INTERNET
The Journals for the Senate are available at

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

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

SITTING DAYS—2004

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

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

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

**TUESDAY, 30 NOVEMBER**

### Chamber

**Business**—

<table>
<thead>
<tr>
<th>Consideration of Legislation</th>
<th>..........................................................</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copyright Legislation Amendment Bill 2004</td>
<td>..........................................................</td>
<td>1</td>
</tr>
<tr>
<td>First Reading</td>
<td>........................................................................</td>
<td>1</td>
</tr>
<tr>
<td>Second Reading</td>
<td>........................................................................</td>
<td>1</td>
</tr>
<tr>
<td>Fisheries (Validation of Plans of Management) Bill 2004</td>
<td>..........................................................</td>
<td>3</td>
</tr>
<tr>
<td>Second Reading</td>
<td>........................................................................</td>
<td>5</td>
</tr>
<tr>
<td>Third Reading</td>
<td>........................................................................</td>
<td>6</td>
</tr>
<tr>
<td>Family Law Amendment (Annuities) Bill 2004</td>
<td>..........................................................</td>
<td>5</td>
</tr>
<tr>
<td>Second Reading</td>
<td>........................................................................</td>
<td>6</td>
</tr>
<tr>
<td>Third Reading</td>
<td>........................................................................</td>
<td>6</td>
</tr>
<tr>
<td>Surveillance Devices Bill 2004</td>
<td>..........................................................</td>
<td>6</td>
</tr>
<tr>
<td>Second Reading</td>
<td>........................................................................</td>
<td>17</td>
</tr>
<tr>
<td>In Committee</td>
<td>........................................................................</td>
<td>17</td>
</tr>
</tbody>
</table>

### Questions Without Notice

| Regional Services: Program Funding | .......................................................... | 25 |
| Economy: Demographic Trends | ........................................................................ | 27 |
| Regional Services: Program Funding | .......................................................... | 28 |
| Superannuation: Contributions | ........................................................................ | 30 |
| Federal Election: Member for New England | .......................................................... | 31 |
| Howard Government: Government Appointments | .......................................................... | 32 |
| Economy: Current Account Deficit | ........................................................................ | 33 |
| Environment: Endangered Species | ........................................................................ | 35 |
| Finance: Special Appropriations | ........................................................................ | 37 |
| Immigration: Refugees | ........................................................................ | 38 |
| Centrelink: Auditor-General’s Report No. 15 | .......................................................... | 39 |
| Environment: Mandatory Renewable Energy Target | .......................................................... | 40 |

### Questions Without Notice: Take Note of Answers

| Answers to Questions | .......................................................... | 41 |
| Howard Government: Government Appointments | .......................................................... | 47 |

### Petitions

| Medicare | .......................................................... | 48 |
| Defence: Involvement in Overseas Conflict Legislation | .......................................................... | 48 |
| Environment: Ningaloo Marine Park | ........................................................................ | 48 |
| Immigration: Asylum Seekers | ........................................................................ | 49 |

### Notices

| Presentation | .......................................................... | 49 |

### Committees

| Corporations and Financial Services Committee: Joint—Establishment | .......................................................... | 50 |

### Notices

| Postponement | .......................................................... | 51 |
| Presentation | .......................................................... | 51 |
| Eureka Stockade: 150th Anniversary | .......................................................... | 52 |

### Business

| Consideration of Legislation | .......................................................... | 52 |

### Notices

| Postponement | .......................................................... | 52 |
Committees—
Electoral Matters Committee: Joint—Reference ................................................................. 52
Prisons: Drug Use ................................................................................................................ 52
Business—
Consideration of Legislation ........................................................................................................ 53
Health: Maternity Services ......................................................................................................... 53
Iraq ........................................................................................................................................ 53
Documents—
Tabling .................................................................................................................................... 55
Parliamentary Zone—
Proposal for Works ................................................................................................................. 55
Committees—
Membership .......................................................................................................................... 55
Customs (Prohibited Imports) Amendment Regulation 2004 (No. 3)—
Motion for Disallowance .......................................................................................................... 56
Surveillance Devices Bill 2004—
In Committee .......................................................................................................................... 61
Third Reading .......................................................................................................................... 70
Condolences—
Haines, Ms Janine, AM ........................................................................................................... 70
National Security Information (Criminal Proceedings) Bill 2004 and
National Security Information (Criminal Proceedings) (Consequential Amendments)
Bill 2004—
Second Reading ...................................................................................................................... 70
In Committee .......................................................................................................................... 82
Documents—
Consideration ........................................................................................................................... 93
Adjournment—
Eureka Stockade: 150th Anniversary .................................................................................... 93
World AIDS Day ....................................................................................................................... 95
Zimbabwe ................................................................................................................................. 97
Australian Stem Cell Centre ..................................................................................................... 99
Health: Breast Cancer .............................................................................................................. 102
Documents—
Tabling ..................................................................................................................................... 104
Tabling ..................................................................................................................................... 105
Questions on Notice
Customs: SmartGate System—(Question No. 3102) ............................................................... 106
Attorney-General’s: Biometric Technology—(Question No. 3104) ........................................... 106
Defence: Contracts—(Question No. 65) .................................................................................... 109
Defence: Project Sea 1390—(Question No. 67) ........................................................................ 110
The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 12.30 p.m. and read prayers.

BUSINESS

Consideration of Legislation

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (12.31 p.m.)—by leave—I move the motion as amended:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills:

Family and Community Services and Veterans’ Affairs Legislation Amendment (2004 Election Commitments) Bill 2004
Tax Laws Amendment (Retirement Villages) Bill 2004
Tax Laws Amendment (Small Business Measures) Bill 2004
Tax Laws Amendment (Superannuation Reporting) Bill 2004.

Question agreed to.

COPYRIGHT LEGISLATION AMENDMENT BILL 2004

First Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.31 p.m.)—I move:

That the following bill be introduced: A Bill for an Act to amend the law relating to copyright, and for related purposes

Question agreed to.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.32 p.m.)—I table the explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted

The speech read as follows—

COPYRIGHT LEGISLATION AMENDMENT BILL 2004

This Bill makes minor and technical amendments to the Copyright Act 1968 and the US Free Trade Agreement Implementation Act 2004 (‘US FTA Implementation Act’) to improve Australia’s implementation of its copyright obligations under the Australia-United States Free Trade Agreement (‘the Agreement’).

It is worth recalling that the copyright provisions in the US FTA Implementation Act were very extensive and covered a number of important areas of reform.

For the first time, performers were given economic and moral rights in sound recordings.

A number of criminal offences were broadened to target copyright infringements undertaken for commercial advantage or financial gain and significant infringements on a commercial scale.

New provisions were introduced in relation to the unauthorised receipt and use or distribution of encoded broadcasts.

The term of protection for copyright material was extended by 20 years.

A new scheme was introduced to limit remedies available against Carriage Service Providers who help copyright owners combat online piracy.

Protection against a wider range of unauthorised reproductions was introduced.

And, protection for electronic rights management information was also extended.

These important reforms reinforced Australia’s reputation as a country which responds to the challenges of the digital age with international best practice copyright laws.
However, there are some areas where the copyright amendments could be made clearer.
This clarity is important to both international and domestic stakeholders that need certainty about the operation of Australia’s copyright laws when they are trading in Australia.
Over recent months there has been a series of fruitful discussions between the Government, domestic stakeholders and the US Government about the operation of certain amendments made to Australia’s copyright laws in the US FTA Implementation Act.
I want to emphasise that the Government is very clear that it has implemented all its obligations under the Agreement.
And I also want to make it clear that the Agreement has not been changed.
However, I do see merit in making some minor and technical amendments to improve the operation and practical effect of the new copyright provisions.
Passage of the Bill will provide reassurance to the US Government and our own industry stakeholders that our copyright obligations are fully met and the provisions are unambiguous.
The amendments are largely of a technical nature.
First, Australia’s commitment to criminalise copyright infringement by businesses, especially in relation to software, will be confirmed as a result of these amendments.
Let me reassure everyone that the Government is committed to targeting infringing activity where it occurs for a commercial purpose within a business.
Amendments in the Bill make it clear that this activity often referred to as ‘business end user piracy’ is part of the criminal offence regime in the Copyright Act.
Further technical amendments will have the effect of widening the scope of some criminal offences for commercial piracy that do not occur in a trade context.
This rectifies the unintended consequence of amendments in the implementing legislation that had the effect of narrowing such offences.
Whether Australia’s laws effectively criminalise commercial activity involving the use of a Pay TV signal decoded without authority has also been considered.
The Bill addresses a possible gap by the inclusion of an amendment to make it an offence to use a Pay TV signal for commercial purposes without the authority of the broadcaster, where the signal has been decoded by someone else.
This is an important measure to ensure that a person who derives a commercial advantage or profit by using an unauthorised Pay TV signal does not escape criminal liability.
The Bill also clarifies amendments made in the enabling legislation to the reproduction right and the scope of the exception to make incidental copies when legally using copyright material.
Further clarification is made to provisions affecting Carriage Service Providers (CSPs).
The amendments make it clear that knowledge of infringing activities by a CSP where the CSP fails to expeditiously remove or disable access to the infringing material disentitles the CSP from taking advantage of the ‘safe harbour’ scheme which limits the remedies available against the CSP.
As is currently the case, CSPs will not be required to actively monitor their systems or networks for such material.
The Bill also amends the US FTA Implementation Act to place a time limit on the application of the transitional provisions relating to the extension of the term of copyright protection.
The Bill clarifies that the type of costs that may be recovered from a copyright owner are limited, and do not include expected profits.
These changes provide certainty to both copyright owners and users about how the transitional compensation scheme is intended to operate.
The Government has consulted domestic stakeholders on the draft Bill and has outlined the amendments to the US Government.
This consultation process involved a positive exchange of views.
The Government believes that these amendments in the Bill will clarify the practical effect of the copyright amendments made in the US FTA Im-
plementation Act and continue the ongoing improvement of Australia’s copyright laws. I commend the Bill.

Ordered that further consideration of this bill be adjourned to the next day of sitting which is more than 14 days after today, in accordance with standing order 111(6).

FISHERIES (VALIDATION OF PLANS OF MANAGEMENT) BILL 2004

Second Reading

Debate resumed from 29 November, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.33 p.m.)—I thank both Senator O’Brien and Senator Greig for their contributions to the second reading debate on the Fisheries (Validation of Plans of Management) Bill 2004. Senator O’Brien has given a precis of the purposes of the bill, and I will try not to take up the time of the Senate by repeating the content of it. Suffice it to say that I appreciate the support for it; it involves a fairly technical issue. The government is advised by AFMA that there is no real problem with plans of management, but a legal audit determined that there was some very minor doubt, which we want to put to rest by passing this bill, thus validating plans of management that have been dealt with in the past.

In concluding the debate, I want to comment on a couple of the issues that Senator Greig raised in his contribution. They were not directly related to the bill, but he raised some issues about fisheries management generally that I think require a response. He mentioned the super trawler Veronica, about which, I have to say, any number of left-wing candidates tried to make an issue during the election campaign. On all occasions, as I kept saying at the time, no formal application had been made by the connections of the Veronica to do anything in Australia. If there had been, there would have been quite a long process to go through, but that did not stop some of the Labor candidates trying to beat it up. I have to say that even my namesake in New South Wales, with whom I have a very close working relationship, did not mind having a bit of a chop—

Senator George Campbell—He doesn’t tell us that.

Senator IAN MACDONALD—I do not want to destroy him by giving away any secrets, but we do get on rather well. As I always say to him, I think sometimes you lefties in the Labor Party are more genuine to your cause than some of your right factional brethren, and I say to Mr Ian Macdonald, the New South Wales minister, that, whilst I do not always agree with his politics, I think he is genuine in his approach to the work that he does. But he could not help having a bit of a chop on this issue because he thought it might help a couple of the Labor candidates in the federal election and, by gee, as events have shown, they needed every bit of help that they could get. Unfortunately, even the help of my namesake in New South Wales did not make much difference to the outcome.

Having said that—and I know Senator Greig will find that very interesting—I want to confirm for Senator Greig that the AFMA board has recently decided to adopt individual transferable quotas in the small pelagic fishery as the key management measure for the fishery. However, the freeze on boat nominations announced in September will continue until the board receives advice from the independent advisory panel on the allocation of statutory fishing rights in the fishery. The method of allocating fishing rights will be considered as part of the development of the statutory management plan of the fishery, and a final decision on the allocation is ex-
pected in June next year. The decision to maintain the freeze reflects AFMA’s concern about the possibility of rapid overcapitalisation in the fishery, so the entry of any new vessels to be used in the small pelagic fishery against existing permits continues to be disallowed.

The uncertainty of the stock levels and the increased interest in the small pelagic fishery were noted by AFMA. AFMA has, accordingly, issued an investment warning for the fishery effective from 6 July. The status of the target species in the small pelagic fishery is uncertain and stocks are currently managed under precautionary trigger catch levels that range from 100 to 9,000 tonnes for different species in each zone of the fishery. Once the trigger catch level is reached fishing ceases for the rest of the season. It can only be recommenced once the AFMA board has considered any new scientific advice and has consulted with stakeholder groups.

I simply conclude on the Veronica issue, Senator Greig, by indicating, as I did when I was asked to comment publicly, that no application had been made to any Australian government agency. If a foreign boat wants to fish and operate in Australian waters it has to go through any number of agencies. It had not made formal application to any of them, as I am advised. I am in a position where courts and others can look at the words that I say in relation to these issues, so I do not want to pre-empt anything that anyone might do at some time in the future. I have indicated, though, that, as far as the government is concerned, if that particular vessel fishes in a way it is alleged to have fished in the Northern Hemisphere, the government would be very concerned about it operating in a similar way in Australian waters.

As Senator Greig would know, however, fisheries management in Australia is run by an independent statutory authority—and I think for good reasons; I do not think politicians and ministers should be involved in managing fairly technical things like fisheries—but if it became appropriate, I would not hesitate to consider some legislative support for the prospect of keeping all of our fisheries in a good condition.

Senator Greig also referred in his speech to ‘the lack of any mention of domestic management planning or environmental assessment in the government’s 2004 election fisheries policy’. We did not mention that because it was relevant to previous election commitments. Senator Greig well knows that all export fisheries, including state managed fisheries, have to get an environmental assessment under the EPBC Act. They are being done. Some of them have taken longer than anticipated and they have been given extensions of time by the environment minister, but we are proceeding with those as quickly as possible and I am quite confident that we will achieve that aim and have those plans with the appropriate assessments under the EPBC Act.

Senator Greig mentioned overfishing of various species of fish and said that the Bureau of Rural Sciences—which, I hasten to add, is an element of my department: it is part of the government—has assessed some of the fisheries as overfished. AFMA is aware of that and is endeavouring to correct those problems. It does take some time, though, to convert a fishery with an overfished status to a ‘ticked’ status, if I can call it that. The redevelopment of fisheries does take a period of time. Those that have been identified as overfished are being worked on by AFMA and I am confident that, given a number of years, as is required, we will get those fisheries back to a very healthy state. AFMA is very much aware of that and the government is very much aware of that. That is our goal and we are proceeding towards that.
Senator Greig also mentioned some issues associated with bycatch. Again, it is something the government are very concerned about and we are working with the industry to get bycatch action plans in place and to appropriately deal with the issue. I share Senator Greig’s concern and the fishing industry share Senator Greig’s concern. The fishing industry are in fact leading the charge to ensure that all of our fisheries are sustainable and that bycatch is addressed in the appropriate way.

Finally, Senator Greig mentioned a speech I made in Cairns yesterday morning and the press release I issued about it. He has misquoted me in reference to the ‘light hand on the tiller’. What I said was:

The Australian Government wants to keep a very light hand on the tiller to ensure that all responsibilities that relate to the management of Australia’s fisheries resource, and the required accountability to the Australian public, are met.

We want to make sure that the fisheries are run properly. Having done that, we then do not think that governments are the right people to run the fishing industry; we think the fishing industry are the right people to operate the fishing industry and to direct it. Fishermen are very responsible; they understand the questions of sustainability and they will continue to manage the fishery properly. We think it is appropriate that the fishing industry itself should direct the business of fishing. We intend to keep an eye on the accountability issues and ensure the appropriate management of fisheries resources. Having said that, can I again thank all senators who have contributed to this debate and thank them for their support for the bill.

Question agreed to.

Bill read a second time.

**Third Reading**

Bill passed through its remaining stages without amendment or debate.
comment by the opposition in relation to preservation requirements where an annuity is split. There was a suggestion that the spouse who is not the contractual party to the annuity—or, in the terms of the Family Law Act, the non-member spouse—may be able to access annuity payments even though the purchaser of the annuity—the member spouse—has not satisfied a contractual preservation requirement such as retirement age. This is not the case. Under the amendments being proposed to the Family Law Act, the non-member spouse will not be able to access annuity payments until the member spouse satisfies the preservation requirement and the member spouse is entitled to be paid. Indeed, that follows the principle that, where the spouse who has entered into the contract reaches preservation age, only then can annuities be paid out. Accordingly, the non-member spouse enjoys that benefit but not before the member spouse has reached that preservation age. That is much like the principle that you can pass on to someone else only the right that you have yourself; you cannot pass on a greater entitlement. That is precisely the principle that is reflected here.

The second point which was raised in the debate, which I also wish to comment on, relates to the suggestion by the Democrats that the extension of the Family Law Act provisions on super splitting to include eligible annuities will mean that term annuities and lifetime annuities will be outside the scope of those provisions. The extension of the Family Law Act provisions to include eligible annuities will extend those provisions to all annuities currently in payment that were purchased with rolled-over superannuation amounts, including annuities payable for a fixed term or annuities payable for the lifetime of the purchaser. This is a valuable amendment to the Family Law Act. I thank senators for their contributions on and their support for the bill. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

SURVEILLANCE DEVICES BILL 2004

Second Reading

Debate resumed from 17 November, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (12.49 p.m.)—I rise to speak on the Surveillance Devices Bill 2004. The bill has been the subject of a bipartisan report by the Senate Legal and Constitutional Legislation Committee, which recommended a number of amendments. We are pleased that the government has responded constructively to that report and that it will be moving a number of amendments in the committee stage which the opposition will be supporting.

The origin of this bill is resolution 15 of the Council of Australian Governments Leaders’ Summit on Terrorism and Multi-Jurisdictional Crime in April 2002, which called for a national set of powers for cross-border investigations covering, among other issues, the use of electronic surveillance devices. Following this resolution, a joint working group was established by the Standing Committee of Attorneys-General and the Australasian Police Ministers Council. The joint working group developed model laws, which were released for public comment in November 2003. This bill substantially implements those model laws, although there has been modification in a number of areas.

I should begin by observing that the need for legislation of this kind is clearly obvious. Currently, the only Commonwealth laws
governing the use of surveillance devices by law enforcement authorities are the Australian Federal Police Act and the Customs Act. In addition, though, state and territory legislation governing surveillance devices is undesirably fragmented. As the joint working group stated in its November 2003 report—and it is worth quoting from that report as the genesis of where we are today:

Currently, the law in each of these areas differs significantly between jurisdictions and there is no provision for recognition in one jurisdiction of authorisations or warrants issued in another jurisdiction. Where an investigation crosses State or Territory borders, the need to obtain separate authorities in each jurisdiction can result in delays, loss of evidence and other impediments to effective investigation. The creation of a national set of investigative powers is intended to facilitate seamless law enforcement across jurisdictions.

It is also important that we have Commonwealth legislation covering the full range of surveillance devices, including not only listening devices but also optical surveillance devices, equipment or programs used to monitor computer input and output, and of course tracking devices. The bill is restricted to the use of devices by law enforcement authorities, specifically the Australian Federal Police, the Australian Crime Commission and state or territory police investigating a Commonwealth offence. It enables these authorities to use surveillance devices where they have obtained a warrant from an eligible judge or Administrative Appeals Tribunal member.

The circumstances in which warrants may be sought and issued are broadly comparable to those applying to telecommunications interception warrants, and balance a range of factors including the gravity of the offence, the importance of the information sought, the availability of alternative methods of obtaining the information and the impact on privacy. A surveillance device may be used without a warrant if an emergency authorisation has been obtained. These may only be granted where the use of the device is demonstrably necessary to deal with a couple of issues: firstly, to deal with an imminent risk of serious violence to a person or substantial damage to property; secondly, to urgently recover a child subject to a Family Court recovery order; or, thirdly, to prevent the loss of evidence in an investigation of a specified serious offence, which includes those of terrorism, serious drug offences, treason, espionage and aggravated people-smuggling.

If an emergency authorisation is granted, the authorising officer must apply within two business days for retrospective approval by an eligible judge or AAT member. A surveillance device may be used without a warrant or an emergency authorisation in the following circumstances: where it is an optical surveillance device and its use does not involve entry onto premises without permission or interference without permission with any vehicle or thing, such as the observation of a person from a distance using binoculars or a camera; where it is used to record words spoken to a law enforcement officer or a group of persons including a law enforcement officer, such as a conversation with an undercover officer wearing a wire; and, lastly, where it is a tracking device and its use does not involve entry into premises or the interior of a vehicle without permission and its use has been authorised by an authorised officer. A clear example would be the placement of a tracking device on the exterior of a vehicle or vessel.

We note that these provisions for the use of surveillance devices without a warrant or emergency authorisation are modifications of the model laws released by the joint working group. They are said by the government to share the feature of being less intrusive forms of surveillance. The bill enables the
use of surveillance devices in the investigation of a range of matters. It is worth going through some of those investigative matters. Specifically they relate to: firstly, the investigation of Commonwealth offences which carry a maximum penalty of at least three years imprisonment; secondly, the investigation by the Australian Federal Police or the ACC of a state offence with a federal aspect which also meets the three-year threshold; thirdly, the safe recovery of a child where the Family Court has issued a recovery order; and, fourthly, the investigation of offences against the Fisheries Management Act 1991, such as the illegal fishing of patagonian toothfish. We note that this contemplates the use of tracking devices on illegal fishing vessels in remote waters. I should add that surveillance devices may be used for the investigation of offences under the Financial Transaction Reports Act 1988, such as failing to declare the import or export of Australian currency in excess of $10,000 or operating an account with a cash dealer in a false name. We note that this is included because such transactions are often indicative of more serious underlying conduct.

We understand that this range of matters is broader than that proposed in the model laws but we recognise that these are all serious law enforcement issues of concern to Australians and that the use of surveillance devices will, in those circumstances, assist considerably with investigations following arrests. The bill also allows surveillance devices to be used under warrant for the investigation of Commonwealth offences outside Australia in accordance with international law. Outside Australia in this instance means in a foreign country or on a foreign-registered vessel or aircraft that is in or above waters beyond Australia's territorial seas. In such circumstances, though, a warrant may only be issued if the surveillance has been agreed to by an appropriate consenting official of the relevant foreign country. The requirement of agreement by a foreign official does not apply if Australia is exercising its jurisdiction in accordance with the United Nations Convention on the Law of the Sea. You can imagine this occurring in a number of circumstances—for example, if the vessel is in Australia’s contiguous zone and the offence being investigated relates to customs, fiscal, immigration or sanitary laws of Australia; or if the vessel is in Australia’s fishing zone and the offence being investigated is one of the specified offences under the Fisheries Management Act 1991. As one would expect, the extraterritorial use of surveillance devices is particularly a matter for the Commonwealth and would not necessarily be dealt with in a model law developed with the states and territories. So again we recognise the need for some departure in this area.

The bill establishes a number of mechanisms to ensure the accountability of authorities using surveillance devices. We understand it was intended that these be based broadly on the mechanisms in the telecommunications interception regime. In particular, where information has been obtained without the required warrant, authorisation or approval, it may not be used by law enforcement authorities in the investigation of an offence or the bringing of a prosecution nor communicated to a foreign country under the Mutual Assistance in Criminal Matters Act. On the other hand, it may be communicated to an Australian intelligence agency if it relates to the functions of that agency and it can be communicated for the purposes of investigating compliance with the provisions of the Surveillance Devices Bill when it becomes an act or with other laws such as the Privacy Act. The bill imposes obligations on each relevant law enforcement authority to maintain detailed records of applications, warrants, authorisations and the use of surveillance devices and information obtained.
therefrom. In some circumstances it imposes obligations to destroy information not required for a recognised purpose under the act. The bill also provides that regular reports must be made to the minister about all warrants and authorisations.

The bill introduced in the current parliament contains two new amendments that the opposition also supports. Of course this bill was introduced in the last parliament. However, due to time constraints, as I understand, in the legislative program, it failed to pass. The first of the amendments contained in the current bill is that minor defects in connection with a warrant or other authority will not void or vitiate a warrant. Clause 65(2) makes it clear that a reference to a defect or irregularity is one that is ‘other than a substantial defect or irregularity’. Clause 65 is consistent with section 75 of the Telecommunications (Interceptions) Act, which has previously been supported by this Senate. Just as in the T(I) Act’s savings provision, this amendment, clause 65(2) of the current bill, cannot protect a warrant containing a substantial defect in its issue or in its execution. The term ‘substantial’ is not defined in the current bill. Some guidance may be obtained from the consideration of what constitutes a defect by going to the substance of a search warrant. A search warrant containing defects is not invalidated unless the defect affects the substance of the warrant in a material particular.

