle (New South Wales) (7.59 p.m.)—That is why I am asking the minister to confirm for me where in the act it says that it is okay to advertise directly to consumers via the Internet. When I look at the Therapeutic Goods Administration web site, it says you cannot advertise directly. It is an absolutely spurious argument to say that putting information on the Internet is not making it available to consumers. That is an absurd argument—to say that you cannot advertise, but if you do it on the Internet it is not advertising. That is ridiculous. If you can find where it says that in the act, sure, I will check it out.

Senator Brown (Tasmania) (8.00 p.m.)—If this parliament wants to legislate next year to knock out indirect advertising on the Internet, do we say this applies to everybody except American companies? We would be able to do it then, wouldn’t we? But if we say that it applies to US companies, we are infringing their right to flog their drugs on the Internet. It would be good to get an answer from the minister on that.

Senator Harris (Queensland) (8.00 p.m.)—I seek some clarification from Senator Hill as to schedule 7. The section in the government’s bill, as it is intended to substitute it, says:

(3) If:
(a) the therapeutic goods are therapeutic devices; and
(b) the evaluation of the goods for registration has been completed;
the Secretary must:
(c) notify the applicant in writing of his or her decision on the evaluation within 28 days of the making of the decision and, in the case of a deci-
sion not to register the goods, of the reasons for
the decision ... That is repeated through different sections of
the schedule. My question to Senator Hill is this: for the purpose of this legislation, is the
secretary or a delegate of the secretary a pub-
lic servant? I will just clarify it. I am asking
this question: under the Therapeutic Goods
Act 1989, as referred to in schedule 7—are
both the secretary and the delegates of the
secretary public servants for the purposes of
this legislation? In other words, are they pub-
lic servants? Yes or no?

Senator Hill—The secretary of the de-
partment of health is a public servant.

Senator HARRIS—I take it from Senator
Hill’s answer there that the secretary of
health is the person that is mentioned in this
section. I am just seeking clarification. When
we read through the section—and I am now
speaking to subsection 25(3), but on the op-
posite page, under 4A: line 5 on page 81—
we have these words:

(4A) Civil proceedings do not lie against the
Secretary (or a delegate of the Secretary) in re-
spect of loss, damage or injury of any kind suf-
fered by another person as a result of the Secre-
tary (or the delegate) including therapeutic goods
in the Register in reliance on a certificate required
under subsection 26B(1).

I take that to read that the government sees
the necessity to protect the secretary or a
delegate from civil proceedings in relation to
the issuing or the declining as a result of the
evaluation process. That is why I directed my
question ‘are they a public servant?’ to Sena-
tor Hill. Why would you have to protect a
public servant from civil action when they
would have statutory immunity?

Senator HILL (South Australia—
Minister for Defence) (8.05 p.m.)—The an-
swer is that this relates to a certificate which
is the certificate of another party. It is the
certificate of the applicant. What the provi-
sion says is that you cannot therefore hold
the secretary or the delegate—the secretary’s
representative—responsible for the content
of the certificate. It is not an action of the
secretary that is being judged. Senator Harris
might say to me that he would find it diffi-
cult to see how an action might lie against
the secretary for the content of a certificate
which clearly under the act the secretary has
not developed, and he might have a reason-
able argument there. But I therefore assume
that this is to remove any risk associated
with that matter—any possibility, even if that
possibility is slight.

Senator HARRIS (Queensland) (8.06
p.m.)—I understand what Senator Hill has
conveyed in his answer: the government’s
position is that they are indemnifying the
secretary from any civil proceeding that
would result from the issuing of a certificate.
If a public servant has done something mani-
festly wrong—and I am trying to think of an
example that would be applicable here—
such as agreeing to issue something that is so
profoundly against sound science, I could
understand somebody mounting a charge,
and that what the secretary or a delegate had
done was so manifestly wrong that they
would lose their statutory immunity. But my
understanding is that our public servants, in
the duties that they carry out, are protected
by statutory immunity. I am absolutely
amazed to find that in the proposed amend-
ment the government feel that they need to
protect them from civil proceedings of any
sort.

If the secretary or a delegate granted a cer-
tificate, and some time in the future a drug—for
example, thalidomide—was found to
have an adverse effect, the public servant
would automatically be covered by statutory
immunity. Why do we have to write into the
act an indemnity against civil proceedings?
is there something in the FTA that, all of a
sudden, has the potential to expose our public servants to civil proceedings?

Senator Hill (South Australia—Minister for Defence) (8.09 p.m.)—As I understand it, the certificate does not warrant the quality of the product. So I think the reference that the honourable senator just made is inappropriate. This is a certificate as to whether there is an existing patent or otherwise. The protection for the public servant in this provision seems to me to go beyond statutory immunity in that the section simply says:

Civil proceedings do not lie …

Why does it go that far? It is because the certificate that is referred to is not the certificate of the secretary. As I said to Senator Harris, I find it hard to imagine how you could found an action anyway. If this is simply reinforcing what seems to be obvious, there must have been somebody involved in the process that was—Senator Harris might think, and I might agree with him—unduly nervous. Nevertheless, it therefore does not seem to me to be something to be particularly concerned about. If it reinforces what seems to be obvious then it hardly seems worth objecting to.

Senator Harris (Queensland) (8.11 p.m.)—I agree with what Senator Hill is saying that, yes, in the normal sense of the procedure that indemnity should be there. The concern that I have is: if somebody is unduly nervous, is it because there is something in the free trade agreement that exposes those public servants? If that were the case then I, like the public servants, would be quite nervous. If Senator Hill tells us that there is nothing in the FTA that reverses any of the statutory immunity then, yes, it is an excess. I am not saying that you should take it out; I am just questioning why it is there. What is the necessity for putting it in there?

Question put:

That schedule 7, as amended, stand as printed.
The committee divided. [8.16 p.m.]

(The Chairman—Senator J.J. Hogg)

Ayes…………… 43
Noes…………… 8
Majority……… 35

AYES

Barnett, G.    Bishop, T.M.
Boswell, R.L.D.    Brandis, G.H.
Buckland, G.    Campbell, G.
Carr, K.J.    Chapman, H.G.P.
Colbeck, R.    Collins, J.M.A.
Conroy, S.M.    Eggleston, A. *
Evans, C.V.    Faulkner, J.P.
Ferguson, A.B.    Ferris, J.M.
Fifield, M.P.    Forsyth, M.G.
Harris, L.    Hill, R.M.
Hogg, J.J.    Humphries, G.
Hutchins, S.P.    Johnston, D.
Kirk, L.    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.    Payne, M.A.
Ray, R.F.    Scullion, N.G.
Stephens, U.    Tchen, T.
Watson, J.O.W.    Webber, R.
Wong, P.  

NOES

Allison, L.F. *    Bartlett, A.J.J.
Brown, B.J.    Cherry, J.C.
Greig, B.    Murray, A.J.M.
Nettle, K.    Ridgeway, A.D.

* denotes teller

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Marshall)—The question is that schedule 9 stand as printed.

Senator Lundy (Australian Capital Territory) (8.20 p.m.)—Schedule 9 relates to the Patents Act 1990. I want to put several questions to the minister. First of all, the schedule describes several amendments and I want some clarification from the minister. Evi-
vidence to the Senate inquiry into the change to the Patents Act in Australia varied widely. It seems that there have been some quite broad commitments from the Department of Foreign Affairs and Trade with respect to the flexibility retained by the Australian government in the implementation of the changes to the Patents Act and general issues. I would like the minister to outline very specifically, and build on the description contained in the explanatory memorandum, the actual effect of schedule 9 on patents, particularly software patents.

I mention software patents in particular because, in all of the evidence collected through the Senate inquiry, this was an area of genuine concern. Indeed, it has been the attention of columnist Ross Gittins, who has spent quite a bit of time putting together some column inches on the issue of concern about software patents. The general fear in the software community relates to the harmonisation of the intellectual property regime—harmonisation in the sense that in the US there are a number of different types of patents that are allowable, including business process patents. The concern in the software community relates to the harmonisation of the intellectual property regime—harmonisation in the sense that in the US there are a number of different types of patents that are allowable, including business process patents. The concern in the software community is that this type of patent will become more prevalent in Australia.

The types of patents that have caused most concern are the very generalised business process patents, patents that include the look and feel of web sites and so forth, and patents that pick up what you would describe as generic sequences of coding in software applications that could create new vulnerabilities for software coders in Australia. The sorts of new vulnerabilities that were articulated through the Senate inquiry include things that open source software coders believe will make them more vulnerable to increasing litigation. I will refer to some comments by Mr Henry Ergas, the former Chair of the Intellectual Property and Competition Committee, contained in the Senate inquiry report. He states:

The FTA foreshadows further “harmonisation” in patent law, which most likely means future increases in patent protection.

He goes on to say:

Ironically, while Australia is being obliged to adopt IP laws that can disproportionately favour producer interests, US policy-makers have taken a more critical stance on their IP laws. Late last year, the US Federal Trade Commission (the US counterpart to the ACCC) released a report on the proper balance between competition and patent laws.

The FTC report, which follows a three-year investigation, highlighted the anti-competitive effects of two emerging problems in the US, namely the granting—

and this is the key point—

of excessively broad patents, that is, those that cover an excessively wide range of follow-on activities, and the granting of too many trivial patents.

He makes the following summation:

... these misapplications of patent law can have an adverse effect on innovation ...

and so forth. In the evidence of the inquiry, the Department of Foreign Affairs and Trade came back with a denial that the sentiment about harmonisation in the free trade agreement would lead to this outcome. The committee heard quite conflicting evidence, and what I am really seeking from the minister is very specific clarification on patent law and how it is likely to affect, and how the government anticipates it will affect, the applications of software patents and the software patent regime generally. It is worth quoting DFAT’s response to this. The committee report states:

The free trade agreement does not change in any way the scope of what we currently consider to be patentable or what would be patented in Australia. We currently allow patents for software, and there will be no change to that. We are not being re-
quired to take a United States approach in relation to that type of patent, so I do not think that that concern is well founded. It will be business as usual for IP Australia in terms of granting patents. That particular reference comes from DFAT official Toni Harmer.

Labor are particularly concerned about this. Hence, in our response and statement relating to the free trade agreement, we have expressed the view that this is an area where we need to keep a close watching brief. If there is evidence that the patent law, particularly relating to software patents and its impact on open source, is being used and abused in an anticompetitive way, then we clearly have a problem. That is why establishing a Senate select committee on intellectual property, which will comprehensively investigate and make recommendations for an appropriate IP regime for Australia in light of the significant changes required to IP law by the AUSFTA, is such a critical element of Labor’s policy response to this agreement. Minister, I put those questions to you. There are many other witnesses I can refer to—Mr Russell and Mr Scott; I have mentioned Mr Ergas—who have made quite strong points about their fear for increased litigation based on the harmonisation goal that is so firmly expressed in the agreement. I am very interested in your response to that problem.

Senator HILL (South Australia—Minister for Defence) (8.28 p.m.)—I will have a go, but I actually thought Labor was supporting those provisions. Senator Lundy refers to detailed submissions that have been made on these issues, and it seems to me the more appropriate time to test both sides of the argument would have been across the table in either of the two committees that considered these matters at length. I am told that harmonisation is not actually referred to in the free trade agreement, and it is not totally clear to me whether Senator Lundy is referring to the patent or the copyright system.

Senator Lundy—Patent.

Senator HILL—If Senator Lundy is talking about patents, as I understand it there is a concern in the United States that the test is a lot less demanding than the test in Australia. But I am advised that what is being done through the implementation of this agreement does not change the Australian test in that regard. That is correct, the expert tells me. I accept that these interest groups have a genuine concern or they would not be making their point, but the advice we have is that in the application of the Australian patent law there is not a real concern in that regard and this agreement will not alter that. With respect to Senator Lundy’s goal, which I presume is to ensure that the patenting of this software or the processes within the software is not unduly restrictive, my advice is that there is no real concern in that regard. If she wants to explain to me the basis of her concern, I will get people to work on it; however, these people have been wrestling with these issues now for a very long time and that is their view.

Senator LUNDY (Australian Capital Territory) (8.31 p.m.)—My reading of the agreement is that the Patents Act is not overly amended and it does not introduce the sorts of changes needed to meet their expressed concerns. I am seeking from you an assurance that that is the case and that the government does not expect that increased litigation is likely. I place on the record Labor’s firm position that we will keep a watching brief on this issue, through the Senate select committee process that we propose, to ensure that any changes in the treatment of the management of patents in the software area are not used for anticompetitive purposes or for the exercise of selective enforcement with teams of lawyers, which
was one of the views collected in the evidence of the inquiry. I think the minister has confirmed that. If he has any other comments, so be it. I do have some comments on copyright, which I would like to make later.

Senator HILL (South Australia—Minister for Defence) (8.32 p.m.)—The advice I have is that, on this issue, our patents law is not affected by the agreement or by the implementation bill. The closer alignment that is sought in some areas does not relate to this particular issue.

Senator RIDGEWAY (New South Wales) (8.32 p.m.)—The Democrats oppose schedule 9 in the following terms:

(15) Schedule 9, page 85 (line 2) to page 163 (line 27), to be opposed.

I want to talk about schedule 9 because the issue of intellectual property, in chapter 17 of the free trade agreement, is possibly the most neglected part of the debate. Whilst there have been various views put forward by various stakeholders and experts in the various committees that have met, the result is that, because the focus has been on the PBS and Australian cultural content, the most far-reaching chapter of the free trade agreement has been pretty much neglected.

Whilst the Labor Party in opposition have said that they would look at putting into place a Senate select committee on intellectual property if they got into government, this really is an issue for a separate inquiry because it has far-reaching consequences. If anything, the agreement either pre-empts or directly contradicts current Australian debate about appropriate reform to our copyright law, particularly in terms of proposed changes to Australian law that go further than what the free trade agreement currently offers and, in some instances, further than current US copyright law. So chapter 17 of the agreement is potentially one of the most significant, with what I would regard as the most far-reaching reforms. It will have a direct and serious impact on Australian innovative industries.

Some of the changes, such as the ratification of the World Intellectual Property Organisation treaties, are positive reforms but there are aspects of the chapter that deal with the extension of the copyright term, anticircumvention devices and the liability of Internet service providers with respect to copyright infringement, which I think are very dangerous developments. Quite frankly, the government does need to provide some answers in respect of that chapter.

Senator Lundy referred to yesterday’s article by Ross Gittins. I thought it was an excellent piece. He stated that a primary objective of the US government’s trade policy has long been to make the world a more congenial place for US exporters of intellectual property. In many respects, the US is trying to get other countries to harmonise their IP laws with US laws. The end result is that we will be policemen prosecuting citizens who pirate American intellectual property and enhancing the ability of US companies to protect their rights in other countries’ courts. As Ross Gittins pointed out, this is all very well for the Americans but it offers little benefit to us—just costs. He asked why, and mostly it is because we are a heavy net importer of intellectual property and we have to bear the cost as a result.

The section dealing with intellectual property is the longest chapter in the agreement. I think it presents us with a puzzle because our government has repeatedly assured us that it has given the Americans little of any value so there is nothing for us to worry about, but when you listen to US politicians and lobby groups you hear them say that they are well pleased with the precedent that our deal sets for the many free trade agreements the US intends to reach with other countries. I ask
how this particular conundrum can be resolved, because in many respects I think we have aided and abetted the United States in extending its capacity to reach into other countries to run, if you like, the IP market for the entire world, and to do that in such a way that the laws of the other countries, or the way in which they operate, will be to the benefit of America because we will all become IP outposts for US IP holders, IT companies and so on.

What our government is talking about now is what the Americans are thinking for the future, and there is something in that. For example, we do not know what the future will be like when it comes to the media landscape and we are accepting amendments to our system through the free trade agreement that will have an impact that we cannot predict. An analysis has not been done on that, and I would be interested to hear from the minister and certainly from his officials what they believe will be the outcome. I do not believe that anyone can escape the free trade agreement once it is locked in. Kim Weatherall from the University of Melbourne has provided what I believe to be an excellent summary of the impact of the US Free Trade Agreement Implementation Bill. She says that the bill:

makes IP much more complicated than it already was;

makes consumers more likely to be both criminally and civilly liable;

makes consumers liable for copyright infringement when they watch an unauthorised copy of a DVD;

makes our law more protective than US law in key respects;

introduces no measures to mitigate the shift of any copyright balance in favour of copyright owners;

makes no attempt to reduce the costs to society of copyright term extension;

makes no attempt to take into account the recommendations of JSCOT;

And she says further that it makes no attempt to take into account the recommendations of the Senate committee and so on. I think that Ms Weatherall’s strongly held view is that even if the parliament does decide to support the free trade agreement it should not accept this part of the implementation bill. There is a good reason for that because, given that it is the most lengthy part of the free trade agreement, first and foremost, there has been a high degree of a lack of public consultation. When there are such radical and significant changes being proposed to copyright law without public consultation, the government is enacting intellectual property policy by trade agreement. This is one of the arguments that has been raised as part of this debate: we do not get to see the free trade agreement and deal with the specifics of it, and we are certainly not dealing with the full ramifications of the biggest chapter in the free trade agreement—the chapter on intellectual property.

There are many factors in this bill that are unpredictable. There are many things that I imagine could be ironed out through a proper process, and it seems to me that the whole thing is being rushed through. I have to ask the question: to what end? It seems to me that we are meeting an artificially determined deadline, and I again ask whether that is the proper process when it comes to dealing with intellectual property law changes in Australia and also changes to copyright law. This is an unacceptable process in the first instance.

The second reason why the schedule should be opposed is that the FTA goes even further in a couple of areas than the FTA requires. People may ask why that is so and what gains could possibly be had from being even more protective of IP than the United States of America. I ask whether anyone has
read the government report that pointed out that Australia's interests are not served by having stronger IP laws than the internationally accepted standard. I ask whether anyone has looked lately at the balance in intellectual property, because the FTA Implementation Bill goes further and is more protective of IP in several respects than the FTA requires. It narrows some exceptions that used to prevent consumers being liable for copies of performances made at home solely for personal and domestic use—in fact, there is nothing in the FTA that requires this. The bill goes even further than the FTA requires by imposing criminal liability in ways in which the effect is likely to be unpredictable. It also makes it a copyright infringement to play an unauthorised copy of a DVD, for example, or to view, even unknowingly, copyright-infringing material online.

Historically it is the person who makes the unauthorised or pirate copy who infringes the copyright, not the consumer. But the government has stated its intention that copyright should not unduly intrude into the private or domestic sphere. The Senate select committee expressed exactly the same concern. So this result is quite surprising, and I ask the minister to clarify whether the changes will shift the liability from those who infringe copyright more directly—the pirates, if you like—to the consumer. Nowhere in the free trade agreement does it mention that copyright owners must have an electronic use right. I think this idea should be discussed and clarified because it extends the provisions about decoding encrypted satellite broadcasts to all forms of broadcasts, and I understand that includes cable. The third reason why this schedule, and more particularly the bill, should not be supported is that it does not take advantage of the many areas where there is flexibility to introduce exceptions into Australian law. For example, there is nothing in the bill about a fair use provision or about extending exceptions to copyright infringement, despite the fact that it already exists in American copyright law, as I understand it.

The fourth reason concerns performers rights provisions. These are quite remarkable, I have to say, because performers rights in Australian law at the moment are really rights to prevent unauthorised recording of performances and unauthorised distribution of those unauthorised recordings. After the implementation bill, performers will have moral rights in their performances so far as those performances consist of sound and co-ownership of copyright in sound recordings of their performances. In effect, it means that they will not have copyright in films. They will not have moral rights in their performances so far as those performances consist of something other than sound, and for existing recordings the copyright will really only mean a right to get an injunction against infringement by third parties. I will have more to say on that when I come to my later amendments—Nos (16), (22) and (23)—as I think it needs to be debated in more detail.

I think the government realises that there is more in this and that it needs to provide some answers. The concerns being raised by me have also been raised by constituents of mine in the performance and arts sector. The matter has been raised as a result of the Senate select committee process and I believe it has also been raised through JSCOT. In many respects, the implementation bill—I repeat—makes IP much more complicated than it already is. It makes consumers in this country—not the pirates any more—more likely to be both criminally and civilly liable, particularly when it makes consumers liable for copyright infringement for watching an unauthorised copy of a DVD. It makes our law more protective than US law in key respects. It introduces no measures to mitigate the shift of any copyright balance in favour
of copyright owners. It makes no attempt to reduce the cost to society of copyright term extension, which is important when you consider the costs involved for institutions like universities, libraries, schools and so on, and it makes no attempt to take into account the recommendations of the various committees. It seems to me to be a dreadful, short-sighted and irresponsible process that has been gone through.

The argument is that this schedule ought not be included. I cannot understand for a moment why the government would go into this negotiation and set new precedents in a free trade agreement. It is only because they want to aid and abet the United States in spreading its IP tentacles across the world into other countries. That is essentially the effect of it. We will become the IP outpost; we will get out there and police all of this for the United States. They do not need to come here any more. They have institutionalised, if you like, their capacity to do so because we have said that the free trade agreement will allow that. That is a good enough reason, from my perspective, for opposing this schedule. It is another example of where the free trade agreement itself is fundamentally flawed.

**Senator NETTLE (New South Wales)**

(8.47 p.m.)—The Australian Greens have a similar amendment to the Democrats relating to schedule 7 and seek to remove this component from the free trade agreement. Copyright—and intellectual property law more broadly—is always balanced between the rights of owners and producers and the users and consumers of an idea or intellectual creation. Currently, changes to technology, particularly the development of digital technology, are posing challenges to intellectual property regulation.

In Australia, various reviews and consultations have been under way for some time on how to adapt our intellectual property laws to the new environment. These include the Copyright Law Review Committee, the Intellectual Property and Competition Review Committee and the digital agenda review by the law firm Phillips Fox, which reported in January this year. The last time such significant changes were made to copyright law, they took place after three years of consultation with stakeholders, leading to the digital agenda act in 2000. There has been no such level of consultation before the changes set out in schedule 9, despite the bill and the US-Australia free trade agreement reversing some of the policy underpinning the act. We need to evolve laws carefully so as not to upset the delicate balance between producers’ and consumers’ rights. In their submission to the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America, the Council of Australian University Librarians identified concerns such as the balance between copyright owners and copyright users being tipped in favour of owners in the United States and this trade agreement heading in a similar direction.

The process of change is being disrupted and, in some cases, reversed by the changes that have come about as a result of the free trade agreement. The change process in the trade agreement pre-empts the resolution of Australian discussion about how to get the balance right. In fact, the changes to copyright law in this bill undermine this important balance. By adopting the worst aspects of American law, we are undermining the creative potential of many industries and the creative enjoyment and participation of our citizens. The copyright changes outlined in schedule 9 of the bill make copyright more restrictive and penalties and infringements more severe. These are often infringements such as the ordinary, everyday practice of copying and using materials, which we have
become familiar with. The trade agreement emphasises criminal liability rather than civil liability even though a breach of copyright is really a private loss and therefore more amenable to civil redress.

In some areas, the bill implementing the trade agreement actually goes further than required by the trade agreement. For example, this legislation criminalises conduct that results in infringement rather than conduct that is a significant copyright infringement as required by the trade agreement. A tourist returning from Bangkok with a large amount of pirated DVDs could be prosecuted for breaching copyright even though he or she did not intend a breach of copyright; the tourist’s conduct resulted in a copyright infringement but the conduct itself was not a copyright infringement. Currently, copyright exemptions exist for sound recordings made solely for the purpose of the private domestic use of the maker and for indirect sound recording for certain purposes. Under the trade agreement, copyright exemptions for sound recordings will only exist for the purpose of research or study, criticism or review and news reportage.

Under the trade agreement, Internet service providers have increased responsibility for the content of web sites and other Internet services that they host. This creates an enormous responsibility for Internet service providers who can become, as has been seen in the United States, bombarded with copyright demands. In order to take a safe path they err on the side of caution and cut people off from their services, thereby having an impact on free speech.

Some of the changes that we have seen in the United States through the US Digital Millennium Copyright Act are also proposed in this trade agreement—for example, the changes that relate to technology protection measures. Article 17.4(7) of the agreement requires Australia to provide civil and criminal liabilities for the circumvention of TPMs and trafficking in such TPMs, even when such TPMs are not used to infringe copyright. There are serious concerns that, once legislation is introduced, as is required in the next two years, many corporations will use such protections to extend their monopoly control well beyond that of the copyright. The serial monopolies can be used to control accessories associated with a particular product, as was pointed out by Linux Australia’s submission to the Senate select committee. In their submission, they cited Brendan Scott, an Australian intellectual property lawyer, who said:

We are already in a position where it is possible to embed microprocessors onto most manufactured items. Manufacturers in the US have already embedded such processors into garage doors and printers allowing them to control after markets for these products. For example, a printer interrogates the consumable cartridges to determine their origin and if they are from a competitor refuse to operate or, worse, will operate to a lower standard without alerting the consumer. The anti-circumvention provisions will prevent competitors from making functional accessories. You don’t need to be too bright to realize that this will become an increasingly common practice for manufactured items—if you can do it for garage doors, why not tractors?

Over time we will see the emergence of the kinds of serial monopolies (and the attendant price gouging) for product areas that we have seen in the software world. In an attempt to protect the US music industry from market competition what will emerge is a reduction in competition across broad swathes of the economy—whether it’s the farmer who wants a combine harvester to work with their tractor, or the IT manager who wants their PDA to interface with their GPS devices— that is, the intellectual technology manager who wants their personal digital assistant to interface with their global positioning system devices—
Economics tells us we will get increased prices and lower quality in these circumstances.

A range of other examples have also been provided by the Electronic Frontier Foundation, a citizens rights organisation that works in the area of digital technology in the United States. They describe the problem as follows:

Every year numerous illegitimate patent applications make their way through the United States patent examination process without adequate review. The problem is particularly acute in the software and Internet fields where the history of prior inventions ... is widely distributed and poorly documented. As a result, we have seen patents asserted on such simple technologies as:

- One-click online shopping
- Online shopping carts
- The hyperlink
- Video streaming
- Internationalizing domain names
- Pop-up windows
- Targeted banner ads
- Paying with a credit card online
- Framed browsing; and
- Affiliate linking.

The harm these patents cause the public is profound.

Unlike most technologies, software and the Internet have attracted a vast number of small business, non-profit, and individual users—each of whom has adopted and built upon these resources as part of their daily interaction with computers and the online world. From open source programming to online journaling to political campaigning, the average citizen is using new technology online and on her desktop as often as any traditional company.

With this increased visibility, however, comes increased vulnerability. Previously, patent holders have begun to set their sights on the new class of technology users—small organizations and individuals who cannot afford to retain lawyers. Faced with million-dollar legal demands, they have no choice but to capitulate and pay license fees—fees that often fund more threat letters and lawsuits. ...

Illegitimate patents can also threaten free expression. More and more people are using software and Internet technology to express themselves online. Website and blogging tools are increasingly popular. Video and audio streaming technology is ubiquitous. Email and Instant Messaging have reached users of all ages. Yet because patents can be anywhere and everywhere in these technologies, the average user has no way of knowing whether his or her tools are subject to legal threats. Patent owners who claim control over these means of community discourse can threaten anyone who uses them, even for personal non-commercial purposes. We lose much if we allow overreaching patent claims to reduce the tremendous benefits that software and technology bring to freedom of expression.

There are other examples in the United States of companies that are claiming patents over video streaming, sending out a whole variety of legal letters to colleges that are using the video streaming technology to provide distance learning, thereby threatening opportunities for those colleges to provide the education services that they do.

A statement was issued last week in Melbourne by the Open Source Software Industry Association and Linux Australia, warning that the US-Australia free trade agreement posed a grave threat to Australia’s entire software development industry due to the large legal framework on intellectual property rights that are required for adoption within this pact. The spokesperson, Brendan Scott, spoke significantly about the resources that software houses had to resource to be able to obtain patents and the experience of the United States patent laws. He talked about non-trivial pieces of software that contained as many as thousands of codes of
processes and algorisms, each of which could infringe one or many US software patents. The number of insights from industry about their concerns in this area continue endlessly.

Professor Peter Drahos from the Australian National University described it this way in his submission to the inquiry:

Australia’s concessions in the IPR—intellectual property rights—chapter come at a time when there is an emerging view within the US that IPR protection has gone too far. ...

Australia has signed onto a set of US standards in the FTA at a time when there is considerable doubt in the US about the suitability of those standards for a truly dynamic and effective knowledge economy.

The other component of this copyright section of the US-Australia free trade agreement is exemplified and known as the ‘Disney clause’, originally put in place by the United States to protect Disney’s monopoly of the Mickey Mouse image. It has now been exported here, care of the Howard government, with the support of the Labor opposition. The Disney clause, which is in part 6 of schedule 9 of this bill, extends copyright from 50 to 70 years. This will have a huge impact on the rights of universities, libraries and educational and research institutions to have cost-effective access to materials for academic, research and public purposes. They will now pay royalties for an additional 20 years, long after the death of the author, so that big business can continue to profit.

The changes are retrospective, so work still under copyright will have their copyright extended by 20 years. This includes photographs. The impact on photographs is illustrated by an example provided in the Parliamentary Library current issues brief on the issue, which states:

... the extension of the duration of copyright in photographs involves a much greater retrospective extension than is involved for other works under AUSFTA, largely because it is coming from a lower base level. This is well illustrated by the case of Max Dupain, one of Australia’s most famous photographers. Assuming passage of this Bill and Assent by the end of 2004, any photos published by Dupain in 1955 and later will maintain their copyright until 2062, 70 years from Dupain’s death in 1992. Without passage of the Bill, photographs published in 1955 would become available next year. The photographs published before 1955 are already in the public domain and this will not change. For these photographs, this Bill will provide effectively prolong their copyright by 57 years. Under the general extension to copyright, no work or other matter would have its copyright prolonged by more than 20 years.

Philippa Dee of the Australian National University conducted research on the economic impact of the agreement for the Senate select committee. She estimated the potential increased net cost to Australia in royalty payments at $88 million. The Greens are not prepared to impose this burden upon the community. We believe that the most appropriate safeguard that can be put in place is in the form of the proposal that we are debating at the moment to remove this schedule from the bill. This is a way to protect Australian culture, Australian industry and Australian consumers.

Part of the trade agreement, as others have mentioned, was pointed out by Ross Gittins in his article on Wednesday of this week—that is, the significance of this area of the debate and the impact we have seen in the United States, whose primary objective of their trade policy is to make the world a more congenial place for US exporters of intellectual property. As such, we will be proceeding with this proposal to remove schedule 9 from the bill.
Senator RIDGEWAY (New South Wales) (9.01 p.m.)—I have a couple of questions for the minister on copyright extension. With regard to the CIE report that the government has relied on so extensively to support its arguments about the free trade agreement and about why it ought to be passed, the Senate select committee noted that the CIE report did not even address the question of intellectual property and, more particularly, the costs to be borne of additional royalty payments as a result of extending copyright by a further 20 years. I would ask the minister whether or not he is aware of any investigation or review that has been done by the government. I understand that one may have been done by DCITA that looks into the likely impact of the extension of a copyright term by 20 years. Is that publicly available? Is the minister prepared to release any of that information to make it quite clear to the parliament and certainly to the public what the additional costs, which were identified by Dr Dee as part of the Senate select committee process, will be? Quite frankly, they have been overlooked.

Considering that copyright was originally established to encourage education and learning, I would ask whether or not it is a valid argument to extend copyright by a further 20 years and whether or not that is an incentive to be educated and to learn, given that most information does go into the public domain after 50 years. An additional 20 years, taking it up to 70 years after the death of an author or creator, essentially will mean that additional costs will have to be borne by someone. In this particular case, it will be taxpayers in Australia, particularly for libraries, schools and universities. I wonder whether the minister might be able to say whether there has been any analysis done by any government departments or at least by government, or whether it is asking CIE to look at that particular question, because that was completely missed in the CIE report. The government has made very little mention at all of what is the largest chapter in the free trade agreement.

Senator HILL (South Australia—Minister for Defence) (9.04 p.m.)—My advice is that the CIE report did make reference to these matters. In relation to the extension to the copyright term of 20 years, it recognised that in some instances this could impose costs on consumers. It found that these costs are unlikely to be significant and are difficult to quantify. The CIE report also noted that copyright obligations in relation to technological protection measures and Internet service provider liability may impose costs on consumers and Internet service providers respectively, but the costs are impossible to quantify.

The amendments implementing the ISP liability obligations have been done so as to minimise costs for ISPs. You have to look at that specific issue to a background where the outcomes are that the copyright amendments will bring Australia in line with international norms and the practice of the world’s largest IP market whilst preserving Australia’s traditional balance between owners and users. The amendments will benefit Australian exporters by creating a more familiar and certain legal environment, thereby reducing transaction costs, and will help Australian innovators by helping them attract US investment. That is the flipside to the very pessimistic assessment of both the Greens and the Democrats. It demonstrates to our trading partners the benefits of strong intellectual property laws and reinforces Australia’s reputation as one of the world’s leading countries in protecting and enforcing intellectual property rights.

Senator RIDGEWAY (New South Wales) (9.06 p.m.)—I am not surprised by the minister’s response. Whilst he might regard the
views being expressed by the Australian Democrats and certainly by the Australian Greens as pessimistic, I would suggest that they are realistic. I understand that copyright term extension in the free trade agreement was included at the eleventh hour. It was not part of the negotiations to begin with. You may want to address that particular issue—why all of a sudden at the eleventh hour copyright extension was thrown onto the table.

The main advocate was the Motion Picture Association of America. That includes the United States copyright owner group which represents firms such as Walt Disney, Sony Pictures Entertainment, MGM, Paramount Pictures, 20th Century Fox, Universal Studios and Warner Bros. Given the size of this industry and its influence in the United States—which might classically be called ‘Hollywood’—I think there are legitimate concerns in Australia about the effect of a 20-year extension, but, most of all, when you consider the ramifications of the IP chapter in the free trade agreement, quite frankly I think it is leaving our own industry open to being swamped by Hollywood. I do not see the government going out of its way to provide the right sort of support to industry. It may talk about our film industry not producing the right sorts of films but at the same time you cannot deny that we produce world-class actors and technicians. There are many well-known Australians producing what are usually foreign films made on domestic soil.

Concerning the main advocate for copyright term extension, when you consider the group that have been named, I would say that the Democrat amendment is realistic, not pessimistic. It highlights the point that the way in which the government have gone about introducing what is the most extensive chapter in the free trade agreement—with very little input, with very little public consultation and certainly very little debate more broadly with consumers in this country—means that we do have a right to be concerned. Essentially, we are opening ourselves to prey to larger groups and that ought to be a concern to the minister and certainly to the government.

One of the things that it is important to point out on this occasion is that besides the raft of cases that have and are occurring in relation to copyright issues in the United States, the reality is that effectively not only have we agreed to extend by a further 20 years but also we are wearing the cost of that. We also need to keep in mind that we are a net importer of copyright material. If we are importing, there is a cost involved in that as well. When you consider that we are talking about educational and learning institutions, quite frankly is that a cost we are prepared to pass on to schools, libraries, universities and so on? It is appalling that the government have not had a proper debate but, most of all, that they seem to think that this is a pessimistic response. I would say it is very realistic and I think the government are being quite fanciful when they think that everything will be right—that sort of attitude. The reality is that that is not the case.

I daresay your officials would agree that the intellectual copyright laws are so complex that to turn around and try to produce such an extensive chapter in the way we have, without a proper review in this country, is a dereliction of duty on the part of the government. There is a need to reform copyright law in this country. That is the view of all stakeholders out there, but that is not what the government is doing. It is pre-empting in many respects what those changes might be. It has not had a proper debate. We have gone through the select committee processes and the Joint Standing Committee on Treaties inquiries, the other inquires and so on. We still do not have a report from DCITA who...
looked at the question of a 20-year extension. If it has been done, I certainly have not seen it out in the public domain so that everyone can access it to see what it says. Quite frankly, we are putting in place a range of precedents, changing our laws to accommodate the United States for their intellectual property regime. We have not looked at our own needs. We have not done an assessment, a review or an analysis of what is in our best interests. Quite frankly, it is a dereliction of duty, which is why this schedule is being dealt with in this way.

Most of all, the free trade agreement is flawed on many accounts. The opposition, talking about 42 reasons why it is that they think there is a problem with the free trade agreement, come up with two. One of those 42 deals with establishing a Senate select committee to look at this particular question. We are going to be looking at it after the fact, not beforehand. It has not been looked at properly through the various committee processes and there has not been proper debate out in the broader community.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that schedule 9 stand as printed.

Senator RIDGEWAY (New South Wales) (9.12 p.m.)—I will ask again whether the minister is aware of any report by DCITA that has been done in relation to the question of extending copyright by a further 20 years; if so, is that publicly available and will the parliament or the public have a chance to look at it?

The TEMPORARY CHAIRMAN—The question is that schedule 9 stand as printed.

Question agreed to.

Senator RIDGEWAY (New South Wales) (9.13 p.m.)—I move:

(17) Schedule 9, page 86 (after line 29), after item 3, insert:

3A After section 42
Insert:

42A Defence of fair use

1. A fair use of a copyrighted work or other subject matter does not constitute an infringement of copyright.

2. A fair use includes purposes such as:
   (a) research or study;
   (b) criticism or review;
   (c) reporting the news;
   (d) judicial proceedings or professional advice;
   (e) parody or transformative use;
   (f) time-shifting, space-shifting, or device shifting;
   (g) reverse engineering or making interoperable products.

3. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:
   (a) the purpose and character of the use;
   (b) the nature of the copyrighted work or other subject matter;
   (c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;
   (d) the effect of the use upon the potential market for or value of the copyrighted work.

4. The defence of fair use cannot be excluded or modified by agreement or contract law.

5. The defence of fair use cannot be excluded or modified by technological protection measures, and electronic rights management information.

There is a range of views out there among those who have an interest in copyright law and I am seeking to have some debate about this issue. Given that we do not have a fair use provision in our copyright law, but, most of all, when you consider the way this par-
ticular chapter has been dealt with, it strikes me as an oddity that while we have allowed the United States IP laws to infiltrate Australian law we have not even looked at the doctrine of fair use.

We decided to move this amendment to address a fundamental matter of concern about the free trade agreement. I do not expect that the government will support the amendment. Perhaps the opposition will look at it—although that is very unlikely, given that they have already got their sweet deal. The government are enacting intellectual property policy through a trade agreement—that is essentially what is happening in this case. We are not dealing with legislation that looks at a proper process of consultation and debate about changing intellectual property policy in this country. We are talking about a free trade agreement that says what the policy is going to be. The way that the government have gone about dealing with intellectual property—without proper debate and consultation with the Australian community—is quite unacceptable.

Again I refer to Ms Weatherall, who argued in her evidence before the Senate select committee that the government should undertake a review to ascertain precisely how Australia’s obligations under chapter 17 of the free trade agreement will sit with its domestic legislation. She said that it is not appropriate to take on extensive obligations to enact further laws protective of IP interests without a full analysis of how these provisions will operate in the context of Australian law which is and—under the US free trade agreement provisions—will remain different from US laws in certain key respects. Any Australian government that considers acceding to such a treaty should undertake to review those areas of Australian IP law where they are stronger than those provided elsewhere in the world and to undertake to redress that imbalance.

On that particular question, Dr Matthew Rimmer of the Australian National University told the Senate select committee that the defence of fair use should have been enunciated in the free trade agreement. He said:

It is such a fundamental doctrine that affects all the different areas of intellectual property, and its absence from the free trade agreement is very significant. Even if this government, for instance, made legislative changes and recommended that there should be a defence of fair use, they could be wound back. But if you tried to make changes in relation to the areas that are mentioned in the free trade agreement and you violated those articles, you would be subject to a trade action. So the failure to include the fair use provisions in the free trade agreement makes it very provisional. Even if this parliament makes those reforms, they can be very easily wound back by a later parliament. That is the real significance: what is included in the free trade agreement is then locked into that free trade agreement because it is subject to those very strong alternative dispute resolution mechanisms and the possibility of trade sanctions if you violate a particular article or even if you violate the spirit of the agreement.

Mr Charles Britton from the Australian Consumers Association, in answer to the same question, told the committee that a fair right defence would guarantee the rights of consumers. He stated that, in the legislative changes required to implement the free trade agreement, at the very least there should be enactment of a fair use right for Australian consumers, which would harmonise the law with current consumer behaviour and protect consumers as the digital environment moves from the control of copying to the control of access. The joint standing committee recommended something along the same lines in terms of the changes being made to the Copyright Act. This does raise real issues.

The application of fair use in the United States as determined by its legal system does specifically provide for several unique copyright doctrines—namely, time shifting and
space shifting. An example of time shifting is when consumers record a television program for later use on a device such as a video recorder or, more recently, on other types of storage mediums. Space shifting in this case is when digital content is recorded onto a different device from that to which it was originally assigned—for example, purchasing a CD and copying it on to an MP3 player. We all get these iPAC pocket PCs here in parliament. We have the capacity to download things off the Net. We ought to ask whether or not as politicians we are doing the right thing, given what the free trade agreement will do in relation to IP changes.

There is a need to redress the balance, because all of the discussion about the IP chapter refers to harmonisation of Australia’s and the US’s IP systems. As far as I can see, harmonisation simply means accepting all of the aspects of their system that protect their copyright owners and none of the aspects that protect copyright users in this country. Where is the balance in that? Where is the harmony? I ask the minister to get advice from his officials about whether or not it is regarded as a fair balance between the rights of users in Australia and the rights of owners in the United States with the changes that are being made.

We all know that intellectual property is about balancing the need to protect the interests of the creators against those of the public domain. Our amendment is about trying to tip that balance back a little so that consumers have an opportunity to get a fair go, as they do in the United States. Why was there an oversight of this issue in the first instance?

I want to make it quite clear that we fully recognise that this amendment will not be supported. It is more about the debate. The Democrats are quite frankly outraged that the government is enacting intellectual property policy through a trade agreement and is not having a proper process of consultation and debate in Australia with Australians. They are huge and complex issues and they should be the subject of an intense and comprehensive public debate in this country, not one that took place in Washington.

We are pitching this proposal at a number of audiences, including people involved in the promotion of education and learning; the protection of cultural heritage, particularly by libraries and cultural institutions; freedom of speech and consumer rights; and the fostering of innovation in IT and open source software.

An amendment of this sort will attract the attention and support of students, teachers, librarians, consumers and people who are iPod owners—perhaps even the pocket PCs, which I have mentioned—and computer engineers. I read an interesting article last week that spoke of the surprise that must be felt by all iPod owners when they discover that they can download music that they legitimately own onto their iPod device. Under this free trade agreement, I can buy a CD and think that I can do whatever I like with it—but the reality is that I would be wrong.

We need to look very carefully at the changes to our copyright regime that are being enacted by the free trade agreement. It is a big deal and it deserves more attention than a promise and a tick that the free trade agreement is going to be all right for this nation. When we proposed this amendment last week, a number of people in the copyright industry called my office to speak about many issues they have raised in this context and an appropriate way to implement the changes to Australian law as a result of the free trade agreement. We have maintained all along that we know that this amendment has no chance of success. It has been suggested that the amendment should have been drafted
along different lines, taking out the current fair dealing provisions of the Copyright Act and replacing them with our new proposed fair use defence. But we have also received advice that that is not necessary; they can work side by side.

While activities such as research and study tend to be allowed in the US under the fair use defence—largely because of case law there—as we would be adopting fair use from scratch until the courts start to outline what fair use is, we have no assurances that fair dealings would be covered. That means in theory that some fair dealings could become unlawful. Retaining both fair dealing and fair use in many respects will allow any existing lawful uses to remain lawful, while also providing judges with an opportunity to decide what is and what is not an infringement on fair use grounds. It has been suggested that further amendments are required to this schedule regarding reproductions—deleting the exception to the exception that currently exists.

I do not want to go on too much longer because the point has been made that we need to consider what the ramifications are going to be. That has been overlooked and, quite frankly, there ought to be more debate about this. I hope that Senator Lundy—now that she has come into the chamber—might also engage in this debate and give us an idea of what the opposition proposes to do, beyond just having a Senate select committee inquiry into IP.

There are real issues about IP law in this country being dictated by the free trade agreement. Everything about the development of IP policy now becomes subordinate to the FTA. That is what is happening in this case and that is why the free trade agreement ought not to be supported. It puts in place many rules for future technologies of which we are not yet aware. I wonder sometimes whether the government have thought long and hard about this.

I come back to my original question: why was it thrown onto the table at the eleventh hour? That is what I understand happened, from discussions with other people who were involved in these negotiations. Copyright extension was not on the table at the beginning. I do not know why we ventured down this path without proper analysis—even the minister did not instruct CIE to look at this more closely—and without the issue having been raised not just by the Senate select committee but also by stakeholders out there in the community. It is a real issue and it should have been resolved properly.

Senator LUNDY (Australian Capital Territory) (9.25 p.m.)—I think the issue is as Senator Ridgeway has described: intellectual property issues were not paid due attention during the course of the Senate select committee’s inquiry on the free trade agreement, and that was certainly an observation made by the Labor senators who participated in it. That is precisely why the Labor Party have come back with a comprehensive response to many of the concerns raised.

In a statement by Mark Latham on the day that Labor announced our response to the free trade agreement, Labor said we will ensure that Australia’s copyright and intellectual property laws continue to provide a fair balance between the interests of creators, owners and users. We made several very strong points, which are worth going through here. First of all, we would require the Attorney-General to report annually to parliament on the impact of changes to the Copyright Act 1968 on universities, libraries and educational and public research institutions, particularly with regard to any increased costs they may bear.

The monitoring mechanism that Labor have identified relates to the fact that Dr
Philippa Dee identified an increase in net cost to Australia because we are net importers of copyright. That is a pretty well established fact. The fact that reports provided to the Senate select committee, such as the CIE and the Allen Consulting reports, were so robustly challenged on the merits of their research and methodology indicates that we do have an issue here. I say to the Democrats that that is why Labor have responded so vigorously on this policy point.

The second issue relates to examining options for broadening the fair dealing and copyright usage provisions of the Copyright Act. In doing so, a Labor government will draw on recommendations from numerous government initiated reports addressing copyright issues that have not yet been acted upon. One of those is a review of the digital agenda.

The point is that there is a case for Australia to look at fair use—and that is why we have stated this—but I do not think the amendment put forward by the Democrats is well thought through or comprehensive or sophisticated enough to address what is, quite correctly, an extremely important issue. Labor have identified that a Senate select committee is needed to look at these issues so that we might achieve, for the first time, a level of sophistication around intellectual property debates in this place. But we need to do it carefully. Because of the implementation process of this free trade agreement, we have that opportunity.

A Labor government, if elected, will have the opportunity to get into the nitty-gritty detail of the appropriate style and shape of a fair use regime that fits with the fair dealing regime in Australia and achieves the purpose of providing an appropriate level of protection for consumers on issues such as time shifting and space shifting of content on different devices in the home. It is true to say that there is a gap. If we do not address the fair use issue, we may well end up in a position where the balance tips too far in favour of copyright owners and too far against consumers. Again, that is exactly why Labor have articulated this response to this issue.

The other point worth making is that the Senate report goes a lot further with respect to recommendations. Recommendation 7 of the Senate select committee report says:

Labor Senators further recommend that the issue of such use of copyright material should be referred to the Senate Select Committee on Intellectual Property to investigate whether universities, libraries, educational and research institutions should be exempt from paying royalties after 50 years.

There is what can only be described as a very strong recognition of the issues in this—and a plan under Labor to address it.

The third point relates to the issue of technological protection measures, TPMs, as they relate to circumvention devices. Labor’s position is that we will ensure 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. This seems to challenge some of the more shallow interpretations of the act. There are questions about criminality—new offences and criminal offences in relation to circumvention and anticircumvention devices. But we know from the response from the department when Labor pressed these points about TPMs in the agreement that this is what the Department of Foreign Affairs and Trade came back with:

The viewing of non-infringing material from other countries is a legitimate activity and the obligations of the FTA target piracy. We do not agree that permitting the sale of region-free DVD players in Australia would contravene the provisions of the AUSFTA provided that the legislation...
is implemented in a manner consistent with the FTA.

The issue of multizone DVD players will be considered as part of the implementation process. The agreement also provides for a 2-year transitional period to implement these provisions, which will present the opportunity for public submissions in this area.

So this agreement does not put in place a foregone conclusion about the way in which Australia is able to legislate around these TPM provisions. That is why Labor is able to say that we will ensure that it is permissible to sell, purchase and use legally manufactured video, DVD and related software items, including components, equipment and hardware, regardless of the place of purchase. This at least in part satisfies some of the concerns around the pressure on Australia to adopt aspects of the Digital Millennium Copyright Act, a piece of legislation that exists in the US. The Senate committee in paragraph 3.172, found:

Contrary to assertions made in submissions and in evidence at hearings, Mr Stephen Deady, Special Negotiator, Department of Foreign Affairs and Trade told Senate Foreign Affairs, Defence and Trade Committee Estimates hearing that the AUSFTA would not involve Australia being forced to adopt the DMCA ...

Stephen Deady is quoted as saying:

I know in some of the consultation and discussions we have had with you, and others on the committee and elsewhere, that there is a question about how much of that US legislation we need to bring into our own system. We have tried to explain that the commitments we have entered into in this chapter do not require us to bring into our legislation the Digital Millennium Copyright Act.

Nonetheless, as I said, Labor is concerned about this—hence our statement.

I want to move on to the broad issue that I spoke about earlier this evening in relation to software patents. Labor has committed to 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. That Senate select committee will give us the opportunity to explore these issues in detail. We have an implementation period available to us, and we will make good use of it. We as a parliament are now in a far more enlightened position to make a far more informed assessment about the likely impact of changes to our intellectual property law, and it is appropriate that we do that in a timely and considered way so that we do not make mistakes.

Finally, the other recommendation put forward by Labor relates to recommendations 7 to 9 in the Senate select committee report. Earlier I mentioned the monitoring role of the cost-effective access to material by libraries and educational and research institutions. That relates to the extension of copyright and it is a very important issue. The other recommendations relate to the expansion of fair use and the establishment of the committee.

The other issue I want to mention here is related to chapter 3. I am not sure if it has been particularly traversed. It goes to the issue of performers’ rights. I understand that the Democrats are moving amendments or have moved amendments in relation to performers’ rights, and I have a couple of comments about that. First of all, to cover a bit of background, in 1996, as part of its election platform, the Howard government committed to introduce performers’ rights. There has been little action since. It has taken until now—and then only at the insistence of the United States in the free trade agreement—for the government to respond to this issue.

However, the proposed model, not surprisingly, does not have the support of Australian performers. The government’s proposed model for performers’ rights will not benefit
Australian performers in many respects, including that there is no declaration of a collecting society for the rights. Unlike similar rights holders, performers alone will be left without the protection of provisions of the act which relate to the operation of such collecting societies. It is not intended to increase the value of the sound recording right in section 152, notwithstanding the increased number of creators who will be sharing the right. Employed performers will not benefit from the legislation at all, with their rights being transferred automatically to the record company or producer. This is not the case with the vast majority of jurisdictions where similar rights are granted, including the United Kingdom, which recognises the special nature of the performer-producer relationship.

The Howard government’s flawed approach to moral rights legislation for writers and directors in films will be extended to performers working on sound recordings and pursuant to this virtual waiver—as put in place but termed ‘consent’, which I think is highly misleading—to all future but unspecified acts, and may be put in place as a condition to getting the job. This ‘consent’, as it is described, can include a consent to all derogatory treatment of the work.

In addition, producers may force performers to sign their rights as a condition of engagement—and I know this has been a consistent concern with respect to moral rights under the Howard government. Labor is of the view that the Democrats proposed amendments to the legislation address some of the concerns but they are not good enough. The Democrat amendments will not do anything to extend the rights being granted to performers working in audiovisual production. In the age of the dominance of the audiovisual media and the increased flexibilities available for the exploitation of audiovisual works, it is essential that the rights of performers are acknowledged. The Democrat amendments obviously do little to rectify the flawed moral rights legislation not only for performers but also for other creators.

All of these issues need to be addressed in a considered way. That is why, if a Labor government are elected, we are committed to reviewing the legislation as part of our proposed Senate select committee on intellectual property to endeavour to introduce a model of performers’ rights, which will be comprehensive and genuinely in the interests of performers. We will get that balance right. We do not believe that anything before us this evening achieves that balance, and it is only Labor that have a plan for the way forward to fix some of those problems.

I have a few minutes remaining and I raise a specific issue in relation to part of the bill concerning criminal offences relating to copyright. I am seeking some clarification from the minister specifically about item 154 in the bill, where the explanatory memorandum refers to the insertion of a new offence relating to a significant infringement of copyright on a commercial scale. The explanatory memorandum states:

The offence is intended to implement the obligation under the Agreement that criminal procedures and remedies apply to a person who has committed significant wilful infringement of copyright on a commercial scale who may be acting with no direct or indirect motivation of financial gain.

It seems that the words ‘wilful’ and ‘knowing’ in relation to the criminal activity are missing in the wording of the legislation. They occur in the agreement, they occur in the explanatory memorandum, but they have been deleted from the legislation. I would like an explanation as to why that is the case.

(Time expired)

Senator RIDGEWAY (New South Wales) (9.40 p.m.)—What a weak response from the
opposition. Quite frankly, it ought to be supporting these sorts of changes. Whilst Senator Lundy talks about what the Labor Party will do if it gets into office, the question that needs to be asked, given this massive cave-in to support the free trade agreement, is: what will it do if it does not get elected to office? That is what stakeholders out there want to know. Although the free trade agreement specifically allows certain things to happen, the reality here is that, if you want to talk about drawing a line in the sand, we ought to keep reminding ourselves that the free trade agreement makes the Australian national interest subordinate to whatever it is that is written into the text, including the way that we develop everything from environmental policy, social policy, health policy and cultural policy to intellectual property policy. That is the reality of what we are faced with here.

A Senate select committee somewhere down the road will be dealing with issues in the context of the cement that is already set. That wet cement is over there in the free trade agreement. You guys have decided to support it because you think it is a great idea. You have not considered all of the issues that have come up here before the parliament and, most of all, we still do not get to debate the free trade agreement. We are just dealing with the enabling legislation, which is why I raise the issue about the most significant chapter in the entire free trade agreement: chapter 17, dealing with intellectual property. It is the longest; it is the most significant. There has been no public consultation out there with the stakeholders and the broader community. What do we get? A response from the opposition: ‘When we get into office, we will have a Senate select committee. We will get out there and inquire about intellectual property.’ The reality is that it is much more than just saying what we will do later; it is about what we can do now. The free trade agreement is fundamentally flawed on 42 grounds. You named them; you have just named the third one, which possibly should have been part of the package of a sweet deal with the Prime Minister that perhaps the White House could have signed off on and said, ‘Yes, we can live with that.’ But we know that that was not going to happen. Why? Because the whole issue about intellectual property and the changes of copyright law have come about because of the strong influences, if you like, of US corporations which have a vested interest in making sure that their ownership of copyright and the way that that is policed across the world is done through these types of preferential trade agreements.

We have aided and abetted the United States in making sure that they can do exactly the same under other trade agreements with other countries. The opposition come in here and say, ‘We’re going to deal with it later on if we get into office.’ But, after having this massive cave-in, the question ought to be: What will you do when you’re still in opposition?

I ask the minister a specific question in relation to the extension of civil liability under the free trade agreement. As he would know, the free trade agreement specifically allows Australia to limit civil and criminal liability to public institutions, such as nonprofit libraries or archives, educational institutions and public non-commercial broadcasting entities where they were not aware and had no reason to believe that their acts were unlawful. This bill does not make that exemption regarding the civil liability. I ask the minister: why has this limitation not been legislated? Was there something that the negotiators had in mind? Is there a problem that they anticipated and therefore they have not looked at this particular question?
I also want to ask the minister, with reference to the extension of civil liability, whether he is prepared to answer the question for the *Hansard* record, just to highlight the flaw in the free trade agreement, of how many ministers in the Howard government have copied CDs for personal use—or, given their age, I might ask how many have copied vinyl onto tape. The reality is that it is being put out there that, as ridiculous as it may sound, we have allowed US laws to be extended into this country such that acts of that sort can now be dealt with as a matter of civil liability.

I ask the minister whether or not he agrees that these provisions clear the way for a ridiculous amount of civil litigation, which has not been tested yet but is sure to arise given the way these cases are dealt with in the United States. I am sure that all of us think about these things from time to time—we put in a video to record the television or we program it when we go out for the night so that we can have a look later. How are the laws going to apply in those particular circumstances? Can the minister give an answer on that? That is the question here. What is the effect of the free trade agreement, even in relation to something as simple as that, which Australians do every night of the week, every day of the year?

You should be changing the law to make sure that there is a fair use provision available so that Australians do not end up being prosecuted for a civil offence—or perhaps, in some cases, even a criminal offence. I ask again: how many ministers have copied CDs or vinyls? Won’t this provision under the free trade agreement lead to civil liability claims? It fundamentally highlights some of the flaws in the intellectual property chapter of the free trade agreement, which is another reason why it ought to not be supported.

**Senator HILL** (South Australia—Minister for Defence) (9.47 p.m.)—I want to respond to Senator Lundy.

**The TEMPORARY CHAIRMAN** (Senator Hutchins)—Minister, I am not sure whether Senator Harris has any questions so that we can do it all at once.

**Senator HILL**—If I do not do it this way, I will let Senator Lundy down because she will have been passed by. I want to answer the question that she raised, which I thought was an interesting one: it is principally a draftsman’s decision. The language that is within the agreement is not commonly included within our criminal law but, interestingly, page 133 of the explanatory memorandum states:

> The offence is intended to implement the obligation under the Agreement that criminal procedures and remedies apply to a person who has committed significant wilful infringement of copyright on a commercial scale...

In effect, it picks up the words that are in the agreement. In relation to the term ‘knowingly’, I presume there would have to be intent or recklessness. Again, it was unnecessary for the parliamentary draftsman to specifically state that. That is the explanation I have been given.

Because I was searching for that answer, I missed the specific question that Senator Ridgeway asked. I heard him talking about the circumstances at home where somebody might be copying from vinyl onto tape. Senator Ferguson has done a lot of that in his time! I am not sure what the specific question was. If it was whether I believe that the changes that exist in this implementing legislation will lead to further litigation, we do not think so, because the focus is still on piracy on a commercial scale.

**Senator RIDGEWAY** (New South Wales) (9.49 p.m.)—To clarify for the minister, the question went to the extension of civil liabil-
ity under the free trade agreement. As I understand it, the free trade agreement specifically allows Australia to limit civil and criminal liability of public institutions. I have mentioned everything from non-profit libraries, archives, educational institutions to public non-commercial broadcasting entities. But the bill itself does not make this exemption regarding civil liability. Where civil liability has not been dealt with, I ask about the extension of civil liability in those particular cases where people may think they are doing the right thing but find that, as a result of the free trade agreement and the integration— it is more than harmonisation—of US IP laws, the way has been opened for civil litigation to occur, presumably by record companies, television companies and so on, which seems to be the norm in the United States. Given that we are now opening that way, is there now not the possibility of civil liability actions being taken?

Senator HILL (South Australia— Minister for Defence) (9.50 p.m.)—My advisers are puzzled. Perhaps Senator Ridgeway might draw us to the specific provision.

Senator RIDGEWAY (New South Wales) (9.50 p.m.)—I am quite surprised at the minister’s response, given that this is the government’s policy. Chapter 17 was written by the officials in the negotiating team, and they do not even know what the answer is going to be. I have made it quite clear.

Senator Hill—We’re having trouble interpreting your question.

Senator RIDGEWAY—I have made it quite clear that our understanding of chapter 17, as a result of information that has been provided to us by experts in the field, is that there will be an extension of civil liability in the same way as in the United States. You have to remember here that we have not gone through a process of full public debate and consultation to amend our IP or copy-right law. We have decided to change our laws as a result of bringing in a free trade agreement with the United States, and in the process we have allowed the laws of a foreign country to dictate what the terms are going to be in Australia, particularly in relation to civil liability. Minister, given that this is your free trade agreement, it is your policy and it is the laws that you are going to put in place that we are all going to be subject to, you should have some idea of an answer in relation to this particular part of chapter 17 of the free trade agreement.

Senator HILL (South Australia— Minister for Defence) (9.52 p.m.)—I have a whole team of experts here, and none of them can understand what this is about. None of them see the evil that Senator Ridgeway sees; they do not see the extension of civil liability to which he is referring.

Senator LUNDY (Australian Capital Territory) (9.52 p.m.)—I have another question in relation to item 154. The issue is a clarification. I will read the explanatory memorandum in relation to item 154 ‘Offence relating to significant infringement of copyright’. It states:

The offence is intended to implement the obligation under the Agreement that criminal procedures and remedies apply to a person who has committed significant wilful infringement of copyright on a commercial scale who may be acting with no direct or indirect motivation of financial gain. This enables the offence to impose criminal liability on a person acting with no direct or indirect motivation of financial gain in certain circumstances.

Minister, can you tell the chamber what those certain circumstances are, and is this provision designed to capture and create a new criminal offence relating to peer-to-peer or file sharing on the Internet?

Senator HILL (South Australia— Minister for Defence) (9.53 p.m.)—My ad-
vice is this is about piracy for commercial gain.

Senator Lundy (Australian Capital Territory) (9.54 p.m.)—It does actually say ‘no direct or indirect motivation of financial gain in certain circumstances’. I am seeking clarification because it relates to that and the fact that it has to be a wilful infringement of copyright on a commercial scale. I am just tying to reconcile commercial scale and no direct or indirect motivation of financial gain.

Senator Hill (South Australia—Minister for Defence) (9.54 p.m.)—If Senator Lundy refers to pages 132 and 133 of the explanatory memorandum, she will see that it does make reference to the fact that it may occur on a commercial scale even though the person acting has no direct or indirect motivation of financial gain, but the damage is still done. I think that is the point that is being made. It may not be the individual in breach who personally benefits, but there is somebody suffering a loss on a commercial scale, and that is what is sought to be dissuaded.

Senator Harris (Queensland) (9.55 p.m.)—I would like to put on the record that One Nation supports Democrat amendment (17). The purpose of the amendment is to introduce a new section into the act at the end of the section pertaining to fair dealings. The title of the section is quite significant: ‘Defence of fair use’. Division 3 of the act itself sets out in section 40 fair dealing for the purpose of research or study, in section 41 fair dealing for the purpose of criticism or review and in section 42 fair dealing for the purpose of reporting news. The new section 42A sets out what is a defence. It is much clearer and, on that basis, One Nation indicates to the chamber that we support that amendment.

There has been a lot of discussion this evening—and this morning when the Prime Minister held his press conference—about how altering domestic legislation may actually put the whole free trade agreement in jeopardy. I find that difficult to understand. If that is the case for Australia, as I indicated earlier to the chamber in a document that I tabled, that is not the case for the United States or the opinion of the United States Trade Representative. They say very clearly that nothing in this free trade agreement or any trade agreement prevents congress from changing a US law in the future.

This chamber should support this Democrat amendment—and I think Labor should as well. Not only would this assist anybody trading with the US; it would also assist people domestically. I do not see any mischief in this amendment at all. I think it is quite sound. In the Senate select committee report One Nation recommended in relation to chapter 17 of the free trade agreement on intellectual property rights:

... that nothing in this Agreement will preclude Australia from legislating to ensure that no additional financial burden or other restrictions as may be applicable to intellectual property rights is experienced by any person or entity embarking upon scientific development, research or experimentation.

I think it is perfectly reasonable to expect that people who embark on scientific development, research or experimentation should not be financially burdened or have any other restriction placed upon them. A report of the Industry Functional Advisory Committee on Intellectual Property Rights for Trade Policy Matters—the acronym is IFAC—to the president, the Congress and the United States trade representatives applauded the US negotiators for incorporating into this agreement the obligations set forth in the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty, which are so critical to
creating the legal infrastructure for e-commerce, for the distribution and transmission of protected material over the Internet and for products in digital format generally. In particular, IFAC applauded the negotiators for convincing Australia to come into full step with and adhere to key provisions of those treaties, consistent with the manner in which they were implemented by the US in 1998 in their Digital Millenium Copyright Act. So the Americans have this very clear understanding that Australia has agreed to come into line not only with America’s copyright—all of the sectors within chapter 17—but also with their position on digital format generally, adopting their protections against digital transmission on the Internet. That is quite a huge step, and other speakers have spoken about their concerns.

Another interesting comment that IFAC make, and this may not bode well for Australia, is about the Free Trade Area of the Americas and the level of intellectual property protection it contains. Our free trade agreement should set a new baseline for future free trade agreements, including the Free Trade Area of the Americas. Stop and think about it. We are no longer talking about Mexico, the United States and Canada. We are now talking about America entering into a free trade agreement with the entire American continent, north and south.

Senator McGauran—What’s your problem?

Senator HARRIS—The problem with that, Senator McGauran, is that this free trade agreement between us and America will become the basis for an American free trade agreement in the Americas. Ultimately there will be implications for Australia when American companies are domiciled in all areas within those states. How will we work out the rule of origin? Does that have any effect on this agreement? In conclusion, I want to reinforce the fact that the Democrats’ amendment has the ability to introduce into the Copyright Act a section which clearly sets out a defence for fair use. I also say that, if it is good enough for the Americans to be able to alter their domestic law after the free trade agreement has been put into effect, Australia should not have fewer rights.

Senator GREIG (Western Australia) (10.05 p.m.)—I enter this very long debate for the first time in my capacity as Democrats spokesperson for IT. I want to give a voice to the many people who have contacted me to talk about their concerns. I have received letters, emails and phone calls with respect to their fears about what the free trade agreement will mean for access and use of open source and copyright provisions for software and software development. I am conscious that Senator Ridgeway has moved this amendment and spoken to open source within that.

Two news articles have come to my attention in recent days. They come from very different areas—one from Europe and one from Australia—but they both speak about these concerns. They are brief, so I will read parts of them and then ask some questions of the minister. The first article was reported in the IDG News Service on 6 August, and it says:

The City of Munich has put its Linux plans on hold in response to fears over software patents. And this goes to the heart of my concerns. The article continues:

The city has cancelled a call for bids on the Linux migration project, called the LiMux Project, planned for July, according to the city’s CIO, Wihelm Hoegner. Hoegner made the announcement on the LiMux Project mailing list ...

The city’s decision reflects growing concerns in Europe and the US that software patents could be used to derail open source projects, which depend on freedom from intellectual property licence fees. Such projects also generally don’t have the
financial resources or patent arsenals necessary to fend off intellectual property lawsuits.

Software patents currently are not allowed in the EU, under the European Patent Convention, but many believe a directive currently going through the EU’s legislative process could change the situation dramatically. “Patent law: patentability of computer-implemented inventions”, known as the software patents directive, would open the floodgates to US-style software patents, according to critics.

... Alderman Jens Muehlhaus, called attention to the situation in two motions calling for the mayor of Munich, the Social Democrat Christian Ude, to analyze how the EU software patent directive affects Munich’s Linux project.

Muehlhaus said a cursory analysis of the city’s proposed Linux client software turned up conflicts with more than 50 European software patents. The Foundation for a Free Information Infrastructure (FFII), which coordinates anti-software patents activities in Europe, carried out the analysis for Muehlhaus.

A company holding one or more of these patents could issue a “cease and desist” order to the Munich government, effectively shutting the city’s computer systems down or forcing the payment of licensing fees, Muehlhaus said. In response—and this gets to the core of my question—the city said it would halt the Linux project until it could thoroughly analyze the legal and financial risks.

The question I direct to the minister is: what, if anything, has Australia done to analyse the legal and financial risks of the FTA if its impact on open source is to have the same impact on Linux that we are seeing in Munich? The article continues:

Munich’s decision underlines the dangers posed by allowing software patents in Europe, according to consultant and developer Florian Mueller, who works with ... software patent issues. He said the city of Munich, in its recently-completed feasibility study, had proved that open-source software could compete with proprietary software from companies such as Microsoft, but the introduction of software patents would put this competitiveness in danger.

“Open source software will survive any new legislation. The question is, can it be competitive three years down the line?” Mueller said.

That too is the question for Australia, in the same context. The article further states:

So far most people have ignored the software patent issue, saying ‘it isn’t going to happen to us’. Now they’re starting to see that it is a clear and present danger.

The decision comes shortly after a study found that a total of 283 registered US software patents, including 27 held by Microsoft, could be used as the basis of patent lawsuits against the Linux kernel. The study was funded by Open Source Risk Management (OSRM), a company that provides insurance against lawsuits related to the use of open source products, and conducted by patent attorney Dan Ravicher, executive director of the Public Patent Foundation and senior counsel to the Free Software Foundation.