The second point of difference is technical and has regard to the fact that the Legislative Instruments Act will take effect from 1 January. The Legislative Instruments Act will require all new legislation to specify whether or not an instrument made under this act is legislative in character. The relevant clause provides that, whilst an instrument made under the current bill is not legislative in character, any regulations made in accordance with clause 66 of the current bill will be legislative instruments subject to the provisions of this act. Instruments made under the current bill that are not legislative instruments are things like instruments declaring federal judges to be eligible judges; records of emergency authorisations granted under the legislation; applications to eligible judges or nominated AAT members for approval of emergency authorisations; records of tracking device authorisations that are issued under the legislation; records that must be kept by law enforcement agencies about their applications for warrants, emergency authorisations and tracking device authorisations and the use of the information they may obtain; and the register of warrants, emergency authorisations and tracking device authorisations that must be kept by each law enforcement agency.

The Legislative Instruments Act has made it necessary to differentiate clearly between matters which are not legislative instruments and those that are. I suspect that not only will that now be a clear feature of speeches in second reading debates, where we try to say what is in and what is out, but also the government will carefully consider and watch to make sure that it can differentiate clearly between what is a regulation and within the reach of the Legislative Instruments Act and what is not clearly within the reach of the Legislative Instruments Act and therefore not a matter that needs to be dealt with in that manner.

In conclusion, the opposition acknowledges the significance of this bill and supports it being given a second reading. I will address the Senate committee report and the amendments resulting from it at the committee stage in due course. I think this is one of the matters of which I can speak with at least some knowledge, as I was a member of the Senate Legal and Constitutional Legislation Committee which dealt with the first Surveil-
The bill establishes a regime which enables law enforcement officers to use surveillance devices subject to warrants. For example, a warrant may be obtained for the purpose of investigating a Commonwealth crime which has a maximum penalty of at least three years. A subsequent warrant may be obtained to retrieve the surveillance device. Warrants are issued by a judge or an AAT member. However, in urgent circumstances, temporary authorisation may be obtained from a senior police officer pending the grant of a warrant.

Information obtained pursuant to a warrant or an emergency authorisation is classified as protected information and can only be used in certain circumstances. Significantly, warrants are not required in relation to the use of tracking devices or optical surveillance devices. Information obtained using these devices is therefore not subject to the same level of protection as information obtained under a warrant. In practice this means that the police will be able to make a video of a person without that person’s knowledge and the use of that video will not be subject to the restrictions which apply to protected information. This is one of the particular concerns we Democrats have in relation to this bill.

But perhaps the more disturbing aspect of the bill is that it contains no general prohibition against the covert use of surveillance devices. In that respect it differs greatly from the regime established by the Telecommunications (Interception) Act. The lack of any general prohibition against covert surveillance leaves us with the situation where there are gaps and inconsistencies under the different pieces of state legislation. This means that in some states private detectives, private corporations and others may be able to legally monitor the activities of individuals if they do not breach any other law in the process. One of the most fundamental points that
needs to be made in relation to this bill then is that it directly affects not just those individuals in relation to whom a warrant has been obtained but also the many other individuals with which that person interacts. Considering the number of people that each of us generally comes into contact with on a day-by-day basis, it is clear that at any given time a significant proportion of our Australian community is likely to be directly affected by the surveillance activities of our law enforcement agencies.

The broad drafting of this bill, as we see it, means, for example, that the police could obtain a warrant to install listening devices in a particular pub and then listen to many conversations that take place in that pub that have absolutely nothing to do with the particular offence they are investigating. Another issue of concern for us Democrats is that surveillance device warrants will automatically authorise the use of force—not just to enter the premises with respect to which the warrant has been issued but to enter adjoining premises if necessary. This means that the police could use force to enter a person’s property purely for the purpose of accessing that person’s neighbour’s property.

The Democrats believe that the bill needs to be amended so that the use of force must be expressly authorised in a surveillance device warrant. We believe that this is something which a judge or AAT member granting a warrant should have to turn his or her mind to. We also feel that the warrant should expressly specify any premises which the police are authorised to enter. Again, we will be looking to move amendments to that effect during the committee stage.

It is very clear that one of the most invasive aspects of this bill is its potential to authorise the surveillance of hundreds, perhaps thousands, of Australians who are not suspected of any crime. This is particularly significant given the policy arguments advanced in support of the legislation. The government acknowledges that the use of surveillance devices is intrusive and infringes the right to privacy. However, it argues that this intrusion is justified in the case of those who commit serious criminal offences. What it fails to acknowledge is that the bill not only infringes the right to privacy of those who break the law but also infringes the privacy of thousands of other law-abiding Australians. Not only can their properties be broken into but their movements can be monitored and their conversations listened to—not just by the police but also by our intelligence agencies.

This brings me to the point that intelligence agencies are specifically excluded from the scope of this bill. While the Democrats acknowledge that there is already an established regime under the ASIO Act, we have long been critical of the lack of basic reporting requirements which apply to ASIO’s surveillance activities. We simply do not accept that there is any legislative justification for excluding ASIO from the basic reporting requirements which apply to law enforcement agencies in relation to telecommunications interception and other surveillance activities.

As we have seen from the annual reports on the Telecommunications (Interception) Act, the government is well able to provide basic information regarding telecommunications interception activities, even in relation to the investigation of terrorism offences, without jeopardising national security in any way. Similarly, there are reporting requirements in the ASIO Act itself which relate to the new questioning and detention powers. We Democrats find it difficult to believe that ASIO can provide specific information in relation to individual cases of detention without jeopardising national security and yet is unable to provide general information.
on the exercise of its surveillance and telecommunications interception powers.

Moving to another concern in relation to this bill, the Democrats concur with the Law Council of Australia that the bill enables surveillance devices to be used to investigate too broad a range of offences. The bill provides that a surveillance device warrant may be obtained for the purpose of investigating a Commonwealth offence punishable by a maximum penalty of three years or more. We feel that that should be lifted to at least seven years. The infringement of personal privacy caused by surveillance devices is severe and should be restricted to limited circumstances. We do not believe that this level of infringement can be justified other than in relation to the most serious of criminal offences. Moreover, simply casually spying or eavesdropping on individuals suspected of criminal offences has the effect of violating their right to silence. Because they are unaware that law enforcement personnel are listening to their conversations, these individuals have no opportunity to exercise their right to silence.

The Democrats are also concerned that there appears to be no limit on the number of surveillance devices which may be used in relation to a single person at any one time. While a surveillance device warrant is required to specify the kind of surveillance device or devices proposed to be used, there is no requirement to specify the number of devices. Similarly, there is no ultimate time limit on how long a surveillance device warrant may remain in operation. While surveillance warrants of this nature may only be in force for a period not exceeding 90 days, it is possible to seek an extension for a further period not exceeding 90 days, and there is no limit on the number of extensions which may subsequently be sought. This means that it is possible for the actions and conversations of a single person to be constantly monitored by multiple surveillance devices for a period of, say, a couple of years. While I concede that this is unlikely given the requirement to satisfy a judge or AAT member every 90 days that that surveillance warrant is still justified, it is nevertheless possible under the provisions of the bill. We believe that ought to be remedied.

I would also like to draw attention to the provisions governing the granting of emergency authorisations. These provisions enable an application for an emergency authorisation to be made orally, in writing, or by telephone, fax, email or any other means of communication. This then creates the potential for a police officer to simply text message his or her superior officer and obtain immediate permission to use a surveillance device. Again, given the very intrusive nature of surveillance devices, we question whether this is an appropriate means of authorisation. However, we acknowledge that such an authorisation would need to be retrospectively approved by a judge or an AAT member.

What we believe is crucial is that, if authorisation is given verbally, by text message or in some other similar way, the senior law enforcement officer who gives that authorisation must write down the details of the authorisation as soon as possible after giving it. Having a written record of the authorisation will be vital to any court which may subsequently be required to determine the admissibility of evidence obtained pursuant to the emergency warrant.

In closing, the view of the Democrats is that the government should start again with this bill. We would advocate a redraft to address those areas that we and others in the community share strong concerns about, and the bill really should start from the premise that the use of surveillance devices should be prohibited and then subject to limited exemptions. The absence of such prohibitions
from this bill is fatal to the Democrats’ support. Finally, I seek leave of the chamber to have incorporated into Hansard the contribution to the second reading debate from my colleague Senator Stott Despoja who is currently on leave owing to travel restrictions. Party whips have been notified in advance.

Leave granted.

Senator STOTT DESPOJA (South Australia) (1.16 p.m.)—The incorporated speech read as follows—

I rise to speak on this Bill in my capacity as the Democrats’ Spokesperson on Privacy.

This Bill is just one among a number of recent legislative initiatives which have serious implications for the right to privacy in this nation.

I spoke about this trend in my Second Reading Speech on the Telecommunications (Interception) Amendment (Stored Communications) Bill.

The Bill before us now deals with the use of surveillance devices by law enforcement agencies. It is the first piece of Commonwealth legislation to attempt to regulate the use of surveillance devices, which is currently dealt with at a State level.

As my colleague, Senator Greig, has said, the Democrats agree with the Government that new legislation is needed to regulate the ever-increasing use of surveillance devices in the Australian community and this should be at a Federal level.

However, the Bill before us is inadequate on a whole range of fronts. Unlike the Telecommunications Interception regime, it contains no general prohibition against the use of surveillance devices, which is then subject to a range of exceptions for law enforcement and intelligence purposes. Apart from the ad hoc legislation which exists in some States, this Bill will have the effect of allowing the unregulated use of surveillance devices by the private sector and by intelligence agencies.

This is because the regulatory regime set out in the Bill is limited to a handful of law enforcement agencies. The regime itself is flawed, giving rise to gaps in the regulation of surveillance devices by enabling the use of some devices does without a warrant.

All in all, this is an entirely unsatisfactory bill. But it is not simply a bad piece of legislation—it is a Bill which has massive implications for the privacy of Australians and should therefore be approached very cautiously.

In a paper prepared by the Office of the Privacy Commissioner more than a decade ago, the Commissioner defined “covert surveillance” as:

“The secretive, continuous or periodic observation of persons, vehicles, places or objects to obtain information concerning the activities of individuals which is then recorded in material form including notes and photographs.”

The Privacy Commissioner went on to say that:

“Covert surveillance is privacy intrusive because not only is information about an individual collected without that individual’s consent or authority but the individual who is subject to the covert surveillance is usually unaware that he or she is under surveillance.”

At that time, the list of Commonwealth Government agencies that engaged in covert surveillance of the Australian community included the predecessor of Family and Community Services, the Department of Immigration, Multicultural and Indigenous Affairs, Customs, the ATO, the Health Insurance Commission, the Department of Primary Industries and Energy, the Department of Veterans’ Affairs, and Comcare. Of course, Commonwealth law enforcement and intelligence agencies routinely conduct surveillance as well.

The extent of this Government surveillance is only likely to have increased over the past decade and that is before we even get to State Governments, local councils and the private sector—not to mention global surveillance initiatives such as the ECHELON project, in which Australia has partnered with the United States, United Kingdom, Canada and New Zealand under the auspices of the UKUSA Agreement.

The extent of surveillance which we now contend with in our everyday lives means that it is possible to monitor our movements, our communic-
tions, our spending habits, our internet use and our viewing.

It is no longer far-fetched to make comparisons with the level of surveillance depicted in George Orwell's 1984, which was described as follows:

There was, of course, no way of knowing whether you were being watched at any given moment ... it was even conceivable that [the Thought Police] watched everybody all the time ... They could plug in your wire whenever they wanted to. You had to live ... in the assumption that ... every movement was scrutinized.

Surveillance is such a mass phenomenon that Queens University has now established what it calls “The Surveillance Project” to examine the globalisation of personal data.

According to its website, this project traces the paths of personal data flows as they cross national borders and explores the social, economic, political and cultural consequences of intensified personal data flows.

Of course, many of these personal data flows occur within the private sector—they occur when we use our credit cards, our frequent flyer cards, when we visit certain websites, when we order products over the telephone. Our mobile phones can be used to reveal our location and who we are communicating with.

A Google search of surveillance in Australia brings up, not only articles warning of ever-increasing threats to personal privacy but, as if to prove this very point, there are a whole lot of sites advertising spy equipment for sale to the general public.

For example, OzSpy, which describes itself as “Australia's favourite spy shop” and tells us that franchises are now selling in all states, with new stores about to open in Victoria and New South Wales. “If you’re in the market for CCTV, listening devices, night vision, surveillance equipment, cameras, de-bugging, alarms [or] transmitters”, OzSpy is the shop for you.

It even sells hand-held lie-detectors for $129.00, which could come in handy at press conferences.

With the myriad of surveillance devices being used in everyday life, I believe it is time for us to reconsider the concept of consent.

It is often argued that privacy intrusions are justified because individuals have consented to the disclosure of their information, or the surveying of their movements, in return for a benefit. For example:

- the person who consents to a credit rating check, because they are applying for a loan;
- the person signs up to become a member of their local video store and, in doing so, agrees to their information being shared with associated companies around the world; or
- the person who chooses to shop in a particular shopping centre fully aware that there are security cameras operating in the centre.

In each of these cases, the person has either expressly or impliedly consented to an intrusion of their privacy. But how much choice did they really have?

These days it is almost impossible to participate in everyday life without consenting, willingly or unwillingly, to intrusions of your privacy. If you want to hire a video, you have to provide your personal details to the store and, in the case of some stores, this means providing your details to a multinational corporation which wants to share those details with other corporations.

If you want to enter a competition, you often have to consent to the retention and sharing of your personal details.

You may not like the idea of being videoed while you shop, but if you want to purchase a particular item, you may have little choice.

These scenarios beg the question whether we really consent to privacy intrusions when we simply engage in everyday activities.

Often there is a clear choice between protecting personal privacy on the one hand and gaining a benefit on the other. For example, in the case of a competition for an overseas holiday, where a person chooses to provide their personal details in exchange for the chance to win the holiday.

In other circumstances, personal privacy is compromised in order to create security, for example, in the case of a mortgage. Clearly, a bank can not
simply lend thousands of dollars to a person without first ascertaining whether he or she is likely to repay the money. The individual seeking the loan must provide personal information and consent to a credit rating check in order to demonstrate that he or she is a good credit risk. Again, this is a situation in which a choice is made on the basis of the benefit outweighing the value that the person places on their personal privacy.

However, in the case of surveillance there is very little room, if any, for the concept of consent at an individual level. Instead, the weighing of competing interests occurs at a broader level. For example, in the case of surveillance cameras, there are the competing interests of privacy and public safety.

Because these decisions are made at a corporate level, whether in the public or private sector, it is important to ensure that those who make them are kept accountable. This is why regulating the use of surveillance devices is so important.

Regulation helps to ensure that in circumstances where an individual has no opportunity to consent to an intrusion of their privacy, that intrusion can be justified as being in the public interest.

In the case of covert police investigations, the interest being served is obviously the administration of justice and the need to prosecute those who commit crimes. Whether or not it is necessary to violate an individual’s privacy to achieve this is obviously a matter for the person granting the warrant and that is why a warrant system is so important.

Unfortunately, this Bill enables law enforcement agencies to use certain kinds of surveillance devices without any warrant.

But the more startling omission is the fact that it makes no attempt to regulate the endemic level of surveillance within the private sector. I acknowledge that some States have passed legislation to address this issue, but the point is that this legislation is ad hoc and inadequate.

If a national regime is appropriate for law enforcement agencies, then it is also appropriate for the private sector. What we need is a more comprehensive approach that addresses all forms of surveillance within the Australian community, whether by public or private organisations. In that respect, this Bill is manifestly inadequate.

And it is for that reason that we are unable to support this Bill—for, although we recognise the urgent need to regulate the use of surveillance devices, we cannot support a Bill which leaves the privacy rights of Australians so exposed.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.16 p.m.)—I thank those senators who have contributed to the debate on the Surveillance Devices Bill 2004 which is a very important one for both law enforcement and security agencies in this country. The bill, of course, implements the model electronics surveillance bill developed by the Commonwealth-state joint working group on cross-border investigations. I think that was referred to by Senator Ludwig in his earlier contribution to the debate.

The bill is therefore part of a national scheme to provide consistent legislation across the different Australian jurisdictions, though a number of changes or additions have been made to the model bill to suit the unique requirements of the Commonwealth. The bill provides for a comprehensive regime governing the use of surveillance devices at the Commonwealth level. The range of devices now includes optical surveillance devices, data surveillance devices and tracking devices along with listening devices. The range of offences has been broadened to include any offence with a penalty of at least three years imprisonment, as well as several specified offences. For the first time, the bill provides a proper framework for conducting extraterritorial surveillance. The bill also creates a stringent accountability regime and empowers the Commonwealth Ombudsman to check law enforcement agencies’ compliance and to report through the Attorney-General to the parliament.

The bill before us today differs from the bill when it was first introduced in the previ-
ous session of parliament in March of this year. It was amended to respond to three of the six recommendations made by the Senate Legal and Constitutional Legislation Committee. The bill now provides that the period within which an emergency authorisation must be brought before a judge or an Administrative Appeals Tribunal member for approval be 48 hours rather than two business days. This was mentioned in recommendation 1 of the Senate committee report.

It also provides for a new civil remedies provision which allows those who have suffered loss or injury as a result of illegal use of a surveillance device by the Australian Federal Police or the Australian Crime Commission to sue the Commonwealth. This is the product of recommendation 4 of the Senate committee. It also puts in place a requirement that surveillance device material held for more than five years be destroyed unless the chief officer certifies that it is still needed for a permitted purpose. This was as a result of recommendation 5 of the Senate committee report.

As I have mentioned, three of those recommendations were accepted. The remaining three were not adopted and those are as follows. Recommendation 2, which recommended that the Ombudsman be required to review records of all use, including warrantless use, of optical surveillance devices such as binoculars, cameras and others, was rejected because the bill already substantively does this. Clause 55 requires the Ombudsman to inspect all records to ensure compliance with the bill, and paragraphs 52(e) to 52(h) require that records be kept regarding all, including warrantless, surveillance device use. This recommendation it was thought was accordingly unnecessary. Any further record-keeping requirements would have been an onerous imposition on police operational capabilities.

Recommendation 3 of the Senate report recommended that both the bill and the Telecommunications (Interception) Act be amended to ensure that circumstances in which similar kinds of surveillance devices may be used are clearly described and that limitations on their respective use are also clear. This was rejected. It is not possible to make the situation more clear than it already is without harming the technological neutrality of both laws. As it stands, the Telecommunications (Interception) Act 1979 in its passage makes any interception of a communication over a telecommunications network an offence unless done with a warrant. The Surveillance Devices Bill 2004 states that nothing in this bill authorises anything for which a telecommunications interception warrant is required.

Recommendation 6 of the Senate committee report dealt with the destruction requirements in the bill and it recommended that those requirements be brought into line with the Telecommunications (Interception) Act. The government believes this was based on a misinterpretation of the Ombudsman’s input to that committee. The provisions of this bill are already substantively in line with the destruction regime under the Telecommunications (Interception) Act with the exception of the new provision which responds to the Commonwealth’s fifth recommendation. The Ombudsman was referring to a proposal about destruction requirements made by a member of the committee. It was this suggestion which was not in line with the T(I) Act, not the bill itself. I would thank the committee for its useful work in relation to this and acknowledge, of course, that it has a great workload and this has been one of many bills that it has reported on.

This bill also contains several other changes that have been made since it was first introduced in March this year. Aside from changes, which I have just outlined,
made in response to the Senate committee’s report, the bill now enables additional state law enforcement agencies—such as the Independent Commission Against Corruption of New South Wales and other similar anti-corruption agencies—to obtain a surveillance device warrant for the investigation of Commonwealth offences, putting their powers in line with those available to the police forces of each state and territory. The definition of a ‘recovery order’ has also been expanded beyond a reference to an order made under section 67U of the Family Law Act to include a warrant for the apprehension of a child under the Family Law (Child Abduction Convention) Regulations 1986. This widens the definition to cover orders made by courts other than the Family Court.

Furthermore, since the introduction of the bill in March provisions have been made which include child sex tourism as an offence for which an emergency authorisation can be sought where it is necessary to prevent the loss of evidence relevant to the investigation of such an offence. Of course, with recent events dealing with child pornography and prosecutions relating to child sex tourism, this has become an increasingly important area for law enforcement.

There were a number of other minor changes made in a bill that was introduced in June this year. I note that this bill differs in two respects from the version that was introduced into the parliament in June. Firstly, it complies with the new requirements of the Legislative Instruments Act 2003. That is a technical amendment. Secondly, it adds a new provision which prevents minor defects in warrants from rendering a warrant and any evidence gathered under it invalid. This provision is modelled on an equivalent provision in the Telecommunications (Interception) Act. While the new provision will maintain the admissibility of evidence obtained under a warrant or authorisation containing a minor procedural defect or irregularity, it will not protect warrants with substantial defects from being declared invalid. Obviously, it is not good public policy for a minor defect in a warrant to have the effect that it could be ruled as inadmissible evidence and result in the failure of a prosecution. As I have stated, this does not change the situation where there are substantial defects.

The bill will provide law enforcement agencies at the Commonwealth, state and territory level with important tools that will enable real progress to be made in the war against serious crime, while at the same time it puts in place a stringent accountability regime. I note that the Democrats have a number of amendments to be moved in the committee stage. I think it best that we deal with those in turn on the arguments presented by the Democrats. I commend this bill to the Senate and thank senators for their contributions.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator GREIG (Western Australia) (1.26 p.m.)—by leave—I move Democrats amendments (1) to (3) and (31) to (33) on sheet 4360:

(1) Clause 6, page 9 (line 26), omit “3 years”, substitute “7 years”.

(2) Clause 6, page 9 (line 30), omit “3 years”, substitute “7 years”.

(3) Clause 6, page 10 (line 24), omit “3 years”, substitute “7 years”.

(31) Clause 45, page 52 (line 36), omit “3 years”, substitute “7 years”.

(32) Clause 45, page 54 (line 35), omit “3 years”, substitute “7 years”.

(33) Schedule 1, item 7, page 80 (line 20), omit “3 years”, substitute “7 years”.

CHAMBER
These amendments collectively respond to concerns raised principally by the Law Council of Australia that the Surveillance Devices Bill 2004 enables the use of surveillance devices in the investigation of too wide a range of offences. I spoke to that in the second reading debate. The bill currently permits surveillance devices to be used in relation to suspected offences involving, as I said, a maximum penalty of three years or more. We agree with the view of the Law Council that that should be increased to offences punishable by a sentence of at least seven years or more, and that is what we are seeking to achieve through this suite of amendments.

As I said in the second reading debate, the use of surveillance devices to monitor the movements and conversations of individuals is extremely intrusive and clearly interferes with the right to privacy. It also violates the right to silence, which would otherwise apply to those suspected of criminal offences. We feel that this kind of covert monitoring can only ever be justified by very strong, overriding policy considerations. The government has argued that it can be justified by the need to bring to justice those who commit serious offences. We believe strongly that the bill has been cast too broadly and that it fails to limit the use of surveillance devices to the most serious of criminal offences. Accordingly, we believe the bill should be amended so that this provision applies to offences punishable by a sentence of seven years or more, and that goes to the heart of this suite of amendments.

Senator LUDWIG (Queensland) (1.28 p.m.)—Democrats amendments (1) to (3) and (31) to (33) all seek to change the definition of ‘relevant offence’ in section 6(1) of the Surveillance Devices Bill 2004. A ‘relevant offence’ is defined as:

(a) an offence against the law of the Commonwealth ... or ...
(b) an offence against a law of a State that has a federal aspect and that is punishable by a maximum term of imprisonment of 3 years or more ...

Effectively, the concept behind the amendments is to change that from three years to seven years—that is, to change the tenor of the position. I can indicate that we are not minded to support those amendments, because we think the balance that has been achieved within the legislation is appropriate and adapted to the circumstances that both the police and other law enforcement agencies and those who are being investigated for what we say are serious crimes have to face. The issue is always about regulating an area which currently is unregulated, and we think it is beneficial legislation in the sense that it seeks regulation to ensure that there is fairness and a balance between the rights of the public to privacy and the ability of the Australian Federal Police and other law enforcement agencies to investigate these types of crimes.

New terminology is now being introduced into the language. We are going to talk of OSDs, optical surveillance devices, and we will have a whole range of new acronyms that the Australian Federal Police will have to get their heads around. It is also worth mentioning at this juncture that there is no common-law right to privacy as we know it, so in a lot of these bills we have sought to examine the issues on their merits and determine whether an appropriate balance has been struck. As I said in the second reading debate, the Labor Party believe that a balance has been struck in this instance. We think that on the whole the legislation will provide clear guidance for the law enforcement officers and that it regulates an area that has been recognised as having no substantive uniform regulation in place.

On the whole we think it assists not only people’s right to privacy but also the law enforcement agencies to understand the
length and breadth of what they can and cannot do. There would be concerns if you did not have this legislation or if you said that there should be telecommunications interception warrants for all occasions, because a law enforcement officer using an optical surveillance device such as a pair of binoculars would be limited or would be required to have a search warrant whereas the normal citizen in the streets walking around in public places with binoculars, cameras, phone cameras and a whole range of other things would have far greater powers to take photos. We think the former might need some careful attention but in this instance there is a need to regulate the use of these devices, and this legislation clearly outlines and provides a basis upon which law enforcement officers can act and also gives them knowledge about where they can use devices without warrants. We are not minded to support the substantive issues of the amendments.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.30 p.m.)—Likewise, the government is not minded to support the amendments proposed by the Democrats. The requirement that a warrant may be obtained for offences which have penalties of at least three years imprisonment was adopted from the model electronic surveillance bill developed in consultation with the states, and provides a consistent standard for Australian surveillance device laws. This threshold is consistent with that which applies to controlled operations under Commonwealth law, and for a majority of states which will be enacting legislation based upon the model bill this threshold will be greater than the threshold currently applying. Most states—Victoria, Western Australia, South Australia and the Northern Territory—allow surveillance device warrants to be obtained for any offence; in the case of New South Wales and Tasmania, for any indictable offence. We believe the threshold strikes a fair balance between privacy and the need for law enforcement. I also point out that in submissions on the model bill the Privacy Commissioner in New South Wales and the Information Commissioner of the Northern Territory supported the three-year threshold.

I would like to make one final point in relation to our international obligations. Under the Mutual Assistance in Criminal Matters Act 1987 Australia is able to seek assistance from and provide assistance to foreign countries in relation to criminal matters. If we were to change this and accept these amendments that would impede the assistance that we could give those countries and on a quid pro quo basis that could result in our also having less cooperation from those countries. It would narrow the ambit within which we could work with those countries in relation to law enforcement. We think the three-year threshold is appropriate and for that reason we do not believe it should be increased to seven years.

Question negatived.

Senator GREIG (Western Australia) (1.34 p.m.)—be leave—I move Democrat amendment (4) on sheet 4360:

(4) Clause 6, page 11 (line 31) to page 12 (line 2), omit the definition of tracking device authorisation.

This amendment reflects the Democrats’ view that there ought to be no alternative authorisation process for the use of tracking devices. The provisions of the bill before us enable the use and retrieval of tracking devices without a warrant if that use and retrieval does not involve any entry onto premises or interference with the interior of a vehicle without permission. In these circumstances a senior law enforcement officer can give permission for the use of a tracking device and there is no need to go to a judge or an AAT member to obtain a warrant. We
Democrats oppose these provisions. We believe the use of tracking devices should be subject to the same protections and accountability mechanisms as the use of other surveillance devices under this bill. Our amendments seek to remove the alternative approval process for the use of tracking devices and in removing these provisions we would make it necessary for law enforcement agencies to obtain a surveillance device warrant from a judge or a member of the AAT if the agencies propose to use a tracking device in respect of a particular individual.

**Senator LUDWIG (Queensland) (1.36 p.m.)**—Labor will not be supporting amendment (4), and I forewarn that we also do not support the Democrat position in their amendment (29). I can deal with both amendments together here as they effectively seek to remove clauses (39) and (40) which regulate the circumstances under which a law enforcement officer may, with written permission, use an appropriate tracking device.

I am not sure whether Senator Greig heard the evidence given to the legislation committee, but I am sure he has read it. We asked a similar question during the legislation committee deliberations because we thought that it was unusual that they might in fact need an emergency warrant. We thought it was a physical device that you would attach to a vehicle or some such thing to track it. But, as they explained, it might be a surveillance operation, or what they called ‘tracking’ a vehicle, but not using a technical device. The suspects might change vehicles and they might have an opportunity of continuing their investigation with the new vehicle. If they cannot get a tracking device on the new vehicle then they might in fact lose it. That is not the only reason, I am sure, but it brought to mind that sometimes it was helpful to have, in instances like these, law enforcement officers before the committee explaining some of the reasons why in certain circumstances—but only justifiable circumstances which they can later justify and validate—there might be an emergency requirement to use this sort of material rather quickly because they did not want to lose the trail or the surveillance. In this instance they might have been running a particularly important surveillance of a drug bust or something like that and they did not want to lose the evidence. With the relevant safeguards surrounding it, it seems sensible to agree to it in those circumstances. That gives some little bit of background, if it helps.

**Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.39 p.m.)**—I would like to address Democrat amendments (4) and (29). The Surveillance Devices Bill 2004 allows for the use of a number of different sorts of devices. One of them of course is a tracking device. It is perhaps the least intrusive of all the tracking devices which are contemplated by law enforcement. You attach the tracking device to an object such as a motor vehicle or a motor cycle and that is less intrusive than a listening device or another sort of surveillance device. Often you have to attach these at short notice—that is, the target is on the run or on the move. To go through the warrant process would certainly be detrimental to law enforcement.

We do have a provision, though, which I believe does address the concerns where it may become a bit intrusive. Where the level of intrusion increases because the device is to be used inside a vehicle or involves entry onto private land without permission, a full warrant must be sought from a judge or an Administrative Appeal Tribunal member. So I think that does accommodate those concerns where the law enforcement officer has to be more intrusive in the placing of the device. But for simply placing it on a vehicle or motor cycle we do not believe that it is
intrusive enough to warrant the issuing of a warrant and, in any event, in those sorts of circumstances the urgency requires swift action. For those reasons the government opposes Democrat amendment (4), and (29), which will be put shortly.

Question negatived.

Senator GREIG (Western Australia) (1.41 p.m.)—Democrat amendment (29) is complementary to our amendment (4), but for procedural reasons it needs to be moved separately. I do not propose to go over it again but the arguments I have advanced in favour of amendment (4) apply equally to this. As outlined in Democrat amendment (29), we oppose clauses 39 and 40 in the following terms:

(29) Clauses 39 and 40, page 42 (line 14) to page 45 (line 5), TO BE OPPOSED.

The TEMPORARY CHAIRMAN—The question is that clauses 39 and 40 stand as printed.

Question agreed to.

Senator GREIG (Western Australia) (1.41 p.m.)—I now move Democrat amendment (5):

(5) Clause 14, page 16 (line 14), at the end of subclause (1), add:

; and (d) it would be highly impractical to obtain the evidence referred to in paragraph (c) by any alternative means.

This is a simple amendment which aims to ensure that law enforcement agencies only seek surveillance device warrants in those circumstances where it would be highly impractical to obtain the relevant evidence by alternative means. We note that the bill currently requires that the law enforcement officer must suspect on reasonable grounds that the use of a surveillance device is necessary in the course of an investigation for the purpose of enabling evidence to be obtained. The Democrat amendments seek to take this requirement just that one step further by making it clear that the officer must have reasonable grounds for believing that it would be highly impractical to obtain the relevant evidence that they are seeking by any alternative means.

Senator LUDWIG (Queensland) (1.43 p.m.)—Without drawing it out, suffice to say that Labor is not minded to support this. A certain amount of effort has gone into getting to the position that is currently provided for in the bill on reasonable grounds and to try to tamper and play around with that is fraught with legislative danger. It introduces both impractical and alternative issues, both negatives I think which may create difficulties in the longer run. But without having the benefit of the committee to examine this particular issue in detail to see whether it had any merit, we are not persuaded that it would be a better position than that which is currently in the bill.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.43 p.m.)—The government is opposed to this amendment. The requirement that alternative means of evidence gathering be considered before a warrant is granted is already a matter which a judge or AAT member must consider. That is referred to in paragraph 16(2)(d) of the bill. We believe that this has already been covered in the bill and for that reason we oppose the amendment.

Question negatived.

Senator GREIG (Western Australia) (1.44 p.m.)—by leave—I move Democrat amendments (6), (11) and (27):

(6) Clause 14, page 16 (line 33), at the end of subparagraph (5)(a)(ii), add “, and the number of each kind of surveillance device sought to be authorised”.

(11) Clause 17, page 19 (line 9), after “devices”, insert “, and the number of each kind of surveillance device,”.
One of the initial concerns that we Democrats had in relation to this bill was that it contains no requirement for a surveillance device warrant to specify the number of surveillance devices permitted to be used. Surveillance device warrants are required to set out a range of different matters, including the alleged offence, the person or premises to which the warrant relates, the period of operation of the warrant and the types of surveillance devices which it authorises to be used. We believe it is also important for surveillance device warrants to specify the number of surveillance devices authorised. We think this is something that the police should be required to provide information on when applying for a warrant and it is also something which the judge or AAT member granting the warrant should be required to give consideration to. It may be, for example, that in relation to a particular offence an effective investigation will involve a large number of surveillance devices. While this may be completely justifiable we believe that there should be some accountability, certainly in the level of surveillance undertaken by the police.

By requiring the number of surveillance devices to be expressly authorised in the warrant we believe there is a great opportunity for the judge or AAT member to consider whether the surveillance regime proposed by the police is reasonable in those circumstances. Obviously, that would be on a case-by-case basis. What we aim to do with these amendments is require that all surveillance warrants, in addition to the requirements already set out in the bill, go that step further and clearly specify the number of surveillance devices which they authorise to be used.

Senator LUDWIG (Queensland) (1.46 p.m.)—Labor are not minded to support these amendments. We think that the current legislation adequately covers the issue. Perhaps this can best be explained in this way. If there is going to be a balance struck between an invasion by the law enforcement officer of the privacy of an individual, and that is the point at which it is going to be dealt with or done at, the warrant should cover the range of devices that might be utilised in that circumstance. You could imagine a prudent law enforcement officer taking both a digital camera and a film camera to ensure that they obtained the evidence in the one go, so to speak, rather than trying to obtain separate warrants for two different devices.

It brings it to a position where we are talking about the technical devices rather than what the legislation seeks to do. The legislation seeks to authorise the use of surveillance devices to achieve an end result—an investigation in this instance—and that is balanced against the privacy concerns of an individual. The warrant should not attach to the devices themselves because devices might change over time, they might vary. It might also mean that cameras get smaller and that an officer might take two digital cameras in the future and no film camera to make sure he gets the shot he particularly wants. Technology might change to such an extent where you get combinations of binoculars and cameras, and other combinations that I have not yet thought of. The real issue is the act of doing the investigation and the warrant to cover that particular point.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.48 p.m.)—Law enforcement needs the flexibility to have a warrant that says you can use a surveillance device. If you have a warrant that specifies the number of devices that have to be employed and you get out into the field and find you need six and you have a
warrant for only four, then you would have to go back and get that warrant amended. In the early stages of law enforcement surveillance operations it is simply not possible to state with any certainty the number or types of surveillance devices needed. For that reason we oppose the Democrat amendments. We believe that the regime that is in place offers sufficient accountability. Once you agree with the principle that there should be a surveillance device used in an operation and you have gone through that process then the number and type, especially the number, should be left to law enforcement.

Question negatived.

Senator GREIG (Western Australia) (1.49 p.m.)—by leave—I move Democrat amendments (7) and (8):

(7) Clause 14, page 17 (after line 2), after subclause (5), insert:

(5A) An application must specify whether, during the 3 years prior to the date of the making of the application, any previous surveillance device warrant or emergency authorisation has been sought or issued under this Division in connection with the same alleged offence or offences, the same recovery order, or the same person or premises; and, if so, must further specify:

(a) the number of previous warrants and emergency authorisations; and

(b) the nature of each previous warrant and emergency authorisation, including the time period during which it was in force; and

(c) the manner in which the evidence or information obtained from each previous warrant and emergency authorisation was used.

(8) Clause 14, page 17 (after line 2), after subclause (5), insert:

(5B) An application must specify whether, during the 3 years prior to the date of the making of the application, there has been, in connection with the same alleged offence or offences, the same recovery order, or the same person or premises, any use of a surveillance device without a warrant under Part 4 and if so, must further specify:

(a) the nature of the previous surveillance, including the time period during which it was undertaken; and

(b) the manner in which the evidence or information obtained from the previous surveillance was used.

These amendments seek to ensure what we feel is greater accountability in the use of surveillance devices by law enforcement agencies and that a judge or AAT member to whom an application is made is apprised of all the relevant information before granting a warrant. Amendment (7) in particular requires that an application for a surveillance device warrant must specify whether any other warrants have been issued in relation to the same offence, person or premises during the previous three years. The application must also specify the number of previous warrants and emergency authorisations that have been granted during that period, the nature of each previous warrant and emergency authorisation, including the time period for which it was enforced, and the manner in which the evidence obtained was used.

Amendment (8) requires that an application for a warrant must specify whether any surveillance device has been used without a warrant in respect of the same offence, persons or premises within the previous three years. Again, the warrant must specify the nature of the previous surveillance and the way in which the information obtained was used. These are highly relevant matters to which a judge or AAT member granting a surveillance device warrant should turn their mind. We think this will help to ensure that the surveillance device powers under this act are used strictly and only for the purposes of law enforcement and not to monitor the ac-
tivities of individuals over long periods of time with no proper justification.

Senator LUDWIG (Queensland) (1.51 p.m.)—Labor are not minded to support these amendments, although I do understand the speech given by Senator Greig in relation to this and the concerns he has. It comes down to the fact that in some circumstances these are operational matters. In the case of the earlier amendments and these ones, the AAT member or judge has to look at the circumstances and say, ‘Will this warrant stand on its own merits? Is it permissible in this circumstance to allow a surveillance device to be used?’ They will weigh that up themselves without being coloured by what might have gone on before or what might be around the corner in another court. We are looking at the warrant in that instance. If there are other matters or impermissible things that might intrude then that is up to the courts themselves to determine.

The other issue that strikes me is that there may be more than one law enforcement agency interested in this individual for entirely different reasons. There may also be instances where warrants cross over. I cannot imagine those; that is why I say they are operational matters in some instances. The bill has struck that balance. The government has segmented it for those reasons, and I suspect for some others that the minister may add. You can imagine circumstances where two different law enforcement agencies might have sought warrants for surveillance devices for different purposes. The last thing they might want to be able to do is cross all that information over so that the judge becomes the depositor of all this type of information. Where that is inappropriate, the request for a warrant should stand on its own by the law enforcement agency making the application and the judge determining that accordingly.

That seems to be the logical way of dealing with it, rather than trying to draw in whatever else may have gone on before in relation to it, because it may only be for a limited period and a new warrant may be sought for the same issue that is being examined or for another issue. As I said, I think these issues draw far more detail into operational matters than the bill can look at. What the bill is designed to do is to regulate these areas to ensure that there is fairness and that the courts have a role and that warrants are provided for in a manner not unlike other warrants, because you do not want them to be in a class of their own. So I think the balance has been struck in this instance. That perhaps gives some explanation as to why Labor will not support the amendment and why, for those reasons, we have come to that conclusion.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.54 p.m.)—Clause 16(2)(f) of the Surveillance Devices Bill (No. 2) 2004 provides:

(2) In determining whether a surveillance device warrant should be issued, the eligible Judge or nominated AAT member must have regard to:

\[\text{(f) any previous warrant sought or issued under this Division in connection with the same alleged offence or the same recovery order.}\]

We believe that the ground is already covered by virtue of this subsection and to require that this be set out in the application for the warrant would not add to the integrity of the process provided for. We believe it is sufficiently provided for in the bill as it is and we oppose Democrat amendments (7) and (8) on that basis.

Question negatived.

Senator GREIG (Western Australia) (1.55 p.m.)—by leave—I move Democrat amendments (9), (10), (16), (18), (19) and (23) on sheet 4360:
These amendments simply require that, wherever a law enforcement officer is required to ‘believe’ something under this act that that belief is based on reasonable grounds. These amendments aim to insert an element of objectivity into the various assessments that need to be made under the bill. We note that section 14 in the current bill already contains the requirement of reasonableness; however, in that case the relevant test is whether an officer ‘suspects on reasonable grounds’, which is obviously not as strong as ‘believes on reasonable grounds’. We take the view that, given the very intrusive nature of the powers contained within this bill, it is critical to include an objective test in the various assessments that need to be made. The use of surveillance devices should not depend on the subject of assessments of individual police officers. We believe there are eminently reasonable amendments, such as these, which can and will improve the bill to help it operate more effectively, and certainly more fairly.

Senator Ludwig (Queensland) (1.57 p.m.)—I think what Senator Greig is trying to achieve is an objective test to be placed on the law enforcement officer in this circumstance. This relates to a couple of the other matters that I have mentioned in that it goes to the operational basis of how the law enforcement officers conduct their affairs. The police or the law enforcement officer in this instance will form a view—a belief—on the basis of what is confronting them at the time. What the law enforcement officer does is by its very nature subjective. I think it is appropriate, given the operational requirements of the type of operation that may be going on, for the law enforcement officer to be able to form that subjective belief at the time rather than try to apply an objective test to the officer later. In this instance, Labor do not support the amendment. We do not think ‘on reasonable grounds’ is appropriate and we think it should be left, for the operational reasons that I have mentioned, for the law enforcement officer to use his subjective belief in this circumstance.

Senator Ellison (Western Australia—Minister for Justice and Customs) (1.58 p.m.)—The government opposes Democrat amendments (9), (10), (16), (18), (19) and (23) on the basis that it is not the officer’s belief that is the issue; it is the decision by the judge or the AAT member. That person has to be satisfied that it is appropriate in the circumstances to make the relevant decision. We believe that is the appropriate course of action. We think that to add this requirement to the officer’s belief would make this unworkable and we oppose these amendments on that basis.

Question negatived.

Progress reported.

QUESTIONS WITHOUT NOTICE

Regional Services: Program Funding

Senator O’Brien (2.00 p.m.)—My question is to Senator Campbell, the Minister representing the Minister for Transport and Regional Services. Does the minister recall his statement to the Senate yesterday that the successful funding provided to Primary Energy Pty Ltd for a grains-to-ethanol proposal was applied for and assessed through the Namoi Valley adjustment package? Is the minister aware that Minister Anderson re-
leased a media statement on 2 February this year in which he announced funding for three other projects under the Namoi Valley adjustment package and that the Namoi Valley structural adjustment package would be put on hold from that date? In the light of media reporting today, how can the Deputy Prime Minister explain why a $1.2 million project located in his electorate was assessed and approved in August through a program that he himself suspended in February?

Senator IAN CAMPBELL—Here we are again with the Labor Party criticising regional program funding that benefits the regions. Here is a project with a modest investment from the Commonwealth government which will leverage significant investment from the private sector, create a strong market for commodities from the region and create renewable energy for Australia, and yet Labor want to criticise, carp and whine. I gave an accurate answer on this issue yesterday. The Labor Party would say that this project was not assessed under any fair or independent assessment process, and Senator O’Brien has, of course, admitted today that we were right; it has been done.

The reality is that the Namoi structural adjustment package was in fact rolled into the Regional Partnerships Program. This project had been assessed and, once again, rather than the Labor Party going out there, looking at the region and trying to assess the value of it in their own way, they would rather sit inside the airconditioned comfort of Parliament House or sit along the cappuccino strips of Sydney or Melbourne and criticise any money that goes out to regional Australia. What I want the Labor Party to do today, rather than to whinge, criticise and moan about money going from the coalition government to the regions to assist employment, the environment and the economic development and growth of the regions, and to support Australia outside the capital cities, is to actually own up and tell us which one of these projects they are going to put the kybosh on—which one of these projects they think should be put in the dustbin or eradicated, and then I will take them seriously.

Senator O’BRIEN—Mr President, I ask a supplementary question. I remind the minister that I asked him whether he was aware that the Namoi Valley structural adjustment package was put on hold in February and that the announcement about rolling it into other programs was made in 2003. Can the minister advise the Senate why this grant is listed as an approved grant under the Regional Partnerships Program on the official departmental web site if, in fact, it was assessed and approved under the suspended Namoi Valley package. Is the minister aware that the New England and North West Area Consultative Committee also identifies the Regional Partnerships Program as the source of funding for the Gunnedah grains-to-ethanol proposal? Does the minister stand by his statement yesterday that this project was assessed and approved under the Namoi Valley structural adjustment package?

Senator IAN CAMPBELL—The problem the Labor Party have is that they do not like the fact that the coalition has been very successful at identifying problems in regional Australia. The problems, which we have assessed over eight years, require significant support from government. We have identified a range of very successful projects, be it the R.M. Williams centre, an equine centre or a rodeo complex in Mount Isa. There are a whole range of projects that can assist local communities—

Senator O’Brien—Mr President, on a point of order: I ask you to draw the minister’s attention to the question. He is dealing with matters which are not germane to the question which was asked of him. He should assist the Senate by restricting his answer to
the question which has been asked, and I ask you to draw the question to his attention.

**The President**—As you know, I cannot direct a minister as to how to answer a question, but I can remind the minister that he has 32 seconds of time remaining, and I draw his attention to the question.

**Senator IAN CAMPBELL**—Thank you, Mr President. I fully understand the question, but the Labor Party do not like the answer. The answer is that the Labor Party are again criticising funds that are flowing to the regions to support regional economies, economic growth, jobs growth and sustainability, and they do not like it. They want to spend the next few weeks analysing which program it was assessed under and which program it was delivered under. It is being delivered under the Regional Partnerships Program because it is an efficient program delivery system that has been independently analysed by the Auditor-General and a range of other independent experts to prove that it delivers. *(Time expired)*

**Economy: Demographic Trends**

**Senator BRANDIS (2.05 p.m.)**—My question is directed to the Minister for Finance and Administration, Senator Minchin. Is the minister aware of long-term fiscal challenges facing Australia as a result of demographic change? Will the minister outline what strategies are in place to deal with these challenges and what further strategies might be adopted? Is the minister aware of any alternative policies?

**Senator MINCHIN**—I thank Senator Brandis for that very pertinent question—much more pertinent than those coming from the opposition. On 9 October the Australian people decided that we were the superior economic managers of this country compared to the Labor Party, and they did that largely on the basis of our focus on the long-term national interest. It was as a result of the long-term approach that we take that a couple of years ago we commissioned the *Intergenerational Report*, which focused on the challenges facing this country over the next 40 years by the ageing of the population. Then in June this year, the Treasurer asked the Productivity Commission to report on the impacts on the economy of this process of ageing. The commission released its very important draft report last week which reported extensively on the likely impact of ageing on the economy and on government budgets, both state and federal.

It projected that the impact of ageing on government budgets would be quite significant. It projected that by 2044, state and federal governments would experience a fiscal gap equivalent to seven per cent of gross domestic product every single year, which is the equivalent of $56 billion in today’s dollars every year. The cumulative value of that gap, if you add it up over the next 40 years, would amount to $2.2 trillion, if there were to be no policy change from today in response to this challenge of ageing. The commission also makes the point that the great bulk of the burden of ageing will fall on the Commonwealth, because we have greater responsibility for the greatest growth area for spending—that is, health—while the states have responsibility for areas like education, which will actually become cheaper relatively.

The point here is that those figures are based on there being no comprehensive policy response. Clearly there has to be a very comprehensive policy response. That is why we need to improve work force participation by reducing taxes for older workers; encourage people to move from welfare to work; boost productivity by reforming workplace relations; sell Telstra; and invest in transport infrastructure. And we have got to control things like expenditure on the Pharmaceutical Benefits Scheme. Those are the sorts of
responses that we have got to make if we are to meet this extraordinary challenge, particularly for the federal government.

One of the most incomprehensible responses to this very significant Productivity Commission report came from the Leader of the Opposition, who had the audacity to say that it was a vindication of one of the most irresponsible policies the opposition took to the last election—that of the so-called Medicare Gold. In fact, Medicare Gold was a policy that purported to remove any discipline in relation to health care for people over 75. There were going to be no price signals and no account for clinical need. My department, the department of finance, estimated that it would cost $5.8 billion by 2007-08 and grow by 10 per cent a year. So it would massively exacerbate that fiscal gap. Indeed, that point was made very well by Mr Lindsay Tanner, one of the many members of the ‘shadow’ shadow cabinet that we now have opposite. In one of his first interviews just last week he said:

I think, for example, the idea that Simon Crean put forward of a future fund and dealing with the looming problem of the ageing population—the pressure on the federal budget was contradicted by Medicare Gold, which would add a very substantial burden to future federal budgets.

Mr Tanner recognised the massive problems involved in Medicare Gold—how totally inconsistent it was with any comprehensive approach to dealing with this problem of ageing—and for his honesty he appears to have been banished to the backbench. So you are left with this talentless lot over here. All the talent has gone to the backbench, to the ‘shadow’ shadow cabinet. We want to see a responsible opposition which is going to join us in dealing with these problems of ageing.

(Time expired)
very serious question about public accountability for taxpayers’ funds. He has made no attempt to answer the question. He is going on a travail because he cannot answer. Could you bring him to order on the basis of relevance and direct him to answer the question.

Senator IAN CAMPBELL—In answer to the point of order, I was specifically asked had I been to a web site and I was responding to the first part of the question.

The PRESIDENT—On the point of order from Senator Evans, I remind the minister that he has three minutes left to answer the question and I remind him of the question.

Senator IAN CAMPBELL—On the question as to whether I have visited a web site under that area consultative committee, the answer is no. But I am well aware of the program guidelines, the Namoi structural adjustment package, and the Regional Partnerships program and the guidelines as to that. I am also well aware of the benefits of this project and I am very pleased to see, as the environment minister, that the proponent of this project wants to assess the greenhouse emissions benefits. In fact it is a reality under the Howard government that we have done more to address greenhouse issues—we have done more to address global warming and climate issues—than most other governments around the world. I am pleased to see that projects under Regional Partnerships and proponents such as Primary Energy Pty Ltd are ensuring that they are making a contribution to the environment—but not just saying they are doing it and publishing a report and saying, like Premier Bob Carr did last week, ‘We’ll stop our ministers driving V8 vehicles,’ while at the same time going off and creating emissions elsewhere. This government is focused on an integrated response, and investing in an ethanol plant in this region—the project that Senator Carr’s question refers to—

Senator Carr—Mr President, I raise a point of order in terms of relevance. The minister was asked a specific question about whether a grant was in breach of the guidelines. I would ask you to bring him back to the question that was asked.