Munich’s actions are being closely watched as a bellwether for the fortunes of Linux in the public sector, in Europe and elsewhere. Following the city’s initial strategic decision to migrate to Linux, a year ago, the City of Paris ordered its own investigation into a switch to open source. The city of Bergen in Norway recently decided to consolidate older Windows and Unix servers on Novell Inc.’s Suse Linux Enterprise Server 8. Other recent wins for Linux include the French Ministry of Equipment and Allied Irish Banks.

My second question, then, to the minister is: what is Australia and its departments doing in watching the development of this process throughout Europe? On 6 August, the same day as the IDG article appeared, I read online, and closer to home, an article in the Sydney Morning Herald. It is an assertion, but the article makes the claim:

The US-Australia Free Trade Agreement poses a grave threat to the entire Australian software development industry due to the legal framework on intellectual property which is required upon adoption of the pact, the Open Source Industry Association and Linux Australia have warned.
Fair enough; that is their assertion. The article goes on:

In a statement issued in Melbourne today, both organisations said the FTA would hamper Australia’s ability to efficiently compete in global markets. “Much like the introduction of a flawed patenting regime for pharmaceuticals, adoption of a flawed patent regime for software is not in Australia’s interests,” the statement said.

Brendan Scott, a spokesman for the groups and a lawyer himself, said the effects would be felt by all developers, not merely those who worked with open source software.

... any non-trivial piece of software could contain as many as thousands of code processes, algorithms or software modules, any one of which could infringe one or many US software patents.

And here is the key quote:

“Most Australian developers have probably built products which ‘infringe’ on US software patents. Introducing a system which makes it simpler for these patent holders to bring such legal hooks into Australia is very damaging to the local industry,” Scott said.

He pointed out that Australian developers would face huge fines if they recreated software processes—

and this is the fundamental point—

while being unaware of the possibility that they may have been patented. “Ignorance of such patents is no excuse. In future, Australian developers may not be able to make any software without the fear of paying ransom.”

The key point of clarification I seek from the minister here is: is it a fact that being ignorant of these patents is no defence? The article goes on:

Scott said a majority of local developers lacked the money and time needed to check their software code-bases against the tens of thousands of software patents which could flood the market if Australia degraded its stringent software patent laws.

“US patent law allows for the imposition of punitive damages. If Australia adopted a similar law, local developers could be sued for many times more than any actual ‘damages’ they may have caused the patent holder, merely as a warning for others,” he said.

He said huge software houses had the resources to obtain patents. “The introduction of US-style software patenting will therefore be a one-sided affair, and definitely not in the local industry’s favour,” he cautioned.

Even if an Australian developer owned a patent, he or she, in most cases, would not have the money and time to pursue a case against a big company. “Most software patents are owned by huge ICT firms, which keep them to be used when necessary to do an opponent serious damage or for legal leverage in deal negotiation. They are not used to ‘extend the art and science’ of technology,” Scott claimed.

We have seen that most vociferously with the film, picture and recording industry in the United States through the processes of the DMCA. The article continues:

He was of the opinion that a large number of software patents in the US had been granted for processes or algorithms which are exceptionally vague or, even worse, quite obvious to most competent software development practitioners.

“They should not have been granted in the first place, as they are not ‘novel’. By degrading Australia’s patent system to match the US approach we will handicap our local developers needlessly.”

Scott also warned that there were an equal number of issues which would arise with the introduction of DMCA-style legislation, also mandated by the FTA. “... anything which stops academic research into security and which also stops any endeavour towards software interoperability engineering is a serious problem for R & D in this country,” he said.

He was referring to the Digital Millennium Copyright Act which was signed into law in the US on October 28, 1998. The DMCA’s stated purpose is to update US copyright laws for the digital age.

Both organisations said they backed the proposals made by David Vaile of the UNSW’s Baker & McKenzie Cyberspace Law and Policy Centre as
a means of starting to tackle the problems posed by the FTA.

Vaile’s proposals—
not the minister’s: David Vaile’s from the university—

Tighten the criteria for software and ‘business process’ patent applications.

Establish a public interest litigation fund to enable Open Source software developers, integrators or users to respond to anti-competitive and tactical patent infringement claims, if they would otherwise be unable to do so.

Official support for global ‘prior art’ research projects to assist research of the viability of such claims.

Change the IPaustralia.gov.au page to make lodged patents easier to track, so that developers can protect themselves from bogus patents.

Limit the implementation of controversial DMCA-style laws, to the extent they inhibit development of open, compatible tools for common file formats and networks.

Introduce US ‘Fair Use’ amendments to Copyright Act.

These encapsulate many of the arguments put to me by way of letters, phone calls and emails. I have taken the time to place them on the record as a summary of the kinds of concerns that we Democrats also have. I would finally like to ask the minister: Senator Lundy, who spoke before me, was emphatic in her claim that the DMCA had absolutely no effect, no impact and no access to the Australian jurisdiction and did not form part of the free trade agreement. What I and many others would like to hear is an emphatic, unambiguous confirmation of that from the minister.

If the arguments that we have heard from the likes of David Vaile and others are wrong then they need to hear that loudly and clearly now to put to rest the very real fear that many in the Australian community have about the DMCA—that it is going to reach into Australia and have the adverse effects that people hold genuine fears of. It is an incredibly invidious and powerful piece of legislation dreamt up by the film, picture and recording industry in America and introduced under the influence of former President Clinton, I believe. I would seek an undertaking from the minister that that is the case. If it is not the case then people also need to know that this is the path the government is going down and that the fears and concerns expressed in the correspondence and opinion pieces will be played out, in which case we Democrats are keen now to be on the record as saying, ‘We were there to argue against that.’

Senator HILL (South Australia—Minister for Defence) (10.19 p.m.)—I thought I had addressed these issues in response to questions raised by Senator Lundy. We talked about the issue of patenting software and the differences between the US patenting system and the Australian patenting system. Basically, I said my advice is that the free trade agreement will not have an effect on Australia’s current approach and treatment of applications to patent computer software. Consequently, this will not affect the take-up and spread of open source software.

Computer software is already patentable in Australia if it meets the patentability criteria of being ‘new’, ‘inventive’, ‘a manner of manufacture’ and ‘useful’.

Basically, it is business as usual for IP Australia in processing patents. I think that the fears that have been expressed are largely unfounded, although I understand that there is always a clash of commercial interests. I understand why Senator Greig is interested at least in seeing that the open source software industry gets a fair go. He would probably also argue, I would hope, that those who invest heavily in something that is patentable receive adequate protection for their investment as well. That is a clash of inter-
ests that we always find in a debate on intel-
lectual property. The fears that are being ex-
pressed—fears relating to a concern of a trans-
ation of US patent law to Australia—are, as I said, on my advice, unfounded as the Australian patent law is not significantly affected by the agreement or the implementa-
tion law, even if some of the concepts are incorporated within the agreement.

Senator BROWN (Tasmania) (10.22 p.m.)—‘The Australian patent law is not signi-
ificantly affected ...’ That is a great word to watch: ‘significantly’. The adjective ‘largely’ in ‘the fears ... are largely unfounded’ is there to let the minister and the government off the hook, but all it does is confirm people’s concerns. There is no categorical assurance in this at all. As ever, it will go to the faceless people in the tribunal set up outside the reach of this parliament to determine. There has been no countermanding of that argument all the way through here. It is a very difficult and complex area. Other speakers have pointed to the Ross Gittins article, and the Democrats have come forward with this amendment. In an awesomely complex area where some people feel they will gain and others feel they will lose, the one thing we know is that this does not protect the interests of Australia. It is not water-
tight; it is ‘largely’—‘you can largely feel okay about it’—and ‘significantly’ without worries. The words there point to the fact that there will be arbitration on this. As soon as it goes to arbitration, let the Australian industry know that nothing in this parliament can save them. There is not even a report-
back here.

By the way, if there are citizens who want to join in that suit when it occurs, they can write a letter. The tribunal might deign to look at their letter; it might not—it does not matter, because they cannot go and take part in it. If the matters are confidential—and which company would say that they are not?—nobody will be able to know what went on. What is more, they are beyond the reach of freedom of information. So there we are.

We will be supporting the Democrat amendment. We know there are difficulties for some people in it, but the reality is that the Labor Party is going to make sure that the government does not allow this to be amended or fixed at all. See you in the face-
less court. Or read about it somewhere down the line. There is nothing more hopeful that can be said about this. We are dealing with imponderables which will be sorted out un-
der the weight of the huge American cartels and the most powerful IP and IT industry in the world—by a long shot—going to court over matters that are not defined in this legis-
lation. It is the government selling out the Australian interest.

Senator GREIG (Western Australia) (10.25 p.m.)—Without having the benefit of Hansard text, I felt that the minister was be-
ing judicious in his answer when he prefaced it by saying, ‘There is nothing currently ...’, leaving me with a fear that perhaps what he was suggesting was that at some future point, if the Australian government or its depart-
ments were to change tack in terms of policy direction or administrative application, the fears of which I spoke do come into play. Was that just a turn of phrase that the minis-
ter used? Or is there an inherent suggestion in his answer that, while the fears that I have articulated tonight may not come into play now, they may in the future? Is there some-
thing which can trigger the application of the DMCA or the patenting deals that I have spoken of and articulated from articles? Do they have potential application in the future?

Senator HILL (South Australia—Minister for Defence) (10.26 p.m.)—As I understand it, there is nothing in the agree-
ment or the implementation bill that would
do that. If a future government wants to change Australia’s patent law, that is a different thing, but, of course, it will have to go through a legislative process. Does this government have an intention to change it to a position closer to that of the United States? It has no such intention, but I cannot speak for future governments in future years.

Senator RIDGEWAY (New South Wales) (10.27 p.m.)—I am going to ask the minister some questions in relation to copyright extension and copyright duration. In particular, does the minister agree that the free trade agreement with the United States will not provide uniform standards with respect to copyright duration in Australia? It is a relevant question when you consider the copyright term of Australia and whether or not that will be harmonised with other major trading partners in Asia, the Middle East, Canada and New Zealand. More particularly, it goes to the question of whether we are going to have a series of different arrangements with different trading partners. Doesn’t the extension of the copyright term by 20 years not only set a bad precedent but also put us out of sync with our other trading partners?

Senator HILL (South Australia—Minister for Defence) (10.28 p.m.)—I think the answer is that it moves us closer to the largest economy in the world and, to the degree that the intellectual property laws become closer, it facilitates doing business in either direction. What do I think will be the trend in relation to other states? I suspect the trend will be in the same direction in due course, but that might take a while.

Senator RIDGEWAY (New South Wales) (10.29 p.m.)—On the question of balance between copyright owner and copyright user, I wonder whether the minister might make some comment about the free trade agreement with the United States and the precedent that is being set there. Essentially, because we are a net importer of copyright material, as I understand it most of what will occur will be that copyright users will have a lesser set of rights than copyright owners. Isn’t it the case that it does not provide international harmonisation with respect to user privileges in other parts of the world? The question really is about balance. Isn’t the balance being altered here in this free trade agreement in favour of the United States, which is predominantly a copyright owner, compared to arrangements that already exist in other parts of the world in terms of the balance between user privileges and other copyright owners outside the United States?

Senator HILL (South Australia—Minister for Defence) (10.30 p.m.)—I hesitate to say it but, again, the Democrats are looking at these issues somewhat negatively. It is true that we are a net user, but some of us have great confidence in the intellectual capabilities of Australia and the opportunities to build strong, internationally-competitive business based on intellectual property. I believe that, the more we can encourage that and support it, the better off we will be. We have looked to a dynamic economy that grows particularly at the intellectually demanding end. It is interesting to see that between 1996 and 2000 Australian copyright industries grew annually by an average of 5.7 per cent. I suspect that, particularly with greater opportunities to sell into the largest economy in the world, that can be further accelerated. But to encourage Australians to invest in intellectual property is going to require giving them reasonable protection for their investment. With regard to the short term, I think I understand what Senator Ridgeway is saying, but that is a concession that is made in order to have the opportunity to grow, which is provided through this agreement.

In relation to third countries, yes, I can see that with different systems throughout the
world that provides difficulties. Greater harmonisation would benefit all. That is obviously going to take time but, as the number of bilateral agreements around the world accelerates—and they seem to be occurring everywhere at the moment—we might find that harmonisation in these areas or movement in that direction occurs much faster than we would otherwise think.

Senator GREIG (Western Australia) (10.33 p.m.)—I know that this is a very recent thing but it has just come to my attention that the High Court has granted special leave to hear the appeal in Sony v. Stevens and that it will now have an opportunity to determine the definition of technological protection measures and temporary copies. So the question that comes from that is: does the minister feel that it is appropriate for parliament to be pre-empting the decision of the High Court by providing much tighter technological protection measures and temporary copies. So the question that comes from that is: does the minister feel that it is appropriate for parliament to be pre-empting the decision of the High Court by providing much tighter technological protection measures and much tighter protection of temporary copies under the free trade agreement? Following from that, has the minister or the government obtained any legal advice as to the possible outcome of the High Court case?

Senator HILL (South Australia—Minister for Defence) (10.34 p.m.)—This is late-breaking news, I gather, Senator Greig. It is very difficult to get instructions on the run. The parliament is the master of its own destiny. The parliament sets the law. The High Court interprets the situation as it existed at the time the case was brought. So be it. The idea that the parliament should not determine the appropriate future legislative structure because previous matters are being litigated does not seem to me to be particularly persuasive.

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that Democrat amendment (17) be agreed to.

Question negatived.
(23) Schedule 9, page 95 (after line 16), after item 15, insert:

**15B Subsections 152(8), (10) and (11)**

Repeal the subsections.

We also oppose schedule 9 in the following terms:

(20) Schedule 9, item 9, page 92 (line 30) to page 93 (line 26), section 113C, to be opposed.

These amendments relate to performers’ rights, which is a particularly important issue, mostly because of what the free trade agreement says or does not say on performers’ rights. I remind the chamber that, back in 1996 during the election campaign, the Howard government committed to the introduction of rights for performers. Since then we have not seen anything come from the opportunities to meet this commitment. It is only at the insistence of other governments that our government is even prepared to look at this issue, namely in the form of the proposals in the free trade agreement. They are performers’ rights essentially in name only.

In all other respects the government is asking us to vote to enhance the rights that are already enjoyed by powerful record companies. That is the effect of this particular part of the free trade agreement.

The amendments we are proposing are the bare minimum necessary to take account of the inequities and inequalities of bargaining power between performers and big record companies with regard to performances in sound recordings. Our performers’ rights amendments are essentially intended to achieve four main objectives: the first is to provide a regime for performers pursuant to which employment status is irrelevant; the second is to ensure the legislation provides an arrangement which is genuinely beneficial to performers; the third is to provide for a declared collecting society, as with other rights holders; and the last is to ensure that the rights regime does not provide performers with lesser rights than other rights holders.

The issue of performers’ rights in the context of the free trade agreement epitomises, I think, the serious problems with the agreement generally because performers’ rights have been in need of addressing for some years in this country. The issues involved are crucial for Australian performers regarding their rights in sound recordings and should be discussed more openly with the performer groups and individuals in Australia, and those whose interests are at stake should be able to make a contribution to the legislative changes. Certainly industry representatives have been active in their concerns about the lack of rights for performers. Unfortunately, they have received little attention due to the deal put together by the government and the ALP.

The government has an obligation to listen to the needs of Australians and to respond to them. Quite frankly, the Australian parliament should be where laws are made which so directly impact Australians in such a negative way. In particular where such crucial rights are being taken from performers or not enshrined in new law our democratic processes should not be circumvented in this way. That essentially is what is happening under the free trade agreement. We are making the discussion that we should be having in Australia subordinate to discussions that have taken place with the United States about what the new regime should be even for performers in this country.

It is an insult to the Australian public that this government thinks that between them and President George W. Bush they can come up with laws which Australia’s parliament is held to ransom to approve. If the free trade agreement is not included in our domestic law, the United States is entitled to compensation. I ask the government how it is
that this government feels entitled to put Australia in that position. The minister might want to clarify whether or not compensation is to be payable.

To oblige the parliament to pass laws detrimental to Australia in so many different areas through a trade agreement with the United States—policy making by trade negotiation with America—is not good enough as far as the process goes and certainly as far as the national interest is concerned. There should have been negotiation in a legislative process about balancing the interests of Australians, not about trying to find a balance between the interests of Australians and the interests of Americans. We should have looked first and foremost at the domestic situation, but that did not occur. The Prime Minister made his commitment way back in 1996, but we have not heard anything since then. Over the past eight years, we have had an opportunity to do something; we now have a government that is forced to respond in a free trade agreement on performers’ rights, but only in name. It does not give them the rights that they are entitled to and which they should receive as creators in this country.

Our amendments are the result of in-depth consultation with industry representatives, specifically Lindy Morrison and the Media Entertainment and Arts Alliance. Lindy and Simon Whipp from MEAA have worked tirelessly for the sake of performers’ rights and deserve to be acknowledged for the work they have done over many years. The provisions we have sought to amend effectively strip performers of any legal rights by allowing employers to be defined as makers, usurping the role of the performers’ legal rights.

We also seek to include amendments to the Copyright Act which ensure that payments made by broadcasters for sound recording of live performances are actually received by the performers. At the moment, whether or not Australians realise it, our performers do not get the payments in those circumstances. They often end up in that big kitty bag that is held by record companies. So the power differential between performers and record companies means that at any opportunity record companies are more easily able to negotiate with performers for broadcasting payments to be delivered to them. Through our amendments, we seek to minimise the opportunities for this to happen by providing that the Australian Attorney-General—not the United States Attorney-General—can declare a collecting agency specifically to collect these payments and not leave it to the PPCA, which is controlled by the record companies.

It is shameful that this government and indeed the ALP—who have been missing in action on this question—will not be supporting performers’ rights through supporting this amendment. It is vitally important that we understand that this issue has been around for quite some time. We put forward these amendments as serious ones that do need to be taken into account, but again this highlights the fundamental flaws in the free trade agreement. It is a debate we should have been having over the previous eight years, not one that has come about just because the free trade agreement has landed on the shores of Australia. Effectively, we are now being told that, because of the free trade agreement, we will get performers’ rights in name only but nothing beyond that. I wonder whether the minister might want to respond to those particular issues.

Senator HILL (South Australia—Minister for Defence) (10.43 p.m.)—The government has a fundamentally different approach from the Australian Democrats on this issue. As I understand, we are implementing our obligations consistent with the
World Intellectual Property Organisation obligations and the Performances and Phonograms Treaty, which will provide performers with new economic rights and the embodiment in sound recordings and moral rights of both their recorded and live performances. The existing protection for performers’ live performances will also be broadened to include protection against unauthorised non-broadcast transmission such as those via the Internet. This performers’ rights model is based on a joint authorship approach which deems performers to be makers of sound recordings jointly with the current owners of copyright as the owners of the original master sound recording and therefore joint copyright owners at first instance.

As joint owners, performers will have the same fully assignable economic rights as current owners in sound recordings. Performers will also have moral rights in their performances, including the right to be known as the performers of their performances and the right to prevent their performances from being subjected to derogatory treatment. Performers’ moral rights are similar to those granted to authors by the Copyright Amendment (Moral Rights) Act 2000. The scheme ensures that Australian performers benefit from copyright protection which is consistent with international standards and which supports commercial opportunities for recording artists.

As I understand it, the Democrats advocate moving in a different direction, which would be inconsistent with the international standards as set by, as I said, the World Intellectual Property Organisation and the Phonograms Treaty.

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that Democrat amendments (16), (18) to (22), R(22A) and (23) on sheet 4361 revised be agreed to.

Question put:
That the amendments (Senator Ridgeway’s) be agreed to.

The committee divided. [10.50 p.m.]
(The Chairman—Senator J.J. Hogg)

Ayes………….. 9
Noes………….. 44
Majority……… 35

AYES
Allison, L.F. * Bartlett, A.J.J.
Brown, B.J. Cherry, J.C.
Greig, B. Harris, L.
Murray, A.J.M. Nettle, K.
Ridgeway, A.D.

NOES
Barnett, G. Bishop, T.M.
Brandis, G.H. Buckland, G.
Campbell, G. Carr, K.J.
Colbeck, R. Collins, J.M.A.
Conroy, S.M. Eggleston, A. *
Evans, C.V. Faulkner, J.P.
Ferguson, A.B. Ferris, J.M.
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. Landy, K.A.
Mackay, S.M. Marshall, G.
Mason, B.J. McGauran, J.J.J.
McLucas, J.E. Moore, C.
O’Brien, K.W.K. Payne, M.A.
Ray, R.F. Santoro, S.
Scallion, N.G. Stephens, U.
Tchen, T. Tierney, J.W.
Troeth, J.M. Watson, J.O.W.
Webber, R. Wong, P.

* denotes teller

Question negatived.
Clause 2, page 1 (lines 9 to 12), omit sub-clause (1) (but not the table), substitute:

(1) Each provision of this Act specified in column 1 of the table commences at the later date of either:

(a) the day as specified in accordance with column 2; or

(b) the date after which all of the following have been completed:

(i) Australia and the United States have entered into reciprocal agreements pursuant to the *Foreign Judgments Act 1991*;

(ii) the United States signs and ratifies the Optional Protocol to the International Covenant on Civil and Political Rights, which is administered by the Human Rights Committee;

(iii) the United States signs and ratifies the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty;

(iv) Australia and the United States sign and ratify the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women, done at New York on 18 December 1979;

(v) Australia and the United States sign and ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;

(vi) the United States ratifies the Rome Statute of the International Criminal Court;

(vii) the United States permits David Hicks and Mamdouh Habib, who are currently detained at Guantanamo Bay, to be repatriated to Australia;


I will talk very briefly about this amendment as I am mindful of the time. This amendment is about making the commencement of the US Free Trade Agreement Implementation Bill 2004 conditional upon the fulfilment of various other international obligations. The government are intent on pursuing bilateral trade deals and have been criticised for their blind pursuit of this approach rather than focusing their attention on efforts in the multilateral area, where there is greater scope for benefits for both Australian producers and those of the developing world.

As Jagdish Bhagwati has stated, the effect of this proliferation of bilateral trade deals is like that of a ‘spaghetti bowl’, and I have to agree with him because that is the outcome. The more free trade agreements that are signed, the more incompatible the standards and rules of origin will become. As it stands, crisscrossing rules of origin requirements are making it harder and harder for Australian businesses, especially small to medium enterprises, to comply with the various requirements of various countries. It probably will not be a big problem for the larger corporations; they will be fine. But what about small and medium businesses and their capacity to sell their products in a wide variety of markets?

So in many respects the preferential trade deal approach by government is flawed. We should be concentrating our efforts on trade liberalisation through the World Trade Organisation to ensure that developments are uniform and open to all. Binding interna-
tional obligations are an area of some concern to the Australian Democrats, hence this amendment. The fact is that both Australia and the US are citizens of the international community with all the rights and obligations that go along with that. Trade agreements are becoming more and more complex. They are now covering a range of social, cultural and environmental impacts that cross over into areas of international responsibilities, unlike any that existed in the past. Through FTAs such as this, we are carving up benefits for us and our mates but we also need to consider all of our international obligations.

This amendment seeks to make entry into force of the free trade agreement conditional upon the ratification of other international treaties. We should use our strong relationship and friendship with the US more effectively. A key characteristic of a good friendship is not merely blindly following along with whatever our friends decide to do. Friends are in the best position to let their mates know when they need to get their act together. In this regard, our government needs to take advantage of its strong friendship with the Bush administration—presuming it is there and it is a real one—to let them know that it is unacceptable for the US to take leadership in world affairs while not ratifying some of the most important international treaties operating in the world today. It seems to me that mates do not let mates get away with that sort of thing.

This amendment would ensure that the free trade agreement does not come into force—that is, the US would not get any benefits from the deal until they do a number of things. They ought to sign and ratify the optional protocol to the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty. Both Australia and the US ought to sign and ratify the optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Both Australia and the US should sign and ratify the optional protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the United States ought to ratify the Rome Statute of the International Criminal Court. Given the way that events have transpired over the past few weeks, particularly in terms of relations between Britain and the United States, the United States ought to permit David Hicks and Mamdouh Habib, who are currently detained at Guantanamo Bay, to be repatriated to Australia. And both Australia and the United States ought to ratify the Kyoto protocol to the UN Framework Convention on Climate Change.

Some might think that these are laughable, but the reality is that free trade agreements, where they extend so far into social, environmental and cultural policy, ought to also deal with the standards that exist within societies across the world. If we are to have this spaghetti bowl arrangement across the world, with a series of trade agreements that go beyond just trade to the question of social policy within communities, part of that also has to be about making sure that the standards that we expect of one country ought to be applied to ourselves—that it is not just a one-way street.

We believe that it is entirely appropriate for Australia to use opportunities that may be presented in the free trade agreement to formalise a strong relationship with the US but that we should use our influence as best we can to encourage them to meet their important international responsibilities. Of particular note is a very important and timely matter in terms of the amendment relating to the
Foreign Judgments Act. The negotiation of the free trade agreement would have been an ideal opportunity to lock reciprocal arrangements in place. It is important for corporate accountability and for the protection of Australian interests under this free trade agreement. Reciprocal arrangements such as would be required under this amendment would enable us to go after the assets of companies such as James Hardie in the United States.

This amendment requires that Australia and the United States enter reciprocal arrangements under the Foreign Judgments Act. It is designed to ensure that asbestos victims of James Hardie can obtain compensation. As my fellow senators will no doubt be aware, the New South Wales government has initiated an inquiry into the conduct of James Hardie Industries and their asbestos funding shortfall. This inquiry, headed by David Jackson QC, is currently hearing evidence. Although we will not see the final report until 21 September, it is clear that James Hardie will have an estimated $2 billion liability payable over the next 40 years for asbestos related injury to employees and customers. Back in 2001, they created a compensation fund of $293 million, which, they argued, would pay for all future claims. At about the same time—we all now know the story—it moved its headquarters to the Netherlands and all of the James Hardie assets are now in the Netherlands and the United States.

For any court to order that James Hardie pay the asbestos victims, Australia needs to enact the reciprocal foreign judgments legislation with either the United States or the Netherlands. We understand that the government is approaching the Netherlands about this. However, the government has not raised it with the United States, where most of the assets are being held. I believe that there is an opportunity to do so through the free trade agreement.

By supporting the amendment the Senate will be not only sending a very strong and powerful message but also increasing the prospects that the victims of James Hardie asbestos will be properly compensated. It will ensure that all Australian companies cannot just move offshore when they want to in order to avoid debts or to avoid liability or compensation to be awarded by Australian courts.

Senator CHERRY (Queensland) (11.04 p.m.)—I find it passing strange that, as Senator Ridgeway has pointed out, the US free trade agreement did not include the ratification of the Foreign Judgments Act. In this debate, we have heard a lot about how one of the benefits of this agreement will be the closer meshing of the corporate and economic activities of Australia and the United States. It strikes me as a serious oversight that the government has not completed that process by ensuring that the recognition of judgments in one country by the other will be brought into play. If we are going to have closer economic relations, then obviously in both countries we need closer respect for the rule of law and the courts to ensure that those closer economic relations can be operated on a proper and civil basis. I ask the minister whether the matter of the enforcement of civil judgments through the Foreign Judgments Act was raised with the United States. If not, why not? Does the government have any plans to follow up the US-Australia free trade agreement with action to ensure that the Foreign Judgments Act is in fact complied with by United States corporations?

Senator HILL (South Australia—Minister for Defence) (11.05 p.m.)—My advisers do not believe that it was. We cannot be absolutely definitive, but that is their recollection.
Senator CHERRY (Queensland) (11.05 p.m.)—Again, I do find it passing strange that the US-Australia free trade agreement establishes the right of companies to sue governments but does not respect the right of individuals to have their judgments in this country enforced in other countries. It strikes me as a serious flaw in the free trade agreement that the government has let this fall through the cracks. I ask the minister again whether the government has raised with the United States the enactment of a reciprocal agreement on the Foreign Judgments Act and whether that will be raised as a matter of some priority to complete the circle of obligations under this agreement or whether we are simply going to allow judgments in this country not to be recognised in judgments of the United States.

Senator HILL (South Australia—Minister for Defence) (11.06 p.m.)—I am still working on the previous question, but I draw your attention to article 14.7.6 at the top of page 14-6, under the competition part of the agreement, where it says:

The Parties shall work together to examine the scope for establishing greater bilateral recognition of foreign judgments of their respective judicial authorities obtained for the benefit of consumers, investors, or customers who have suffered economic harm as a result of being deceived, defrauded, or misled; and shall report on the feasibility and appropriateness of, and progress toward, greater recognition of such foreign judgments at the first meeting of the Joint Committee.

We think that that is the only reference to the subject matter within the agreement.

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that Democrat amendment (3) on sheet 4361 be agreed to.

Question negatived.

Senator RIDGEWAY (New South Wales) (11.08 p.m.)—by leave—On behalf of the Australian Democrats, I move amendments (1), (2), (4) and (24) on sheet 4361:

1. Title, page 1 (lines 1 to 3), omit “Australia-United States Free Trade Agreement, and for other purposes”, substitute “Restricted Trade Agreement”.

2. Clause 1, page 1 (lines 6 and 7), omit “US Free Trade Agreement Implementation”, substitute “Restricted Trade Agreement”.

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

4 Protection of the national interest

(1) No action may be taken under this Act or its regulations that is contrary to Australia’s national interest.

(2) For the purpose of this section, Australia’s national interest means the:

(a) economic welfare; and

(b) social welfare; and

(c) environmental protection; and

(d) national cultural identity;

of Australia and the Australian people.

(24) Page 163 (after line 27), at the end of the bill, add:

Schedule 10—Preservation of Australian national interests amendments

Broadcasting Services Act 1992

1 At the end of section 122

Add:

(5) In making determinations as to the appropriate level of Australian content, the Australian Broadcasting Authority must not have regard to any obligations under free trade agreements entered into by the Commonwealth Government.

National Health Act 1953

1 After section 100

Insert:

100AAA Special Pharmaceutical Benefits Scheme listing

For the purpose of making decisions with regard to the listing of medications on the Pharmaceutical Benefits Scheme, the Minister must give priority...
to the best interests of the Australian community and must not have regard to the interests of, or requests from, other nations or foreign companies.

Quarantine Act 1908

3 At the end of section 11C

Add:

(4) The interests of, or requests from, any other nation must not be taken into account when making determinations under the risk assessment process.

At the eleventh hour the Democrats have sought to change the name of the US Free Trade Agreement Implementation Bill 2004 to the Restricted Trade Agreement Bill. We propose to change the name, because we have to be fearless and frank about what we have under the free trade agreement. It simply is not a free trade agreement; it is much less. I think that the government itself has agreed that this is nowhere near a completely free trade agreement. It leaves in place plenty of barriers and sets a dangerous precedent in a number of ways that will indicate to the world trading community the terms Australia is willing to accept in trade deals.

We went through a number of options when trying to decide the best name for this legislation. It is probably good to put a bit of humour into this debate right at the end. Some of the options that we considered were ‘The Unfair Trade Agreement Bill’ and ‘The un-Australian Bill’—which was a particular favourite of mine. What authority do we have for such a statement? None other than the Deputy Prime Minister himself, Mr Anderson. This was a reference to his comments at the beginning of the year, when he said that ‘to accept a deal without sugar would be un-Australian’. That is what he said and that is what happened. Not a full week later the trade minister ticked off on a deal that did just that. The deal is un-Australian; it will harm our long-term trade interests in an economic, social, cultural and environmental sense. A final option was to rename the legislation the ‘51st State of America Transition Bill’. We made the considered judgment, however, that the government and the ALP were unlikely to accept any of these alternatives—or even the one that we chose—because that would be to admit the truth.

The government and the ALP know that this is a substandard deal that will do more harm than good to our country; nevertheless, they are all going to support it. They cannot deny, however, that this is not a free trade agreement or a fair trade agreement in the proper sense of the term. In February, when the deal was announced, the opposition leader, Mr Latham, said:

This is not a free trade agreement, it is not a free trade agreement at all, it’s a partial trade agreement that from our assessment this morning is not in Australia’s interest.

Later, whilst speaking on the Sunday program he described the free trade agreement as a ‘restricted trade agreement which is a major concern’. The government should agree that the title of this bill is misleading. It does infer that this deal will open up trade between our two countries when, in fact, it is all about opening up the areas America wanted and maintaining the restrictions that would have brought real gains to Australian producers. This is a restricted trade agreement—it is time that we called a spade a spade—which is why the Democrats are seeking to amend the title of the bill. I think the government have based most of their sales pitch relating to this FTA on the assumption that it will bring a significant economic benefit to Australia. They talk about the analysis, but they have not weighed up the costs in the process because they have not bothered to look at those questions.
While the Democrats believe that wide-ranging trade agreements of this nature should be assessed according to a broader set of criteria than mere economics, it is useful to look at the vastly divergent views about whether the government’s loudly proclaimed benefits are ever likely to eventuate. We recognise that modelling is an inexact science and that there are a range of different assumptions that can be used to produce remarkably different results. However, I think the government have deliberately misled the Australian people with respect to the benefits of the deal. They have done so according to results from their own economic modelling study. It is useful therefore to consider the CIE report that the government are basing their projections on and to outline some of the shortcomings of the analysis.

The debate has probably been exhausted in terms of going through those issues, so I will not repeat them. I make the point in closing that we have to be genuine when we talk about the effect of the free trade agreement as subordinating the national interest to the interests of the United States. As I have said many times, social policy and, more particularly, health and IP policy and policy concerning the environment and culture have all been subjugated to the text of the free trade agreement. It will be the deciding factor as to how we deal with these crucial issues into the future. While we would expect the free trade agreement to be a great opportunity to carve out something unique, positive and progressive, we may get some winners and some losers. There are those who are happy and who will say that they will get some benefits from it. But, quite frankly, even when you consider the hoops which have to be jumped through in the various states for small and medium enterprises and the costs involved in doing that, I would imagine that they will come back to Australia and say, ‘Let’s just deal here or deal in any other country.’

I will not delay the chamber anymore. I just wanted to give a very brief explanation about this particular issue. I do want to say finally that I appreciate the work done by Senator Hill and the officials who have stayed for the past couple of nights. I am sure that everyone has families and other commitments that they need to get to, but I thought I would acknowledge the work that has been done. Thank you.

Question negatived.

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that item 1 in schedule 8 stand as printed.

Senator HILL (South Australia—Minister for Defence) (11.16 p.m.)—This is one of Senator Nettle’s proposals, for which I undertook to get some further information. The issue she was interested in satisfying herself of was that it was not unbalanced—that the provision that is in the Australian enabling bill is complemented by a similar provision in the American legislation. The provision that provides for this verification process is at article 4.3.4 on page 4-5 of the act, which relates to Customs cooperation. I will not read it out. I remind the chamber that, under the American system, the act is voted on by the congress. There is also enabling legislation by the US Congress that has a head of power, and then the implementation of a similar provision is intended to be through a US regulation. They have not gone the whole way yet, but it is understood that, at the end of those processes, there will be complementary provisions on both sides.

Senator BROWN (Tasmania) (11.17 p.m.)—Senator Nettle was pursuing the place in US legislation where this complementary legislation stands. I am not quite sure, from what the minister said, whether that does not exist yet, whether it is to be
placed in a regulation or whether it does exist and the free trade agreement will be recognised by regulation. Senator Nettle is now with us, but what she was seeking was the place in the US legislation where this complementary provision now exists.

Senator HILL (South Australia—Minister for Defence) (11.18 p.m.)—Now that Senator Nettle is with us, I will repeat what I said. The starting point is article 4.3.4 on page 4-5 of the act, which provides in part:

... the exporting party, through its competent authority, shall permit the importing party, through its competent authority, to assist in a verification conducted ...

On the Australian side, we went straight from that to the enabling legislation. On the American side, they bring into law the agreement, which was the provision that I just read out. They then pass enabling legislation that has within it a head of power, which is section 103 of the US enabling legislation. Under that head of power the US is intending to issue a regulation. When those processes are finished, the outcome should be complementary provisions on both sides, albeit achieved in different ways.

I am hoping I do not have to say much more, but I will do what Senator Ridgeway did and thank particularly the officials for their endurance and good advice in this matter. I found it quite an ordeal for four days; some of them told me they had been working on it for two years. I thank them and I thank all senators for the good spirit in which they have conducted a long debate.

Senator CONROY (Victoria) (11.20 p.m.)—I will add my thanks to the officials who have worked on this for a long time. Thank you for all your cooperation during the debate. I also thank the minister and his officers, who have been exceptional in their cooperation in providing information.

Question agreed to.

Bill, as amended, agreed to.

US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF) BILL 2004

Bill—by leave—taken as a whole.

Senator HARRIS (Queensland) (11.23 p.m.)—I move One Nation amendment (1) on revised sheet 4367:

(1) Page 3 (after line 11), after clause 3, insert:

4 Exclusion of services provided by governmental authorities

(1) For the purposes of the Australia-United States Free Trade Agreement, all services the subject of a customs tariff which are supplied by a governmental authority in the exercise of its responsibilities are excluded from the provisions of the Agreement.

(2) For the purposes of subsection (1), a governmental authority includes:

(a) a central, regional or local government and any authority of any of the governments listed in this paragraph; and

(b) a non-governmental body when exercising of powers delegated by a central, a regional or a local government or an authority of any of the governments listed in this paragraph.

The reason for moving this amendment to the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 relates to the difficulties in being able to move amendments to various bills because of the way the bill is structured. I spoke earlier about the implementation bill changing 10 bills, and now we have moved to the next implementation bill, relating specifically to Customs. One Nation’s concern about this particular bill relates to a side letter dated 18 May between Ambassador Zoellick and the Hon.
Mark Vaile. Both parties make a commitment in this letter, which says:

During the course of their negotiations concerning Chapter Thirteen, the Parties discussed Article 13.15 (Recognition). Based on these discussions, I have the honour to confirm the Parties’ shared understanding that the scope of measures covered by Article 13.15 is no less extensive than the scope of measures covered by Article VII of the General Agreement on Trade in Services (GATS) and paragraph 3 of the GATS Annex on Financial Services.

I know that the side letter is speaking primarily about financial services. The real concern that One Nation has with that commitment the way it stands is that it brings into the American free trade agreement the sections of GATS that also refer to services provided by government authorities. For the benefit of the chamber I will read the One Nation amendment:

(1) For the purposes of the Australia-United States Free Trade Agreement, all services the subject of a customs tariff which are supplied by a governmental authority in the exercise of its responsibilities are excluded from the provisions of the Agreement.

(2) For the purposes of subsection (1), a governmental authority includes:

(a) a central, regional or local government and any authority of any of the governments listed in this paragraph; and

(b) a non-governmental body when exercising of powers delegated by a central, a regional or a local government or an authority of any of the governments listed in this paragraph.

By introducing this amendment, One Nation is taking the reference to government services as it stands in GATS and excluding it from the free trade agreement. One Nation believes this is imperative because the majority of our local governments—I will work on the local government level—currently have the ability to award a contract for services in their particular area and an increased grant of up to 10 per cent to a company that has local status. In excluding government services as currently defined in GATS, we are preserving the ability of, as the amendment says, a central, regional or local government or an authority of any of the governments listed in this paragraph. So we are excluding them from the implications in relation to the General Agreement on Trade in Services.

The second thing this would achieve, and probably the more important, would be to clarify the definition of a government service. As it currently stands in GATS, a government service is a service that is not supplied commercially or by one or more service providers. The concern that One Nation has with that definition in GATS is that, historically, government services have had an equivalent service in private enterprise. For example, there are state funded hospitals and there are private hospitals. Under the definition in GATS, hospital services provided by a state government are not excluded. If they are not excluded from GATS, they are not excluded by the definition of these side letters and they are not excluded from the free trade agreement.

Private enterprise has capacity on our railways. Schools are a more frightening aspect of GATS. For the benefit of the chamber, it encompasses not only our lower level state schools but also high schools and universities. By agreeing to write these into the free trade agreement, the Australian government is writing in the ability for any American provider of a service to, in a legal sense, raise an argument that they should have access to government services that they would normally have been excluded from. When I introduced this amendment, I did raise the difficulty of addressing these structural issues in light of the way the agreement has been written. The only way we could partially exclude them would be through the customs tariff bill. I know it would be an
The purpose of this second amendment is to raise the issue of the national interest. The one thing that this trade agreement sets out to do is undermine the ability of the Australian government to protect our national interest. One Nation’s amendment (2) states:

No action by way of customs tariff reductions may be taken under this Act or its regulations that has an adverse impact on rural and regional economies and the viability of family farming.

We have only to look at chapter 3 in the free trade agreement to find that under this agreement all US agricultural imports into Australia, many of which are grown on corporate farms that are heavily subsidised by the US, will gain immediate duty-free access. In the US in the early 1960s and 1970s, predominantly family farms were producing the majority of the primary produce in America. They were encouraged to expand to get greater economies of scale, so families bought up farms around them. Subsequently, as a result of low commodity prices, which I believe were to a large degree manipulated by the futures market, we saw the natural rise and fall in prices following the natural market responses to supply and demand. So if it was a good year we saw an increase in the prices of commodities such as grains; if it was a year when there was an overabundance of supply, we would see those prices drop. What the futures market has the ability to do is take out those natural fluctuations in the market. So from the 1960s through to the early 1980s we saw a gradual reduction in family farms in America. We saw the gradual encroachment of corporate farms. In America today we see subsidies for their primary producers to the extent of something like $US386 billion over 10 years—that is $US3,860 million per annum. Of that, 80 per cent currently goes to corporate producers.

What concerns One Nation is that we are seeing the same thing happen in Australia: we are seeing the gradual erosion of our fami-
ily farms. They are gradually being taken over by larger corporations. Why is this happening? It is happening because of several things. Yes, the drought conditions are part of it, but the larger part is again the control of the commodities in the futures market, which is taking away the ability of the producer to get the advantage of the normal fluctuations in the market. So the purpose of this amendment is very clearly to protect and to allow the government to ensure that no adverse action will be taken by the government in relation to our rural and regional economies, particularly the viability of family farming.

Question negatived.

Senator HILL (South Australia—Minister for Defence) (11.43 p.m.)—May I request that Senator Harris consider putting the balance of his amendments cognately?

The TEMPORARY CHAIRMAN (Senator Chapman)—Senator Harris, are you seeking leave to move the balance of your amendments together?

Senator HARRIS (Queensland) (11.44 p.m.)—No. I move One Nation amendment (3) on sheet 4367 revised:

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

6 Protection of textile, footwear, apparel and leather industries

No action by way of customs tariff reductions may be taken under this Act or its regulations that has an adverse impact on the textile, footwear, apparel or leather industries.

This is one of the major areas of concern that has been raised by the workers around Australia. They see very clearly the difficulties that their fellow workers in the United States have been subjected to. When NAFTA came in there were a subsequent 600,000 jobs lost in the United States itself. We saw, as a result of NAFTA, American companies translocating down to the edge of the Mexican border. The senators who were in the chamber over the last successive days will be well aware of the number of companies that have translocated as a result of that. What is actually facing our workers in the textile, footwear, apparel and leather industries is exactly what those American workers faced as a result of NAFTA.

I find it amazing that our Labor senators can sit in the chamber and agree to a piece of legislation that, as a result of the free trade agreement, is going to alter the customs tariffs that will be payable on textile, footwear, apparel and leather industries. Currently, some of those existing tariffs stand at up to 20 per cent until 2005. They are all going to be reduced under this legislation to as low as five per cent and the job losses from those reductions will be quite substantial. The government will say to us, ‘That is balanced by the increase in jobs in the other sectors.’ I say to the government very clearly: tell that to somebody who is currently working in any of those industries.

Some of the workers have indicated their concern. I have an AMWU petition which does not comply with the normal requirements of Senate petitions, so unfortunately it cannot be tabled in this chamber as a petition. It very clearly states:

Mr Howard—

Don’t trade away our jobs

The US Free Trade Agreement will destroy Australian manufacturing jobs

It is addressed to senators and the Leader of the Opposition and it was faxed to the Hon. Mark Latham, Senator Stephen Conroy, Senator Brandis, Senator Cook, Senator Ridgeway, myself, Senator Boswell, Senator Ferris and Senator O’Brien. Those workers say:

We are writing to you with deep concern about the US-Australia Free Trade Agreement.
This agreement, if ratified, will have disastrous consequences for our manufacturing industry.

Since we are a small country with an economy that is roughly 4% of the US economy, we are not participating on a level playing field. If we open ourselves to the US markets with no tariffs or protection, it can only mean the loss of thousands of jobs.

The manufacturing industry in Australia has declined dramatically over the last 20 years as many companies have moved offshore to the low wage manufacturing economies of Asia. The Free Trade Agreement will mean a further decline particularly in high-value manufactured goods, because we will be competing with the most powerful and technologically advanced manufacturing nation in the world.

In closing, they say:

I urge you to vote down the legislation to have the agreement ratified.

We now know that that is not going to happen. Within the context of these petitions, there are over 1,000 signatures from businesses right across the board. I will just flick through and pick up a couple of them. Autoliv, VARIAN, Trico—some of these have employees in the hundreds. Blackwell and IXL have a considerable number of employees. Lockwood—all of their employees are concerned about it. VisiPak—the list just keeps on going. We are getting such a reaction from the employees of so many companies around Australia who are concerned that as the reduction in tariffs comes in, their jobs go out of the door. That is the reason why One Nation believes that it is important that the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 be amended so that no action by way of customs tariff reductions can be made that would impact on the textile, footwear, apparel or leather industries.

Question negatived.

Senator HARRIS (Queensland) (11.52 p.m.)—I move amendment (4) on sheet 4367:

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

7 Protection of the environment

(1) Under this Act or its regulations, any action or measure necessary, including by way of increasing customs tariffs, may be taken to protect the environment from the adverse impact of imported products or produce.

This amendment has been extensively spoken to regarding the US Free Trade Agreement Implementation Bill 2004, but there are also impacts in relation to the environment in the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004.

Regarding the thrust of this amendment, we only have to look at the recent instance of the outbreak that occurred in Central Queensland in relation to our citrus fruit. That outbreak came as the result of imports of plant material into this country, and we saw the amazing devastation that this one instance perpetrated. I think all of the issues in relation to the environment and the dangers that we are exposing our environment to through this legislation have been well covered in the chamber. It is obvious that the position of both the government and the opposition is to vote down all amendments by One Nation, irrespective of their validity and their benefit to the environment or the Australian people.

What we are actually seeing, as I have said earlier, is not converging politics but converged politics. We are at the point where, on major issues, there is no opposition in this parliament. We have two parties whose philosophies are so similar, particularly in relation to issues like free trade agreements and GATS. All we have to do is see who was in government when the negotiations for GATS took place. It was the Labor Party. When the Liberal Party took gov-
ernment, what did they do? They implemented the policies that the Labor Party had commenced the negotiations on. And so we go on and on. We have converged politics in Australia. What Australia needs is a strong, viable opposition in our parliaments, and that is gradually occurring. It is not going to happen overnight; it is going to take some years for that to develop, but develop it will because the people of Australia view with great concern the decisions that are being taken in this chamber by the Labor Party and the Liberal and National parties.

Protecting the environment should be one of the greatest issues that we as senators fulfil in this chamber. We are placing the environment substantially at risk in relation to the situation that is transpiring. If we look at agriculture, all we have to do is look at the possible impacts on agriculture in Australia. If we look further, we can see that there is the ability, I believe, in this document for the Australian government to actually implement temporary relief. I will come back to the footwear, apparel and leather industries.

One Nation recommends improved safeguard measures to deliver temporary relief to injured import sensitive Australian industries and to improve safeguard provisions to provide relief against import surges. These provisions must be allowed: only a specific quantity of a select product is to enter into Australia at zero duty rates, and higher tariffs should automatically be triggered when imports reach a specific level or volume. One Nation recommends that Australia must have the ability to restrict imports for temporary periods if, after investigation carried out by competent authorities, it is established that imports are taking place in such increased quantities—either absolutely or in relation to domestic product—as to cause serious injury to the domestic industry and producers of like or directly competitive products. Those issues must remain—

The TEMPORARY CHAIRMAN (Senator Chapman)—Senator Harris, I advise you that we need to report progress before midnight.

Senator Harris—that is your call, Mr Temporary Chairman; that is your duty.

The TEMPORARY CHAIRMAN—It is in the standing orders.

Progress reported.

Sitting suspended from 11.59 p.m. until 9.00 a.m. on Friday 13 August.

Friday, 13 August 2004

The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.00 a.m. and read prayers.

COMMITTEES

National Capital and External Territories Committee

Meeting

Senator FERRIS (South Australia) (9.00 a.m.)—by leave—I move:

That the Joint Standing Committee on the National Capital and External Territories be authorised to hold a public meeting during the sitting of the Senate today, from 9.30 am, to take evidence for the committee’s inquiry into the role of the National Capital Authority in the redevelopment of Pierces Creek.

Question agreed to.

Public Works Committee

Meeting

Senator FERRIS (South Australia) (9.00 a.m.)—by leave—I move:

That the Parliamentary Standing Committee on Public Works be authorised to hold a public meeting during the sitting of the Senate today, from 9.30 am, to take evidence for the committee’s inquiries into the development of new collection storage facility for the National Library, and the construction of East Building at the Australian War Memorial.
Question agreed to.

**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 (CUSTOMS TARIFF) BILL 2004**

The TEMPORARY CHAIRMAN (Senator Brandis)—The committee is considering the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 and amendment (4) on sheet 4367, revised, moved by Senator Harris.

Senator HARRIS (Queensland) (9.02 a.m.)—I will not detain the chamber for any great period of time this morning, because it is very obvious that we have two sets of rules here. We have one set of rules that apply to America and we have a very different set of rules that apply to Australia and in relation to our legislation. I referred yesterday to a US document headed ‘US-Australia Free Trade Agreement—Questions and Answers About Pharmaceuticals’. Even though these references pertain to pharmaceuticals, I think it is worth while reiterating them this morning as they are relevant to the different outlook of the United States and the different position that it claims to be in relation to this free trade agreement. One question that was put in that document is:

Does the U.S.-Australia FTA prevent Congress from passing drug re-importation legislation?

The answer is:

No. The FTA reflects current law in the United States.

It continues—and this is the important wording:

Nothing in this FTA or any other trade agreement prevents Congress from changing U.S. law in the future. Even if a dispute settlement panel found the U.S. acted inconsistently with the FTA, it could not require Congress to amend the law.

So we have both sides of the argument there. In other words, the Americans can have two bob each way. The Americans clearly say that they can change US law in the future if they want to, but they do not have to change US law even if a dispute panel finds that the US has acted inconsistently with the free trade agreement. Yet in the Australian media this morning we have the outstanding statements of the US Ambassador to Australia saying that if we make any amendments to the enabling legislation America may pull out of the deal. Is that a balance? Of course it is not. That is one set of rules for the United States and a totally different set of rules for Australia.

Speaking to the amendment that I have before the chair, there could be no issue with a higher priority for the Australian people than the environment. Yet each time the crossbenches have brought an amendment into this chamber to effectively protect workers’ jobs, the environment or the Pharmaceutical Benefits Scheme they have been voted down. It has been said time and time again in this chamber by the government minister, Senator Hill, that we cannot alter any of this legislation, because it reflects our commitment under the treaty. Well, if we cannot why can the Americans? It should be a balance. What is good for the US should also be good for Australia.

The amendment I moved late last night is to protect the environment. Under this act or its regulations, any act or measure necessary, including by way of increasing customs tariffs, may be taken to protect the environment from the adverse impacts of imported products or produce. I commend the amendment to the chamber. It will be interesting to see...
whether the government and the opposition are again willing to put the environment of this nation before their commitment to getting the FTA through.

Question negatived.

Senator HARRIS (Queensland) (9.08 a.m.)—I move One Nation amendment (5) on sheet 4367:

(5) Schedule 1, page 5 (after line 3), after the Schedule heading, insert:

Customs Act 1901

1A After subsection 50(2)

Insert:

(2A) For the purposes of paragraph (2)(aa), a specified circumstance includes a circumstance where it is established that the importation of like or directly competitive products are being imported in increased quantities, either absolute or in relation to domestic production, and the importation is having a negative impact on the domestic industry.

There we had a classic example. That was the exact example for the Australian people. There was not a word of defence by the Labor Party, the Liberal Party or The Nationals to have a very open statement—the statement being the ability to protect the environment. No, they want their FTA. It really makes you wonder whether what we are seeing is the government and the opposition delivering the best legislation that money can buy.

Here is a very simple amendment. The purpose of the amendment is to protect the jobs of Australian workers, in, for example, footwear and textiles, where Australia currently has 60,000 to 70,000 workers employed. If this amendment is agreed to by Labor and the Liberals, under exceptional circumstances it will allow the government to restrict those imports where they were found to be adversely affecting the jobs of workers. I will put it as bluntly as I can. If we have no response from the Labor Party nor support for this amendment, it will send a clear and concise signal to every worker in Australia that the Labor Party has abandoned them, because the thrust of this amendment is to protect them. It is not to stop imports; its purpose is to protect the jobs of Australian workers, the very people the Labor Party is committed to defending. If it abrogates that commitment and does not support this amendment then it is clear that the Labor Party has walked away from its members. I commend this amendment to the chamber.

Question put:

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

The committee divided. [9.17 a.m.]

(The Chairman—Senator J.J. Hogg)

Ayes............ 11
Noes............ 46
Majority........ 35

AYES

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

NOES

Barnett, G. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Carr, K.J.
Chapman, H.G.P. Colbeck, R.
Collins, J.M.A. Denman, K.J.
Eggleston, A. Ferguson, A.B.
Ferris, J.M. * 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, I.
Macdonald, J.A.L. 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. Stephens, U.
Tchen, T. Tierney, J.W.
Troeth, J.M. Watson, J.O.W.
Webber, R. Wong, P.

* denotes teller

Question negatived.

Bill agreed to.

US Free Trade Agreement Implementation Bill 2004 reported with amendments; US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 reported without amendment; report adopted.

Third Reading

Senator HILL (South Australia—Minister for Defence) (9.20 a.m.)—I move:

That these bills be now read a third time.

Senator BROWN (Tasmania) (9.21 a.m.)—Here we have, at the end of a long debate, a very simple concluding point—that is, the Labor Party are going to join with the coalition in a moment to put through the enabling legislation for the US-Australia free trade agreement. It has been a long debate but what has emerged, above all, is the loss of sovereignty of our nation of Australia. In every avenue, in every component, of this legislation—from quarantine to health, to manufacturing, to intellectual property, to protecting our culture, to agriculture and to the environment—this nation is disempowered. This parliament is disempowered by the big parties assenting to legislation which puts arbitration on a whole range of matters into the hands of an appointed judicial system beyond the reach of our courts.

The free trade agreement, after this, is beyond the reach of this parliament. It cannot even be terminated by the parliament—that is up to the Prime Minister and the President of the United States. It cannot be altered by the parliament—that is up to the President and the Prime Minister. The arbitration system under this joint committee, and several other committees yet to be appointed by the Prime Minister and the President, is beyond the reach of this parliament, not open to scrutiny by this parliament. Its determinations—whether in relation to cutting back the Australian cultural content of films, lowering our quarantine barriers, harsher and more expensive intellectual property restrictions or the import of manufactures resulting in the loss of thousands of jobs for Australian workers—are beyond the reach of appeal in our courts and do not come to this parliament to be vetted. We are disempowered by the Latham Labor opposition and the Howard government of the day.

This morning we got a message from the United States trade department which said: ‘You passed an amendment in your parliament in Canberra, down-under, last night. We’ll see. We’ll let you know a bit later whether or not that’s acceptable.’ There is nothing this parliament can do about it, because it has been disempowered by the Rt Hon. John Howard and Mark Latham.

Senator Brandis—Australia’s got exactly the same right, Senator Brown.

Senator BROWN—We await the pleasure of the US department of trade to tell this parliament whether or not its legislation is acceptable. The barking dog opposite is barking at the wrong person. I stand here on behalf of the Greens and this crossbench in defence of the sovereignty of this country, sold out by the Labor Party and sold out by the Howard coalition to faceless people in the department of trade, Hollywood, Silicon Valley and the drug corporations in New England. They are empowered. This parliament and our courts are disempowered.

Senator Brandis—Australia’s got exactly the same right to do that.
**Senator BROWN**—The barking dog opposite says: we’ve got the same rights they’ve got. What he means is that the corporations have the same rights. Try to get to this unelected, faceless joint committee and its subcommittees, and the best an Australian or an ordinary American can do is write a letter—that is it, full stop. The corporations will be in there with their lawyers, but the ordinary people will be locked out. What a black day for democracy this is. What a black day for Australia’s sovereignty this is—defended honourably by the crossbench but sold out by the big parties, the Labor Party along with the Howard government.

The press gallery has been concentrating on that minor pharmaceutical amendment, of which the Americans now say, ‘You have to wait and see whether that’s allowable.’ But the big picture—that this legislation moves our sovereignty out of this parliament into the clutches of the multinationals and the appointed ayatollah of trade, appointed without any comeback from this parliament—makes this, in my books, a derogation of the duty of every parliamentarian to defend our sovereignty. The Americans are not giving up their right to legislate as they want to. When will our department of trade send a message to congress saying: ‘We’ve vetted your legislation. We’ll determine some time down the line whether or not it’s good enough’? Can you imagine that happening?

The US department of trade says, on the very first day that this trade agreement gets settled in this parliament: ‘Well, Canberra, hang on here. The drug companies and the United States haven’t made a decision yet. What your parliament says doesn’t stand until they’ve ticked it off.’ It is disgusting.

**The PRESIDENT**—Senator Brown, three times in your contribution you did use unparliamentary language to another senator. I did not interrupt the flow of your speech, but I ask you to withdraw. You were referring to Senator Brandis using unparliamentary language, and I would ask you to withdraw.

**Senator BROWN**—What reference was made?

**The PRESIDENT**—You accused Senator Brandis of being a barking dog, which is unparliamentary. I did not want to interrupt your speech while you were speaking, and I ask you to withdraw that comment.

**Senator BROWN**—My canine sensitivities make me withdraw that comment at your pleasure, President.

**Senator RIDGEWAY** (New South Wales) (9.28 a.m.)—I will not take up much of the time of the Senate in dealing with this issue, but I do want to put on record the views of the Australian Democrats in relation to this debate. It has certainly been a very long one over the last two weeks. Whilst many here might think we have had a chance to go through the issues, it is important to remind ourselves in this place again and again that we are not debating the free trade agreement, because that got dealt with by the government. It was dealt with separately. What we are debating is the enabling legislation. In many respects, the many chapters in the free trade agreement have been neglected in terms of proper debate, proper scrutiny and proper review. It is not enough for the government to hide behind the rhetoric that the Joint Standing Committee on Treaties, the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America and the various reports are sufficient in and of themselves in giving us, as Australians, an opportunity to see what the impacts of this free trade agreement are going to be.

We all ought to be very clear that the free trade agreement has been struck in such a way that it not only is a preferential deal but tips the balance in favour of the United
States to the extent that our environmental policy, our social policy, particularly in relation to health, and our cultural policy—all of these policies—are subordinate to it. In effect, the national interest has been made subordinate to our alliance with the United States. It is correct that they will have a greater say.

The minister has continually said that we are taking a flexible and non-predetermined approach to how we deal with particular issues and that many things—the PBS, for example, as it relates to the pricing mechanism for medicines—are not on the table. Yet he could not give any real explanation for why we needed review processes and why dispute resolution mechanisms provided opportunities for private individuals—not members of the US government, not even members of the Australian government, but private individuals—representing corporations to have a greater say. People ought to understand very clearly that we have created a situation where public policy will be dealt with in a private rather than a public way. Our policies have been made subordinate to the text of the free trade agreement, which has also given many US corporations a foot in the door.

We have been fighting it all along because, whilst we support fair trade, no-one could ever say that this is either a free trade agreement or a fair one. In fact, it is fundamentally flawed in many respects. I am astounded and dumbfounded that the opposition have seen fit to support the government in making this law to support the free trade agreement. Quite frankly, it is not a question of the opposition saying, ‘These are the things we are going to do when we get elected to office.’ As a result of this massive cave-in, I would ask this question: ‘What are they going to do when they are in opposition?’ They may very well be in opposition as a result of this, and I think the concerns of all of the people out there who feel betrayed by what has occurred on this day are legitimate. It is a black day, being black Friday. We have tried to talk about this in a fair and open way. The government have tried to paint our response as reactionary or sensationalist. I would describe it as realistic, as a response that takes account of the evidence put before us through the various inquiries.

While we have responded in this way, the opposition and the government have only been able to talk about this in strange, science fiction terms. All they can say is: ‘The truth is out there’—somewhere; and when they talk about the spirit the only one that they can evoke is one from bad US television. I think we have to ask whether this is really an episode of The Bold and the Beautiful. Will our Senate just turn into The West Wing? Our ability to determine our own future has been compromised to a high degree.

The Australian Democrats have held as a united team and have been firmly committed to making sure that the deal does not come into force, because it is a dud; it is a bad deal. I congratulate my Senate colleagues and others on the crossbenches for their efforts in this critical debate. Without their contributions many of the issues that have come forward would not have been aired, but there are many others that have not been debated at all. Asking the questions is about guaranteeing the role of the Senate as the house of review and providing an opportunity for people out there to be informed. It ensures that there is an honest and sensible debate. The public deserve that. I think all of us would appreciate that that is the role the Senate ought to play, irrespective of the frustrations that might be felt from time to time.

The free trade agreement could have been our opportunity to carve out something unique in our trade relations with not just the United States but other countries around the world. As the deal stands it is unbalanced,
unfair and completely unacceptable. We should not pay this price for a meagre economic gain and a pat on the head from our friends in the United States. In many respects the government have bowed to the pressure of US interests. We are taking the scraps from the table just so that they can say we have got a deal.

The Democrats do not want to be seen as being antibusiness or antitrade. We do not just talk about these things for the sake of talking. It is a question of standing up for what you believe in, because this is the most significant issue that the Senate has dealt with for a long time. Quite frankly, we do not want to stand by and watch this country’s future being sold at bargain basement prices. It is too important. In the years to come, when the reviews are conducted and we look back and realise that prices of medicines in this country probably have changed—as have other things we were told were not going to change—I wonder whether anyone will remember the debate we had. It is not just a question of looking to the future; it is also a question of drawing a line in the sand now. I would have liked to have thought that the opposition would not cave in. They gave us 42 good reasons why the agreement should not have been supported, yet they still went ahead and supported it. I want it on the record that the Australian Democrats oppose this free trade agreement, not because we are antitrade but because we believe in fair trade—and this free trade agreement is far from it.

Senator HARRIS (Queensland) (9.36 a.m.)—In making my comments in relation to the US-Australia free trade agreement I want to place very strongly on the record that One Nation is not anti-American. This is not about saying we should not have a trade deal with America; it is about saying this is the wrong deal with America. Australia is a small economy about to be swamped by a tidal wave called the US economy. We have just seen the ALP vote against One Nation’s amendment to protect workers’ jobs in Australia. But the ALP will not worry. They are not a labour party; they are a liberalised party—a party for big business, just like the Liberals and Nationals. They are no longer supporters of workers and—very sadly—they will sit back and see jobs destroyed.

Under this agreement, workers will be laid off. Workers will unbolt the very machines that they have worked for years and years, dismantle them, put them into shipping containers and send them overseas along with their jobs. Jobs are not statistics. They are a lifeline for our families. And yet we have an agreement that will see huge job losses over the coming decades.

Still unanswered is the question of the impact of the Free Trade Area of the Americas. Australia has now, to all intents and purposes, signed up to the US-Australia free trade agreement. I ask each senator in this chamber in the vote on the third reading of this bill: are you taking into account the fact that America is moving into a free trade agreement that will cover the whole of America—North America and South America? That is 800 million people. Australia’s economy is going to be competing against the strength and the economies of scale of 800 million Americans. God help us, because we are going to need it.

Why haven’t we had a conscience vote on this issue? Why can’t each senator be allowed to voice their opinion for the constituents that they represent. We are friends when it counts, but friends do not slavishly follow the free trade economic model that has hurt so many American, Canadian and Mexican people. We should not subject our own country to that same treatment.

When we have a decision by the Labor Party and the Liberal and National parties to
pass this agreement, we know emphatically that they are not poles apart, as they will try to imply for the polls at the next federal election. They are cold, calculating economic rationalists who do not care about Australia’s interests but care more about getting the corporate donations that this trade agreement will deliver for their election campaigns. The crossbench senators in the chamber have delivered documented evidence—not rhetoric—to back up each and every amendment that we have put forward that clearly demonstrates that free trade agreements cause severe economic hardship, job losses, family breakdowns, untold suffering, misery and, most importantly, environmental devastation. I most certainly hope that the people of Australia reflect their dissatisfaction in the next election. Furthermore, the preamble of the agreement commits us to expand bilateral trade and investment, so we have not seen the end of the process yet. This is just the beginning.

I wonder whether senators, when they sit down in their seats in this chamber in the third reading division that will occur, have ever heard of Maquiladora? I will lay London to a brick on that none of them have. But they should have. If you get onto the Internet and have a look at the ads for Maquiladora, you will find labour and environmental standards under American free trade—they have a zone on the US-Mexico border—that will take your breath away. The cost of labour, the reimbursement to the workers there, and the devastation to the environment in that border area are absolutely appalling, and we are going to purchase goods derived from that devastation. I do not believe that the ministers have any idea how many jobs will be lost from our textile, clothing and footwear industry. Why not? Because that sort of thing is just too hard to work out. And yet they will commit to this experiment which history has shown to be an absolute disaster.

At the end of the day, senators in this chamber will not get a vote on the text of the document. That agreement is already signed off, and the statements in the media over the last few days emphatically deliver to the Australian people the message that this agreement was and always will be beyond the power of this parliament. This is not a free trade agreement; it is a farcical trade agreement. It is an agreement inspired by big business, put together by big business and administered by big business for the benefit of big business. If you doubt that, have a look at the list of companies, both American and Australian based, that have signed up to support this trade agreement. Close inspection of the FTA reveals not genuine free trade but managed trade. It is an agreement designed to create a favourable environment for multinational corporations. Despite the free trade rhetoric behind the FTA, the treaty itself is a mixture of trade liberalising and trade restricting elements. It liberalises trade into Australia; it restricts our ability to have any say over our national entity.

One Nation questions the wisdom and the theoretical basis of the free trade agreement. The bureaucracies, such as the dispute resolution panel which implements the trade agreement rules, are ripe for manipulation and capture by special interests, particularly corporate interests. This agreement is characterised by the typical hallmarks of excessive, unaccountable government—government by executive and not by parliament; government by a clique of elite workers—in the interests of a narrow section of big business, and a weak, limp, pathetic opposition that cannot even raise its voice to protect the national interest or the interests of its own constituents, that is, the workers of Australia.

This agreement will not produce the results that are being scripted by the government. US markets will not be transformed into a paradise for Australian companies. The
Australian market will be a paradise for the US multinationals that now, as a result of this agreement, will receive most favoured nation treatment. The biggest economy presently in the world is about to roll over into Australia and roll over our businesses. Under this agreement, the major exporting industries in Australia will become jobs offshore. The Americans have all the protection they need to protect their workers, their industries, their farmers and their investments. After the experience of NAFTA what else would you expect? They have had 10 years to get the violin out and really tune it up to do a number on us.

One Nation are opposed to corporate defined globalism where the interests of multinational corporations are put before people, democratic practices and the environment. Our key concerns are corporate control and power imbalance. Australia’s economy is minuscule compared with that of the United States. Exports from Australia to the US represent 11 per cent of total exports from this country. Conversely, US exports to Australia represent only 0.7 per cent of American exports. The sheer imbalance in the trade between the US and Australia means that there is a potential for a massive impact through economic changes in the US. Barely a ripple would be felt in the reverse situation. Moreover, the US would be able to leverage its power to continually open Australian markets up to more and more competition without necessarily reciprocating or compensating. Poorer people in both Australia and the US are already feeling the effects of privatisation, while multinational corporations make the profits.

The free trade is based on neoliberalism, the idea that the most efficient way for societies to distribute resources is by ensuring that the capitalist economy is managed with the barest possible level of government intervention and administration. In other words, the market becomes the key determinant in deciding who gets what. It is highly questionable whether the market is the most efficient way of distributing resources. The question quickly becomes: efficiency for whom? Far from the trickle-down effect, the gap between the rich and the poor across the world is widening. The profits of free trade are lining the pockets of the super rich while the rest of the world is forced to face the social and ecological consequences. The public are bamboozled and the big political parties are bought.