The PRESIDENT—I remind the minister of the question. I presume that there will be a supplementary question as well. Senator Campbell, you have two minutes.

Senator IAN CAMPBELL—Thank you, Mr President. It is quite clear that Senator Carr does not like the answer that he is getting. But the guidelines are there for everybody to see. I have got absolutely no doubt that the project and the approvals processes are entirely in order. I also have absolutely no doubt that the project itself will make a significant contribution to the sustainability of the region. It will create 50 full-time jobs. It will create an additional 350 indirect jobs. It will provide the baseload for the Central Ranges natural gas pipeline and expand the economic base of that local economy by around $170 million. In addition, it will utilise 300,000 tonnes of coarse grains annually to produce 120 million litres of fuel-grade alcohol and 90,000 tonnes of valuable stock-feed per year. The plant will play a major role in reducing the economic impact of the changed water allocations in the Namoi Valley, a huge structural adjustment issue for the people of that region—something that Senator Carr will probably never understand nor ever try to understand. I say seriously to the opposition that they should assist, rather than tear down these regional projects and tear down a program that will assist regional communities that need assistance from the Commonwealth government, because quite often Labor governments ignore them. I suggest to Senator Carr that, rather than hanging around central Melbourne over the recess, he should go and buy himself a pair of Blundstones, get them a bit dirty and go and talk to
the people who are trying to build regional Australia. I bet he does not do it.

Senator CARR—Mr President, I ask a supplementary question. It is quite clear that the minister had trouble following the question. I ask him to take on notice the question I asked with regard to the eligibility of this particular grant applicant for the grants and whether or not there was a breach of the guidelines. I also ask the minister to please advise the Senate of the details of the government’s new strategic opportunities national assessment guidelines, otherwise known as the SONA guidelines. Can he confirm whether or not these guidelines were used to override the guidelines for the Regional Partnerships program, and are they available for other uses in his department, particularly where the need arises—for instance, where local political interest benefits need to be demonstrated? Can he confirm that the SONA guidelines were in fact introduced in only March this year? Would he table a copy of those guidelines?

Senator IAN CAMPBELL—Senator Carr wants to play cheap and dirty politics with grants to regional Australia that are benefiting local communities, benefiting the local economy, benefiting the national economy and benefiting the environment. He wants to continue in the fine Labor tradition of sitting in the comfortable inner city, sipping a cappuccino and pouring scorn on anything the government does to help a struggling regional community—in this case with a modest grant that will leverage significant further investment. The guidelines have been applied to this project. He asks, ‘Do we have a guideline that allows political interests to overwhelm other guidelines?’ No, but we do have a guideline that says national benefit can be brought to bear—and Senator Carr knows this—and the national benefit of this is that it is creating jobs in regional Australia, creating good outcomes for the national economy, creating 140 permanent jobs and a good outcome for the environment. (Time expired)

Superannuation: Contributions

Senator McGAURAN (2.18 p.m.)—My question is to Senator Coonan, the Minister representing the Minister for Revenue and Assistant Treasurer. Will the minister advise the Senate how the government’s superannuation co-contribution scheme is benefiting hard-working, low- and middle-income earners? Is the minister aware of any alternative policies detrimental to these benefits?

Senator COONAN—I thank Senator McGauran for the question. As senators will remember, the superannuation co-contribution was introduced by the government in the face of determined opposition by Labor senators. The policy was designed to help low-income people save for their retirement, and it is with a great deal of pleasure that I am able to inform the Senate that the Australian Taxation Office is about to roll out the first round of payments from the government’s superannuation co-contribution scheme. I am advised by the minister that the ATO can already confirm that some 215,000 middle- and low-income earners are eligible for a co-contribution payment and will be receiving a direct contribution from the government to their retirement savings. As a result of these payments, a total of $110 million will be injected into Australia’s retirement income system, an average of $510 a person. To put this into context, for a person on $28,000 a year making these contributions over a 30-year working life, the government’s contribution will increase their superannuation balance at retirement by $54,000. This is a very powerful incentive and is of great assistance to Australians on low incomes who want to do the responsible thing and save for their future.
Introducing and then significantly enhancing the co-contribution scheme were policy achievements of which we can be truly proud. The enhanced co-contribution scheme meant that from 1 July 2004 low-income earners earning up to $28,000 who contributed to their super became eligible for an extended government co-contribution of $1.50 for every dollar contributed, up to a maximum government contribution of $1,500. For a person earning $25,000, receiving the maximum co-contribution over 30 years will boost super by 86 per cent, or $106,000 in today’s dollars. For a person earning $36,000, the improvement is 28 per cent, or $51,000 in today’s dollars. These policies are in very stark contrast to those of the ALP, which sought to plunder Australia’s retirement system to the tune of about $4 billion to pay for its unfunded promises during the last election campaign. Labor proposed that the co-contribution be completely scrapped, effective from 11 October 2004—just wiped out. They were too ashamed to be honest about it and hid it up the back of their tax policy as a savings measure, robbing the future to fund their election promises.

Senator Sherry interjecting—

Senator COONAN—Senator Sherry, who was of course credited as the author of Labor’s superannuation policy—if indeed he was—should be ashamed of the superannuation policies that the ALP took to the last election. Labor simply wanted to remove the incentives which the government had put in place for low- and middle-income earners, and they also wanted to discourage higher income earners by increasing the superannuation surcharge.

These policies were a prime example of just how badly out of touch the Labor Party have become. They are particularly out of touch with those on low incomes, who of course have a right to save for their retirement, who should have an incentive to do so and who have every right to expect the government to provide that sort of assistance.

This week we heard an apology from Senator Conroy. I wonder whether Senator Sherry is going to apologise to the Australian people for having a superannuation policy that simply robs Australia’s retirement system. I do not know whether Mr Latham will be asking Senator Sherry to apologise for punitive superannuation policies, but the Australian people know that the coalition government will continue to support retirement savings for Australians. (Time expired)

Federal Election: Member for New England

Senator KIRK (2.22 p.m.)—My question is to Senator Ellison, the Minister for Justice and Customs and the Minister representing the Attorney-General. Can the minister confirm that Australian Federal Police investigations regarding federal members of parliament are covered by a comprehensive set of protocols which detail how much and when the minister for justice is to be informed about those investigations? Given that the AFP are required under those protocols to inform the minister, when did the AFP inform the minister for justice of the fact that serious allegations regarding electoral bribery had been made against the Deputy Prime Minister, Mr Anderson, and Senator Sandy Macdonald? Under the same protocols, when did the AFP inform the minister that they had interviewed the member for New England regarding the serious allegations he had made? When did the AFP inform the minister that the investigation into Mr Windsor’s allegations had been terminated, apparently on the advice of the Director of Public Prosecutions?

Senator ELLISON—As I recall it, the member for New England had a lot to say about this investigation quite publicly. In fact
he referred to it at length on more than one occasion. As with all investigations, in relation to these matters and others, the Australian Federal Police advised me as minister for justice. As to the date on which that occurred, I will ascertain that and get back to the Senate. There is a case prioritisation system which the Australian Federal Police have. It is a matter for the Australian Federal Police how they conduct their investigations. I am not for one moment going to enter into any discussion or answer which would touch on why the AFP chose to adopt the course of action they did in relation to who they spoke to or who they did not speak to. That sort of question displays a total lack of understanding of the division of responsibilities between the minister and police. As to when I was informed about the investigation, I will check that date and get back to the Senate.

Senator KIRK—Mr President, I ask the minister to take on notice the date he was informed by the AFP and I ask a supplementary question. Under the protocols governing the provision of information to the minister for justice on investigations regarding federal members of parliament, did the AFP inform the minister that they were terminating the investigation without interviewing the two federal members of parliament; namely, Mr Anderson and Senator Sandy Macdonald? Did the AFP inform the minister of the reasons for not interviewing the two members of parliament at the centre of the allegations?

Senator ELLISON—I recall that a statement put out by the Australian Federal Police on this matter referred to the actions they took. As I recall, the advice I received was in accordance with that statement. As to the date that I was advised of the termination of the investigation, again, I will get back to the Senate. I would like to add that, throughout this matter, the Australian Federal Police have conducted this matter as they have seen fit in accordance with their obligations. I have no reason to question the AFP’s conduct of this matter, as I have indeed no reason to question their conduct of other investigations of recent times.

Howard Government: Government Appointments

Senator MURRAY (2.26 p.m.)—My question is to the Leader of the Government in the Senate, Senator Robert Hill. Given that the minister is aware of recent allegations by a member of the House of Representatives that he was offered an improper inducement of a beneficial trade or diplomatic post, is the minister aware that this has again raised the issue of how government appointments are made? Does the minister recognise that the member’s allegations had popular traction because of the public’s view that jobs for the boys and girls go on all the time? Does the minister agree that if all government appointments were to be made through an independent process on merit then there could never ever be any opportunity for, or even suspicion of, improper inducements of the kind alleged?

Senator HILL—The implication within that question is that this independent body will make better appointments, and that is neither my view nor the view of the government. This government is responsible for diplomatic appointments. It generally appoints professionals from within the Department of Foreign Affairs and Trade, but on occasions it makes a decision that some other individual might be better suited for a particular post. It is a practice that has been in existence for a long time; this is not something that has been originated by this government. I can think of recent appointments who did not come out, at least in the immediate sense, of the Department of Foreign Affairs and Trade such as Mr Michael L’Estrange in London. I would have thought any objective observer would say that he has
done an outstanding job. I do not think anybody would argue that an independent body would have made a better choice. There are a few others I can think of along the same lines.

I can say, similarly, that I thought Kerry Sibraa did a great job in Africa. He was particularly well-suited to that appointment. He had a love of Africa and a good knowledge of Africa. He had been a chairman of the foreign affairs and defence committee of this parliament and the president of the Senate. Senator Conroy might be shaking his head, but in my view his former colleague the honourable senator was particularly well-suited to that appointment. So, no, it is not the view of this government that it should abdicate its responsibility for these appointments to some independent body. It is not the view of this government that that would lead to better appointments. This government will make appointments, as is its responsibility, and it will have the responsibility then to defend those appointments. In my observations, certainly more often than not they have been proven to be wise choices by the high quality of the performance given by the individuals concerned.

Senator MURRAY—Mr President, I ask a supplementary question. The minister would be well aware, as an experienced minister and member of parliament, that his answer does not address the public perception problem that exists. Is the minister aware that other governments have radically improved the independence of the process by publishing independent criteria under which appointments are made? When will the government act to end appointments being made that could be or are the subject of political patronage? When will it improve its formal processes in this regard?

Senator HILL—There is an assertion within the supplementary question that there is a public perception that there is something wrong with diplomatic appointments. I have not seen evidence to that effect. I have not seen the public expressing criticism of the appointments made by this government to diplomatic posts. The reason I have not seen it, I suspect, is that they have done an exceptionally good job. It is true that other governments in other systems have different ways of making these appointments. I assume the Democrats would also argue for a more independent appointment process for judges. This government accepts that when it is elected to govern it has responsibilities to govern, not to pass that responsibility to third parties. That might not be the way the Democrats wish to do business, but in this instance it is not the Democrats that are doing the business.

Economy: Current Account Deficit

Senator CONROY (2.31 p.m.)—My question is to Senator Minchin, the Minister representing the Treasurer. Given the current account deficit reached a record $13.7 billion in the September quarter and Australia's overseas debt ballooned to a record $406 billion, what action is the government taking to end the massive run of 29 consecutive Australian trade deficits? Why should Australians have to suffer a current account deficit that has soared from $18 billion in 2000-01 to a dangerously high level of $47.4 billion in 2003-04, an amount close to six per cent of GDP? How does the government respond to reported comments from credit rating agency Standard and Poor's saying Australia's foreign debt posed a big risk to international investors and that they were rattled by the fact that most of the foreign debt was being funnelled through the banks to prop up the housing boom?

Senator MINCHIN—It is a great pleasure to welcome back Senator Conroy to the field of policy while he takes a short break
from his jihad against the dead parrot. Mind you, he is not asking a question about his own portfolio responsibilities. Apparently he cannot think of any questions in his own responsibilities, that of communications, but he now wants to express an interest in being shadow Treasurer. We are very pleased that Senator Conroy and the opposition are finally taking an interest in the economy. We only wish they had done so for the last eight years. They have basically wasted the last eight years avoiding any discussion of the economy, and now they have found a latter-day interest in that subject, which we welcome. We welcome their constructive participation in ensuring that this economy continues to perform, instead of them spending the last eight years obstructing every measure that we have tried to introduce to improve the flexibility and performance of this economy.

The Treasurer has made it quite clear that we of course pay attention to the foreign debt situation. The Treasurer did make a point yesterday in his answer to this question in the House of Representatives. While the senators opposite have been too busy muckraking over our support for investment in regional Australia, at least in the House of Representatives they were focusing on the economy. Now, a day later, Senator Conroy gets up to ask a question which was asked yesterday in the House. The Treasurer did make the point that the current Leader of the Opposition pooh-poohed this very line of attack in 1994, when he said that a current account deficit of the nature that we had was actually a vote of confidence in the Australian economy. Those are the words that the Leader of the Opposition, Mark Latham himself, expressed in 1994. So he completely undermined the attack brought on yesterday by Mr Swan and the attack brought on today by Senator Conroy on this subject.

The main driver of the current account deficit, as they well know and as economists well know, is the relative strength of the Australian economy compared to that of our trading partners of the world. The Australian economy continues to outperform most of the developed world. Therefore, by definition, with our domestic growth, we are going to be sucking in more by way of imports in investment flows than we are able to export. The strength of the Australian dollar of course has been a factor and is a function of the decline in the US dollar. The Treasurer also made the point that we think a greater range of countries should bear the burden of the decline in the value of the US dollar, other than simply Australia. But the Australian dollar is very strong, some 10c above its long-term average since the dollar was floated by those opposite when they used to take an interest in good economic policy.

The way in which we deal with this is to make sure that the Australian economy is flexible, productive and competitive. One of the most important ways to do that is to ensure we have the most flexible possible workplace relations. It is this opposition, which have the gall to raise the question of our current account deficit, that have been blocking every attempt that we have been making to free up industrial relations. They have a massive problem. They know that, if they are to become economically credible, they have got to address this issue of flexible industrial relations. Senator Conroy, to his credit, I think understands that, but the troglodytes like Senator Campbell and others opposite will not allow this opposition to escape from the stranglehold that the trade union movement has over them.

_Senator George Campbell interjecting—_

**The PRESIDENT**—Order! Senator Campbell!
Senator MINCHIN—They will never achieve economic credibility, because they will never escape the burden they bear as a product, as a wholly owned subsidiary, of the trade union movement. They will never become relevant to the economic debate. (Time expired)

The PRESIDENT—Order! There is far too much shouting from the left.

Senator Ian Campbell—Mr President, on a point of order: when you are quite properly calling the other Senator Campbell to order, could you please use his first name to distinguish the lowland Irish from the Highlands Scot.

The PRESIDENT—There is no point of order.

Senator CONROY—Mr President, I ask a supplementary question. How can the minister possibly claim that Australia’s poor trade deficit performance, which has placed the country last of the 15 advanced economies, is not a risk to the Australian economy? Didn’t the Treasurer, Mr Costello, identify in the 1996 budget paper overview a current account deficit of four per cent of GDP as a risk? If four per cent is a risk, isn’t six per cent a disaster waiting to happen? As Australia draws on foreign savings, as represented in the current account deficit, doesn’t the Australian economy become more vulnerable to external financial shocks outside our sovereign control?

Senator MINCHIN—Senator Conroy ought to understand that the principal difference between 1996 and now is that we as a government are contributing to national savings. What we are seeing is the workings of the private economy. Our economy, of course, is in extraordinarily good shape compared to the rest of the world, is outperforming the rest of the world and is therefore producing the sort of current account figures we have had. What we need to do is ensure, as I have said, that we have a productive, competitive and flexible economy, which will be a product of the sorts of the policies we will be able to produce and implement after 1 July next year.

Environment: Endangered Species

Senator BROWN (2.38 p.m.)—My question is to the Minister for the Environment and Heritage. It is about the critically endangered Tasmanian swamp eyebright, which is ostensibly one of the most rare and endangered plants in Australia. Is the minister aware that a road through the Southport Lagoon conservation area potentially threatens this plant with extinction? Is he aware that the proposed completion of that road is not under a forest practices plan? Will the minister ensure that under the EPBC Act, the environment act, an environment assessment is completed before any further approval is given? Will he make sure that the draft management plan prohibiting four-wheel drives from this area is carried into practice before any approval for a road is granted?

Senator IAN CAMPBELL—Firstly, I thank Senator Brown for a question on the environment. From reading the Greens’ web site, I note that most of it is taken up with policies on making drugs more freely available, trying to bring the economy to an end and putting taxes up on people. So, to the extent that this is a question that relates to a policy which receives very little coverage on the Greens’ web site, I congratulate him for focusing on something that most Australians actually agree with him on—that is, protect-
passing unique, valuable, vulnerable flora and fauna species.

The senator refers to the Environmental Protection and Biodiversity Conservation Act, which was passed through this parliament in 1999 with enormous energy and enthusiasm from the then minister for the environment, Senator Robert Hill. This is an act that is regarded around the world as leading federal environmental law. It is one of the great achievements of the Howard government in its custodianship of the environment. Senator Brown points out quite rightly that this is an act that gives the federal government power to act where there are threats to significant national environmental issues. That of course relates to species that are vulnerable or endangered. It also relates to acts that might take place on important wetlands listed under the convention on wetlands, or the Ramsar convention, as it is known. The interesting thing is that, when that law was going through this place and when the bill was being debated, Senator Brown was one of the loudest opponents of it. If he had had his way, the law would have never made it into the statute book. So it is a little bit perverse that he now is asking the Commonwealth to use this act.

But it is an entirely appropriate use of the act. The trouble with Senator Brown’s question is that from my information—I may well be wrong—the road that is being built is actually approved under a forest practices plan. So there is obviously disagreement over that. My brief tells me that it was approved under a forest practices plan. The importance of that is that, under the regional forest agreement, actions under a forestry plan are exempted from the federal environmental law. Part of the important agreement that the Commonwealth reached with each of the states on the regional forest agreement was to ensure that there was some certainty as to environmental approvals and some resource security for the timber industry, but also significant protections for historic levels of forest types right across Australia, including in Tasmania, as has been achieved.

Senator Brown benefits the world, though, by drawing attention to the important natural heritage aspects of the Recherche Bay area. The government has a strong interest in this area. Recently identified were historic and archaeological remains from the D’Entrecasteaux French expedition back in 1791-93. These are very important parts of heritage for Australia and for the world. There are, of course, other important natural heritage features in the Recherche Bay area. I have before the Australian Heritage Council a proposed listing because of the national heritage values particularly related to the D’Entrecasteaux expedition. With regard to the impact of the EPBC Act in relation to the road that Senator Brown refers to, my information is that it is subject to a Tasmanian forest plan. (Time expired)

Senator BROWN—Mr President, I ask a supplementary question. I thank the minister. I can inform him that that approval of the road under the forest practices plan expired in June 2003 and that a future proposal for the road insofar as the Southport Lagoon conservation area is concerned is not covered by any forest practices plan and therefore is covered by his need to protect the critically endangered swamp eyebright. Is it true, Minister, that the French ambassador is visiting Recherche Bay this week and that the whole area is under global watch? Was it featured on the 7.30 Report last night? Can the minister say whether he is inclined to grant protection to the north-east peninsula of Recherche Bay for the glory of this nation’s heritageforevermore?

Senator IAN CAMPBELL—I will be taking the advice of the Australian Heritage Council in their assessment of that area.
have no doubt that the Recherche Bay area is important to Tasmanians and all Australians and that the heritage values associated with the D’Entrecasteaux expedition are an important part of the heritage of a great era of expedition in that part of mankind’s history. I will be looking forward to the advice of this expert panel. I think it is wise for ministers, particularly environment ministers, to get advice on these sorts of issues from expert panels and not work on the latest whim of a politician.

Finance: Special Appropriations

Senator SHERRY (2.45 p.m.)—My question is to Senator Minchin, the Minister for Finance and Administration. Is the minister aware of the scathing criticisms in the Auditor-General’s report No. 15 of 2004-05, Financial management of special appropriations which included drawings by five department and entities relying on incorrect appropriations in 1998-99 to 2002-03 totalling $393 million? There was spending of $7.26 billion by one department against legislation that had not been passed by parliament. There was spending of $23 million by two entities that had not been approved by parliament, including $6.96 million in breach of section 83 of the Constitution, failure to disclose payments by two entities totalling $13.1 billion and $26.6 billion—and the list goes on. What responsibility does the minister take on behalf of his department and the government for this financial incompetence?

Senator MINCHIN—It is not financial incompetence and Senator Sherry knows that. In fact, this government is rightly commended for its extraordinarily successful approach to the management of government accounts and, indeed, is held in very high regard. Senator Sherry will learn that when he visits organisations like the OECD who uphold Australia as one of the great exemplars of a very professional and responsible approach to the management of government finances. In relation to these ANAO performance audits of special appropriations, we welcome the audits. The ANAO is an extremely good, independent body and it has drawn attention to some very important issues in relation to the management of the special appropriations. I would stress they have absolutely no impact whatsoever on the integrity of the budget, government accounts, revenue, expenses, surpluses, net worth et cetera. The findings have absolutely nothing to do with that.

The audit reports deal largely with technical issues that go to the accuracy with which agencies’ use of special appropriations has been documented in annual reports, so they are extremely technical matters that have been properly brought to our attention. My department will play a significant role in ensuring that the relevant agencies and departments do respond comprehensively and in full to the ANAO audit. But I do stress that these findings really do go to accurate reporting in annual reports and not to anything other than that. They are extremely technical. It is a proper role that the ANAO plays in acting as a watchdog for all the agencies in this way to ensure that they are properly reporting their use of the special appropriations in an accurate fashion. None were found to be illegitimate or improper in a strict sense of the word, so we will ensure, as my department has a responsibility to ensure, that all these agencies who have the ultimate authority over these special appropriations do implement the recommendations of the ANAO in relation to their management of special appropriations.

Senator SHERRY—Mr President, I ask a supplementary question. The minister will find out that it involves a lot more than he has outlined in terms of wasted expenditures. He will find that out shortly.
Senator Minchin interjecting—

Senator SHERRY—Laugh if you like; it is a pretty serious situation, Minister. Given the department of finance is responsible for developing and maintaining the financial framework of the Commonwealth public sector and the oversight of the implementation of the devolved financial arrangements to government departments from 1999, why did the minister allow such financial incompetence over a period of five years? Why was the minister asleep at the wheel?

Senator MINCHIN—As I say, I am very proud of the performance of this government in relation to the management of the budget and very proud of the performance of my department of finance. It is one of the best departments in the government in ensuring accuracy, proper control and discipline in relation to the expenditure and recording of government moneys. As I said, the findings that the ANAO has made in relation to special appropriations are extremely technical. They only go to the accuracy of reporting of agencies in relation to their annual reports. We are following up on all those ANAO recommendations. One of the agencies involved is ATSIC—which has, of course, since been abolished—and its management of the Indigenous land fund. There are issues of that kind and we will make sure that they are all properly followed up.

Immigration: Refugees

Senator PAYNE (2.50 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone. Will the minister provide the Senate with the details of the government’s successful efforts in providing refugee protection to those in most desperate need of resettlement, particularly from the Sudan? Is the minister aware of any alternative policies?

Senator VANSTONE—I thank Senator Payne for the question and for her long-standing interest in this area. The government, as you know, Mr President, is committed to a humanitarian resettlement program that does provide protection to those people who need it most. The United Nations High Commissioner for Refugees recognises Australia as one of the top three permanent settlement countries in the world. Australia follows the United States and Canada in that respect. It is interesting that the top three immigration countries are also the top three in recognising an international obligation to look after those most in need. In 2004-05 our bipartisan humanitarian program will offer a new start in life to about 13,000 people who are now offshore. That includes places for 6,000 refugees, up from 4,000 in 2003-04 or, let me put it another way, a 50 per cent increase in the refugee intake through the front door. Most of those, about 70 per cent, will come from strife-torn regions in Africa.

So far this year just under 4,000 humanitarian visas have been granted, and that makes us on a pro rata basis about 99 per cent on target. It is a program with real and practical outcomes. It makes a difference. It gives hope to people who have never experienced the kind of life that everyone here just takes for granted. For example, 49 Ethiopian refugees will arrive in Australia over the next week. They will come from the Abu Rakman UNHCR refugee camp in southern Sudan. Their arrival will bring to just over 300 the number of refugees Australia has resettled from that particular camp through the UNHCR over the last six months. Tomorrow 24 refugees will arrive in Tasmania and 25 will arrive in Melbourne next Tuesday. Soon they will be calling Australia home. They range in age from infants to people in their 70s; there are small, medium and large families; there are single mums with small children; and there are many kids who have
known nothing of a life outside of a refugee camp.

The government has developed a specific resettlement strategy to help these refugees adjust. They will get cultural orientation assistance; links to services such as Centrelink, Medicare and banking; accommodation support; help in establishing their household; and health and psychological services. They will also be immediately eligible for the same services as are available to other members of the Australian community, such as social security payments through Centrelink, health benefits through Medicare, and education and employment services. In conclusion, I point out that the whole-of-government cost of the humanitarian program is estimated at $500 million per year, something that all Australians can be very proud of. I pay tribute to the community groups who are not merely advocates but who actually do some work on the ground with the refugees Australia accepts every year through the front door.

Centrelink: Auditor-General’s Report No. 15

Senator MOORE (2.54 p.m.)—My question is to Senator Patterson, the Minister representing the Minister for Human Services. I refer to the Auditor-General’s Report No. 15, which uncovers massive financial bungling by a wide range of government departments. Why did Centrelink not require its client agencies to estimate funding requirements and instead rely on an overdraft facility with an average daily debit balance of $250 million in order to make income support and family assistance payments? Did the minister know of or approve such an arrangement? Why did Centrelink fail over a number of years to obtain the required legal authority to operate such an overdraft?

Senator PATTERSON—I thank the honourable senator for her question. As honourable senators on the other side will know, there has been a change in arrangements and Minister Hockey now has responsibility for the service delivery of Centrelink, HIC, hearing services and a range of other services. This is in order to ensure that we deliver services to, for example in Centrelink’s case, six million customers in an orderly and appropriate fashion and can concentrate on that. The delivery of services by Centrelink is a complex task. In fact, this gives me the opportunity to talk about the $600 one-off payment that went to families in June this year. Because of strong financial management, we have been able to increase payments to families by $600 per child. The other side is still trying to decide whether that $600 per child is real or not real. Let me tell you that it is real. When it went into people’s bank accounts and when it covered any overpayment they might have had, people realised it was real. It was a $600 per child increase in family benefit for each and every family eligible for family tax benefit A. We saw Centrelink undertake what was a huge task in delivering that payment to those families.

The honourable senator raises a number of issues. I do not have any information on those in my briefing and I will get back to her with the details as soon as I possibly can.

Senator MOORE—Mr President, I ask a supplementary question. Thank you, Minister, for taking that part of the question on notice. I further ask: what was the interest rate payable and the total interest bill on the $250 million illegal overdraft over its years of operation? Further, why was such an expensive funding operation entered into so that the Commonwealth could continue to make basic payments to entitled recipients?

Senator PATTERSON—I can tell the honourable senator that the interest rate was significantly less than the interest rate on the
$96 billion of debt we inherited. The interest on that was about $6 billion a year. The interest rate was significantly less than the interest rate on the overseas debt that the Labor Party left us with, which we have now repaid. On the details of that question, I will get any information I can for the honourable senator. I do not have that level of detail here; I will obtain it. But that interest was significantly less than any interest that was paid—billions of dollars—on the $96 billion of debt they left us with.

Environment: Mandatory Renewable Energy Target

Senator ALLISON (2.58 p.m.)—My question is to the Minister for the Environment and Heritage and the Minister representing the Minister for Transport and Regional Services, Senator Ian Campbell. I refer to the speech last night of the Leader of The Nationals in the Senate, Senator Boswell, calling for the phasing-in of an MRET style renewable transport fuel scheme and I ask: when does the government propose to introduce it?

Senator IAN CAMPBELL—I thank Senator Allison for the question. The mandatory renewable energy target scheme is a world-leading scheme which has seen Australia maintain its leadership in moving to renewable energy. The government has backed up its world-leading mandatory renewable energy target scheme in the power sector with a multibillion-dollar investment in low emissions technology. The solar cities program maintains our world leadership in the use of solar energy in powering households and in powering tertiary institutions, secondary institutions and other community facilities.

We have also brought in a whole range of measures to improve air quality in Australia, for example through promoting ethanol. In fact today in the Senate Senator Allison would have seen the Australian Labor Party attacking an ethanol project in the Gunnedah region. The government have brought in a whole range of measures, including fuel standards measures and measures in relation to the use of ethanol that have encouraged the increasing quality of fuel standards in Australia, the use of alternative fuels, historic support for the biofuels industry and infrastructure grants to ensure that biofuels proponents around Australia can build world-leading facilities to recycle agricultural and other wastes to see the uptake of biofuels in Australia fast-tracked as a way of reducing our dependence on fossil fuels, creating a cleaner environment, improving our atmosphere and, very importantly, reducing the emission into the atmosphere of carbon and other greenhouse gases as a way of addressing climate change.

Climate change, as I have said, I believe is probably the single biggest environmental challenge facing Australia and the world. Climate change deserves the sort of attention that Senator Boswell gave to it in a most eloquent and elegantly crafted speech yesterday addressing this concern. It is very good to see that the Australian Liberal Party is well known internationally and throughout the towns and suburbs of Australia as having very robust and focused environmental policies—policies that address biodiversity, greenhouse gases and a whole range of leading-edge environmental challenges for Australia. But, sadly, the National Party have never quite had that reputation and I think it was fantastic timing for Senator Boswell to move to the forefront of the national and international environment debate with a well thought through speech showing that the National Party care deeply about the Australian environment. They do not care just about agriculture, fisheries, sustainable communities and the regions; they also care about ensuring that all of those important activities
are sustainable and that they do their share to address climate change issues, air quality issues and the use of renewable fuels. So I am glad that the Democrats have got on board and that they support the coalition’s focus on these issues. We look forward to that ongoing support.

Senator ALLISON—I have a supplementary question, Mr President. I was pleased to hear the minister say that Senator Boswell’s eloquent speech last night deserved attention and I draw that to the minister’s attention as being the focus of my question. As a supplementary question I ask: is the government on track to achieve the Prime Minister’s target of 350 megalitres of ethanol by 2010? What have the government’s ethanol confidence-boosting committee achieved so far? Have they met lately? Have they discovered that the ethanol warning labels are not helping to boost confidence in E10? Why was the $50 million in the renewable fuels capital grants program, promised by the government in 2001, cut back to $37 million, and how much of this money is still to be spent?

Senator IAN CAMPBELL—I am very pleased to see that Senator Allison is supporting Senator Boswell on these ethanol issues. It has been a lonely fight for those of us who have supported biofuels and alternative fuels. You had the Labor Party, for most of the time under Mr Latham’s leadership, bashing ethanol and bashing the government for supporting ethanol and a whole series of measures that Senator Allison has mentioned. I am happy to provide an update. I am not able to give a comprehensive answer in the few seconds remaining to me but Senator Allison has, in an eloquent way—matching Senator Boswell’s eloquence—outlined a whole series of measures that this government has put in place to support alternative fuels, biofuels and, importantly, ethanol. We want to make sure that consumers are well aware of the benefits of ethanol; that has been part of our program. I will be very happy to provide a detailed response to Senator Allison’s question because it is a very important one.

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

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Answers to Questions

Senator CARR (Victoria) (3.04 p.m.)—I move:

That the Senate take note of answers given by ministers to questions without notice asked by opposition senators today.

I suggest to the Senate that the imbroglio surrounding the Regional Partnerships program is getting deeper and deeper. If you were a public servant trying to administer this program I would not be surprised if you were somewhat perplexed in working out the basis for funding of projects under this program. In the eyes of many public servants there is an eye-watering stench surrounding this program. It is being seen increasingly as a slush fund for the National Party. Today we raised some questions concerning one project that I am particularly concerned about and that is the $1 million—$1.2 million when you include the GST—that has been paid to Primary Energy Pty Ltd and which was announced on 17 August this year by the Deputy Prime Minister. This was paid to Mr Matthew Kelley who is, I understand, a very close associate of the Deputy Prime Minister. He is a member of the government’s ethanol task force and he has been associated with the Deputy Prime Minister for some time.

According to the ASIC records he was operating a one-dollar company. The government paid $1.2 million to a company with a paid-up share value of $1. According to these records, his principal place of residence, his registered office and his principal place of
business are one and the same place. So it would appear from the ASIC records that he is working from home. That is a hell of an amount to be paid to work from home. I could be corrected on that if the ASIC records were up to date. The government has paid $1.2 million to this firm when no ASIC return has been lodged for 2003. Papers were sent to ASIC but they were sent back because they were not complete.

We have a situation here where the administration of the program has now been seriously questioned on the basis that $1.2 million has been paid to a company for undertaking research projects by the CSIRO. This is in complete contradiction of the guidelines themselves, which are very explicit on this very point. We have a situation where the Deputy Prime Minister actually announced the money being paid to this company at a barbecue attended by the Prime Minister, along with 700 other persons. It was clearly aimed at the re-election of the government and the re-election of The Nationals members of the government. The grant is being paid in contravention of the guidelines and it is now being said that the guidelines were in fact breached. The guidelines are quite explicit that money cannot be paid for research work. The government acknowledges that, although it tries to duck and weave and say, ‘Maybe it was a prospectus or something like that.’ The reality now appears to be that the government has a new set of guidelines, and this is really Monty Pythonesque. The government has a new set of guidelines called the SONA guidelines—‘strategic opportunities national assessment’ guidelines. These are the guidelines you have when you get into trouble on the main guidelines. These are the guidelines that override all other guidelines. When the government says that it is in the national interest—by which they mean The Nationals’ sectional interest—you can override the stated guidelines, the published guidelines, and you can say that this is now a SONA project, and the paperwork says how to use the SONA guidelines. From March this year a new set of arrangements have been in place in this government. There has been no published documentation, no statement that there are overriding guidelines, but a secret set of protocols to public servants to override the stated public policy position as announced by the government with regard to regional programs. (Time expired)

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (3.09 p.m.)—The latest rant from Senator Carr has drawn attention to three facts, all of which, if you take away the hysteria of Senator Carr’s comments, reinforce the correctness of the government’s decision in granting this money under the Regional Partnerships program. Senator Carr’s first claim was that the junior minister—and that was at the time and still is Mr Jim Lloyd—had agreed to the grant. The process is well known within this government if you are dealing with a grant that is in your electorate. The Deputy Prime Minister undertook to have the matter dealt with by another minister in the portfolio. That is something that he did when I was in the portfolio in relation to some of these grants, as I recall. The minister is required—and it is what I did and what I am absolutely sure Mr Lloyd would do—to
look at it with his fresh set of eyes and to ascertain that the grant was within the guidelines. That is what I did when these grants came before me and that is what Mr Lloyd has done also. Ultimately it is Mr Lloyd’s name as the minister that is on the letter. He has approved it and under his responsibilities he has to make sure that that is the case. So what has Mr Anderson done? He has said, ‘It is in my electorate so I am going to hand it over to another minister to make his assessment of it.’ Mr Lloyd took responsibility for it. This is what he has done. It is a proper and correct process that has been abided by.

Secondly, Senator Carr has said, ‘This is in his electorate. It is a National Party sectional interest.’ What he is really saying there is that if you happen to be in an electorate of The Nationals you should not get any regional grants. That is of course stupid. The Nationals represent significant areas of Australia—

Senator Ferris interjecting—

Senator IAN CAMPBELL—and the Liberal Party do as well, Senator Ferris. In fact I am told that the Liberal Party represent more regional electorates than any other party in Australia. If you are a Liberal Party minister like me and want to deliver a grant to Western Australia, because that is my electorate, you are saying we should exclude Western Australia from receiving grants because I happen to represent Western Australia from receiving grants because I happen to represent Western Australia. If you happen to be Warren Truss, the Minister for Agriculture, Fisheries and Forestry, you should not have any grants to his electorate because he happens to be minister there. It is an absurd nonsense, a nonsense generated by a political party that have no understanding of probity or of proper process. They have been so long out of government that the normal processes of government are absolutely unfamiliar to them.

It also shows a political party absolutely out of contact with regional and rural Australia, as I said during question time. They live in the inner-city suburbs. They spend all their time sipping cappuccinos and wondering what they can do to further wreak havoc on regional and rural Australia. This is the political party under Mr Hawke and Mr Keating that totally destroyed the economy of Australia, drove interest rates up above 20 per cent for farmers and other people out there in regional Australia and wiped out a whole generation in regional Australia. Now they are in opposition they want to keep doing it. They will not give any credit where it is due.

The third point he makes is that the company operates from a farm in regional Australia and that, because he lives on the farm and he runs his business from the farm, he should not get support for a regional project. The reality, as you know better than most of your comrades opposite, Mr Deputy President, is that most people in regional and rural Australia run their businesses from their home. And what is the home called? It is called the homestead or the farmhouse. They have got a kitchen table there and they are the ones who sit there working hard day and night trying to figure out how they are going to reinvigorate their regional communities. Here is an Australian who has come forward with a project which will provide 50 permanent jobs and 350 indirect jobs in a massive benefit for the environment and a massive benefit for the community. Yet here are the Labor Party, who were wiped out at the last election because regional and rural Australia said, ‘We don’t want these people running the economy again. We don’t want to risk having these guys back in charge,’ showing why they are so out of touch.

Senator Carr has also described to us very well that this project matched the guidelines. Senator Carr is now saying that he has dis-
covered the guideline under which it was approved but he does not like the guideline. You do not think we should approve projects that have a national interest. We believe in supporting the local interest. We believe in supporting the regional interest and we believe in supporting the national interest. I would like to get Senator Carr or anyone who has the guts on the Labor Party side to say that this project would be cancelled under Labor. *(Time expired)*

Senator SHERRY (Tasmania) (3.15 p.m.)—The Labor Party has moved to take note of the answers to a number of questions relating to financial mismanagement by this government. In question time today I raised an important issue which was arrogantly dismissed by the Minister for Finance and Administration, Senator Minchin. I raised the latest Auditor-General’s report, No. 15, which contained scathing criticisms of the financial management of a range of government departments and entities. Let me summarise what some of those criticisms were: drawings by five departments or entities relying on incorrect appropriations in 1998-99 to 2002-03 totalling $393 million; spending of $7.26 billion by one department against legislation that had not been passed by parliament—a pretty serious matter; spending of $23 million by two entities that was not approved by parliament, including $6.96 million in breach of section 83 of the Constitution—an illegal expenditure; and failure to disclose payments by two entities totalling $13.1 billion and $26.6 billion. There is a long list of financial mismanagement identified in the Auditor-General’s report.

It was the finance minister’s response that these were all merely technical matters. That is not what the Auditor-General’s report says. It says:

While many of the issues are quite technical, in a legal sense there are important considerations of appropriate accountability, including transparency ...

The report goes on to say that there are: ...

... significant shortcomings in the financial management of various Special Appropriations.

My colleague Senator Kirk posed a very important and detailed question on an issue which does impact significantly on the budget, and that related to Centrelink expenditures. The representational minister, Senator Patterson, was asked why it was—and this was identified in the Auditor-General’s report—that Centrelink, through failing to obtain forward estimates from its clients, was running a $250 million overdraft for part of its funding purposes. Secondly, this overdraft was not authorised. Centrelink was running an illegal overdraft at the rate of a $250 million daily debit balance. It is extraordinary that a government instrumentality such as Centrelink would be running a daily debit balance of $250 million for expenditures when the budget is in surplus. Why would you do that? It seems extraordinary financial incompetence for Centrelink to run an overdraft in those circumstances.

Senator Kirk asked whether the minister knew of this. Did the minister authorise this illegal overdraft operation at the rate of $250 million each day? Senator Kirk went on to ask the cost of this overdraft. What was the interest being paid? It is here that Senator Patterson, in response, demonstrated that she apparently did know something about it. She assured the Senate that she knew what the interest rate was. She would not disclose what it was. It is absolutely ridiculous and absurd financially to be running an overdraft at the rate of $250 million per day. The Labor Party wants to know what the interest rate was. What was the interest bill? Was this overdraft authorised by the minister? If so, the Auditor-General said it was illegal—it was being operated illegally. This is a very
important issue. It is not just some trifling amount of money, as Senator Minchin arrogantly dismissed it as being. It is financial incompetence of the first order to be running an illegal overdraft at a daily rate of $250 million. The Labor opposition wants some answers. This is part of wide-ranging, serious and scathing criticism by the Auditor-General of the incompetent financial management by the Department of Finance and Administration of devolved financial arrangements for government departments.

(Time expired)

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (3.20 p.m.)—I rise to speak on Senator Carr’s motion to take note of answers. We have been in parliament one week—the first week was taken up by pomp and ceremony and in this second week we are right into the nitty-gritty of the business. We on this side are waiting to see some sort of form from the Labor Party—some sort of spark of interest, some sort of connection between the electorate and the ALP. It is the party that once represented rural Australia. In fact, it was born in rural Australia out of the shearers strike in the 1890s. It has certainly left its past behind. When I first joined the National Party we could go and get a game of cricket at Goondiwindi with the ALP. We used to have a yearly game of cricket with the ALP. Unfortunately, they do not have a team anymore. They have been sidelined because no-one in rural Australia wants to belong to the ALP.

If you sat here for this first week of parliament you could understand why, because since we have been back here this opposition have done only two things. The first is to bag their own leader. He has been called everything from a dead parrot to a mangy dog, and it goes on and on. The second, their other big policy projection, has been: ‘Let’s try to attack the Regional Partnerships program.’ I can’t see why you are doing this, I can’t see who it is impressing, I can’t see it getting any votes and I can’t see where it is taking you. It is disappointing that the Labor Party cannot even think of these things themselves. They have to depend on an Independent, Mr Windsor, the member for New England, to come up with some ideas so that they can tag along on his shirt tails to get some forward momentum.

The project that is under discussion at the moment started in the early 1990s when the New South Wales government made cuts to the water sharing plan in the Namoi Valley of about 78 per cent, leaving about 22 per cent of the water allocation there. It said that was going to cost the agricultural sector of the valley some $400 million in the life of that water sharing plan. So the New South Wales government put forward a Namoi water sharing plan and tried to come up with some packages that would assist the industry in the Namoi Valley. The package was placed on hold in 2004. The Namoi Valley Structural Adjustment Package was designed to assist the community to adjust. That is the background of the program. It was needed. There had been a 78 per cent cut in water allocation, down to 22 per cent, and independent assessors believed that $400 million was going to be cut out of the economy of the valley, so we decided we would do something.

I said yesterday in a similar debate: when John Anderson became leader of this party he said there were two Australias. One Australia was the cities, where the economy was moving and jobs and job opportunities were plentiful; but in the other, rural and regional Australia, the economy was moving at a different pace. So they put through these regional partnerships to assist the economy, give the economy a leg-up, balance the good times that were going in Australia and try to give rural and regional Australia some assistance. But all we have ever got out of it from
the Labor Party is one bucket after the next. You would think the party that has—\(\text{(Time expired)}\)

**Senator FORSHAW** (New South Wales) (3.25 p.m.)—Senator Boswell referred to his past and took us on a bit of a trip down memory lane. I can recall back in earlier days when I was a young bloke watching a TV program called *The Three Stooges* with Moe, Larry and Curly. We just saw them over there from The Nationals, sitting in the corner—the three stooges; an absolute joke. They are such a joke they are not taken seriously at all by anybody in this parliament. They sit here day after day in the Senate with nothing really to say. Today they have come in and Senator Boswell has sort of attempted to defend his colleague in the other place, Minister Anderson, but he has done a rather pathetic job of it. There is not one member of the Liberal Party government here to listen to the Leader of The Nationals in the Senate except the Leader of the Government in the Senate, Senator Hill, who has to be here.

**Senator George Campbell**—He’s on duty.

**Senator FORSHAW**—He’s on duty. And the Liberal Party Whip. I am sure there are people listening to this debate. If you could see the looks on their faces. They have their heads buried in their papers. They were taking absolutely no notice at all of their country colleagues. The Nationals, because they are irrelevant. I listened to Senator Boswell’s speech last night about what he saw as the future of the ethanol industry—a speech that is relevant to what was being discussed here in question time today. Senator Boswell had to get up in the Senate and make a speech in the address-in-reply debate outlining his policy views on the future of ethanol and biodiesel fuel in this country. He had to do that here in the Senate because obviously he cannot get those ideas anywhere through the coalition party room—nobody is listening.

What an extraordinary way to try to put The Nationals policy down for discussion within the coalition.

I want to come back to the specific question that was asked by Senator O’Brien of Minister Campbell today regarding the funding for the proposed ethanol plant at Gundah. What is at issue here is accountability and probity. What is at issue here is the public’s right to know and to feel confident that public money that is being given by way of grants is being allocated through a proper process of accountability. Clearly, when you look at the funding for this ethanol plant, and if you look at a range of other projects, a lot is left to be desired. For instance, yesterday the minister advised the Senate that the successful funding that was provided to Primary Energy Pty Ltd for the grains to ethanol proposal had been applied for and assessed through what was known as the Namoi Valley Structural Adjustment Package. The problem with that answer yesterday is that very adjustment package had been suspended on 2 February this year. But the funding was approved in August, only a couple of months ago. If you go to the web site, it says that the approval was from the Regional Partnerships program. So the minister cannot actually give us the true facts of how this project was funded. The reason he cannot is that the ground rules and the guidelines have been ignored and have been changed on the way through.

That of course is what has happened with many projects. I recall that, when I was chairman of the Senate Finance and Public Administration References Committee, we investigated funding for a project down in the Eurobodalla Shire under the dairy RAP program. They brought back the project four or five times to try to find a way to fund it, because it never met the guidelines. In the end, Warren Truss, the minister at the time,
found a way. Of course, it was demonstrated at the inquiry that the way it was done was completely inappropriate, and that is what has happened here. In the other place Mr Windsor has raised the same concerns in respect of the equine centre. There should be an inquiry into these matters. (Time expired)

Question agreed to.

Howard Government: Government Appointments

Senator MURRAY (Western Australia) (3.30 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Murray today relating to government appointments.

In my question to the Leader of the Government in the Senate, Senator Hill, I essentially said that, if government appointments were to be made through an independent process on merit, there could never be an opportunity for improper inducements of the kind alleged, and of course I am referring to the recent allegations by a member of the House of Representatives that he was offered an improper inducement of a beneficial trade or diplomatic post.

I was disappointed with the minister’s answer, because he did not accept that it is not just a point about making the appointments process better, more transparent and more accountable, but it is about maintaining an arms-length approach. It reminds me of the saying about justice: justice must not only be done but be seen to be done. Senator Hill made the point that the practice has been in existence for a long time, that all governments exercise appointments in this manner and that some extremely good appointments have been made. But that does not mean that it is working effectively from an accountability point of view, and merits based selection has to be addressed because it eliminates the sense of a possible corrupting influence.

I want to make the point that you have to address the public perception that jobs for the boys and girls go on all the time. The problem with parliamentarians is that they take one of two views. They either take the view that political patronage is perfectly acceptable and it is the loot, the benefits, that come from power or they say there is no other way to do it. I encountered that view from a Liberal senator following question time, as I walked up the stairs. It indicated thoughtlessness and a failure to follow the debate that has been going on in this chamber. Twenty five times the Democrats have put up amendments to have appointments made on merit, and 25 times, so far, those amendments have been rejected by the major party.

Why do we keep doing it? We do it because we think that appointments to governing organs, public authorities or overseas posts should be based on merit and that the processes by which those appointments are made should be transparent, accountable, open and honest. That Liberal senator asked me, ‘What government has done it?’ I said, ‘The British government.’ He said, ‘Oh, they’re the worst at patronage in the whole world.’ He is just not up to date with what has been done. An independent body was set up in the UK after Lord Nolan headed the 1995 Nolan commission and managed to persuade the United Kingdom government to accept that appointments should be based on merit. This process will go, and has gone, a long way towards ending the privilege and patronage associated with some government appointments.

Lord Nolan set out key principles to guide and inform the making of such appointments. They are: a minister should not be involved in an appointment where he or she has a financial or personal interest; ministers must act within the law, including the safeguards against discrimination on grounds of gender.
or race; all public appointments should be governed by the overriding principle of appointment on merit, except in limited circumstances; political affiliation should not be a criterion for appointment; selections on merit should take account of the need to appoint boards that include a balance of skills and backgrounds; the basis on which members are appointed and how they are expected to fulfil their roles should be explicit; and the range of skills and backgrounds that are sought should be clearly specified.

In response to that committee’s recommendations, the United Kingdom government subsequently created the office of Commissioner for Public Appointments, which has a similar level of independence from the government as the Auditor-General, to provide an effective avenue of external scrutiny. The fact is that overseas precedent shows that our system can be improved and appointments could be done in a manner which advances the issues of transparency, independence and accountability. Fundamentally the population do not like the idea that political patronage operates, whether it is in a territory government, a state government, the federal government or indeed in a local council, and this parliament should be setting the standard.

(Time expired)

Question agreed to.

PETITIONS

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

Medicare

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

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

by Senator Allison (from 20 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 197 citizens).