Senator Hill, representing the Minister for Trade, says that the free trade agreement is a win-win for Australia. I say that is codswallop, claptrap and absolute twaddle. The US is a big country and makes up the rules to help the US. I personally have been through the committee process and say to all: why would any government in its right mind sign such an agreement that so seriously undermines its own authority?

The Liberal, National and Labor parties get the bulk of their campaign contributions from corporations, so they do what the corporations want. The large corporations are, quite understandably, wildly in favour of chapter 11 on investment. The negotiators of the treaty were lawyers and public relations spin doctors who can now earn billions teaching corporations how to milk the chapter 11 cow and how to propagandise the public. They put the language in there on purpose so that they could exploit it later. The coalition have not realised how foolish they were being when they signed the agreement, and Labor has supported it.

The major news media, television and newspapers, particularly the News Ltd stable, have engaged in a conspiracy of silence. We have heard about the PBS and we have heard a little about intellectual property rights, but very few in the media have re-
ported on the investment chapter. Not one has substantially explained what the free trade controversy is about. What is it about? The Americanisation of Australia’s economy.

In closing, I want to reiterate what I said at the commencement of my contribution. In opposing the free trade agreement between Australia and America, One Nation is not anti-American. What One Nation is, and is proud to be, is fiercely parochially Australian.

Question put:
That these bills be now read a third time.

The Senate divided. [9.58 a.m.]

(The President—Senator the Hon. Paul Calvert)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>51</th>
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<tbody>
<tr>
<td>Noes</td>
<td>10</td>
</tr>
<tr>
<td>Majority</td>
<td>41</td>
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**AYES**


**NOES**


* denotes teller

Question agreed to.

Bills read a third time.

**BUSINESS**

**Consideration of Legislation**

Senator HILL (South Australia—Leader of the Government in the Senate) (10.02 a.m.)—I seek leave to move a motion to enable two government business orders of the day to be taken together for their remaining stages.

Senator Brown—I ask what those orders of the day are.

Senator HILL—They are the two terrorism bills: orders of the day Nos 2 and 16—Anti-terrorism Bill (No. 3) 2004 and Anti-terrorism Bill (No. 2) 2004.

Leave not granted.

**Suspension of Standing Orders**

Senator HILL (South Australia—Minister for Defence) (10.04 a.m.)—Pursuant to contingent notice standing in my name, 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 provide for the consideration of the Anti-terrorism Bill (No. 3) 2004 and the Anti-terrorism Bill (No. 2) 2004 together for their remaining stages.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.04 a.m.)—It is important to draw attention to what is being attempted here and the fact that it cannot be done without the acquiescence of the Labor Party. Clearly the government does not have the numbers to do this unless
others agree. In the first place, it is extraordinary to be sitting on a Friday. I could accept that there was a majority who wanted the free trade agreement and that we should sit until that has been passed. That has been passed; we have had that debate.

There is no need for us to continue to debate any legislation. The government are making no case that it is urgent to pass these two bills or any of the other bills on the Notice Paper or the red. Unless they do, frankly, I believe that we should adjourn. I will not move a suspension, but the Democrats openly signal to the chamber that we support adjourning because there is no need for us to now continue to sit. People can get back to their electorates. I gather there is this thing called an election coming up, and people might want to campaign.

Senator Ian Macdonald—A pity you didn’t think that for the last week!

Senator BARTLETT—I note the interjection from the government. The fact is that, despite all the criticisms and allegations of filibustering, the Senate could not come to a vote on the free trade agreement because the government and the Labor Party had not figured out their deal on what they were doing until yesterday. When we got to their amendment at 11.30 on Wednesday night, they stared at each other blankly across the chamber and said, ‘What are we doing?’ We had to adjourn. It took you two weeks to figure out what you were doing. Do not blame us for it taking so long. We have now finished what that was about, after two weeks. We can now adjourn. There is no urgency on any of these bills. I make that point first: the Senate can adjourn, and the Democrats would support the Senate adjourning. If the government will not do it, we can suspend standing orders and others can move to adjourn.

The second point here is what is being proposed with the two pieces of legislation. Let us look. Yesterday the government had on the Notice Paper a list of 11 or 12 bills that they were suggesting should all be debated before we adjourn. That did not include Anti-terrorism Bill (No. 2) 2004. It is No. 16 on the Notice Paper. It is not on the red; it is not on the order of business for today. I know it is about antiterrorism, but it is No. 16 with a bullet! It has gone from No. 16 to No. 1—to the top of the chart—in the space of two seconds. Suddenly it is superurgent. But no reason is given, of course.

People actually following the issue would know that groups like Amnesty International have expressed strong concerns about the threat to basic freedom of association that is contained in that bill. This has happened with no notice at all. It is farcical enough that we are debating anything when there is no urgency. To have a bill, with no notice at all, suddenly surge from 16th in priority to No. 1 at one minute’s notice is just not acceptable. If the government want to debate it, they can debate it separately. Although one is called Anti-terrorism Bill (No. 2) 2004 and the other is called Anti-terrorism Bill (No. 3) 2004, they deal with different matters and should be considered separately.

The government should not be trying to sneak through more attacks on our freedom on a Friday in the midst of everything else, hoping nobody notices. If the government are going to do this sort of stuff, we are going to look at it properly. If the government are not going to adjourn then we are certainly prepared to sit here, examine these bills properly and expose the truth about them. They do not need to be taken together and so we will not support them being taken together. We should not be lifting a bill up from being No. 16 to No. 1 with a bullet. Frankly, we should be adjourning.
If the government need to lift it up then they should make the case. But none of these bills are urgent. There is no reason why we cannot come back and deal with them in a couple of weeks. Yesterday, despite the lists of the bills that the government had given notice needed to be debated, the Manager of Government Business in the Senate stood up and said, ‘Actually, we don’t need all those; we just need the free trade bill, the antimarriage bill and the electoral bill. Forget about the rest.’ Suddenly, as well as the Marriage Amendment Bill 2004 we now have the antiterrorism bills back on as well.

Who knows what will happen? They might bring back some more bills. We are totally open ended. It is simply ridiculous. We do not know what we are supposed to be debating from one minute to the next, with legislation that it is not even necessary to debate today at all, and we are expected to agree with this. It is a joke. The Senate and the public should get more respect than that. The government might have the numbers to get these sorts of bad laws through but they should at least have the guts to ensure that they are properly examined. They should try to figure out themselves what they are going to bring on, what order they are going to bring them on in, what is important and what is not rather than keep changing their mind from one minute to the next. We should be adjourning. We should not be debating any of these bills and we certainly should not be trying to mush them all together in one heap and hope nobody notices the extra dangers. [Time expired]

Senator BROWN (Tasmania) (10.09 a.m.)—This is an extraordinary abuse of the Senate. We expect that the Labor Party will support it but, who knows, they might peel off from the government somewhere during the day’s proceedings. Because of some press condemnation of the government and the discrimination against gay marriages that it wants to bring into law with the aid of the Labor Party, here we have it putting that ahead of antiterrorism legislation. Because it has an election coming down the line the government has suddenly changed its priorities in the Senate and wants to bring the two antiterrorism bills on first.

Let us have a look at what the government does not want to bring on. This includes the Family and Community Services and Veterans’ Affairs Legislation Amendment (2004 Budget Measures) Bill 2004. Senator Abetz is not here. He is not talking about that; he is not promoting that—it apparently does not matter. It includes the Trade Practices Legislation Amendment Bill 2004. Where is Senator Minchin? That bill is apparently not as important, let alone the Surveillance Devices Bill (No. 2) 2004, from the same minister. Then, there is the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill 2004; that one does not get a guernsey, even though it is listed on the Notice Paper ahead of this bill to allow people to be indicted because they associated unwittingly with people who it is claimed are involved in wrongdoing. There is also the Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004. The wine producers—Senator Abetz has the charge there again—can wait. They can wait weeks. There is the Australian Passports (Application Fees) Bill 2004 and the Australian Passports (Transitionals and Consequentials) Bill 2004. They are Senator Abetz’s again. Is he in the chamber? Is he in the parliament? Is he in the country? Who knows? All his bills are here, but there is no sign of the Special Minister of State.

There is the Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002. The employees can wait; Senator Ellison is not here promoting that bill onto the agenda. Then we get to
No. 11—we are still five short of the antiterrorism bill that did not matter yesterday but does today—and we have the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004. We had the Prime Minister sitting with kindergarten kids just a few weeks ago, but now the bill is relegated. Of course, the States Grants (Primary and Secondary Education Assistance) Legislation Amendment Bill 2004 is something which one might have thought was critical to the promotion of public education and indeed education in general in this country, and absolutely critical as part of the debate on the future of education funding, particularly in the run-up to the election—let us see what the bona fides are. It is not on the agenda. Who is the minister in charge of that bill? Senator Abetz. Senator Abetz is AWOL as far as this debate is concerned.

Then we have Indigenous education, with the Indigenous Education (Targeted Assistance) Amendment Bill 2004. If you are in the Indigenous community you might think that is important. It is not important to this government; it is only No. 12 and it is not going to be debated. Senator Coonan is in charge of that one and she is not here either. There is the Workplace Relations Amendment (Simplifying Agreement-making) Bill 2004. I am sure business wants to see that go through. It is the Manager of Government Business in the Senate, Senator Campbell, who is in charge on this occasion, and he is not here either. Then we move on to the Indirect Tax Legislation Amendment (Small Business Measures) Bill 2004. Small business does not matter this morning. Their misfortune is the minister—guess who!

Senator Cherry—Senator Abetz!

Senator Brown—Yes, it is Senator Abetz and he is missing again. Could somebody please send out a call for Senator Abetz. He is not in the parliament. Is he in the country? There is a whole slate of legislation here which is not being given its due priority. Why? Because the minister has fled the parliament. Senator Abetz has gone missing. Senator Abetz, can you hear us? Would you please come back? We need you.

The Acting Deputy President (Senator Watson)—Senator Brown, address your remarks through the chair.

Opposition senators interjecting—

Senator Brown—There is some dissent from that call. I am talking about the people who need support: those in education, Indigenous people, those in workplace relations—the whole gamut. (Time expired)

Senator Ludwig (Queensland) (10.14 a.m.)—This is a matter we will not oppose in terms of the suspension motion. We will not oppose the suspension motion so that we can get on with the cognate debate in respect of the motion put. In fact, the cognate debate on the Anti-terrorism Bill (No. 2) 2004 and the Anti-terrorism Bill (No. 3) 2004 is not that unusual in the sense that we can deal with them cognately: that is clear. They were originally one and the same bill. They were actually split and dealt with separately. In fact, on 23 June 2004 the Senate referred the provisions of the Anti-terrorism Bill (No. 2) 2004 to the Senate Legal and Constitutional Legislation Committee, of which I am a member, for inquiry and report. On 5 August 2004 we agreed to a bit of an extension to finalise that report; nevertheless, that report has been finalised and is available. Since that time, parts of the No. 2 bill have been referred to the committee for further consideration, but it did not need to actually go to another committee. But all that aside, ostensibly the five schedules deal with the one matter, so we are in a position to be able to deal with that today. If the program is to proceed, then we will—and we stand ready to—deal
with Anti-terrorism Bill (No. 2) and Anti-terrorism Bill (No. 3) cognately. They were originally the one bill. The No. 3 bill was split off. The committee inquired into the No. 2 bill but it also dealt with all the matters contained in the No. 3 bill, so we are in a position to be able to proceed with these today.

**Senator Murray** (Western Australia) (10.17 a.m.)—I think this conspiracy we are facing whereby a process is manipulated—

**Senator Boswell**—You have been voting with Senator Harris too much. You are getting caught up with conspiracy theories.

**Senator Murray**—I will take the interjection. The reason the word ‘conspiracy’ exists is that now and again they do exist.

**Senator Boswell**—You ought to be ashamed of yourself.

**Senator Murray**—And I should be ashamed of myself—you are quite right. The fact is that the majors have decided how things are going to be, without coming clean in advance through whips and leaders in determining the process. There is a real point at issue here which was very well made by Senator Bartlett: in the pursuit of our national security and the pursuit of our concern about the national threat to our country, there is this constant need for us to balance the freedoms which are being assailed and the issues of protection, and that does require these matters to be contested and debated on the floor. It is a very serious matter to us that you will suddenly put together two bills and suddenly advance a change in the program which makes it difficult for members of the Senate who are not tied to their caucus or to their party room by the iron discipline of knuckling under—which, as we know, the Left of the Labor Party have just done on the FTA. I do not condemn you for obeying discipline, but that is the reality of it: you have to obey discipline. We are not beholden in that sense; nor are we beholden in the sense that the National Party or the Liberal Party are. We the crossbenches—and particularly the Democrats—carry the flag of having to represent the views of those who are concerned about an assault on freedoms and liberties in the pursuit of the very important issue of our national security. So we resent, oppose, are dismayed by and are disgruntled about this idea that you want to rush through these matters.

Then there is the question of other priorities. Frankly, I have never understood this marriage bill and I am going to refrain from speaking on it if I can, because reading the stuff I have to read in the committees that I sit through has brought me to a fairly prejudiced view about some of the behaviours of some of those who claim to have strong spiritual leanings. But it does seem odd to me that an antimarriage bill or a marriage bill—whatever you want to refer to it as—would come before other matters. It was designed as a wedge issue—you know it was—and the Labor Party have agreed with the Liberal Party, so no wedge exists. Who cares? Put the thing back to No. 20 or No. 25 and get on with the stuff that really matters. Or, if you really want to care, let us have a proper debate and allow us to have this week and then the next sitting on it. We do not object to you debating it—make no mistake about that; what we object to is the prioritisation.

If, however, there is this question of urgency—that you think an election is around the corner—there are things which matter to people: improving the Trade Practices Act for small business in my portfolio and ensuring that small business tax measures which advance their needs are attended to. As I see it, taking our parliament, every party, as I understand it, has now signed up to trying to make sure that our children and those who are to be educated get some advancement.
No. 11 is the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004. Why would something else come before dealing with an issue for our children? I see numbers of bills before us which have much more worth than is shown in the way in which this program is being manipulated. But my most important point really comes back to the first choice you are making, that you want to run concurrently two bills which should be dealt with separately because they deal with issues of our freedoms, our democracy, the protections that we have fought for as a country. They need to be dealt with in full in detail and be properly examined by the Senate with sufficient time to do so. (Time expired)

Senator GREIG (Western Australia) (10.22 a.m.)—I find fascinating and quite telling—and important to get on the record—the role of homophobia as the key reason we are now having this debate, for two reasons. The reason we are now potentially going to be discussing these antiterror bills is that yesterday the Prime Minister called not one but two press conferences to talk about the free trade agreement. Clearly he walked away from the first press conference thinking, ‘I came across as a bit of a dill in that; I think I’ll do a second one.’ So a second press conference was called, where the Prime Minister clumsily and unsuccessfully tried to explain to the media again where we were at with the free trade agreement while they stood there in bewilderment. At the end of that press conference, Age journalist Misha Schubert said, ‘Prime Minister, why are you prioritising the ban on gay marriage over the ban on terrorism? Why is the proposal to ban same-sex couples getting married being given priority in the Senate over the suite of antiterror bills?’ To this the Prime Minister said, ‘We are not.’ Misha Schubert replied, ‘Yes, you are.’ The Prime Minister said, ‘It’s cold out here. Is anybody else cold?’ He then closed the press conference and shuffled back inside to his office like some sort of Captain Mainwaring on another unsuccessful mission.

We get repeated media calls and inquiries as to what on earth is going on in the Senate. The answer is that nobody knows, because of the appalling time management of this government. How dare you criticise the crossbenchers for taking up time on the free trade agreement when the fundamental PBS amendments agreed between the major parties were not even ready at 11.30 p.m. two nights ago! The fact of the matter is that the government has now been spooked into the recognition that it had in fact put its gay-bashing exercise before its antiterror procedures, and so it is now hurriedly rearranging the agenda to save face.

The second aspect of homophobia in this to which I draw senators’ attention—and we will debate this at much greater length, I assure you, when we get to it—is that, for the first time ever in Australian history, the words ‘same-sex partner’ are going to be included in a government bill. Which bill? Anti-terrorism Bill (No. 2) 2004. In what context? If you are in a same-sex relationship and you are associating with a terrorist, we will recognise your same-sex relationship for the purpose of jailing you. So the exercise before us today is, one, let us ban same-sex couples in long-term loving, committed relationships—whether or not they are raising children, from solemnising their relationships—let us put an end to committed relationships being recognised under law—and, two, let us recognise same-sex partners when they are associating with terrorists. It is disgraceful.

The fact of the matter is that the government has been spooked not just by evangelical Christians, not just by fundamentalists and not just by the hateful anti-gay groups
who had the most appalling rally in this place last Wednesday organised by the Australian Family Association—an organisation found by the Advertising Standards Board to be guilty of vilification. Now it wants to give priority to that so that it can press ahead not just with condemning same-sex relationships in terror bills but also with preventing any recognition of those relationships within civil marriage. That is the rush; that is the reason. This is an ideological push; it has nothing to do with the good governance of the business of the Senate and everything to do with the election. I condemn it. I argue—and I will argue again later—that what we should really be dealing with is not a gay-bashing exercise but antidiscrimination provisions and protections. If we are going to recognise same-sex relationships, let us not do so in a discriminatory way by including them in antiterror bills for the purposes of jailing people; let us do so to recognise the dignity and humanity of lesbian and gay citizens.

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

The Senate divided. [10.30 a.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes........... 44
Noes........... 8
Majority....... 36

AYES

Barnett, G.  Bishop, T.M.
Boswell, R.L.D.  Buckland, G.
Calvert, P.H.  Campbell, G.
Campbell, I.G.  Chapman, H.G.P.
Colbeck, R.  Collins, J.M.A.
Conroy, S.M.  Eggleston, A. *
Evans, C.V.  Ferguson, A.B.
Ferris, J.M.  Fifield, M.P.
Forshaw, M.G.  Harradine, B.
Hill, R.M.  Hogg, J.J.
Humphries, G.  Hutchins, S.P.
Johnston, D.  Kirk, L.

NOES

Knowles, S.C.  Lightfoot, P.R.
Ludwig, J.W.  Lundy, K.A.
Macdonald, I.  Macdonald, J.A.L.
Mackay, S.M.  Marshall, G.
McGauran, J.J.  Moore, C.
Patterson, K.C.  Ray, R.F.
Santoro, S.  Scullion, N.G.
Stephens, U.  Tchen, T.
Troeth, J.M.  Watson, J.O.W.
Webber, R.  Wong, P.

*B denotes teller

Question agreed to.

Procedural Motion

Senator HILL (South Australia—Leader of the Government in the Senate) (10.33 a.m.)—I move:

That a motion to consider the Anti-terrorism Bill (No. 3) 2004 and the Anti-terrorism Bill (No. 2) 2004 together for their remaining stages may be moved immediately and have precedence over all other business today till determined.

Question put.
The Senate divided. [10.35 a.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes........... 43
Noes........... 9
Majority....... 34

AYES

Barnett, G.  Bishop, T.M.
Boswell, R.L.D.  Buckland, G.
Calvert, P.H.  Campbell, G.
Campbell, I.G.  Chapman, H.G.P.
Colbeck, R.  Collins, J.M.A.
Conroy, S.M.  Eggleston, A. *
Evans, C.V.  Ferguson, A.B.
Ferris, J.M.  Fifield, M.P.
Forshaw, M.G.  Harradine, B.
Hill, R.M.  Hogg, J.J.
Humphries, G.  Hutchins, S.P.
Johnston, D.  Kirk, L.

NOES

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

Question agreed to.
Senator HILL (South Australia—Leader of the Government in the Senate) (10.38 a.m.)—I move:

That government business orders of the day no 2 (Anti-terrorism Bill (No. 3) 2004) and no. 16 (Anti-terrorism Bill (No. 2) 2004) may be taken together for their remaining stages.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.38 a.m.)—This motion asks that these two bills—one of which, as I have said previously, has been brought up out of nowhere with no notice whatsoever—should be debated together. It is not only an attempt to hold an extraordinary and unnecessary Friday sitting of the Senate to try to sneak through one attack on our freedoms; the government want to do two for the price of one, mashing them together and trying to rush them all through. The more they can push through without people noticing, the more they think they can get away with. The motion before us is to enable both of those bills, which deal with separate matters, to be taken together. The main commonality between them, apart from being called antiterrorism bills, is that they both involve further removal of the freedoms of Australians and give extra power to the government and government agents.

There is no justification given for the need to put them together. There is no justification given even for the need to pass them today. I should remind the Senate that under our current arrangements for sitting today there is still no limit on the length of time we can sit. We are here sitting literally at the government’s pleasure—not that I am particularly interested in making it a pleasurable experience for them. The motion was previously agreed by the government was that we sit until we adjourn, and the only person who can move an adjournment is a government minister. So we do not know if this is it. They have come to us and said, ‘We have got the antiterrorism bill, we have got the marriage bill and we have got the electoral matters bill, and that will do us,’ but we do not know. Yesterday they said not just privately but also to the whole chamber, ‘All we want is the free trade agreement, the marriage bill and the electoral matters bill, and that will be it.’ There has been no coming back into the chamber and apologising for blatantly misleading the Senate. I had thought there was still a convention that, when government ministers blatantly mislead the Senate, they come in and correct the record. We have had none of that.

As 43 eminent Australians said at the start of this rather long week, we cannot trust what the government do. There is no honesty, integrity or democracy in politics in this country anymore, so we have no way of believing what they are saying to us now. Privately they can say it and they can say it on the record in the chamber; it does not matter. They can change their minds again five minutes later if they feel like it, with no recognition even that they should bother correcting the record. Why should they care about the
fact that they have misled the Australian people? They just go from one deception to the next. At the moment we do not know how many bills the government are going to try to add to the pile of repressive measures and attacks on our freedoms that they are trying to push through on an extraordinary and unnecessary Friday sitting. Will it be Friday night, Saturday or Sunday—who knows? The first thing I would very strongly request of the government is that they outline categorically to the Senate and to the public which bills they are now going to propose the Senate deal with before we adjourn today, tomorrow or Sunday—or whenever it ends up being. They should outline the order in which they propose to put them forward and they should move an amendment to put that as a decision of the Senate so that they cannot come along later and come up with some other fairytale, the latest version of the pretend reality that they are trying to make the rest of us subscribe to.

That is the first and immediate thing I suggest to the government. Otherwise I can quite strongly indicate to them—we cannot believe what they say, but you can certainly believe what the Democrats are saying, and I say this quite clearly—we will question, every step of the way, what they are doing, what they are planning to do next, why they are trying to give it urgency and what their justification is. We will then expect a proper and full debate on the matters in the legislation and the consequences, not just legally but also socially for the country. That is our job; that is what we are elected here to do. We do not need to be sitting here today to do it; we can be doing it properly and in the normal process in two weeks time, but if the government and the Labor Party are going to force the Senate to sit in this unnecessary way then we will make sure the Senate does its job. That was the first thing that needed to be said.

We oppose taking these bills together. It is not necessary, particularly when one of them has advanced from being No. 16 on the Notice Paper to No. 1 with a bullet, without any justification or explanation. We oppose taking the bills together also because we were told yesterday that it was not a requirement that the other antiterrorism bill be debated today. I suspect it is part of a deliberate strategy. It is hard to know, when you get these sorts of things, whether the government has just not figured out what it is doing from one minute to the next. That leaves the Labor Party thinking, ‘We don’t know what we’re doing, because the government has not told us what we’re going to agree to yet.’ Then we will all come along and they will agree to it. I suspect, sadly, that we will get agreement on this as well. But perhaps it is part of a deliberate strategy. If you are going to attack people’s freedoms, if you are going to deliberately reduce the right of freedom of association, if you are going to give extra powers to the government and take them away from the people, you want to do everything you can, when you are attacking things, to try to get through the defences.

I remember Jeff Thomson, a feared Australian fast bowler with a very strong ability as an attacking bowler, saying his great secret was that he never knew where he was going to bowl the ball, so there was no way the batsman was going to know. I think the government are doing the same thing: they do not know what they are going to do next, so there is no way the Australian people and the Senate are going to twig as to how best to defend against their latest attack on our freedoms. In every speech we have another line of attack, another justification, another manufactured argument, another piece of deceit. The only option with that sort of thing is to respond like Geoffrey Boycott: play a straight bat to everything and look at everything as closely as possible. We have to make
sure that every aspect of what is being put forward gets the scrutiny of the Senate.

Part of the strategy is that the longer we sit, particularly once we get into night hours, the ability of others, particularly the media, to scrutinise is reduced and it is much easier to make those attacks on freedoms without the public becoming aware that that is what is happening. This would be serious enough in normal times but I remind the Senate, as the Democrats have done a few times this week, that these are less than normal times in terms of the security of the freedoms of the Australian people. Last week we had a High Court decision. The High Court is charged with interpreting the law and the Constitution as it sees fit and that is what it has done. But the law in this country now is that we have such a scope for government power, under the Migration Act, that the government can lock people up without charge and trial and without any recourse to the courts to do anything about it.

The Democrats have said repeatedly that that decision is not just bad news for people in migration detention. Many of us assumed, and I am sure most of the Australian public assume, that there is some legal or constitutional underpinning against the government’s having absolute power to decide to remove people’s freedom without any protection of the courts. But the decision of the High Court is that there is no protection. The only question is whether or not the government have the head of power under the Constitution to pass a law dealing with that area, as they clearly do with migration. They clearly do in this area as well—there is that head of power—so there is no protection.

We have a much greater responsibility this week than we did last week, because the interpretation, the effect and the reality of the law have changed since last week and since these matters came before the Senate committee. The ramifications of the High Court decision last week, in terms of the total lack of protections for the freedoms of the Australian people, are so potentially far reaching that any piece of legislation that is currently before the Senate that involves giving extra power to a government minister or delegated official and taking it away from the Australian community or individuals should be re-examined. It should be re-examined to see whether the massive expansion of government power that has now been ruled valid by the High Court actually means there are even fewer protections against extreme and unfair actions by the government than we had previously thought.
These bills were already unacceptable. The High Court’s decision shows that, when governments have been given power to remove and restrict people’s freedoms, those powers are unfettered. It just makes a far stronger argument for us not to allow these sorts of bills to pass. We certainly should not allow two separate bills that deal with two separate matters to be marshmallowed together, squished in and pushed through in an attempt to minimise scrutiny of them. The case for urgency has not been made—and that should be made first, frankly—for us to debate them today. But, if we are going to debate them, the case of them being two separate bills dealing with two separate matters—sure, there is commonality in that both of them give extra power to the government and take away freedoms of the community—should be addressed.

I do not need to remind the opposition of some of the heartfelt, heart-on-sleeve, impassioned speeches we heard a couple of months ago about the necessity of protecting our civil liberties and freedom of association when we were talking about protecting building unions. But when it comes to bills that restrict the freedoms not just of building unions and workers but of everybody in Australia the Labor Party are happy to roll over and let them through. They say, ‘We’ll deal with whatever the government says we’re going to deal with.’ Some consistency would be desirable. I do not suggest that the concerns people expressed in June were not genuine. They certainly were and I understand the concerns people had. That is why we were keen to get as many protections as possible. These bills do not have any protections at all and they are far wider in their scope because they affect every Australian.

There is no guarantee, as things currently stand with the decision that the Senate has made, that we will not have next before us some of the other bills that are still on the Notice Paper, like ticking time bombs, to legalise interception of SMSs, email and voicemail without even a warrant. Those are the surveillance bills. We expressed concerns a couple of months ago about industrial relations legislation that might mean extra power for government officials to conduct surveillance of workers. That is a legitimate concern to express. Surveillance that was overseen by parliamentary committees and was able to be challenged in a court if it was not done in appropriate ways and in accordance with the law was a protection that was put in on those occasions to ensure that there was still judicial oversight that could be challenged in the courts. In these bills we have before us there is not even parliamentary oversight, let alone judicial oversight of surveillance in the workplace or anywhere else about anything anybody is up to.

I would certainly not put it past this government—in fact, I suspect some of them have already used this language—to call workers, whether construction workers or anyone else, ‘industrial terrorists’. I am sure I have heard the phrase ‘industrial terrorism’ a number of times. Who knows? We had people in our Great Hall last week calling gay couples ‘moral terrorists’, and they were quite seriously using that phrase. The powers that are contained in these bills—and some of the other bills that are on the Notice Paper that the government are still able to bring on today, as things stand—give absolutely untrammelled power to government officers to conduct surveillance, intercept messages and charge people for so-called inappropriate association with others. These are massive attacks on our freedoms, and they are trying to get them passed by legislation by exhaustion.

It is simply not acceptable, which is why we will not just oppose this motion but continue to oppose this travesty of process throughout the day and throughout tomor-
row—at a minimum, I would suspect. These bills themselves certainly need appropriate scrutiny. If we are going to be dealing with both of them together, we will certainly make sure they are appropriately scrutinised in the committee stage, as well as the other ones that have been flagged. Again I would remind the Senate, and particularly the Labor Party, that this could easily be resolved. All they have to do is vote against this motion and vote to adjourn. Then we could get back to an appropriate democratic parliamentary process, we could prevent these attacks on our freedoms being put forward without proper scrutiny and we could have the parliament consider legislation in a proper manner, as I think the public are entitled to expect us to do.

As 43 eminent Australians said when they stuck their necks out at the start of the week, the standards of democracy in our country have sunk to alarming levels. This is just another indication of it. They got pilloried and vilified for their troubles, for expressing their concern for their country and for their country’s democracy. That is what you get these days: if you express concern for your country, all you get is a torrent of abuse. Plenty more than 43 people, eminent and otherwise, have those same concerns. All of them tie back to what we are debating at the moment, which is to enable two separate pieces of antiterrorism legislation, which in the Democrats’ view unnecessarily and excessively attack our freedoms, to be rushed through alongside each other rather than rushed through separately. If the government is going to try and rush these through without justification, push them through and hope nobody notices, we believe it should at least be required to do it one piece of legislation at a time. We urge the Labor Party to take the same view.

Senator LUDWIG (Queensland) (10.55 a.m.)—I only want to reiterate the position I put earlier. We will deal with the legislation as put forward by the government today. The Anti-terrorism Bill (No. 3) 2004 has been on the red. It is worth stating, as I think I iterated earlier, that it was part of the Anti-terrorism Bill (No. 2) 2004, which had five schedules—the first dealing with passports, the second with the Australian Security Intelligence Organisation Act, the third with division 102 of the Criminal Code Act, the fourth with the Transfer of Prisoners Act and the fifth with the Crimes Act 1914. We adopted the position that schedule 5 was not an onerous provision. Schedule 5 contained amendments for the forensic procedure provisions in the Crimes Act to facilitate effective disaster victim identification. That is an important issue, and it should be proceeded with. I would not imagine anyone in this chamber would be opposed to it, especially given the nature of the issue contained within it.

The Anti-terrorism Bill (No. 2) was then split. Schedules 1, 2 and 5 of the Anti-terrorism Bill (No. 2) were put into the Anti-terrorism Bill (No. 3) and the remainder were left in the Anti-terrorism Bill (No. 2). The Senate had an opportunity to look at the whole of the issue in the report of the Senate Legal and Constitutional Legislation Committee inquiry into the provisions of the Anti-terrorism Bill (No. 2) 2004. The report also dealt with the issues that are now contained in the Anti-terrorism Bill (No. 3). So it is not the mashing together—in terms that Senator Bartlett might use—of disparate measures. This was in fact one bill, the Anti-terrorism Bill (No. 2), and all these matters that are now contained in the Anti-terrorism Bill (No. 3) were in that. I will not go through the provisions. I will simply indicate that we do not oppose the cognating of these two bills, for the very reason that this in fact was originally one bill. All of those schedules, schedules 1 to 5, can be dealt with today.

Question agreed to.
That these bills be now read a second time.

Senator LUDWIG (Queensland) (10.59 a.m.)—I think I just started my speech in the second reading debate on the Anti-terrorism Bill (No. 3) 2004 and the Anti-terrorism Bill (No. 2) 2004. As I said, these bills were effectively one bill—that is, the Anti-terrorism Bill (No. 2)—and that bill was then split to facilitate some of the issues in the other place. Schedules 1, 2 and 5 were put into the Anti-terrorism Bill (No. 3) 2004 and the remainder were kept in the Anti-terrorism Bill (No. 2) 2004. The bills are now cognate so we can deal with the schedules together, as was provided for in the original No. 2 bill.

I welcome the opportunity to speak on not only the bills but also the report of the Senate Legal and Constitutional Legislation Committee on the Anti-terrorism Bill (No. 2) which provides a view on the two bills before us today. The committee considered the provisions which now form part of the Anti-terrorism Bill (No. 3) because they were in the bill which was originally referred by the Senate before the No. 2 bill was split in the House of Representatives. The committee received 95 submissions and took evidence from 16 individual witnesses. I think that is indicative of the high level of community interest in applying appropriate scrutiny of legislation of this kind.

The government and opposition members of the committee joined in a bipartisan report and recommendations. This continues an approach of the committee which goes back as far as the first antiterrorism legislation considered by parliament after September 11 and which has endured through many parliamentary debates. The committee made 10 recommendations in respect of the Anti-terrorism Bill (No. 2) which now apply to both No. 2 and No. 3. The majority of the recommendations relate to the proposed association offence and suggest sensible change to address problems raised in evidence before the committee. For example, the committee recommended that the presumption against bail enacted in the Anti-Terrorism Act 2004 not apply to the proposed offence in light of the fact that it is a less serious offence than the other terrorism offences and does not require any involvement with a terrorist act, actual or planned. The opposition were in a position to consider sensible amendments in respect of that, and we think that the ability of the government to address terrorist and terrorist related offences is important in the fight against terrorism.

The Anti-terrorism Bill (No. 3), as I have said, is the balance of the schedules—it reproduces what were formerly schedules 1, 2 and 5 of the Anti-terrorism Bill (No. 2). Schedule 1 contains amendments to the Passports Act relating to foreign travel documents. Upon the passage of the Australian Passports (Transitionals and Consequentials) Bill, that act will be renamed the Foreign Passports (Law Enforcement and Security) Act. Schedule 2 contains amendments to the ASIO Act dealing with the surrender of passports and the movement of persons in the context of requests for ASIO questioning warrants. Schedule 3, which was formerly schedule 5 to the No. 2 bill, contains amendments to the Crimes Act concerning the use of forensic procedures in disaster victim identification.

Provisions of the bill have been considered by the Senate Legal and Constitutional Legislation Committee, as I earlier indicated, as part of its inquiry into the No. 2 bill. This is because, as I have said, it was referred to
the committee as the No. 2 bill, which contained all five schedules. The committee took a balanced approach which recognised the need to ensure our laws deal strongly with terrorism but also are appropriately targeted at and respond to the problem and do not potentially criminalise areas of legitimate behaviour or activity. Schedule 3 is the least controversial proposal in the bill. In essence, it will enable the national DNA database to be used for disaster victim identification and criminal investigation in connection with a mass casualty incident within Australia.

The amendments were recommended by a committee chaired by Mr Tom Sherman AO which was reviewing the provisions put in place by the Crimes Legislation Amendment Act 2002 following the Bali bombing. I look forward to ensuring that that committee report is available and read in conjunction with the report in relation to the Bali bombings that was provided to the Senate yesterday. Both of them provide a broad view on how we can deal with not only the broader issue but also some of the narrower issues that come up and on how we then ensure legislation properly deals with those issues and provides sufficient powers to our law enforcement officers to ensure these sorts of things can be avoided where possible.

In respect of schedule 2, which concerns the machinery of the ASIO questioning warrant regime, the amendments would require that persons who have been notified that the Director-General of Security has sought the consent of the Attorney-General to request a questioning warrant are obliged not to leave Australia, to surrender their passport to the director-general and to not exit Australia without the director-general’s permission. The director-general must return any passports as soon as practical if consent or a warrant is refused. This builds on changes passed in the ASIO Legislation Amendment Act 2003 which enabled the confiscation of a passport upon notification of the issuing of a warrant. The Senate committee understandably heard concerns about these provisions, and the ASIO questioning warrant regime was itself controversial and no doubt remains a controversial issue in parts of the community. The Senate committee appreciated, as they said, the serious implications of restricting a person’s freedom of movement, but ultimately determined that the amendments were appropriate to deal with cases where it might be necessary to prevent a party from leaving the country before it has been possible to obtain a warrant. In reaching this conclusion, the committee had regard to the safeguards that were incorporated into the warrant regime in the course of parliamentary debate last year and the year before that.

In particular, before seeking the Attorney-General’s permission to request a warrant, the director-general must be satisfied that the statutory criteria in section 34C of the act are met. Schedule 1 of the bill concerns foreign travel documents. The schedule creates power to demand, confiscate and seize foreign travel documents so that a person suspected of a serious offence or specified harmful conduct is prevented from leaving Australia using the document. The schedule also creates offences relating to false or misleading statements in connection with and forgery of foreign travel documents. Again, the committee heard a range of concerns about these provisions, but in the final analysis was persuaded of the need for them and was reassured at the conclusion by the presence of an administrative review mechanism. However, the committee did not seek an explanation from the government of why the defence of reasonable excuse was provided in the offences in sections 21 and 22 but not those in sections 18, 19 and 20.

Another matter on which the opposition seeks some clarification from the government is whether the offences in sections 18
to 22 cover all kinds of false foreign travel documents—for argument’s sake, if you take a situation where a person procures a genuine foreign travel document in a false identity by deceiving the relevant overseas authority as to their identity and that deception occurs overseas. I am sure during the debate in the committee stage the government will be able to provide an answer in respect of that issue. On one view, such a travel document appears not to fall within the definition of ‘false foreign travel document’, because it has been issued by the foreign government and has not been altered in an unauthorised way. On this view it does not appear to give rise to an offence under sections 21 or 22 and, because the relevant deception occurred overseas, it does not appear to be an offence under sections 18, 19 and 20, which are subject to standard geographical jurisdiction. We would be interested, as I said, in hearing the government’s advice or view on whether such a situation in fact would be covered. In summary, with the benefit of the submissions and evidence to the Senate committee and the committee’s report, we believe parliament can now be satisfied of the need for this legislation. As I said earlier and have repeated during the debate, we will be supporting the passage of that legislation.

We have dealt with schedules 1, 2 and 5. By a process of mathematics, there are also schedules 3 and 4. For the benefit of the chamber I will briefly deal with some of the more succinct issues that were covered in relation to 3 and 4. The Anti-terrorism Bill (No. 2) 2004 contains schedule 3, which proposes a new offence of associating with a terrorist organisation, and schedule 4, which proposes a new mechanism for interstate transfer of prisoners on security grounds. These proposals also attracted considerable controversy during the Senate committee’s inquiry.

In relation to the association offence, the committee made bipartisan recommendations: that a number of terms in the offence be defined; that a presumption against bail not apply to the offence; that there be changes to the exceptions relating to religious practice and legal advice or representation; and that the operation of the offence be subject to an independent review. Labor have raised several amendments with the government. We note that the government has responded with the amendment it will be moving later, which Labor will not oppose.

The Labor Party carefully considered these proposals and the submissions and evidence about them presented to the Senate Legal and Constitutional Legislation Committee. As I said earlier, Labor is determined to ensure both that our laws deal strongly with terrorism and that they are appropriately targeted at the problem and do not criminalise legitimate social activity. The proposed offence requires the prosecution to prove beyond reasonable doubt that an accused intentionally associates on two or more occasions with another person, knowing that the other person promotes or directs the activities of a listed terrorist organisation, and in doing so intentionally provides support to the listed terrorist organisation and this support assists the listed terrorist organisation to expand or continue to exist. This imposes a heavy burden on the prosecution and appropriately targets conduct that intentionally supports a listed terrorist organisation to continue or expand its activities.

We believe officials of the Attorney-General’s Department have made a genuine attempt to craft stringent fault elements that squarely target criminal behaviour in the form of active intentional support of a listed terrorist organisation. We have also given appropriate weight to the evidence from Australian Federal Police Commissioner Mick Keelty about the need for an offence of this
kind. That said, however much we as legisla-
tors might be able to understand the checks
and balances in this bill, there is force in the
committee’s observations that these subtle-
ties will be lost on communities which are
increasingly alarmed and alienated by the
legislative proposals coming out of this gov-
ernment. Again, the opposition would urge
the government to heed those warnings of
the acting Race Discrimination Commis-
sioner in his report Isma—Listen. Stopping
the activities of terrorist organisations will
require the cooperation and support of the
whole Australian community. We simply will
not get that cooperation and support if com-

...ions will only make
people more receptive to voices of extremists
rather than voices of reason.

There were a number of drafting flaws in
the offence which the Senate committee
picked up, as I referred to earlier. We are
glad the government is moving to fix some
of these. The first effect of the government
amendments, as I indicated earlier, will be
that the presumption against bail created in
the Anti-terrorism Act will not apply to this
offence, and that is appropriate. The conduct
targeted in this offence, while serious, is not
of a character that should require an accused
to show exceptional circumstances justifying
a grant of bail.

The second effect will be that the scope of
the exception for legal advice and represen-
tation will be expanded to include decisions
relating to ASIO questioning, listing of or-
organisations under the Charter of the United
Nations Act, proceedings before military
commissions, and proceedings relating to
passports and travel documents. The gov-
ernment has not picked up the amendment of
the committee relating to further definition
of numerous terms. We acknowledge that
this is a difficult exercise in practice, but we
do think at the very least that this issue
should be revisited in the independent review
of the antiterrorism legislation which is, in
fact, fast approaching.

The government has also refrained from
moving an amendment to the exception for
religious practice. There was some misun-
derstanding in evidence before the commit-
tee about the scope of this exception but,
putting this aside, Labor did argue to the
government that there is justification for
broadening it. For example, the equivalent
religious worship exception in the New
South Wales Crimes (Sentencing Procedure)
Act, which the government has professed to
use as a precedent, does not distinguish be-
tween public and private places. However,
we have not been able to persuade the gov-
ernment of this view and so at the very least
we are seeking a clear statement from the
government about the scope of this excep-
tion, including examples of the places to
which it would apply and the reasons why
the government believes it should not be
broadened. Would it, for example, cover a
place that, while sometimes used for private
purposes, is opened up to members of the
public for religious worship at a particular
time and an association takes place during
that worship?

Turning to the proposed mechanism for
interstate prisoner transfers, the government
really must acknowledge that it has not de-
ivered a satisfactory outcome. When the
government is dealing with an operational
matter as fundamental as transferring prison-
ers on security grounds, you would expect
the government to get the states and territo-
ries on board before putting a proposal to the
parliament. After all, the states and territories
have the responsibility for managing prisons.
Instead, we have a situation where the
Commonwealth, having been asked by the
states and territories to address the issue, put
legislation into the parliament and expected
the states and territories to support it sight
unseen. I am aware of plenty of accusations flying around about who failed to communicate with whom but, as the Senate committee pointed out, it is not the role of this parliament to resolve those communications.

The Senate committee made a bipartisan recommendation that this schedule not proceed before further consultation with the states and territories, and Labor have argued for this to the government. However, the government is pressing ahead and will be amending the bill to apply the mechanism to Commonwealth offences only. We will leave it to the government to explain its position to the states and territories who will have to manage the legislation should it pass. However, we would be seeking a public commitment by the government to work cooperatively with the states and territories to try to address any outstanding operational concerns. We expect them to be able to put that on the record.

**Senator GREIG (Western Australia)** (11.17 a.m.)—The two bills before us, the Anti-terrorism Bill (No. 2) 2004 and the Anti-terrorism Bill (No. 3) 2004, do a number of things. The first bill I want to address, the Anti-terrorism Bill (No.2), contains characteristics we have seen in previous antiterorism legislation introduced by the government. It is riddled, we would argue, with imprecise definitions and it contains an increase in unaccountable power, new offences for which no proper justification has been demonstrated and a range of measures which are likely to have a disproportionate impact on Australia’s Muslim community.

The Democrats find that the amendments to the Criminal Code Act 1995 are without a doubt the most disturbing amendments contained in this legislation and this was reflected in the evidence to the committee. The proposed new offence of associating with a terrorist organisation is extremely broad, poorly defined and has the potential to be applied in a way that impacts disproportionately on Muslim peoples. The Democrats strongly oppose the introduction of this offence. I received a letter yesterday from Amnesty International. In summary they said, in reflection of their submission:

- the proposed amendment may breach the right to freedom of association.
- there are already provisions in existing legislation that cover providing an organisation with support to conduct a terrorist act. The enactment of the proposed provisions cover conduct that is not directly associated with a ‘terrorist’ act and may punish association for peaceful means.

They go on to argue:

- the definition of being a member of a terrorist organisation is too broad and vague, and that this vagueness is then compounded by provisions to cover the act of associating with a ‘member’.

These concerns remain. It still remains the case that the right of freedom of association may be breached by the passage of the bill and an innocent person may inadvertently commit an offence and be wrongly imprisoned.

Significantly, the exemptions to the offence involving ‘close family members’ in clause 102.8(4)(a) of the bill do not cover an extended family which might include aunts, uncles and cousins. The committee’s recommendations in this regard do not go far enough to address our concerns. Similarly, exemptions in relation to public religious worship in clause 102.8(4)(b) of the bill do not cover social meetings, education and counselling, amongst other activities, which could conceivably be conducted both in the place used for public worship and other places temporarily obtained for such religious worship and ancillary activities. The committee’s recommendations do not go far enough to address our concerns.

Exemptions to the offence relating to the provision of humanitarian aid in clause
102.8(4)(c) of the bill and for the purpose of providing legal advice, clause 102.8(d) of the bill, continue to pose the threat of catching innocent activities, such as fundraising for the purpose of affording appropriate legal advice outside the specified exemptions. Furthermore, the evidential burden to make out these exemptions remains with the defendant and not the prosecution. This further erodes safeguards that innocent people will not be caught by this offence and face terms of imprisonment. The committee’s recommendations do not adequately address these concerns and, as such, the bill should not be passed.

With regard to amendments to the Transfer of Prisoners Act 1983, the Democrats share the concerns of the Law Council of Australia that these amendments:
... will allow for the transfer of remand prisoners without notice and without regard for the personal circumstances of the detainee, including their prospective distance from family or other support networks.

The Democrats agree that decisions regarding the transfer of remand prisoners should require the approval of a court. We are very concerned that there will be no opportunity for a person affected by such a decision to seek judicial review of that decision. We note and are concerned by the evidence regarding limited consultation in relation to these changes. The Democrats do not support the proposed amendments.

It is interesting to note that there was a news story relevant to this yesterday in my home state of Western Australia. An article by Trevor Robb from the West Australian entitled ‘Justice Minister slams Federal Government over security cooperation’ read:

PERTH, Aug 12 AAP—The West Australian government today accused the federal government and national law enforcement agencies of failing to consult with state authorities over the detention of terrorism suspects.

Justice Minister Michelle Roberts said the Commonwealth had kept WA in the dark and also refused to allow state authorities to test new ways of securing dangerous prisoners.

Ms Roberts said federal law enforcement agencies had failed state counterparts in relation to Jack Roche, who was convicted in June of plotting with al-Qaeda to blow up the Israeli Embassy in Canberra.

“There was a situation in WA a few months back when we were overseeing Australia’s number one terrorist prisoner and yet our authorities had literally been kept in the dark and not properly informed by the federal agencies,” Ms Roberts said.

“It was a totally unacceptable situation which could have jeopardised the safety of prison officers, other prisoners and the community,”

Ms Roberts said Canberra did not run any jails in Australia, yet proposed anti-terrorism legislation to allow interference in the management of state prisons.

“The states and territories run the prisons and yet the federal government ignores our years of experience in securing the most dangerous inmates,” she said.

A spokesman for federal justice minister Chris Ellison said there had been full consultation about the new anti-terrorism legislation, including a meeting with all States last December, and there was no intention to meddle in prison systems.

“It is vital that we are involved in the transfer of prisoners because the Australian Federal Police or ASIO may have information which may not be known by state authorities,” he said.

He agreed running jails was a state responsibility but said federal anti-terrorism legislation would not interfere with the way states ran jails or handled high-risk prisoners.

Ms Roberts said WA needed to make plans for housing dangerous prisoners who often had outside contacts with the will and resources to get them out of jail by any means.

She said the WA Government was now considering a high-tech, “ultra security” jail within the grounds of the existing Casuarina prison to han-
dle dangerous prisoners considered at high risk of escaping.

In considering the provisions of Anti-terrorism Bill (No. 3) 2004 the chamber has the benefit of the recent inquiry conducted by the Senate Legal and Constitutional Legislation Committee. Time and time again, the chamber has received enormous assistance from the reports of Senate committees on a variety of legislation. The committee process is a vital part of the Senate’s role in scrutinising new legislation and, most importantly, it facilitates the direct participation of the community in the legislative process. As a member of the Senate’s legal and constitutional committee, I am very much aware of the significant workload of that committee, particularly in recent months, and I take this opportunity to again acknowledge the outstanding assistance of the secretariat and to thank them for their hard work. It should be noted that the committee report which was tabled on Friday afternoon was actually a report on the Anti-terrorism Bill (No. 2) 2004 in its original form. Following the commencement of the inquiry, the government took three of the schedules from that bill and put them into the new Anti-Terrorism Bill (No. 3) 2004, which we are debating today.

The committee proceeded with its original inquiry, and consequently it covered the provisions of both the Anti-Terrorism Bill (No. 2) 2004 and the Anti-Terrorism Bill (No. 3) 2004. The committee received 95 submissions. As the report notes, the vast majority of those opposed most aspects of the bill. Only one submission supported the bill, and that was from the Australian Federal Police. We Democrats have considered the evidence presented to the committee and we share many of the concerns raised in relation to both antiterrorism bills.

As we know, the bill makes changes to three pieces of legislation. It amends the Passports Act to prevent those who are subject to an arrest warrant in a foreign country, or who are likely to engage in harmful conduct, from leaving Australia on a foreign passport. Specifically, the bill provides that those subject to a warrant for an indictable foreign offence—or who are prevented from travelling by a court order, a law of the Commonwealth or a condition of parole—or who are suspected of engaging in harmful conduct can be prevented from leaving Australia on a foreign passport. The bill also creates new offences in relation to foreign travel documents—for example, making false or misleading statements in relation to foreign travel document applications. These amendments are closely linked to the changes proposed in the Australian Passports Bill 2004. In fact, the provisions in that bill assume the prior passage of this bill.

We Democrats have a number of concerns in relation to these changes, and these concerns were confirmed in the evidence given to us during the Senate committee inquiry. For example, the Public Interest Advocacy Centre questioned whether there was even a need for the new confiscation powers and expressed concern that these powers could be inconsistent with the separation of powers. The Human Rights and Equal Opportunity Commission, HREOC, argued that the new provisions could potentially infringe article 12 of the International Covenant on Civil and Political Rights relating to freedom of movement. The Castan Centre for Human Rights Law argued that an order for the surrender of foreign documents should only be made where a foreign arrest warrant, court order, bail or parole condition relates to a matter which is also a serious offence under Australian law. We Democrats agree. We do not believe that the minister’s power should be predicated on the existence of an arrest warrant issued by a foreign court without any consideration of the nature of the laws and
the legal system of the foreign country or the reasons for the issue of the warrant. For example, if a woman had been arrested for adultery in a foreign country governed by sharia law, would the minister make an order for the seizure of her travel documents?

This brings me to the concerns raised in relation to the potential impact of the proposed amendments on refugees and asylum seekers. HREOC expressed concern that the new offences relating to the falsification of foreign travel documents may conflict with Australia’s obligations under article 31 of the 1951 Convention Relating to the Status of Refugees. Article 31.1 says that states:

... shall not impose penalties, on account of their illegal entry or presence, on refugees who... enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

As the committee report notes, HREOC argued that the drafters of the 1951 convention envisaged that a refugee fleeing his or her country of origin would rarely be able to meet the requirements for legal entry into a country of refuge.

We Democrats concur with a number of the submissions to the committee that there is a need for a defence of ‘reasonable excuse’ in relation to the foreign travel document offences and that this defence should expressly apply to a person who believes that his or her safety or wellbeing, or that of his or her family, depends on the use or possession of the false or cancelled foreign travel documents. We Democrats also believe that a person should be given an opportunity to challenge the basis of a demand for the surrender of their travel documents. In order to do so, it is vital that the person is provided with the details of any arrest warrant or court order on which the demand is based. However, there is no provision for that in the current bill. We Democrats strongly believe this should be rectified.

Perhaps the most concerning amendments to the Passports Act are those which seek to limit the opportunity for review of a decision by the minister to order the surrender of foreign travel documents. We are concerned that, pursuant to part 4 of the bill, there is no opportunity for judicial review of the minister’s decision pursuant to the Administrative Decisions (Judicial Review) Act. In the absence of judicial review, it is particularly concerning that the government has sought to place restrictions on the process of review by the Administrative Appeals Tribunal. In particular, the bill provides that, if the minister certifies that his or her decision involves matters of international relations or criminal intelligence, the AAT will have no choice but to either affirm the minister’s decision or remit it to him or her for reconsideration.

That process is entirely unsatisfactory, particularly given the enormous impact of the minister’s decision on a person who is subsequently prevented from leaving Australia. It continues the disturbing trend towards more opaque decision making on the basis that decisions relate to security or, in this case, international relations or criminal intelligence. In evidence to the committee, the Attorney-General’s Department made the point:

Only where the Minister has certified that a decision involves matters of international relations will provide the Tribunal be restricted to affirming the decision or remitting it to the Minister for consideration.

Of course, that is not the case; that is not true. The AAT will also face this restriction if the minister certifies that the decision involves matters of criminal intelligence. The obvious point that needs to be made here is that, given the various circumstances in which the minister can make an order for the surrender of foreign travel documents, it is
clear that in most cases the decision will relate to matters of either international relations or criminal intelligence. This means that in almost all cases in which an order is made for the surrender of documents, the minister will be able to make a certification pursuant to proposed section 23(3), and consequently the AAT will be emasculated and unable to conduct a proper review.

Schedule 2 to the bill makes amendments to the ASIO Act, and in particular it deals with the controversial questioning and detention provisions introduced by the ASIO Legislation Amendment Act 2003. The amendments provide that, if the Director-General of ASIO has sought the Attorney-General’s consent to make a request for the issue of a questioning warrant in relation to a person, that person must surrender every passport—whether Australian or foreign—that he or she has in his or her possession or control. We strongly oppose these amendments. In considering the amendments, the Senate should remember that the questioning regime contained in the ASIO Act is not restricted to those suspected of involvement in terrorism; rather, it applies to any person who might have information that is relevant to ASIO.

As we have said previously, this means that ASIO could detain and question innocent Australians just because they happen to go to school with or live next door to someone who is suspected of terrorism. This bill seeks to demand that these innocent Australians surrender their passports to the authorities before the Attorney-General has even consented to the making of a request for a questioning warrant. Section 34JC of the ASIO Act already provides that a person who is subject to a questioning warrant must surrender his or her passports. These new amendments bring forward that obligation so that it kicks in before a prescribed authority and before the Attorney-General has even consented to the making of a request for a questioning warrant. These provisions have incredibly serious consequences for those individuals who might be affected by them. To put it simply, innocent Australians will be required to surrender their passports or face five years in prison, and this will occur in the absence of any judicial or even ministerial scrutiny. We Democrats unequivocally oppose these provisions.

According to the explanatory memorandum, schedule 3 of the bill seeks to amend the Crimes Act to ‘facilitate effective disaster victim identification in the event that a disaster causing mass casualties (such as a terrorist attack or an aircraft disaster) were to occur’. We support these changes in principle, but we note that they go much further than the government first intimated. They are not restricted to incidents involving mass casualties but they extend to any incident involving a Commonwealth offence or a state offence that has a federal aspect, in which one or more Australians have died. They will also apply to incidents involving the death of an alien, pensioner, Commonwealth employee, resident of a territory or member of the Defence Force, if the minister determines that they should apply.

We Democrats would have much preferred these amendments to be restricted to incidents involving mass casualties; however, we are prepared to support the amendments for three reasons. Firstly, we note that a determination by the minister in these circumstances is disallowable and therefore subject to parliamentary scrutiny. Secondly, the data matching permitted is restricted to the matching of different DNA profiles on the unknown deceased persons index of the database. Thirdly, we note that the federal Privacy Commissioner has expressed support for the amendments. It is for these reasons
that we support the amendments contained in schedule 3 of the bill.

However, we are very concerned and angry, although not surprised, at some of the cynical politics that the government has displayed in coupling these amendments with the very controversial amendments to the Passports Act and the ASIO Act. We note that, in his second reading speech on this bill, the Attorney-General indicated that the shadow minister for homeland security had written to him offering to expedite schedule 5 of the Anti-terrorism Bill (No. 2)—in other words, the provisions relating to the identification of the victims of disasters. It appears that the shadow minister for homeland security did not mention the more controversial schedules 1 and 2, yet the Attorney-General included them in this bill. We Democrats will be moving amendments to oppose schedules 1 and 2 of the bill, with a view to expediting the passage of schedule 3. The passage of these amendments is a prerequisite to our support for the bill. Of course, I will speak later on our amendments during the committee stage of the debate.

Senator NETTLE (New South Wales) (11.36 a.m.)—In the hour since we found out that the Anti-terrorism Bill (No. 3) 2004 and the Anti-terrorism Bill (No. 2) 2004 were to be debated now—and I was going to take responsibility for the legislation for the Australian Greens—I have been reading a number of speeches made by government members about the legislation. I have been reading about the concerns of Mr Georgiou in the House of Representatives and Senator Brandis and Senator Mason in the Senate. I have been reading about the concerns of Mr Georgiou in the House of Representatives and Senator Brandis and Senator Mason in the Senate. I have been reading about the concerns that Mr Georgiou had about the guilt by association components of the Anti-terrorism Bill (No. 2) 2004 and how the provisions go further than what was originally proposed by the government after September 11.

In his speech on the second reading of this legislation in the House of Representatives, Mr Georgiou listed a number of different examples of people who would be caught under the legislation and went through four different scenarios. He went through a scenario about a journalist who is writing about a terrorist organisation—and who is thereby associating with that organisation—and who makes more than one phone call to that organisation being jailed for three years as a result of the legislation that is proposed. He also talked about an example where a community leader appears at a meeting next to a terrorist leader or somebody who is defined as a terrorist leader. Under the legislation this could be defined as helping the organisation or supporting the organisation, and therefore such a person would be liable for three years in jail despite the fact that they merely shared a platform with the individual concerned. He went on to list examples about an uncle, a schoolteacher, a caterer or a person who rents a hall to a member of a terrorist organisation. He talked about religious leaders, social workers and lawyers also being caught by the legislation. He also raised the same concerns that Senator Greig raised about exemptions relating only to direct family members and not including uncles, aunts, nephews, nieces, mothers-in-law or fathers-in-law but including people who are part of a same-sex couple.

It is interesting to read through the concerns put on the record by Mr Georgiou and also the concerns that Senator Brandis and Senator Mason raised during the debate in the committee stage of this bill. There are components of the committee hearings where Senator Brandis is talking about the wide definition of terrorism that exists in laws we currently have around terrorism, and there is also discussion between witnesses and Senator Mason and Senator Brandis about organisations. The examples that they give are
branches of the Greens, the Labor Party or the Liberal Party who have given financial support to organisations such as Fretlin being caught under this legislation if this legislation had come in before we saw the independence of East Timor. There is clearly a large amount of opposition to these bills, not just on this side of the chamber but also from government members.

Let me go to the detail of what is in the Anti-terrorism Bill (No. 2) 2004. The bill introduces a new offence of associating with a person linked to a terrorist organisation. It allows the Attorney-General to transfer convicted and remand prisoners to another state in the interests of security. Australia already has far-reaching antiterrorism laws. The Commonwealth Criminal Code criminalises such acts as being a member—even an informal member—of an organisation that the government prescribes as a terrorist organisation. Now, the bill proposes to make it an offence to even associate or communicate with people connected to such organisations. This will disproportionately infringe freedom of association and imposes guilt by association. Furthermore, the offence depends on the exercise of executive discretion in declaring an organisation to be a terrorist organisation under the Criminal Code; this is an exercise of discretion which is itself based on an overly broad existing definition of terrorism.

As a result, the police and the government have very broad discretion on how the law is applied, and it is of grave concern that it may be selectively exercised. For example, there is already evidence that antiterrorism laws have been selectively applied to Muslim members of the community. In other areas of the law, selective application is regarded as objectionable and undesirable, so why should it be allowed in this case? What is particularly alarming is the combined effect of this amendment and the newly introduced bail provisions—which were supported through this parliament by both major parties—where a person charged will be granted bail only in exceptional circumstances. A person could very easily be charged and locked up in jail on the thinnest of evidence even before it is tested in a court of law. This means a person could end up being in jail for doing nothing more than phoning somebody twice, even if he or she is later found to be innocent.

Other issues raised in the bill include the minister’s decision to transfer prisoners not being open to judicial review. Limits are also placed on the Administrative Appeals Tribunal’s ability to review decisions of the minister if he or she issues a certificate in relation to a decision to seize a person’s passport. Fundamental to the concept of democratic government is the fact that all administrative decisions must be reviewable in order to instil and ensure public confidence.

Some of the provisions that are outlined in the Anti-terrorism Bill (No. 3) 2004 relate to a person’s passport. They grant the authorities the power to prevent people from leaving Australia even before an ASIO warrant has been issued against them. They grant to authorities the power to seize foreign passports from suspects. Existing laws already give ASIO more powers than an intelligence-gathering agency should have, in the view of the Greens. ASIO will be given further powers to seize a person’s passport even before a warrant has been issued against them. ASIO’s role is to gather intelligence, not to have the unconstrained power to be able to prevent a person from leaving a country simply by making a request for a warrant to be issued for that person’s questioning or detention. ASIO’s functions and operations are not easily open to scrutiny, which makes the vesting in ASIO of this sort of power particularly dangerous and open to abuse. Concerns have also been raised by the Human Rights
and Equal Opportunity Commission about giving ASIO the power to seize foreign passports from suspects, as in schedule 1 of the Anti-terrorism Bill (No. 3) 2004. These concerns relate to the impact on everybody’s right to freedom of movement, particularly that of asylum seekers. Asylum seekers may face criminal penalties for using false travel documents to seek asylum.

The war on terrorism has ushered in some of the most significant changes to our civil and political rights since the beginning of the last century. In some cases, important principles of law hundreds of years old and designed to protect the innocent have been swept aside. Rights such as the right to a lawyer, a fair and open trial, to be innocent until proven guilty and to avoid detention without charge or trial are all under threat. Terrorism is a real threat, but removing civil rights not only will undermine our democracy but also can contribute to even greater hostility, which fuels support for terrorism. Like Western policies in the Middle East and Central Asia which are driving support for terrorism, repressive domestic laws risk intensifying the conflict and undermine the very freedoms which our leaders purport to be protecting.

Terrorism will never be prevented through military means or undermining democracy and removing civil rights. This is something the government clearly does not understand, despite the mess in Iraq which it helped create. The Minister for Foreign Affairs, Alexander Downer, recently gave a speech on the government’s white paper on terrorism in which he highlighted again the myopic vision of this government when he claimed that there are no ‘root causes’ of terrorism. Of course there are underlying causes as to why there is support for organisations such as al-Qaeda. We know what some of these are. They are the Israel-Palestine conflict, the US strategic energy policies in the Gulf backing authoritarian regimes, and now, of course, the illegal invasion of Iraq. To deny these not only denies reality but condemns us all to an endless cycle of conflict that could last, as Mr Downer has said, as long as the Cold War.

Since September 11, the federal government has passed almost 30 separate pieces of terrorism legislation. The government now has the power to ban organisations. A raft of new offences have been created based on the broad and subjective definition of terrorism. ASIO and the police have been given extensive new powers to detain and question people without charge. And new powers have been put in place to freeze and confiscate assets. This is a global problem, with security agencies in the United States and Europe also grabbing more unaccountable power. Many national liberation movements have been criminalised, and in countries like China and Indonesia past repressive policies are gaining new legitimacy as part of the war on terrorism. The most notorious example of this global problem is the detention without charge or trial of the people being held at Guantanamo Bay. The Howard government, through its terrorism legislation, has backed President Bush’s prison camp and his kangaroo courts, the military commissions. The opposition has backed the government at almost every step down this road. Despite widespread opposition from community and legal groups, both major parties have refused to protect human rights and civil liberties. Like the law and order auction that occurs at a state level, we see both the major parties competing to be tough on terrorism, following each change with a plan for another.

There are, of course, more bills in the running, not just the two bills that we have before us. The National Security Information (Criminal Proceedings) Bill 2004 will allow secret evidence to be used in trials for terrorism offences. The Human Rights and Equal
Opportunity Commission has recently found that the Muslim, Arab and Asian communities in Australia have been experiencing growing racism and discrimination since September 11. In part, this is caused by the government’s refugee and terrorism policies. In fact, the fear that new terrorism laws will be used for racial profiling is a part of the problem. Communities have responded in different ways to this. One example is the establishment of the Australian Muslim Civil Rights Advocacy Network. A brochure which they produced was launched in Sydney during the hearings into this legislation. The Terrorism laws: ASIO, police and you guide provides useful information to the community and is a positive response that that community has made to try to explain what will be the impacts on Muslim communities of the legislation that is being proposed.

I want to read out some comments that have been made by Joo-Cheong Tham, who is an associate law lecturer at La Trobe University and has appeared as a witness before the inquiry into this and other terrorism legislation put by the government. He says in an article that he wrote:

Two and half years after September 11, it is clear that the Coalition government has developed a distinctive modus operandi when proposing new anti-terrorism laws. Its formula rests on five key strategies.

First, capitalise on terrorist incidents by proposing new anti-terrorism measures in the wake of such events and justifying them on the basis of being ‘tough on terror’. So a raft of anti-terror legislation was proposed shortly after the September 11 attacks. Similarly, the Brigitte affair prompted far-reaching offences which have the effect of cloaking much of ASIO’s activities in secrecy. The Madrid bombings provide the justification for the latest tranche of changes.

The second key strategy of the government that he identifies is:

... propose changes which have nothing or very little to do with these terrorist incidents. It is hard, for example, to see the link between the Brigitte affair and making secret the exercise of ASIO’s powers to compulsorily question and detain without trial when these powers could but were not used against Willie Brigitte. What the proposal to ban persons who have trained with terrorist organisations from publishing their memoirs has to do with the Madrid bombings is equally a mystery.

The third strategy he identifies is:

... fetishise proposed anti-terrorism measures by depicting them as imperative in the ‘War on Terror’. Imply that failure to adopt such measures will mean, in the extreme case, the murder of innocents. Insinuate that those who fail to support such measures are, at best, unintentional allies of terrorists. In December 2002, for instance, the Coalition government strongly hinted that the ALP’s delay in supporting a detention without trial regime would result in further terrorist attacks and that blood would be on the ALP’s hands if these attacks occurred in the ensuing summer.

The fourth strategy he identifies is:

... ignore the existing panoply—or raft—of anti-terrorism powers. Imply that measures are needed because a gap exists. Hence, the present proposal to extend the detention/interrogation time of persons suspected of ‘terrorism’ offences to 24 hours is made without any public acknowledgment of ASIO’s extensive powers. These are powers which can result in a person not suspected of any criminal wrongdoing being detained incommunicado for rolling periods of seven-days and interrogated for up to 24 hours with no right to silence and only a heavily circumscribed right to legal representation.

The fifth strategy he identifies is:

... pretend that the proposals only target persons engaged in extreme acts of political/religious violence. Ignore the fact that the proposals and current laws impose guilt by association by making illegal conduct peripherally connected with acts like bombing and hijackings. Obscure the
fact that these laws draw in their net certain acts of industrial action and political activity.

The current proposal— this is one that has now gone through parliament— to extend the detention/interrogation period, for example, is portrayed as if it only targeted terrorist suspects when it, in fact, catches persons suspected of committing a ‘terrorism’ offence; an offence that can be committed merely by possessing a thing related to a ‘terrorist act’. ‘Terrorist act’, in turn, embraces certain acts of industrial action. Thus, a person holding a leaflet promoting picketing by nurses is, arguably, committing a ‘terrorism’ offence.

We have, in sum, a formula based on opportunism, exaggerations and misrepresentations. It is these elements that lend substance to the charge that the Coalition government is exploiting the real fears that the Australian public has of terrorism and taking advantage of community perception that it is better at handling security issues than the ALP—or anybody else—

It is this formula that makes up the politics of fear in the ‘War on Terror’.

Such politics might prove to be an electoral winner for the Coalition but there will be clear losers. The health of Australia’s democracy will be eroded by the acidic effect of fear and misrepresentations. Laws that trench upon established rights and liberties and do very little in preventing extreme acts of political violence will be on the statute books—

and they are appearing on the statute books—

Most of all, there will be the sharp irony of Australians being no less safe from extreme acts of political violence but, in fact, all the more vulnerable to the arbitrary state power.

**Senator BARTLETT** (Queensland—Leader of the Australian Democrats) (11.53 a.m.)—It is important to emphasise what the Senate is debating here to make sure that the Anti-terrorism Bill (No. 2) 2004 and the Anti-terrorism Bill (No. 3) 2004 are not just waved through and that people listening to this debate do not think, ‘It's just another bill at the end of a long sitting fortnight. Why don’t they all shut up and go home?’ We are debating, examining and outlining the detail of the legislation because it affects every single Australian and every single person in Australia. Its reach is such that it will affect every one of us, so everybody needs to be aware—or at least needs the opportunity to be aware—of what is in it and what its consequences will or could be.

That is why the Democrats believe it is not appropriate to be debating the legislation on a Friday, when the Senate is not normally sitting, in a deliberate and commonly used process of trying to enable enactment of legislation through exhaustion, hoping that senators will decide, ‘It’s going to get through anyway; so we’ll just make a few perfunctory comments and let it be over and done with, and then we can all go home.’ Frankly, that may be understandable but it is not satisfactory at the best of times and it is certainly not satisfactory in dealing with legislation like this which does affect every single Australian, every single person in the country and every person who may be in Australia in the future.

The legislation directly takes away individual freedoms and individual rights. There can be no dispute about that. Even the Attorney-General, Mr Ruddock, who is certainly no slouch at restricting people’s rights and has a long record of doing so, says that the bill ‘does not unnecessarily encroach upon individual rights and freedoms’. The qualifier ‘unnecessarily’ is a nice subjective term—a single word that tries to alleviate all concern and say, ‘It’s not a problem. None of this taking away of rights and freedoms is unnecessary, so don’t worry about it.’ Frankly, it is not only unnecessary but also extremely dangerous. It does give more power to the government. Not just this gov-
ernment but governments throughout history—particularly once they have been in power for a little while—do not seem, sufficiently enough, to be able to see any problem with giving themselves more and more power and with giving more and more power to themselves in a way that prevents the courts from being able to properly scrutinise the exercise of that power.

In adding to the comments that my colleague Senator Greig has already made, I would like to focus on a couple of specific aspects. Firstly I emphasise, to ensure that the Democrats’ position is not misrepresented, that we do not oppose the component of Anti-terrorism Bill (No. 2) 2004 which deals with amendments to the Crimes Act. We believe those measures are important and desirable and should be passed expeditiously. That is on the record; it is in the Democrats’ dissenting report on the examination of the bill by the Senate Legal and Constitutional Legislation Committee. We support the passing of that component expeditiously; it could even be done now. It is clearly acknowledged to be not only justifiable but also desirable. But there are other significant components that are not only undesirable but extremely dangerous.

It is worth noting the concerns of others in the community. As I mentioned, this legislation went through the Senate committee process—often the only real mechanism for enabling the truth to be exposed about what the legislation will actually do. Many concerns were raised by people in the community with the expertise and the experience to understand what its ramifications would or could be. The Law Council of Australia, representing a range of constituent state law councils, said:

... the new laws have the potential to operate harshly and will unfairly target members of minority groups, especially those of the Islamic faith.

The New South Wales Council for Civil Liberties gave a brief but very chilling assessment of one of these bills. I remind the public that we are dealing with two bills that have been pushed together and so the government is attempting to push through today a wider range of attacks on our freedoms. The Council for Civil Liberties spoke specifically about the component of the legislation that deals with the offence of association with a terrorist organisation. It is the sort of thing that sounds really simple, understandable and justifiable when it is first spouted by a government minister: ‘We want to be able to catch people who are hanging out with terrorists.’ Who would be against that? But when you look at the detail of the power, the enormity of the power and the fact that in many respects that power is being given to a government minister with no significant scope for judicial oversight of its use, you see that it is rather different.

These sorts of offences of making it illegal to associate with certain groups of people tend to be called ‘consorting legislation’ and, as was stated in the submission of the New South Wales Council for Civil Liberties, experience with existing consorting legislation at a state level has shown how it has been open to abuse. It has actually been the genesis of much police corruption. It is always possible for us to make mistakes when we are passing legislation. You have a look at it and you think, ‘It might be used this way; it might be used that way.’ You then make an informed judgment and see how it goes. But when you already have similar sorts of powers operating and you have clear evidence that they are actually being misused—and, according to the submission of the Law Council, not only being misused but actually generating police corruption—then you would be a fool if you were to allow similar sorts of powers to be enacted in other areas or other jurisdictions. It is one thing to make
a mistake—we all do that—but not to learn from those mistakes and continue to build on them moves from common human frailty to dereliction of duty. The New South Wales Council for Civil Liberties said that consorting offences had been consistently held to be unconstitutional and a breach of the Bill of Rights in the United States and that, globally, they were not aware of any comparable jurisdiction that had similar provisions in its antiterrorism legislation. What that says is that we are actually going further in this particular attack on people’s freedoms than any comparable jurisdiction, as far as the Council for Civil Liberties are aware, and certainly further than the United States in this area of consorting offences. As they say, consorting offences have been consistently held to be unconstitutional and a breach of the Bill of Rights of the United States of America. It is a reminder how weak our protections are in Australia against such attacks on our freedoms.

I repeat the point I made earlier today: the High Court decision last week that addressed mandatory detention might sound like it is just something that affects failed asylum seekers, but it was a clear demonstration that we do not have any constitutional protections against government ministers exercising powers that will deny people their freedoms in the most extreme ways. As long as they can get them into law and get them through the parliament, the courts cannot protect us. If the parliament passes these laws, there is nothing in the Constitution that will protect us. We have no bill of rights, we have no implied rights, explicit rights or underpinning rights that will allow the protection of Australians from misuse and abuse of these powers. They are not there. The only protection left is the Senate. The Senate is the only thing that can stop governments giving themselves these powers through legislation.

That is what we are doing here today. We are allowing laws to be put in place that will give the government these enormous powers to restrict and infringe on people’s right of association. We can translate it to another common debate in this chamber about industrial relations. For a government and a party—in the Liberal Party—that regularly talks about freedom of association in an industrial context, as indeed does the Labor Party from the point of view of freedom of association within trade unions, to allow a provision to be put into law that can make it a criminal offence to associate with somebody, even unwittingly, I think is extraordinary.

I would draw the attention of the Senate to the submission that came from the Australian Muslim Civil Rights Advocacy Network. I have spoken in this chamber before about the fear, the apprehension and the concern that exist already in Muslim communities in Australia with the laws that are already in place, let alone the extra ones that are being proposed here today. There is quite clearly a strong belief amongst many in the Muslim community that the existing antiterrorism legislation, the ASIO legislation and other legislation that has already been passed are acting and operating in a way that is targeting the Muslim community specifically.

I remember that, when I raised these concerns before, I think it was Senator McGauran who said, ‘That is just outrageous. There is nothing in this legislation that even talks about Muslims. How could you say that it is targeting Muslims?’ I am not saying that there is anything specific in these bills—I do not think there is any mention of the word ‘Muslim’ or ‘Islam’. So in one sense it is quite easy to say, ‘Yes, of course they don’t target anybody; they are completely neutral.’ But you cannot—when you are doing your job of examining legislation properly in the Senate, anyway—just look at the black-and-
white words on the page; you have got to look at what the likely or potential impacts will be and learn from what is already happening and learn from what people in the community believe. We have Senate inquiries not so that we can all sit around and read things a little bit more closely; we have them so that we can hear from the public and hear from the community.

The Muslim community are very concerned not just about the whole trend of the laws but about the implementation and the operation of those laws. I would urge anybody who actually cares about defending the right of association and the freedom of religion—which, again, many in this place would normally speak positively about—as well as people who are concerned about the future viability of multiculturalism and ethnic diversity in this country to read the submission from the Muslim community that was put to the Senate committee inquiry. They are making it quite clear what they believe is already happening. It is not good enough for us to say, ‘Well, they’ve got it wrong. That’s not what we mean to do. We’re not really targeting them.’ If you have a clear belief as a community that you are already being targeted, that is the reality. Our saying that it is not happening does not change that reality. We have to listen to these sorts of messages and these sorts of views, because it is these people’s lives that are being affected by what we are doing.

It is not likely to affect the lives of most of us here in this chamber, although frankly we cannot discount that possibility either, because as politicians we do a lot of associating with people in the community. It is part of our job. We are supposed to associate with people, communicate with them, support them, listen to them, work with them. People in the press gallery—the vast throngs up there at the moment, listening intently—will have their right to free speech and their ability to work with, examine, explore and expose the truth through people in the community potentially being impinged by this legislation. There was evidence before the Senate committee that outlined how these sorts of laws can specifically be used to restrict freedom of speech within the media, to harass journalists who are seeking to get particular groups in the community to reveal the truth. All it needs is a decision by a government minister for a group or a person who is associated with a so-called terrorist entity and anybody else who talks to them to come under the auspices of these laws. Anyone who attends a meeting with them can come under the auspices of these laws.

As the Muslim community said, the exemptions that are in the bill that say it is okay if you are associating with someone in a place used for public religious worship in the course of practising religion are far too narrow. The Muslim community, as with many others, has large community and religious festivals at outdoor venues. They have classes, they have study groups, they have social events, they have other celebrations—religious events. But the fact is, as the submission from the Muslim community says, they have already suffered unprecedented levels of racism and discrimination in the last few years. There is a trend, which already existed and is now growing, of creating isolation between the Muslim community and the wider Australian community. That is a bad thing in general but even for the focus of this legislation, supposedly aimed at restricting and tackling terrorism, the last thing you want to do is start building divisions, separation and isolation within the Australian community.

To tackle terrorism, the best thing is not to have a whole bunch of laws giving the government more power and taking away the freedoms of the public; it is having as much communication and as much cohesion
amongst the entire community as possible. It is when the cohesion amongst the community breaks down that things become much more serious and lead to greater isolation within the Muslim community. It would lead to people not wanting to talk to one another, not wanting to associate with each other and not wanting to be seen with other people from that community for fear of falling foul of this legislation. That fear already exists under laws that are already in place, so it cannot be blithely said that these are invalid concerns or concerns that are understandable but that will not come to pass. They have already come to pass and we cannot just ignore that reality.

When we are talking about restricting people’s rights to freedom of association, it means putting in place legal and therefore social barriers to interaction between people within the community. It increases suspicion. Everybody looks sideways at different people, thinking that they had better not hang out with a particular group of people because they are a bit suspect. The fact is that every proscribed organisation so far in Australia has a Muslim link to it. But nobody would suggest that every terrorist related organisation is linked to Muslim activity. The fact is that a large proportion of organisations that have been proscribed in the United States have no Islamic association. It just happens to be that all the ones in Australia do. That fact has not gone unnoticed by people in the Muslim community.

We do need to be quite cognisant of the seriousness of the powers that are being proposed in these two pieces of legislation, particularly anything that restricts freedom of association. Anything that puts in place the threat of a government, a government agent or the police being able to charge or act against someone in the community for being seen with somebody else makes it easy for us all to recognise and sense just how easily that can be misused. We all know groups in the community get targeted politically and rhetorically and they get a veneer of suspicion put over them for various reasons. We have seen it repeatedly in recent years. For it to potentially be made illegal to be seen to be associated, even inadvertently, with particular groups—it is not saying you know they are doing something untoward—can be misused. Someone else thinks they are doing something untoward and you are hanging out with them—that is enough. These are extreme restrictions on our freedom and, as the High Court showed last week, we do not have any other protections in the Constitution. We give these powers to the government, they have got them and they can use them however they want, and there is no protection for Australians against those powers being misused. (Time expired)

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.13 p.m.)—I thank senators for their contributions to the second reading debate on the two antiterrorism bills we are dealing with together this afternoon. This is a Liberal government, and the Liberal Party is a party whose principal tenet is the freedom of the individual. We understand as well as anyone else the human rights that all Australians expect and should have, and their political and civil rights. I would like to make it very clear at the outset that perhaps the most fundamental civil right of all is the right to human security. These bills are about allowing Australians to go about their work and their daily lives in security. That is a goal that most Australians accept and understand.

All senators are well aware of the provisions of these two bills. I am not going to take up the time of the Senate by going through the elements of the bills in any great detail. Nor will I respond to the issues that have been raised in the speeches made in the second reading debate, as I am confident—in
fact, it has been indicated to me in the speeches of senators—that these issues will be raised again in the committee process which is to occur immediately following the conclusion of the second reading debate.

However, I would like to correct the record on something that Senator Greig said—not in this debate but in some of the preliminary motions leading up to this debate. He suggested that the offence relating to association with terrorist organisations was designed to put same-sex couples in jail. This bill provides for completely the opposite. The bill provides for an exemption from the association offence. The exemption recognises same-sex partners as close family members. The exemption means that same-sex partners can be exempt from the offence where the association is a matter of family or domestic concern. So the concerns that Senator Greig mentioned earlier were completely erroneous and a complete misreading of the government’s intentions. Senator Greig did not mention that in his speech in the second reading debate, so perhaps he had already received advice to that end. I wanted to put that on the record so that there was no misapprehension.

The amendments to the Anti-terrorism Bill (No. 3) 2004 address two very important practical issues that are significant to the security of this country and all Australians. They go some way to dealing with the consequences of a terrorist attack or a national disaster. The procedures in schedules 1 and 2 for the surrender of passports will play a vital role in enabling Australian authorities to effectively seal the border to escaping terrorists. There is not much point in having a sophisticated system for the surrender of Australian passports if the suspect can avoid that system simply by using a foreign passport. The amendments concerning foreign travel documents will also enable authorities to take travel documents from those suspected of other serious crimes such as child sex offences. All countries need to work together to impede the movement of criminals across the globe.

These bills are not directed at ordinary Australian citizens; they are directed at criminals of the worst kind. In some of the speeches we have heard in the second reading debate, that principle seems to have been overlooked. These bills are all about attacking criminals and terrorists so that Australians can go about their normal daily work and life in the recognition that they and their families are safe. I am pleased to see that senators understand the need for the amendments the bills are making. The amendments will make a difference in our efforts to prevent a terrorist attack.

The provisions of schedule 3, which would enable authorities to use federal forensic procedures laws to identify the victims of mass casualty incidents, are sadly a lesson that we have learnt from the Bali attack. No longer can this country rely on myriad state laws to deal with such incidents. Following Bali the parliament met the challenge by enacting a federal law, and we need to do the same in preparation for a possible domestic incident. It is pleasing to see our parliament meeting these challenges in a sensible fashion.

The Senate Legal and Constitutional Legislation Committee, in its report dated 6 August, supported the provisions contained in schedules 2 and 3 of the bill. The committee recommended that the government review some of the proposed foreign passport offences in schedule 1 and report to parliament about whether a reasonable excuse defence should be incorporated. The government has reviewed the offences and does not believe such a defence is appropriate in these circumstances. I would like to convey my thanks to Mr Tom Sherman, whose review of
the provisions enacted immediately following the Bali attack identified the need for the forensic amendments. The review, as senators will recall, was made up of officers from the Office of the Federal Privacy Commissioner, the Ombudsman, the Director of Public Prosecutions and the Australian Federal Police.

I am pleased that the Senate has been able to agree to the important reforms contained in the Anti-terrorism Bill (No. 2) 2004. The bill is yet a further contribution to the development and consolidation of the counter-terrorism laws, which are essential to ensure that terrorists and their organisations are confronted and dealt with. The terrorist organisations depend on contact and integration with communities in order to survive and expand, and we have seen examples of that. The bill seeks to cut off this source of support for organisations that engage in acts of terrorism from behind the veil of the broader community by making illegal the associations through which that support is gained.

The bill also recognises the continuing risk a person in custody may pose to Australia’s security. Where there is a security risk, the bill will enable the transfer between states of federal prisoners and those on remand. It is the government’s hope that state and territory governments will soon see the way clear to agree to the measures that would provide the same protection in relation to all prisoners. Security transfer orders will necessarily involve a balancing of the interests of the administration of justice and prisoners’ welfare against the interests of security. I recall Senator Ludwig asking for some assurances from the government in relation to the negotiations with the state and territory governments, and I will be happy to give those during the committee stage of the debate. These amendments are necessary to ensure that any threats to our security can be managed wherever they arise. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

In Committee

ANTI-TERRORISM BILL (No. 3) 2004

Bill—by leave—taken as a whole.

Progress reported.

URGENT LEGISLATION

Declaration of Urgency

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.26 p.m.)—I declare that the following bills are urgent bills and I move:

That these bills be considered urgent bills:

Anti-terrorism Bill (No. 3) 2004
Anti-terrorism Bill (No. 2) 2004
Marriage Amendment Bill 2004
Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004.

Senator NETTLE (New South Wales) (12.27 p.m.)—by leave—We seem to be having urgency in government priorities made on the run across the chamber, without any discussion with people on the crossbench. There appeared to be very little discussion with the opposition, who are unclear as to what the position is. All of a sudden we have the Manager of Government Business in the Senate coming into the chamber and moving a motion to say that these bills are urgent. All of a sudden the government have reprioritised the lengthy list we had before and said, ‘These are our bills, these bills are urgent and we want the Senate to immediately acknowledge that these are the urgent government priorities.’ We have not even had put forward a proposal, an explanation, a reason or a rationale. There has been no discussion beforehand. The Manager of Government Business in the Senate has simply come in
and said to the Senate, without any notification: ‘Join with me and say these are the priority urgent bills for the government.’

It is not acceptable. This is not the first time today that it has happened. We have had the government coming in and saying: ‘All of a sudden we have changed our minds. These bills which were not urgent yesterday are automatically urgent.’ Now they have changed it again and they are going to add on another few bills. They say, ‘These are the bills we are going to say are urgent now.’ It is the most obscure way to run business. They are ramming stuff through with no discussion beforehand. They say: ‘This bill is urgent. Now this bill is urgent. Now these three bills are urgent. We are going to change our minds.’ There is no discussion beforehand; they just come in and, bang, say that these bills are urgent. They cut off the discussion that is occurring right now. It seems to be the most absurd way to run a process. We are already sitting far longer because the government and the opposition could not reach agreement on their fiddling around the edges of the free trade agreement. It is not what the Greens think is an acceptable way to running government business here in the Senate.

(Quorum formed)

Question put:

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

The Senate divided. [12.36 p.m.]

(The Acting Deputy President—Senator A.B. Ferguson)

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.
Coonan, H.L.  Ferguson, A.B.
Evans, C.V.  Fifield, M.P.
Ferris, J.M. *  Hill, R.M.
Forshaw, M.G.  Humphries, G.
Hogg, J.J.  Johnston, D.
Hutchesons, S.P.  Knowles, S.C.
Kirk, L.  Lundy, K.A.
Ludwig, J.W.  Mackay, S.M.
Macdonald, J.A.L.  Mason, B.J.
Marshall, G.  McGauran, J.JJ.
McGauran, J.JJ.  McLucas, J.E.
Moore, C.  O’Brien, K.W.K.
Patterson, K.C.  Payne, M.A.
Santoro, S.  Scullion, N.G.
Stephens, U.  Tchen, T.
Tierney, J.W.  Treeth, 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.  Murray, A.J.M.
Nettle, K.  Ridgeway, A.D.
Stott Despoja, N.  

* denotes teller

Question agreed to.

Allotment of Time

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.40 p.m.)—I move:

That the time allotted for consideration of the remaining stages of the bills be as follows:

Anti-terrorism Bill (No. 3) 2004 and Anti-terrorism Bill (No. 2) 2004 until 2 pm, 13 August 2004

Marriage Amendment Bill 2004 until 5.30 pm, 13 August 2004

Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004 until 6 pm, 13 August 2004.

It is important when the Senate considers a time management motion that a couple of points be made. The Senate always has it in its hands to make decisions about how much priority and how much time it allocates to
legislation. We have, of course, during the last fortnight spent almost every hour of every sitting day on a very important piece of legislation—the free trade agreement. The parliament has passed that legislation into law, and it is a great piece of history that this parliament has made as a result. But we did spend all of the time of every sitting day for the entire fortnight—the time available for government business, I might say—to pass one bill, and there were more than 23 other bills that we sought to deal with.

Because the Senate has not been able to make decisions about time management and the time to apply to bills, we have now sought the Senate’s agreement that we do allocate times to ensure that these remaining bills are dealt with in a reasonable time. The Senate will make its own decision about how long it wants to spend on the time management motion and how much time it will spend on the bills. That is a matter for all senators. I am not going to delay the debate any longer than necessary, so that we can maximise the time available for debate on the legislation and minimise time on what is effectively a motion that seeks to create a time management process.

We have chosen to allocate time to each of these bills. The marriage bill will commence after the votes on the antiterrorism bills and conclude at 5.30 p.m., then the Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004 will conclude at 6 p.m. We have chosen that time because it leaves the remainder of the afternoon to deal with this legislation—for any senator who wants to have a say to have a say—and to reach a democratic conclusion to these matters. It also ensures that all senators can have a reasonable chance at getting home at a reasonable hour this evening and not see the Senate sitting into the night and into the weekend. I think it is a sensible time management proposal and I commend it to the Senate.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (12.44 p.m.)—It would be difficult to have a more precise example of this government treating the Senate with utter contempt. The government suggests that we should be cooperative. I do not think we should even go through the motions of trying to be cooperative when we get spat in the face like this. I do not think we should even go through the pretence in future—it would save us the time of trying to pretend this government gives a toss what anyone else thinks. The government pretends to consult and then it comes along with drivel like that. I do not know whether it is against standing orders to mislead the Senate, but virtually every statement the minister just made is grossly misleading.

We saw 43 Australians willing to stick their necks out at the start of this week and cop vilification from this government as a consequence. The contempt for the truth that this government has is historical in its enormity and we have just seen another example of it. To somehow or other blame the Senate for having spent the last two weeks debating the free trade agreement when we had to sit here whilst the government and the opposition waited for the word from the United States about whether they could go ahead is just a disgrace. You could have stopped that debate at any time and brought on any of these bills. You know it and you continue with this fatuous pretence that somehow or other it is the Senate’s fault that you let that debate go on until you figured out what you were going to do. Then you have the gall to say that you are allowing anybody who wants a say to have one. Let me quote the minister’s words: ‘Any senator who wants a say on these bills can have a say.’ That is totally dishonest. Your own speakers list has enough people on it to go well beyond 3½
hours. You are quite happy to let a bunch of hate merchants sit in the middle of our great hall and spew out bile against gay and lesbian people in this community.

That you had the gall to come in here to try to gag us from giving the truth about what you were doing is an absolute disgrace. It is probably quite appropriate that you are trying to gag debate on a bill that is trying to take away people’s freedom of speech under the antiterrorism laws—completely appropriate. The next step, no doubt, will be making speaking in the parliament against the law—an act of sedition or something. Can you believe that the Labor Party would agree to it? They have just voted to say that these matters are urgent. It is not urgent to make sure that carers get properly paid because you stuffed up the legislation by rushing it through in June. That is not urgent. It is not urgent to fix up all the mispayments with the family benefit payments that you stuffed up by rushing it through after the budget. That is not urgent. It is not urgent to make sure people get their proper entitlements. It is not urgent to make sure that people who need assistance get it. What is urgent? Ripping away peoples’ freedoms, taking away freedom of speech, taking away freedom of association, attacking marriage and vilifying gay and lesbian people—that is urgent. That is what is urgent to the Labor Party—nothing else.

When was the last time we had a guillotine? I still cop flak from you guys for a guillotine in 1999 over how outrageous it was. We had a week-long debate that was guillotined at the end of it and you said how appalling it was. What do we get? We get 3½ hours on gay marriage. That is what is urgent. It is the only guillotine, I suspect, since the last election that Labor have supported, and they have supported it to comply with John Howard’s agenda of vilifying gay and lesbian people. It is unbelievable—absolutely unbelievable. On your own speakers list there are six Labor senators wanting to speak on this bill about marriage. There are four from the coalition and others from the crossbench. Even in the second reading debate we will not have time to deal with it. You have the absolute contempt to come here and say, ‘This is a nice piece of benign time management;’

If the 43 eminent Australians who signed the letter at the start of the week because they thought things were bad in terms of lies, dishonesty and contempt for the democratic process from the government were to seek more signatories at the end of this week, they would get up to 43,000 eminent Australians. This is just an absolute disgrace—and to do it on legislation that attacks the community. Let me remind the Senate what we are doing. We are saying that this is so urgent we cannot leave it until we come back here in two weeks time. It is so urgent that we make sure there is no prospect of any same-sex relationship being recognised as marriage in the next two weeks. We have to do it now otherwise society will crumble and the world will end. How will we cope if we go another two weeks without stopping gay and lesbian people from being able to get married? That is what the Labor Party are saying. Do not just look at what is in these bills, look at the message it sends, which is even worse: you are giving priority above everything else to the deliberate agenda that you guys have spent the last three years criticising—the Prime Minister using dog whistle politics to vilify sections of the community. He has given up the dog whistle; he has brought out the megaphone. And you are there alongside him saying, ‘Yes, that’s OK.’ In fact, it is not only okay; it is urgent. There is a well-known phrase about evil happening when good people do nothing.

Senator Ferris—That counts you out!
Senator BARTLETT—Senator Ferris gives the usual response from the government to anyone who criticises them—total vilification.

Senator Vanstone—You would not be doing that yourself, would you?

Senator BARTLETT—There is another minister. I know you want to gag people and that you are passing bills that prevent freedom of speech, but at the moment we still have the right to speak in the parliament. I am sure you would like to stop that. That is what you are trying to stop by passing your gag motion. Not only are good people doing nothing and allowing this evil to happen, people are actively making sure that it happens by giving these bills urgency. Normally I would not use such phrases as that but we had Senator Peter Cook speaking in here last June—I know he is not here and that he has been ill and I do not seek to take advantage of that—in a very passionate speech that went late and we did not gag that debate. We let that go as long as you liked because we knew you believed it was important. It was a very passionate debate. He specifically said that the Senate was passing evil legislation because it potentially allowed people’s rights of association as workers in the building industry to be compromised. And we understood those concerns. That is why we put in place protection after protection after protection and a sunset clause at the end of it all. He was still unhappy with that, obviously.

Now we have these antiterror laws that take away the freedoms of every Australian, including freedom of association. These allow not only building workers but also everybody else to be targeted by a government. You know as well as anybody else that there are no depths to which this government will not go if they want to target a group and they think they can create the political circumstances to justify it. So do not ever come here again and say that you are concerned about protecting workers from being targeted by this government. You are passing laws that make it a criminal offence to associate if a government minister is able to create a circumstance that he thinks he can get away with, without the protection of the courts at all. And you are giving it urgency over everything else! It is not even a matter of good people doing nothing; it is a matter of good people aiding and abetting. This is beyond belief. It is bad enough that we are even sitting on a Friday when we should not need to, let alone then gagging debate on such fundamental issues. You are saying, ‘It is urgent that we take away as many freedoms and rights from people as possible and do it really quickly before they notice and get a chance to be upset about it.’ If you reworded the motion and were at least honest about that then maybe people would be a bit clearer about what you are doing.

I thought you would have learnt the lesson from three years ago about what happens when you acquiesce to absolutely massive power grabs by government—taking away people’s freedom in a massive abuse of government power—but you are letting it happen again and guillotining this debate to allow it to happen. It is a tragedy. The real concern, of course, is not about the consequences of this in the chamber but about the consequences of this for the Australian people. Many Australians, as a direct consequence of this, will not only have far fewer freedoms but also feel a lot sadder about being Australian. They will feel, quite rightly, that they are lesser members of the community and that they are not safe to live their lives. It is impossible to overstate the seriousness of what is being allowed to happen here, and that is why it is impossible to overstate the enormity of the contempt that is being shown. (Time expired)
Senator BROWN (Tasmania) (12.54 p.m.)—It is black Friday, August 2004. What we are witnessing today is a sell-out by the Latham Labor Party of the democratic principle that you do not allow the government to ride over the right that there be debate by the people’s representatives in this house of parliament when important issues for the whole nation are at stake. That is Labor’s mantra. But today it has sold out that mantra because Prime Minister Howard wants to hold an election and Labor wants to get to it too—to prove it is further to the right, more Hansonite, than the Howard government.

This is a triple winner for John Howard today. He gets the free trade agreement up, and the Americans can knock out the minor change that this parliament has agreed to from Labor. He gets discrimination against gay and lesbian people having an equal right under the law to get married through here, supported by everybody on the Labor benches. Then he gets a guillotine motion through here to truncate debate on those issues and matters of enormous importance for the people of Australia so that he can hold an election at his leisure in the next month. And the Labor Party waits to take part in that election. We have two radical right parties in this parliament now vying for government. They have moved across to the right, cheek by jowl, to offer the public of this country no real choice. I hope every green group in this country notices the performance here today by the Labor Party—because that is where the problem lies—when they are considering the allocation of their preferences.

What is the difference between the Howard government and the Latham alternative when it comes to the free trade agreement which sold out democracy to the United States this morning? What is the difference between the social justice view of the world from the Howard benches and the Latham benches when it comes to building in discrimination against gay and lesbian people in this country under the law? There is none. What is the difference when it comes to the democratic right of this parliament, held back on a Friday at the start of the spring session, which is unprecedented, to meet the Prime Minister’s wish to have a free and unfettered ability to announce an election when he wants to—not in the interests of this country? The Labor Party has said, ‘Yes, we will bring in the guillotine on that.’ I ask all Australians: can you spot a difference between the Howard coalition and Latham Labor on any of those issues?

It has not escaped my attention that the last time every person on the Labor benches went across to vote for a guillotine on debate in this place it was on the regional forest agreement legislation to license the Prime Minister’s death warrant on Tasmania’s forests. Labor voted for that as well. Since that regional forest agreement came in, the destruction has doubled. Spot the difference, if you can, between these two camps. I know that there are people hurting, particularly on the Labor side about what the heavyweights in the Labor Party are doing here, but the fact is that they go across and vote with the government every time for these motions which breach Labor philosophy and Labor principle of the last 100 years—

Senator Murray interjecting—

Senator BROWN—and, as Senator Murray correctly reminds me, small ‘l’ liberal philosophy and the philosophy of The Nationals, who are more grassroots in their make-up than the other parties. Getting the free trade agreement through—that was the big one. Labor supported it. Then there was this dastardly move to support the government on the built-in discrimination. Labor are voting for discrimination. It is not a matter of saying, ‘Let’s leave things as they are.’ It is about moving to say, ‘We support the
Howard government in their philosophy of putting a prohibition in the marriage law.’ That prohibition came from a debate under the Bush administration in the United States.

What has happened to the Labor Party? That is something that will have to be left to the electorate. They are sick and tired of the Howard government. But they do have alternatives—and those alternatives are at this end of the chamber.

Senator Boswell—They won’t vote Green! You only get six per cent of the vote.

Senator BROWN—The Leader of The Nationals intervenes about the percentage of the vote. The fact is that that is a bigger vote in this country than the vote for his party. He should look at the figures. That is something we will see in greater numbers this time than we have ever seen before.

Nevertheless, we put our faith in the people. You can cut the debate here. You can hand the powers to the United States trade department. You can usurp the powers of the courts here and give them to some faceless trade ayatollah, as Labor and Liberal did this morning in determining matters of importance to this country. The job of all of us is to get that to the people—and we will—in the coming weeks. But, if Latham Labor loses the next election, it will be writ large through its cave-in on three basic issues in this black Friday parliament of 2004.

The ACTING DEPUTY PRESIDENT (Senator McLucas)—I acknowledge that you are seeking the call, Senator Cherry, but I understand Senator Vanstone is seeking the call. For balance, I call Senator Vanstone.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (1.02 p.m.)—I thank Senator Cherry. Rather unwisely, I was not expecting the good senator to finish before his allotted time. So I thank you, Senator Cherry; you were on your feet before me. There are just a few things I would like to say in this debate. I have been thinking for some time, since I am in my 20th year, about just what it is that deceives the demos and what diminishes democracy. I am absolutely certain of one thing that does not deceive them and that does not diminish democracy, and that is articulate and focused debate.

What can deceive the people, the demos, and what certainly does diminish democracy is the bandying about of wild allegations, allegedly to support your cause. There is a suggestion that a majority of the Senate—and it will only happen with the support of the majority of the Senate—deciding to order its debate and allocate what it believes is appropriate time for something is somehow a curtailment of free speech. Anybody in here is free to say as much as they like outside the parliament as well. There is no curtailment of free speech whatsoever. There is no sell-out of democracy when people properly elected in a democratic system come together in the chamber and decide how they would like to conduct their affairs. To somehow label that as a sell-out of democracy defies belief.

As I said, I am not going to take up much time, because it may be that the more time we spend on this process issue the less time there is to spend on the substantive arguments. Those who feel so strongly about these issues might like to consider that and spend more time on the substantive issues than on the process issues. It sometimes just has to be the case that, if you are in the minority, you lose. Sometimes the government loses because minority senators join with the opposition. We do not say, ‘Hold on, our free speech has been curtailed because minority senators have joined with the opposition.’ Frankly, I do not hear the Labor Party behaving like wimps when they lose because minority senators join with the government.
The only people who appear to be complaining when they lose, when they are not in the majority or with the majority, are the minority senators.

I want to make a couple of points, because it is quite important to look back at the history of the Australian Democrats, who now wish to complain about an effective guillotine being put in place. As I was here prior to 1996, I remember rolling guillotines regularly being endorsed by the Australian Democrats with the then government, the Australian Labor Party, regarding it as efficient management of Senate business. There were many of them. In 1991 the political broadcasting bill was guillotined—except by Senator Sowada, and, incidentally, you have been diminished since her loss—in 1990 there were 52 bills guillotined, in 1993 the Native Title Bill was guillotined, and in 1999 about 30 bills were guillotined—all with the support of the Australian Democrats.

When you look back at that history, you say to yourself: ‘Heavens above! I would have thought that the Australian Democrats’ record indicates that they believe it is appropriate for the minor parties to sit down with the government or the opposition of the day and decide how Senate business should be run.’ So, when anyone wants to look at a hypocritical approach, when anyone wants to look at whether it is one view today and another view tomorrow, we know exactly where to look. The Labor Party has had the same view on these things as we have for some time. So let us put that protestation to one side and put it against the Democrats’ record. Let us drag it out next time we hear the Democrats saying, ‘We just want to keep them honest.’ Here is a party which has supported rolling guillotines time after time, year after year, and now does not like it when it happens to them.

The second point I want to make is about the suggestion put by a number of speakers—and this can be dealt with in the substance of the debate, so I will not talk about it much—that somehow the amendments to the Marriage Act are vilification of the gays; that is what the major parties are seeking to do.

Senator Cherry—Which they are!

Senator Vanstone—This can be debated in the substance of the bill. It happens to be the case at the moment that a marriage in Australia is between a man and a woman. That will be the case after the passage of these amendments. There is a lot of huff and puff going on down the other end, which is quite unreasonable. To suggest that to people who have been longstanding supporters of people in the gay community—in their friendships and in employment—on this side and that side of the chamber is in itself a vilification that I reject on my behalf and on behalf of many others. If these issues are so important—and I believe they are—let us get on with the Senate, properly elected people, deciding its process and then let us go to the substantive debate.

Senator Cherry (Queensland) (1.07 p.m.)—What extraordinary accusations! I am extremely disappointed in the actions of the government this morning. If the Minister for Immigration and Multicultural and Indigenous Affairs looks at the history of the native title debate, the environmental protection bill debate and all those debates she will see that the guillotines were added at the end of a very long debate. From memory, I think the native title debate went for about 30 hours. It was intransigence on the part of the Liberal Party around about Christmas Eve, if I recall, that actually finally resulted in an orderly end to the debate. The Democrats have never, ever agreed to a guillotine that actually cuts short a second reading debate, let
alone allows half an hour for the bill to be debated.

I notice that there are 19 senators on the speakers list for the Marriage Amendment Bill 2004—that is one-fifth of the entire Senate, including all three gay members of the Senate, wanting to speak on that bill. The government has allowed 3 1/2 hours. We do not even have enough time for the senators to get on the record what they wish to say. It is very disappointing for the gay population of Australia that the government is acting in this way.

It suits me politically. I can go back to Queensland and say the government guillotined it. I will put out a leaflet through Ingrid Tall’s electorate in Brisbane and tell people how hypocritical the party she has chosen to represent as a gay woman is. I can do that and go on to the Labor Party. It suits me. But it does not suit this Senate, as the setting of our democracy, to have important views curtailed in this way—to say that there will be 3 1/2 hours for debate on the Marriage Act when there are fundamental issues at stake and when there is vilification of a fundamentally important part of our population, and half an hour for debate on the issue of prisoners’ rights, which is again a fundamental issue of our democracy. It really disappoints me.

The key thing I want to say today is that this place lives on cooperation and it always has. What I find particularly offensive about this is the lack of respect that the government has shown for my party, the Democrats. I can accept they have got the numbers on this particular occasion, but they will need us. They will need me and other Democrat senators at some stage. I can recall many times over the course of this year when I have been approached by Senator Campbell’s office or Senator Ferris’s office or other people’s offices when they have been wanting cooperation on the management of some particular issue. We have tried to provide that cooperation. We have tried to ensure that the government has had a reasonably workable Senate.

Senator Bartlett—The workplace bills.

Senator CHERRY—Yes, there were the workplace bills and there have been many bills on which the government has been able to look to cooperation from the Democrats. I cannot recall such appalling treatment of the Senate and the Democrats by the government over the course of this year. They have the numbers today and they will win on this occasion, but I say to Senator Campbell, Senator Ferris and Senator Vanstone that we will remember this. Next time you come cap in hand asking for cooperation in some matter of management we will remember that, on what for us was a fundamentally important bill—the Marriage Amendment Bill 2004—you guillotined 3 1/2 hours of debate when 19 people wanted to speak on it in the Senate.

Senator Ian Campbell—What about the native title bill?

Senator CHERRY—After 30 hours of debate, Senator Campbell. Thirty hours of debate! Let us stop misrepresenting your position and the position of this particular parliament. The native title debate was actually a very long debate. The EPBC bill was a very long debate.

Senator Ian Campbell—What about the education bill?

Senator CHERRY—We have never guillotined a debate after half an hour of debate or after 3 1/2 hours of debate with 19 people on the speakers list. You are showing complete contempt for the gay population of Australia by guillotining this bill. I know the whole bill is about contempt for the gay population of Australia, but by not even allowing it to be debated properly you are showing complete contempt.
Senator Ian Campbell interjecting—

Senator CHERRY—But I will remember. I am putting you on notice; I will remember your performance today.

Senator Ian Campbell interjecting—

The ACTING DEPUTY PRESIDENT (Senator McLucas)—Senator Campbell, don’t interject.

Senator CHERRY—I will remember that you did this without consultation with our party room. I will remember, and my colleagues will remember, the lack of respect you have shown today. Next time you come looking for cooperation I will remind you of this and I am sure you will regret the action you have taken today.

Senator GREIG (Western Australia)
(1.11 p.m.)—There are two or three key points I want to make. The first picks up on that which Senator Cherry has raised and which I was going to speak to as well, and that is that there is a fundamental difference between guillotining a very long debate at its end to progress business and bringing in a guillotine on a bill which you have not yet debated.

Senator Ian Campbell interjecting—

Senator Cherry interjecting—

The ACTING DEPUTY PRESIDENT (Senator McLucas)—Senator Campbell! Senator Cherry!

Senator Ian Campbell interjecting—

The ACTING DEPUTY PRESIDENT (Senator McLucas)—Senator Campbell, your interjections are being unhelpful.

Senator GREIG—Minister Vanstone made the point that we ought not to be talking to this motion but, rather, shutting up, sitting down and getting on with the business, if that is what we want to get to. But that ignores a really important point, which is that in that situation the amendments that will be moved to the Marriage Amendment Bill 2004—there are nine of them—will not be debated, because the speakers list is stacked with speeches on the second reading which will consume the 3½ hours dedicated to the Marriage Amendment Bill 2004 under the guillotine motion.

Where the parties stand on these amendments—not just how they vote on them but how they speak to them—is very important to me and my party and very important to lesbian and gay people following this debate. That will not be shown, and I believe that is a part of the hidden agenda here. Some of these amendments which we have drafted and others have put forward call on the parties to articulate where they really stand on this stuff.

I have been invited to speak on this issue at a rally in Sydney tomorrow. Initially, I was disinclined to go as I really want to get home and get on with the business of campaigning back in WA, as I think we all do, in our home electorates. When the gay marriage debate was first raised, I was intrigued by it because in my 16 years of being involved with the gay and lesbian community and advocating on their behalf I have never found any particular interest in, or desire for, marriage. It is very low on the list of the community’s expectations and aspirations. I am not suggesting that some lesbian and gay people do not want it—they do. It is not a priority but—my God!—how offended they were when the government came along and kicked them in the head and said, ‘Too bad, you can’t have it anyway.’ How much more offended they were when Labor said, ‘Me too.’

There was some concession made to that by Labor when they said, ‘We have committed to this. We will be snuffing out civil marriage for lesbian and gay couples. But as a concession we will agree to have a committee inquiry into this bill so we can explore
some of the broader areas.’ Point 5 of the terms of reference of that committee stated:
the consequences of the Bill becoming law—
that is, if the bill is passed and agreed to—
... and those remaining avenues available to the
Commonwealth for legally recognising inter-
personal relationships including same-sex rela-
tionships ...

So there was an olive branch, if you like,
handed out by the Labor Party, and called on
and initiated by the Democrats, so that there
could be an inquiry into some other forms of
partnership recognition that the Common-
wealth could extend in the event that civil
marriage were denied. For reasons that still
bewilder me, shadow Attorney-General Ni-
cola Roxon, when standing before a huge
antigay rally in this place last week, sud-
denly announced, apparently unilaterally,
that that was now being withdrawn.

Senator Boswell—That was not an anti-
gay rally; that was a pro marriage rally.

Senator GREIG—Senator Boswell inter-
jects that it was not an antigay rally. I heard
speakers say at that rally that homosexual
people were shameful, vile moral terrorists
and that their relationships were unnatural,
harmful to children, inherently promiscuous
and eternally unstable. Had those speakers
said that about Jewish people they would
have been condemned. Had they said that
about Aborigines they would have been con-
demned. But you can say it in this place and
suddenly it is acceptable because you have
the cloak of religion. You say, ‘That’s my
religious viewpoint. It’s not vilification. It’s
hatred but it’s not vilification.’ I heard speak-
ers say that children being raised by same-
sex couples suffer from shame and guilt.
Imagine saying that about children being
raised by people with disabilities. It is dis-
graceful that Senator Boswell so eagerly
perched himself in the front row of that rally
so that he could get on the television sup-
porting traditional marriage.

The bill is not about supporting traditional
marriage; it is about supporting traditional
prejudice. That is why we need a compre-
hensive and sensible debate about it. That is
why I am so keen to get on the public record
the very real hatreds that lie behind these
front groups which claim to speak on behalf
of families. One of these groups—the key
group which organised the rally last
Wednesday, the Australian Family Associa-
tion—is a front group for the National Civic
Council. But, more importantly, that group’s
Western Australian branch was found guilty
of vilification in Western Australia by the
Advertising Standards Board when it distrib-
uted leaflets and displayed billboards around
Perth saying that gay men were paedophiles.

One of the speakers at the rally last
Wednesday was Digger James. I did not hear
his speech. I have not seen a transcript of
that speech. But I have seen a transcript of a
speech he gave in Perth in December 2001 in
which he argued that gay and lesbian people
were mentally ill, molested children and
spread disease. Imagine if anybody had been
invited into this place to say that of Jews.
You cannot underestimate the very real anger
in the gay and lesbian community, not be-
cause gay marriage is being banned but be-
cause hate groups are being accepted and
embraced by the government and the opposi-
tion and are being legitimised and endorsed,
and because, for no explicable reason, the
government and the opposition have now
gone out of their way to kick these people in
the guts—not the hate groups but lesbian and
gay people.

All that the lesbian and gay community
are asking for is that these issues be dealt
with properly and sensitively. They want to
give voice to their concerns, their fears and
their aspirations. I will be going to the rally
in Sydney tomorrow, part of which will be held outside the Labor offices in Surry Hills. I invite Senator Ludwig and Acting Deputy President McLucas to be there if they can make it, not to explain their position on gay marriage—I do not think many people in the lesbian and gay community really care—but to explain why they are now sucking up to these appalling evangelical Christians who claim to speak for families. They do not speak for mine. My parents are mortified by the hatred they hear coming from these groups. So are all parents of lesbian and gay children.

It is utterly ridiculous for the Labor Party and the government to now say that the marriage bill is urgent and must be guillotined and that there must be censorship of the debate on it when only a few months ago the position of the Labor Party was that it could wait until 7 October because there ought to be a full and thorough committee inquiry. There is no excuse for this haste. I know that antigay groups and fundamentalist Christian groups are running around in their state of moral panic saying that parliament must precede the court. I understand there are two court cases in Victoria where same-sex couples who have lawfully married in Canada are seeking recognition for their partnerships here in Australia. There is this myth, this rumour, this lie running around that, unless parliament acts now to extinguish that, if the courts should decide in the next few weeks or months that same-sex marriages are to be accepted, there is nothing the parliament can do. That is utterly untrue.

I believe that the courts are not going to find in favour of same-sex marriages. I think there is enough common law that suggests that that is highly unlikely. But I really want that human rights case to have its day. I really want those citizens to have their day in court. I would really like our parliament to sit back and say, ‘We’ll look at the transcripts of the court proceedings and look at the rulings that the judges make but, whatever the outcome—whether it is positive or negative—parliament will still decide on that at the end of the day.’ To rush ahead with this now is appalling.

I agree with Senator Vanstone when she says that the marriage bill before us is not vilification. I have never suggested that. I do not think any of my colleagues have. But scratch the surface and look at the hidden meanings. What are we saying to the broader community when we say that lesbian and gay relationships are lesser and second class and not the same? In the same breath, we sometimes hear—only from the Labor Party, not from the coalition—that there might be some alternative form of partnership recognition. But they have advanced none. They have suggested none. I understand their caucus has stomped on the prospect of civil unions and registered partnerships, despite labour parties in other countries having happily gone down that path. I note with supreme irony that the Conservative Party in Britain is calling for civil unions for same-sex couples, yet in Australia the best we can do is allow hate groups to spew out their hate speeches in our parliament, say that it is traditional values, excuse it as a religion and then rush through a bill to extinguish the opportunity for solemnisation of same-sex relationships in this country.

I will never stand in this place and argue for haste on that kind of human rights legislation. Ironically, I probably would have supported a guillotine on the free trade agreement, not because I wanted to rush that debate but because a lot of that debate was unnecessary and a lot of it was filibustering because the government and the opposition had not got their act together. Their time could have been far better managed. I cannot and will not support this guillotine but I call on Labor members in this place to address
the rally in Sydney tomorrow and tell the gay and lesbian people not only why their rights are being extinguished but also why Labor believe it has to be done in such appalling haste.

Senator Ludwig (Queensland) (1.21 p.m.)—The Labor opposition will be supporting the motion, on balance. We think that the allotment of time, given the time pressures that exist, is reasonable. We are clearly ready to proceed with the debates in relation to the bills that have been listed in the motion today.

Senator Stott Despoja (South Australia) (1.22 p.m.)—One of my constituents has just sent me a text message suggesting that the Democrats and others on the crossbench should simply walk out as a sign of protest against, or boycott of, this absolute thwarting of the democratic process, but I recognise that that would suit the purposes of this chamber. If we were to leave, the two major parties, who have colluded not only on this guillotine motion but also on other regressive pieces of legislation, would be too thrilled as a consequence. I see our responsibility in this place today as standing up—even if we are only seven Democrats and two Greens—for what we consider important democratic principles and, indeed, standing up for the role of the Senate. In case we have forgotten, in the Westminster tradition—or the ‘Washminster’ tradition, if we are to be more correct about our democratic inheritance—the Senate is a house of review which has a responsibility to scrutinise legislation in an accountable and transparent manner. That is our responsibility and that responsibility is being abrogated today.

Ministers may say it is democratic because a majority of the Senate has decided, or is about to express its majority will so that we do decide, to impose this particular time constraint—‘a TMM’, as Senator Ian Camp-

d said it, a time management motion. It sounds almost Orwellian but that does not surprise me in the context of this week. This has been a shocker of a week—an embarrassing, shameful, disgraceful week. In fact it is one of the most embarrassing weeks in this parliament and I feel embarrassed and shamed being here today.

Friday, 13 August: what a bummer this has been. This week started on a regressive, shameful note. We started our week as legislators recognising a High Court decision that said we could detain innocent people for life—refugees, asylum seekers, who have come to our country and who are effectively stateless. Despite the fact that they were not going to be deported in the foreseeable future, we have a ruling which says that it is now legal to put those people in jail for life. That is how the week started and it did not get any better.

Today we have exposed not only this government but also the opposition for their lack of truth in parliament, in government and in representative democracy. My leader, Senator Bartlett, referred to the 43 eminent Australians who, last weekend, signed that invaluable note expressing their desire for real truth in government and expressing their concerns about the lack of commitment to that important transparent process which we are supposed to value. And what happened? By Wednesday, the debates in this place were all about how we could be incredibly derogatory to those people—43 people with whom I have not always shared the same political opinions but who are, nonetheless, eminent and distinguished Australians. Yes, some of them are older, and some of the derogatory references made to age in this place during the week were appalling. What a disgrace those comments were.

As I asked during the week, what other comparable democratic nation would spend
its hours in the Senate—we spent at least half an hour taking note—condemning, trivialising, patronising, ridiculing and mocking 43 eminent people who helped make this nation what it is today, who made it great? Today I do not feel that my nation is so great. I certainly do not feel that the representative pinnacle of our nation, the Australian parliament, is acting in a great fashion.

Senator Ludwig has just said that the Labor Party will support the guillotine—not that we doubted it, because the votes preceding this debate have made the Labor Party’s intention quite clear. And the only justification he offered in a very brief explanation to the Senate was that the guillotine is ‘reasonable’. Reasonable? What a joke! Half an hour for an electoral bill which deals with a number of issues! Voting rights of prisoners may be part of it—it is not my portfolio. Half an hour: that is 1½ speeches on the second reading. That is a joke and everyone in this place knows it. Of course it is a joke. And 3½ hours on the marriage bill? Don’t give me reasonableness! That is not even attacking the substantive nature of the policy with which we are dealing.

We have 19 members on the speakers list. I have not put my name down yet and I wish to speak on that bill. Do the math, people: that is 6½ hours, or more. That does not allow time for debate on any of the amendments. Senator Greig, who has carriage of that portfolio, has spoken on these issues twice in the Senate today in, I might say, a brilliant manner—having clapped your last contribution, Brian, and being called disorderly, I will minimise my enthusiasm on this occasion. In his last contribution, Senator Greig outlined quite appropriately the fact that there are a number of amendments that will never be debated, that will never be dealt with. At best, dealing with those amendments would let us see a voting record of politicians in this place. We are not going to hear the rationale as to why politicians may have voted a certain way. This is all the more offensive because of the nature of the legislation with which we are dealing. I have no doubt that it is discriminatory in the sense that it has an implicit impact. It makes very clear how this parliament feels about gay and lesbian unions and I am embarrassed by that.

Senator Greig and Senator Cherry talked about the concern and disappointment that gays and lesbians in our community may feel. Well, I am married and my union satisfies the definition with which we will be dealing, but how dare anyone suggest that my union, my partnership, is any more valuable that that of a same-sex partnership! I do not suggest for a moment that, because I happen to be in a heterosexual relationship which meets legal requirements, somehow my union is more valuable. How dare we suggest that! How patronising we are! If only we were simply patronising. We are not: we are offensive if we pass legislation that has that implied criticism, that illusion.

Ministers cannot stand in this place and pretend that this bill is not discriminatory, and Labor Party spokespersons cannot either. I know there has been outspokenness from some members of the Labor Party, but for once in this place I would like to see a vote that is not on party lines—a vote about passionate, principled policy issues that we believe in. Cross the floor, for goodness sake. Senators in my home state have expressed concerns about the bill and the message it sends but they should not just talk about it; they should vote that way, for goodness sake. I am embarrassed to be on record today as the only South Australian senator who not only voted against the FTA but also will vote against this guillotine. I will vote and make clear my views on the Marriage Amendment Bill 2004. I am embarrassed that I am the only South Australian to do so, out of 12. It
is appalling, and I hope South Australians remember it.

As Senator Cherry has made clear, it suits us politically and it suits us pragmatically, but surely these issues are broader than simply the electoral cycle with which we are confronted? Surely these issues are more important to us as legislators, as upholders of democracy and as parliamentarians—parliamentarians, my foot: members of parliament. I am yet to see a few parliamentarians in this place stand up for the real things that they believe in. So I commend my colleagues on their contributions.

Again I put on record that the Australian Democrats are pretty upset and angry today. This government has misrepresented its position today and in recent times when we have been told what the forward agenda is and yet it has been changed. Change is fine. Consultation is better. But informing the Senate of one thing and doing another is misleading and misrepresenting the parliament. It comes back to the original concern that many of us had this week—the concern articulated by 43 eminent Australians that there is a lack of truth in government and a lack of truth in parliament. Bob Brown is right: Friday, August 13 is Friday the 13th in this place. It has been a black day for parliament and democracy. The Democrats are not going to give up without a fight. We may not have the numbers but we certainly have sought to uphold the morality—for lack of a better word—and the democratic intentions of this place.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (1.32 p.m.)—I was not going to get into this debate; I was going to save my comments for the substantive debate on the Marriage Amendment Bill 2004. But I am forced to come into this debate because I believe the 1,200 people who came from all parts of Australia, representing many other Australians who believe that marriage is the cornerstone of Australia, have been vilified. Senator Greig, you are quite open about your relationship, and I do not condemn you for it. That is your choice. As we pass in the corridors, I always say g’day to you. I do not condemn you for your choice of lifestyle, and you do not condemn me for being on the other side of the issue. We exchange pleasantries and say g’day to each other as we pass.

The ACTING DEPUTY PRESIDENT—Direct your remarks through the chair please, Senator Boswell.

Senator BOSWELL—What I find difficult is when Senator Greig gets up here and vilifies these people in the same terms that he believes the gay and lesbian community have been vilified. He is turning the whole debate around. He vilified the 1,200 people who came from as far as Western Australia and Queensland, with three or four days notice, to express their concerns. Do they not have rights also? They have the right to come here and express their views, which I know are the views of the majority of Australians. They have every right to come here and express those views. If Senator Greig were going to address a gay and lesbian rights rally in Sydney tomorrow and if I suggested to him that all those people were anti-Christian, did not like churches and were against families, that would be wrong. But he is doing exactly what he accuses those 1,200 people of doing.

I know the passion that the Democrats have. I know how strongly they feel. I know they do not like being rolled. I was in exactly the same position during the native title debate. I thought it was absolutely wrong that native title be brought in and for there to be two titles over a property. I fought it hard. I did not believe in it. I was passionate about it but I did not have the numbers, and native
title became a fact of life. I had to accept it. I made a speech on the third reading, if senators recall. I knew that we were done and I knew we had the numbers against us, but I did congratulate the Aboriginal people and the people who supported them in this place on a well-run campaign.

Senator Ridgeway—You still didn’t give us much.

Senator BOSWELL—I say to Senator Ridgeway, the Aboriginal representative in this chamber, that I fought against it and I was rolled, but I congratulated the Aboriginal people on their campaign and the way they ran it. Democracy is numbers. The Democrats do not represent the majority of people. They have that narrow vote of around six or seven per cent. That is fair enough. They come in here and they represent them. But we represent the majority of people, and the overwhelming majority of people want marriage preserved between a man and a woman. Are we wrong to get up and defend the position of the majority? Of course we are not wrong.

We have been elected by people with different points of view. The people who elected me feel very strongly about this issue. Many of them are the people whom Senator Greig, I believe, has criticised and vilified. Look, in the excitement of giving speeches perhaps some of those things should not have been said. I do not know. As Senator Greig said, I sat near the front, although it was not to get my photo in the paper; it was to support those people because they turned up and made a huge contribution in coming here. It cost them a heap of money to get here, and they deserved support.

I sat in the second front row—not to get my photo in the paper, because I did not believe that would happen and, even if it did, that was not the reason I went there—to support those who back the majority of people. They came in here to express not an anti-gay or anti-lesbian position, or to vilify the gays and the lesbians, but to support marriage which they believe is the cornerstone of society.

Let us get on with the debate. I know how strongly you feel, Senator Greig. I can gauge that by the passion with which you are delivering your message. I shared that anxiety and passion in the native title debate. You might remember—I do not think you were here, Senator Greig—that I stood up and everyone in the gallery booed me. I was putting forward a position which I believed was the position of the people who elected me and which they asked me to support, and I agreed with their position. That is what representation is all about.

Unless you can get the majority of people to believe in gay and lesbian marriages, you are never going to override the parliament because the parliament is expressing the majority views. That is what it is all about. Everyone on this side of the parliament, and probably those on the other side, knows that. If Senator Greig were to go out there and express his view, he would be annihilated because it would not be the majority view of the people of Australia. You need only six or seven per cent of the vote to get elected, and then you pick up a bit of a spill here and cross-preference with the Greens and the Democrats and pick up a bit of the spill from Labor. You are not going for the majority vote; you are going for the minority vote. You always have and you always will. You do not represent the majority views of the two major parties.

The two major parties have to reflect what is required in the mainstream electorate. The mainstream electorate do not support marriage between same-sex couples. But that is not to say that they are vilified or that they are second-class citizens. That is their choice
of life and, if that is their lifestyle, I do not condemn or condone it. It does not represent what I believe is a family. Let us not debate this any longer. Let us get on with the substantive debate and put our positions forward on what we believe and the people of Australia want us to vote for.

Senator RIDGEWAY (New South Wales) (1.40 p.m.)—I was not going to enter this debate but after that pathetic performance from Senator Boswell—

The ACTING DEPUTY PRESIDENT (Senator McLucas)—Senator Ridgeway, you only have one minute, just by way of information.

Senator RIDGEWAY—I want to make it clear that, in the context of this notion of democracy being about a majority vote, I thought a democracy was about the values in society, about equality, fairness, understanding and compassion. When the Leader of the National Party in the Senate, Senator Boswell, was here for the native title debate, the Prime Minister held up a map showing how much land was going to be taken by Aboriginal people. What we are doing wrong in this particular case, aided and abetted by the opposition, is institutionalising bias and prejudice against particular people. The opposition should stand up and be counted and should not assist the government. People are entitled to their views in society, but I will not countenance putting them into law so that we can actively discriminate against people, which is what is happening in this place. This has happened with Indigenous people, disabled people and other people in this country because governments have allowed it to happen and oppositions have supported it. (Time expired)

Question put:

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

The Senate divided.  

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Ayes……….. 36
Noes……….. 8
Majority……. 28

AYES

Barnett, G.  Boswell, R.L.D.
Campbell, G.  Campbell, I.G.
Carr, K.J.  Chapman, H.G.P.
Conroy, S.M.  Coonan, H.L.
Evans, C.V.  Faulkner, J.P.
Ferguson, A.B.  Ferris, J.M. *
 Fifield, M.P.  Forshaw, M.G.
 Harris, L.  Hogg, J.I.
 Humphries, G.  Johnston, D.
 Knowles, S.C.  Lightfoot, P.R.
 Lundy, K.A.  Macdonald, I.
 MacDonald, J.A.L.  Mackay, S.M.
 Marshall, G.  Mason, B.J.
 McLucas, J.E.  Moore, C.
 Patterson, K.C.  Payne, M.A.
 Scullion, N.G.  Troeth, J.M.
 Vanstone, A.E.  Watson, J.O.W.
 Webber, R.  Wong, P.

NOES

Bartlett, A.J.J.  Brown, B.J.
Cherry, J.C.  Greig, B.
Murray, A.J.M.  Nettle, K. *
Ridgeway, A.D.  Stott Despoja, N.

* denotes teller

Question agreed to.

ANTI-TERRORISM BILL (No. 3) 2004
ANTI-TERRORISM BILL (No. 2) 2004

In Committee

Consideration resumed.

ANTI-TERRORISM BILL (No. 3) 2004

Senator GREIG (Western Australia) (1.49 p.m.)—The Australian Democrats oppose schedule 1 in the following terms:

(1) Schedule 1, page 3 (line 2) to page 17 (line 16), to be opposed.

Democrat amendment (1) seeks to oppose schedule 1 and therefore remove it from the bill. With this amendment, the Democrats are
not saying that there is no need for the Passports Act to be updated. We agree that the time for legislative changes has probably come; however, we have some concerns with the provisions in schedule 1, which we believe need to be worked through carefully. We agree with the shadow minister for homeland security that there is a compelling reason to expedite the passage of schedule 3 to this bill and we are willing to support the passage of that schedule. However, the government has made it difficult for us to do so by coupling it with schedules 1 and 2, which the Democrats are not prepared to pass in their current form. What we are saying to the government with respect to schedule 1 is: ‘Go back and start again.’

In its current form, the schedule raises a number of issues. As I said in my speech during the second reading debate, the Democrats have a number of concerns with the changes proposed in schedule 1, and these concerns were confirmed by evidence in the Senate committee. We are persuaded by the argument of the Castan Centre for Human Rights Law, which argues that an order for the surrender of foreign documents should be made only where a foreign arrest warrant, court order, bail or parole condition relates to a matter which is also a serious offence under Australian law. The Democrats do not believe that the minister’s power should be predicated on the existence of an arrest warrant issued by a foreign court without any consideration of the nature of the laws of the legal system of the foreign country or the reasons for the issue of the warrant. You may recall that the example I gave during my speech on the second reading debate was in relation to adultery and sharia law and what-not from a Middle Eastern country.

One of the primary concerns that the Democrats have with schedule 1 is the potential impact on refugees and asylum seekers. We are disturbed by the evidence that the new provisions may be inconsistent with the convention relating to the status of refugees. The Democrats believe that there is a need for a defence of reasonable excuse in relation to foreign travel document offences and that this defence should expressly apply to asylum seekers and refugees. As I have said, the Democrats also have serious concerns with the restrictions, on review of the minister’s decision to order the surrender of foreign travel documents. The limitations placed on the AAT are unacceptable, particularly given the enormous impact of the minister’s decision on a person who is subsequently prevented from leaving Australia.

Given the likelihood that the minister’s decision will relate either to international relations or to criminal intelligence, the AAT in almost all cases will be restricted either to affirming the minister’s decision or to remitting the decision to the minister for reconsideration. So there is a range of concerns that we Democrats have with schedule 1 in its current form, and we do not believe it should be expedited in the same way as schedule 3. We believe the government should go away and attempt to address the concerns raised in evidence to the Senate committee, particularly the concerns about the potential impact on refugees and the severely limited review mechanisms. It is on that basis the Democrats are opposing schedule 1. Madam Temporary Chairman I seek leave to move Democrat amendment (2) now so that it may be dealt with together with amendment (1).

Leave granted.

Senator GREIG—The Democrats oppose schedule 2 in the following terms:

(2) Schedule 2, page 18 (line 2) to page 20 (line 20), to be opposed.

Democrat amendment (2) seeks to oppose schedule 2 and, consequently, to remove it from the bill. Our concerns are somewhat different from the concerns I have expressed...
with schedule 1. In this instance our concerns are more substantive: we are not asking the government to go away and redrawn schedule 2; we are simply asking it to abandon this schedule altogether. The Democrats strongly oppose the provisions of schedule 2, primarily because they enable travel documents to be seized from innocent Australians who are not even suspected of involvement in terrorism. Unfortunately, this is already provided for under section 34JC of the ASIO Act; however, schedule 2 takes that one step further by enabling the seizure of documents before a prescribed authority has issued the questioning warrant, before the request has even been made to the prescribed authority and before the Attorney-General has even consented to the making of the request for a questioning warrant. As I said in my contribution to the second reading debate, these provisions have incredibly serious consequences and we cannot support them. We believe they both ought to be removed from the bill.

Senator LUDWIG (Queensland) (1.53 p.m.)—The opposition does not support the amendment. The opposition has carefully weighed the evidence put to the committee. We have had a look at the issue in respect of the passports matter and we do not support it for the reasons given during my speech in the second reading debate, and that was clearly articulated earlier in the day.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.54 p.m.)—We have spent so much time arguing about the procedural motion earlier that there is no time to discuss these important matters. The government finds the amendments unacceptable. They create a situation where terrorists, paedophiles and other serious criminals can escape Australian law enforcement authorities by using foreign travel documentation. This amendment seeks to remove that and we of course disagree with that so we oppose the amendments.

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that schedule 1 and schedule 2 stand as printed.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that the bill stand as printed.

Question agreed to.

Bill agreed to.

ANTI-TERRORISM BILL (No. 2) 2004

Bill—by leave—taken as a whole.

The TEMPORARY CHAIRMAN—The question is that the bill stand as printed.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.55 p.m.)—by leave—I table a supplementary explanatory memorandum relating to the government’s amendments to be moved to this bill. The memorandum was circulated in the chamber yesterday. I move government amendments (1) to (4):

(1) Schedule 3, page 3 (before line 5), before item 1, insert:

Crimes Act 1914

1A Paragraph 15AA(2)(a)

After “terrorism offence”, insert “(other than an offence against section 102.8 of the Criminal Code)”.

(2) Schedule 3, item 3, page 5 (line 12), at the end of paragraph 102.8(4)(d), add:

; or (iii) a decision made or proposed to be made under Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979, or proceedings relating to such a decision or proposed decision; or

(iv) a listing or proposed listing under section 15 of the Charter of the United Nations Act 1945 or an application or proposed application to revoke such a listing, or
proceedings relating to such a listing or application or proposed listing or application; or

(v) proceedings conducted by a military commission of the United States of America established under a Military Order of 13 November 2001 made by the President of the United States of America and entitled “Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism”; or

(vi) proceedings for a review of a decision relating to a passport or other travel document or to a failure to issue such a passport or other travel document (including a passport or other travel document that was, or would have been, issued by or on behalf of the government of a foreign country).

(3) Schedule 4, item 3, page 6 (line 26), omit “a State or a Territory.

(4) Schedule 4, item 15, page 8 (line 19), omit “Territory or State”.

Question agreed to.

Senator GREIG (Western Australia) (1.56 p.m.)—I move Democrat amendment

(1) on sheet 4399:

(1) Schedule 3, item 2, page 3 (line 17), at the end of the definition of close family member, add:

: or (f) cousin, uncle or aunt of the person.

This amendment seeks to respond to concerns of the Australian Muslim Civil Rights Advocacy Network, which argued in its submission to the committee that family is very important in almost all Arabic and Islamic cultures, and in particular the extended family bonds of cousins, aunts, uncles and grandparents. It is not uncommon for several generations of families to be living in the same household, or for a group of related families to live in the same street. It is not unusual, for example, for cousins and uncles to meet each other on a daily basis to share their experiences and problems. We Democrats do not believe that the Muslim community should be penalised for spending time with their extended families. Accordingly, we are seeking to insert an additional paragraph into the definition of close family member to ensure that it covers uncles, aunts and cousins.

Senator LUDWIG (Queensland) (1.57 p.m.)—The opposition does not support this amendment. The question of penalty was one that we considered closely; indeed, it was raised by the shadow minister in the other place. On balance we are prepared to accept that there is justification for a more serious maximum penalty than that which applies under state and territory consorting offences. That is because the stringent elements in this offence, which are absent from consorting offences, mean that it applies to more serious behaviour. Also, the opposition is satisfied that the investigative powers that will be available if this penalty is maintained, such as those under the surveillance devices regime—which, hopefully, we might get to in the next sitting period—are appropriate, given the terrorist-related nature of the conduct being targeted.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.58 p.m.)—The government also opposes the Democrat amendment. It is something we did look at; it is restricted to closer family. We think the amendment would undermine the effectiveness of the proposal. In any case, if a person does not intend to support the expansion or existence of a terrorist organisation they will not be guilty of any offence.

Question negatived.
Senator GREIG (Western Australia)
(1.59 p.m.)—by leave—I move Democrat amendments (2) and (3) on sheet 4399:
(2) Schedule 3, item 3, page 4 (line 9), omit “3 years”, substitute “6 months”.
(3) Schedule 3, item 3, page 4 (line 29), omit “3 years”, substitute “6 months”.