Environment: Ningaloo Marine Park

To the Honourable President and members of the Senate in Parliament of the Senate assembled:
The petition of the undersigned shows:
That the Western Australian State Government intends pursuing the nomination of the Ningaloo Marine Park and the North West Cape for World Heritage listing, which has the potential to adversely impact on the local Exmouth community.
Your petitioners request that the Senate:
Calls on the Federal Government Minister for the Environment and Heritage to reject any proposal to nominate the Ningaloo Marine Park and the
North West Cape for inscription on the World Heritage list, until such time as there has been adequate consultation with the residents of Exmouth and local community concerns have been resolved.

by Senator Eggleston (from 412 citizens).

Immigration: Asylum Seekers

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

The physical and mental safety of Mr Peter Qasim, who has been in Immigration detention for almost 6 years, is in grave danger if his detention continues.

The circumstances of Mr Qasim’s case are as follows:

• Peter was born in the disputed region of Kashmir in India in 1974. When he was a child, his father was murdered by the security forces because of his peaceful political activities. As a young man, his own peaceful opposition to the government’s brutal policies in his region led to him being detained and tortured by the security forces, and after some years in hiding and on the run, it became necessary for Peter to flee his country;

• On 9 September 1998, Peter arrived in Australia. The delegate of the Minister for Immigration who assessed his claim accepted that he was an Indian citizen from Kashmir, and that he had been tortured, but did not believe that he faced a risk of persecution. He appealed to the Refugee Review Tribunal, but in January 1999 was again refused;

• Since January 1999, Peter has pursued no further appeals, and has been liable for removal from Australia. While he believes that he would face the risk of arrest and torture if returned to India, he would prefer that possibility rather than dying in detention in Australia. However, because Peter has no passport, birth certificate, or other official document from India, the Indian government has so far refused to accept that he is a citizen of that country;

• Peter believes that the Indian authorities will continue to refuse to provide travel documents to him. The state government of Jammu and Kashmir, busy with the ongoing conflict there, might not have the resources to make time-consuming investigations to establish his identity. Also, because there are 20 million people living illegally in India who come from neighbouring countries such as Bangladesh, Nepal, Bhutan, Sri Lanka and Pakistan, it is difficult to persuade the Indian authorities to accept anyone as a citizen without definite proof;

• Peter has applied to almost 80 countries, asking if they might accept him, but he has received no positive replies;

• On 6 August 2004, the High Court ruled that the Migration Act allows people who cannot be deported to be held in immigration detention indefinitely. This means that the personal intervention of the Minister is Peter’s only prospect of freedom.

Your Petitioners ask that the Senate arrange for the prompt issue, on humanitarian grounds, of the necessary instructions and documents for Mr Peter Qasim to be granted permanent residency in Australia.

by Senator Stephens (from 21 citizens).

Petitions received.

NOTICES

Presentation

Senator Jacinta Collins to move on the next day of sitting:

That the time for the presentation of the report of the Select Committee on the Scrafton Evidence be extended to 9 December 2004.

Senator Vanstone to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the Aboriginal and Torres Strait Islander Commission Act 1989, and for other purposes. Aboriginal and Torres Strait Islander Commission Amendment Bill 2004.

Senators Allison and Greig to move on the next day of sitting:

That the Senate—
(a) notes that Wednesday, 1 December 2004 is World AIDS Day;

(b) notes that:

(i) the Government has abrogated its leadership role in the area of domestic HIV/AIDS prevention by continuing to pursue a flawed process for developing the new HIV Strategy and continually delaying the development and release of the 5th National HIV Strategy,

(ii) in 2 decades the AIDS pandemic has claimed more than 20 million lives, 3 million of them in 2003, with little hope for improvement in 2004, as the pandemic continues to accelerate,

(iii) more than 38 million people are currently living with HIV/AIDS,

(iv) less than 20 per cent of people at high risk of HIV infection have access to proven prevention interventions which, if increased, could avert an estimated 29 million to 45 million new infections by 2010,

(v) in 2003 there were 5 million new HIV infections, of which women accounted for nearly half of all infected adults and nearly three-fifths of those in sub-Saharan Africa, and

(vi) half of all new HIV infections are among young people—four infections every minute—with young people particularly at risk, especially in Africa, where the infection rates for young women are two to three times those of young men; and

(c) calls on the Government to:

(i) expedite the conclusion of the 5th National HIV Strategy,

(ii) fulfil the agreed target of 0.7 per cent of gross national product for official development assistance, and

(iii) support the expansion of HIV/AIDS prevention activities both locally and internationally and ensure that they are integrated into comprehensive sexual and reproductive health programs.

COMMITTEES

Corporations and Financial Services
Committee: Joint
Establishment

Senator CHAPMAN (South Australia)
(3.36 p.m.)—I seek leave to make a statement in relation to the consideration of message No. 4 from the House of Representatives relating to the appointment of the Parliamentary Joint Statutory Committee on Corporations and Financial Services.

Leave granted.

Senator CHAPMAN—Yesterday, when the motion was moved to re-establish the Parliamentary Joint Committee on Corporations and Financial Services, I moved an amendment, which was put and passed, to change the structure of the committee by providing greater flexibility in terms of the government and the opposition respectively being able to nominate their members to this committee from the House of Representatives and the Senate. Although it was possible to appoint the committee on the basis of that amended resolution and still be consistent with the requirements of the ASIC Act, which does require currently a fixed number of members of the House and the Senate, concern has arisen that there is a potential within the terms of that resolution for the ASIC Act not to be complied with. In light of that concern, as I advised yesterday, it is now proposed that the ASIC Act be amended early next year to similarly provide that degree of flexibility but that, until that amendment occurs, the structure of the committee will remain as it traditionally has. Therefore, the motion that was put in its original form yesterday is the way in which the committee should be structured until that amendment to the act occurs.

On that basis, I seek leave to have the motion as it was put yesterday put again, and the amendment to that motion put again and
negatived, to give effect to that intention for the current structure to apply. Then, when the ASIC Act is amended early next year, there will be an opportunity again to put a subsequent motion dealing with the structure of the committee so that both the ASIC Act and the motion establishing the committee are in concert. At that time we will then be able to change membership of the committee to provide that greater flexibility should either the government or the opposition parties desire to change the balance in their numbers of members of the House and of the Senate constituting that committee.

Leave granted.

The DEPUTY PRESIDENT—Leave has been granted for the questions to be put again on the motion for the consideration of message No. 4 from the House of Representatives relating to the appointment of the Parliamentary Joint Committee on Corporations and Financial Services. The question therefore is:

That the amendment moved by Senator Chapman be agreed to.

Question negatived.

The DEPUTY PRESIDENT—The question now is:

That the Senate concurs with the resolution relating to the appointment of the committee.

Question agreed to.

NOTICES

Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 2 standing in the name of Senator Stott Despoja for today, proposing the reference of matters to the Legal and Constitutional References Committee, postponed till 1 December 2004.


General business notice of motion no. 17 standing in the name of Senator Brown for today, relating to Tasmanian forests, postponed till 7 December 2004.

General business notice of motion no. 20 standing in the name of Senator Brown for today, relating to Indigenous Australians on Palm Island, postponed till 1 December 2004.

Presentation

Senator NETTLE (New South Wales)

(3.40 p.m.)—by leave—I give notice that on the next day of sitting I shall move:

That the Senate—

(a) notes that:

(i) research and development of laser enrichment technology is being pursued at Lucas Heights, by private company Silex Systems Ltd,

(ii) this project is protected by a bi-lateral agreement with the Government of the United States of America which was signed to enable the transfer of restricted enrichment technology and equipment for the research and development,

(iii) Silex Systems Ltd has imported uranium for enrichment as part of this project, and

(iv) the Australian Nuclear Science and Technology Organisation has processed radioactive waste produced as a result of these activities; and

(b) calls on the Government to:

(i) recognise that the technology being developed by Silex Systems Ltd could constitute a threat to internationally agreed goals of nuclear non-proliferation, and

(ii) legislate to ban the development of uranium enrichment technologies in Australia.
EUREKA STOCKADE: 150TH ANNIVERSARY

Senator MARSHALL (Victoria) (3.41 p.m.)—by leave—I move the motion as amended:
That the President be requested to arrange a standard outdoor size replica of the Eureka flag to be displayed on a flagstaff in public view in the main Senate entry foyer from dawn to dusk on Friday, 3 December 2004 in commemoration of the 150th anniversary of the Eureka Stockade.

Question agreed to.

BUSINESS

Consideration of Legislation

Senator BROWN (Tasmania) (3.42 p.m.)—by leave—I amend general business notice of motion No. 22 to read as follows:

(1) That so much of standing orders be suspended as would prevent this resolution having effect.

(2) That the Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) 1998 (No. 2) [2002] be recommitted, and that consideration of the bill in committee of the whole be an order of the day for the next day of sitting.

(3) That the committee consider the bill as reported by the committee of the whole on 15 May 2003.

NOTICES

Postponement

Senator BROWN (Tasmania) (3.42 p.m.)—by leave—I move:
That general business notice of motion no. 22 be postponed till the next day of sitting.

Question agreed to.

COMMITTEES

Electoral Matters Committee: Joint Reference

Senator MURRAY (Western Australia) (3.42 p.m.)—I move:

That the Joint Standing Committee on Electoral Matters inquire into and report, as soon as practicable on:

(a) the matter relating to electoral funding and disclosure, which was adopted by the committee in the 39th and 40th Parliaments, and any amendments to the Commonwealth Electoral Act necessary to improve disclosure of donations to political parties and candidates and the true source of those donations; and

(b) submissions and evidence received by the committee in relation to those inquiries in the 39th and 40th Parliaments.

Question agreed to.

PRISONS: DRUG USE

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.43 p.m.)—At the request of Senator Allison, I move:

That the Senate—

(a) acknowledges that drug use within Australian prisons poses a considerable health risk to prisoners and the broader community;

(b) notes that:

(i) the Australian National Council on Drugs report, Supply, demand and harm reduction strategies in Australian prisons: Implementation, cost and evaluation, found that many injecting drug users spend considerable periods behind bars and that a history of drug use is far more common amongst prisoners than in the general population,

(ii) the report also identified a high prevalence of injecting drug use during incarceration and that high proportions of prison inmates report injecting drug use in the community once released, and

(iii) levels of hepatitis C in prisons are estimated to be up to 17 times greater than those in the general community; and
(c) calls on the Government to work collaboratively with the states and territories to develop and fund:
(i) a hepatitis B vaccination program for prisoners,
(ii) voluntary programs for prisoners for testing, counselling and treatment for HIV and other blood-borne viral infections, and
(iii) a trial needle and syringe exchange program, with rigorous evaluation, in an Australian prison.

Question agreed to.

BUSINESS

Consideration of Legislation

Senator NETTLE (New South Wales) (3.43 p.m.)—I move:
(1) That so much of standing orders be suspended as would prevent this resolution having effect.
(2) That the Criminal Code Amendment (Workplace Death and Serious Injury) Bill 2004 be restored to the Notice Paper and that consideration of the bill be resumed at the stage reached in the last session of the Parliament.

Question agreed to.

HEALTH: MATERNITY SERVICES

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.44 p.m.)—At the request of Senator Allison and Senator Ridgeway, I move:

That the Senate—
(a) congratulates the Northern Territory Government on announcing a new maternity services package that will allow independently practicing midwives to practice in the Northern Territory by indemnifying them through the government health department;
(b) notes that:
(i) community midwifery is the most appropriate care for 80 per cent of pregnant women, and
(ii) the inability of independently practicing midwives to obtain medical indemnity insurance has restricted the provision of optimal care and choice for Australian women during the birth process;
(c) calls on the governments of other states and territories to follow the Northern Territory, which has joined South Australia and Western Australia, in providing indemnity insurance arrangements which allow independent midwives to practice; and
(d) calls on the Government to consider Medicare funding for independent midwifery consultations.

Question agreed to.

IRAQ

Senator NETTLE (New South Wales) (3.45 p.m.)—I move:

That the Senate—
(a) notes that:
(i) the US-led assault on Fallujah has, according to the International Committee of the Red Cross, created a ‘humanitarian crisis’,
(ii) despite claims by the United States appointed Prime Minister Allawi that ‘there have been no civilian casualties’, large numbers of civilians have been killed and injured in the attack,
(iii) at least one clinic has been bombed and a hospital looted and that Red Cross ambulances and a relief convoy have been refused access to Fallujah by the US-led Multinational Forces in breach of the Geneva Conventions,
(iv) destroying this ancient city will not bring peace and will increase support for the resistance, as shown by the shift of control of large areas of Ramadi, Samarra, Haditha, Baquba and other cities in the Sunni triangle to insurgent forces, and
(v) the recent study by US medical researchers at the John Hopkins
Bloomberg School of Public Health and Colombia University which estimated that as many as 100,000 civilians may have died as a result of the US-led invasion and occupation of Iraq;

(b) is concerned that elections in Iraq will be further delayed as a result of the actions of the Multinational Forces and the US-appointed Iraqi Government;

(c) calls on the Australian Government to:

(i) clarify the role of Australian Defence Force members in the planning of, and participation in, the assault on Fallujah,

(ii) reverse its policy of support for the US-led occupation of Iraq; and

(iii) bring the Australian troops home from Iraq.

Senator GEORGE CAMPBELL (New South Wales) (3.45 p.m.)—I seek leave to make a short statement on behalf of the Leader of the Opposition.

Leave granted.

Senator GEORGE CAMPBELL—Labor cannot support the motion in its current form. Labor are happy to work with the minor parties on notices of motion of this nature. However, on this occasion we needed more time to explore some of the claims made in the proposed motion. We will not rush to support motions in the Senate unless we are completely satisfied with their content. Labor have always been upfront about our policy differences with the Howard government on Iraq. Given the outcome of the federal election, Labor recognise that Australian troops will remain in Iraq into 2005. Labor’s policy approach to Iraq for the difficult period ahead is to provide economic, humanitarian and security support for the Iraqi people and to support the interim Iraqi government, through the United Nations. Labor will now consult further with the UN, the incoming US administration and the interim Iraqi government with a view to providing the most effective support through the UN in the critical year ahead.

Senator NETTLE (New South Wales) (3.46 p.m.)—by leave—I put this notice of motion on the Notice Paper two weeks ago, I have been in constant discussion with the Labor Party shadow minister and on several occasions I have been prepared to change the wording of the motion in order to get the agreement of the Labor Party. I had hoped that two weeks would be enough time in which to come up with a position on an attack on Fallujah. It appears that this is not the case, and that is why I am proceeding with the motion.

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

The Senate divided. [3.51 p.m.]

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

Ayes........... 2
Noes............ 46
Majority....... 44

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

NOES
Abetz, E. Allison, L.F.
Barnett, G. Bartlett, A.J.J.
Bishop, T.M. Brandis, G.H.
Buckland, G. Campbell, G. *
Chapman, H.G.P. Cherry, J.C.
Colbeck, R. Collins, J.M.A.
Crossin, P.M. Denman, K.J.
Ellison, C.M. Evans, C.V.
Faulkner, J.P. Ferguson, A.B.
Ferris, J.M. Fifield, M.P.
Forshaw, M.G. Greig, B.
Hogg, J.J. Humphries, G.
Hutchins, S.P. Johnston, D.
Kirk, L. Knowles, S.C.
Ludwig, J.W. Macdonald, J.A.L.
Mackay, S.M. Marshall, G.
Mason, B.J. McLucas, J.E.
Moore, C. Murray, A.J.M.
Tuesday, 30 November 2004

SENATE

Patterson, K.C.
Ray, R.F.
Scullion, N.G.
Tchen, T.
Watson, J.O.W.
Payne, M.A.
Ridgeway, A.D.
Stephens, U.
Troeth, J.M.
Webber, R.

* denotes teller

Question negatived.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.55 p.m.)—I seek leave to make a brief statement regarding the motion we have just voted on.

Leave granted.

Senator BARTLETT—I realise I probably should have done this before the vote was taken, but I actually thought Labor was denying formality and so we would have a debate on this. I was not paying enough attention. I had not realised that motion was going to come on for a vote. My understanding was that the Greens and Labor were negotiating and that I would just look at what the final version was on the expectation that the Democrats would be able to support it. But, as Senator Campbell said, they decided they could not support anything.

Just for the record, the Democrats opposed that motion solely because the Democrat senators have a view that it is not appropriate to bring the Australian troops home from Iraq now and that we should be assisting with the preparations for the very important elections, but we very much share the concerns contained in the rest of the motion. I wanted to put that on the record to explain the reason for our vote. I think, on an issue as important as this, it would be helpful to have a proper debate rather than just a yes/no vote on a motion. I guess if we want a proper debate, we can move a motion ourselves on this issue.

DOCUMENTS

Tabling

The DEPUTY PRESIDENT—I present the annual report of the Department of Parliamentary Services for 2003-2004.

PARLIAMENTARY ZONE

Proposal for Works

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.57 p.m.)—In accordance with the provisions of the Parliament Act 1974, I present a proposal for works within the Parliamentary Zone, together with supporting documentation, relating to the replacement and extension of cooling towers at the rear of Old Parliament House. I seek leave to give a notice of motion in relation to the proposal.

Leave granted.

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

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being the replacement and extension of cooling towers at the rear of Old Parliament House.

COMMITTEES

Membership

The DEPUTY PRESIDENT—The President has received letters from party leaders seeking variations to the membership of committees.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.58 p.m.)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

Finance and Public Administration References Committee—

Appointed—Substitute member: Senator Murray to replace Senator Ridgeway for the committee’s inquiry into government advertising
Foreign Affairs, Defence and Trade Legislation Committee—

Appointed—Substitute member: Senator Hogg to replace Senator Mackay for matters relating to the Defence portfolio.

Question agreed to.

CUSTOMS (PROHIBITED IMPORTS) AMENDMENT REGULATION 2004 (NO. 3)

Motion for Disallowance

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.59 p.m.)—I move:

That the Customs (Prohibited Imports) Amendment Regulation 2004 (No. 3), as contained in Statutory Rules 2004 No. 121 and made under the Customs Act 1901, be disallowed.

The regulation which I am seeking to disallow enables the importation of dangerous dogs into Australia for what are deemed to be scientific purposes. Those dangerous dogs include the American pit bull, the Japanese tosa and the Argentinean and Brazilian fighting dogs. In seeking the logic behind the development of these regulations, the Democrats were told by the Minister for Justice and Customs that it was desirable to allow the potential import of these dangerous animals into Australia for scientific purposes. He then went on to write:

I understand that at this stage no immediate scientific purposes have been identified, which I consider is understandable given the absolute prohibition on imports that have existed for over a decade.

I guess the government is trying to be pre-emptive here and soften the complete import ban in advance of any possible application down the track to import these particular breeds of dogs for scientific purposes.

My view and the Democrats’ view is that there have not been sufficient reasons given as to why we would want to relax this ban in any way, given the inadequate indications of what type of scientific research on these dogs may be required or desirable at any stage in the future. Indeed, there is no indication given as to why imported dogs of these particular breeds might be necessary for research, given that there are already significant numbers of these dogs present in Australia.

As far as I am aware, there has been no indication of any consideration of the possible impact on state legislation and regulations covering the ownership and use of these breeds of dogs, which in some jurisdictions have also been deemed to be potentially dangerous. I mention by way of example the Western Australian Dog (Restricted Breed) Regulations, made a couple of years ago under their Dog Act, which recognise a restricted breed of dog as a breed whose importation to Australia is prohibited under the Commonwealth Customs (Prohibited Imports) Regulations. I do not know, and I would be interested if the minister could indicate, whether or not it has been verified that these regulations today are not going to have any impact on those Western Australian regulations. Similarly, currently in South Australia any person who gives away or sells, or advertises to sell or give away, any of the four breeds currently banned from import that are listed under this regulation here today could operate in South Australia, given the state legislation that is already in existence.

I should emphasise, as I said before, that there is already in Australia a significant number of these breeds of dogs which have been deemed to be dangerous. There are inadequate protection and controls, in my view, over the use of dogs for research from some animal shelters. In 2000, South Australia’s lost dogs home reported receiving 30 to
35 pit bull terriers each month—that is three times more than other breeds. Should the government wish to enable these breeds to be locked up for whatever experiments or research are deemed necessary, which are yet to be identified, I think there are already more than enough specimens existing in Australia. In my view there is still insufficient protection against how those dogs might be used for research and experimentation. We do not need to be importing more.

There is no way in which the minister for customs or his department could possibly follow up to ensure that any dogs that are given a licence to be imported are actually used for the purposes described or, more importantly, that they are not also used for breeding either at the same time as the research is being conducted or after it is concluded. We do not have a proper national system for keeping track of the number and types of animals used in scientific research in Australia. Should we have national animal welfare laws established, as the Democrats have often advocated, beyond the piecemeal approach which is in existence at the moment from state to state—beyond the haphazard management which stretches across the agriculture, science, health, local planning and environment portfolios—we might have a legitimate baseline from which to make decisions around matters such as those proposed here today.

The government places a lot of reliance on the existence of animal ethics committees, saying that the ethics committees will approve any research and the minister has to ascertain that before they would permit the importation of dogs for scientific purposes. I would suggest that the minister see if he could be provided with the actual number and species of animals in experimental facilities in Australia today. The fact is that the minister could not do that, because they are not able to be produced, because the system we have is so piecemeal and not monitored and overseen on a national level. I do not seek to make any specific criticism of animal ethics committees; I served on an animal ethics committee at Griffith University in Queensland. But the fact is that there is no national oversight and register of all of these experiments that are approved by different animal ethics committees. Different committees work at different levels of efficiency and effectiveness. Once the approval is given by those committees for potential research, the ability to follow up and genuinely oversee and ensure that animals are used in the way that it is said they will be, and particularly that they are disposed of afterwards in the way it is said they will be, is less than perfect.

There is already a lot of debate and concern in Australia about the habit of some pounds—not all, by any means, but some—to, after dogs are dropped off, pass on those dogs for research purposes for experimentation in places like veterinary schools. People might say that if the dogs are going to be put down anyway then they may as well be used for training purposes for vets. I will not go into that argument here because there are broader issues, but the fact is there are currently not sufficient controls in Australia to properly monitor the situation or even know what is happening let alone to properly regulate the use or control of dogs in Australia for scientific research. In that situation, I do not believe we should be adding to the number of dogs that we bring into the country for this purpose.

On what I believe is a related matter—some may not see it as completely relevant to the current debate but I think it is germane—we do not have a proper system in place in Australia for companion animal management. We are saying here that the dogs we are proposing to import are not companion dogs but are for research. But the
broader problem is about why some of these dogs are deemed to be dangerous and why in these circumstances, beyond having a blanket national ban on the importation of certain breeds, we do not have a proper coherent system for tracking animals and for companion animal management. There was a report in the Age just yesterday which showed that we still have not managed to get a simple, workable, single system for pet identification within Australia and for tracking of companion animals between states. That again brings us back to the problem that, once these dogs are allowed into Australia, there is no real mechanism for ensuring that they are tracked or are used for the purpose that it was said they were going to be used—even if that is legitimate, which is a separate debate—and that they are not also used for breeding stock.

Senators would probably be aware that there is some community contention about the approach of banning certain breeds of dogs that are deemed to be dangerous, such as the American pit bull or these fighting dogs. The facts are certainly very important. Over 30,000 dog attacks were reported nationally in the year 2000 and by far the vast majority of those attacks were on children under 10 years of age. In the same year, the South Australian Health Commission released a report confirming dog attacks were the second most common cause of hospital admissions for children. It is believed that pit bull terriers were responsible for four of the seven dog attacks in Australia in the decade between 1990 and 2000 in which people have died—a higher death rate, I might note, than occurs from shark attack.

I believe that these figures and this problem are very much a result of a lack of responsibility on the part of pet owners rather than any inherent danger in dogs in general, but it all goes to highlight the lack of an overall national system of management of companion animals and dog breeds. I do not think we should be opening up a loophole to allow the importation of certain breeds of dogs that have been deemed to be dangerous when there is not a proper and adequate mechanism for following up or keeping track of those dogs or a proper mechanism for ensuring that the use of animals in research is justified in terms of that research. I do not think we should be expanding the numbers of animals at all. In light of these figures and in light of the lack of a proper national system for regulating the use of animals in experimentation, I hope the Senate would understand why I believe there should be a very good reason given for relaxing the ban on imports of the most dangerous breed of dogs, however slim the risk it may present might seem. I am yet to be convinced that the government has such a reason.

I am not convinced that all of the animal experimentation that is done in Australia, particularly on larger animals such as dogs, is done properly or is necessary. There is no national mechanism for overseeing all of that. Adding more dogs to the list or having more dogs potentially subjected to that experimentation is not something that I see as particularly desirable unless clear reasons are given. There have been no reasons given at all, beyond the suggestion that maybe somebody down the track might want to so we may as well relax it now in case they do.

Similarly, with regard to concern about having these dangerous dog breeds in Australia, the ban was put in place some years ago, presumably for the very good reason that we did not want to have more of these dogs within Australia. The longer the ban is in place, the more difficult it is for people who want that breed of dog to find a pure-bred version. In such circumstances and given that we do not have proper national controls and proper ways of tracking the animals once they come into Australia, relaxing the ban is, again, something I do not see as
desirable or necessary, even if the risk is slim, unless a clear, strong reason is given. I certainly have not heard or seen any strong reason—or even a weak reason, frankly—from the government side. Hence, I have moved this disallowance motion.