As I have already made clear in my second reading speech, we Democrats unequivocally oppose the proposed new offence of associating with a terrorist organisation. We maintain that opposition and we will be voting against the bill. However, we know that the bill is likely to be passed despite our opposition and it is on that basis that we are now seeking to reduce the penalties which apply to that offence. Democrat amendments (2) and (3) will reduce the penalty from three years to six months. This responds directly to a recommendation made by AMCRAN in its submission to the Senate committee, and it is an attempt to reduce the impact of what is an incredibly problematic and draconian offence. It is important to remember that this offence does not target suspected terrorists or members of terrorist organisations. It applies to those who may come into contact with such individuals or organisations. This is not an offence that we believe should be punished by up to three years imprisonment.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The allotted time for this debate has expired. The question is that Democrat amendments (2) and (3), by leave taken together, be agreed to.

Question negatived.

Bill, as amended, agreed to.

Anti-terrorism Bill (No. 2) 2004 reported with amendments; Anti-terrorism Bill (No. 3) 2004 reported without amendment; report adopted.

Senator Bartlett—Mr Acting Deputy President—

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Senator Bartlett, unless you are on a point of order, there is no debate because the time for debating the bills has expired.

Senator Bartlett—I appreciate that. To assist the Senate, via a point of order, to ensure maximum time for debate on the next bill, I simply seek to ensure the Democrats’ opposition to the bills is recorded in Hansard.

Third Reading

The ACTING DEPUTY PRESIDENT—The question is that these bills be now read a third time.

Question agreed to.

Bills read a third time.

BUSINESS

Consideration of Legislation

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (2.02 p.m.)—At the request of Senator Ian Campbell, I move:

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

(2) That the Marriage Amendment Bill 2004 may proceed without formalities and be now read a first time.

Question agreed to.

MARRIAGE AMENDMENT BILL 2004

First Reading

Bill received from the House of Representatives and read a first time.

Second Reading

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (2.03 p.m.)—I move:

That this bill be now read a second time.
I seek leave to have the second reading speech incorporated in *Hansard*.
Leave granted.

*The speech read as follows—*

**MARRIAGE AMENDMENT BILL 2004**

It gives me much pleasure to introduce this Bill. This Bill is necessary because there is significant community concern about the possible erosion of the institution of marriage.

The Parliament has the opportunity to act quickly to allay these concerns.

The Government has consistently reiterated the fundamental importance of the place of marriage in our society.

It is a central and fundamental institution.

It is vital to the stability of our society and provides the best environment for the raising of children.

The Government has decided to take steps to reinforce the basis of this fundamental institution.

Currently, the Marriage Act 1961 contains no definition of marriage.

It does contain a statement of the legal understanding of marriage in the words that some marriage celebrants must say in solemnising a marriage that: ‘Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.’

The Government believes that this is the understanding of marriage held by the vast majority of Australians and they should form the formal definition of marriage in the Marriage Act.

This Bill will achieve that result.

A related concern held by many people is that there are now some countries that permit same-sex couples to marry.

The amendments to the Marriage Act contained in this Bill will make it absolutely clear that Australia will not recognise same-sex marriages entered into under the laws of another country, whatever country that may be.

As a result of the amendments contained in this Bill same-sex couples will understand that if they go overseas to marry, their marriage, even if valid in the country in which it was solemnised, will not be recognised as valid in Australia.

In summary, this Bill makes clear the Government’s commitment to the institution of marriage. It will provide certainty to all Australians about the meaning of marriage into the future.

**Senator Greig**—Mr Acting Deputy President, I rise on a point of order. I seek your guidance. Earlier this week I tabled a series of contingency notices. I understand I am now able to move one of those. If my understanding of that is correct, I would seek to do so.

**The ACTING DEPUTY PRESIDENT**—You are a little late, Senator Greig. The time for that has passed.

**Senator Ludwig** (Queensland) (2.03 p.m.)—I rise to speak on the Marriage Amendment Bill 2004. Labor supports the Marriage Amendment Bill and will be voting for it today. Labor has said from the beginning of this debate that we will not support same-sex marriage. In a doorstop interview on 31 May this year, the Leader of the Opposition, Mark Latham, said:

... we have always said that we believe the Marriage Act is an institution for a man and a woman, and we’ve never proposed in the Labor Party to change that. So we will be supporting what really is the formalisation of it—they’re writing from the common law now into the statute law that it’s an institution for a man and a woman. That is something we support ...

He went on to say:

The Labor Party decision not to advocate for gay marriage is a position that was determined last year by our Labor caucus as part of a whole package of other reforms relating to same sex couples that we are taking to this election. This package was developed prior to the Howard Government’s recent attempts to raise the issue of gay marriage in the parliament.

We all know that the Howard government continues to try to make same-sex marriage a central issue in its re-election strategy. In
fact, debate on the issue has gone back and forth and there are now before the parliament two bills that deal with marriage. Last week the Prime Minister announced that he intended to bring back into the Senate the government’s second marriage bill, and we are now at the second reading stage of that. This bill deals only with the definition of marriage and a prohibition on recognising same-sex marriages made overseas. It does not deal with adoption. The bill accords with the current common law definition of marriage in Australia as being between a man and a woman, and it is consistent with the social and religious history of this institution. This second bill, without the adoption clause, was the result of Labor rejecting the provisions of the previous bill which sought to allow the Commonwealth to interfere with adoption issues usually handled by the states. Importantly, and irrespective of the votes today, the Labor Party will ensure that the first bill continues to be examined by the Senate committee. Many thousands of submissions have been received and the detailed submissions need to be considered, as I understand it, by the committee. It is clear that this issue has attracted a great deal of community interest, although much of it is conflicting.

The committee is due to report in October. Labor expects that the recommendations of the Senate committee report will be on a range of issues affecting the gay and lesbian community and will be useful as part of our reform plans if we are in government after the next election. Labor acknowledges that some members of the gay and lesbian community would like the right to marry, but it also acknowledges that the institution of marriage is held dearly by many other Australians who are strongly against any change. Consider also the fact that marriage has not been a major focus over past years. The influential NSW Gay and Lesbian Rights Lobby Group said in a press release on 28 August 2003:

The GLRL has never opposed marriage. But we have been very clear about what we can achieve strategically as well as what rights are of the most immediate practical benefit to our community.

They went on to say in this press release:

When we have surveyed gay men and lesbians about how they want the GLRL to spend its time, they have told us loud and clear that what matters most is to be free of discrimination in everyday life, in relationships and with the families we form.

These are exactly the matters Labor have prioritised. In the recent media and community debate about the Howard government’s plans to change the Marriage Act there has been no focus on these other reforms which have been pursued by the gay and lesbian community for many years and will benefit all members of the community, not just those who would like to be able to marry. In fact, it is quite ironic to the Labor Party that parties to both the right and the left of us are criticising our position. We are not reacting to calls from any particular group in the community; we are listening to, and talking with, many Australians with many differing views and we have formulated a solid, long-term response and a plan for action when a Labor government is elected. Those who want same-sex marriage think we are too conservative, and those who oppose decent treatment of gays and lesbians think we are too progressive. It is a pretty sure sign, in my view, that we have in fact got a balanced, sensible and fair plan of action.

Let me recap on Labor’s major commitments. The recent focus solely on same-sex marriage, as covered by this bill, has largely ignored the extensive commitments Labor has made to ensure that loving and caring relationships within the same-sex community are acknowledged and respected. Labor is committed to pushing ahead with the reforms
it prioritised in consultation with representa-
tives of the gay and lesbian community well
before this Howard government bill was
even raised. Only Labor will immediately
introduce antidiscrimination laws based on
sexuality and introduce protection from har-
assment and vilification. Only a federal La-
bor government will deliver to same-sex
couples equivalent status to heterosexual de
factivo couples, following an audit of all
Commonwealth legislation similar to exer-
cises already conducted by many state and
territory governments. The purpose of the
audit is to identify where, among the thou-
sands of pieces of Commonwealth legisla-
tion, discrimination against same-sex couples
exists. Labor will then amend legislation to
remove discrimination against same-sex
couples in all areas such as taxation, social
security, superannuation and immigration.
The one exception is the Marriage Act.

When these commitments by Labor were
first announced last year they were hailed as
the most progressive package of reforms a
major party had adopted on same-sex issues
in decades. Labor have long campaigned for
equal rights to superannuation benefits for
same-sex couples. For many years Labor
have put forward private members’ bills
which the government has never adopted.
Last year Labor moved amendments to a
number of superannuation bills that would
have given same-sex couples those superan-
nuation rights, but they were opposed by the
Liberal government. At the end of our long
campaign the government finally introduced
its interdependency amendments giving su-
perannuation rights where an interdependent
relationship exists, which includes same-sex
couples. Of course Labor were pleased that
the government finally supported this cam-
paign. Some doubts have been raised by the
gay community suggesting that the interde-
pendency arrangements may not adequately
cover all same-sex couples. So when Labor
are in power we will revisit the area to en-
sure that the rights of same-sex couples to
superannuation are properly protected. But
superannuation is just one of many areas
where same-sex couples suffer discrimina-
tion and where Labor are committed to mak-
ing a real difference. The reform commit-
tments by the Labor Party on same-sex issues
are a plan ready for implementation.

I foreshadow that Labor will not support
amendments and motions in this place that
will simply be rejected by the government in
the other place and go nowhere. The minor
parties can put forward any package they see
fit to. They are free to do so, and it might
advantage them in their constituencies, but in
our view it is simply grandstanding. They
know, and the gay and lesbian community
should know, that these are futile attempts
that will not become law. The amendments
will not be accepted by the government and
will never become law under a Howard gov-
ernment.

The Labor Party is the only party with a
thorough, well thought out policy that it can
actually deliver by implementing the plan in
government. The minor parties cannot do
that; only Labor can do that. Look at the re-
cord of previous Labor governments in terms
discrimination laws. Focus on the reforms
that have been delivered by Labor state gov-
ernments around the country. Labor clearly
has runs on the board and intends to pursue
these reforms in government. We will not
support amendments and motions in this
place that will simply be rejected by the gov-
ernment in the other place. We do not think
they will go anywhere in this instance.

It is true that marriage is today being tied
to its social and religious history. For some
people this is critically important. Others
object to it. But it does not change the cur-
rent law and will not remove rights from, or
deliver benefits to, anyone. In contrast, La-
bor’s reform package is about serious and far-reaching change for the gay and lesbian community. We will fight for our package and continue to advocate its benefits. These will be delivered by a newly elected Labor government.

Senator GREIG (Western Australia) (2.13 p.m.)—Imagine if I were to stand in this chamber and boldly announce that Jewish people were shameful, vile, immoral terrorists, or if I were to claim that interracial relationships—those between Aborigines and white people—were unnatural, inherently unstable, highly promiscuous and harmful to children, or if I were to go even further and argue that children raised by interracial parents suffered from shame or guilt or that people involved in interracial relationships were mentally ill with a psychiatric disorder. I do not believe those things. I would not say them. I know them to be untrue. I would condemn anybody who said such appalling and shocking things.

However, last Wednesday here in the Great Hall of Parliament House I witnessed a huge gathering of mostly fundamentalist Christians and other assorted far right wing and antigay groups make those exact claims against gay and lesbian people and their children. It would be utterly unthinkable that the parliament’s Presiding Officers would grant the use of the Great Hall to, say, the League of Rights so that it could hold a public forum entitled ‘Traditional Gentile Values’ and use that forum to reinforce fear and loathing of Jewish people. Yet our Presiding Officers allowed the use of the Great Hall by antigay groups to reinforce fear and loathing of homosexual people. Why?

To answer that question we need to understand the context in which this debate is taking place and to understand that the so-called debate over traditional marriage is nothing of the sort. That is a smokescreen. The underlying issues here are the place of gay and lesbian people in society, their rights and responsibilities and whether or not they and their children are accorded full citizenship or defined as ‘less than’ citizens and regulated as second-class citizens.

This is a clash between sex, politics and religion. It is being pushed by religious zealots and deeply conservative MPs. It is not a debate being driven by the lesbian and gay community itself. However, now that that community is under attack, it must respond. I am conscious as I give this speech that I am not talking to those in this chamber or even those who might be listening elsewhere; I am speaking to researchers, students and scholars in the future—perhaps 10, 20 or 30 years down the track—who will be looking at the Hansard debates over this in bewilderment, trying to understand how such an awful law could have happened.

Looking back on same-sex marriage ban from the future will be like looking back on debates around the introduction of the White Australia Policy. As it happens, ‘marriage’ has never been clearly defined in our legislation as specifically heterosexual. However, it is very clear that the common law has evolved into an opposite-sex-partner understanding of the institution. Internationally over the last few years other jurisdictions have come to accept same-sex marriage as being equally valid. Such places include Denmark, the Netherlands, Canada and several US states. In this context, it was inevitable that same-sex couples from Australia would lawfully marry overseas and then seek to have that marriage validated here in Australia. The government has known of that prospect for more than a year, but it has waited until the eve of a pending election to embark on and announce this antigay policy response and to use the issue as an election wedge to target a minority, unsettle Labor and corral conservative voters. Gay marriage
has sailed into this election much like the Tampa did in 2001.

There are at least two test cases before the Australian courts seeking a declaration of a same-sex marriage conducted overseas and, contrary to the dishonest claims of antigay groups, is not a political action by the mythical and militant gay lobby to undermine the very foundations of society but an action by two very unassuming couples who engaged the courts out of their own volition. I have not met either couple. One of these couples includes a Canadian national, a person whose marriage is lawful in Canada but about to become unlawful in Australia—a ridiculous situation. It is probably the case that the courts would be unlikely to find in favour of same-sex marriage. I think the conservative fears of a positive outcome by so-called activist judges are unfounded. However, we Democrats believe it is important and helpful for the courts to be allowed to make a determination on this, and it is a key reason why we argued for a Senate inquiry to investigate the broader issues around the Marriage Amendment Bill 2004 and to not report until 7 October this year, thus allowing the courts further time to consider the matter.

The Prime Minister has been suggesting that if the courts decide in favour of gay marriage nothing can be done about it, and anti-gay groups have been claiming that the courts must be stopped from redefining marriage or society will collapse. This is nonsense. Even if the courts do decide in favour of same-sex marriages, parliament still has the right to legislate against that and, indeed, would do so, given the current policy position of both major parties. There is no need for rush and haste. The Australian citizens who have their cases before the legal system deserve their day in court. Natural justice should have been allowed to take place. Rushing to extinguish legal avenues is despicable. Does the Prime Minister believe that no question of human rights should be left to the courts?

It has been ironic for me to have seen this debate unfold. As I said earlier, in my 16 years of gay and lesbian rights activism and advocacy, marriage has been way down the agenda. It has never been a priority in the lesbian and gay community. Many indeed see it as a bankrupt and failing heterosexual institution based on patriarchal principles. Others feel that seeking gay marriage is heterosexual mimicry and want no part in it. But there are, of course, many long-term, same-sex couples who really do want to get married and, despite the general apathy in the gay and lesbian community around Australia, none of them have said that the option of civil marriage should be denied to same-sex couples. While they may not want it for themselves, they agree it should not be denied to those who want it. Not wanting to get married is one thing; suddenly being told that you cannot is quite another, especially when some of the arguments used for that are that lesbian and gay people are shameful, vile moral terrorists with unnatural relationships who are harmful to children, mentally ill and spread disease. This is most especially the case when there has not been one single, solitary, sensible or provable argument against same-sex marriage. It is all a smoke-screen to disguise underlying homophobia.

Same-sex marriage opponents argue that traditional marriage is a Christian instruction and that Australia is founded on Judeo-Christian values. Apart from the fact that Hindus, Muslims, Rastafarians and all other manner of non-Christian sects also embrace marriage, the fact is that parliament is a secular institution and that marriage is a civil contract and not a religious one. Same-sex marriage opponents say that marriage is a fundamental institution of civilisation and must not be redefined. But, as researchers
and historians continue to point out, marriage is an evolving paradigm. Conservative social commentator Andrew Sullivan writes:

... for the first millennium after Christ, Christianity didn't even recognise marriage as a sacrament, it was regarded as a purely secular matter of property ownership. Marriage also once meant the ownership of women by men, it was once permanent, and no divorce was possible, it was once restricted to couples of the same race, the notion that it has never changed is simply untrue.

Besides, if marriage is the unshakable and rock solid institution that conservative MPs and religious leaders would have us believe, could they explain why 40 per cent of marriages end in separation and divorce and why more and more people are choosing not to marry? In truth, marriage is not a rock solid institution. In Australia it is growing weaker and less important to many people with each passing decade. Far from further weakening the institution, the inclusion of gay and lesbian couples brings added strength. Conservatives should embrace the fact that a new group of citizens want to be included in an institution that clearly needs reinforcing.

Opponents of gay marriage argue that the proposal is a threat to general society and that the traditional marriage needs to be protected. What exactly is this threat? As Andrew Sullivan said:

Are some people trying to break up other people's marriages? Are people proposing to abolish civil marriage? Are divorce laws going to be loosened further? The answer is that a small group of citizens, far from wanting to threaten marriage, actually want to participate in it.

Same-sex marriage opponents argue that marriage is about having kids and raising a family and that marriage is the best environment in which to do that. This is all well and good but it does not explain why gay and lesbian couples raising children should be denied marriage. If marriage is the best way in which to raise children, why would we as a parliament want to disadvantage children in same-sex families by refusing their parents the right to marry? But marriage is not about having children. Infertile couples are allowed to marry. Elderly couples are allowed to marry. Couples who do marry but decide not to have children are not then made to divorce. Being married and having children are not axiomatic. This cannot be used as a valid argument to deny same-sex couples the option of civil marriage. Many same-sex couples have children; many heterosexual couples do not.

Opponents of same-sex marriage have also argued that marriage is a sacred commitment based on love, trust and togetherness and a symbolic demonstration to friends and family and to society as a whole that this couple is socially, legally and financially intertwined. Leaving aside the fact that sacredness and sanctity are religious ideals and that marriage is a civil contract and not a religious one, gay marriage opponents have still not been able to say why same-sex couples do not have or share the same values. Gay and lesbian relationships are also based on love, trust and togetherness and many of them too yearn for a symbolic demonstration and the practical advantages of being married. They too want to share their commitment with their friends and family, most especially if they are raising children or plan to do so. It is both wrong and deeply offensive for antigay campaigners to argue that love and commitment between a lesbian or gay couple is less than, different from or incomparable to the love of two people of the opposite sex. This is really where we get to the crux of the issue; this is the core of the debate which is mostly hidden and rarely spoken about. There is an ideological push behind this from very conservative MPs and some religious communities to ensure that same-sex relationships are relegated to second-class and never equate to marriage. It is
just an extension of the sexuality apartheid I have spoken of before. Denying marriage to same-sex couples is about entrenching heterosexual supremacy.

For the religious Right, marriage is seen as the last bastion of conservative values. Over the last 20 years we have seen most discrimination, but not all, against gay and lesbian people removed from all state laws, whether they are about age of consent, antidiscrimination law or partnership recognition. The states have done much of what they can to bring about equality for gay and lesbian citizens. At every turn this has been fiercely resisted by right-wing church groups, conservative MPs and antigay organisations, but they have failed. With the focus now on Commonwealth laws in Canberra, this moral panic amongst the religious Right has found an icon issue in marriage. Thus, the scene has been set for a cultural showdown. This ideological push by the religious Right merged with the Howard government’s keen desire for an election wedge issue, and an opportunity to pander to popular prejudices sees this bill before us today. Regrettably, the ALP has agreed to support it rather than show leadership and defend the humanity of gay and lesbian people.

Labor has tried to sell its conscience by claiming that the gay and lesbian community is more concerned about other pressing issues of discrimination, such as superannuation, taxation, social security and property issues. But this defence fails to recognise that civil marriage is the swiftest and least complicated way to achieve all of those outcomes. Nor does it explain or justify the shadow Attorney-General’s endorsement of an antigay rally held here in parliament last week or her panicked backflip in the Senate committee process, which has now been neutered by her inexplicable decision to rush the legislation rather than consider it. The many gay and lesbian people who fought so hard to get up an inquiry into these deeply personal issues that affect their daily lives have been deeply betrayed. There is a great need if we are going to extinguish access to civil marriage for same-sex couples for there to be an alternative scheme for same-sex partnerships. We have seen in the states a variety of mechanisms introduced, whether it is de facto recognition in Western Australia, New South Wales and Victoria or registered partnerships in Tasmania. We have nothing at a Commonwealth level and, as a consequence, every area of Commonwealth law that deals with relationships discriminates against gay and lesbian people, whether it is social security, veterans’ affairs, immigration, taxation—you name it, discrimination exists.

I found it galling when the Prime Minister spoke to the rally at parliament last Wednesday and argued that he had no particular animosity towards gay and lesbian people and did not support discrimination. He nominated the workplace and industrial relations as an area where he would not tolerate discrimination. I wish I could have called out with a megaphone to say, ‘In that case, what are you going to do about it?’ There is a raft of existing discrimination under industrial relations law against gay and lesbian people, not the least of which is the denial of bereavement leave to the same-sex partner of someone who has died. I wrote to the Leader of the Opposition, Mr Latham, in January this year following repeated frustrations in this place, where I pleaded with the Labor Party to allow time in the Senate to bring on debate and discussion of the Democrats’ Sexuality and Gender Identity Discrimination Bill 2003, a bill which in one form or another has been on the Notice Paper for almost a decade. That bill would introduce national antidiscrimination laws, partnership recognition and antivilification protections. These are things Labor claims to desperately believe in and want, and it dangles them as a
carrot before the electorate as we approach the coming election. It cannot and will not commit to those things here in the chamber. Despite writing to Mr Latham after the then shadow Attorney-General, Mr McClelland, announced Labor’s three key policy points in this area and urging that those things be debated in the Senate, I did not have the courtesy of a reply from Mr Latham.

If empowered, the Democrats would bring about those three things. It is worth noting that as a nation we are one of very few Western countries without any national antidiscrimination laws on the grounds of sexuality or gender identity and one of very few Western countries with no partnership laws for same-sex couples. Senator Ludwig, in his contribution, argued that Labor would not support the Democrat amendments on these bills because they would be rejected in the lower house. If that is Labor’s policy approach then it needs to explain why it was happy to pass the Kyoto protocol bill—a private member’s bill for the environment—knowing that it would be quashed in the other place. Why, too, did it support and pass in this chamber an end to mandatory sentencing laws—a bill dealing with Indigenous concerns—knowing it would be quashed in the other place? I submit that Labor is prepared to take a principled stand on Indigenous issues and the environment but not on issues relating to the lesbian and gay community.

We Democrats support civil marriage being an option for same-sex couples. We recognise the humanity of those relationships, most especially for those who are raising children, and we continue to remind people that many lesbian and gay people have children or plan to. I have heard the argument over and over again that marriage is about children and that marriage is the best environment within which to raise children. Great! Let us, at the very least, allow same-sex couples raising children to get married for the benefit of those children.

A booklet was distributed by the traditional marriage forum—or whichever name they were going by. It is a lovely brochure with smiling faces. It contains 21 reasons why marriage is a good thing. While I find most of the alleged research at best questionable, I found nothing in that booklet which argued that same-sex marriage was a bad thing. It argued that those people who were married were happier, lived longer, provided the best environment for children and produced less crime in their communities. That is all very wonderful but the flip side of that is that same-sex relationships—those people who may be raising children—are specifically being discriminated against in our community by those very people who trumpet marriage. At the same time they are saying, ‘We will impose on you and your family a lesser environment and greater opportunities for ill health and for your children to become law breakers.’ That is their argument, not mine. It is completely nonsensical to argue that marriage is a really fantastic and great thing. I have no particular argument with that but I have yet to see the argument as to why same-sex couples in long-term committed relationships should not be allowed into the institution. It is simply segregation.

The other thing we can point to is that every single doomsayer prediction, every criticism of same-sex marriage that is thrown up by the religious Right and other conservatives, can be proved wrong simply by looking to Canada, the US, Denmark and those countries where same-sex marriages have been allowed for a year or more. The sky has not fallen in in those places. Traditional marriage has not been undermined. There has been no negative impact on society. I was delighted to see that the most recent poll in Canada showed that a clear majority of Ca-
nadians who were initially opposed to same-sex marriage now support it. That only happened because leadership was shown by their political parties. The political parties argued, in the face of controversy, to support same-sex marriages. Now that those marriages have been seen as being viable, workable, legitimate and acceptable, they have a place. That, for most gay and lesbian people, is the issue—it is about inclusion. (Time expired)

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (2.33 p.m.)—It is ironic that each side of the debate will be heard one after the other. It would be no surprise to anyone in this parliament or anyone who is listening that the National Party believe there is no stronger union and no stronger bond than that between a man and a woman in marriage. We support that wholeheartedly.

I would like to mention the 1,200 people who turned up to support marriage. They did not turn up to vilify gays. They turned up, at a great cost—many came from right around Australia on very short notice—to support marriage because they believe very firmly in it. The organisers of the National Marriage Forum should be congratulated. The forum attracted about 1,200 people to Parliament House last week to defend the definition of ‘marriage’ as being between a man and a woman. The forum provided the public pressure that forced the Labor Party to address this bill. Unfortunately it did not do the same for the Democrats and the Greens. Nicola Roxon stood up in front of those 1,200 people and committed the Labor Party to marriage. One wonders whether we would be debating this today if those 1,200 people had not turned up and cornered the Labor Party.

The Democrats and the Greens seem intent on removing marriage as an important thread of the Australian social fabric. Most Australians recognise that marriage is a sacred union, the most basic building block of society and the foundation of a family. It is a union in which children can be created and brought up in a loving, secure environment. This has been clearly illustrated during the recent Senate Legal and Constitutional Legislation Committee inquiry into this legislation, which, according to the web site, received around 12,000 submissions—a record for this kind of committee—overwhelmingly supporting the government’s position.

It is not the government’s right or role to interfere in the bond of marriage. However, it is our responsibility and duty to ensure the institution of marriage is not ambushed by minority groups keen to create their own definitions of it. I am disappointed that the Labor Party did not support this bill immediately when it was introduced into the Senate. They cited the lame, hoary excuse that they had not put it through the required ‘process’. I ask: how much process do you need to define what is right and what is wrong?

The government showed good faith in making changes to the original legislation submitted to the parliament, removing the clause which the opposition claimed was their concern—the clause regarding gay adoption of foreign children—and still there was no support forthcoming for the Senate to protect the sanctity of marriage as being between a man and a woman. Let me make it clear that the government did not want to make any compromise on gay adoptions at all. It was not our preferred position but we did it to get this vital piece of legislation through. It is our view that same-sex relationships cannot be equated with marriage. That is what the majority of Australians believe and that is what this legislation enunciates.

The coalition government was forced to legislate the beliefs of the majority to protect this sacred institution against the personal
agendas of the minority after the possibility was raised that same-sex marriages entered into overseas could be recognised as holding marriage status in Australia. As it stands, the Marriage Act 1961 contains no definition of marriage but includes a statement on the legal understanding of a marriage. So it was not a wedge issue. It was perpetrated by a decision taking place overseas. In fact a group of people on this side of parliament signed a letter asking the Prime Minister to address this issue. I am quite proud to say I was one of the signatories. The amendments contained in this bill will make it absolutely clear that Australia will not recognise same-sex marriage solemnised in other countries. Same-sex couples will understand that if they go overseas to marry it will not be recognised here.

Marriage between a man and a woman to the exclusion of all others voluntarily entered into for life is what my party are proud to stand up for and proud to declare as part of our beliefs. It is a union designed to provide a loving environment in which to create and nurture children. Children have the right to be born into a family with a mother and a father. As members of society we have responsibilities to do whatever we can to ensure that children are created in a stable, loving and secure relationship. Our society has a responsibility to protect the institution of marriage. In order to protect our children, marriage undoubtedly provides the best environment for raising those children. Society must shelter kids in a secure environment and allow them to develop their own views and belief systems. Children should never be held up as trophies in an attempt to justify or enhance a lifestyle choice. Australian families are not the place for social experiments. Adults who participate in homosexual behaviour make that choice. That is their choice. As I said, I do not condone it; I do not condemn it. They make the choice for themselves but have no right to include children in that choice. A union, regardless of how loving, that is biologically incapable of procreation is not a marriage. In this respect the union must be between a man and a woman.

Some senators in this chamber will cite love as being above all things—that if two people love each other, regardless of gender, no-one or no government has the right to stand between them. The same senators quote divorce rates and the incidence of domestic violence and abuse as reasons why love should be the only criterion in any definition of marriage. But this is unrealistic. If love is the only criterion then all forms of unions could be defined as marriage. Consenting adult homosexuals would be the thin edge of the wedge. This is not what Australians believe; this is not what The Nationals believe; this is not what I believe. Marriage is about love—I have had 40 years of it—but it is also about commitment, about creation and about providing the right environment for nurturing children.

Through this legislation, the government are reconfirming society’s commitment to marriage, its commitment to families and its commitment to our children and grandchildren. We are recognising that marriage is a public good, not just a private benefit. However, we must remain vigilant. The commitment from all parties must be that there is no alternative to marriage. This is not a subterfuge, and Australians want to know the details of any plans afoot to get around it. A newspaper article in Wednesday’s Australian confirms that the Labor caucus have now agreed, through an amendment to their policy, to examine ‘options to achieve more consistent national treatment of all de facto relationships’. The article goes on to say that this will open the door for gay unions to be registered officially if Labor wins government. This amendment was moved by Mark Latham. What are the
details of this change of policy? The silent majority want to know and Australian voters want to know. As the alternative leader of this nation, Mark Latham has a responsibility to come forward and explain what this means.

The warning is out that Labor have a plan to subvert marriage. If this is to be Labor’s policy, they should enunciate it to the Australian people here today so that people can judge them on that basis. Labor have got to come clean on that amendment. Are they considering similar legislation to New Zealand’s Labour government, which has introduced a Civil Unions Bill to enable the application of legal rights identical to those of marriage to same-sex relationships? On 24 June, the New Zealand parliament voted 66 to 50 for the Civil Unions Bill to pass its first reading. New Zealand’s legal recognition of relationships bill was passed by 77 to 42 votes on 29 June. It will change around 1,000 clauses in over 125 acts to treat all relationships the same as marriage. Both New Zealand bills have been referred to the Justice and Electoral Select Committee for public submissions, which closed on 6 August. New Zealand’s Labour Prime Minister, Helen Clark, says the new legislation will take out any discrimination, so the Marriage Act will not have any practical effect. This will produce a counterfeit marriage, with identical rights but none of the responsibilities of a real marriage.

We have got to know what Labor are now advocating—the creation of civil unions and the levelling of marriage that will further damage society and the next generation? Any argument that a civil union serves heterosexual couples by providing a non-religious alternative to marriage simply does not wash. The Marriage Act is itself civil and secular in nature. A civil union is simply a marriage by another name, the only difference being that it is open to the gay and lesbian community. I will oppose that, and I will oppose any move to introduce that into parliament. The challenge today for the Labor Party is to come clean on their plan to introduce civil unions. If they are going to do it, they should say so. If they are not, they should say they are not. As we front up to an election the people deserve to know what that amendment is, what it means and how it will be carried out in legislation. I am proud to stand in this chamber today as the leader of The Nationals in the Senate and support the bill, to thank the Labor Party for their belated support of it and to say to those senators on the crossbenches who continue not to support it: you are not acting in the interest of the majority of Australians.

Senator NETTLE (New South Wales) (2.45 p.m.)—When I hear these issues debated in the Senate chamber, and hear some of the arguments put forward—and we have just heard many of them—I feel like I have gone through a time warp and am back in the Dark Ages. The Marriage Amendment Bill 2004 legislates official discrimination against a section of our community because of their sexuality or their gender identity. It seeks to define marriage as:

... the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

The Australian Greens will be moving an amendment to the bill to define marriage as:

... the union of two persons, regardless of their sexuality or gender identity, voluntarily entered into for life.

That way, marriage will be open to all people regardless of their sexuality or gender identity. Whether they be lesbian, gay, transgender, bisexual or intersex, this option will be open to them if they choose to take it. The bill we saw before this one came into the parliament, the Marriage Legislation Amendment Bill 2004, sought to ban not only same-sex marriage but also overseas
adoptions by same-sex couples. It was sent off to a Senate committee for inquiry, but instead of waiting for the committee to report, or even for the submissions to be made public, the government—and the opposition in giving their support—decided that if same sex marriages were not banned this week then the world, or marriage, as they knew it would cease to exist. The government and the Greens agree that this is a simple piece of legislation. It simply discriminates against same-sex couples. The Prime Minister said last week:
You don’t need a Senate inquiry on ... that. It’s not a complicated issue.

It is not a complicated issue to discriminate against a section of the community. The government seems to have been able to convince the opposition because, having previously agreed to an inquiry into this legislation to allow for public debate, the ALP now is not even going to wait until those submissions are made public before it supports the government’s move to ban same-sex marriages. The government announced its intention to re-introduce this bill to ban same-sex marriages at a forum organised in Parliament House by Christian fundamentalists, and the opposition chose this same forum to reaffirm its intention to support the bill. The Howard government has successfully wedged the opposition on this issue of fundamental human rights. Now the ALP is tying itself in knots trying to justify its position. The federal member for Sydney recently addressed a rally in support of same-sex marriages and said:
Labor didn’t vote for this legislation. We allowed it to pass the House of Representatives so it could go to a Senate inquiry ... What a set of weasel words we have there. The bill passed through the House of Representatives with the support of the Labor Party and, because the government has the support of the Labor Party to make it urgent and to guillotine debate, we are debating this legislation right now. The shadow Attorney-General is quoted in the Sydney Morning Herald as stating:
... Labor had “no intention now, after the inquiry finishes or after the election of advocating for gay marriage”.

That is pretty clear, and it is clearly discriminatory. Labor had the option of opposing the bill and standing up with the Greens and others for the rights of all citizens to marry if they chose, but instead they are playing these ridiculous word games. Equal rights for same-sex couples is not a radical proposition. Countries like Canada and the Netherlands and the state of Massachusetts have legislated to recognise the right of same-sex couples to marry. A recent decision by that radical left wing institution the British House of Lords recognised the right of same-sex couples to be treated as married. Lord Nicholls described the situation this way:
A homosexual couple, as much as a heterosexual couple, share each other’s life and make their home together ... There is no rational or fair ground for distinguishing the one couple from the other in this context ...

On this issue the Howard government is even more conservative than the United States Congress. George Bush could not get the support of the United States parliament for a ban on gay marriages in the United States. But here today in Australia the opposition has fallen over itself to gag debate and help the Howard government put in place more conservative and discriminatory legislation than exists in the United States. Across the world, nations are enshrining the rights of same-sex couples in legislation. Yet Australia is desperately swimming against this tide. It is difficult to estimate just how many same-sex couples live in Australia. We know it is well in excess of the tens, and likely to be in excess of the hundreds, of thousands.
This legislation does not offend just those couples who cannot marry. It offends every Australian who holds dear the values of equality, human rights and decency. I recently met with a young father of Portuguese descent, and he told me of the outrage his entire extended family felt because of the discrimination he faces as a gay father. The Howard government’s homophobic attitude insults everyone who does not fit neatly into its picture of white, middle-class, picket fenced suburbia. To vote for this legislation is to vote against equality, decency and the need to celebrate and embrace diversity. The Greens recognise the wide range of opinions on the validity of marriage as an institution. We recognise that there are many couples who do not feel any need to enter into this traditional union. But that is a separate issue. Regardless of the debate over whether marriage is relevant or appropriate, it is every couple’s right to access it if they choose.

Greens offices across the country have been inundated with thousands of emails, letters and phone calls from people who are angry about this issue, particularly from people who are angry about the opposition letting down the lesbian, gay, bisexual, transgender and intersex community on these issues. I will read some of the emails we have received. We received one from a mother in New South Wales who wrote:

As the mother of a gay son, I am finally doing something that I should have done a long, long time ago. That is to speak up on behalf of my son and his partner and all gay people regarding their basic human rights and their human dignity ... To everyone who wants to deny gay people their basic human rights and dignity—to these people I offer this challenge. Have the compassion and the humanity to sit quietly for a while and search your own heart and soul to see how you would feel if you, yes you, had been unfortunate (or perhaps fortunate) enough to be born as one of those ‘different’ people and try to truly understand how it would feel to have to face the obstacles that society will undoubtedly impose upon you ... Why deny the status of legal and accepted marriage relationship to gay and lesbian couples who are just as worthy of this same happiness as heterosexuals? Their love for each other is real, just as real as the love between a heterosexual couple and some of them may feel the need for a marriage union, as do many heterosexual couples.

I received another email, from a gay man in New South Wales, that said:

Why should any[one] choose to support gay marriage? I am gay and I don’t think I will if allowed choose to marry but I will fight to support my friends who have lived for over 30 years together hoping to see the day when they are recognised for who they are.

Each and every one of us deserves the same rights and freedoms to love our loves the way we choose and the right to expect tolerance and respect from others.

Another email, from a couple in South Australia, said:

We are a same-sex couple and have been in a relationship since January 1995 (yes nearly 10 years). On the 24th of February 1996 we had a commitment ceremony in front of all our friends, I wore the white fairytale wedding dress that I had always dreamt of, and after we celebrated with our friends with a dinner and honey moon. Sounds relatively common doesn’t it? But apparently our situation seems to embroil some politicians to the point of making a public point that we as a couple do not deserve the respect and right to celebrate and confirm our relationship in the eyes of the law. We cannot understand why, as tax paying citizens, who [have] always [taken] our right to vote VERY seriously, we are being treated like second rate citizens. We contribute a great amount to our society through employment, and I volunteer not only in the Gay and Lesbian community but also in the great community by running our local playgroup, chairperson on a kindy governing council, and now a member of the local school governing council.

So why don’t we have the same rights? Isn’t it about time we got out of the ignorance of what the minority, (yes believe it or not), believe is the abomination of same sex couples and how we are
going to ruin the core of our society!! Don’t you
feel that if we were going to do that we would
[have] done it a long time ago!!
Our point today is to let you see very briefly that
we are just a regular family, bringing up children
hoping for the best, renovating our home, and
sharing our lives with those close to us. We live in
a democratic society where equality is fought for
virulently, we wish that you think about your
situation and think what it would be like to be
told that your relationship (as much as you be-
lieved in it and worked at it) doesn’t count. You
must tick the single box on any government pa-
perwork, you can assume that your partner will
not be automatically the person called if you have
no next of kin assigned at a hospital, family will
not accept your commitment ceremony papers
because “the law does not agree”.
We live in a society that takes the laws of the
country VERY seriously, and when something has
been accepted by the government of the day we
are more prone to allowing that to enter our con-
science and often adapt and accept.
These are quotes from people who have had
to endure eight years of this government try-
ing to undermine the rights of lesbian, gay,
bisexual, transgender and intersex people.
The Greens have amendments to this leg-
islation that will ensure that same-sex mar-
rriages that have been entered into in another
country will be recognised in Australia. We
also have another amendment to ensure that
marriages that have been entered into under
Australian law where one partner has under-
gone gender reassignment surgery will still
be recognised under Australian law.

Last year the Prime Minister weighed in
to the same-sex marriage debate when he
made the ridiculous claim that gay marriage
threatened the survival of the species. In July
2000, after the Federal Court ruled in favour
of allowing lesbian couples to access IVF
treatment, the government announced that it
would amend sex discrimination laws to
overturn that ruling. In 2002 the Family
Court recognised the validity of the marriage
of a person who was born female but then
underwent gender reassignment surgery. Not
content with letting the court do its job, the
federal government appealed that decision.
That appeal was thrown out of the courts.
Earlier this year four separate government
ministers, including the Deputy Prime Minis-
ter and the Prime Minister himself, felt the
need to publicly condemn Play School’s re-
cent depiction of Brenda and her two moth-
ers going off for the day on an activity.

This ban on same-sex marriages is part of
a long list of gay bashing by this govern-
ment. This bill is legislated discrimination. It
legislates for the creation of second-class
citizens with second-class relationships and
fewer rights than heterosexual couples. One
constituent who wrote to me said:
[These changes] will only provide tremendous
encouragement to the minority of Australians
with homophobic attitudes who will feel a little
more justified next time they decide to discrimi-
nate against someone who they think looks like a
poofter.

This Prime Minister has presided over some
of the most repressive and regressive legisla-
tion and acts of this century. The Prime Min-
ister through his actions has shown disregard
for the core values of our society—equality
and humanity. And the opposition is content
to stand idly by while the government courts
the reactionary Right with this type of legis-
lation. Any opposition that does that is not
worthy of calling itself an opposition at all.

Yet some members of the Labor Party are
trying desperately to deny their party’s own
lack of action and cling to a semblance of
credibility with the lesbian, gay, bisexual,
transgender and intersex community. One
Labor member last week letterboxed a leaflet
about this legislation. The leaflet said:
Sometime in the not too distant future people will
look back on this desperate attempt at wedge poli-
tics and treat it with the contempt it deserves ...
That is absolutely right. People will look back at the way that every member of the Labor Party—in this place and the other place—has been part of legislating discrimination against a section of our community, and they will treat the actions of every member of the opposition and the government with contempt. So much for Mr Latham’s claims that gay and lesbian people are now part of Labor’s ‘circle of mateship’. This is a blatantly discriminatory, unnecessary and homophobic act on the part of a government that is desperate to shore up the votes of the moral conservatives in the run-up to an historically tight election. It saddens and appals me that the opposition has been complicit in this.

The Greens will not stand by and just let this happen. We recognise that freedom of sexuality and gender identity are fundamental human rights. We believe that the acceptance and celebration of diversity, including sexuality and gender diversity, are essential for genuine social justice and equality. I am extraordinarily proud to represent a party that will not roll over on these core values and that has been loud and vocal in continuing to speak out for communities such as the lesbian, gay, bisexual, transgender and intersex community that we represent. We will reject the bigotry, prejudice, division and homophobia that are driving this legislation. We, unlike the opposition and the government, will have no part in it. We will always stand up for human rights and we will always stand up for an end to this bigotry, division, homophobia and prejudice.

Senator BARNETT (Tasmania) (3.00 p.m.)—Firstly, I want to acknowledge those in the gallery today who are here to support the Marriage Amendment Bill 2004. I acknowledge those who last week were among the 1,000-plus who attended the forum on why marriage matters. I acknowledge the hundreds and thousands of Australians who support the government on this bill. But in light of the time constraints we are in and the agreement with the other parties, I seek leave to incorporate my speech in Hansard.

Leave granted.

The speech read as follows—

I rise to welcome the Labor Party’s back flip on the Marriage Bill 2004, but I also want to highlight Labor’s rubbery and duplicitous attitude towards the institution of marriage, that so characterises the approach the new Labor Party has towards the policy process in this Parliament.

This political party has lost its soul, largely because the Latham version of the Australian Labor Party, judging by his recent actions, would sell its soul in the twinkling of an eye to grab hold of power. This party is cynically manipulating the political process and cynically treating Australians with contempt.

I respect the Democrats and the Greens for their opposition to marriage being solely between a man and a woman, because they have been consistent.

But for Labor, oh no. This party is trendy one day and conservative the next, depending on the audience. Its leader will sup with the Greens one day and sup with the foresters the next, and tell both sides what they want to hear. This is Labor’s juke box of ideas, which involves dialling up a position and running with it until it has served its useful purpose.

They treat the Australian people like fools, but I know the Australian people are smarter than that, and they are seeing right through this veneer.

The Labor Party’s manipulative acrobatics on the Marriage Bill is an insult to all Australians and specifically the one thousand people who travelled to Canberra a week ago to attend the marriage forum organised by the National Marriage Coalition.

I pay great tribute to these people who are totally dedicated to the ideals of Christian living, where marriage is honoured as a loving and mutually respecting relationship between a man and a woman. Where children in this institution are protected and nurtured to grow and prosper in a safe and balanced environment.
These are the people I respect. In particular I acknowledge Jim Wallace of the Australian Christian Lobby, Warwick and Alison Marsh of the Fatherhood Foundation and Bill Muehlenberg of the Australian Family Association. They were the organisers and prime movers who helped to make the forum such an overwhelming success. As the forum’s parliamentary convenor I nearly booked the Theatrette which holds 250-odd people. So, having over 1000 in the Great Hall was fantastic in such a short time frame. I also acknowledge the forum speakers including in particular Professor Patrick Parkinson of the University of Sydney, the Rev Dr Margaret Court, Professor Tom Altobelli, Mary Louise Fowler of the Australian Family Association, columnist Angela Shanahan, Bill Muehlenberg of the National Marriage Coalition, Dr David Van Gend, Babette Francis of the Endeavour Forum, Major General "Digger" James, and the Hon Richard Gee of the NSW Council of Churches.

Those who attended travelled long distances from every State and Territory of Australia in many cases because they cared. They were concerned that if the current workable definition of marriage was watered down the great value of marriage to our society, our families and particularly our children, and their children would be irreversibly diminished.

Prime Minister John Howard spoke at the forum because he cared. He knows that the character of a nation is expressed through the values it shares. In his speech Mr Howard said—"I have a very simple view about the issue that is currently before the Federal Parliament, and that is to insert affirmatively into the Marriage Act the definition of marriage that we have always commonly understood in our society. It expresses the fundamental Judeo-Christian view, and that is that marriage is a life long union between a man and a woman to the exclusion of all others".

This is the big difference between John Howard and Mark Latham. The Opposition Leader will poach or plagiarise any idea or ideal and snatch it for himself, until it becomes expendable.

John Howard has demonstrated courage in the face of opposition and ridicule, being prepared to stand firm, saying he won’t sacrifice or diminish important Australian values for the sake of fashion, to fit with trends in some overseas countries, or to satisfy the carrion cry of vocal minority groups.

John Howard’s actions as Prime Minister are predictable, certain and reasonable, creating a sure path forward for the Australian community. Labor’s back flip on marriage shows that the Latham Labor Party is predictable only where populism resides.

The great virtue of John Howard’s Prime Ministership is that what you see is what you get. With Mark Latham, what you see is anything you want it to be.

With John Howard you don’t get smoke and mirrors, prevarication or confusion. You see, it is a shame we have to have this debate at all to make a stand on something so simple as marriage. There should be no confusion about its definition, and indeed no need for a Senate inquiry.

John Howard has demonstrated commitment when it may be a populist stand among some people for this Government to open up marriage to common law or parliamentary re-definition, but I am proud to say the leader of this Government is not so fickle.

With John Howard you do not get equivocation or procrastination on such basic fundamentals as marriage.

I believe that marriage is a bedrock institution worthy of protection, and I will do all that I can and in my power and persuasion to ensure that that institution is protected, especially from the Labor Party’s duplicity. The institution of marriage has endured for thousands of years and across countries, cultures and religions. It is a social institution which benefits family members and society, and it does provide for stability in society. It also provides a solidly-built roof under which children are nurtured, protected and raised. It specifically benefits the children and is designed to ensure their welfare is maximised.

I believe that the Labor Party in June this year tried to covertly kill off the Marriage Bill. On the one hand they said that they supported marriage; but on the other hand they also said they supported overseas adoptions by same-sex couples. Frankly, in my view, that is illogical, irrational and inconsistent.
The Labor Party referred the Marriage Bill to a committee for some 14 weeks, hoping not to be forced into making a decision until after the election.

They said ‘we support marriage’ but when the Howard Government introduced the marriage only bill Labor refused to support it. Yes they refused!

An article in The Australian on August 10 said “Labor had promised that it would not vote for the bill until a Senate report into the issue had been handed down.”

Gay activist Rodney Croome accused Labor of reneging on its promise to wait for the Senate report. Mr Croome and I agree on that fact at least. Labor has done a back flip.

I believe in the view of the vast majority of Australians that children, including adopted children, should have the opportunity, all things being equal, to be raised by a mother and a father. Labor opposes this proposition.

Labor is happy to allow same sex adoptions and the Labor shadow Attorney General Nicola Roxon said exactly this early in the week. If they support our Marriage Bill but oppose the Government’s same sex adoptions bans, why the need for an inquiry?

As our Deputy Prime Minister John Anderson said on August 10 — “The continued division and duplicity within the ALP over the preservation of marriage shows yet again that they are incapable of governing Australia.”

In this debate it is instructive to detail what Mark Latham has had to say publicly in recent years about, Christianity, religion and how these views sit with Labor’s back flip on the Marriage Bill.

MARK LATHAM AND RELIGION

“As an agnostic I have strong reservations about organised religion. It strikes me as too doctrinaire and, when it comes from the pulpit, too authoritarian.”


2. Asked about his religious faith, he said: “I’m best described as an agnostic. I think there is a world beyond, a spiritual world...but it hasn’t presented itself...I can’t say it’s this religion or that religion. just haven’t had that personal connection.”

- Sydney Morning Herald. April 19, 2004

3. “The only reason I can see for opposing the bill is religious fundamentalism . . . . We have the news overnight of the Archbishop of Sydney standing down because of serious child sexual abuse allegations made against him. We have the horrific situation in the United States where the Catholic Church has been ripped to the ground by the allegations, and proven instances, of child molestation.

“People are living in fear in what is happening to young, innocent children in the hands of the Catholic Church. Yet the hierarchy adopts a pious, sanctimonious status where they want to lecture others about family and moral issues. This demonstrates the problem with religious fundamentalism. . .


4. “The Catholic Church is...losing popular faith and public support. The Catholic Education Commission in particular is an example of a flawed and authoritarian hierarchy...


5. is the Lyons Forum a group of religious zealots? Is it a group of fundamentalists with a Bible in the top drawer and a Hustler magazine and a box of tissues in their bottom drawer? My answer to my constituents who are posing those questions is that they are all of the above. They are narrow; they are social engineers; they are zealots; they are fundamentalists...”

- Income Tax Rates Amendment (Family Tax Initiative) Bill 1996. Cognate Bill: Family (Tax

6. ‘Abrechtsen is another filthy hypocrite. Who is she to lecture people on civility? She is someone who hates feminism, describing other women as ‘totalitarian’ and ‘self-obsessed’ just because they support paid maternity leave.


In conclusion, let me say that one of the reasons for the Labor backflip on marriage is the almost record number of submissions to the Senate inquiry. Some estimates put the number over 10,000, some are over 12,000. This is an incredible response in such a short time, with an overwhelming number supporting the Government’s initiative. Latham’s Labor could see the writing on the wall, and, combined with the 1000 plus attendance at the marriage forum in Parliament House, knew they had to do a back flip.

I believe the silent but overwhelming majority of Australians support the view that marriage should be between a man and a woman and that same sex couples should not adopt children.

I am proud to have played a part in researching and writing a letter to the Prime Minister in March and signed by 30 Coalition backbench colleagues, recommending that the Marriage Act be amended. This bill we are passing today is the culmination of a lot of effort and support from across Australia. Today if we are successful in passing this Bill, and I expect it to be, it will be a watershed event.

In fact on this historic occasion I believe the vast majority of Australians will be saying thank you, and what a relief. Why did we need to go through this debate in the first place?

On a personal note I have been overwhelmed with support and encouragement, and I want to thank all those Australians who have stood up to be counted and expressed their views. God bless them, and God bless Australia.

Before concluding I want to express the utmost concern regarding Labor’s announcement on August 4, where shadow Attorney General Nicola Roxon at the Marriage Forum said:

...we are committed to introducing religious and racial anti-vilification laws...”

I say to the Labor Party, please provide the details. Put them into the public arena so that they can be assessed and analysed. Labor also has policies for same sex couples and adoptions. The community wants to see the details, lest my suspicions be confirmed that behind this veil of support for the institution of marriage, a Latham Government would have an agenda to appease the Left wing of the party, and ultimately undermine the new marriage laws being passed today.

Senator HARRADINE (Tasmania) (3.01 p.m.)—I will be brief as my position on the Marriage Amendment Bill 2004 is relatively well known and I do not want to take up the limited time available going over arguments that have been well canvassed. This legislation is quite important. The system of marriage between a man and a woman is one that has been relied on for thousands of years across the world and across all cultures. It has been tried and tested over time and found to be the best arrangement available. Moving away from this shared community standard would mean that marriage would become just one option in a list of relationship options. It would in fact lose its meaning.

The legislation we are currently considering is a simple piece of legislation. It is about reflecting the community understanding of marriage, which is that marriage is between a man and a woman. It is in some respects a simple matter of clarifying a definition in legislation so that it reflects a common understanding. But there has been a lot of complex debate surrounding that simple aim.

I acknowledge there are Australian citizens who do not want to marry a person of the opposite sex. Rather than saying marriage is not for them, they have argued for the definition of marriage to be broadened to allow them to marry someone of the same sex. More than that, there are claims that not changing the definition to allow same-sex
marriage discriminates against gay people. But, with respect, this is a very simplistic argument. There are of course a range of conditions put on the definition of marriage and these help to maintain the fundamental nature of marriage. These include the conditions that the people marrying must not be already married, that they are old enough to marry, that they not be of the same sex and that there are only two people in a marriage.

Marriage is in effect open to all people, without discrimination, but under a range of conditions. Those who do not accept those conditions because it does not suit them for one reason or another need not enter into marriage. The difficulty with agreeing to change the basic conditions surrounding marriage is that a range of groups might want to alter the surrounding rules to suit them. This would lead to a point where marriage would no longer be recognisable. I am not sure how we could, without accusations of discrimination, distinguish between the demands of one group and another. It therefore seems more reasonable to me to keep marriage as it is and confirm that situation in legislation.

If we were to start changing the common understanding of marriage, you could expect to have representations made from people supporting the legal recognition of various relationships such as polygamy, polyandry, which is one woman and many men, and polyamory, which is a group marriage of varying numbers. The possibility of group marriages is not so farfetched. Two years ago the Law Commission of Canada produced a report on adult relationships which stated, ‘In principle, the Law Commission sees no reason to limit registration [of relationships] to two people.’ A quick search of the Internet revealed at least two active polyamory groups in Australia.

There is value in the current system of marriage. At a very practical level, it provides a very stable environment in which to raise children. It seems to me most important that children have a mother and a father. To allow homosexual marriages is to deliberately deny children a father or a mother. I know that there are exceptions to the stability of marriage—that marriages sometimes fail, we all know that; that children are sometimes not treated well; and that children can be brought up well by one parent. But I consider that having children grow up with a mother and a father is a social ideal, and that is accepted generally in the community. I know myself how difficult it can be to bring children up as a single parent. It was not a situation I wanted to be in—certainly not; my wife died—and it certainly was not ideal. I, like many parents, did the best I could. I was not all that crash hot. I am sure that, after two years of my single parenting, the kids were very happy when I married a widow and were delighted when, once again, they were in a family with a mother and a father.

I am not saying that children cannot be brought up well by relatives or guardians rather than by a mother and a father. Sometimes that has to be the situation, for one reason or another. But I do see that as a substitute arrangement, and, acknowledging the best efforts and intentions of people in this situation, it is not the ideal. These are some of the reasons I support the acknowledgment and strengthening in legislation of the general community understanding of marriage—that it is between a man and a woman. Obviously there are many ways to strengthen marriage, and I will continue to lobby for that assistance. We have not got there yet. I believe governments do not adequately recognise the work that is done by families. I support this bill as one part of that overall structure of support for marriage and the family. I will leave my comments there to let
other honourable senators contribute to this important debate.

Senator JACINTA COLLINS (Victoria) (3.10 p.m.)—I rise to briefly comment on the Marriage Amendment Bill 2004 as well because I think it is important to deal with a number of issues on the record. Firstly, let me say that I support this bill because of some of the things that Senator Harradine has just said—that there is value in the current system of marriage, that we are affirming and strengthening the common law understanding of marriage—and because it is essentially consistent with the view that I have expressed now for almost a good decade to those people raising concerns with me over homosexual relationships. I was quite pleased last year when I was able to note in the Vatican statement in relation to homosexual unions two critical points, because they are the points that I have been highlighting for a decade. Some of these issues were lost in the controversy around, and the interpretations placed on, this document, but I would like to refer to a couple of them. One is the teaching that says:

Nonetheless, according to the teaching of the Church, men and women with homosexual tendencies “must be accepted with respect, compassion and sensitivity. Every sign of unjust discrimination in their regard should be avoided”.

Nothing is more clear. There is no firmer base for the Labor Party’s position on what we should be doing about discrimination as affecting homosexuals. But the other element in this position highlights some of the controversy and the complications that we have been dealing with today. I will refer to that now. It comes from the conclusion in this document. It says:

11. The Church teaches that respect for homosexual persons cannot lead in any way to approval of homosexual behaviour or to legal recognition of homosexual unions. The common good requires that laws recognize, promote and protect marriage as the basis of the family, the primary unit of society. Legal recognition of homosexual unions or placing them on the same level as marriage would mean not only the approval of deviant behaviour, with the consequence of making it a model in present-day society, but would also obscure basic values which belong to the common inheritance of humanity.

I would like to reflect on that statement for a moment because it relates to a discussion that I had with my staff last year on the interpretation of the word ‘deviant’. I am trained theoretically as a statistician. To me, deviant means other than the norm. Unfortunately the interpretation I heard last year was that there was this enormous insult to homosexual people because they were being cast as deviants. I do not believe that that was the intent of this statement. I think the statement says that the norm for our society should be marriage as we understand it and that we need to apply care to how we deal with the issues over what is just and unjust discrimination to ensure that it does not undermine how we reinforce our norm for organising our community. That is what I think the meaning of this is.

As I think I implied in my opening statement, it essentially reflects the position that I have been putting to my constituents now for a good decade—that is, that I think it is reasonable that unjust discrimination against homosexuals should be removed but that I have care or concern to ensure that is not done in a way which undermines important institutions in our community. Senator Harradine gave one good example of how you need to apply care when you are thinking through these issues. Senator Greig referred to the problems associated with homosexuals who have married overseas. I am aware of many, many people who have married overseas in polygamous relationships. There is no debate here in Australia, no debate at all, that at the same time we should be dealing with
polygamy. So I would just offer that one caution when we are talking about how we fiddle with the institution of marriage. I think Senator Harradine’s example there is a good one.

At the same time, looking at how we regard the homosexual community, and thinking about my reflection on that word ‘deviant’, I think on one very rare occasion I need to agree with Andrew Bolt that the homosexual community also needs to take care about how it allows perceptions to be cast. I know that some people probably take too seriously—some would counter-argue far too seriously—events such as the gay Mardi Gras. But, if the homosexual community wants to portray itself in ways other than how homophobes assume it to be, we need some care and attention.

That was highlighted in Melbourne recently with what some of the gay literature was doing in relation to one of Melbourne’s high schools and the suggestion that perhaps it was encouraging paedophilia. Care and attention need to be applied on both sides when we are talking about accusations over whether people are homophobic, or whether they just have common, good-sense differences in policy or perspective.

We need to reflect on the fact that we have, I think, got to a stage where there is a fairly solid community consensus on how we should deal with discrimination. That is reflected in what has happened in many states. We should take stock, for instance, in South Australia. When legislation was progressed there, the organisation, Families First, that has been pilloried in South Australia over the last week did not oppose removing discrimination. Some would say it was a strategic manoeuvre that they sought to ensure that the removal of discrimination was applied across other types of relationships as well. But if it reflects a community view that for Families First to be regarded as credible they could not come out and say, ‘No, it’s okay to continue to discriminate,’ then we need to accept that, across a broad community now, we have a general consensus that there are issues of discrimination that need to be dealt with. This is why the Labor Party made this our priority issue. There is good community consensus on this issue, and we can make some progress consistent, as I highlighted, even with statements from the Vatican.

But we risk losing some of that community consensus with events such as those that have occurred in the last week. So I wanted to share with the chamber my response to the forum that was organised last week. I received a brochure in my office advertising the forum. I had heard nothing else about it. Despite the fact that I am aware of other senior Labor Party people attending and presenting to organisations such as the Australian Family Association, there was not one reference to any Labor participation in this forum. Despite the fact that afterwards, in the glossy brochure circulated, all the organisations paraded that they were non partisan, someone like me—with my record and my standing in this parliament—felt alienated from that event from the outset.

My word of caution to those organisations is: dare not let that continue. If you allow the sort of political debate that has occurred in the last week to continue, you will damage your own cause. If you allow Senator Barnett to incorporate the type of speech he has today, you are politicising these events in a way which will wreak damage for you in the future. That is my warning. My other warning, though, is that unfortunately—and certainly I feel this very strongly—these organisations are allowing the Howard government to deflect the very serious issue that Senator Harradine alluded to.
In today’s Financial Review, a small Christian school principal indicated that it would be good if Labor funding more on a needs basis for non-government schools would assist his school, but that they are about social engineering, and that might be a problem. You tell me to which person can be more strongly attributed that label of social engineer than the Prime Minister of Australia, who allows experimentation on human embryos. That is what I call social engineering of the worst order. I remind those groups very strongly: do not have your attention deflected from issues such as that and issues such as how much real, genuine support families in Australia are receiving.

To remind people, I would like to conclude my comments by incorporating elements—I have culled this contribution—of a speech Wayne Swan made in Utah. He reflected that the very ideology of some of our conservatives today is what is introducing the market economy into our social sphere. It is that market economy perspective that is damaging our human relations. So don’t stand there and cast the Labor Party as having done a backflip—which we have not. Don’t set up procedural pretences to try to claim that that has been the case. We have consistently said we would support marriage as it presently stands and an affirmation of that.

Procedural manipulations and attempts to cast a backflip which never occurred are an outrage and damage the social policy issues that are at stake here. We have been quite consistent in our position. I ask anyone challenging that: what did they think Labor was going to do if the government had accepted our amendment in the House of Representatives to split the bill? If you had accepted that when it was first presented, this bill would have been through months ago. But no. You were into procedural manipulation and maintaining pretences. The sooner that stops, the better for Australian families. I seek leave to incorporate the speech in Hansard.

Leave granted.

The document read as follows—

Families under pressure

We all know strong families build strong communities. We all know families are the backbone of a society. We all know they are the only place for teaching and nurturing the values that underwrite and bind our communities.

We all know they determine standards of acceptable behaviour within a community, and we all know it is the family that sets the benchmark for community interests, aspirations and sense of belonging.

The family, we all know, gives us our place, our identity. The family potentially holds the answers to many of our most debilitating social challenges. So why is it under so much pressure? Why is it being devalued as an option?

In Australia, we are experiencing the widening of the gap between rich and poor in both an economic and geographic sense, and we are witnessing the struggles and exhaustion in the greatest marathon of all—the raising of a family.

Life is faster, harder, more technical, more demanding of time than ever before and with all the will in the world, some families can’t clear the hurdles put before them.

They struggle financially, they struggle time-management wise, they struggle with the every day stress of modern life, and they struggle with guilt.

They need both partners to work, but they want to put in time with their children, or maybe with their aging parents. They aren’t given enough time to be a parent, a worker and a good involved citizen. The changes of recent years have stretched families to the limit in terms of coping with longer working hours and with the rising costs of raising children.

Everyone has heard the old saying, so popular in times of conservative governments, that “the rich get richer and the poor get poorer”. The sad truth
is that there is now a new clause on that sentence: “and the middle gets squeezed”.

Government complicity
In Australia, the current government has actively contributed to this increase in pressure being placed on families.

For example, cuts to childcare funding meant that parents’ gap fees have risen by $20-$30 per week for each child. In fact, childcare fees have jumped by 56% since 1991, but government benefits have only climbed 29% over the same period, with that gulf opening up since the conservative government cut childcare in 1996.

As if trying for double-or-nothing on pressuring middle income families, the Howard Government introduced the European value-added tax system in Australia—only 30 years past its use-by date in Europe.

In Australia now, the goods and services tax, or GST, means that effectively every time a family has a child, they go up into a new tax bracket. But that’s not all. When the GST was introduced, the Howard Government knew it needed to offer income tax cuts to try and compensate people for its impact. Half of them went to the top 20% of income earners. So the rich got richer; the poor got poorer; and as usual, the middle were squeezed.

Workplace pressures
A further obvious area of pressure comes from the workplace. Over time, the workplace has come to encroach more and more on family life. An Australian study found that 68% of fathers felt they had too little involvement with their children. In 1999, Australian Bureau of Statistics figures showed that, with dual-income couples, when both members work full-time, 70% of mothers stated that they always or often felt rushed, compared to 56% of fathers and 52% of women with no dependent children.

Family values
In the face of these pressures, the political debate has had to respond. And this is where we come to the vexed political issue of family values. Of course there are many theories today about how the family came to be in this precarious position, and how to get it back on its feet.

At one end of the political spectrum there is a preoccupation with issues such as divorce rates and single parenthood and the decline of the nuclear family. At the other end there is a concern for atypical families and their rights. One thing we all agree on is that the pressures on families are a problem.

Social Conservatives want to reverse the change via a cultural movement to re-establish family values and traditions. An important part of this, they argue is to dismantle the welfare state which serves to give families an excuse not to support each other. Some believe the dominance of individual rights over the community is a major cause of the family’s plight and sense that a values and morals movement could put things right again.

Those of a less conservative bent see the change to the family as a component of broader social issues like the changing economy, gender equality and so on—in other words, things that people would not want to reverse or that cannot be reversed.

In Australia however, the evidence in shows that what we see as the traditional family is alive and well. Despite the rise in divorce rates, by age 15, 77% of children live with both parents and 91% of one-year olds live with both parents.

None-the-less, in considering the current debate on the role of the family it’s easy to hark back to the days of white picket fences, back to the 50s, when families were real families, and say “we should go back there.” We can’t go back. But if there is a “values” debate worth having, it’s this one. In years gone by, the family represented a shelter from the outside world. It was a place of daily renewal and regeneration. A place of readiness from which to emerge to do daily joust in the market or civic arena. Morals were reinforced and formed in the family. Family values were wholesome, reverent, promoted order. And they were different to the values in the marketplace.

Steadily, the rules of the market economy have encroached on family life. In the market people learned self-interest. They learned individualism, competitiveness and aggression. They learned to focus all on growth at all costs. In the economy there are different sorts of responsibilities, it’s
laissez-faire...no obligations, no limits, just rights...sound familiar?

How often do we hear people say that the trouble with kids today is that they have no values? The thing is, they do. But more often than not, they have the values of the market economy. Little wonder that it takes just a few short years for a toddler to unlearn the innocent first rule of play and social interaction: how to share!

Too often, the very conservatives who talk about family values have radical economic policies which only push the market further into family lives. Families should be able to expect both a fair share of the economic good times and a good family life. Government policy should be directed at achieving these twin goals. We shouldn’t be washing our hands of the problem, and we certainly shouldn’t be in there up to our elbows making it worse.

It takes a very committed government in these difficult times to really make a difference for average families. Conservatives in the past made a strong play on family values on the basis that they were the ones attempting to hold back change and preserve the position of families. The problem now is that change is upon us. It has clearly outflanked average families. We shouldn’t be washing our hands of the problem, and we certainly shouldn’t be in there up to our elbows making it worse.

The birthrate problem is no longer just facing families. It is a problem confronting entire nations—we face the problem of an aging population driven by declining birthrate. We know that the challenges of paying for health care; aged care; and pensions will only get bigger as our baby boomers grow older. In a short period of time we will have gone from baby boom to baby bust.

Australia’s birthrate is now 1.75 down from 1.84 less than a decade ago. Today, there is one Australian of retirement age for about every five Australians of working age. Assuming current levels of net migration continue in the future, in the year 2021, there will be one for about every 3 ½. And by 2051, the ratio will be one for every 2 ½. Why? Because many couples are deciding not to have children, and it is a perfectly legitimate choice.

However, it is the task of policymakers to ensure that it is also a conscious choice—that people are not discouraged from having children by bad policies.

Sadly, for too many Australians the choice to have children weighs heavily. They look at the economy, their careers, and the future for children of our society—a good education, a decent job, a home. When they do their sums they are quite rationally delaying or deciding against having children.

We must tackle the birthrate problem if we are to safeguard our future and central to the problem of the birthrate is the economic plight of ordinary working families. Immigration helps a bit, but in terms of lowering the average age of the population, you can’t get much better than a new child aged 0!

Family policy, properly understood, is not about forcing women to have more children, or keeping them in the home, or any other such antiquated rubbish. It is simply about things that you would want to do anyway—make it easier for families to have and care for children. The growing intolerance in our society towards families—so often expressed as the complaint, why should my taxes pay for someone else’s children?—comes from a failure to recognise that families perform a social good. Families produce the workers of tomorrow who will support us in our old age. They are also nurturing children who will provide our society
with innovation, creativity and hope for the future.

**Work and family**

How do we provide encouragement for those families who want to have children but are not? How do we ensure that the current paradoxical situation whereby families who can afford children are not having them, and families who cannot are—is addressed?

First, we have to accept the reality of economic life. We have to accept that in most families both parents need to work. So we need to help those families balance work and family life.

The OECD has been closely following the relationship between work and family policy and birthrate. It has found that family size is lowest in countries where women’s labour force participation is lowest. The OECD sensibly observes that such correlations do not prove that increasing female labour force participation rates will inevitably increase fertility rates. But they do suggest “child rearing and paid work are complementary rather than alternative activities,” and that policy should be made on that basis.

Let me give you an example of what I mean—and I think this one is equally as relevant in your country. I spoke earlier of how the conservative Australian Government has punished families through its childcare and taxation policies. But a further policy agenda has arguably done as much—if not more—damage. Since 1996, the Howard Government has favoured a policy of radical workplace deregulation. It has weakened the industrial awards that protected wages and conditions in the workplace, and has very effectively worked to lessen the influence of industrial unions in Australian workplaces, and weakened the Australian industrial relations commission, which was traditionally the “umpire” that worked to promote industrial harmony and workplace fairness. As a result many workers in Australia have now traded off hard won conditions, like job security, for meagre wage increases. The practical result of this has been to lessen job security, and to release a boom in casual as opposed to permanent work.

An Australian Demographer, Peter McDonald argues that this radical economic agenda in Australia has seen:

- Family-friendly industrial relations reversed in the interests of efficiency;
- The hiring of people who will not be disturbed by the demands of family responsibility;
- Job insecurity which arises from individual contracts;
- Calls for further cuts to family services and lowering taxes

**Labor’s work and family agenda**

Responsibilities are important; but when the decline of families is in direct proportion to the economic pressure placed on it by government decisions, one has to ask whether they are the real issue. In our country we have a government that is more concerned with the fluctuation of prices on the sharemarket than those at the local supermarket. Its ministers take their cue from those sitting around the boardroom tables rather those peeling potatoes at kitchen tables. And in his haste to reduce the size of Government our Prime Minister has increased the vulnerability of families to the harsh forces of the market.

**Early assistance**

My Labor Party has not only turned its mind to family matters, it will bring the resources of government to bear, to ensure the foundations of families are strong.

In our country, people always talk about the Snowy Mountains Hydro-Electric Scheme. Projects like the Snowy Mountains dammed mighty rivers; drilled through mountains and gave the nation an asset for generations to come. Our modern Snowy Mountains challenge is of a ‘human’ rather than a ‘bricks and mortar’ kind. It is about making families stronger by giving them more time together and providing them with the support they need. I see our modern Snowy Mountains Scheme as a complete redrawing of the map when it comes to services for families and children services including childcare.

We currently have a patchwork quilt of services—childcare, maternal and child health, family support and early education—that is fragmented and
inaccessible. Where once the infrastructure challenge facing us was to move mountains, we now must move minds. We need a root and branch reappraisal of services for children and families and we have to make sure young families get all the services they need to be good families. That means changing the way Governments (and remember like you we have three tiers of it) plans and funds child and family services.

There will be those who argue that the logistics are too difficult. That you can’t hope to create a service system where a child and their family get the right mix of medical, practical and emotional support when they need, where they need and how they need it. I think you can. And I think we must begin the task. Because we are sitting on 40 of years of research on child development that says unequivocally—every dollar invested today can save many more down the track. Research that suggests if you get the platform of child and family services right you have less adults who cannot read, less spending time in prison and less without work.

My vision of a new child and family service platform starts with a comprehensive national program of early assistance backed by a Government commitment to monitor and strive to improve the wellbeing of families and their children.

**Childcare**

Childcare is the single biggest issue most parents cite when it comes to the task of balancing work and family. It is essential to the modern balance between work and family life, and to providing opportunities for children’s development.

Labor’s commitment to the reworking of services for families and children will have a strong focus on child care, particularly to ensure it is once again affordable and available to the many families who need it. While enabling parents to work and study will always be a central purpose of childcare, it can also promote children’s growth in healthy environments. We must face the reality that couples are having children later in life and this is producing more single child families. Childcare provides this growing number of children with a chance to socialise that once would have been provided by a brother or sister.

Labor will invest in childcare—in the name of not only higher living standards for struggling families; but also a better educational start for children.

**Industrial relations**

There are 2.8 million working parents with kids in Australia. If we could give each one of them just one more hour a week with their kids, that would be an extra 150 million hours a year invested in happier kids; stronger families; better values. What a great investment in the future of our nation.

We want to steal back the millions of hours together that have been taken from families in the last few years. We want to give people the real choices to earn a living, but also to have time with the people who they live for.

**Welfare reform**

In my view, lasting welfare reform comes from three things:

- provision of an adequate safety net—so no one falls through the cracks;
- the investment in opportunities—so people have the skills that employers want, and
- the provision of incentives—making work pay.

Our current Government believes you motivate the wealthy by giving them more, but when it comes to poor families, the motivational technique is to give them less and to hand out punishment. While they make sport of demonising people with labels like ‘job snobs,’ there is a persistent refusal to address the appalling poverty traps that see unemployed families keep just 10 cents of each extra dollar they earn.

All the rhetoric from the Liberal Party about restoring family values means nothing if it is not matched by policy effort that gives families the support they need to be self sufficient and successful. Therefore welfare reform must place as much emphasis on responsibilities as it does on obligations. Government has a clear responsibility to ensure it does its part in helping families back to work, particularly where it’s economic decisions and policy may have put them out of work in the first place.
Conclusion
The message I have been trying to give today is this:
The foundation of family prosperity—putting family values before market values—has been ignored in our political debate for too long—caught in a debate for and against different moral propositions.
This debate is important, but it should not be allowed to be a substitute for Government action to support and strengthen families—action that reflects basic and uncontested values and demonstrates that families are a priority.
When the family debate is exclusively about moral propositions, political conservatives who don't want to spend money on education; health care; families; and communities—are let off the hook.
No progressive party like the Labor Party can stand by and allow this to go on. We need to take up the battle—for the elevation of family values above market values because an investment in our families is an investment in the future of our nation.

Senator CHERRY (Queensland) (3.21 p.m.)—I seek leave to incorporate my speech in Hansard.

Leave granted.
The speech read as follows—
The Marriage Amendment Bill is a most unfortunate piece of legislation. It is an attempt by the Howard Government to denigrate the status of a significant part of the Australian population by implying that, in some sense, gay Australians, and the relationships they form, are worthy of lesser recognition than heterosexual relationships.
I think we need to separate out two issues in dealing with this bill. The first is we must set aside religious convictions. Australia does not have a State religion, indeed section 116 of the Constitution expressly forbids a State religion. Thus, we should not be talking about a 'religious' view, whether it be a Christian or Islamic view, of what marriage is.
Rather, in dealing with the Marriage Act, the question for this parliament should be about legal and social aspects, not the morality of what we are discussing. I think many people in this debate have forgotten that.
Religions should be free to recognise marriage within their own communities consistent with their beliefs. The State, however, has a wider responsibility for the proper regulation of the legal, financial and social aspects of personal relationships right across the community.
I can't move on without noting the shameless politicking associated with this bill. Let me make it clear—there has been no concerted lobby from the gay community for marriage rights. The legislation is not in response to some urgent legal or social issue—rather it is a rather pathetic attempt by John Howard to emulate the political tactics of his good friend President George W Bush and try to 'wedge' his political opponents on a 'moral' issue.
Labor of course has panicked, with Shadow Attorney General Nicola Roxon throwing any sense of human dignity and freedom out the window by backing this discriminatory and unnecessary law.
The gay community has not asked for gay marriage in Australia. It was not on their very reasonable list of social and legal recognition that they were chasing.
As a gay community leader said at a community forum I attended recently, "Why should we ask to parody a patriarchal heterosexual institution being increasingly rejected by many heterosexual couples?"
But, what offends the gay community, notwithstanding the 'non debate' about gay marriage in Australia right up until Prime Minister Howard started it, is the Prime Ministers' implicit assertion in bringing forward this legislation in saying that they are unworthy of marriage or recognition of their relationships. And that, rightly, makes them, angry.
I should acknowledge those Government MPs who argued in the party room against this legislation, arguing that it was unfair, discriminatory and out of date. Warren Entsch from my own state,
Trish Worth and Chris Pyne from Adelaide, Petro Georgiou from Melbourne, Judi Moylan and Mal Washer from Perth, and Peter King from Sydney on speaking out against this legislation in the party room according to press reports.

I agree with Trish Worth’s view in a letter to her constituents in Adelaide that the bill is “completely unnecessary and could be seen to marginalise a section of the community for no sensible reason.”

Of course, that didn’t stop her and her colleagues voting for it in the House.

Ms Worth and her colleagues argued unsuccessfully to their party room that the world has moved on, that social acceptance of gay relationships is widespread, and that it is time for the Government to catch up. Unfortunately, too many Government and Opposition MPs seem to have their minds still stuck in the social system of the 1950s.

But, I’ll make an attempt at least at trying to educate them. One of the world’s great bastions of conservative thought, quoted regularly by the Treasurer and other Ministers, is “The Economist” magazines found in the waiting rooms of many ministers.

I wonder if those minister saw the cover story on February 26 this year which was entitled “The case for gay marriage”. The editorial argued:

“The case for allowing gays to marry begins with equality, pure and simple. Why should one set of loving, consenting adults be denied a right that other such adults have and which, if exercised, will do no damage to anyone else? Not just because they have always lacked that right in the past, but until the late 1960s, in some American states, it was illegal for black adults to marry white ones, but precious few would defend that ban now on the grounds that it was ‘traditional’.

Another argument is rooted in semantics: marriage is the union of a man and a woman, and so cannot be extended to same-sex couples. They may live together and love one another but cannot on this argument be “married.” But that is to dodge the real question—why not—and to obscure the real nature of marriage, which is a binding commitment, at once legal, social and personal, between two people to take on special obligations to one another. If homosexuals want to make such marital commitments to one another, and to society, then why should they be prevented from doing so while other adults, equivalent in all other ways, are allowed to do so?”

It is a pity that such clear and compelling arguments are lost on the Howard Government and the Bush Administration in their efforts to round up votes among fundamentalist Christians.

Last month, Nobel Laureate and former Anglican Archbishop of Johannesburg Desmond Tutu contributed an article for a new book published by Amnesty International entitled “Sex, Love and Homophobia” arguing that apartheid and homophobia are both crimes against humanity.

He wrote:

“Opposing apartheid was a matter of justice. Opposing discrimination against women is a matter of justice. Opposing discrimination on the basis of sexual orientation is a matter of justice.

“It is also a matter if love. Every human being is precious. We are all, all of us, part of God’s family. We all must be allowed to love each other with honour.”

“Yet all over the world, lesbian, gay, bisexual and transgender people are persecuted. We treat them as pariahs and push them outside our communities. We make them doubt that they too are children of God —and this must be nearly the ultimate blasphemy. We blame them for what they are.

“Churches say that the expression of love in a heterosexual, monogamous relationship includes the physical, the touching, embracing, kissing and the genital act —the totality of our love makes each of us grow to become increasingly godlike and compassionate. If this is so for the heterosexual, what earthly reason have we to say that it is not the case for the homosexual?”

American Episcopalian Bishop John Shelby Spong, in an open letter to evangelist Jerry Falwell in 2000 argued that loving relationships should always be recognised regardless of sexual orientation. Bishop Spong argued that:

“My study has convinced me that homosexuality is a given part of the broad spectrum of humanity, so I, as Christian, could never equate it with sin as glibly as you (Falwell) do.... There is certainly
some homosexual behaviour which is sinful. But maybe you haven’t noticed that there is also some heterosexual behaviour that is sinful. ...I regard any sexual activity that is promiscuous or predatory, forced or uninvited to be evil and sinful....

“But I also regard sexual activity which expresses love, which is lived out in a monogamous commitment, which is part of a relationship of trust and dedication, which does not violate one’s word given to another personal and which issues in life, to be blessed by its own fruits and theirs to be ultimately holy. I believe that the benefits and sanctity of marriage must be extended by both church and society to faithful homosexual partnerships and the sooner the better. Not to do so is to continue the pattern of a killing prejudice based upon uninformed ignorance.”

I’ll leave as I said at the outset the theology to the theologians, but I do want to argue that our society will be the beneficiary of any act, any law, that seeks to encourage more Australians to commit to each other.

My generation of Australians and the next one coming through is loath to commit to anything, particularly to each other. Between 1986 and 2001, the percentage of Australians aged between 15 and 35 living alone rose from 6.5% to 9.2%. The total percentage of households with a one person rose from 22% to 24.6% between 1993 and 2001.

As a nation, we are becoming less and less able to commit to each other, becoming more and more selfish and self absorbed. This is not healthy for our society. The National Marriage Coalition dropped a glossy document into my office this week entitled “21 Reasons why Marriage Matters”. I read it very carefully. And, while some of the reasons were a little poorly articulated, I agreed with its overall tenor that Australians are, for the most part, happy, healthier and economically and socially better off in long term, committed relationships than outside them.

But, if that is true for heterosexual couples, it is also true, as Bishops Tutu and Spong argue, for homosexual couples as well.

As a Senator, I believe our society is healthier is we encourage people to make long term commitments to each other.

Four months ago, I marched down the aisle myself and made my marriage vows in the Uniting Church. I didn’t undertake it lightly. I believe that my marriage has and will continue to enrich my life.

I don’t want to deny that right to stand in front of the community and make a public commitment to the person you love to any Australian person.

The proposition in this bill is objectionable in the extreme that stable, loving relationships should be demeaned by a Federal Act of Parliament.

The proposition that my relationship, being a heterosexual one is worthy of legal recognition but the longer term relationship of my colleague Senator Greig is not is objectionable.

As I said at the beginning, we need to separate issues of theology and law in this debate. I would be opposed to a law which forced the churches to solemnise gay marriages where this was contrary to their teaching. My personal faith tells me that Christianity should recognise long term monogamous loving relationship regardless of sexuality, but that is a matter for the churches to decide not me.

But while I oppose the State imposing on the churches its view of marriage, I also oppose the churches imposing on the State their view of marriage. The legal aspects of marriage—the care of children, the sharing of property, the aspects of health, welfare, superannuation, the issues to do with separation—these are matters for the State to regulate, and we are failing to do so in respect of gay couples.

Let’s finally recognise that there are gay marriages in our country. There are gay people with children, with joint mortgages, sharing their lives, loving one another to the exclusion of all others. This law will not change that.

Let’s give them the legal recognition they need to ensure that they can live their lives, and properly manage their affairs. Let’s give them the community recognition that they can declare their love to be a beautiful thing. Let’s give them the social recognition that commitment to another person is a positive thing in a society where commitment appears to be a dying concept.

As Reverend Doctor Dorothea McRae McMahon said to the Uniting Church assembly last year:
“As a lesbian, I am not in moral decay. I am in one faithful relationship that brings me life and hope and that my family supports and which enriched my life as a Christian. I’ll be 70 in a few months. I’m not on sexual adventure. Its about love, its about the freedom for people like me to love another person body, heart and soul as you—heterosexuals—are permitted to do.”

I hope that one day this Parliament will give to Dr McCrae-McMahon and the hundreds of thousands of other gay Australians the recognition as full Australians that they so richly deserve. Regrettably, in this politically charged pre-election debate, the Labor, Liberal and National Parties will be denying them that just recognition here today, even to the extent of denying time for a proper debate of this discriminatory bill.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.21 p.m.)—In my view, the Marriage Amendment Bill 2004 degrades marriage and is anti-family. It encourages and reinforces a decline in moral standards and decency that will strike at the heart of our society if we do not stand against it. It will obviously pass today, but that will not be the end of the battle. There have been plenty of immoral laws passed in the past. That does not mean you just say, ‘Well, we lost that one,’ and give up; you continue to fight until the immorality that it represents is overturned. The Democrats will continue to do that.

This bill will prevent people from being able to marry. It will prevent people from being able to marry the person they love, and for the romantics here amongst us marriage is first and foremost an expression of love. Perhaps the lawyers amongst us would remind us that marriage is first and foremost a civil contract—a piece of paper that you sign and a contract into which you enter. That civil contract is what is reflected in the law, and what we are actually debating here today is an amendment to the civil law. It is not a debate about religion, and any attempt to legislate in respect of a religion would most certainly be unconstitutional and would not be acceptable. If a particular religion wants to set up a particular set of criteria for people who choose to follow that religion, whether it is to do with marriage or various other codes of behaviour, that is one thing. But to seek to apply those religious criteria to the entire community and to prevent some people being able to marry at all is totally unacceptable and totally discriminatory.

A law is a lot more than just a legal document, in the same way as a marriage is a lot more than just a civil contract. It is for that reason that, whilst it has been good that the debate from various sides to date has been measured, it has also been narrow in a lot of respects because it has looked at definitions of marriage and the nature of marriage as an institution. I want to ensure that also reflected in this debate is the impacts that this could have on some people—the impacts of our validating certain views by passing a law that reflects them, as this does.

This bill is part of a range of matters currently before a Senate committee that is looking at not just the narrow legal components but a lot of those consequential matters. The committee received a lot of interest from the community and received a range of views. The committee was not able to hear the public’s views on it; it was not able to consider the range of matters. The public and those perspectives were silenced and the Senate has decided to make a decision on the bill anyway, without taking those views into account. That is a shame, because it may have led to a more informed decision, if nothing else. People may have had a broader understanding of what it is that they are actually doing here.

It is extremely inappropriate, in a parliamentary sense and in terms of the undermining of democracy, to put a bill on for debate when it is before a committee. We have said
to the public, ‘The Senate believes this is sufficiently important, we will have an inquiry and we will let you put your views. We will explore the substance of those views. We will have public hearings and then they will be on the public record. We will at least have a richer outlining of the issues and we can hopefully have a more informed debate when we finally get to it in the Senate.’ There has been none of that. What has been decided today, apart from anything else, is a spit in the face to that entire process and another spit in the face to democracy, which we are getting used to from this government. I do not know how many more times they are going to spit in the face of democracy, but I do not think it ever gets enjoyable or acceptable.

Causing extra outrage is the fact that the Labor Party has consented to subverting that absolutely critical part of the Senate process, which we often laud as one of the great pluses of the Senate and one of the most valuable components of the entire Senate committee process because of the opportunity to engage the public. Labor has not only acquiesced by ignoring that; it has sent an extra message that this is not just a simple procedural vote but a matter of urgency—it is a matter of priority above everything else and it must be passed today and with a curtailment of debate, even amongst senators, let alone the public. That is bad in itself but the message it sends is far worse.

For that reason, I will read a little bit from a few of the emails I have received. I am sure all of us have had many emails on this issue from all sides of the debate. Because those people have been in effect silenced it is appropriate to at least read a few of them, without mentioning names. One person wrote:

As far as marriage goes, it should be a simple human right to marry the person you love. It is that simple. To claim that allowing gay marriage in some way diminishes heterosexual marriages is to claim that a gay relationship is not as important or loving or valid as a heterosexual relationship. This is simple homophobia. How can a few gay people committing themselves to each other for life hurt this society? Surely it would have the opposite effect.

How can extra people wanting to commit themselves through marriage somehow hurt marriage? Another couple, from whose email Senator Nettle also read, so I will only touch on it, make the point that they have been in a relationship for nearly 10 years and have a couple of children. They are in that respect, as in many others, just a regular family bringing up their children and, as they say:

... hoping for the best, trying our best, renovating our home, sharing our lives with those close to us. We live in a democratic society where equality is fought for virulently.

These people end by saying that, despite everything that is happening—obviously they oppose this legislation—they are married in the eyes of their friends, themselves and the universe, and they are just waiting for the law to catch up—and that is great. Clearly they are married in their own minds and obviously would love one day to be able to be married in the eyes of the law but they are not going to let others’ prejudices prevent them from feeling strong in their love for each other. Another email is from a woman—a 43-year-old mother of eight children—who is a resident of the ACT. One of those children is a lesbian. She says she, her husband and all family members are very proud of their daughter. She goes on to say that, when her daughter first talked about being a lesbian:

... as a mother my reaction was an immediate fear for my child as I knew her sexuality would make life harder for her and that she could be the victim of discrimination.

She speaks of how proud she was when she sat with her daughter in the ACT Legislative
Assembly as the local government here in Canberra overturned the discriminating phrase in the ACT Adoption Act that precluded adoption by same-sex couples. I am pleased that the Democrats, through our local member, Roslyn Dundas, were part of ensuring that happened. She speaks of how that was important not just in a legal sense. In one sense it was affecting a very small number of people, but it was a clear signal to her daughter that society was changing and that she should not be judged solely on the basis of her sexual orientation. I will not read all of the email, but she talks of her distress that straight after that we get the federal government coming in, not with the dog whistle but with the megaphone and the loudspeaker, once again reinforcing ‘those perceptions and encouraging those perceptions of discrimination’. She talks about her greater awareness, gained from her daughter, of the impact on other young people. I spoke before of the couple who are quite comfortable with themselves. Their view is that, if others in the community have a problem with our relationship, that is their problem. The more people who feel like that the better, but we have to acknowledge that not everybody—particularly not every young person—is so self-assured and so comfortable. It is a simple fact—even a statistical fact—that young gay people are at a much higher risk of suicide—about a six-fold increased risk of suicide—than others. Around one in three suicide attempts by younger people relate to sexuality issues. That is wider than just sexuality in relation to being a gay or lesbian; that is about sexuality issues in general. We all know that sexuality issues not only are personal, by definition, but also are in many ways ones that a lot of people, because of the social environment that we are in, have difficulty working through, particularly when they are young. That six-fold increased risk of suicide among young people if they are a gay man or a lesbian is a statistical fact.

As to the other side of the debate, I am certainly not accusing those people who support this bill of encouraging, condoning or not caring about suicide. I am talking about the fact that the impact of these sorts of measures, let alone giving them priority and urgency, involves a lot more than just a little change to the law, because it reinforces signals and it gives legitimacy to the sorts of statements that were made by people last week in the Great Hall of our Parliament House. Some of them said that gay people were moral terrorists, they had vile passions, they were a sign of the moral decay of our society and they were undermining our society. If you feel strong about yourself, then you are likely to respond to that by saying, ‘Go get stuffed. I don’t care. That is your problem.’ And it is their problem if they believe that. But if you are not strong in yourself, that sort of thing can be unbelievably damaging at an individual level.

I still cannot get over my fury at walking into that meeting in the centre of our Parliament House, in the Great Hall, where our Presiding Officers would not permit an address by a world leader like the Dalai Lama because they did not want to upset or offend the Chinese communist dictatorship. Yet any persons—public visitors, and we all know we get many visitors from the public coming to Parliament House, as they should and as we would want them to—could walk into the upstairs area, as I did, and hear that sort of stuff being applauded in the middle of our Parliament House. That is permitted by our Presiding Officers but a few people that stay outside and hold signs expressing their disgust are breaking the rules by protesting!

I should say, because I take on board what others have said, that it is not fair for me and others to have vilified all of those people that...
attended that forum by saying that they are all guilty of this sort of hate speech, and I retract any impression of that. To be balanced, I have to say that some of the other speeches there—and I witnessed only about 30 minutes in all; that is all it took; God knows what else was said—among some of the other bits I saw were lovely. I remember in particular an elderly couple, who had been married about 40 years, just talking about their love for each other after 40 years of marriage and how wonderful it was. Nobody could complain about that. As Senator Boswell said, the people attending that forum were supporting marriage. I support marriage, and I am married. It would be a bit of a problem if I did not support marriage, seeing that I am married. But what do I say to a constituent that meets with me and says, ‘I want to get married too but it is illegal for me to do so’—which has happened to me. Do I just say, ‘That’s a pity. That’s just because of who you are, because of your “vile passions” or something’?

We should not forget that in our lifetime Aboriginal people had to get permission to marry—that interracial marriages were seen as wrong on the basis of race. Now people, quite rightly, would be absolutely disgusted. But that is what we are saying here. We are saying that, just because of who you are, if you are a certain way it is bad luck—you cannot get married—and supposedly that is not discriminatory. I wish people would think through what they are actually saying. The fact that it is something only a certain number of people in the community can have access to and others cannot, purely because of how they were born and who they are, devalues my marriage. That is why this offends me so much. This legislation is disturbing. To say that it defends marriage when it degrades it so much is something I find extraordinarily upsetting.

Earlier I used a quote from Edmund Burke—one which has been used many times by many people—that the only thing necessary for the triumph of evil is for good people to do nothing. That is why it is so disappointing, when there are many people in this chamber who I know recognise how terrible this legislation is and how destructive it is to our basic humanity and decency, that they are going to let it go through. Another quote—one from Martin Luther King which was at the bottom of emails I, and probably a lot of other people, got from one woman—is another reminder that in debating the law we are not just talking about semicolons and sentences on bits of paper and about decisions for judges to make in their courts; we are talking about things that can go not just to the heart of our society but also to the human heart. As King said, ‘The law may not change the heart but it can restrain the heartless.’

That is a reminder of the much broader and in many ways much more powerful impact of our role as a parliament. It is not just about changing the law; we play a role in legitimising certain values and certain views. The law can restrain the heartless but, sadly, the reverse applies here. The law we are now passing will validate the heartless, the bigoted and the hate filled. I do not accuse everybody who supports this bill of being bigoted or hate filled but I do say that, by allowing the bill to pass, they are validating those messages and those statements, including some that were made—with permission and to applause—in the very centre of our Parliament House just last week. Not only does this law not restrain the heartless; it applauds, validates and encourages them.

I really do not think people recognise how severe the impact of their actions can be. I talked before about the much greater rate of suicide among younger gay people. I am not going to try to lay the blame for that on this
bill but I remind people that, for those who have self-doubt or difficulty with who they are or their role in society or in life—all of the sorts of things that are swimming around in some of the dark areas the mind can go to—letting some of this stuff have any validity can be not only hurtful but also fatal. So, as I said at the start, this bill does not only degrade marriage and is not only antifamily; it is antihuman and is, in my view, a validation of a decline in moral standards and decency. (Time expired)

Senator MARSHALL (Victoria) (3.41 p.m.)—I seek leave to have my speech on the Marriage Amendment Bill 2004 incorporated in Hansard.

Leave granted.

The speech read as follows—

I rise to address the Marriage Amendment Bill 2004.

In doing so, can I say how ashamed I am of this Government and the Prime Minister. This is a most regressive piece of legislation. It is fuelled by the politics of hate and division and the possibility of laying down a political wedge in the community at large.

And it is a sad indictment on a government that really has no agenda and no vision for this country and our people.

How could the provisions of the bill before us be of any significant importance to the Australian community at this point in time or need to be dealt with in the hasty manner in which they are? There is no reason for it other than an impending election campaign and the possibility of exploiting fear, prejudice and hate throughout the community.

And it is an issue that demonstrates the backward-looking, outdated, old-fashioned, mean, nasty and totally out-of-touch nature of the current Prime Minister and his attorney general, Mr Ruddock.

Here is an issue that is necessary because there is significant community concern about the possible erosion of the institution of marriage. Well, what a joke, Mr President! That is a load of rubbish.

Who are these people and what exactly are their concerns? What century are they living in? Or where are they living?

And what exactly is it about marriage that is under such threat today from the gay and lesbian community? There isn’t anything.

This isn’t an issue about gay marriage at all. This is an issue about exploiting prejudice and hate. It is about division and segregation. It is about discrimination and it is about the Prime Minister’s unhealthy obsession with everything President George W. Bush.

That is what this is about. Why, after eight years in Government have Mr Howard and Mr Ruddock chosen now, just prior to an election to bring about this change to the Marriage Act?

Why hasn’t the Government acted during the past 8 years if this was such an important and necessary issue to act on?

It is a cynical approach by the Government. There can be no doubt.

If there was not to be an election this year and the possibility to use this issue to divide the community at large on the basis of prejudices held by people, would it be coming to the Senate right now?

The answer would have to be no.

This bill is politically motivated. Just like the proposed changes to the US constitution banning gay marriage, this is a politically motivated stunt.

If only the issues weren’t so sensitive, one would have to laugh at the politics of the Government on this issue. President George W. Bush mentions that there might be a need to act in the US on gay marriage, two minutes later, Prime Minister John W. Howard sees an opportunity to exploit the very same issue and brings it here to Australia.

It is laughable. This is a Prime Minister obsessed with the US President and all of his policies. Does Mr Howard seriously think he can keep up with the neo-Conservatives? Well, it seems as though he is willing to do all that it takes to at least give it a go.

It is a disgrace that our Prime Minister has chosen to attack some of the most already-discriminated against members of our community for his own political and electoral purposes. Again, I have to
say how ashamed I am of this Government and this Prime Minister.

Now, Mr President, let me turn to the bill itself. This bill seeks to define marriage as the union of a man and a woman, entered into for life, to the exclusion of all others. Fine.

But this insertion is not the motivation behind the bill. The motivation is to discriminate against gay and lesbian Australians.

As my colleague, the Member for Batman, Mr Ferguson said in the other place, and I will quote him, “the Prime Minister was at long last driven by the will of the community to fix the blatant discrimination inherent in our superannuation laws. He was driven to concede that gays and lesbians should have the right to nominate the beneficiary of their own hard-earned and accumulated superannuation. I commend him for finally relenting on this issue, albeit a relenting that was long overdue. But I also suggest that having made the concession, the Prime Minister was so petty and small-minded that he could not make that reform without soothing his own moral conservatism. The Prime Minister could not make a progressive reform for our gay and lesbian Australians without giving them a commensurate kick in the guts,” end quote.

That is exactly right and that is exactly what we have before us today.

I cannot understand how in this, the 21st century and in the very same year that we have removed discrimination against same-sex couples in terms of superannuation, why the Government would seek to impose another layer of discrimination against same sex couples. It really beggars belief.

This Government just simply cannot accept that the world has changed—that Australia has changed—and with it has the idea of what constitutes a family.

Australian families in the 21st century come in all shapes, sizes and forms. This should be embraced and supported, not shunned and systematically averted.

It is high time that the national parliament recognised this and afforded all Australians, regardless of individuals’ sexual preferences the rights and opportunities that all other Australians have.

Why should a union between two loving and committed people be denied simply on the grounds that they are of the same sex? There is clearly something wrong with a society that turns a blind eye and rejects a union on those grounds alone.

At a time when marriage rates are on the steep decline, wouldn’t you think that we would be looking at ways to increase the number of committed, loving and caring unions/relationships/marriages (call them what you will) in our community?

As the Member for Sydney said in her contribution to this debate, as a society we are stronger when we look for ways to celebrate and increase the sum total of love: not wall it in, deny it or ignore it because it does not read like a Mills and Boon novel.

Labor will be supporting this bill but it isn’t for the discriminatory reasons that the Government has introduced it.

Labor believes in removing discrimination against same-sex couples and gay and lesbian Australians. Labor is committed to introducing protection from harassment and vilification on the grounds of sexuality.

Following the next federal election, Labor in Government will undertake an audit of all federal legislation with the view to removing ALL discrimination against same-sex couples—this will involve making changes to many aspects of the law, including in taxation, veterans’ affairs, social security, superannuation, and more.

Labor wants to ensure that we deliver same-sex couples full equality with that experienced by all other Australian de facto couples.

Mr President, given everything going on in this country and around the world at this point in time, how on earth could the Government justify wasting the time of the Parliament on this unnecessary diversion?

As the Member for Sydney argued, and I quote from her contribution to the House of Representatives debate again, “does anyone believe that it is a coincidence that this legislation came about at the same time as the member for Makin was making the front page of every newspaper with new revelations about the trip to Paris she took with
her then boyfriend? This is an ugly little trick designed to rebuild the government’s family values credentials after that fiasco,” end quote.

Well, Mr President, what a way to display those credentials—by demonising an already-marginalised group in our community. It is simply disgraceful.

Mr President, in concluding my short contribution to this debate, I would like to make a point that has already been made and is well understood in the Australian community: Australians in same-sex relationships lead normal lives and want and deserve to be treated like all other Australians. Same-sex couples, or gay, lesbian, bisexual, transsexual and transgendered Australians are not asking for special treatment—quite the opposite, they are asking for no special treatment. These people want to live their lives as valued citizens of Australia and to be criticised against the very same criteria as all other Australians.

As the Member for Batman said in the other place, “sooner rather than later we as a community and as legislators must cut down the straw men and afford rights and responsibilities to all partnerships, not just straight partnerships as the Prime Minister would define them. In that regard, the work of the Tasmanian and ACT parliaments must be commended, but other parliaments, including our own national parliament, must start to think about biting the bullet and removing discrimination in all its forms against gay and lesbian Australians”.

I couldn’t agree more.

Just finally, I think I owe it to explain to the Senate, in quite frank terms why it is that I will be voting to pass this bill to get it off the agenda and I do so looking forward to the day, in what I hope is the not too distant future when a Government with a heart finally gets to lift this shameful and ridiculous discrimination.

**Senator FORSHAW** (New South Wales) (3.42 p.m.)—I rise to support the Marriage Amendment Bill 2004. I do not intend to speak at length. Although a number of senators have sought to incorporate their speeches in view of the time constraints, many of us would probably have preferred an opportunity to make our remarks directly. I have listened intently to the speeches that have been made this afternoon on this legislation. In particular, I listened to the very passionate and obviously genuine speech made by Senator Bartlett a moment ago. He obviously holds those views strongly. But, equally, overwhelmingly many people in this community do not agree with the assertions that have been made by Senator Bartlett and by many others who have opposed this legislation. I have to say that I think it is completely wrong—I would like to use stronger words but I will not—to argue that this bill somehow degrades marriage. That is just a nonsensical proposition in logic. A bill that seeks to make abundantly clear in law the definition, the meaning, of marriage that has existed for eons cannot of itself degrade marriage. That is a preposterous proposition.

I will come back in a moment to the issue of discrimination, but enshrining in the Marriage Act a definition of ‘marriage’ which represents what it has always been understood to mean—whether it be in the common law, in canon law or in recognition of the entire social history of humankind—cannot be said, in my view, to either to degrade the very institution that the definition will clarify or to be discriminatory.

I will come back in a moment to the issue of discrimination, but enshrining in the Marriage Act a definition of ‘marriage’ which represents what it has always been understood to mean—whether it be in the common law, in canon law or in recognition of the entire social history of humankind—cannot be said, in my view, to either to degrade the very institution that the definition will clarify or to be discriminatory.

As I said, I support the passage of this bill. I do have some concerns about some of the motivations that have accompanied it from
the government, particularly given that this is a government that in respect of other legislation has argued that it is not really necessary to clarify the law. We heard that argument in respect of the free trade agreement. I do not think it hurts to clarify the Marriage Act by putting a definition of ‘marriage’ into that act. It may be unnecessary, but I do not think it detracts in any way from good public policy and good legislation to ensure that a piece of legislation reflects what it should. We are particularly conscious of the fact that there is a debate going on worldwide in respect of the institution of marriage. I understand that only in the last 24 hours a court in the United States has overruled attempts in the state of California to give legal effect to gay marriages. It is clearly an issue of currency around the world.

I support the passage of the bill because I believe and I have always believed that marriage, whether it be in the legal sense, religious sense or social sense, is the union of one man and one woman entered into voluntarily for life to the exclusion of all others. That is what the definition in the legislation that is before us says. We know it does not always work. It is not always for life, and, although we hope it is always voluntary, it is not necessarily always to the exclusion of all others. But we are here defining the meaning of ‘marriage’. That is what it has always been understood to mean and I do not think it needs to be any different.

It is clearly the view of an overwhelming proportion of the population, and it is not an unreasonable view. It is not some degraded view and it is not some disrespectful view to people who are married or people who are not married; it is the view of ordinary Australian people out there of what marriage is: the union of one man and one woman entered into voluntarily for life to the exclusion of all others. This is not the tyranny of the majority imposing its views on the minority. Attempts to argue that it is are, in my view, not just unfounded but I think in some cases are deliberately distorted for a purpose which is not genuine.

There are two issues involved in the debate with respect to the legislation in this chamber. There are a lot of issues involved in the debate in the community, but we are here dealing with this debate in respect of this legislation. The first issue is: what is the meaning of ‘marriage’ and what should be the legal definition of ‘marriage’? The second issue is: does the definition to be enshrined in this legislation discriminate against other forms of relationships—same-sex couples in particular but other forms of relationships as well? I have already said what I believe to be the definition and meaning of ‘marriage’ and it is that contained in the legislation. As I said, it is derived from almost the beginning of humankind. In my view it essentially derives from a social concept, it is encompassed within many religions and it is enshrined in the common law but founded in the very nature of the human race itself—that is, the division of the sexes. Whilst society changes and advances—and unfortunately regresses too often, I suppose—whilst science makes new discoveries and solves mysteries, whilst technology enables the human race to do things never previously contemplated and whilst society and the law allow people to engage in relationships and other activities that may have once been regarded as unlawful, it does not follow as a matter of logic, nor does it follow as a matter of necessity, that fundamental definitions or meanings must change. To argue that the definition of ‘marriage’ should be expanded to include other forms of relationships, particularly same-sex relationships, is to destroy the definition of ‘marriage’. It does not broaden it; it destroys it.

The other argument against this bill is that it discriminates and vilifies—that it denies
fundamental human rights. I have heard that said by speakers earlier in the debate this afternoon. I have to disagree. To me there is no logic in a proposition which says that you should apply a definition of ‘marriage’ that is unique, that applies to heterosexual relationships, to a relationship which is not the same. The gay community proudly celebrates its diversity. That is what it claims to celebrate and it is entitled to do that at law. It claims the right to celebrate—using a term that has been used here today—its ‘gender identity’. It sees it as a gender identity that is different from that of the heterosexual community.

If you want to celebrate diversity, if you want to enshrine the right to that diversity, if you want to enshrine recognition of the right to have a relationship which is not heterosexual, you cannot then logically argue that you will do that by importing into your own relationship the definition of something which it is not—by importing, in effect, the opposite. As I said, it is a simple matter of logic. I have never understood why the gay community says, ‘We need to celebrate the diversity of the gay community,’ by taking unto their relationships the definition of that which they are not. If a gay couple can argue that they are discriminated against because they are not allowed at law to marry then people in a whole range of other human relationships could also argue the same case. Again, it is a matter of simple logic. There are many relationships in the community that are not heterosexual but are not gay—family relationships, for example. Are we to see the definition of ‘marriage’ further changed because some people believe that they have been discriminated against by their particular relationship not being defined as a marriage?

In my view, exclusivity does not automatically translate into discrimination. Certainly under this legislation marriage will be, by definition, as it always has been an exclusive relationship. It is exclusive to heterosexual couples: one man and one woman entering into that union voluntarily for life. It does not follow as a matter of logic or as a matter of human rights that something which is exclusive in the community must therefore discriminate against others. Gays can claim that there are areas in which they have been discriminated against, and we know that. Historically there has been much discrimination against homosexuals. We all know about, and many can remember, the days of the Second World War when homosexuals were murdered by the Nazi regime and by other regimes—and that still happens—simply because of their sexual preference. Civilised society does not support that and we have attempted to remove those extreme forms as well as all other forms of discrimination. There are some still to be addressed. Issues that relate to divestiture of property and rights to superannuation entitlements are areas that clearly still need to be addressed, and they are being addressed.

I might also point out that there are some areas married people tell me about where they believe they are discriminated against. For instance, married couples on the pension may well argue that as a married couple they receive a lower pension entitlement than is received by two single people living together in the same accommodation. It is a fact. So the real issue is not about the definition of ‘marriage’; rather, it is about removing discrimination. It is about the need for tolerance and acceptance. I do not believe you achieve tolerance and acceptance by changing the fundamental definition of ‘marriage’. You do not achieve recognition of the diversity of humankind by seeking to import into the description of one relationship that which applies to another. Indeed, I think you would ultimately lose that status the gay community seeks to celebrate. I support the bill and I urge a lot more tolerance in the debate. In some respects there certainly has been intol-
erance in this debate. People who argue, from whichever side, that the views in support of this bill are degraded in my view do not have much substance to their point of view.

Senator MOORE (Queensland) (3.57 p.m.)—In my comments this afternoon I want to concentrate on the process surrounding the debate on this piece of legislation. I have been deeply saddened and worried by the process surrounding the introduction of this legislation. In some of the letters and emails—most of them amazingly similar—that have been received in my office over the last few weeks in strong support of the definition of ‘marriage’, there has been a common theme, and that is protecting the sanctity of marriage. There seems to be a real concern or fear that any acceptance or understanding of a union beyond that of a man and woman will automatically devalue or threaten current marriages. I personally cannot accept the proposition that any external factor should or would threaten a relationship that has been freely given and is the result of genuine respect. That is my concept of marriage. The expectation that this legislation affecting others—as the people who have written these particular letters to me clearly identify—relates only to those who are different or not blessed with their own sense of belief and will impact on the sanctity, legitimacy and value of a personal commitment makes no sense to me. Rather, this view reflects the distressing atmosphere of exclusion driven by fear and sometimes, in 2004, an almost amazing ignorance.

The zeal of people and groups in promoting the belief in what they call traditional marriage has in some cases crossed into real vilification and personal attack. I have been deeply sickened by comments and public forums allegedly based on the reasonable effort to raise awareness or promote certain beliefs, often using the word ‘family’. As a community we genuinely value the concept of family, and when arguments are made or literature is distributed which focuses on love, trust and special relationships with children many people are attracted, feel an automatic warmth and are drawn to accepting the credentials and goodwill of those promoting the ideas and values.

Sadly, during the debate on the legislation there has been some confusion and even some deliberate attempts to demonise gay and lesbian people and to create an atmosphere and an environment where somehow it is acceptable to judge, exclude and hurt people whose relationships do not fit the definition of ‘marriage’ that these people believe in. Perhaps I should not have been surprised, because personal relationships, particularly with the addition of religious beliefs, cause strong feelings and reveal deep convictions and experience. However, that anyone, even in our own Parliament House, would make outrageous statements about homosexual people still manages to shock me.

When we have been able as a community to accept change through previous sex discrimination, racial vilification and affirmative action legislation why can we still seem to accept blatant attacks on gay and lesbian people? Recently, through the commemoration of 20 years of sex discrimination legislation, we were able to take time to think back over the achievement of change—and the years since, protecting those changes in our community. Now there seems to be, in many ways, a general acceptance of the principles of equity. Although there were always some people or organisations that disagreed with any change—and they will probably always remain unconvinced—the dire predictions about the impact of equity legislation in the eighties have just not been fulfilled.

In debates which were held during the eighties significant concerns were expressed
publicly about the impact on families and the traditional roles of men and women. Some of us in this chamber were part of those debates. However, the decades have proved that the community has come to accept the principles that individuals can have the choice and the freedom to make their own decisions in their workplaces, in their homes and in their lives. It seems that the world did not end but somehow the people of the world got greater responsibility and greater choice. The people who, during the 1980s, raised their voices in fear about equity seem to be in the game again now. I am concerned that the level and tone of the debate could become—and maybe has become—more vicious, focused and dangerous. I do not want to be part of that fear. I firmly believe that the community has the right to openly debate issues about values, religious beliefs and life. I do not believe that any issue or value, including marriage, gives any group or individual the right to attack or exclude a person based on sexual preference.

I am concerned that this debate on marriage is only one element of a wider debate that will not be concluded when this piece of legislation is concluded. Those people who wrote the letters and the emails based on fear will continue to agitate for change and will still be afraid. The total lack of respect for people called ‘others’ or ‘them’ will not disappear; rather, the fight will continue. In this process I believe that the members and senators in this parliament have a really special responsibility.

The Australian Labor Party are committed to review all the legislation and to identify and remove discrimination against gay and lesbian people. We will work to uphold our belief that Australians are entitled to respect, dignity and the ability to participate in our society and to receive the protection of the law, regardless of sexuality or gender identity. This will not happen automatically, as the same people who have been agitating against legislation will be there, and the fear and the hate will have to be faced down.

Any organisation which considers that it is appropriate to verbally attack and intimidate young Australians who are gay does not represent the principles of respect and family that I and my family value. Any organisation which publicises that all gay people are sick, have an illness or are child abusers, or any group that descends in their publications to vicious labelling and personal abuse, does not argue for any family based community that I believe in. I hope that, as the level of awareness grows in our community, we will respond to the simplicity and the tactics of fear evidenced in arguments focused on gay people.

While this debate is important and very formal I am personally overwhelmed by the experience of some of the people who have been damaged by these attacks and by the wider acceptance of the legitimacy of that process. Why is it considered okay to demonise some people? Where is the outrage and the anger when it occurs? It seems to be far too easy to create fear and to convince good people that somehow their rights and the things that are important to them are threatened or damaged by the acceptance of change.

Where is the threat? How can the acceptance of genuine equity be harmful or impact on individual beliefs or the freedom to make choices? There is no legislation proposed to force anyone to give up personal beliefs or to enforce behaviour. I hope that in the ongoing debate—and there will be an ongoing debate—our community is strong enough to accept that any argument based on fear must be immediately questioned. I hope that the people who have been so threatened by proposals to legislate for equal rights in the past will be able to openly consider the experi-
ence and the expectations of all members of our community. I hope that future debates on legislative change will be less affected by hate and fear and instead be informed by a genuine concern for inclusion and increased awareness. I know that the acknowledgment of the rights of some does not automatically mean harm or threat to others.

Senator BROWN (Tasmania) (4.06 p.m.)—Along with my colleague Senator Nettle I oppose this marriage discrimination bill, the Marriage Amendment Bill 2004. One of the things that is not talked about in this parliament very much is love. But love is the highest human value and it is in the heart of everybody. It is everybody’s right to express it. Any sensible liberal society, besides practising acceptance, will promote love. This legislation is about hate. In any liberal society it is important that we try to minimise this negative human expression—this antithesis to love—corral it where we can and in any way possible remove it. Today the government of this country and the alternative government, the Labor Party, are promoting hate, the most negative of human values, over love, the most positive and wonderful of human values.

It comes from the Prime Minister, although it has been endorsed by the Leader of the Opposition, that there should be some special prerogative for people who love each other. If they want to have that love recognised by society then they must be of the opposite sex; if they are not of the opposite sex then the hate of difference that is in society should be expressed in legislation. In a plural society we might not wonder that such an extraordinary thing might express itself, even through representatives in a many-numbered place like this. But when it is not just the majority of but the leaders of both the big parties who are putting hate in front of love in the expression of legislation then one does indeed worry for one’s country, not just for the parliamentary system.

The Prime Minister, in his extraordinary way, has said: I don’t seek in any way to discriminate against them.

He was meaning, and he says in a following sentence, homosexual people. It is a classic prodromal statement to the following discrimination: ‘I have friends, but,’ or, ‘I don’t want to hurt them, but,’ or, ‘You have to be cruel to be kind, so.’ To the Prime Minister’s words ‘I don’t seek in any way to discriminate against them’ add ‘but I am going to anyway.’ From the debate triggered by George W. Bush, the extreme right-wing fundamentalist currently empowered in the United States, John Howard has said, ‘I will follow suit and discriminate against Australians.’ This is the man who said he would be Prime Minister for all of us. But he has in the past held off. When Pauline Hanson came into this place and introduced racism into the debate of this great parliament, the Prime Minister said nothing for five months. We know the story; I will not repeat it. It is about small-mindedness, narrow-mindedness and vilification—by innuendo or even failure to speak up—of boat people, Indigenous people and people who may have different points of view.

Today the Prime Minister takes that a step further. He says: I support marriage because I believe it provides stability in relationships, because it is a public expression of commitment ...

No, he does not. He only supports that if you size up to his assessment of what is okay. If you do not, he does not support marriage providing stability and being a public expression of commitment. If you happen to be a same-sex couple, he not only does not support it but is also going to legislate so you cannot have it. He wants you to be unstable,
he wants you not to be committed and he does not want you to go public with it. It is all the old repression: set them aside, make them in some way different. Will we next have a Prime Minister saying, ‘Put a patch, a triangle, on their coat’? That is where the politics of hate can take you. The words of the Prime Minister are very subtle. He says:

... I think the overwhelming majority of the Australian people support this change.

I think the overwhelming majority of Australian people have always taken for granted what we propose and would share the view that it should be put beyond argument so far as the law of this country is concerned. ‘They’, he said, speaking for this fictional overwhelming majority, ‘don’t see it as discriminatory.’ That is the next problem when you have a leader who is narrow-minded, who is divisive, who hates people of a certain category, but who says, ‘Most of the rest of the people do, so I can justify that.’

Senator Coonan—Mr Acting Deputy President Chapman, I rise on a point of order. I know that the constraints of time are putting people under great pressure this afternoon, but I would ask Senator Brown to withdraw the imputation that the Prime Minister hates certain people.

The ACTING DEPUTY PRESIDENT (Senator Chapman)—I would deem that as an unparliamentary expression, Senator Brown, and I ask you to withdraw.

Senator BROWN—No, I will not, because that is the truth. That is what is being expressed here today. This is hate legislation.

The ACTING DEPUTY PRESIDENT—Senator Brown, I ask you to comply with the ruling of the chair.

Senator BROWN—I will not, because I am stating the situation as I see it. I have been cogently developing this argument. This is not a Prime Minister who loves everybody regardless—

The ACTING DEPUTY PRESIDENT—Senator Brown, I have asked you to withdraw.

Senator BROWN—Yes, you have.

The ACTING DEPUTY PRESIDENT—Are you going to withdraw?

Senator BROWN—No, I will not withdraw.

The ACTING DEPUTY PRESIDENT—In that case, Senator Brown, I have no option but to name you and would ask you, in that context, to either apologise or give an explanation for your refusal to withdraw.

Senator BROWN—I will take the second course. I have been explaining that you cannot be on one or the other side of a divide with discriminatory legislation like this. The people who are on the receiving end of this discriminatory legislation will find it hateful. It impacts on them. It is not a loving message coming from the Prime Minister; it is the opposite. I have said that this is legislation of hate. I have said that this is a message of hate coming from the Prime Minister. It came from George W. Bush initially. It is not going to be changed by me saying, ‘Well, I shouldn’t make that statement.’ The Prime Minister brought the legislation in. I did not. The Prime Minister is discriminating. I am not. Discrimination is hate in this circumstance and it is not unparliamentary for me to say so. It is quite proper for other people to argue that that is not the case. The Prime Minister can do that for himself. He has argued that this is not discriminatory. I say it is. When you discriminate against people, they feel they are being hated. If the Prime Minister feels that that is not the case then let him argue it. But that was what happened in the past with discriminatory laws against people of other races. They were based on hate and fear. This legislation has those same components but it is aimed in a different direction.
The Prime Minister could well have left this legislation off the agenda. He brought it forward to put it in the face of the Australian people on the eve of an election. Sadly, the opposition have felt that the Australian people would not be mature enough to see it for what it is and dismiss it. That is their decision, but the motivator here is the Prime Minister. I am not going to do other than call a spade a spade and say it as I see it. The Prime Minister can speak for himself; I can do likewise.

Senator Coonan—I think it is a matter of great regret, given the time, the hour and the day on which the Senate is sitting, that we have to have this kind of debate. It is clearly not appropriate to be reflecting on another member, particularly the Prime Minister in the sense of saying that the Prime Minister hates. Senator Brown has given an explanation as to why he has not withdrawn.

The ACTING DEPUTY PRESIDENT—Minister, you have to simply move the motion or determine that you are not going to move the motion. You cannot speak to the motion.

Senator Coonan—I cannot speak to the motion? At least, I have to move it first, obviously. In those circumstances, I do not propose to move a motion that Senator Brown be removed.

The PRESIDENT—Senator Brown, I invite you to continue your speech on the second reading.

Senator BROWN—Thank you. In that wise move by Senator Coonan, she said that we ought not reflect on other people in this parliament. If only the Prime Minister would set the example. What a reflection on same-sex couples this awful, nasty legislation is. What a reflection it is that they should be shut out, that they should be discriminated against—that the law should be not for people who love each other but for people who are heterosexual, and not for couples who are of the same sex.

There was an SBS Newspoll on this matter quite recently. Rather than this overwhelming majority the Prime Minister talks about, it showed that, with a majority of 44 to 38, people were opposed to same-sex marriages in Australia—but that was with the leader of the country advocating that point of view. I have been around long enough to see the enlightening of times. These are the sorts of figures we used to see with regard to same-sex people not even being allowed to live together only 20 years ago. Now it is 90 per cent to 10 per cent or 80 per cent to 20 per cent. It will be the same with same-sex marriages a little further down the line. If we had leadership of quality in this country—if we had a Prime Minister and a Leader of the Opposition in this country who were prepared to lead on important community values—those figures would turn around and we would see people feeling comfortable with instead of fearful of difference and variety.

Finally, because I know there will be debate in committee and since we have been guillotined by the big parties, I ask: how can they do this to the young people of Australia who are just finding their sexuality—these numberless young people, quietly finding their own sexuality and feeling that they may be left out? This is a message from both the parties to thousands of wonderful young people who happen to be homosexual—gay or lesbian—that they are different and that they are substandard.

What a message from the Prime Minister of the day to those lovely young Australians! How dare he. How dare the Leader of the Opposition follow suit. How dare members say that to young people in that position when we should be saying: ‘Be proud of yourselves. Celebrate yourselves.’ This soci-
ety celebrates difference. Shouldn’t that be
the message from this parliament? Isn’t this
the great Australia that celebrates differ-
cence—nature’s own difference? Of course it
is and of course that day will come. But here
again on black Friday it is not to be. The big
parties have fallen under the thrall of nega-
tivity.

The legislation will get through and will
do untold harm to many people who will
suffer the waves of discrimination coming
from Capital Hill, wherever they are in Aus-
tralia. More enlightened times will come,
though, and this will be turned around.

Senator BUCKLAND (South Australia)
(4.24 p.m.)—I seek leave to incorporate the
speeches of Senator Hogg, Senator Denman
and Senator Wong.

Leave granted.

Senator Hogg’s incorporated speech read
as follows—

Firstly, I support the bill.

Having said that, there are two issues that I wish
to raise in respect of this legislation and they are:
• the legislation does not in practice affirm the
  position it is said to affirm, and
• that, in matters such as this, Senators should
  be entitled to a conscience vote on the issues.

This bill was cynically introduced by the Gov-
ernment to ‘wedge’ the members of the Labor
Party causing it internal dislocation and disrup-
tion on a socially sensitive issue knowing that
there was a diverse range of views within the
Labor Party.

Little did the Government expect that Labor
would come to the considered and balanced view
that it did.

Labor not only chose to respect the view that
marriage was between a man and a woman, but
also went further and gave undertakings that it
would remove all forms of discrimination against
same sex couples.

The wedge did not work.

It is a real pity that this bill is being rushed
through the Senate before the Senate Legal and
Constitutional Legislation Committee could con-
sider the implications of the terms of the bill and
suggest any changes that might improve the qual-
ity of the legislation.

Whilst there is an undertaking that the Legal and
Constitutional Legislation Committee will review
the legislation post its passing, it is highly
unlikely that any of the findings of that review
will see the legislation revisited.

The Government asserts that its objective in in-
serting a definition of marriage into the Marriage
Act is to reinforce its belief that marriage can
only be between a man and a woman.

But, it has failed to define at what point in being,
is the sex of a man and/or a woman defined, as
jurisdictions in Australia and overseas have raised
that the psychological belief of sex would be the
determinant factor.

In other words, a person undergoing a sex reas-
ignment from one sex to the other could marry a
person of his/her original sex which would result
in a same sex marriage thus defeating the Gov-
ernment’s stated objective.

This bill imposes no new conditions or require-
ments on marriage.

It does not make any new law as such.

The bill changes nothing that does not already
exist.

2. I fully support that marriage is between a man
and a woman.

Whilst I acknowledge that there are a diverse
range of relationships in our community, I am
firmly of the belief that the sole province of mar-
rriage is the union of a man and a woman to the
exclusion of all others, voluntarily entered into
for life.

My views are an amalgam of basic belief patterns
and structures on which my life is built.

But, I know there are people in my own Party and
on the other side of politics that have the direct
opposite view to mine in this matter.

I respect their view greatly as I believe in in-
stances such as this that they hold those views too
for the deepest held personal reasons and should
not suffer great personal pain and angst in debates
such as this by being constrained by a Party position.

Therefore, in issues such as this, I believe, and have said consistently, that all politicians should have access to a conscience vote such that they are not forced to be at odds with their innermost fundamental and most fervently held beliefs on social issues like this.

I respect the fact that others do have loving and fulsome relationships outside the concept of the traditional marriage.

Marriage between a man and a woman is the fundamental basis of the organisation for our society and its uniqueness should be maintained to the exclusion of the many other diverse forms of relationship that exist today and might emerge into the future.

Senator Denman’s incorporated speech read as follows—

Australia in the 21st century ought to be renowned as a tolerant society. It should be respectful of the rights of all of its citizens.

I have to say that I have been extremely disappointed with the lack of tolerance and respect shown by some Australians during the debate about this legislation.

Instead of being a piece of routine legislation designed to codify standard practice, it turned into a campaign by some to vilify others in the community.

Some of the letters and emails I have received in relation to this legislation have been considered and passionate, reflective of genuinely held views. But others have sadly displayed a level of intolerance and even hatred which have no place in the Australia of 2004 and beyond.

I was dismayed by those who used the recent Marriage Forum here in Canberra to denigrate others.

I have pondered the legislation many times. I have wondered whether it is necessary. After all, it simply states the practice which we have followed in this country for many years.

The Prime Minister originally announced that this bill would be a part of a series of measures pertaining to relationships.

Quite appropriately, the proposed measure in relation to restricting inter country adoptions has been shelved. Adoptions are the responsibility of the states and territories and those are the appropriate jurisdictions in which those matters should be considered.

Sadly, whilst this Bill, has once again, somewhat hastily, been brought before the Senate, there is no proposal from the Government to address the other issues foreshadowed by the Prime Minister.

I make no apology for listening to and considering the matters which all of my constituents raise with me. I have always been and advocate for tolerance and against discrimination.

For too long, some Australians have not enjoyed the same rights and opportunities as others.

But the time should have been long gone when addressing these matters ought to have become a way of driving a further wedge between Australians.

This legislation has two purposes. First of all it formally defines marriage in the manner in which it has been traditionally accepted in this country.

It seems that this remains the view of the majority of Australians. I am not convinced that there is anything inherently unfair or unjust in the enactment of the provision.

But there should not be permitted to be made, thereby, any assumptions which would purport to reduce the rights and privileges of Australians who choose to live in other forms of relationship.

Sadly I know that some will so interpret the passage of this legislation.

It is thus imperative that appropriate other legislation be enacted to protect those rights and privileges. Such legislation, to me, is just as important, and I am pleased that we on this side of the House, along with a majority on the cross benches agree.

I hope that in a very short time that the personal views that many of those opposite will prevail over the seeming intransigence of the prime Minister and the Government in dealing with these important issues of equality.

The same ladder of opportunity should be available for all Australians. Some rungs should not be
removed because of the status of the relationship in which Australians choose to live.

I will return to this issue later.

The second aspect of this legislation would ensure that same sex marriages, permitted under laws of other countries, would not be recognised as marriage in this country.

Again, I accept that this is the considered view of the majority of my constituents in Tasmania and of the Australian people. This may change in the future, as has obviously been the case in other jurisdictions, but for the time being, at least, it is not inappropriate for the law of this country to so reflect community wishes.

I note that this is not, however, the view of all Australians, particularly many young adults, who have presented their alternate position to me. But I am equally certain that the majority of Australians also believe that people who choose to live in relationships other than marriage as defined by this legislation, should not thereby be denied basic rights and privileges.

Every state and territory in Australia, with the exception, as I understand it, of South Australia has responded to this community expectation.

Legislation has been enacted in each of the seven jurisdictions which provides appropriate equality before the law with respect to matters such as intestacy, property matters, medical decision making, statutory compensation acts and state superannuation.

The Commonwealth must follow suit. Just as both sides of the chamber have agreed that this bill ought to be enacted, so too should it be agreed that legislation protecting the rights of all Australians, regardless of their relationship status, be introduced and passed.

In fact I believe that the latter is even more necessary.

Whilst it is possible to argue that the provisions of this Bill, are already the law in this country, it is not the case with the other reforms. They are essential to ensure we provide equality for all Australians.

And I should emphasise that whilst it is often gay, lesbian, bisexual and transgender Australians that are seen to be the most outspoken in their rightful pursuit of these rights, there are many other Australians in relationships, which do not enjoy the rights of others.

Take for example, never married siblings living together, other companion and caring relationships and like situations.

I accept that it is the community’s expectation that marriage, as set out in this Bill, be a heterosexual institution. I therefore support the legislation.

I have to say, however, that I would be a great deal more comfortable in doing so, if I knew that there was other legislation in place or, at least, forthcoming which would deliver appropriate rights and privileges to other Australians, who choose forms of relationship other than marriage.

In my view there may possibly be no need for the current bill, if this other legislation were already in place.

I state my commitment, in the time that I have left in this place, to seek appropriate equal rights for all forms of relationships accepted within this country.

I should make it clear that I am not advocating open slather. I am not in favour of the legitimisation of bigamy, child marriages or the like.

But it is a fact that the other relationships, to which I have referred, are accepted in Australian society, as evidenced by the passage of the legislation in the states and territories.

I am proud to be a senator, representing the tolerant new Tasmania of the 21st century.

Tasmania now has what are regarded as some of the most progressive relationship laws in the World. And as it happens contrary to the expectations of some, hell and damnation has not been wrought upon our beautiful island.

Tasmania has taken the substantial step of introducing a partnership registration scheme.

The Tasmanian Partnership Registration Scheme allows for everyone in a significant personal relationship to so register that relationship with the Registry of Births, Deaths and Marriages and to receive a certificate of registration.

The legislation is wide ranging. There are two categories of registration. One which covers both
same sex and what we generally know as de facto couples and a second for non-conjugal couples. Couples in each category must comply with the relevant criteria in order to be registered. Entry into and termination of registered relationships is regulated in the same way as marriage.

This is a serious and valuable advance in legislation. Whilst registration extends no further rights, other than in relation to parenting, it serves the key purpose of providing couples in legitimate relationships with a recognised and simple way of proving the relationship if challenged.

There may be other methods of achieving the rights which ought to be afforded to Australians in relationships other than marriage but it has succeeded in providing equality, and also, I believe, extending tolerance within the Tasmanian community. It has provided dignity.

I believe that rather than create division in our society, as some would have had it, measures such as this, have brought Tasmanians together. It had significant support across party lines and was supported by the traditionally conservative Tasmanian Upper House, which has a majority of independent members.

Recently, one constituent wrote to me in these words, ‘I have seen the positive change that the legislation has brought about in attitudes in the community in general and in the self esteem of many Tasmanians living in same sex couples.’

I have no doubt, from my own observations that he is correct.

Similar registries exist in many Western European countries and in some US states. Great Britain and New Zealand are both expected to pass similar enacting legislation this year.

Each of these jurisdictions have already or are in the process of acknowledging the importance of legislation which extends standard rights to all citizens, regardless of the relationship they are in.

Why should an unmarried sister on the death of the sibling with whom she lived, or a gay man or woman in a similar situation have to go through the heartache of having to prove the relationship or survive the challenges of other relatives, in order to receive the benefits their partner would have wanted them to have.

In drawing my remarks to a close, I affirm my support for the passage of the bill.

In doing so, however, I also urge all senators to consider the real need for other legislation necessary to ensure appropriate recognition of all personal relationships and the rights that flows therefrom.

Senator Wong’s incorporated speech read as follows—

It is necessary in politics to place decisions and actions in their context. The decision of the Howard Government to introduce this Bill to amend the Marriage Act has not been taken in a vacuum. This decision has been taken in the context of eight years of decisions made in the interest of political gain, at the expense of the cohesion of the Australian community.

It is in the context of the Prime Minister’s response to the High Court’s Wik decision, where the Howard Government moved to extinguish native title under the false claim that suburban backyards were at risk of being taken by indigenous Australians.

It is in the context of the Prime Minister choosing to quietly endorse the sentiments of Pauline Hanson in an attempt to manipulate her support base.

It is also in the context of the Howard Government’s false claim that asylum seekers threw their children overboard in order to find safe haven on our shores. That claim came as we approached the last election, and was a cynical stunt designed to denigrate people—to make some people seem less decent and therefore less worthy—in order to gain votes. It sought to create a community of ‘us’ against ‘them’.

And the Prime Minister’s decision to amend the Marriage Act now is in the context of an election that is likely to be held within weeks. The Prime Minister would dearly love this to be the new Pacific Solution.

Above all else, this bill comes in the context of the new political correctness of the Howard Government’s Australia. This Prime Minister is always keen to accuse those who work for a fairer
Australia of being motivated by some apparently twisted desire to be politically correct. Well, what is politically correct is not fixed, but instead is what is popular, and this Government has made the populist and subtle denigration of minorities their meal-ticket. Over the past few years, any vestiges of fairness as correctness have been eroded and replaced with prejudice as correctness. A nod and a wink to prejudice is seen as a legitimate political tactic.

If people oppose the Howard Government’s agenda in relation to this Bill, I hope they recognise it belongs in the context of the Howard Government’s broader agenda to undermine the achievement of fairness—of social justice—in Australia. If people are offended by the Prime Minister’s manipulation of prejudices for political advantage in this instance, they should consider that this is not the first instance of such manipulation. And they should recognise that while oppositions and minor parties may tinker with the details of legislation, governments bring forward laws, and the tone of the national debate is set by the government of the day. Prime Ministers in Australia, like presidents in the United States, have a unique platform from which to frame national identity.

When the Prime Minister said recently that Australia has finally gotten over the debate about our national identity, what he really meant was that he had gotten over it, and he believes his view has prevailed.

In terms of the specific effects of this legislation, it has minimal practical effect. It reaffirms the existing common law and statutory definition of marriage. It does not change the legal definition, other than to add the phrase, ‘entered into for life’. Of course marriage is intended to be for life but can never be guaranteed for life—and marriages certainly won’t be more likely to survive because this phrase is included.

The Government has attached much weight to this legislation, to this bill that simply confirms the existing law. Perhaps they believe it serves a symbolic purpose, that it will somehow demonstrate they really care about Australia’s families. Perhaps they hope that it will distract attention from some of the everyday hardships and difficulties Australian families face on their watch. Raising health costs, being unable to find a bulk-billing doctor for your children or an aged care bed for your parent, the increasing costs of education—these are some of the daily problems families face.

The Government’s attempt to use this legislation as a distraction from these issues is self-evident. It is further exposed by their pathetic attempts to misrepresent Labor’s position on the bill, and the dishonest and prejudiced scare campaign attempted by those opposite.

From the government who ignored the vast majority of Australians in their recent spree of tax-cuts for the wealthy, the government that strips families of their tax return in their heavy-handed management of their flawed family benefit system, the government that failed to fund the pneumococcal vaccine, and continues not to fund appropriate polio and chicken pox vaccines for Australia’s children—from this government we now hear long loud declarations of their support for families.

And they offer up a bill that simply restates the current legal definition of marriage as evidence of this.

The restatement of the definition calls to mind another famous statement by the Prime Minister, that ‘we will decide who comes into this country, and the circumstances in which they come.’ That statement was made at the Liberal Party campaign launch before the last election. It was a statement of fact, not a new policy initiative. It simply emphasised a long standing predicament.

The Prime Minister made that statement with a view to capturing nationalist sentiment in the wake of September 11 and the arrival of asylum seekers by boat, and wanted to subtly link the two. Now he restates the definition of marriage, not because there has been any concerted move to change the definition—there hasn’t, not by lobby groups and not by parliamentarians—but because he wants to beat his chest about how conservative he is.

Perhaps the next Liberal slogan will be ‘We will decide who gets married in this country, and the circumstances in which they marry.’ One thing the Government is not always able to decide is the circumstances in which children are
raised, and unless they forced gays and lesbians to be sterilised, there is little they can do to stop loving same sex couples bringing up their own children.

Nevertheless, the Prime Minister has also tried to make it impossible for same-sex couples to legally adopt children from overseas.

This is what we have come to know under this government as the dog whistle: an appeal to people by implication rather than explicit meaning. With the children overboard affair, the Prime Minister and his government implied that asylum seekers were prepared to terrorise Australians and even their own children in order to achieve asylum. Now, the Prime Minister is tapping into a deep-seated prejudice held by some in our community that lesbians and gays are unsuitable parents. He wants Australians to believe that sexuality is the sole criteria for good parenting.

Many in our community have not witnessed the reality of lesbian and gay parenting and so are closed to the possibility that it might not be as dangerous as they might assume. That hesitation is a typically human one. It is hard to understand something which is not in the realm of your experience and not what you’re used to—that goes for most of us.

In fact, lesbian or gay parents want and have children for many of the same reasons that other parents do. And like all parents they do the best they can for the children they have.

Above all, it is hard to argue that a child’s best interests can be determined by a single piece of legislation. That can only be determined on a case by case basis, and I struggle to understand how a destitute orphan Overseas could be worse off with caring parents in Australia.