Senator LUDWIG (Queensland) (4.13 p.m.)—The opposition have taken a very careful look at this. We are minded, in this instance, to support the disallowance motion of Senator Bartlett. This is for a number of reasons, which I will go to briefly. In the first instance, the purpose of the motion, it seems to us, is to relax customs regulations prohibiting the import of dangerous dogs, such as pit bull terriers, for scientific purposes. The question that is raised is that there must be a live issue about scientific purposes being required at this particular juncture—this ban has been in for some time. We took it on face value and we sought advice from the regulations themselves as to the reasons for the relaxation of the customs regulation in this instance. They were unfortunately a little unclear. Having been on the Regulations and Ordinances Committee, I would have liked the opportunity to have a look at what they said as well, but time is always against us in these issues.

I then thought that the next best bet was to ask the Minister for Justice and Customs about the reasons for the relaxation of this particular regulation. Without going into any significant detail, there does not seem to have been a cogent reason put forward by the government. I would have thought—looking at the type of regulation—that it would be a live issue, perhaps an educational institution or some other scientific body seeking the importation of a particular dog for a reason which then required the relaxation. I would have thought that there was a significant issue that would militate against the reasons for not allowing these dogs in.

The reasons for not allowing these dogs in are quite clear. These types of dogs were banned in the first place because, according to the Child Accident Prevention Foundation of Australia, children aged under 12 are most at risk of dog attacks and children aged one to four years have the highest rate of injury. Most serious injuries from dog attacks are to the child victim’s head and face and these injuries often leave substantial scars. Peter Thomson et al in their 1997 study found that 90 per cent of children admitted to hospital from dog bites suffered injuries to the face or head. It is a big step for relaxation of the regulation to occur after it has been in for so long.

There are four breeds of dog explicitly banned from import under the current regulations. That instrument includes the dogo argentino, the fila brasileiro, the japanese tosa and the pit bull terrier. All of these dogs have been specifically bred from fighting breeds and can be particularly dangerous. I think everyone here and anyone listening would agree. One of the breeds, for example, was banned because it has the behavioural characteristic of extreme aversion to strangers and in many cases is liable to bite anyone who touches it, outside of those whom it considers immediate family. There is a history in relation to these particular dogs. I will not go into it in detail but, for instance, pit bull terriers, known for their stubborn attacks and aggressiveness, are supposed to be able to exert about 680 kilograms of pressure with jaws that lock like a steel trap—several times greater than that of a german shepherd.

It is true that a dog attack can happen; but these dogs are capable of doing much greater damage than can a fox terrier. That is why they have been banned and continue to be banned as imports. Dangerous dogs pose a significant threat to both domestic urban Australia and rural and regional Australia. The idea of lifting the ban, without any
specified reason given and without the min-
ister providing any detailed or cogent argu-
ment, deserves far more scrutiny than simply
relaxing customs regulations. Given that the
purpose is to relax the customs regulation
prohibiting the import of dangerous dogs,
you would expect that there would at least be
some reasonable reason put forward to an-
swer the usual things that we might ask in
here: why, who, where, what and when?

In this instance, as I have said, we have
not been able to ascertain a reason from the
minister other than the broad response that
we have received. It certainly did not go to
whether there was any broad consultation
with interested groups or whether the scien-
tific community had a specific use for these
dogs. It did not go to any specific measures
or safeguards to ensure that these dogs do
not escape into the community or interbreed
with domestic pets or whether there has been
consultation even with wool growers, agri-
cultural growers or anyone else. It is not a
case of saying, ‘It’s a minor regulation and
we think there might be a use at some point.’
We think the onus is on the government to
demonstrate clearly why it should have the
regulation and also to demonstrate that there
has been consultation and that it knows who
might be interested in importing the breeds
so that it can ensure that this is dealt with in
a reasonable way.

If the government does know all of that, it
should put that on the table and inform the
Senate of the reasons. We can then deal with
it on its merits and determine our position
accordingly. It seems that someone might
have thought it was a good idea, but without
any justification. If there is a justification, it
should be provided; otherwise it is just a way
of adding more red tape to the whole system:
‘We’ll just have a customs regulation be-
because we think we might need it.’ It is a bit
like a back-pocket amendment. Until there is
a need, there is nothing to consider. Should
the government have a particular need for an
amending regulation, we would consider it
on its merits. But, in this instance, there can-
ot be any merit because the government
cannot demonstrate any need.

The proposed changes therefore—I do not
want to take up too much of the Senate’s
time on this—appear to be, from at least a
short look at them, a waste of time and
should not have been made in the first in-
stance. Labor will support the motion of
Senator Bartlett in this instance. We will add
the caveat that this could change if a demon-
strable need or reason is put to us as to why
there should be a regulation for the importa-
tion of such banned dogs as these for scien-
tific purposes. The government can always
come back and do that. The onus is on the
government to do that. We will not allow
amendments such as this one.

Senator COLBECK (Tasmania—
Parliamentary Secretary to the Minister for
Agriculture, Fisheries and Forestry) (4.20
p.m.)—The import prohibition on dangerous
dogs was introduced over 10 years ago as a
measure to protect the community from dan-
gerous breeds of fighting dogs, as has been
discussed here so far this afternoon. The ef-
fect of the regulation was to deny the import
of four breeds of dangerous dogs in all cases,
including for legitimate research needs. The
amendment to the regulation empowers the
Minister for Agriculture, Fisheries and For-
estry, or a person authorised by him, to grant
permission to import dangerous dogs only
for scientific purposes.

The explanatory statement that was issued
for the amending regulation advises that
‘scientific purposes’ was defined in the Aus-
tralian code of practice for the care and use
of animals for scientific purposes. The code
applies to all those activities performed to
acquire, develop or demonstrate knowledge
or techniques in any scientific discipline,
including activities for the purpose of teaching, field trials, environmental studies, research, diagnosis, product testing and the production of biological products. The regulations require the minister to take into account whether the establishment that proposes to use the dog conforms with the code and whether the scientific purpose has been approved by the animal ethics committee established in accordance with the code.

The purpose of the code is to ensure the humane care of animals used for scientific purposes. It encompasses all aspects of the care and use of or interaction with animals for scientific purposes in medicine, biology, agriculture, veterinary and other animal sciences. I have been advised that the code sets out specific requirements concerning the acquisition and care of animals—including, importantly, a requirement that pens, cages and containers be escape proof and maintained in good repair. The amendment regulation maintains the public safety objective of the control, as it would not allow the import of dangerous dogs for companionship or other recreational or commercial breeding purposes. I understand that at this stage no immediate scientific purposes have been identified, which is quite understandable given the absolute prohibition that had existed for over a decade. However, the permission based arrangement is a prudent public policy approach to allow a timely and considered response with respect to legitimate and ethical scientific purposes as they arise.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (4.23 p.m.)—I thank the Labor Party for their pending support for the Democrats’ disallowance motion. I do not believe anything the government representative said then seriously addressed the concerns that I have. This is not the most major issue the Senate is going to debate today or in the next couple of weeks, but it is nonetheless an appropriate matter for us to consider. I am pleased that Labor is supporting this disallowance motion to prevent dangerous dogs from being imported into Australia for scientific purposes in the future. I think it is a bit unfortunate that Labor is willing to wave through the Senate a whole raft of other legislation that is dramatically expanding—with grossly inadequate controls—the powers of the government in the areas of police and intelligence agencies to spy on Australians, but at least it is willing to support us in preventing the government having this small extra discretion in another area where there are not adequate controls. I thank Labor for that. I reinforce my point that this emphasises the need for a more coherent system, for a national approach, overseeing the use of animals in experimentation, tracking them and justifying that use much more than is done currently.

Question agreed to.

SURVEILLANCE DEVICES BILL 2004
In Committee
Consideration resumed.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (4.26 p.m.)—by leave—I move Democrats amendments (12), (13), (20) to (22) and (26) on sheet 4360:

(12) Clause 17, page 19 (after line 13), after sub-paragraph (1)(b)(vi), insert:

(via) if the warrant authorises the use of a surveillance device on premises, and access to the premises involves entry onto adjoining or other premises—details of the premises onto which entry is authorised for that purpose; and

(vib) whether the warrant authorises the use of force; and
These amendments seek to place some limitations on the use of force and of entry to premises for the purpose of installing, using and maintaining surveillance devices. Like the use of surveillance devices generally, which is highly intrusive, gaining entry to private premises and the use of force are highly intrusive practices. In its current form the Surveillance Devices Bill 2004 provides that a warrant authorises the entry, by force if necessary, to the premises and to other specified premises adjoining or providing access to the premises. In other words, the police—acting under a warrant—are able to forcibly enter the premises of law-abiding Australians simply because those people might live next door to someone who is suspected of a criminal offence. The Democrats believe that the privacy and rights of law-abiding Australians should be protected to the greatest extent possible. The very significant intrusions permitted by this bill are said by the government to be justified by the overriding need to bring to justice those who commit serious criminal offences. Accordingly, in our view the intrusions permitted by the bill should as far as possible be targeted at those who commit such offences.

We believe that issues such as the use of force and entry to premises are issues which a judge or AAT member authorising a warrant should be required to turn his or her mind to. A requirement in the legislation that warrants should expressly authorise the use of force and specify each premises onto which entry is authorised will ensure that judicial officials who grant warrants will need to consider whether in each case the use of force and/or entry to premises is strictly necessary in order to install, use, maintain or retrieve a surveillance device. It may be that in some cases there is a less intrusive means by which the surveillance device can be in-
stalled and used, and in those cases the warrant should not authorise the use of force. It is that area that these Democrat amendments seek to address. In summary, they will provide that the use of force and entry to premises are not permitted unless they are expressly authorised in the warrant. In addition, they will put beyond any doubt that all premises to which entry is authorised must be specified in the warrant.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.29 p.m.)—The government’s position is that it opposes these amendments on the basis that the provisions that are proposed by the Democrats would make it impossible for law enforcement to carry out their duties under this legislation and other legislation. At present the warrant which authorises entry onto specified premises may also authorise entry to adjoining premises for the purpose of access to those premises. In this case the adjoining premises must be specified in the warrant. I refer to clause 18(2)(a)(ii). Democrat amendment (12) appears to be confined to warrants relating to premises but amendment (13) makes it clear that this amendment must also be intended to apply to warrants in relation to object and persons, even though no amendments to clauses 18(2)(b)(ii) and 18(2)(c)(ii) have been proposed. Democrat amendment (13) precludes entry onto premises unless this is specifically authorised by the warrant and the use of force is specifically authorised. It would appear that this amendment would contradict the statutory authority afforded in clauses 18(2)(b) and 18(2)(c). In the case of warrants relating to specified persons or objects, it would not usually be known which premises it would be necessary to enter to execute a warrant—that is, it is quite often the case that law enforcement officers will be presented with a situation on their arrival where flexibility is needed for them in order to carry out their relevant duties.

If this amendment were accepted, law enforcement officers would be unable to execute the warrant because the premises on which a vehicle, for instance, was sitting would not be specified in the warrant even though that vehicle was just one metre from the public footpath. To preserve flexibility the government believes that law enforcement officers must have reasonable powers of entry subject to the constraints imposed by the warrant. In relation to the use of force, a warrant at present allows the use of force if necessary to gain entry onto any premises on which entry is permitted. The reference to ‘if necessary’ ensures that any use of force is proportional and constrained by the purposes of the warrant. It will, however, not usually be possible to know ahead of time whether force will be needed to gain entry. Again, this is another of those situations where law enforcement is presented with a set of circumstances upon its arrival. It is something that you cannot ascertain without signalling your shots and, in fact, alerting those people under investigation to what is happening. The government believes therefore that if these amendments were to be adopted, it would make the situation unworkable for law enforcement. I can see the reason the Democrats propose them but, at the end of the day, the government opposes these amendments for the stated reasons.

Senator LUDWIG (Queensland) (4.32 p.m.)—As I understand it, Democrat amendment (12) would add two matters to the list of matters that a surveillance device warrant must contain. The first is details of any additional premises such as adjoining premises or those which are contiguous onto which entry may be required to access the premises on which the surveillance device will be used. The second is whether the warrant authorises the use of force. In relation to
the first matter, we note that clause 18(2) of the bill provides that a warrant authorises the entry onto specified premises adjoining or providing access to the primary premises and, furthermore, clause 18(5) provides that if the premises belong to a person who is not the subject of the investigation, the eligible authority may not authorise interference with these premises unless satisfied that that is necessary. We think that the provisions in the bill address that first amendment in any event.

In relation to the second matter, we note the bill provides for limited use of force if necessary to enter premises or to install maintenance or retrieve surveillance devices or enhance equipment. It does not authorise force to be applied to a person. That seems to be the import of the statute; the bill seems clear. Indeed, such force would not make sense in a covert surveillance operation or in many other circumstances where there is surveillance. It may of course not be possible for a law enforcement agency or eligible authority to know in advance whether force would be needed to enter a property or install a device. Of course, because of the way legislation is sometimes proposed, that is always difficult to ascertain from an operational sense. Some of the matters, as I think I have alluded to earlier in this debate, go to operational issues. Although I can understand the direction from which the Democrats are coming, it is a matter that has to be left to the law enforcement agencies which have proper protocols and procedures to ensure that they do these things according to the rule book and according to the legislation as well. For those reasons the opposition cannot support the amendment.

In relation to a proposed amendment, we are concerned that a 30-day bar on fresh warrants is arbitrary and that it could in fact prejudice investigations. The bill provides that an eligible authority considering a warrant application must take into account any previous warrants, and we believe this existing provision is appropriate. For those reasons we do not think that amendment is appropriate in this instance. Democrat amendments (20), (21) and (22) are equivalent to amendments (12) and (13) except that they apply to retrieval warrants for retrieving a surveillance device. For the reasons given earlier, we are similarly not prepared to support them. Amendment (26) relates to the emergency authorisation equivalent of earlier amendments relating to warrants and retrieval warrants. For the same reasons I have articulated, we are not minded to support it.

Question negatived.

Senator GREIG (Western Australia) (4.37 p.m.)—by leave—I move Democrat amendments (14) and (15) on sheet 4360 together:

(14) Clause 19, page 23 (line 1), omit “An application may”, substitute “Subject to subsection (7), an application may”.

(15) Clause 19, page 23 (after line 1), at the end of the clause, add:

(7) The period during which a warrant, whether varied or not, is in force may not exceed 180 days and, if a warrant has been in force for a period of 180 days, a new warrant may not be issued for a period of 30 days following the expiration of the previous warrant.

Amendments (14) and (15) reflect the Democrats’ concerns that under this legislation it would be possible for someone to be subject to continuous surveillance, and I spoke to that in my speech in the second reading debate. This is because there is no limit on the number of extensions that could be granted in respect of a surveillance device warrant. While there is some protection against indefinite detention arising from the need to satisfy a judge or AAT member that the warrant is still required, we Democrats feel that there is still a need to include a
maximum period for the operation of a surveillance warrant. We have set that period at 180 days or roughly six months. If a person has been the subject of a surveillance warrant for a period of six months, a new warrant cannot be issued in respect of them for a period of a month. We feel that this is an important amendment which will ensure that the police only use these intrusive powers for the efficient collection of evidence relating to serious offences or child recovery.

Senator LUDWIG (Queensland) (4.38 p.m.)—Amendment (15) provides that a warrant may not be in force for more than 180 days and, at the end of such a period, a new warrant may not be issued for a period of 30 days. In relation to the former issue, we note that clause 17(1)(ix) provides, I think, that a warrant may not be granted for a period exceeding 90 days, and clause 19(1) provides for the application for an extension not exceeding 90 days. There is no limit to the number of applications which may be made in these instances. This is consistent with the model legislation. I think it is important to note that the joint working group did not receive any submissions opposing this particular provision. The amendment would make this bill inconsistent with the model legislation in a way that the opposition would find it could not support.

In relation to the second matter, we are concerned that a 30-day bar on fresh warrants becomes, as I think I indicated earlier, very arbitrary and could prejudice investigations. This bill provides that an eligible authority considering a warrant application must take into account any previous warrants in relation to the same investigation. This is an existing provision, and we think that is appropriate.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.40 p.m.)—We believe these amendments, if adopted, would cause problems in relation to the operation of the Surveillance Devices Bill 2004 and the duties imposed on law enforcement. We do not believe it makes any sense to interrupt the surveillance for 30 days and then have a resumption of it. We believe that, really, it should be in place for as long as it is needed, and that is borne out by the fact that some covert, controlled operations can go on for some time. An aspect might be drugs—a house might be under surveillance for quite a lengthy period of time—and we believe that should not be interfered with just because of some arbitrary demarcation of time. For that reason, we believe that the provisions in relation to the Surveillance Devices Bill are appropriate.

Question negatived.

Senator GREIG (Western Australia) (4.41 p.m.)—I move Democrat amendment (17) on sheet 4360:

(17) Clause 22, page 26 (line 6), after “lawfully”, insert “or unlawfully”.

This amendment relates to the retrieval of surveillance devices and, in particular, what to do in the event that a surveillance device has been unlawfully installed. Proposed section 22(1) of the bill currently provides that a law enforcement officer may apply for the issue of a retrieval warrant in respect of surveillance devices which have been lawfully installed. We are concerned about circumstances in which a surveillance device has not been lawfully installed—for example, if it is discovered that there were some irregularities with the original application warrant. While we obviously do not want to encourage the unlawful installation of surveillance devices, we suspect that this is something which may happen from time to time. In those circumstances, the illegality of the surveillance device is likely to prevent any evidence obtained from being used in court. However, we do believe that it should be
open to the police to apply for a retrieval warrant to retrieve the unlawfully installed device. We note that proposed section 22(1) specifically targets circumstances in which a surveillance device warrant has expired and, therefore, the police no longer have any power to enter the premise or use force to retrieve the device. We believe it makes sense to extend this subsection to circumstances in which the police lack that power because the device has been unlawfully installed.

Senator LUDWIG (Queensland) (4.43 p.m.)—I think the situation outlined is where someone has unlawfully put in something such as a surveillance device. I guess we could name one of them, but we will use the broad example of surveillance devices, which covers all of them. If they have done it unlawfully, it would seem inappropriate for them to then go and get a search warrant, sneak back in—although I am sure the law enforcement officers will object to me using that expression—and retrieve it. It would seem more sensible for them to put up their hand and say, ‘We’ve unlawfully installed a device.’ The person may then want to claim that device and use it in civil proceedings for the unlawful installation or for whatever might be on it, but that is a matter for a future occurrence. I do not want to encourage any litigation.

It would be more sensible, more proper and more appropriate for the police. I think even the judge in that instance would say, ‘Well, if it was unlawfully installed, you need to put your hand up and go and tell the people that that’s what’s happened and follow due process’—wherever that might lead them—rather than try to use the statute to retrieve an unlawfully installed device. I think if that has occurred—it might be for a technicality or for a whole range of issues: wrong place, wrong time or whatever it might be—that is the better and more appropriate way to deal with it.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.44 p.m.)—I simply add that the government oppose this amendment. I certainly agree with the comments that Senator Ludwig has made. We believe that in this bill we have a suitable regime for the retrieval of listening devices and that the proposal by the Democrats could allow law enforcement to covertly enter premises to retrieve a device that has been unlawfully installed. We prefer the regime as outlined in this bill, and we oppose the Democrat amendment.

Question negatived.

Senator GREIG (Western Australia) (4.45 p.m.)—by leave—I move Democrat amendments (24) and (25):

(24) Clause 31, page 33 (line 26), at the end of paragraph (1)(c), add “, including the same details as would be required by section 17 in respect of a warrant”.

(25) Clause 31, page 33 (after line 26), at the end of subclause (1), add:

; and (d) the reasons for granting the emergency authorisation.

These amendments seek to enhance the information contained in the written record of an emergency authorisation. The Democrats believe that this record should contain the same details that are required by clause 17 in respect of a normal warrant. We believe that this information will be important not only to the judge or AAT member who must consider whether approval should be granted but also in any court of law where the admissibility of the evidence is subsequently challenged. Perhaps, most importantly, amendment (25) requires the record of an emergency authorisation to set out the reasons why it was considered necessary to provide the emergency authorisation—in other words, the reasons for the urgency. We be-
lieve that this is a means by which to ensure a greater level of accountability in the granting of emergency authorisations, and we believe that it will help to ensure that such authorisations are only granted in situations involving genuine urgency.

Senator LUDWIG (Queensland) (4.46 p.m.)—As I understand it, amendment (24) would require the record of an emergency authorisation under clause 31 to include the same information required by clause 17 in respect of a warrant. It seems to me that no useful purpose would be served if the information were already there. Not all of the matters in clause 17 would be applicable to emergency situations. You could imagine circumstances outside of clause 17 where an emergency situation might arise and require authorisation that would not be covered. If you step to the next process, the law enforcement authority must then apply within 48 hours—it used to be two business days—for approval of the emergency authorisation and, if desired, a warrant for the further use of the surveillance device.

That application contains all the details and the information that is provided to justify why they require a warrant. That will stand or fall on the merits of the particular application before the AAT member or judge, as the case may be. Under clause 31 the authorising officer has an onus to ensure that it is an emergency and provide a written record accordingly that that is the basis for the warrant. All warrants have got to come back to the judge in this instance to demonstrate their bona fides, and if they want a further warrant then they have got to apply. That seems to be the way the system worked and it seems to have merit. We do not see any additional benefit served by the amendments in this instance. Therefore, we are not in a position to support them.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.48 p.m.)—The government oppose these amendments. We do not believe emergency authorisations need to be recorded in any greater detail because, within 48 hours of granting those authorisations, such authorisations must come before a judge or a member of the Administrative Appeals Tribunal for approval. It is at that point that aspects of the authorisation, including the grounds on which approval is sought, must be included in the affidavit to the judge or the AAT member. There is a record in clause 31 dealing with emergency authorisations. We believe that that is sufficient. For those reasons we believe the bill has a sufficient safeguard in relation to the reporting of detail for those emergency authorisations and the government do not agree with the Democrats’ proposed amendments.

Question negatived.

Senator GREIG (Western Australia) (4.50 p.m.)—I move Democrat amendment (28):

(28) Clause 35, page 38 (lines 12 and 13), omit “not being a manner that involves the destruction of that information”.

This amendment applies to the consequential orders that can be made by a judge or AAT member who does not give approval to an emergency authorisation. Clause 35(5) currently provides that a judge or AAT member in those circumstances may order that any information from or relating to the exercise of powers under the emergency authorisation be dealt with in a specific manner, not being a manner that involves the destruction of that information. It is important to remember that we are talking about information obtained from the use of a surveillance device which has not been approved by a judge or AAT member—in other words, the judge or AAT
member has concluded that the situation did not warrant the emergency authorisation.

The emergency authorisation mechanism has been included in the bill to address situations of genuine urgency, not as a general alternative to obtaining a judicial warrant. The requirement for emergency authorisations to be subsequently approved by a judge or AAT member is a vital safeguard against any potential abuse of this power. We Democrats feel that, where evidence has been obtained pursuant to an emergency authorisation which has not been approved, a judge or AAT member should have the discretion to order that the evidence be destroyed. It is highly unlikely that such evidence would be admissible in any criminal proceedings, and in that case there is a strong argument that the wrongfully obtained evidence should be destroyed. Our amendment does not require the evidence to be destroyed. However, it does give the judge or AAT member the discretion to order the destruction of material, if that is appropriate in the circumstances. This was an issue that was expressly referred to in the discussion paper produced by the joint working group, which was established by the Standing Committee of Attorneys-General and the Australasian Police Ministers Council to prepare model legislation.

The joint working group argued that investing a judge or AAT member with the power to order the destruction of records would provide ‘an additional safeguard if the law enforcement agency obtains material that falls outside the ... approval.’ For that reason we Democrats believe that this amendment is an important one which should help to guard against the use of wrongfully obtained evidence. It is consistent with the views of the joint working group and for those reasons I think the committee should give it consideration.

Senator LUDWIG (Queensland) (4.53 p.m.)—You are not having much luck tonight, Senator Greig. We disagree, unfortunately. We do not think that the issue should be dealt with separately. We recognise that this issue is more appropriately dealt with under those general provisions of the bill which deal with the destruction of protected information. The amendment in this instance would enable the eligible authority to order the destruction of information obtained by the use of a surveillance device under an emergency authorisation which is not subsequently approved. For the reason that we think that this issue is better dealt with under the more general provisions for all protected information rather than having separate or specified areas we are not minded to support the amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.53 p.m.)—This amendment would allow a judge or AAT member who considers an emergency authorisation and does not approve it to order the destruction of information. That information could well be used in another operation and its destruction would be an undesirable outcome. I believe that the ability to use such information should be available even if that approval is not given. For that reason alone the government does not agree with the proposed amendment.

Question negatived.

Senator GREIG (Western Australia) (4.54 p.m.)—I move Democrat amendment (30) on sheet 4360:

(30) Clause 44, page 50 (after line 10), after paragraph (1)(a), insert:

(aa) any information obtained from the use of a surveillance device without a warrant under Part 4; or

One of the most important aspects of this bill is that it limits the way in which evidence obtained through the use of surveillance de-
VICES can be used. Unfortunately these limitations do not apply to evidence obtained from all types of surveillance. Notably, evidence obtained by means of an optical surveillance device is not considered protected information for the purposes of this legislation and therefore is not subject to the same restrictions on the way in which it can be used. We Democrats disagree with this double standard for different types of surveillance devices. We believe that the covert videotaping of individuals going about their daily lives should be subjected to the same restrictions as other forms of surveillance. Accordingly, this amendment seeks to ensure that any information obtained through the use of a surveillance device without a warrant is treated as protected information.