Sadly, however, that is what our Prime Minister is saying. He says it is better for a child to live in poverty, in war, without shelter or hope, to be sold into slavery or prostitution, than to be cared for by a same-sex couple, so sickened is he by the prospect of them as parents. I find this deeply disturbing.

My colleague, the Member for Sydney, in speaking on the original Bill, gave some heart warming, real-life accounts of gay and lesbian parenting and I would urge honourable senators to read the Hansard of her speech. Indeed, the Member for Sydney, the Member for Grayndler and a number of my colleagues have been very strong advocates for lesbian and gay Australians. And so have rank and file colleagues in Rainbow Labor, which has since its inception only two years ago, brought the Party a long way forward in recognising that fairness for gay and lesbian Australians is part of our commitment to social justice more broadly.

It is people like these who—out of personal experience or a desire for an Australia that is fairer for their friends and family members—have brought a renewed sense of fairness to Labor’s agenda. A recognition that what is important is what lies between two people—the content of their relationship—not their gender.

We will not say one person’s love is worth less than another person’s love, or that one family is more of a family than any other. Nobody has a monopoly on commitment and love, nobody has the right to judge the worth of another person’s relationships.

These are intensely personal issues and the role for government here is questionable; certainly, it is questionable that a government that apparently prides itself on supporting the rights of the individual seeks to curb those rights in the interest of electoral politics.

There are big differences between the Howard Government’s approach on this and our approach, and this is in keeping with the historical fact that it is Labor governments that have consistently delivered same-sex law reforms in this country.

We do not want lesbian and gay Australians to become a political football in the coming election. We reject the Government’s dog whistle on adoption, and we have indicated that we would oppose the Government’s amendments in its original bill on this point. The Attorney-General has blatantly misled the Australian people by saying Labor’s amendment will stop foreign countries accepting Australian couples as adopting parents.

We also recognise that the debate around gay marriage in Australia is actually a fairly new one. Unlike the United States and other countries, the debate in Australia has not focused on marriage but on equality more broadly. In large part that
reflects Australia’s quite comprehensive accommodation of de facto couples in law. In fact, all Australian states, other than South Australia which has signalled amendments to do so, now recognise same-sex relationships in their de facto laws.

Labor will conduct a full audit of Commonwealth legislation, to identify and remove all discriminatory provisions across areas like superannuation, tax, veterans’ affairs, social security and immigration. No other party in Australia will do this. We will also legislate against vilification and harassment on the basis of sexuality.

Labor has also committed to ensuring that same sex relationships have equivalent status to de facto heterosexual couples. Again, no other party in the federal parliament can and will do this. The Prime Minister promised superannuation rights for same-sex couples. However, the Bill has not arrived. It is a Labor MP, the Member for Grayndler, who has been pushing for same-sex super since 1998. The Howard Government refuses still, even this month, to debate that Labor Bill.

Perhaps an analogy that can be entertained on these issues is an American experience. We know that the Prime Minister is inspired by current US policy, to the extent that he even mimics his American mentor’s electoral strategy to ban gay marriage. However, there is a dark chapter in American history that also warrants consideration.

It was once illegal in several states of America for people of different races to marry. Black and white Americans who wanted to marry could not in some states. This was a popular policy across most of America. Nevertheless, in 1967, the US Supreme Court struck those laws down, arguing that the right to marry was one of the most basic human rights. Changing the law didn’t necessarily change public attitudes, for the next year 72% of Americans still opposed interracial marriage.

We have now consigned those attitudes to the graveyard of history where they belong. We condemn them as dated, offensive and bigoted, and we certainly agree that those attitudes were framed by prejudice.

I hope it is only a matter of time before this Prime Minister is similarly abandoned by the Australian people. I hope instead we will look to a future that is about hope and opportunity, and not about old fears. A future about what we can be as individuals and as a nation, not about what we cannot be.

Senator FERRIS (South Australia) (4.24 p.m.)—I seek leave to incorporate Senator Santoro’s speech.

Leave granted.

Senator Santoro’s incorporated speech read as follows—

This bill is not controversial, except for those who want to fundamentally change not only the law of Australia but also a fundamental tenet of our society.

It has the support of the Labor Party, because all it seeks to do is to make it clear that marriage in Australia is a choice made by a woman and a man.

That has always been the understanding of marriage. That has always been the practice in European societies—and indeed in human society everywhere.

Marriage fundamentally helps create social conditions in which monogamy is the practice, the children of marriages have stable and loving homes in which to be nurtured to adulthood, and society benefits from the stability thus created.

It is the ideal. Australians overwhelmingly understand the principle of monogamous marriage for life and most seek to attain this state.

The fact that there are failures, the fact that a proportion of marriage relationships do not work out is no reason to argue for weakening the institution of marriage by legislation.

Neither is there any reason to change the meaning of marriage by extending the law’s recognition of it to people who logically cannot fall within its ambit.

The Marriage Amendment Bill 2004 gives effect to the government’s commitment to protect the institution of marriage by ensuring that marriage means what it has always meant and that same
sex relationships cannot be equated with marriage.
The principal provisions of the bill define marriage in the terms traditionally understood—as ‘a union of a man and a woman to the exclusion of all others, voluntarily entered into for life’ and ‘confirm that unions solemnised overseas between same sex couples will not be recognised as marriages in Australia’.
The problem is that up to now there has been no definition of marriage in the Marriage Act. It was never necessary, since it was universally understood.
However, section 46(1) already requires authorised celebrants, who are not ministers of religion of a recognised denomination, to explain the nature of the marriage relationship before solemnising a marriage.
The celebrant is required say certain words, including: ‘Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life,’ or words to that effect.
This bill amends the Marriage Act so that marriage defined in these terms, in subsection 5(1). It amends subsection 88B(4)—in Part VA of the Act relating to recognition of foreign marriages—by making it clear that the meaning given to marriage in subsection 5(1) applies to Part VA.
I have received a great many representations from Queenslanders and other Australians about this bill and what it proposes to do.
I’m sure every other honourable senator has too.
The majority of the hundreds of representations made to me have been from people who support the amendment of the Marriage Act proposed in this bill.
It is clearly an issue on which huge numbers of Australians feel very strongly.
I have also received strong representations—a lot of strong representations—from people who want the understanding of marriage in Australia to be changed, so that it can encompass unions that are not between women and men.
My view is clear. It is that marriage must be defined as we have always understood it to exist.
There can be no such thing as ‘same sex marriage’.
I respect the views of everyone who makes representations to me, on any issue. It is always a duty gladly performed to give voice in this place to constituents’ representations.
It is clear that a minority of Australians—I suspect a small minority—believe it is time to accord ‘marriage’ rights to couples who cannot naturally have children together.
They see the move towards recognising same-sex marriages overseas as an opportunity to change the fundamental mould of our society.
They are entitled to make such judgements and to propose consequent changes to our basic laws.
The majority of Australians are entitled to reject these judgements and refuse to countenance any act that would have the effect of diminishing the meaning of marriage.
And I believe the majority of Australians do reject the concept of recognising same-sex marriages.
That is certainly not a matter of making moral or any other judgements on the life choices of free Australians. I certainly make none in the context of this bill.
Of course, the amendment to the Marriage Act that we are discussing today expresses a Judeo-Christian view.
That in itself is unremarkable, I would have thought, since it is the fundamental moral basis of our law as well as of our custom.
But objectors to this bill should consider that monogamous unions between a woman and a man have underpinned every successful civilisation in human history.
In this instance, the Judeo-Christian view accords exactly with the views of other religions—and societies whose basic laws originate in the commandments of their own religions—that have no connection whatsoever with our historic faith.
These are points the Prime Minister made with some force in his address to the National Marriage Forum last Wednesday.
The Prime Minister also said that if there is to be a change in the understanding of marriage, this is not something that should happen bit by bit,
judgement by judgement, through a judicial process. If there is to be a change—and I just observe that there is no evidence I have seen that suggests the mass of the people seek such change—then as the Prime Minister says, it should come from the parliament.

Parliament makes the laws by legislation on behalf of the people.

The courts apply the laws and from time to time interpret them.

It is especially important to stick to that convention in matters of serious social policy.

**Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.24 p.m.)—**On behalf of the government, I want to sum up on the Marriage Amendment Bill 2004 and thank honourable senators for their contributions to the debate on this bill. Given the time constraints I referred to a few moments ago, I will be brief and will not be canvassing all the issues that have been raised in the course of the second reading debate. I also thank opposition senators for their support for the measures contained in this bill. I place on record that I recognise, as does the government, that there are dissenting views in respect of the objectives intended by this legislation. These views have obviously found expression in the course of this debate.

The timing and urgency of these measures, however, is brought about by the fact that, if we do not act in parliament to address this matter, the matters that are the subject of this legislation will be left to the judiciary to decide. Much has been made of the fact that no decisions of our courts are challenging the accepted common law definition of marriage, and I remind the Senate that there are already proceedings on foot to seek a declaration of validity in Australia for same-sex marriages performed overseas. That is the reason the government has taken the lead on this issue.

I wish to make it very clear on behalf of the government that these provisions are not about discriminating against anyone. They are about this parliament—and not the courts—making clear the meaning of the fundamental institution of marriage, deciding what the laws will be and not leaving it up to the courts. In summary, the purpose of this bill is to give effect to the government’s commitment to protect the institution of marriage by ensuring that there is a clear definition of marriage in the Marriage Act. The other major provision confirms that unions solemnised overseas between same-sex couples will not be recognised as a valid marriage in Australia.

The issue gives rise, as I said, to strong opinions and I remind honourable senators that this bill reinforces what has always been the traditional, and indeed the legal, understanding of marriage in Australia. I am not sure of the status of the amendments, but I understand that several amendments have been proposed by the Australian Democrats and the Australian Greens. It is the government’s view that the Marriage Act is not the appropriate legislation for these amendments. The bill is dealing with marriage and does not set out in any way to deal with de facto or other relationships. The bill merely seeks to formally confirm the current legal understanding of marriage in this country. The amendments proposed would fundamentally change the nature of the Marriage Act.

In this bill the government seeks to reinforce marriage and its status as a fundamental and special institution in our society. I do not think anyone seriously disagrees with that. This has always been the government’s view and it is what underlines the straightforward provisions in the bill. In those circumstances, and having regard to the time, I commend the bill to the Senate.

Question put: 
That this bill be now read a second time
The Senate divided. [4.33 p.m.]
(The Acting Deputy President—Senator H.G.P. Chapman)

Ayes………….. 38
Noes………….. 7
Majority………. 31

AYES
Barnett, G. Bishop, T.M.
Boswell, R.L.D. Buckland, G.
Campbell, I.G. Carr, K.J.
Chapman, H.G.P. Colbeck, R.
Coonan, H.L. Eggleston, A. *
Evans, C.V. Ferguson, A.B.
Ferris, J.M. Fifield, M.P.
Forsyth, M.G. Harradine, B.
Johnston, D. Kirk, L.
Knowles, S.C. Lightfoot, P.R.
Ludwig, J.W. Lundy, K.A.
Mackay, S.M. Mason, B.J.
McGauran, J.J. McLucas, J.E.
Moore, C. O’Brien, K.W.K.
Ray, R.F. Santoro, S.
Scullion, N.G. Stephens, U.
Tche, T. Tierney, J.W.
Trotter, J.M. Watson, J.O.W.
Weber, R. Wong, P.

NOES
Bartlett, A.J.J. Brown, B.J.
Cherry, J.C. Greig, B.
Murray, A.J.M. Nettle, K. *
Stott Despoja, N.

* denotes teller

Question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BROWN (Tasmania) (4.36 p.m.)—On behalf of the Australian Greens, I move amendment (1) on sheet 4395:

(1) Clause 1, page 1 (line 5), omit “Amendment”, substitute “Discrimination”.

The Green amendment substitutes the word ‘discrimination’ for the word ‘amendment’ in the name of this bill so it would make it the Marriage Discrimination Bill 2004. It is a simple exercise in being honest and truthful. It is one that those who value honesty, if they do not value love in this place, will agree to.

Senator GREIG (Western Australia) (4.37 p.m.)—The Democrats will of course support the amendment because it goes to the heart of the matter. While we have heard much talk and rhetoric today about how the bill is all about reinforcing traditional marriage, the point that I and others have made is that it does nothing of the sort. It denies the fact of the evolution of marriage. It denies the fact that marriage was once banned between interracial relationships. It denies the fact that marriage was once denied the opportunity for divorce. It denies the fact that interfaith marriage was once banned. It denies the fact that marriages were once based on the notion of women being regarded as the property of their husbands—all things which have changed through the evolving paradigm of marriage.

It is a great pity that the opportunity before us today to eradicate one last element of discrimination within the Marriage Act could not be embraced. Senator Brown’s amendment is accurate: the proposal before us is to legislate in stone a definition that quite specifically discriminates against a section of the community. There are those who argue that that discrimination is valid and warranted; nonetheless, that does not change the fact that it is discrimination. We support the amendment.

Question negatived.

Senator NETTLE (New South Wales) (4.39 p.m.)—I, and also on behalf of Senator Brown, move Australian Greens’ amendment (1):

(1) Schedule 1, item 1, page 3 (lines 7 and 8) omit the definition of “marriage”, substitute:
marriage means the union of two persons, regardless of their sexuality or gender identity, voluntarily entered into for life.

This is an amendment which changes the definition of marriage from the one proposed in this legislation. It changes it to read: ‘marriage means a union of two people, regardless of their sexuality or gender identity, voluntarily entered into for life’. This amendment is about recognising that there are a whole raft of different relationships that people enter into and seek to have recognised under the law as a marriage. This amendment says, ‘That institution of marriage, that opportunity and choice for people to have their relationship recognised under the law is available to all people regardless of their sexuality and gender identity.’ They may be intersex people. They may be people who have had gender reassignment surgery and want to have their relationship recognised with their loving partner.

This amendment is about taking away the discrimination that is inherent in the piece of legislation that we are debating at the moment and ensuring that the opportunity for people to have their relationship recognised as a marriage under the law of this country is available for all individuals. This is an amendment that the Australian Greens are bringing in so that all people, regardless of their sexuality and gender identity, have the opportunity to have their relationship recognised under the law as marriage.

Senator GREIG (Western Australia) (4.41 p.m.)—The Democrats will also support the amendment. Our core argument has been that rather than quarantining marriage to a distinct group it ought to be non-discriminatory but nonetheless defined. The definition spoken to by Senator Nettle would do the reverse of what is before us today: rather than prevent lesbian and gay people from accessing civil marriage, it would allow that. Sadly, that is not the path that we are headed on today, unlike other Western countries—Canada, Denmark, the Netherlands and some states of the US—which have at the very least debated these issues sensibly and moved progressively towards the inclusion of same-sex relationships within their jurisdictions.

I note too that there are similar debates in New Zealand and Britain, although based more around the notion of civil unions. Sadly, we cannot do that and it seems there is no prospect of civil unions under a potential Latham Labor government, and there has been nothing but silence from Labor when questioned on that point. It strikes me as quite strange that in other jurisdictions the debate around same-sex marriage so alarmed and concerned conservative MPs and religious organisations that they suddenly announced that what the governments in those countries ought to do would be to bring in relationship registers, civil unions or have some other form of recognition but not marriage.

Curiously, the debate in Australia—or the lack of debate really—and the way it has played out is that both civil marriage and other forms of relationship recognition have been denounced by conservative politicians and religious organisations. The debate in that sense is much harsher in terms of a complete denial of the humanity and dignity of a same-sex relationship and a failure to acknowledge that many in such relationships are raising children. Implicit in that is the notion that such children should be further discriminated against by not allowing their partners to marry. It strikes me as odd that groups which claim to be concerned about the family are the same groups which so readily and happily condemn same-sex relationships with children in them, even though—surely—the best interests of those children should be their principal concern.
These groups would argue that same-sex couples ought not be having children, but the fact is that they are. You cannot stop lesbian and gay people from having children. There are increasing numbers of lesbians having children. Most often children in same-sex relationships are from previous heterosexual relationships, but increasingly we are finding, through fertility programs, adoption and access to IVF, many same-sex couples—mostly women—are having and raising children. If we truly believe that the best environment in which children can be raised is marriage, why would we possibly deny that to same-sex couples raising children? The amendment Senator Nettle has moved would incorporate that and would allow for a broader range of definitions. It is more inclusive and much more reflective of the direction the Democrats would like to see Australia take.

Senator STOTT DESPOJA (South Australia) (4.44 p.m.)—I rise to support the comments of my colleague. Rather than unnecessarily dragging out this debate by speaking in addition to Senator Greig, I have sought permission from other members of the chamber to incorporate my speech notes that encapsulate some of my views. They would have been much broader and longer had there not been a guillotine in place today. I seek leave to incorporate my notes on the amendments and the Marriage Amendment Bill 2004.

Leave granted.

The speech read as follows—

I wish to incorporate some of my views about the proposed amendments to the Marriage Act contained in the Marriage Amendment Bill 2004, although due to a guillotine I did not have the opportunity to speak to this legislation.

Clearly, this is a Bill the Government considers to be of national importance, originally listing it for debate prior to an Anti-Terrorism Bill, the Telecommunications (Interception) Bill and the Surveillance Devices Bill. So important is it to the Government that Gay and Lesbian couples not be able to marry or adopt, that they have swept aside other legislation to deal with this Bill. And, unfortunately, as I feared, the Labor Party have helped them do it. In fact, so willing are the Labor Party to help the Government get their agenda through the Senate that they have agreed to a guillotine on this legislation to ensure it passes before the Senate rises, potentially for the last time before a Federal Election.

This Bill has already been before the Senate. The Senate decided the Bill required further examination and sent it to Committee. This Committee has received an extraordinary number of submissions, and members of the Committee have been working through them over the past months. The Committee was due to report on October 7, now it would seem that this Committee’s work has been a waste of time.

Content to subvert the democratic process, the Labor Party have allowed the Government to bring this Bill before the Senate today, and at the conclusion of debate, they will renege on the Gay and Lesbian community and support this Bill. Sadly, for the third time today, the Labor Party will capitulate and support a Bill which is not in the best interests of Australia.

At a time when many parts of the world are moving forward, and recognising that relationships and families come in all shapes and sizes, Australia is moving backwards. This Government is seeking to enshrine in law the nuclear family, to the exclusion of all others. It speaks of supporting families, but means only some kinds of families, and only some of the time.

This Government has shown itself willing to amend the Marriage Act 1961 in what they purport to be the best interests of families, yet they have made absolutely no effort to introduce Paid Maternity Leave, or other measures that would genuinely help Australian families. This Bill isn’t about protecting families it is about discriminating against gay and lesbian couples. It is a blatant attack on gay and lesbian relationships, an indication that while gay and lesbian relationships may be tolerated, they certainly are not entitled to the same rights, privileges and protections as heterosexual relationships. It is legislative proof that
Gay and Lesbian couples are second class citizens, and signals to the community that the Australian Government that this kind of discrimination is acceptable, and even sanctioned.

As Ms Ruth Thompson, convenor of Equal Opportunity Practitioners in Higher Education Australasia noted

‘My organisation has a particular interest in ensuring that education and employment in the higher education sector is free from discrimination and harassment, and provides inclusive work and study environments. The proposed legislation is divisive and sends the wrong message to the public on what constitutes acceptable community standards’.

I should clarify though, not all members of the Government are as apparently gung ho about this regressive and discriminatory attitude to gay and lesbian couples. The Hon. Trish Worth, member for the seat of Adelaide in my State of South Australia, has apparently opposed these amendments. As The Advertiser reported on July 5, Ms Worth apparently spoke in the Party Room in opposition to the Prime Minister’s efforts to ban same sex marriage, fearing that it would cost her votes. The seat of Adelaide is one of three key marginals in South Australia, and a seat held by the merest margin of .62 percent.

In an effort to avoid this backlash, Ms Worth contacted concerned constituents via a letter which said she believed the move to be ‘completely unnecessary’ and stating that, in her view, ‘the Government does not need to take such a heavy handed approach to an issue that...does not need to be fixed’. She further said while she saw no real need for same sex marriage, she understood ‘meaningful same-sex relationships and respect those relationships as I would any other relationship’. If only this were an attitude shared by her Government colleagues, and the Opposition. Unfortunately, it’s not. They are willing to create a hierarchy of relationships which exalts heterosexual marriage for the continuation for the species and which utterly disregards other relationships. This is 2004, in a pluralistic society. This when other nations are embracing the modern family. This when other nations are proactively supporting happy healthy relationships, and legislating to ensure that gay, lesbian, transgender and intersex people enjoy the same legal rights as all other people, the legal rights that international instruments guarantee them.

Perhaps it should not come as a surprise that this Government is willing to enact legislation which breaches international instruments, including the Hague convention and other human rights instruments. They have shown repeatedly that international law and international instruments are not worth the paper they are written on. They have shown time and time again a willingness to erode, and tear down principles of law constructed over decades, and sometimes centuries.

I am not surprised that this Government has pursued this agenda. They have shown again and again over their 8 years in Government a willingness to discriminate against gay and lesbian couples. However, I thought better of the Labor Party. For all their supposed commitment to the GBLT community, the Labor Party’s legislative record in this area is woeful, and today they will soundly demonstrate where their loyalties lay in populist politics, rather than with the groups who they claim to represent.

At a time when our country is crying out for leadership, not poll-driven populism, and not the ‘isn’t wasn’t my fault you were misled, I don’t have an obligation to ensure the information I provide the public is accurate, well there aren’t any weapons, but there might have been’, politics we have seen over the past few months from this Government, the Labor party have capitulated. As many of the emails I received said, the Labor Party should be showing their credentials as an alternative Government, not as a Party willing to do whatever the current Government wants for fear of public backlash.

Ms Thompson, also appropriately said,

‘At a time of deepening community divisions due to the Iraq war, the Marriage Bill is a diversion which non-government parties should place squarely in perspective. As the alternative government, the Labor Party should show genuine leadership by: 1. not pre-empting the Senate enquiry, 2. demonstrating a public commitment to building inclusive social values’

Let me remind Labor Party members in this Chamber, in the lead up to a federal election, of
the poor record of this small target strategy. If they are wanting another three years on the Opposition benches, their continual kowtowing to the Government’s agenda will ensure it.

This has been a shameful week in the Senate. It began with the news that our High Court will allow as Constitutional the locking up, potentially for life, of detained persons who have done nothing wrong. It ends in Friday the 13th with a guillotine designed to thwart any democratic debate on the issues before us. Shame.

I note that I am the only South Australian Senator opposing this move by the Government.

Senator Ludwig (Queensland) (4.45 p.m.)—Labor do not support the amendments. We made that clear during the second reading debate. Labor have in fact made clear that we will not support a change to the existing legal status of marriage.

Senator Coonan (New South Wales—Minister for Communications, Information Technology and the Arts) (4.45 p.m.)—The government does not support the amendment for the reasons I outlined in my summing up speech. The government is seeking simply to reinforce marriage and its status and to give effect in legislation to what is the common legal understanding of marriage.

Senator Nettle (New South Wales) (4.46 p.m.)—I thought I might explain why the Greens’ amendment has this particular wording. We made it intentionally broad so that it says ‘regardless of sexuality and gender identity’ as a way to include individuals who may have intersex condition or transsexual people who may have had gender reassignment surgery. That is the intention of the amendment and why it is broad—to ensure that all individuals, regardless of their current sexuality or change in their sexuality during adult life or childhood, have the opportunity to access the institution of marriage if they so choose. I wanted to explain why we have phrased this particular amendment in the way we have.

Question negatived.

Senator Nettle (New South Wales) (4.46 p.m.)—I move the Greens’ amendment R(2) on sheet 4338 revised, in both my name and the name of Senator Brown:

R(2) Schedule 1, item 3, page 3 (lines 15 to 19), omit section 88EA, substitute:

**88EA Certain unions are marriages**

A union solemnised according to the law of a foreign country between two persons, regardless of their sexuality or gender identity, voluntarily entered into for life shall be recognised as a marriage in Australia.

This amendment ensures that marriages between two persons, regardless of their sexuality and gender identity, that have been entered into according to the law of a foreign country shall be recognised as a marriage in Australia. This amendment is to make it clear that individuals who have chosen to have their relationship recognised in another country, perhaps another country with a more enlightened view of the types of relationships and marriages that people experience, can have that relationship equally recognised in Australia when they choose or if they choose to come back to or to live in Australia. It is an opportunity to recognise those people because they have not had the opportunity to have their relationship recognised under Australian law and have chosen to make an often difficult choice to travel overseas and go to a country in which they can have their relationship recognised. They have gone to that effort because they specifically wanted to have their relationship recognised under the law. This amendment says, ‘Your relationship will be recognised under Australian law. If you have gone to a country and married under a legal system that is more enlightened than the one we have here and in which your relationship is recognised, it will be recognised here in Australia as well.’ That
is what the second Australian Greens’ amendment seeks to do.

Question negatived.

Senator GREIG (Western Australia) (4.49 p.m.)—I move Democrat amendment (1):

(1) Schedule 1, item 1, page 3 (lines 7 and 8), omit the definition of marriage, substitute:

marriage means the union of:
(a) a man and a woman; or
(b) a man and a man; or
(c) a woman and a woman;

to the exclusion of all others, voluntarily entered into.

And the Democrats oppose schedule 1 in the following terms:

(2) Schedule 1, item 3, page 3 (lines 13 to 19), to be opposed.

Democrat amendment (1) is to help make clear, since the original bill was mooted, that we are strongly opposed to the government’s attempts to use gay and lesbian, bisexual, transgender and intersex people as a political wedge. We have consistently attempted to achieve reform in this area for some years and we support an end to discrimination of all kinds of GLBTI individuals.

We too propose that discrimination within the Marriage Act ought to be removed, to the extent of broadening the opportunity for those who might seek civil marriage. So for us amendment (1) would change the definition of marriage or substitute it so that marriage would be: ‘The union of a man and a woman, or a man and a man or a woman and a woman to the exclusion of all others, voluntarily entered into.’ We make the point that, in coming up with that definition, it struck as odd that so frequently throughout this legislation—and indeed, as I understand it, the legislation that will be passed—the definition of marriage includes the words ‘for life’ at the end of it. In other words, marriage is voluntarily entered into for life. But, of course, there are many people who do not enter into marriage for life. That would certainly be their aspiration, their expectation and their hope, but many marriages end in separation and divorce. It seems a falsehood to us to claim that marriage is entered into for life, because that is simply factually untrue. It may be the aspiration, but for so many people it is not the case. We have narrowed that definition so that it simply reads ‘to the exclusion of all others, voluntarily entered into’. Certainly we support and endorse the aspiration, but we think that to legislate for a definition that would ensure that marriage has to be for life is just not a factual reflection of society.

The Democrats also oppose item 3 in schedule 1. The intention of this is to effectively ban overseas marriages to prevent the recognition of foreign marriages in Australia. We strongly oppose that. I have spoken to that at length already. We argue that, simply because other Western democracies have gone down a greater human rights path than we in Australia have, and many now formally recognise same-sex civil marriages, we ought not be in a position to deny that. That means that those Australian citizens who may lawfully marry overseas ought to be regarded as lawfully married in Australia. The intention of the first part of these two amendments is, firstly, to broaden the definition of marriage to do the reverse of what is before us in terms of allowing for same-sex marriages; and, secondly, to overturn the proposed ban on recognising overseas marriages from comparable jurisdictions which do recognise and validate civil marriages for same-sex couples.

Senator LUDWIG (Queensland) (4.53 p.m.)—For the same reasons I articulated in relation to the amendments moved by Senator Nettle—although these amendments are in a different form, in part they have the
same effect—the Labor Party has been clear that it does not support a change to the existing legal basis of marriage in Australia. Labor will not be supporting these amendments.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.53 p.m.)—I will speak to both of the proposed amendments to schedule 1. I repeat that the government’s clear position is that the legislation confirms and clarifies the existing common law, both with regard to the definition of marriage and the recognition of overseas same-sex marriages. The government, for the reasons I have already outlined, will not be supporting the amendments.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that item 3 in schedule 1 stand as printed.

Question agreed to.

Senator GREIG (Western Australia) (4.54 p.m.)—by leave—I move Democrat amendments (1), (2) and (4) on sheet 4392:

(1) Schedule 1, page 3 (after line 4), before item 1, insert:

1A Title
Repeal the title, substitute:
An Act relating to relationships

(2) Schedule 1, page 3 (after line 4), before item 1, insert:

1B Section 1

(4) Schedule 1, page 3 (after line 8), after item 1, insert:

1D After section 51
Insert:

51A Relationships recognised by the Commonwealth

(1) The Commonwealth recognises two adult people who live together, in accordance with the conditions in this section, to be in a relationship.

(2) For the purposes of this Act, a relationship is a relationship between two adult persons:

(a) who have a relationship as a couple; and

(b) who are not related except as provided by this section.

(3) In determining if two persons have a relationship for the purposes of this section, all the circumstances of the relationship may be taken into account, including but not limited to the following matters so far as they are relevant in a particular case:

(a) the duration of the relationship;

(b) the nature and extent of the common residence;

(c) whether or not a sexual relationship exists;

(d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties;

(e) the ownership, use and acquisition of property;

(f) the degree of mutual commitment to a shared life;

(g) the care and support of children;

(h) the performance of household duties;

(i) the reputation and public aspects of the relationship;

(j) whether the relationship is regarded in a law of a State or a Territory as:

(A) a de facto; or

(B) a domestic partnership; or

(C) a significant personal relationship.

(4) This Act confers the same rights and entitlements, and imposes the same obligations, on a person in a relationship with another person of the same sex, or
when either or both are transgender or have an intersex condition, as is recognised or imposed by Commonwealth law for a person in a de facto relationship.

(5) This Act enables two adult persons of the same sex, or when either or both are transgender or have an intersex condition, to be registered in accordance with the registration provisions of this Act as if the relationship were a marriage.

Democrat amendments (1) and (2) combine to amend the title of the Marriage Act 1961 to make it consistent with subsequent Democrat amendments that recognise a broader range of relationships within the scope of the act. Amendment (1) amends the title of the act to read ‘An Act relating to relationships’. Amendment (2) renames the Marriage Act 1961 to read ‘Commonwealth Relationships Act 2004’.

Debate on whether same-sex couples should be afforded equal relationship recognition to heterosexual relationships, whether through marriage, de facto recognition or some other form of civil union or registry, has been the subject of much debate over recent years not only in Australia but across the globe. The shadow Attorney, Nicola Roxon, says that the Labor Party supports the ban on same-sex marriage because marriage has only ever been between a man and a woman, and at any rate consultation with the gay and lesbian community has always focused on de facto recognition, with no particular consensus on marriage.

It is true that the domestic debate within the gay and lesbian community has, for the most part of the last decade, focused on the extension of equal recognition of de factos. In many ways, this has been because it has been expedient to do so. Advocates recognised that, in order to achieve relationship recognition at all, state and territory campaigns that were focused on achieving equal de facto status for same-sex relationships were more likely to be successful—and they were, at least at a state level. Each state and territory in Australia now recognises same-sex relationships in one form or another—with South Australia still lagging behind as the last state to implement broader reform—and has ensured that the very serious discrimination experienced by people in same-sex relationships and their children has not yet been addressed.

To argue, however, that a focus on de facto recognition as part of a federal relationship reform campaign or an apparent lack of lesbian and gay community consensus on marriage justifies a ban on marriage is just absurd. It is true that there is little consensus within the broader lesbian and gay community on marriage. Some same-sex couples desire to marry; others do not. Some community members believe marriage maintains its position as a relevant institution in a modern society, while others have equally deeply held convictions about the institution’s inherent worth. This divergence of views is no reason to prevent lesbian and gay couples who do want to get married from being able to do so. No-one would seriously suggest that, because some heterosexual people do not want to get married, or believe that marriage is outdated, no heterosexual person should be able to marry. It is clear that lesbian and gay communities are united in their views about marriage in a number of other respects, most specifically with the notion that it ought to remain an option. Our amendment goes to the heart of that.

In Australia, Tasmania has gone down the path of its Relationships Act, which I note was not only introduced by a state Labor government but also endorsed by a Liberal coalition. That act, which governs the whole of the state, has removed from all Tasmanian legislation any reference to ‘spouse’, ‘hus-
band’, ‘wife’ or ‘de facto’. Instead, the Tasmanian legislation recognised a very broad range of significant relationships—caring relationships, personal relationships and family relationships—and created a voluntary relationship register scheme to recognise the validity of all those relationships.

I am particularly pleased with the Democrats’ role in negotiating the terms of the Senate Legal and Constitutional Legislation Committee inquiry and including the notion of interpersonal relationships. We look often to the Tasmanian model as a way forward. Regardless of what these debates about relationships have highlighted, the recognition highlights that there is a very urgent need for a variety of means by which different relationships may be recognised, and there is a growing willingness—and, more importantly, a readiness—to address the issue. The law must respond flexibly to the diversity of people’s experiences by ensuring that significant personal relationships, in a variety of forms, are validated, supported and accorded the same access to the rights, benefits and obligations of any other form of relationship.

In pressing forward with our suite of amendments which go to the heart of recognising same-sex relationships, it remains our desire to bring about the sweeping reform which Labor sometimes indicates but has in no serious way ever progressed from opposition. I know that many Labor speakers have said today that a Latham Labor government would move forward in these areas. My experience, though, as an activist and advocate in this area, has been that I have heard all that before. I heard it during 13 years of Labor governments—and Labor did absolutely nothing in 13 years of government in the area of national antidiscrimination laws and partnership recognition, despite so often promising to do so. I know that Labor has promised an audit of all discriminatory legislation if elected to government, but I have to say that, from speaking to people in the gay and lesbian community, that policy position seems rather pathetic.

The promise of having an audit of legislation if elected to government ignores the fact that, firstly, you can do the audit now; secondly, you need not be elected to government to initiate such an audit; and, thirdly, the Parliamentary Library could probably quite happily do that for you if you put a phone call through to them. So the promise of antidiscrimination laws, partnership recognition and antivilification laws following an audit is somewhat hollow given that we Democrats have had bills which would do those three things on the Notice Paper for nine years. My best efforts just to get the opposition to support a debate on those bills have met with failure. There is deep cynicism within the lesbian and gay community about the promises of the alternative government, because those things that are being promised are also opportunities to be grasped now but which never have been.

To get to the heart of the issue, it is our hope and aspiration with this suite of amendments to recognise same-sex relationships and rights and responsibilities, and to get moving in this area of reform rather than holding out in vain hope that a future government, be it Labor or otherwise, might embark on this course. It is the view of the Democrats—being in a position of never being in government—that the way to bring about reform is to engage the parliament and not to wait for the expectation that you must only ever be in government to bring about change. We have proved on a number of occasions that you do not need to be in government to bring about change. While I heard Senator Ludwig wax lyrical a little earlier today about what he claimed was Labor’s policy to reform superannuation and how great it was that Labor got that achievement, the fact is that we Democrats did that, in cooperation
ultimately with Senator Coonan and the government, and that Labor had voted against those particular amendments on same-sex couples and super on 11 occasions before they finally supported them.

**Senator Ludwig** (Queensland) (5.02 p.m.)—The Labor opposition will not support the amendments. I am sure Senator Greig did listen to my speech in the second reading debate on this matter, and he is aware of our commitment in relation to the issue of recognition of same-sex relationships. I also briefly want to reiterate that state Labor governments have introduced significant reform in this area. Senator Greig was correct in identifying the Tasmanian Relationships Act 2003, which amended more than 70 statutes to assign a range of rights and/or responsibilities to same-sex and caring partners. I think that really underpins shadow Attorney-General Nicola Roxon’s position in relation to this. She has indicated on a number of occasions why she supports an audit of all Commonwealth legislation to go through in a meaningful way, whilst Labor is in government.

You also have to look at the Northern Territory’s Law Reform (Gender, Sexuality and De Facto Relationship Act) 2003, which was passed in November 2003. The debates continue in relation to the act in South Australia, the home state of a number of the Democrats, which passed on 25 March 2004 in the House of Assembly. In your home state of Western Australia, Senator Greig, the Acts Amendment (Gay and Lesbian Law Reform) Act 2001 was dealt with. It dealt with 62 statutes and was effective from 1 July 2003. I can continue to make the point, but I do not want to detract from the debate on the other amendments. We have said that Labor in government can and will progress these matters. We have clearly got the runs on the board in relation to all the other states. We do know that the government cannot be persuaded to do it and, therefore, we will be able to do it in government. That is the clear distinction between us and the government on this matter. As I have said, on the matter before us, we will not support any change to the common law understanding as it currently exists.

**Senator Coonan** (New South Wales—Minister for Communications, Information Technology and the Arts) (5.05 p.m.)—The government will not be supporting the Democrats’ amendments for the reason that neither this bill nor the act deal in any way with de facto or same-sex relationships. There are, in the government’s view, some pieces of legislation where it is appropriate that the government look at some of these issues. Quite apart from empty rhetoric and promises, as Senator Greig knows, the government has taken action in a number of areas. I want briefly to note the immigration area, for instance, where interdependency visas allow application for permanent residency of a person’s same-sex partner. The superannuation laws, where the definition of ‘dependant’ has been changed, have no doubt been canvassed in earlier speeches. I have initiated a review of Commonwealth superannuation schemes for consistency with the government’s policy to recognise interdependent relationships for superannuation death benefits. The Workplace Relations Act contains a range of measures intended to help prevent and eliminate discrimination, including on the basis of sexual preference.

I am not going to give an exhaustive answer, but I think it is appropriate to say that this government takes it seriously where there is an appropriate response required in relation to some of these matters. This is not the right place for it, in the government’s view, because these amendments seek to alter the fundamental nature of the legislation and it is contrary to what the government is trying to do here. The government is seeking
to reinforce and confirm the special status the institution of marriage holds in our society. The bill we are debating responds to fundamental concerns in the community about the institution of marriage. It does reinforce the commonly accepted definition and also has the effect, as we have said earlier, of preventing the recognition in Australia of same-sex marriages that may be performed overseas. But this is not the place for any sanctimonious talking about audits. I agree with Senator Greig: this government has taken action where it was considered appropriate.

Senator GREIG (Western Australia) (5.07 p.m.)—I will respond briefly. I was not aware that the Howard government had made changes to the immigration laws. I knew that changes had been made but I understood that that was under the previous Labor government, when Senator Bolkus was the minister. I do not think the coalition can claim credit for that. I would make the point that, while there have been some timid steps towards partnership recognition in immigration, it is still clumsy, inadequate and discriminatory. It is still very difficult for an Australian citizen who establishes a same-sex relationship with a foreign citizen to bring their partner into the country and to gain citizenship for them. There are many more difficulties and hurdles placed in front of them than there are for other relationships. That includes heterosexual de facto relationships. There is not equality by any means.

While I thank the minister and acknowledge the work she did in bringing about some superannuation reform, it is still not 100 per cent and there are still some hiccups and difficulties within that legislation. While it is no longer the case that a surviving same-sex partner will face great difficulties establishing that there was a previous relationship or getting access to a death benefit—that has been removed—the fact is that reversionary pensions do not apply to same-sex partners. So that discrimination is still there. It is also the case that, under the scheme that Senator Coonan has introduced and endorsed, to establish an interdependency relationship under the definitions of the act you have to demonstrate that you were living together. That is not the case if you are married. From time to time couples who are still married live apart—that is not so unusual—but they do not have to prove that they were living together. In order to access the death benefit, there is no requirement for them to have cohabited. That is the case under the interdependency provisions. So there is still work to be done in those two areas, even though timid steps forward have been taken.

Senator NETTLE (New South Wales) (5.09 p.m.)—The Greens support this Democrat amendment and indeed all the Democrat amendments that seek to remove the discrimination from the legislation we are currently debating and that has been put in place by the government and supported by the opposition. We will support this Democrat amendment and all the other Democrat amendments.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that Democrat amendments (1), (2) and (4) be agreed to.

Question negatived.

Senator GREIG (Western Australia) (5.09 p.m.)—I move:

(3) Schedule 1, page 3 (after line 8), after item 1, insert:

1C After section 6

Insert:

6A Acceptance of referral of State or Territory legislative authority

(1) The object of this section is to make provision in relation to unmarried couples regardless of sex, variously referred to in State or Territory law as de
facto relationships, domestic partnerships or significant personal relationships.

(2) Subject to subsection (6), this Act extends to:
(a) any State in relation to which a Proclamation under subsection (3) is in force; and
(b) any Territory in relation to which a Proclamation under subsection (4) is in force.

(3) Where:
(a) the Parliament of a State refers to the Parliament of the Commonwealth the matter set out in subsection (1); or
(b) a State adopts this Act; the Governor-General may, by Proclamation, declare that this Act extends to that State.

(4) The Governor-General may, by Proclamation, declare that this Act extends to a Territory.

(5) A Proclamation under subsection (3) or (4) may be expressed to come into operation on a date fixed by the Proclamation.

(6) A Proclamation under subsection (3) in relation to a State remains in force only for so long as there is in force:
(a) an Act of the Parliament of the State by which there is referred to the Parliament of the Commonwealth the matter referred to in paragraph (a); or
(b) a law of the State adopting this Act.

This amendment deals with the relationship between the Commonwealth and the states. The amendment aims to remove an anomaly of law that continues to cause hardship for many separating de facto couples across Australia, not only those who happen to be in same-sex relationships. The amendment will put in place the necessary instruments to initiate the process of referral of state powers regarding de facto couples to the Commonwealth. It indicates the Commonwealth’s readiness for that referral and represents the first step required to facilitate its occurrence.

Throughout the course of the debate on marriage we have heard that the granting of de facto recognition to same-sex couples would remove all discrimination in law by providing legal equality to those relationships on a par with marriage. The argument has been used as justification as to why access to marriage is not necessary for same-sex couples, yet we know that this is currently not the case. De facto couples continue to experience different treatment from married couples in a number of areas of law, including immigration, superannuation and access to the Family Court. In instances where one de facto partner lives overseas, couples under the interdependency category, including same-sex couples, must reside together for a period of 12 months prior to the issuing of a visa. This condition places a financially and logistically onerous requirement on same-sex and de facto couples that is not imposed on married couples or those intending to marry; rather, couples intending to marry must simply be engaged and intending to marry for the overseas partner to be granted a visa without any prior co-residency requirement. It is also true that heterosexual de facto couples are subject to the same restriction as same-sex interdependent couples, but at least heterosexual couples have the option to marry if they choose.

On behalf of the Gay and Lesbian Immigration Task Force, I wrote to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone, in mid June to request that the government consider extending the prospective marriage visa to interdependent same-sex and de facto heterosexual partners seeking to live together in Australia. As yet there has been no response
from the minister. Additionally, the very process of recognising de facto relationships differs from married couples in that married couples need only provide a certificate but de facto couples must demonstrate that they fulfil a whole range of criteria. While we recognise the significance and the importance of extending de facto recognition to same-sex couples, and we will continue our decade long campaign to achieve that goal, we still do not regard it as full equality. That is why we advocate for civil marriage. It is also why we advocate for a new system of civil partnership registration, as I discussed in amendment (1). If de facto couples were able to register their relationship, they would have automatic proof of that relationship that is on a par with married couples. These examples provide a clear demonstration of the way in which de facto relationships still cannot access a full range of automatic benefits and entitlements accorded to those who are married. There are also the issues in the Family Court upon separation.

The Prime Minister has made a great deal of his support for families and ensured the best possible outcomes for couples and their children while they are together and while they are separating but, when it comes to same-sex families, and to a lesser extent de facto couples, the Prime Minister has made it clear they are not deserving of the same benefits and support while they are together or while they are separating. Under the powers of the Family Law Act, the benefits for separating married couples of access to a single court for child custody issues, property and financial settlements are clear: a single process, a single court and a uniform national approach to deal with the difficulties that can arise for some separating couples during that period. Where de facto couples are concerned, however, this is not the case. They continue to operate under a dual system. Referral of child custody issues has been accepted by the Commonwealth, but property and financial matters have not and so still must be addressed in state Supreme courts. This is not only more time consuming but also more expensive. The significant stumbling block is the Commonwealth’s refusal to accept a referral of power that includes same-sex couples recognised under state or territory law as de facto relationships, domestic partnerships or significant personal relationships.

While introducing into the New South Wales parliament the Commonwealth Powers (De Facto Relationships) Bill, the parliamentary secretary said the referral of power to the Commonwealth:

... in relation to property and other financial resources on the breakdown of a de facto relationship ... has been discussed in the Standing Committee of Attorneys-General for some time ...

He went on to say:

Under the present regime, de facto couples in different States may have their property treated differently for no good reason. Even if States intend to enact and maintain uniform legislation, process delays can result in legislative anomalies. Such an approach would be highly complex, time consuming and impracticable. Success would in any event require a high degree of continuing coordination to ensure all necessary amendments to Commonwealth and State legislation were from time to time effected. These difficulties would not arise if States were simply to refer power to the Commonwealth.

I have seen a press release from Mr Rob Hulls, the Attorney-General of the state of Victoria, accusing the Commonwealth of being very homophobic by not accepting the powers as to same-sex couples when that state referred its powers to the Commonwealth in these areas. It is clear that state Labor governments want this to happen and they have condemned the Commonwealth for not allowing it to happen, so I consider this amendment to be a litmus test for Labor.
Here is the very opportunity to enact what your state Labor colleagues have called for. Indeed it brings about the de facto recognition which you claim to support. The amendment goes to the referral of powers: it is about allowing that push-up to the Commonwealth for federal oversight of this area but in a way which deals with the de facto relationships of both heterosexual and same-sex partners.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.16 p.m.)—I did listen intently to Senator Greig’s contribution on this matter, and I commend to the committee the statements that have been made by Senator Ludwig, who has been able to address this matter in a very diligent and sensible way. I also am very happy to admit that I would be concerned by any legislation that might inflame prejudice against any group in society. I would freely admit that, as a result, I was very concerned when I first heard of the government’s proposals in this area, but upon my seeing the legislation it did not take me long to realise that this was a pretty pathetic attempt at wedge politics by the Prime Minister.

I think it is fair to say that the Marriage Amendment Bill 2004 is more about rhetoric and political posturing than about making a substantive change to the law. Many have found it hard to get hot under the collar over a bill which confirms the existing common law. I am pleased that the response that the federal parliamentary Labor party has made to the bill has been strong and very clear in its commitment to removing discriminatory provisions from Commonwealth legislation on the basis of sexuality. I think that the Labor Party position, as adopted by the caucus of our parliamentary party, makes it very clear that we believe Australians are entitled to respect, dignity and the ability to participate in society and receive the protection of the law regardless of their sexuality or gender identity.

We have said—and we mean it—that if we are elected to government we will work with all groups to reform federal laws to recognise the diversity of legitimate relationships in the Australian community. We have also said and made it very clear—and my colleague Senator Ludwig has put forward our position in a very forthright and thorough way—that we will not be redefining marriage. That has governed our approach to this bill. We have indicated we will support the bill that is before the chamber without amendment. But we have also said that we will work to eliminate discrimination against Australians in same-sex relationships across a range of federal laws including taxation, superannuation, immigration, family law, industrial relations and government benefits. I think that position is well known to the committee. I understand that it does not find favour with Senator Greig, just as sometimes the approach of the opposition does not find favour with the Australian Democrats. On this occasion there is a different approach to dealing with amendments to this bill, but I commend the opposition’s approach to the committee. We have also said that, as part of our consideration of measures to eliminate discrimination against Australians on the grounds of sexuality, we will examine options to achieve a more consistent national treatment of—

Senator Brown—Mr Temporary Chairman, I rise on a point of order. I do not want to interfere with this speech by Senator Faulkner, but he did vote for the guillotine and there is a very short amount of time left for this debate and some very important amendments to come. I hope he will consider that.

The TEMPORARY CHAIRMAN—There is no point of order.
Senator FAULKNER—We will have to check the division lists on that, Senator Brown. If you are suggesting because there is a short amount of time left that you would like to make a comment, that is fine. You could have passed me a note, as is the normal procedure. I respect that; you know I do. I try to cooperate with senators in the chamber, so I will cooperate with you. There is no need to take a spurious point of order. You know—as you do, Mr Temporary Chairman—that my general approach to these things is to try to fit in with colleagues. Because Senator Brown and perhaps others want to make a contribution and time is short, I will conclude on this point. I said that we would be examining options to achieve more consistent national treatment of all de facto relationships, and I think we have also made it clear that we will look at the recommendations made by the Senate inquiry into the Marriage Amendment Bill 2004. I respect Senator Brown’s interest in making a speech at this point in time, and I will cut short my remarks to allow other senators to make a contribution. I commend to the committee the approach of the opposition.

Senator NETTLE (New South Wales) (5.23 p.m.)—I have a question for the minister relating to an Australian Greens amendment. It is coming up on the running sheet, but I am not sure whether I am going to have an opportunity to move it. Our amendment seeks to ensure that marriages that have currently been entered into will continue to be recognised under this legislation. It comes from a number of queries to our office from constituents about whether or not the marriages of people who are currently in heterosexual relationships in which one of the partners is going to go through a gender reassignment surgery process or has gone through such a process continue to be recognised as a result of this legislation. I have not been able to find an answer to that question and I wonder whether the minister might be able to answer it for us.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (5.23 p.m.)—I do have some information that I think would be of assistance in resolving that issue. I will get those advising me to turn it up. The referral of powers amendment, which is what we were dealing with, is not supported by the government. The government has made it quite clear that it is a matter for the states and territories to deal with and not, in our view, a matter that should be referred to in the Marriage Act. If I am not able to give you an answer to your question in the short time that is available, Senator Nettle, I will make sure that I try to give you that information. I have seen—if not in the notes that I have here—some information on that.

Senator NETTLE (New South Wales) (5.25 p.m.)—I will set a broader framework for that question. It concerns not just people who are going through gender reassignment surgery but also people who were born with an intersex condition or indeterminate sex, had a gender assigned to them at a certain point during the first two years of their life and subsequently have gender reassignment surgery or take on their birth sex which was wrongfully assigned—with or without consultation with their parents—at the time when they were born of indeterminate sex. How does this legislation impact on those individuals? They may or may not have entered into a marriage. They were born of indeterminate sex, a decision was made to assign them a particular gender which was not the gender identity that they subsequently determined for themselves, and they will have gender reassignment surgery or surgery to return to the gender which they have identified for themselves. How will they be impacted on by this legislation?
Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (5.26 p.m.)—My understanding of the situation—and I will be corrected if I give you incorrect information—is that gender reassignment enables people to marry, but not to someone of the same sex. So if somebody has a gender reassignment and they wish to marry somebody who is not of their sex, that is supported by this act.

Senator NETTLE (New South Wales) (5.26 p.m.)—My question relates in particular to people who are currently married in a heterosexual relationship and are undergoing—next year, for example—gender reassignment surgery. Currently their relationship is a heterosexual one recognised under the law. After this legislation comes in and they go through gender reassignment surgery, will their relationship and their marriage still be recognised under the law?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (5.27 p.m.)—My understanding is that that would mean that they would then be two people of the same sex purporting to be married to each other. They could obviously seek a declaration of validity, but I doubt whether the act would respond to recognise that relationship as valid.

Senator BROWN (Tasmania) (5.27 p.m.)—I have friends in this position. Is their marriage valid or not? What is going to happen? Are people going to arrive and say, ‘Where’s your marriage certificate—give it to us; we’re going to rip it up’? What is Mr Howard going to do with the folk who are in this situation and are bringing up children? Is he going to tell them that, under this new discrimination legislation, suddenly they are unmarried because the Prime Minister said so? We need an answer—they need an answer to a question like this. How is the Prime Minister going to dissolve the marriage? Is he going to ring up Archbishop Pell and get an annulment in some other country? Please let those folk know.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (5.28 p.m.)—Given the fact that we will be cut off, I emphasise the very valid point Senator Nettle has raised. The answer the minister has given shows the absurdity of the whole thing. You should be able to get married to the person you fall in love with. The whole suggestion that choosing to undergo gender reassignment might mean having to make a decision to invalidate the lawfulness of your marriage shows how ridiculous the whole concept underlying this situation is. It is a future amendment, but obviously the Democrats would support it if there were an opportunity to get it moved.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that Democrat amendment (3) on sheet 4392 be agreed to.

Question negatived.

Senator GREIG (Western Australia) (5.29 p.m.)—I move Democrat amendment (1) on sheet 4394:

(1) Schedule 1, page 3 (after line 8), after item 1, insert:

1BA After subsection 5(1)

Insert:

(1A) It is not intended by this Act that, in relation to any Commonwealth law, the definition of marriage in subsection (1) should be taken to mean or imply that a relationship between two people of the same sex who are not married to each other should have other than the same status as an equivalent de facto relationship between a man and a woman.

CHAMBER
This final Democrat amendment is word for word an amendment moved by Ms Tanya Plibersek in the House of Representatives. It goes to the heart of saying that, if this amendment is passed:

It is not intended by this Act that, in relation to any Commonwealth law, the definition of marriage in subsection (1) should be taken to mean or imply that a relationship between two people of the same sex who are not married to each other should have other than the same status as an equivalent de facto relationship between a man and a woman.

In other words, this amendment, moved by Labor in the House of Representatives to represent its aspirations for lesbian and gay couples, is now moved by me—not by them—here in the Senate chamber. It is another litmus test for Labor. I call on Labor to demonstrate its professed commitment to this, to acknowledge the humanity and dignity of lesbian and gay people in same-sex relationships and to support the amendment to do this—originally your amendment—here in the committee now.

The TEMPORARY CHAIRMAN (Senator Ferguson)—Order! The time for debating the bill has expired. I put the question that Senator Greig’s amendment (1) on sheet 4394 be agreed to.

The committee divided. [5.34 p.m.]

(The Temporary Chairman—Senator A.B. Ferguson)

Ayes………….. 6
Noes………….. 38
Majority……….. 32

AYES
Bartlett, A.J.J. 
Coonan, H.L. 
Evans, C.V.  
Ferguson, A.B. 
Fifield, M.P. 
Harradine, B. 
Johnston, D.  
Knowles, S.C.  
Lundy, K.A.  
Mackay, S.M.  
McGauran, J.J.J. 
Moore, C.  
Ray, R.F.  
Scullion, N.G.  
Tchen, T.  
Troeth, J.M.  
Watson, J.O.W.  

NOES
Barnett, G.  
Bishop, T.M. 
Brown, B.J.  
Buckland, G.  
Carr, K.J. 
Colbeck, R.  
Carr, K.J.  
Carr, K.J.  
Faulkner, J.P.  
Forshaw, M.G.  
Harris, L.  
Kirk, L.  
Lightfoot, P.R.  
Macdonald, I.  
Mason, B.J.  
O’Brien, K.W.K.  
Santoro, S.  
Stephens, U.  
Tierney, J.W.  
Vanstone, A.E.  
Webber, R.  

* denotes teller

Question negatived.

The TEMPORARY CHAIRMAN (Senator Ferguson)—As the time for debating this bill has expired, I put the final amendment, which is Australian Greens’ amendment (3).

The amendment read as follows—

R(3) Schedule 1, page 3 (after line 19), at the end of the bill, add:

4 After section 88E
Insert

88EB Continuing validity of a marriage

For the avoidance of doubt, a union solemnised and recognised as a marriage in Australia before the commencement of the provisions of the Marriage Amendment Act 2004 will continue to be recognised as a marriage in Australia after the commencement of that Act.

The TEMPORARY CHAIRMAN—The question is that that amendment be agreed to.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.
The question is that the bill be now read a third time.

Question put.

The Senate divided. [5.40 p.m.]

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

Ayes............ 38
Noes............ 6
Majority........ 32

AYES
Barnett, G. Bishop, T.M.
Boswell, R.L.D. Buckland, G.
Carr, K.J. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleston, A. Evans, C.V.
Faulkner, J.P. Ferguson, A.B.
Ferris, J.M. * Fifield, M.P.
Forshaw, M.G. Harradine, B.
Johnston, D. Kirk, L.
Knowles, S.C. Lightfoot, P.R.
Lundy, K.A. Macdonald, I.
Mackay, S.M. Mason, B.J.
McGauran, J.J.J. McLucas, J.E.
Moore, C. O’Brien, K.W.K.
Ray, R.F. Santoro, S.
Scullion, N.G. Stephens, U.
Tchen, T. Tierney, J.W.
Troeth, J.M. Vanstone, A.E.
Watson, J.O.W. Weir, R.

NOES
Bartlett, A.J.J. Brown, B.J.
Greig, B. * Murray, A.J.M.
Nettle, K. Stott Despoja, N.

* denotes teller

Question agreed to.

Bill read a third time.

Senator MURRAY (Western Australia) (5.43 p.m.)—by leave—Senator Lees asked that her vote be recorded against the bill.

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

Second Reading

Debate resumed.

The Acting Deputy President (Senator Ferguson)—I have a list that says Senator Brown is the first speaker on this bill.

Senator Faulkner—Mr Acting Deputy President, I rise on a point of order. I do not want to—in fact, I do not intend to—stop Senator Brown speaking. I just draw your attention to the fact that the second reading of this bill was dealt with yesterday as non-controversial legislation. Senator Troeth, on behalf of the government, is in continuation, if you like, as the minister in reply. I am very happy in this circumstance for Senator Brown to speak but I think he would require leave to do so. I certainly would grant leave but the status, I understood, was that we had the minister in reply in continuation. I would be happy to give Senator Brown leave and I will certainly do so, but I think we have a problem if we do not.

Senator Coonan—My advisors have just confirmed that Senator Troeth was some very short way into her summation.

The Acting Deputy President—She had the call, as I understand it, but she had not got very far into her speech. She does not have to conclude her speech, does she?

Senator Faulkner—I am saying that if Senator Brown wants to make a speech on the second reading, which I am happy to give leave for, I do not believe he can do it after the minister. That is all. That is the point of order. If you interpret it that way, that is fine.
I do not intend to try to stop Senator Brown from speaking.

Senator Murray—I was there. It was not non-controversial. The bill was introduced at the time because time was available. The minister acted in error—a perfectly reasonable error—and thought she should summarise when it was known to us and to other participants at the time that the Greens still had to give a speech on the second reading.

Senator Coonan—Mr Acting Deputy President, I rise on a point of order. I am informed by Senator Troeth that there were no other speakers in the chamber. In fact, when she commenced her summation, it was her expectation that, when resumed, she would continue.

The ACTING DEPUTY PRESIDENT—I will seek advice. This is a very difficult situation. Senator Troeth cannot close the debate if there were others who were going to speak. I think the best thing to do would be to go by the speakers’ list that we have, which has Senator Brown to speak and Senator Coonan to sum up. Maybe Senator Faulkner will speak. I call Senator Brown.

Senator BROWN (Tasmania) (5.48 p.m.)—Thank you. With 12 minutes to go before the guillotine falls, let me just briefly say that the Greens will be opposing this bill. The bill will take away the right to vote from some prisoners but not others. The right of every person to vote is recognised in the International Covenant on Civil and Political Rights. The European Court of Human Rights on 30 March this year ruled against a blanket restriction on convicted prisoners. There will be effectively thousands of Australians behind bars who will have their vote taken away by this legislation. Let me remind the Senate that the Joint Standing Committee on Electoral Matters recommended in 1993 that all prisoners in Australia, except those convicted of treason, be granted the right to vote because, firstly, prisoners should not be punished twice and, secondly, retaining the right to vote assists with the rehabilitation of offenders. That is the Senate’s own advice from the expert committee that looked into the matter. Let me also quote from a Canadian judgment. In 2002, Chief Justice McLachlin said:

... denying penitentiary inmates the right to vote is more likely to send messages that undermine respect for the law and democracy than messages that enhance those values.

The whole basis of the respect for the rule of law rests on the participation of citizens through the democratic selection of their representatives making the law. How will prisoners subject to this feudal concept of civil death have respect for the law if they are banned from participating in its formation? One has to remember that it is our job to encourage people to take part in society, to feel empowered to be in society and to feel they have a role in society—not to take away that role. The one thing parliament should not do is intervene in the courts. This is effectively mandatory sentencing. This is effectively saying that the vote should be taken away from this group of prisoners without the court having the ability to levy that punishment—if it is expected to be a punishment that should be meted out against the international law and the proper precept of democracy.

On behalf of the Greens, I will be moving these amendments: firstly, to repeal all the provisions of the electoral act which remove the right of a prisoner to vote; secondly—and these are fallback provisions—to return to the five-year imprisonment threshold for the loss of the vote; and, thirdly, to oppose the retrospective nature of this bill—that is, extending it to people who commence serving a sentence before the provisions were passed—and to retain the definition of a sentence of imprisonment. It is again remarkable
that the big parties have allowed this process of infringing international law, mandatory sentencing and interference in the courts through mandatory sentencing to not only creep into more and more law but also grow in the strength of application. It is a wrong law and it should be voted down.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (5.52 p.m.)—Given the time, I will be extremely brief. The Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004 is a demonstration of the government’s commitment to ensuring the integrity of the electoral system. When it passed the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act, it was the parliament’s intention that people who commit offences against society sufficient to warrant a full-time prison term for an electoral cycle or longer should not have any entitlement to vote and elect the leaders of this society. They would be deprived of this entitlement whilst serving that prison sentence.

The legislation will give effect to that intention by preventing all prisoners who are serving a full-time sentence of three years or more, including those whose sentences began before the commencement of the legislation, from enrolling to vote or being enrolled to vote, and therefore being eligible to vote. The bill also removes items from the enrolment integrity act relating to the early close of rolls for referenda, which were overlooked during debate on the legislation in the Senate. This will ensure consistency with the removal of all other early close of roll provisions during the debate on that act and will maintain the current seven-day time limit for the close of rolls after the writs are issued for an election or a referendum.

Finally, the bill will clarify that all provisions relating to proof of name and address requirements for enrolment commence at the same time. Amendments made by the Senate to the enrolment integrity act contained different commencement dates which made the commencement of the scheme unclear. The amendments will remedy that and will remove the uncertainty having been brought about by the earlier amendments. I commend the bill.

Question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (5.54 p.m.)—For your guidance, given the guillotine, I will be happy to move the amendments one after the other without speaking to them, unless it is felt necessary by the chamber to do so. Most of these amendments are a consequence of there having been no other bill available to the Democrats in which to put these amendments since the 2001 federal election report. Therefore, this is the one opportunity we have before the next election.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.55 p.m.)—This bill is intended to fix what is basically a glitch that occurred in the legislation that was agreed to by both the Senate and the House of Representatives. It is as simple as that. An amendment was moved—in fact, it was a longstanding view of the Labor Party; it was first moved over five years ago—that a prisoner whose sentence commenced on or before the return of the writs for an election and whose sentence continued until after the issue of the writs for any succeeding election would not be entitled to enrol.
In other words, it was a tightening of the then provision which was that any prisoner who was serving a sentence of over five years should not be entitled to vote. The sense of this was, in both chambers of the Commonwealth parliament, to tie the restriction on prisoner voting to a logical rather than an arbitrary period of time. However, more than five years after it was first moved as a proposal, and some time after it was agreed to by both houses, advice has come from the AGS, the Australian Electoral Commission and others saying that this amendment may be unworkable and may not have the intended effect.

In this case, new legislation has been brought into parliament to ensure that the will of parliament is enacted. Why is it urgent? It is urgent in case an election is called. I find that uncontroversial and unremarkable. Instead of the wording that was intended—the life of an electoral cycle—the clear provision in this bill is to use the words ‘three years’. With the previous provision, if you served a sentence for over five years, you would not have been entitled to vote. Effectively, now, if you serve a sentence of three years or longer, you are not entitled to vote. That is what this is doing. I really do believe it is housekeeping.

I know Senator Murray has some very important amendments that he has moved. I accept their significance as I often have in this chamber. But I do not believe this is the vehicle to do it and, in many ways, Senator Murray would agree on that. He nods; he does. I accept his point that this is the only opportunity, but it is not a good opportunity. The amendments include very significant issues such as one vote, one value—a long and dearly held principle that is supported by the Australian Labor Party. We have to get these things right. That is the challenge for us, and this is not the mechanism to do it.

This is a corrective bill. It has come forward to ensure that the will of the parliament in relation to a small area of electoral law is adequately and properly reflected in electoral law. I do not think anyone can quibble with that. You really cannot argue that that is the intention. It would be very unfortunate if anyone abused this process. It is to fix a glitch and get the intention of the parliament clear.

The approach of the Labor Party will be to support the bill. It is certainly an improvement on the current provision and it has been a longstanding view of the Labor Party that this ban on prisoner voting is appropriate over the one electoral cycle. Parliament has always tried to draw a distinction between those serving more minor prison sentences and those who are in for more serious crimes. We have had a significant debate previously on this in the chamber, but understand that this is about fixing a problem that has very recently been identified, and it really ought to be an uncontroversial step.
1A After Part IV
Insert:

Part IVA—Equal suffrage—Article 25 of the International Covenant on Civil and Political Rights to apply to elections for the Australian Federal Parliament and for State Parliaments

78A Preamble to this Part

(1) The International Covenant on Civil and Political Rights was opened for signature on 19 December 1966, was signed by Australia on 18 December 1972 and entered into force for Australia (except article 41) on 13 November 1980. Article 25 of the Covenant reads as follows:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

(2) The instrument of ratification which was deposited for Australia with the United Nations on 13 August 1981 contained various reservations and declarations including the following concerning Article 25 of the Covenant:

The reference in paragraph (b) of Article 25 to “universal and equal suffrage” is accepted without prejudice to laws which provide that factors such as regional interests may be taken into account in defining electoral divisions, or which establish franchises for municipal and other local government elections related to the sources of revenue and the functions of such governments.

(3) This Part will enable Australia to fulfil its obligations under Article 25 of the International Covenant on Civil and Political Rights by requiring the laws governing the parliamentary elections of the Commonwealth and the States to conform to that Article of the Covenant with the reservations and declarations made by the Australian Government in the instrument of ratification of the Covenant.

78B Interpretation

In this Part:


State includes the Northern Territory and the Australian Capital Territory.

78C The International Covenant on Civil and Political Rights to apply to elections for the Australian Federal Parliament and for State Parliaments

(1) Article 25 of the International Covenant on Civil and Political Rights with the reservations and declarations made by the Australian Government in the instrument of ratification dated 13 August 1981 is hereby declared to apply to all elections for the Australian Federal Parliament and for all State Parliaments.

(2) Where for the purposes of electing members of a house of the Federal Parliament or of a State Parliament a State is divided into more than one electorate, the reference in paragraph (b) of Article 25 of the Covenant to universal and equal suffrage is to be construed as permitting a margin of allowance in the number of voters in each electorate, to be used whenever necessary, but in no case shall the margin of allowance be greater than one-tenth more or one-
tenth less than the average number of voters in each electorate in that State.

78D Judicial review
(1) An action may be brought under this Part in a court of competent jurisdiction provided that the court shall refer all questions relating to whether the electoral arrangements in any jurisdiction conform to the requirements set out in section 78C to the Electoral Commissioner for investigation and determination.

(2) The Electoral Commissioner may inform himself on any matter in such manner as he thinks fit and may consult with such persons as he thinks fit.

(3) Notwithstanding anything contained in any other law, but subject to the Constitution and to section 39B and Part VII of the Judiciary Act 1903, a determination by the Electoral Commissioner made, or purporting to be made, under subsection (1):
   (a) is final and conclusive; and
   (b) shall not be challenged, appealed against, reviewed, quashed, set aside or called in question in any court or tribunal on any ground; and
   (c) is not subject to mandamus, prohibition, certiorari or injunction, or the making of a declaratory or other order, in any court on any ground.

(4) A determination made, or purporting to be made, under subsection (1) shall be made by instrument in writing.

(5) The Electoral Commissioner shall send a copy of the determination made, or purporting to be made under subsection (1) to the court which referred the matter.

(6) A determination made, or purporting to be made under subsection (1) must be published by the Australian Electoral Commissioner in the Gazette within twenty one days of being made.

78E Application
This Part applies to any State election held more than 6 months after the commencement of the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004.

(2) Schedule 1, item 1, page 4 (lines 6 to 10), omit the item, substitute:

1 Paragraph 93(8)(b)
   Repeal the paragraph.

(3) Schedule 1, item 2, page 4 (lines 11 to 16), omit the item, substitute:

2 Subsection 93(8AA)
   Repeal the subsection.

(4) Schedule 1, item 3, page 4 (lines 17 to 19), omit the item, substitute:

3 Section 109
   Repeal the section.

(5) Schedule 1, page 4 (after line 19), after item 3, insert:

3A Subsection 123(1) (paragraph (b) of the definition of eligible political party)
   After “(however described)”, insert “that compiles with the minimum constitutional requirements set out in section 129A and”.

(6) Schedule 1, page 4 (after line 19), after item 3, insert:

3B After section 129
   Insert:

129A Party not to be registered unless it meets minimum constitutional requirements
(1) The Commission must refuse an application for the registration of a political party unless, in its opinion, the constitution of the party complies with minimum constitutional requirements set out in subsections (2), (3) and (4).

(2) For the purposes of subsection (1), a constitution complies with minimum constitutional requirements if it provides the following rights and opportunities for each of its members, including members in specified classes of
membership, who have complied with any requirements of the party in relation to the payment of fees or subscriptions:

(a) to take part in the conduct of the party’s affairs, either directly or through freely chosen representatives;
(b) to freely express choices about party matters, including the choice of candidates for elections, at genuine periodic ballots;
(c) to vote at such periodic ballots by secret ballot;
(d) to exercise a vote of equal value with the vote of any other member in the same class of membership as the member.

(3) For the purposes of subsection (1), a constitution complies with minimal constitutional requirements if it includes:

(a) the conditions and rules of membership of a political party;
(b) how office-bearers are preselected and elected;
(c) how preselection of political candidates is to be conducted;
(d) the processes that exist for the resolution of disputes and conflicts of interest;
(e) the processes that exist for changing the constitution;
(f) the processes for administration, management and financial management of the political party.

(4) It is also a minimal constitutional requirement for a political party constitution to be:

(a) publicly available in printed form; and
(b) reviewed at least once in every electoral cycle of the political party and altered as required.

Any alterations made in accordance with paragraph (b) are to be notified to the AEC.

(5) Failure to comply with this section makes a political party ineligible to obtain funding in accordance with section 297A.

(7) Schedule 1, page 4 (after line 19), after item 3, insert:

3C After Part XI

Insert:

Part XIA—Supervision of registration of political parties

141A Object of Part

The object of this Part is to provide for the supervision by the Electoral Commission of certain aspects of the operation of registered political parties, for the investigation of complaints that a party has not complied with its constitution, and for the imposition of penalties where there has been a breach of a provision.

141B Complaints

(1) A person may complain in writing to the Electoral Commission that a registered political party has failed to comply with its constitution.

(2) A complaint under subsection (1) must set out particulars of the party’s failure to comply with its constitution.

141C Discretion not to investigate certain complaints

The Electoral Commission may decide not to investigate, or not to continue to investigate, a complaint made under section 141B if:

(a) the complainant does not provide particulars under subsection 141B(2); or
(b) the complainant is, or has been, a member of a registered political party and has not first exhausted the procedures available under the party’s constitution for the resolution of disputes; or
(c) in the opinion of the Electoral Commission, the complaint is frivolous or vexatious or was not made in good faith.

**141D Investigations**

(1) Before commencing an investigation under this Part, the Electoral Commission must inform the registered officer of the political party of the alleged breach of the party’s constitution which is to be investigated.

(2) An investigation under this Part is to be conducted in private and, subject to this Act, in such manner as the authorised person thinks fit.

(3) An authorised person may, for the purposes of this Part, obtain information from such persons, and make such inquiries, as it thinks fit.

(4) Subject to subsection (5), it is not necessary for the complainant or any other person to be afforded an opportunity to appear before the authorised person or any other person in connection with an investigation by the authorised person under this Part.

(5) The Electoral Commission must not take any action, as a result of an investigation under this Part, to deregister a political party for non-compliance with its constitution unless the Electoral Commission has afforded the registered officer and the person or persons principally concerned in the matter to which the investigation relates opportunities to appear before the Electoral Commission, or an authorised person, and to make such submissions, either orally or in writing, in relation to that matter as they think fit.

(6) A person who appears before the Electoral Commission under subsection (5) may, with the permission of the Electoral Commission, be represented by another person.

(7) For the purposes of this Part, the Electoral Commission may, by instrument in writing, authorise a person or a person in a class of persons, to perform duties under this Part.

**141E Power to obtain information and documents**

(1) Where an authorised person has reason to believe that a person is capable of furnishing information or producing documents or other records relevant to an investigation under this Part, the authorised person may, by notice in writing served on the person, require that person, at such place, and within such period or on such date and at such time, as are specified in the notice:

(a) to furnish to the authorised person, by writing signed by that person, or in the case of a body corporate, by an officer of the body corporate, any such information; or

(b) to produce to the authorised person such documents or other records as are specified in the notice.

(2) Where documents or other records are produced to the Electoral Commission in accordance with a requirement under subsection (1) or an order under subsection 141F(1), the authorised person:

(a) may take possession of, and may make copies of, or take extracts from, the documents or other records; and

(b) may retain possession of the documents or other records for such period as is necessary for the purposes of the investigation to which the documents or other records relate; and

(c) during that period shall permit a person who would be entitled to inspect any one or more of the documents or other records if they were not in the possession of the Electoral Commission to inspect at all reasonable times such of the documents or other records as that
person would be so entitled to inspect.

For the purposes of this subsection a person entitled to inspect a document includes a person from whom the document has been obtained.

(3) Where the authorised person has reason to believe that a person is able to give information relevant to an investigation under this Part, the authorised person may, by notice in writing served on the person, require the person to attend before a person specified in the notice, on such date and at such time and place as are specified in the notice, to answer questions relevant to the investigation.

(4) Notwithstanding the provisions of any enactment, a person is not excused from furnishing any information, producing a document or other record or answering a question when required to do so under this Part on the ground that the furnishing of the information, the production of the document or record or the answer to the question:

(a) would contravene the provisions of any other enactment; or

(b) might tend to incriminate the person or make the person liable to a penalty; or

(c) would be otherwise contrary to the public interest;

but the information, the production of the document or record or the answer to the question is not admissible in evidence against the person in proceedings other than:

(d) an application under subsection 141F(1); or

(e) proceedings for an offence against section 315.

(5) A person is not liable to any penalty under the provisions of any other enactment by reason of his or her furnishing information, producing a document or other record or answering a question when required to do so under this Part.

(6) The reference in subsection (1) to an officer, in relation to a body corporate, being a body corporate that is not a prescribed authority, includes a reference to a director, secretary, executive officer or employee of the body corporate.

141F Powers of Federal Court of Australia

(1) Where a person fails to comply with a requirement made by an authorised person by notice under section 141E to furnish information, to produce documents or other records or to attend before an authorised person to answer questions in relation to an investigation under this Part, the Electoral Commission may make an application to the Federal Court of Australia for an order directing that person to furnish the information, or to produce the documents or other records, at such place, and within such period or on such date and at such time, as are specified in the order, or to attend before the Electoral Commission to answer questions at such place, and on such date and at such time, as are specified in the order, as the case may be.

(2) The Federal Court of Australia has jurisdiction with respect to matters arising under this section in respect of which applications are made to the Court.

141G Complainant and registered officer etc. to be informed

(1) Where the Electoral Commission does not, for any reason, investigate, or continue to investigate, allegations that a registered political party has failed to comply with its constitution in a material particular, the Electoral Commission must, as soon as practicable and in such manner as the Electoral Commission thinks fit, inform the complainant and the registered officer of the political party concerned, of the Electoral Commission’s decision and of the reasons for that decision.
(2) Where the Electoral Commission completes an investigation of an allegation that a registered political party has failed to comply with its constitution in a material particular, the Electoral Commission must, in such manner and at such times as it thinks fit, furnish to the complainant and to the registered officer of the political party particulars of the investigation.

(3) The Electoral Commission may, if it thinks fit, furnish comments or suggestions with respect to any matter relating to or arising out of an investigation under this Part to the registered officer of any registered political party.

141H Power to examine witnesses

(1) An authorised person may administer an oath or affirmation to a person required to attend before it in compliance with section 141E and may examine the person on oath or affirmation.

(2) A person before whom another person (in this subsection called the respondent) attends in compliance with a notice under subsection 141E(3) may:
   (a) administer an oath or affirmation to the respondent; and
   (b) examine the respondent on oath or affirmation.

141I Power to enter premises

(1) For the purposes of an investigation under this Part, an authorised person may, at any reasonable time of the day, enter any place occupied by a registered political party and may carry on the investigation at the place.

(2) For the purposes of an investigation under this Part, an authorised person is entitled to inspect any documents relevant to the investigation kept at premises entered by him or her under this section, at a reasonable time of the day arranged with the registered officer of the registered political party concerned.

(3) Subsection (2) does not restrict the operation of section 141E.

Part XIB—Selection of candidates by registered political parties

141J Ballots for candidate selection may be conducted by Electoral Commission

(1) At the request of a political party, any ballot for the selection by a registered political party of candidates to stand for elections covered by this Act may be conducted by the Electoral Commission and a returning officer shall be appointed by the Commission for that purpose.

(2) The regulations may prescribe the method of candidate selection to be used by registered political parties.

141K Certificates under this Part

Where the Electoral Commission has conducted a ballot for the selection of a candidate by a registered political party, the Commission must issue a certificate to that effect.

(8) Schedule 1, page 4 (after line 22), after item 4, insert:

4A After section 297

Insert:

297A Payment not to be made unless certain conditions met

(1) A payment under this Division must not be made in respect of votes given in respect of:
   (a) a candidate or candidates endorsed by a registered political party; or
   (b) for a Senate election—a group where members of the group were endorsed by one or more registered political parties;

unless the Electoral Commission is satisfied that the constitution of the registered political party complies with the requirements set out in subsection (3).

(2) For the purposes of subsection (1), a registered political party must provide the Electoral Commission with a copy of its current constitution at the request of the Commission.
(3) The requirements of this subsection are as follows:

(a) the requirement that the voting members of the executive committee of a registered political party are elected only by financial members of the party;

(b) the requirement that a financial member of a registered political party is entitled to exercise a vote of equal value to the vote of any other financial member in the party or—if the party’s constitution provides for different classes of membership—in the same class of membership as the member.

(4) Paragraph (3)(b) does not apply to the representation on the executive committee of:

(a) the parliamentary members of the party; or

(b) previous members of the executive committee of the party [in an ex officio capacity].

(5) In determining whether the constitution of a registered political party complies with the requirement set out in paragraph (3)(b), the Electoral Commission is to disregard the following:

(a) any difference in the size of the States and Territories of the Commonwealth, based on the number of electors enrolled in each State and Territory;

(b) any difference in the number of members enrolled as members of a registered political party in each State and Territory;

(c) any provision made in the constitution of the registered political party for the representation on the executive committee of members representing any affirmative action target groups or the designated youth sector of the party.

(6) For the purpose of this section, a financial member of a registered political party means a member who, if the constitution of the party requires a member to pay dues in relation to the person’s membership of the party, has paid any dues that are payable and includes life members, patrons or honorary holders of positions in the party.

(9) Schedule 1, page 4 (after line 22), after item 4, insert:

4B After section 306B

Insert:

306C Foreign donations prohibited

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

306D Forfeiture of foreign donations

For the avoidance of doubt, where a foreign gift, or disposition of property is made to a political party or a State branch of a political party or a person acting on behalf of a political party or a State branch of a political party, the foreign gift is presumed to be in breach of section 305C and is to be dealt with accordingly.

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

306E Donations by non-citizens resident in Australia lawful

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

306F Donations by Australians living abroad lawful

A donation by a person registered on a Commonwealth Electoral Roll living overseas is not a foreign donation for the purposes of section 306C or 306D.
(10) Schedule 1, page 4 (after line 22), after item 4, insert:

4C After section 320

Insert:

320A Publication of returns of donations

(1) The Electoral Commission is to publish free of charge on its website all returns kept by it in accordance with subsection 320(1).

(2) Publication by the Electoral Commission on its website is to occur at the same time as the returns are made available under subsections 320(4) and (5).

(3) Subject to subsection (2), all returns are to be published on the website quarterly.

(11) Schedule 1, page 4, (after line 22), after item 4, insert:

4D After section 326

Insert:

326A Donations with strings attached prohibited

It is unlawful for a grant, donation, gift or gift in kind to be given to a candidate or a political party if that grant, donation, gift or gift in kind is made for the purpose of:

(a) soliciting the candidate’s or the political party’s support for a particular purpose or course of action;

(b) colluding with the candidate or the political party to secure the candidate’s support or the political party’s support for a particular purpose or course of action;

(c) causing the candidate or the political party to take a decision in his or her or the party’s official capacity once elected;

(d) bribing the candidate or the political party or causing the candidate or political party to act in a corrupt manner once elected.

Note: Bribery or corruption is defined in section 326 of the Commonwealth Electoral Act 1918.

Penalty: In the case of an individual—30 penalty units.

In the case of a political party—300 penalty units.

(12) Schedule 1, page 4 (after line 22), after item 4, insert:

4E Section 394

Repeal the section.

(13) Schedule 1, item 5, page 4 (lines 23 to 26), omit the item, substitute:

5 Clause 9 of Schedule 2

Omit “but not serving a sentence of imprisonment (within the meaning of subsection 93(8))”.

(14) Schedule 1, item 6, page 4 (line 28) to page 5 (line 4), omit the item, substitute:

6 Clause 9 of Schedule 3

Omit “but not serving a sentence of imprisonment (within the meaning of subsection 93(8) of the Commonwealth Electoral Act 1918)”.

Schedule 1, item 1, page 4 (lines 6 to 10), omit the item, substitute:

1 Paragraph 93(8)(b)

Repeal the paragraph.

Schedule 1, item 3, page 4 (lines 17 to 19), omit the item, substitute:

3 Section 109

Repeal the section.

Schedule 1, item 1, page 4 (line 8), omit “3”, substitute “5”.

Schedule 1, item 2, page 4 (lines 11 to 16), omit the item.

Schedule 1, item 3, page 4 (line 19), omit “3”, substitute “5”.

Question negatived.

Bill agreed to.
Bill reported without amendment.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—The question now is that the bill be now read a third time.

Question put.

The Senate divided. [6.05 p.m.]

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

Ayes........... 30

Noes........... 5

Majority......... 25

AYES

Barnett, G. Boswell, R.L.D.
Carr, K.J. Chapman, H.G.P.
Colbeck, R. Eggleston, A.
Evans, C.V. Faulkner, J.P.
Ferguson, A.B. Ferris, J.M. *
Fifield, M.P. Kirk, L.
Knowles, S.C. Lightfoot, P.R.
Lundy, K.A. Macdonald, I.
Mackay, S.M. Mason, B.J.
McGauran, J.J. McLucas, J.E.
Moore, C. O’Brien, K.W.K.
Scullion, N.G. Stephens, U.
Tchen, T. Tierney, J.W.
Trought, J.M. Vanstone, A.E.
Watson, J.O.W. Webber, R.

NOES

Bartlett, A.J.J. Brown, B.J.
Harradine, B. Murray, A.J.M.
Nettle, K. *

* denotes teller

Question agreed to.

Bill read a third time.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Messages received from the House of Representatives agreeing to the amendments made by the Senate to the following bills:

US Free Trade Agreement Implementation Bill 2004

Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002

Anti-terrorism Bill (No. 2) 2004

ADJOURNMENT

SENATOR VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (6.08 p.m.)—I move:

That the Senate do now adjourn.

International Conference for Renewable Energies

Senator TCHEN (Victoria) (6.08 p.m.)—I seek leave to incorporate my speech in Hansard.

Leave granted.

The speech read as follows—

In the weeks from 31 May to 13 June, 2004, I undertook a study tour of Germany, in the first stage to Bonn, Germany, to observe proceedings at the International Conference for Renewable Energies, hosted by the Federal Government of Germany held between 1 and 4 June, and to take part in the International Parliamentary Forum on Renewable Energies hosted by the German Bundestag held in parallel with the International Conference on 2 June.

At the International Conference, Australia was represented by an official delegation of officers from the Department of Industry, Tourism and Resources (Mr Bruce Wilson, General Manager, Environment Branch, Delegation Leader), Australian Greenhouse Office (Dr Greg Terrill, Branch Head, International and Strategies Branch; Mr Denis Smedley, Manager, Renewable Energy Technologies Team), Department of Foreign Affairs and Trade (Mr Peter Heyward, Assistant Secretary, Environment Branch; Mr Mike Byers, Executive Officer, Climate Change Section). I thank all these officers for the excellent advice and support they provided me during the course of the Conference and the Parliamentary Forum.

The Parliamentary Forum was chaired by Dr Herman Scheer, a Social Democrat (Government) member of the German Bundestag. Dr Scheer was
assisted by Ms Michaele Hustedt, a member of the Green Party in the Bundestag. The programme of the Forum comprised six sessions: four plenary debate sessions and the opening and the closing sessions. The topics of the four plenary sessions were, in order: Parliamentary Initiatives in Industrialised Countries; parliamentary Initiatives in Developing Countries; Parliamentary Initiatives on North-South cooperation; and parliamentary Initiatives for International Institutions—Joint Promotion of Renewables. I chaired the fourth sessions, and took the opportunity to deliver a speech outlining Australia’s approach to renewable energies and the considerable progress we have made. I thank Mr Denis Smedley of the AGO especially for his considerable assistance to me in preparing this speech.

The International Conference was well planned and managed by the Germany Federal Government, with generous support from the Governments of the State of Nordrhein-Westfalen and the City of Bonn, and the Germany renewable Energy industry.

The Parliamentary Forum was one of a number of “side events” of the International Conference, and was attended by some 200 members from various parliaments. Discussions covered a wide range of topics, not always as indicated by the programme. The level of passion and intensity many of the participants brought to the discussion often reached impressive heights, their contributions frequently interesting and from time to time informative, but regrettably in most instances to my observation more or less impractical.

I also took advantage of my stay in Bonn to meet with Mr Richard Kinley, deputy to the Executive Secretary of the Climate Change Secretariat (UNFCCC), which is headquartered there. Mr Kinley kindly provided me with a briefing on the current status of Kyoto Protocol, especially with regard to the then widely reported news that Russia was on the verge of ratifying the Protocol. I understood that while Mr Kinley believed that Russia was closer to ratifying than previously, he did not expect any announcement of decision, if any, before October. I was also pleased to find that (1) Mr Kinley did not regard the coming into force of the Protocol as a necessary condition for further global collaboration toward reduction of greenhouse gas emission; and (2) the feverish assertions by Senator Brown and assorted environmental warriors that Australia had become international pariah for failing to ratify the Protocol were grossly exaggerated—Australia’s efforts and achievements in greenhouse gas reduction were in fact well acknowledged. My meeting with Mr Kinley was arranged and facilitated by the Australian Embassy and DFAT. I thank Ms Alison Carrington of the Embassy and Mr Peter Heyward of the Delegation for their kind efforts.

Following the close of the International Conference, I joined a tour of the East Frisia region of Nordrhein-Westfalen State, described as a “wind energy region” with nearly 900 operative wind turbines, representing over 700 MW of installed generating power, outputting 1.2 MKWh in 2003 which was 54% of the total load. The 2-day tour was hosted by Ostfriesland Regional Council and the Council of the City of Aurich. Their hospitality, as well as the natural beauty of their countryside—even with the sight of the forest of wind turbine towers across the horizon—was gratefully appreciated.

The tour included attendance at the commissioning of the third E-112, 4.5 MW, of ENERCON. The designation 112 referred to the diameter of the rotor, in metres. ENERCON is Germany’s leading wind turbine manufacturer, its main plant in Emden is East Frisia region’s second largest industry—Volkswagen is the largest. ENERCON was a major sponsor of the East Frisia tour.

I understand that the proliferation of wind turbines in Germany generally was made possible by an energy tax regime which heavily subsidised renewable electricity generation; and in East Frisia in particular because it gave the farm owners there the opportunity to gain a source of steady supplementary income which made their farms economically viable. However, in recent years both of these factors have come under challenge—the cost of the subsidies has led to demand for reform which is now in process; at the same time environmental activists have become increasing vocal in opposition to wind turbines—which, ironically, are promoted heavily by the German Greens in government in coalition with the SPD.
In the second part of my study tour I visited Berlin, and met with officials of the German Environment Ministry—Dr Patrick Graichen (International Cooperation, Conventions and Climate Change); Mr Kai Schlegelmilch (Implementation of Germany’s Climate National Protection Program); Mr Uwe Busgen (International and EU Renewables Policy)—and received briefing on Germany’s renewable policy and general approach to environmental management. Of interest was the information that wind power was not regarded as a major player of future development of energy sources.

I also met with a number of German experts on immigration law, multiculturalism and citizenship issues. These included: Dr Steffen Angenendt, Senior Research Fellow, Research Institute of the German Council on Foreign Relations; Ms Malti Tanuja, Federal Government Commissioner for Migration, Refugees and Integration; Mr Till-Olive Rothfuss, a senior SPD parliamentary advisor on immigration.

As a summary of these discussions, I have incorporated below a short abstract of an article on immigration reform in Germany co-authored by Dr Steffen Angenendt.

“Immigration has long been one of the most hotly debated domestic political issues in Germany and in Europe at large. After many years without substantial action in this policy field, the Red-Green government which came to power in 1998 introduced two new laws, an American-style Green Card and a new citizenship law. From these beginnings the immigration reform campaign captured the public imagination and for two years a broad spectrum of figures from German life including a panel of experts summoned by the government took part in a lively debate on the issue. A law was eventually adopted by parliament and promulgated in spring 2002, but—in the wake of a voting scandal in the Bundesrat—it was struck down by the Constitution Court weeks before its scheduled entry into force. This paper recounts the story of the now defunct immigration law and seeks to shed valuable light on German politics by asking three fundamental questions: What were the main differences the political parties were unable to affect a compromise? Why have the political forces failed to turn virtually universal agreement on the need for immigration reform into an effective law? And what does the failure say about the functioning of Germany’s democracy?”

Senators wishing to read the full text of Dr Angenendt’s research report should please contact me.

I am extremely grateful to Ms Allison Carrington of the Australian Embassy in Berlin for her kind assistance in arranging and for accompanying me to these very informative meetings. I also thank Ms Miriam Kueller, senior research and project officer at the Embassy for the onerous task of interpreting for me at these meetings, a task she performed very efficiently. My special thank is due to Ms Pamela Fayle, Australian Ambassador in Germany, for her kindness of not only making her staff available for assistance, but also taking time from her busy schedule to brief me on current German political situation.

Finally, I thank Synergi Travel and Qantas for their efficient and friendly service.

Chair’s Introductory Speech to Session IV—Global Renewable Energy Actions and Institutions—Bonn 2 June 2004

Australia’s Renewable Energy Approach

I am delighted to have the privilege of chairing this session and opening the discussion regarding the promotion of renewables. I thank Dr Herman Scheer, the Forum Chair, for inviting me to take this role.

I would like to take this opportunity to talk about what Australia has developed in terms of renewable energy, especially in the context of climate change measures.

Domestic Action—Key Policies and Programs

Australia recognises the importance and the potential of renewable energy in the global effort to reduce greenhouse gas emissions and improve the sustainability of energy supply.

For 2004-5, the Australia Government has budgeted more than A$2 billion to fund a range of climate change measures across the economy, including the energy, transport and agricultural sectors, in a whole of government effort—including A$280 million through overseas aid.
Australia is making careful, targeted investments in developing the technologies that will deliver a vibrant economy with a lower greenhouse signature. The greatest intervention effort by the Australian Government so far, has been to support a greater role for renewables, including the introduction of the Mandatory Renewable Energy Targets (MRET) scheme. I should speak more on this aspect later.

Australia’s physical and geographic characteristics—ours is a large, hot and generally dry continent with a small, dispersed and yet highly urbanised population—make us a difficult candidate for a high level of renewable application. Only about 6% of total energy use in Australia comes from renewable energy. In the electricity sector, current use of renewable energy contributes nearly 11%. This is expected to expand significantly in the next decade.

On the other hand, Australia is blessed with an abundance of good renewable resources—solar, wind, tidal and biomass.

Australian Government is providing a major boost to renewable energy as a key part of its overall strategy for reducing Australia’s greenhouse gas emissions. The Government, in partnership with industry, launched a Renewable Energy Action Agenda three years ago, to underpin the renewable energy industry in Australia, based on a competitive energy market with clear signals provided to investors. This Action Agenda aims to grow annual industry sales to $4 billion by 2010 and industry is playing a key role in its implementation.

A Renewable Energy Technology Roadmap has followed on from the Action Agenda. This outlines a long-term research and development plan that defines the industry’s collective future and establishes clear pathways forward. Other more detailed roadmaps are now being developed for areas of special interest such as photovoltaics.

**Key Policies and Programs**

A key element of the Australian Government’s renewable energy strategy is the Mandatory Renewable Energy Target (MRET) scheme which was introduced in April 2001. The initiative, which will be in place until 2020, is a world-first in developing a legislated national renewable energy market based on an innovative system of tradeable certificates. The Australian Government remains committed to the measure and after almost three years of operation, an independent review of the MRET found that it is meeting its objectives, with industry taking up the challenge of delivering new renewable energy projects.

MRET, coupled with other significant Government programs dedicated to renewable energy, are ensuring Australia is on track to achieve its Kyoto-compliance emissions target and positioning Australia for a lower greenhouse signature.

Coupled with this expanded market through MRET, Australia has introduced a suite of programs that have successfully supported project delivery and technology support.

Over the past five years, Australia has allocated over $300 million to programs that have encouraged deployment of existing renewable energy technologies and furthering industry capacity building.

These programs address a range of approaches, such as supporting solar power in homes and community use buildings; supporting the installation of renewable energy in remote areas; providing venture capital for small innovative renewable energy companies; showcasing Australian technology; and supporting the commercialisation of renewable energy technologies.

The potential of hydrogen to deliver significant economic and environmental benefits is also recognized and supported.

Thus, through a combination of providing and promoting the market “pull” factor, such as the legislated targets provided by the Mandatory Renewable Energy Target scheme, and the efficient and competitive provision of support—the market “push” factor—for the commercialisation and deployment of innovative renewable energy technologies, Australia is growing and developing a significant industry sector.

**Successes**

**The results of these initiatives are impressive.**

- Around 190 power stations run on renewable energy have been accredited across Australia, covering a wide range of technologies.
• Wind power has grown at 30% per annum in Australia over recent years and could reach over 2,000 MW of installed capacity in the near future.

• Over 5,000 households and community buildings across Australia have installed solar panels on their roofs and generate their own solar electricity. More than 1,700 of these are grid connected and can sell any excess electricity they produce back to the main grid.

• 50 projects have been supported to commercialise new renewable energy technologies, in areas such as photovoltaics, wind, wave, biomass energy, and enabling technologies such as battery and inverter technology.

• Many of these technologies are already showing their potential for regional and international markets. For example the commercialization of dish and trough solar concentrators, the development of innovative photovoltaic cells, the design and development of specialised inverters, the integration of wind energy into diesel grids, and the design and manufacture of a solar and wind-powered hybrid passenger catamaran, are developments that are keeping Australia at the leading edge of renewable energy technology.

• Isolated households and remote communities are installing photovoltaic power, wind turbines and micro-hydro generators to reduce their reliance on diesel fuel for power generation. Australia has much technology and experience to share that may be relevant to developing countries faced with the challenge of providing energy to remote rural populations.

• Australia is at the leading edge of technical training and accreditation of renewable energy designers and installers.

International Cooperation

In addition to domestic measures, Australia is also actively involved in a number of international forums which are undertaking activities to promote the uptake of renewable energy. For example, renewable energy forms an important component of the Asia-Pacific Economic Cooperation (APEC) Energy Working Group (EWG) Type 2 Partnership Initiative, Fostering Regional Energy Cooperation in APEC: Energy for Sustainable Development.

In particular, Australia has led a project which assessed the training needs and capabilities of APEC member economies for the planning design, operation and maintenance of renewable energy systems. An associated project is currently being undertaken which will develop and implement a system for accrediting renewable energy training in member countries.

Australia also participates in International Energy Agency’s (IEA) International Agreements specifically directed to renewable energy. There are nine such Agreements. All are practical and cost effective mechanisms to accelerate technology developments by sharing information and expertise and broadening the prospects of market deployment for renewable energy.

I understand that Australia is likely to join the Renewable Energy and Energy Efficiency Partnership (REEEP) and work with other partners to undertake the substantial program of work proposed to expand the global market for renewable energy. Australia considers REEEP a practical means of disseminating information about renewable and energy efficiency technologies and believes Australia has much to offer to the partnership, based on our experience with renewable energy and energy efficiency technologies, policies and programs.

Australia is currently progressing bilateral cooperation on climate change with the United States, the European Union, Japan, New Zealand, and China. These relationships provide a framework to focus on practical and measurable outcomes that benefit both countries, including opportunities for renewable energy development. They complement multilateral initiatives previously mentioned, including partnerships that emerged from the World Summit on Sustainable Development.

Australia also participates in the International Partnership for the Hydrogen Economy, and our work on hydrogen includes its generation using renewable energy.
Conclusion

Australia recognises the importance of a strategic plan for Australia’s long term energy policy. As such, over the past 18 months, the Government has worked to develop a consistent and coherent framework for energy policy in Australia. While specific details are not yet available, it is anticipated that a major statement on energy to be released in the near future will include a strong component on the role of renewable energy.

In all of these programs and relationships we aim to build the opportunity for the private sector to contribute its entrepreneurial skills, knowledge, networks, and resources. And we strive to include business more broadly in international collaboration initiatives.

Gifted and Talented Children

Senator TIERNEY (New South Wales) (6.09 p.m.)—Given the time constraints, I also seek leave to incorporate my speech in Hansard.

Leave granted.

The speech read as follows—
I rise today to discuss the education of talented and gifted children in Australia.

As an educator in a previous lifetime, who has taught many gifted children, I must confess that I find it difficult to contain my enthusiasm for the subject of the education of the gifted.

This weekend I will be addressing the 10th Conference of the Australian Association of Education for the Gifted and Talented in Melbourne.

The President of AAEGT, Dr Sue Vasilevska will host a conference for around 300 delegates including state education departments, catholic and independent school authorities, primary and secondary teachers and academics.

In October 2000, I established a Senate Inquiry into The Education of Gifted Children. The unanimous report covering 20 recommendations was presented to the Senate in October 2001.

During the Inquiry, the Senate Committee considered 279 submissions made by government and non-government school authorities, interest groups, professional associations, schools, academics and individuals.

All submissions to the Inquiry agreed that many gifted students are not being catered for in the mainstream education system and these students need to be considered as a priority.

Most worrying, the 2001 Report found that there had been little progress in educational provision for gifted children since the previous 1988 Senate Select Committee report on this subject.

As a result, the needs of many gifted children are not met in the classroom resulting in boredom, frustration, physiological distress and under-achievement. As a result, some children’s potential is ignored because they ‘act up’ at school or have learnt to hide their abilities to fit in with a peer group.

And these are the children who love to learn.

We often rely on parents to take control of their gifted child’s identification and education. This is more difficult for parents and children from less advantaged backgrounds.

We must remember that gifted children are found in all socio-economic and ethnic groups.

A focus on identification in schools is most important for these children who may lack a wide range of support outside school.

It is not an easy task for classroom teachers who may not have previously received specialist training in gifted education and are faced with the day-to-day issues of managing classes.

The task is additionally complex for teachers because of the range of abilities among gifted children. Not all gifted children are the same.

Very few education faculties in Australia have lecturing staff with gifted education post-graduate qualifications. This means that relatively few student teachers receive adequate pre-service training in gifted education.

Evidence provided to the Senate Inquiry suggests that the majority of Australian teachers currently have only the most limited knowledge of how to identify and respond to gifted and talented students and I am delighted that Coalition has made this a high priority in the recent funding announcements for gifted education.

One of the most disturbing findings of the Inquiry was the low priority State Education Authorities
gave to inservice education in general and gifted inservice in particular.
Training and in-service in gifted education can significantly increase teachers’ effectiveness.
Given that the schools decided their own inservice priorities and given the scarcity of resources, the committee concluded from the evidence that gifted education rarely got a look-in.
It is quite possible that the majority of teachers in Australia have not had even one hour of gifted preservice or inservice education.
Teachers untrained in this area tend not to distinguish between potential and performance, and tend to miss underachievers, divergent thinkers, visual-spatial learners, and children who mask their ability.
Untrained teachers are also more likely to see giftedness in well-behaved children of the dominant culture (middle-class Anglo-Celtic or Asian students), and less likely to see it in disadvantaged groups (e.g., gifted students from low socio-economic areas, rural communities, non-English speaking backgrounds and Indigenous communities).
I’ve often heard it suggested that gifted education is not as much of a priority as education for students with learning difficulties because the gifted students will get through in the end. Some children might ‘get by in the end’ but this kind of comment ignores the large amount of research showing underachievement and de-motivation among gifted children. Submissions to the Senate Inquiry highlighted the particular problems and difficulties faced by gifted students and their parents in rural and isolated areas. In more remote areas, there may be no choice of schooling and fewer services for families and teachers as in metropolitan areas.
As we know, potential for learning is not enough. It is not enough that we merely identify children as gifted if their potential is not then nurtured and assisted.
There may be many children of great potential remaining unnoticed in classrooms. For these students the pace and level of the regular classroom is not challenging and they are merely learning to see education as something dull and unrewarding.
We have a duty to help all children reach their potential.
This is not just because of some perceived benefit to Australia overall, although this is a factor, but for the sake of these children’s own health and well-being.
The Senate Report made 20 recommendations covering the role of teachers in identifying gifted children, especially those from disadvantaged backgrounds.
Significantly, the call was made for a national approach to this issue and the Australian Government answered this call to the tune of $3.2 million for a series of national initiatives.
As part of this $3.2 million national response to the needs of gifted students, the Australian Government will provide:
$300,000 for the preparation this year of a professional learning package to help teachers and school leaders recognize and respond to gifted students in the classroom, including gifted students from minority and disadvantaged groups.
The package will include strategies to identify gifted students and incorporate a range of valuable intervention strategies to address the needs of gifted students, such as modification of curriculum, accelerated learning or ability groupings.
A further $2 million will be provided to assist jurisdictions in implementing the professional learning package during 2005;
$340,000 through which grants of $10,000 will be made available during 2005 to education faculties without any lecturing staff with specialist qualifications in gifted education. These grants will help education faculties nurture skills in gifted education by assisting a staff member in each education faculty to gain specialist qualifications in gifted education.
$550,000 to help parents in regional Australia understand and meet the needs of their gifted children via information sessions and workshops to be held around the country. Up to 50 regional and remote workshops will be conducted for parents, teachers and academics.
Unlike the Coalition Government, the previous federal Labor government saw no role for the federal government and sadly for the gifted, their
families and this nation, many parliamentarians have an ideological objection to special programs for the gifted, opting instead for a comprehensive, inclusive approach to education.

Parliamentarians aside, fortunately there has been greater recognition, in the field and in the community generally, of the need to provide specially gifted students, the seed stock that will enable our society to bloom and thrive.

At present it is far too easy for gifted students in our school system to slip through the cracks and have their potential unrecognised. Research has shown that many talented fail to reach their potential and just drop out of school if not physically, certainly intellectually and often emotionally. We need to stop this in its tracks and support the needs of gifted children.

The Government has recognised that it has a vital role to play in education of gifted children and their teachers. This is a far cry from the situation I encountered when I first entered the Senate in 1989.

At that time the government of the day did not see that the Federal Government had any role in gifted children.

However, the Coalition has now put the Education of Gifted children firmly on the national agenda.

Gifted children are the bright sparks that are needed to ignite our information economy and its supporting culture. Australia will be a duller star in the firmament of nations if our small poppies are not provided with the right conditions to shine.

Senate adjourned at 6.09 p.m.

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**DOCUMENTS**

**Tabling**

The following documents were tabled by the Clerk:

- Defence Act—Determinations under section—
- Military Rehabilitation and Compensation Act—MRCA Instrument—
  - No. 1 of 2004—Guide to Determining Impairment and Compensation.
  - No. 2 of 2004—Motor Vehicle Compensation Scheme.
- **Indexed Lists of Files**

The following document was tabled pursuant to the order of the Senate of 30 May 1996, as amended:

- Indexed lists of departmental and agency files for the period 1 January to 30 June 2004—Statements of compliance—National Capital Authority.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Health: Australian Longitudinal Study on Women’s Health
(Question No. 3015)

Senator Allison asked the Minister representing the Minister for Health and Ageing, upon notice, on 17 June 2004:

Given that the preliminary findings of the Australian Longitudinal Study on Women’s Health indicate that: (a) partial incontinence affects 13 per cent of young women and more than a third of middle aged and older women; and (b) risk factors for incontinence severity include heavy smoking in young women, hysterectomy in middle-aged women, use of hormone replacement therapy in older women and being overweight in all three age groups:

(1) What measures are being put in place by the Government to warn women about these risk factors.

(2) What, if any, economic analysis has been done of the potential health services and aged care savings that might be achieved by reducing incontinence rates through prevention.

(3) Given the causal relationship between caesarian section and the need for hysterectomy in later life, what efforts are being made to reduce rates of caesarian section in childbirth, particularly in the private hospital sector.

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

(1) In relation to smoking, the Australian Government funds national population-based measures to alert people to its adverse health effects and encourage them to quit. The National Tobacco Campaign initiated in 1997 is one of the most intensive of its type ever seen in Australia. It is intended to alert people aged over 18, both male and female, to a range of health effects and encourages use of the national Quitline. The Australian Government also maintains national bans on tobacco advertising and health warnings on tobacco packaging, which are one of the most direct ways of advising smokers about the dangers they face. The Government has indicated its commitment to update these warnings, including the use of graphic images. It should be noted that the direct delivery of smoking cessation services is a matter for State and Territory Governments through their various Quit organisations.

The Australian Government provides funding of $500,000 per year until the end of June 2006 to the Jean Hailes Foundation. These funds support professional development for clinicians, and community education, primarily focused on the health and wellbeing of women aged between 35 and 65 years.

The Foundation provides education on a range of health issues that affect women, including incontinence. Their educational material on incontinence includes information on the types of incontinence, causes, prevention and treatment, and suggests that, in some women, incontinence may become worse after menopause because of the lack of the hormone oestrogen. Hence, the Foundation suggests that these women may be helped by oestrogen treatment—particularly a local oestrogen treatment such as a cream. The Foundation also suggests that these women also do pelvic floor exercises and bladder retraining exercises.

The Foundation suggests women seek further advice from their doctor or the National Continence Helpline, a service that is also funded by the Australian Government.
Researchers with the Women’s Longitudinal Study are debating whether there is a relationship between hormone replacement therapy and urinary incontinence, once other factors have been taken into consideration.

Further evidence is required before prevention methods can be considered.

(2) Health economists from the University of New South Wales are currently engaged in a research project to develop a framework for the economic and cost evaluation of continence conditions. The project commenced in June 2001, with funds from the National Continence Management Strategy. The final report is expected to be completed and published in late 2004. The purpose of the project is to develop a framework for evaluating the cost of treatment and management of urinary and faecal incontinence for different target groups, service and treatment settings.

This research will inform further work looking at potential health, aged care and community savings by reducing the incidence of incontinence through preventative measures.

(3) The Department is not aware of any work in this area.

However, the Department has undertaken other work researching the correlation between different childbirth factors and the risk of incontinence. Key factors that were identified include head circumference, birth weight and length of stage two labour.

Health: Private Hospitals
(Question No. 3016)

Senator Allison asked the Minister representing the Minister for Health and Ageing, upon notice, on 18 June 2004:

(1) Is the Minister aware that in the 2001-02 financial year, private hospitals treated only 18 percent of all falls type patients and 16 percent of all pneumonia type patients, while undertaking over 44 percent of all cardiac procedures and 60 percent of lens procedures.

(2) Is it correct that only 505,000 emergency patients were treated by the private sector in the 2001-02 financial year, in comparison to 5.5 million treated by the public hospitals.

(3) Given that falls and pneumonia commonly cause older Australians to require hospital care and that the frail-aged are likely to need emergency admission due to falls and respiratory problems, does this imbalance between the public and private systems in relation to emergency treatment and the proportion of falls and pneumonia type patients treated suggest that the private health care system is not contributing sufficiently to providing a level of care for the frail-aged that is commensurate with the proportion of aged persons in the community.

(4) Are cardiac procedures and lens procedures high profit yielding operations.

(5) Is the Minister aware that over 50 percent of private hospital admissions are for day procedures.

(6) Does this bias on the part of private hospitals towards procedures the costs of which may be easily managed, such as cardiac and lens procedures, and same day treatments indicate that the elderly, who would be less likely to fit into these categories, are being left out of the private hospital system.

(7) Is it the case that in 2003 there were 106,000 nursing home type patients who made insurance claims through public hospitals, suggesting that the frail-aged are not gaining access to the private hospital system at a rate that might be expected.

(8) Does the Minister agree that, in effect, the private hospital system is being selective about the services it provides and the patients it treats.

(9) What action is the Government taking to ensure that elderly people are not discriminated against in the provision of hospital services in the private sector.

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

(1) The Australian Institute of Health and Welfare (AIHW) Australian Hospital Statistics 2001-02 report shows that private hospitals treated:
- 19% of falls type patients;
- 19% of pneumonia type patients;
- 51% of cardiac procedures; and
- 69% of lens procedures.

(2) The AIHW Australian Hospital Statistics 2001-02 report shows that approximately 505,000 accident and emergency patients were treated in private hospitals and approximately 5.8 million accident and emergency patients were treated in public hospitals.

(3) No. Private hospitals treat as many older patients as public hospitals. The AIHW Australian Hospital Statistics 2001-02 report shows that:
- 33% of patients treated in public hospitals are older than 65 years;
- 34% of patients treated in private hospitals are older than 65 years;
- People older than 65 years accounted for 46% of the total time of all people in public hospitals; and
- People older than 65 years accounted for 49% of the total time of all people in private hospitals.

(4) No. Overall, private hospitals’ net operating profit for 2001-02 was 6%, according to ABS data. There is no evidence to suggest that lens and cardiac procedures yield particularly high profits.

(5) Yes.

(6) No. See answer to (3) above.

(7) No. See answer to (3) above. Nursing home type patient indicators are no longer used in public hospital data collection. However, Department of Health and Ageing data shows there were 1,600 episodes of maintenance and non-acute geriatric care for privately insured patients older than 65 years in public hospitals in 2001-02.

(8) The Government believes that a mixed model of balanced private and public health services is integral to the provision of universal access to high quality affordable health care services for all Australians, including older Australians. The essence of this system is patient choice. A patient with private health insurance may elect to be treated as a public patient in a public hospital, as a private patient in a public hospital, or as a private patient in a private hospital. A decision to admit a patient is made by the treating doctor on clinical grounds. The choice of hospital may be influenced by a number of factors which include the patient’s preference as well as the specialist’s admitting rights, capacity of available facilities, the location and the type and range of services provided by facilities. Hospitals and day facilities which are privately owned and operated may choose to offer particular types of services and this is a commercial decision for them. However, consistent with the Government’s policy, the outcome is a wider range of choices for all Australians.

(9) As noted in the answer to Question 3 above, AIHW statistics for 2001-02 show the proportion of patients aged over 65 years treated in public hospitals and private hospitals is very similar. Elderly people, along with all Australians, who choose to have private health insurance are guaranteed a choice by this Government about where they will be treated, when they require treatment. Data from the Private Health Insurance Administration Council for the March quarter 2004 indicates that 1,048,552 people aged 65 and over had private health insurance.
Science: Stem Cell Research  
(Question No. 3024)

Senator Brown asked the Minister representing the Minister for Science, upon notice, on 18 June 2004:

(1) For each of the next 3 financial years, how much has the Government allocated for research related to or using:
   (a) stem cells; and
   (b) human cloning technology.

(2) To whom will the money go.

(3) (a) What overview arrangements has the Government implemented; and
   (b) will there be a report prepared on this matter for tabling in Parliament; if so, when.

Senator Vanstone—The Minister for Science has provided the following answer to the honourable senator’s question:

The honourable Senator may wish to note that expenditure on research in such areas may also be funded through other portfolios such as the Minister for Health and Ageing and the Minister for Industry, Tourism and Resources. The following response has been prepared on a programme basis for the education, science and training portfolio.

Questions 1 and 2

CSIRO

(1) (a) The CSIRO will undertake expenditure on stem cell research over the next three financial years:

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<td>Animal stem cells (non-human)</td>
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(b) nil.

(2) The funds will be spent by CSIRO in three of its divisions – Livestock Industries, Health Sciences and Nutrition and Molecular Science – as well as in the Food Futures National Research Flagship.

Major National Research Facilities Programme (MNRF)

(1) (a) Under the MNRF, the Department of Education, Science and Training is providing $1.5m in 2004-05 and $1.5m in 2005-06 to the MNRF Division of the National Stem Cell Centre.

(b) Nil.

(2) The funding is provided to the National Stem Cell Centre (NSCC) Ltd.

Co-operative Research Centres (CRC) Programme

(1) (a) The CRC for Chronic Inflammatory Diseases is conducting research using murine (mouse) embryonic stem cells. This is part of just one of the Centre’s five research programmes. Over the next three financial years the CRC Programme is contributing $3.464m to the Centre per annum. The funding provided to each CRC is for use across all approved CRC activities. It is not possible to identify the proportion of Australian Government funding allocated by each CRC to specific research programmes.

(b) Nil.

(2) The money is part of a seven year grant awarded to the CRC for Chronic Inflammatory Diseases.
The Australian Research Council (ARC) through its National Competitive Grants Program, funds thousands of research proposals, across many areas, and it primarily uses the titles and summary information provided by applicants to identify these. The ARC has provided its input to the response to Senator Brown’s question on the basis of such descriptions, but recognises that this may not represent the totality of its funding for the areas requested – it is not possible to easily identify funding beyond that provided below:

1. (a) The funding provided by the ARC over the next 3 financial years for research described by applicants as relating to, or using, ‘stem cells’ is:

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<td>$9,079,673</td>
<td>$9,646,355</td>
<td>$7,358,344</td>
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(b) Nil. The ARC does not fund research in ‘human cloning technology’

2. The funding allocated by the ARC to these research projects will be paid to: Monash University, the National Stem Cell Centre, RMIT University, The Flinders University of South Australia, The University of Adelaide, The University of Queensland, The University of Western Australia, and the Victor Chang Cardiac Research Institute.

Question 3

3. (a) There are no specific collective overview arrangements within this portfolio for such research. However funding through the ARC and the MNRF and CRC Programmes all have their own requirements that are specific to funding and include, for example, annual reports to be provided documenting progress and that any prescribed ethical clearance or compliance arrangements are observed.

Regarding broader Government overview arrangements for such research the honourable Senator may wish to note that the Minister for Health and Ageing has portfolio responsibility for the National Health and Medical Research Council and its legislation, which also provides funding for health and medical research in Australia. The honourable Senator may also be aware that the Prohibition of Human Cloning Act 2002 and the Research Involving Human Embryos Act 2002 require the initiation of independent reviews of the operation of each Act, scheduled to commence from the end of the year, with the outcomes of the reviews to be provided to the Council of Australian Governments and both Houses of Parliament by 19 December 2005. I understand that this process will be managed by the Minister for Ageing.

(b) At this time there is no intention to prepare a report for tabling in Parliament on such research expenditure in this portfolio.

Health: Chickenpox

(Question No. 3070)

Senator Allison asked the Minister representing the Minister for Health and Ageing, upon notice, on 14 July 2004:

With reference to the proposed chickenpox (varicella) vaccine subsidy:

1. Is it correct that: (a) the only people who are at risk of complications from chickenpox are those with serious immune suppression, and that almost all of those who have died from chickenpox had been treated prior to their deaths with steroids, anti-virals or other immune-suppressive drugs; (b) the experience in Japan, the country which has used this vaccine for the longest time, has been that rather than preventing chickenpox, vaccination has simply moved the disease from childhood to adulthood, when this normally benign disease can be more dangerous; (c) the use of this vaccine has led to an increase in shingles (Herpes zoster) infections in children and that this painful illness used to be unheard of in young people but is now becoming more and more common in countries

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where this vaccine is used; and (d) this vaccine contains Neomycin which, according to the manufacturer’s directions (http://www.merck.com/mrkshared/mmanual/section13/chapter153/153c.jsp), should only be used topically or orally and never injected because of the high toxicity of this drug when administered in this way.

(2) Given that chickenpox is a relatively benign disease, what, if any, are the benefits of subsidising the vaccine.

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

(1) (a) Chickenpox (varicella zoster virus) is usually a disease of childhood, with estimates of up to 90% of all individuals infected in childhood. ¹ It is highly contagious and usually self-limiting with low morbidity and mortality rates. In some individuals, though, complications can arise and increased death rates are seen in neonates and immunocompromised people.² ³

Some studies identify predisposing factors for severe chickenpox infection as use of intermittent or long-term steroid treatment, women who are pregnant or postpartum, children with cancer or bone marrow transplants, HIV infection or other immune-suppression.³ ⁴

(b) One study published in 1997 from Japan⁴ indicated that since vaccine licensure for healthy children in 1989, chickenpox vaccine has shifted the age distribution of chickenpox cases from children into adulthood, with an increase in the social costs to society. This study was referenced in a later edition of the New England Journal of Medicine.⁵ Whilst chickenpox vaccine was first licensed in Japan, vaccine coverage in the population has been quite limited.⁴

(c) Current data from countries with chickenpox vaccination programs have shown no evidence that chickenpox vaccination programs increase childhood shingles rates. However, full evaluation of these programs is continuing. Most cases of shingles are in individuals over 50 years of age.⁶

(d) The website address to which you refer indicates the uses for the antibiotic product neomycin, which is manufactured by Merck, Sharpe and Dohme. Neomycin is given to people who have specific bacterial infections, and should only be given by mouth (oral) or onto the skin (topical), depending on the product’s formulation. Vaccine manufacturers use trace amounts of neomycin in varicella vaccines to prevent bacterial contamination of the product as it is being manufactured. The GlaxoSmithKline product, Varilrix, contains 25 μg of neomycin per dose of vaccine, while the CSL sponsored product, Varivax Refrigerated, contains only a trace amount of neomycin (less than 5 μg).

There have been many clinical trials conducted on both varicella vaccine products available in Australia. All clinical trials have concluded that both vaccines are safe, and effective against chickenpox.

(2) On the advice of the Chief Medical Officer for Australia, Professor John Horvath, the Minister for Health and Ageing has asked the Australian Technical Advisory Group on Immunisation (ATAGI) to review the most recent evidence about chickenpox vaccine, and to update its advice about the benefits and costs of introducing the vaccine into the National Immunisation Program.

The Minister for Health and Ageing has been advised that at its July meeting ATAGI formulated a process for reviewing the evidence, and is expected to provide advice to the Minister late in 2004 or early in 2005.

Senator Allison asked the Minister for Finance and Administration, upon notice, on 19 July 2004:

(1) Since 1 April 2004, by month, how many and which hospital contracts have been negotiated and agreed by Medibank Private.

(2) How does this number compare with the previous quarter.

(3) (a) How many and which hospital contracts are currently under negotiation; and (b) for each contract under negotiation, how long have negotiations taken so far.

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

(1) I am advised by Medibank Private that since 1 April 2004, it has agreed 21 hospital contracts. Five were agreed in April 2004, seven in May 2004, and nine in June 2004. These numbers are to be read in the context that the large majority of Medibank Private contracts expire between 30 June and 30 September each year, and as such it is normal for Medibank Private to have a large number of negotiations in progress at this time of year.

It is not appropriate for me to provide details regarding Medibank Private’s negotiation of specific hospital contracts, including which hospital contracts have been negotiated, on the grounds that answering would be prejudicial to Medibank Private’s commercial interest. To reveal such details of negotiations would provide both hospitals and other private health insurance funds with information on Medibank Private that may influence contract negotiations. A list of hospitals with which Medibank Private has a contract or is currently negotiating a contract, as at 2 August 2004, is attached.

(2) I am advised by Medibank Private that 12 hospital contracts were negotiated and agreed during the period January to March 2004; two in January 2004, four in February 2004, and six in March 2004.

(3) (a) Medibank Private currently has 72 hospital contracts under negotiation.

(b) It is not appropriate for Medibank Private to provide details regarding negotiation of specific hospital contracts, including the length of negotiations, on the grounds that answering would be prejudicial to Medibank Private’s commercial interest. Medibank Private operates in a competitive environment and as such has commercial imperatives that influence contract negotiations, and the length of those negotiations, with health service providers. To reveal such details of negotiations would provide other private health insurance funds with information on Medibank Private that could be damaging to Medibank Private’s commercial position.

Hospital Name
Calvary Private Hospital
John James Memorial Hospital
The National Capital Private
QUESTIONS ON NOTICE

Brindabella Endoscopy Centre
Canberra Eye Hospital
Canberra Surgicentre
Mugga Wara Endoscopy Centre
Allowah Children’s Hospital
Alpha Westmead Private Hospital
Alwyn Rehabilitation Hospital
Armidale Private Hospital
Baringa Private Hospital
Berkeley Vale Private Hospital
Brisbane Waters Private Hospital
Calvary Private Hospital Wagga Wagga Inc.
Cape Hawke Community Private Hospital
Castlecrag Private Hospital
Christo Road Private Hospital
Dalcross Private Hospital
Delmar Private Hospital
Dubbo Private Hospital
Eastern Suburbs Private Hospital
Evesham Clinic Hospital
Hawkesbury District Health Service Private Hospital
Hirondelle Private Hospital
Holroyd Private Hospital
Hunter Valley Private Hospital
Hunters Hill Private Hospital
Hurstville Community Private Hospital
Jean Colvin Hospital
Kareena Private Hospital
Lady Davidson Private Hospital
Lake Macquarie Private Hospital
Lawrence Hargrave Private Hospital
Lingard Private Hospital
Lithgow Community Private Hospital
Longueville Private Hospital
Macarthur Private Hospital
Manly Waters Private Hospital
Mater Misericordiae Private Hospital
Mayo Private Hospital
Metropolitan Rehabilitation Hospital
Minchinbury Community Hospital
Mosman Private Hospital
Mt Wilga Rehabilitation Private Hospital
Nepean Private Hospital
Newcastle Private Hospital
North Gosford Private Hospital
North Shore Private Hospital
Northside West Clinic
Nowra Private Hospital
Orange Private Hospital formerly Dudley Private Hospital
Peninsula Private Hospital
Poplars Private Hospital
Port Macquarie Base Hospital
Port Macquarie Private Hospital
President Private Hospital
Prince of Wales Private Hospital
Roma Private Hospital
Shellharbour Private Hospital
Southern Highlands Private Hospital
St George Private Hospital
St John Of God Private Hospital
St John Of God Private Hospital
St Luke’s Hospital Complex
St Vincent’s Private Hospital
St Vincents Private Hospital
St Vincents Private Hospital
Strathfield Private Hospital
Sydney Adventist Hospital
Sydney Southwest Private Hospital
Tamara Private Hospital
The Hills Private Hospital
The Illawarra Private Hospital
The Northside Clinic
The Sydney Clinic
The Sydney Private Hospital
Toronto Private Hospital
Wandene Private Hospital
Wamers Bay Private Hospital
Wesley Private Hospital
Westside Private Hospital
Wolper Hospital
Adori Day Clinic
Aesthetic Day Surgery
Albury Day Surgery
Ballina Day Surgery
Bankstown Primary Health Care Day Surgery
Bega Valley Day Surgery and Private Hospital
Bondi Junction Endoscopy Centre
Boulevarde Day Surgical Centre
Bowral Diagnostic Centre
Broadmeadow Day Surgery Centre
Burwood Endoscopy Centre
Calvary Day Procedure Centre (was Wagga Wagga Day Surgery)
Caringbah Day Surgery
Carswell Clinic Day Surgery
Castle Hill Day Surgery
Centre for Digestive Diseases
City West Day Surgery Centre
Coffs Harbour Day Surgery
Day Surgery Centre - Manly
Dee Why Endoscopy Unit
Diagnostic Endoscopy Centre
Drummoyne Eye Surgical Centre
Eastern Heart Clinic
Eastern Suburbs Endoscopy Clinic
Excel Endoscopy Centre
Francis Street Ophthalmic Day Procedure Centre
Hastings Diagnostic Centre
Hurstville Day Surgery Centre
Inner West Endoscopy Centre
Insight Clinic
Kingsgrove Day Hospital
Laser Cosmetic Day Procedure Centre
Liverpool Day Surgery
Maroubra Day Surgery
Marsden Eye Surgery Centre
Metwest Eye Centre
Miranda Eye Surgical Centre
Newcastle Plastic Surgery Day Case Centre
Ophthalmic Surgery Centre (North Shore)
Orange Eye Centre
Peninsula Private Sleep Laboratory
Pennant Hills Day Endoscopy Centre
Pittwater Day Surgery
Preterm Foundation
Randwick Day Surgery
Riverina Cancer Care Centre

QUESTIONS ON NOTICE
Riverina Cardiovascular & Physiology Centre
Rosebery Day Surgery
Rosemont Endoscopy Centre
Skin And Cancer Foundation
South Western Day Surgical Centre
Southdern Southern Suburbs Dermatology
Southline Eye Surgery Centre
Sussex Day Surgery
Sydney Day Surgery Prince Alfred
Sydney Day Surgery Darlinghurst
Sydney ENT And Facial Day Surgery Ctr
Sydney Eye Day Surgery
Sydney Haematology and Oncology Clinic
The Eye Institute
The Eye Surgery
The Lambton Road Day Surgery
The Plaza Clinic for Laser & Cosmetic Surgery
The San Day Surgery
The Sydney Clinic For Gastrointestinal Diseases
The Sydney Eye Specialist Centre
The Wales Day Centre
Tweed Day Surgery
Vista Laser Eye Clinics (NSW)
Wagga Endoscopy Centre
Warringah Mall Day Surgery
Westmed Centre
Wollongong Day Surgery
Darwin Private Hospital
East Point Day Surgery Centre
Allamanda Private Hospital
Allora District Co-Op Hospital
Belmont Hospital
Brisbane Private Hospital
Caboolture Private Hospital
Cairns Private Hospital
Caloundra Private Hospital
Canossa Hospital
Clifton Co-Operative Hospital
Cooloola Community Private Hospital
Crows Nest Hospital
Eastern Endoscopy Centre
Eden Private Healthcare Centre

QUESTIONS ON NOTICE
Eye-Tech Day Surgery
Friendly Society Private Hospital
Greenslopes Private Hospital
Holy Spirit Northside
John Flynn Hospital & Medical Centre
Killarney & District Private Hospital
Logan Day Surgery
Logan Private Hospital
Mater Centre for Haematology & Oncology
Mater Misericordiae Childrens Private Hospital
Mater Misericordiae Day Unit
Mater Misericordiae Hospital
Mater Misericordiae Private Hospital
Mater Misericordiae Private Hospital
Mater Misericordiae Private Hospital
Mater Misericordiae Private Hospital
Mater Misericordiae Private Hospital
Mater Misericordiae Private Hospital - Redland
Mater Mothers Private Hospital
Mount Olivet Hospital
Nambour Selangor Private Hospital
New Farm Clinic
Noosa Hospital & Specialist Centre
North West Brisbane Private Hospital
Nth Queensland Day Surgery Centre
Pacific Private Hospital
Palm Beach Currumbin Hospital
Peninsula Private Hospital
Pindara - Gold Coast Private Hospital
Pindara Day Procedure Centre
Pine Rivers Private Hospital
Pioneer Valley Hospital
Pittsworth Hospital
QFG Day Theatres
Queensland Eye Centre
Rockhampton-Hillcrest Private Hospital
Roderick Street Day Surgery
South Burnett Community Private Hospital
St Andrew’s Hospital
St Andrew’s Hospital
St Andrews War Memorial Hospital
St Stephens Private Hospital
St Vincent’s Hospital
Sunnybank Private Hospital
Sunshine Coast Day Surgery
Sunshine Coast Haematology & Oncology Clinic
T & G Day Surgery Unit
Terrace West Endoscopy Centre
The Sunshine Coast Private Hospital
The Wesley Clinic for Haematology & Oncology
The Wesley Hospital
The Wesley Hospital Townsville
Toowong Private Hospital
Toowoomba Surgicentre
Tri-Rhosen Day Surgery
Allamanda Surgicentre
Brisbane Endoscopy Services
Cairns Day Surgery
Cairns Surgical Centre
Chasely Day Surgery
Mackay Day Surgery
Montserrat Day Hospital
Montserrat Day Hospital
North Queensland Day Surgical Centre
Pacific Day Surgery
Short Street Day Surgery
Townsville Day Surgery
Vision Centre Day Surgery
Adelaide Clinic The
Ardrossan Community Hospital
Ashford Hospital
Burnside War Memorial Hosp.
Calvary Hospital Adelaide
Central Districts Private Hospital
College Grove Private Hospital
Flinders Private Hospital
Fullarton Private Hospital
Glenelg Community Hospital
Griffith Rehabilitation Hospital
Hamley Bridge Memorial Hosp.
Kahlyn Private Hospital
Keith & District Hospital

QUESTIONS ON NOTICE
QUESTIONS ON NOTICE

Mallala Community Hospital
McLaren Vale Private Hosp.
Memorial Hospital The
Moonta Health & Aged Care Service
Mount Gambier Private Hosp.
Noarlunga Health Services
North Eastern Community Hosp.
Northern Yorke Private Hosp.
Parkwynd Private Hospital
Repromed
Riverland Private Hospital
South Coast District Hosp
Sportsmed SA Hospital & Day Surgery
St Andrews Hospital
Stirling & Districts Hospital
Wakefield Hospital
Western Hospital
Adelaide Day Surgery
Adelaide Eye & Laser Ctr
Brighton Day Surgery
Glen Osmond Surgicentre
Glenelg Day Surgery
Hamilton House Day Surgery
Hartley Dialysis Centre
Hill Day Surgery Centre
Mary McHugh Day Surgery Ctr
Modbury Private Endoscopy Clinic
North Adelaide Gastroenterology Ctr
North Adelaide Day Surgery Ctr
Northern Endoscopy Centre
Oxford Day Surgery Centre
Renal Therapy Services
Sach Day Surgery
South Terrace Urology
Waverley House Plastic Surgery
Calvary Campus - Calvary Healthcare
Hobart Clinic The
Mersey Community Hospital
North West Private Hospital
Philip Oakden House Private Hospital
St Helens & Hobart Private Hosp.
St John’s Campus - Calvary Healthcare
St Lukes Private Hospital
St Vincents Private Hospital
Eye Hospital The
Hobart Day Surgery
Albert Road Clinic The
Albury-Wodonga Private Hosp.
Avenue Hospital The
Baronor Private Hospital
Bays Hospital - Mornington The
Beleura Private Hospital
Bellbird Private Hospital
Berwick Hospital
Cabrini Brighton Private Hospital
Cabrini Hospital
Cedar Court Rehab. Hospital
Chiltern & District Bush Nursing Hospital
Cliveden Hill Private Hospital
Como Private Hospital
Cotham Private Hospital
Delmont Private Hospital
Donvale Rehabilitation Hospital
Elsternwick Private Hospital
Epworth Hospital
Epworth Rehabilitation - Brighton
Euroa Hospital
Frances Perry Private Hospital
Freemasons Hospital
Gambro Diamond Valley Clinic
Geelong Clinic The
Geelong Private Hospital
Hartwell Private Hospital
Heyfield Hospital Inc
Hopetoun Rehabilitation Hosp.
Ivanhoe Manor Private Hosp.
Jessie McPherson Private Hosp.
John Fawkner - Moreland Private Hospital
Knox Private Hospital
La Trobe University Medical Ctr
Lilydale Private Hospital
Linacre Private Hospital (formerly Bayside)
Malvern Private Hospital
Maryvale Private Hospital

QUESTIONS ON NOTICE
Masada Private Hospital
Melbourne Clinic The
Melbourne Private Hospital
Mercy Campus - St Vincents & Mercy Hospital
Mitcham Private Hospital
Monash Surgical Private Hosp
Mount Alvernia Mercy Hospital
Mount Waverley Private Hospital
Mountain District Private Hosp.
Murray Valley Private Hospital
Neerim District Soldiers’ Memorial Hosp
Northpark Private Hospital
Peninsula Private Hospital
Pinelodge Clinic Private Hosp.
Ringwood Private Hospital
Sea Lake & Dist. Health Service
Shepparton Private Hospital
South Eastern Private Hospital
St John of God Health Care - Nepean Rehabilitation Hospital
St John Of God Hospital
St John Of God Hospital
St John Of God Hospital
St Vincent’s Campus - St Vincent’s & Mercy Hospital
Sunbury Private Hospital
Valley Private Hospital The
Victoria House Private Hospital
Victorian Rehabilitation Centre- North (Formerly Dorset Private Hospital)
Victorian Rehabilitation Centre The
Vimy House Private Hospital
Wangaratta Private Hospital
Warley Hospital Inc
Warringal Private Hospital
Western Private Hospital
Yackandandah Bush Nursing Hosp.
Avenue Day Surgery
Ballarat Day Procedure Centre
Bayside Day Endoscopy Hosp.
Bayside Day Procedure & Specialist Ctr
Bayswater Day Procedure Centre
Berwick Eye & Surgicentre
Box Hill Gardens Day Surgery

QUESTIONS ON NOTICE
Brighton Plastic Surgery Centre
Camberwell Eye Clinic Day Surgery & Laser Ctr
Chesterville Day Hospital
Dandenong Eye Clinic & Day Surgery Ctr
Digestive Health Centre
Eastern Eye Surgery Centre
Eastside Endoscopy
Eye Clinic Footscray
Forest Hill Dialysis Centre
Glen Eira Day Surgery
Hobsons Bay Endoscopy Centre
Jolimont Endoscopy
Kew Endoscopy Centre
Kew Private Dialysis Centre
Knox Surgicentre
Linley Clinic
Melbourne Day Surgery
Melbourne Endoscopy Monash Day Hospital
Melbourne Endoscopy Day Hosp.
Noble Park Endoscopy Ctr
North West Endoscopy Services
Peninsula Endoscopy Ctr
Reservoir Day Procedure Ctr
Rosebud SurgiCentre
Southern Eye Centre
Springvale Endoscopy Centre
Stonnington Day Surgery
Surgicentre (Dandenong)
Taburn Specialist Medical Ctr
Waverley Endoscopy
Western Day Surgery
Western Gastroenterology Services
Western Suburbs Endoscopy Services
Albany Hospice
Attadale Hospital
Bethesda Hospital
Cancer Foundation Cottage Hospice
Fremantle Kaleeeya Hospital
Galliers Private Hospital
Gi Clinic
Glengarry Hospital

QUESTIONS ON NOTICE
Harborne Dental Clinic
Hollywood Private Hospital
Joondalup Private Hospital
Lions Eye Surgical Centre
McCourt Street Day Surgery
Mercy Hospital Mount Lawley
Mount Hospital
Mt Lawley Private Hospital
Murdoch Community Hospice
Murdoch Surgicentre
Peel Health Campus
Perth Clinic Pty Ltd
Rockingham Family Hospital
South Perth Community
Southbank Clinic
St John Of God Hospital
St John Of God Hospital
St John Of God Hospital
Westminster Day Surgery
Colin Street Day Surgery
Desula Day Surgery
Eye Surgery Foundation

Trade: Free Trade Agreement
(Question Nos 3088 to 3090)

Senator Ludwig asked the Minister representing the Minister for Trade, upon notice, on 22 July 2004:

(1) Will the proposed free trade agreement with the United States of America affect any aspect of the regulation of firearms in Australia.

(2) Will the proposed agreement affect the regulation of the importing, sale, distribution, marketing, or regulation of firearms in Australia in any way.

(3) Can the Minister confirm that the proposed agreement will not result in any amendments to any of the laws or regulations governing any aspect of the control and regulation of firearms in Australia.

(4) Has any agency in the Minister’s portfolio undertaken an analysis of the proposed agreement to ascertain the effect this agreement would have on all aspects of the regulation of firearms in Australia; if so: (a) which agency undertook the analysis; and (b) are the results publicly available.

(5) What provisions exist in the proposed agreement that would prevent the United States’ small arms industry mounting in Australia a marketing campaign for the sale of guns that are manufactured in the United States.

Senator Hill—The following answer has been provided by the Minister for Trade to the honourable senator’s question:

(1) No. The Agreement does not affect the regulation of firearms in Australia. Most significantly, the services and investment chapters contain a reservation preserving Australia’s right to introduce new
market access restrictions on wholesale and retail trade in firearms. Furthermore, the general exceptions provisions allow the use of measures otherwise inconsistent with the Agreement that are necessary to ensure the protection and safety of the community.

(2) No.

(3) Yes. The proposed agreement will not result in any amendments to any of the laws or regulations governing any aspect of the control and regulation of firearms in Australia.

(4) No. The Agreement will have no affect on the regulation of firearms, so no further analysis of this issue has been required.

(5) There is nothing in the Agreement which would limit the right of the Parties to regulate firearms, including their marketing, for public policy purposes such as the protection and safety of the community.