Senator Ludwig (Queensland) (4.55 p.m.)—The effect of the amendment would be to subject this information to the same restrictions which apply to information obtained where a warrant or authorisation is required. However, I think it is implicit within the bill—and you can recognise the way the bill has been drafted—that the information referred to would be obtained through lesser degrees of intrusion into the property and privacy of those under surveillance in those instances. The bill recognises that there are gradations of intrusion. There is that type of intrusion which is not significant and that which clearly is. In these circumstances we believe it is justified not to include this information in the protected information regime in the bill.

You can recognise when there is a lesser degree of intrusion into the property and privacy of those under surveillance. The use of surveillance devices will stretch across a broad spectrum of circumstances, from binoculars and cameras right down to tracking or listening devices inside cars, vehicles or houses. There is a range of surveillance and I think the bill tries to encapsulate the whole range. With regard to the lesser type of intrusion the legislation tries to ensure that the rights are balanced all the way through rather than having a balance at the highest order which is not reflected at the lowest order of intrusion into property. I think the bill has achieved that balance as well as can be done. Therefore the bill achieves the objective of balancing the rights at the high end and at the lower end of intrusion. For those reasons we are not minded to support the amendment.

The amendment would include in the category of protected information, information obtained by the use of a surveillance device where a warrant is not required under the legislation. Therefore the amendment would just add another layer so that the category at the higher end where a warrant is required is the same as the category at the lower end. I think you can clearly delineate between the two. The use of optical surveillance devices which do not involve entry onto premises or interference with property without permission and listening devices which record words heard by a law enforcement officer are the circumstances I am talking about, and it would seem that the way the bill is structured is a fair representation and a fair balance of people’s privacy against the law enforcement officers’ need to continue their investigations.

Senator Ellison (Western Australia—Minister for Justice and Customs) (4.58 p.m.)—This amendment, whilst well intentioned, has the effect that Senator Ludwig has mentioned. It would extend the protected information regime from material gathered under a warrant or authorisation to material gathered using optical surveillance devices without a warrant—for example, if you used binoculars or perhaps even a camera. You would have such a wide application of this amendment that any information gained by that means would be protected.
An example may be that a Federal Police officer who uses binoculars to look for a lost child could possibly commit an offence if he reported on what he saw through his binoculars to the parents of the child. That is taking it to the extreme, but certainly we do not believe that the same regime should apply to those devices for which a warrant is not required, such as a camera just taking a photograph, or a set of binoculars. Where you have a hidden camera or other devices installed there is of course a much stricter regime. For those reasons the government cannot support amendment (30) from the Democrats.

Question negatived.

Senator GREIG (Western Australia) (5.00 p.m.)—I have a final question for the minister about the overall effect of the legislation. Specifically, within the bill is there any right of appeal against a warrant if a person who is subject to surveillance becomes aware of that fact?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.00 p.m.)—Under the requirements of the bill there is no appeal. I am wondering whether there might be an avenue for action elsewhere—we will have to take that question on notice—but it is certainly not in the bill.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.02 p.m.)—I move:

That this bill be now read a third time.

Senator GREIG (Western Australia) (5.02 p.m.)—Given that it is apparent this vote will take place on the voices, I would like to reiterate the Democrats’ opposition to the bill in toto for the reasons we have outlined, particularly on the basis that the amendments we proposed, and which might have leant our support to the bill, have not been supported.

Question agreed to.

Bill read a third time.

CONDOLENCES

Haines, Ms Janine, AM

Senator HARRADINE (Tasmania) (5.03 p.m.)—by leave—I wish to associate myself with the condolence motion adopted by the Senate yesterday. Because of pressing circumstances I was not present here on that occasion. I further wish to express my deepest sympathy to Janine’s husband, Ian, and to Bronwyn and Melanie and their families and all of their friends.

NATIONAL SECURITY INFORMATION (CRIMINAL PROCEEDINGS) BILL 2004

NATIONAL SECURITY INFORMATION (CRIMINAL PROCEEDINGS) (CONSEQUENTIAL AMENDMENTS) BILL 2004

Second Reading

Debate resumed from 17 November, on motion by Senator Ian Campbell:

That these bills be now read a second time.

Senator LUDWIG (Queensland) (5.04 p.m.)—I rise to speak on the National Security Information (Criminal Proceedings) Bill 2004. This bill establishes a regime for the handling of national security information in federal criminal proceedings. The opposition will be supporting the bill but will move several amendments at the committee stage. The bill arose as a result of a long process of inquiry by the Australian Law Reform Commission. However, the government chose to introduce this bill into parliament before the ALRC had handed down its final report entitled Keeping secrets: the protection of classified and security sensitive information. Para-
graph 17 of the ALRC’s submission to the Senate inquiry into the bill, which I participated in, states:

The ALRC was not consulted during the development or drafting of these Bills, nor was this parallel process referred to in consultations, or in the submissions from the Attorney-General’s Department and the Australian intelligence community.

This outcome is extremely regrettable because the original bill failed to consider the detailed recommendations contained in the ALRC’s final report. This was clearly a wasteful mismanagement of public resources and the Attorney-General should offer the Australian people and the parliament a full explanation of this decision. Why he would set two processes in train independently and not ensure that they utilised each other’s expertise in this matter is beyond belief.

The object of the bill is to prevent the disclosure of information in federal criminal proceedings where that disclosure is likely to prejudice national security, except to the extent that preventing the disclosure would seriously interfere with the administration of justice. In these circumstances, the bill provides a procedure where information relating to or the disclosure of which may affect national security may be introduced in federal criminal proceedings, taking into account the interests of national security and the right of a defendant to receive a fair hearing.

In the submission to the ALRC, the Law Council of Australia stated that a bill outlining a process for dealing with security sensitive information in criminal proceedings was desirable to ensure:

The clear expression of the possible orders that may be made to ensure the appropriate balance between the public interests and the interests of justice. The Council sees as desirable the Commission’s proposals (10–10) that emphasise the wide powers courts and tribunals have to ensure the appropriate balance in the individual case.

I now turn to the committee report. On 19 August government and opposition members of the Senate Legal and Constitutional Legislation Committee—on which I had the privilege to serve—delivered a bipartisan report on the bill. The committee made 13 recommendations for amendments to the bill. Subject to these recommendations being adopted, the committee recommended that the bill proceed. In response to these recommendations, the government has introduced a substantially amended bill. The amendments are once again proof of the value of the Senate committee process, and further condemn the Attorney-General’s ill thought-out criticism of the opposition in the first instance for referring a bill such as this to the relevant Senate committee. The opposition believes that the current bill strikes a balance between the interests of national security and the right of a defendant to receive a fair hearing. The opposition also believes that the bill deserves to be read a second time.

I now turn to some of the substantive issues covered in the bill. We will touch on some of the more pertinent matters during the second reading debate and deal with the proposed amendments at the committee stage. The exclusion of persons from closed hearings is one of the more germane elements contained within the bill. In response to recommendations 6 and 13 of the Senate committee’s report, the bill amends clause 29 of the original bill to ensure that the defendant and his or her legal representative will not be excluded from the entire closed hearing and that the court always maintains the capacity to stay proceedings if a defendant cannot be assured of a fair trial. Let us be clear about that: the bill ensures that the court will always maintain the capacity to stay proceedings if a defendant cannot be assured of a fair trial.

The original bill gave the court the power to exclude the defendant and his or her legal
representative from all of the closed pre-trial procedures if the court believed the presence of either of these persons would be likely to prejudice national security. An amendment has been inserted in response to the following finding by the Australian Law Reform Commission:

Leading secret evidence in criminal matters clearly breaches protections afforded by Australian and international law for an individual to be tried in his or her presence and to have the opportunity to examine, or have examined, any adverse witnesses. Excluding a person’s lawyer from a criminal hearing would appear to violate that person’s rights under Article 14(3)(b) and (d) of the International Covenant on Civil and Political Rights—that is, the ICCPR—to communicate with, and be defended by, counsel of his or her own choosing.

The amended clause stipulates that a court can only exclude the defendant or the defendant’s legal representative from ‘any part of the hearing’, where the defendant or their legal representative’s presence in the court would be likely to prejudice national security. The capacity of a court to restrict access to closed pre-trial procedures is further restricted by an amendment to clause 29(3)(c), which states that a defendant’s legal representative can only be excluded by a court for the reason that the representative has failed to be ‘given a security clearance at the level considered appropriate by the Secretary in relation to the information concerned’.

Clause 19 of the current bill is also amended to expressly state that, irrespective of any pre-trial ruling, a court maintains the discretion to stay federal criminal proceedings. It should be clear in this instance that, irrespective of any pre-trial ruling, a court maintains the discretion to stay federal criminal proceedings in the event that the defendant would not be guaranteed a fair trial.

In response to recommendations 7 and 8 of the committee’s report, clause 31 of the bill has been amended to provide that a court must, when making an order in relation to the disclosure of information or a witness, take into consideration ‘whether any such order would have a substantial adverse effect on the defendant’s right to receive a fair hearing, including in particular on the conduct of his or her defence’.

In making its decision a court is still required to give greatest weight to the risk that the disclosure of information or a witness could prejudice national security. However, a court retains the discretion to stay proceedings if the court believes that the order made under clause 31 would unfairly prejudice the defendant. In particular, clause 19 has clarified, by way of additional provision, that any order made under proposed clause 31 in a closed hearing does not prevent the court from later ordering that the criminal federal proceedings be stayed on a ground involving the same matter. In respect of the timing of closed hearings, in response to recommendation 9 of the committee report, clause 27 of the bill has been amended to allow the trial court to hold closed pre-trial hearings in relation to information which is the subject of an Attorney-General’s certificate. This amendment gives the defendant more time to prepare his or her defence in the context of the court’s ruling on the certificate.

I now turn to the issue of admissibility of redacted evidence. While a pre-trial ruling on the Attorney-General’s certificate cannot be challenged before a court conducting the criminal proceedings, the court retains its discretion to determine the admissibility of evidence and to generally determine the course of the trial. As the Law Council noted in its submission to the original ALRC inquiry, while situations will arise which demand that access to sensitive national security information be prohibited or restricted
courts and tribunals, ‘any such limitations remain the responsibility of the courts, that the onus be always upon those seeking to limit access, and that any permitted limitations upon access always remain consistent with the principles of a fair trial’. That is consistent with Senate committee recommendation 2.

I now turn to another issue that was dealt with during the Senate Legal and Constitutional Legislation Committee—reasons for court orders following a closed hearing. The Senate committee report recommended that the bill be amended to include a provision requiring the courts to provide a written statement of reasons outlining the reasons for holding closed hearings. The current bill does not act upon this recommendation, because the bill requires that a court hold closed hearings for all proceedings in which the Attorney-General’s certificate is challenged. Therefore, a court’s only reason would be that the court is required to hold a closed hearing by the relevant act.

Instead of adopting this amendment, new clause 32 has been inserted into the bill to ensure that the court is now required to give reasons for decisions it makes admitting, excluding or redacting information or excluding witnesses following a clause 31 closed hearing in which the Attorney-General’s certificate has in fact been challenged. This can be found at clause 32(1). Given the potential of any information in those reasons to be prejudicial to national security, clause 32(2) requires the court to give a copy of its proposed statement to the prosecution. If the Attorney-General is a party or if the prosecution or the Attorney-General consider that the proposed statement may disclose information that may prejudice national security then either of those parties may challenge the proposed publication. The court must then make a decision about this request to refrain from publishing its reasons and again give reasons for acceding to or rejecting the request.

New clause 33 in the bill ensures that the prosecution or the Attorney-General—if he is a party to the closed hearing—can request that the court delay publishing its statement of reasons to allow those parties to appeal a decision under new clause 32. Clause 38 has also been added to allow the prosecution and the Attorney-General—if the Attorney-General is a party to the closed hearings—to appeal a decision under clause 32. The court that hears the appeal is the court that has jurisdiction to hear and determine appeals from the judgment on the trial. That statement can be found in clause 38(2).

The bill also contains technical amendments that impact on the lapsing of the Attorney-General’s certificate, the required form of notice to the Attorney-General regarding an expected disclosure, the impact of the bill on extradition hearings and a definition of ‘likely to prejudice national security’. All these amendments are consistent with the intent of the Senate committee report.

We have a federal protected disclosure regime. A Labor government will introduce a new federal protected disclosure regime, which will include appropriate protection for national security information as per recommendations 3-1 to 3-3 of the ALRC’s report. As indicated in the opposition’s second reading amendment, whilst not objecting to the second reading of the bill, the opposition believes that the Senate should call upon the government to implement a new federal protected disclosure regime, which will include appropriate protection for persons working with security sensitive information and national security matters consistent with the recommendations of the Australian Law Reform Commission. In light of the amendments outlined above and the opposition’s support of the purpose of the bill, it is now
fair to say that we can speak in favour of granting the bill a second reading; however, we note the opposition will also move amendments to the bill in the committee stage.

**Senator GREIG (Western Australia) (5.18 p.m.)—** These national security bills seek to clarify and streamline the way in which information affecting Australia’s national security is dealt with in the criminal justice system. Of course there are a number of mechanisms which currently exist to protect highly sensitive information in the courtroom, including closed hearings, the editing of documents to be tendered, confidentiality undertakings and the doctrine of public interest immunity. With all of these mechanisms available, it is not entirely clear why a new regime is required. Indeed, the Law Council of Australia has expressed the view that the current regime is adequate. However, there does appear to be independent support for the government’s proposition that further clarification might be needed. Mr David Weisbrot, the President of the Australian Law Reform Commission, which conducted a comprehensive inquiry into the handling of national security information within the criminal justice system, concluded:

At the moment, it isn’t clear how far our courts can go to accommodate legitimate national security concerns. As a consequence, the government may be forced to drop or reduce criminal charges against an individual or to settle a civil claim—even though the result is unsatisfactory—because ultimately this better serves Australia’s strategic interests.

If we accept then the view that legislative clarification would serve to combat this uncertainty, the challenge is obviously to ensure that any legislation strikes an appropriate balance between the need to protect Australia’s national security and the need to ensure that those charged with crimes are afforded a fair and open trial. Unfortunately, the government appears to have the balance wrong in this legislation. The Democrats’ view of this bill is perhaps best summarised by Mr Bret Walker SC, former President of the Law Council, who made the point:

This bill is not all bad—far from it. A very conscientious attempt has been made to balance some very difficult things. It is just that, in the upshot, I think one of the prevailing views is that trade-offs have gone too far.

We acknowledge that the government faced some complex issues in the drafting of this bill and we welcome some of the improvements that have been made in response to the report of the Senate Legal and Constitutional Legislation Committee; however, the balance in our view is still not right. The bill applies to all stages of proceedings relating to a crime under Commonwealth law or to a matter arising under the Extradition Act. If in the course of such proceedings the prosecutor or defendant believes that they or one of their witnesses will disclose information that relates to national security, they must notify the Attorney-General of that fact. The Attorney-General may then issue a certificate either preventing the disclosure of the information or the calling of a witness or permitting the partial disclosure of the information. If the Attorney-General’s certificate relates to pretrial or extradition proceedings, it will operate as conclusive evidence that the disclosure of the information would be prejudicial to national security. The court must then consider whether to allow or disallow the disclosure of the information, taking into account the adverse effect of the defendant’s right to a fair trial.

One of the more controversial aspects of the legislation is that the court may make an order permitting the hearing of evidence in the absence of the defendant. Such a hearing may also exclude the defendant’s lawyer if he or she has not been granted security clearance at the appropriate level. Although we
acknowledge the difficult issues with which the government has had to grapple in drafting this legislation, we Democrats do have some outstanding concerns regarding aspects of it.

We are concerned that the proposed new regime hinges on a definition of national security which is incredibly broad and contentious. The definition includes defence, security, international relations and law enforcement interests, all of which are also defined very broadly. While it is notoriously difficult to come up with a working definition of national security—and we acknowledge the government’s exploration of other options—we remain of the view that the definition is problematic. A range of organisations expressed similar views during the Senate Legal and Constitutional Legislation Committee’s inquiry into this bill. For example, the Australian Press Council argued:

The sweeping nature of this definition has the potential to include within its scope a broad range of types of information which not only relate to matters of public interest but which are appropriate matters for public debate. Just a few examples would be contracts for government tenders, analysis or forecasts of the Australian economy, proposed trade agreements with foreign governments, planned changes to Australia’s telecommunications infrastructure, or reports of mismanagement within Australia’s immigration detention centres.

Some of these issues will now be excluded by the government’s intention to remove national interests from the definition of national security. The Democrats welcome those amendments. However, even despite the removal of that element from the definition of national security, the definition remains incredibly broad. As the Australian Muslim Civil Rights Advocacy Network has argued:

... almost any matter involving a non-Australian citizen could be covered by the definition of ‘international relations’, namely ‘political, military and relations with foreign governments and international organisations’.

One of the problems associated with such a broad definition is that the bill places disclosure obligations on the prosecutor and the defendant in relation to information regarding national security. With such a broad definition of national security, it will be difficult for a defendant, in particular, to determine whether a piece of information genuinely relates to national security. This is all the more concerning given that penalties of imprisonment apply for nondisclosure and that an increasing number of defendants are choosing to represent themselves before the courts.

It is important to remember that, although the government may focus on the need for this legislation in the context of security related trials, the legislation is not limited to that context. Indeed, it applies to any proceedings involving an offence against the Commonwealth. It is entirely possible that information relating to national security could emerge in the course of a trial which does not, at first, appear to have any association with issues of national security. Because the definition of national security is so broad, it would be possible for a defendant to unknowingly commit an offence by failing to advise the Attorney-General. The defendant would then be liable to two years imprisonment. The Senate Legal and Constitutional Legislation Committee shared this concern, stating:

... in light of the broad and vague definition of national security, the Bill may place a heavy and unfair burden on the defendant to comply with its requirements.

Perhaps the most controversial aspect of this legislation is contained in clause 27, which enables a court to hear evidence in the absence of the defendant and his or her lawyer if the lawyer has not received the appropriate security clearance. In this respect, the bill
differs markedly from the regime proposed by the ARLC. As Professor Weisbrot explained to the committee:

We saw that the most important thing was for the lawyer to be in there and for the person to be properly represented ... our proposals made no recommendations for criminal proceedings to go ahead absent the accused and ideally the person's counsel.

The Law Council specifically referred to the ALRC's recommendation that 'the fact that a hearing is taking place should never be kept from the party whose rights are being determined or affected by the hearing'. A fundamental element of our criminal justice system is that a defendant has the right to be present during his or her trial. Given the potential deprivation of liberty which can result from a criminal conviction, it is vital for a defendant to have the opportunity to contest all the information to be heard against her or him. Amnesty International has expressed concern that the operation of this provision will mean that the defendant is not in a position to rebut the evidence or to provide instructions to their legal representative. The Senate committee indicated that it held:

... strongly to the view that defendants, as guaranteed under the International Covenant on Civil and Political Rights ... are entitled to be present at trial and to defend themselves in person or through legal representation.

Another contentious aspect of the bill is the requirement for lawyers to submit to security clearances if they are to have access to national security information. A large range of organisations, including the Law Council, have expressed concerns about this provision, which has implications for both the defendant and his or her lawyer. Firstly, it compromises the right of a defendant to choose their lawyer given that the lawyer of choice may not receive security clearance. This would place the defendant in the position of choosing their lawyer, who will not be given access to all the information, or resorting to another who will be given access. Secondly, the process could slow the trial down—the time needed not only for a security clearance to be undertaken but also for the defendant to instruct a new lawyer if that becomes necessary. Moreover, it is unclear whether there is likely to be any fee associated with the security clearance and, if so, who will pay that fee. It is certainly a possibility that the cost of this process could be added to the defendant's legal charges.

Of course, the requirement to undergo security checks also has significant implications for lawyers. As the New South Wales Council for Civil Liberties has argued, lawyers are officers of the court and are regularly required to give confidentiality undertakings, so the need for security checks is questionable. It went on to argue:

... it is sufficient that the Bill creates an offence for contravening a certificate of the Attorney-General or an order of the court. Any lawyer convicted of such an offence would be subject to the discipline of the court and risks being struck off.

I understand that the proposed security checks are very extensive, covering things such as the lawyer's place of residence, travel and overseas contacts over the previous decade. They may even incorporate a form of personality testing relating to the lawyer's trustworthiness—an interesting concept. On this basis the Law Council has highlighted this concern, saying:

The prospect of the government holding detailed private information about lawyers who regularly defend in contentious cases always creates the appearance, if not the actual risk, of a misuse of that information. Such a prospect exists no matter how secure and how separate the relevant sections within government are from each other.

The conduct of security clearances will be in accordance with the Commonwealth Protective Security Manual, which is not a public document and can be changed at the will of
government. While I am informed that lawyers who receive an adverse security assessment would have the opportunity to seek a review of that decision, there is no provision to compensate a lawyer for any loss suffered as a result of such assessment.

The final concern which I want to highlight is the fact that an Attorney-General’s certificate granted in relation to pre-trial or extradition proceedings—in other words, the vast majority of Attorney-General’s certificates—will operate as conclusive evidence that the information in question is prejudicial to national security. As Australian Lawyers for Human Rights have argued, this amounts to the Attorney-General making a finding of fact without any opportunity for the defendant to be heard. Given that the court may rely on the Attorney-General’s certificate in order to exclude the evidence, which may have a significant impact of the fairness of the trial, the defendant should have the opportunity to be heard. The potential unfairness associated with the Attorney-General’s certificates is compounded by the fact that an Attorney-General’s certificate is not liable to judicial review nor can any action taken by the Attorney-General be investigated by the Ombudsman. As the Ombudsman noted in evidence before the committee:

Essentially, the only method of accountability of action taken by the Attorney-General that is preserved by the bills is the requirement imposed by clause 42 for the Attorney-General to make an annual report to the Parliament.

In closing, there is clearly a range of outstanding issues in relation to the bill, issues which are not only of concern to the Democrats but also have been identified by a diverse range of reputable organisations within the community. We do acknowledge that the government has made a genuine attempt to formulate appropriate legislation but in the end we feel that the balance is wrong. It is our hope that we may be able to address some of these issues through amendment during the committee stage.

Senator BROWN (Tasmania) (5.32 p.m.)—The Greens are highly concerned by this legislation and will not agree to it passing the Senate without extensive modification. We therefore will bring forward a number of amendments to return basic and long-held political, legal and other rights which would be excluded by the legislation. The right to a fair trial in open court and trial by jury, the right to a lawyer of a defendant’s own choice, the separation of powers, the independence of the courts and the independence of prosecution decisions are all threatened by this National Security Information (Criminal Proceedings) Bill 2004. The rights that I have listed are fundamental principles of Australia’s common law as well as international law, in particular article 14 of the International Covenant on Civil and Political Rights. The right to a trial by jury is recognised in section 80 of the Australian Constitution. Amnesty International, the Law Council of Australia, the Australian Press Council and the Senate Legal and Constitutional Legislation Committee have all expressed serious concerns in opposition to the bill as it stands.

While there has been some modification of the original bill by the government, most of the amendments proposed by the Senate committee have not been implemented. The Greens are proposing amendments that will give effect to important recommendations of the committee, so ensuring, at the very least, increased discretion on the part of the courts that would otherwise be forced by this legislation to exclude evidence from the view of the defendant, the jury and the public on the grounds of national security in certain circumstances.

What qualifies as national security in this bill is defined and determined by the execu-
tive—that is, effectively, the Attorney-General of the day. The government claims the bill is necessary because there is a need to prevent information important for national security from entering the public domain in the course of criminal trials. At the same time it says that it is desirable that the fact that such information or evidence cannot be tested in the open court in front of the jury or tested by a defendant and their lawyer should not prevent such evidence being used to prosecute and convict an accused person. In other words, the evidence should be available but not necessarily to the defendant or the defendant’s legal representatives. Such an approach to criminal proceedings gave rise to many of the struggles for the current fundamental principles underlying Australian criminal law going right back to the Magna Carta and the repudiation of the Star Chamber.

The government says that the bill seeks to establish a process for strengthening ‘the procedures for protecting national security information’ and to provide a court which has found that ‘sensitive security related information should not be disclosed with an alternative to simply dismissing the charge’. The government’s bill enables the Attorney-General to determine that particular information or witnesses may prejudice national security. Both the prosecutor and the defence are required to notify the Attorney-General and the court ‘if they know or believe that they, or one of the witnesses they intend to call, will disclose during the proceeding information that may affect our national security’. Upon receiving notification under this bill the Attorney-General may simply issue a certificate preventing disclosure of that information or precluding an individual from being called as a witness.

There will be a closed hearing of the trial court. The court will decide whether the information can be disclosed or whether the witness can be called. As a priority, the court is to consider whether disclosure of the information or the calling of the witness would create a risk of prejudice to national security over that of the right of the accused to a fair trial. The defendant and his legal representative may be excluded from the closed hearing. If the court confirms that the information should not be disclosed then the information may not be disclosed except in permitted circumstances. This order by the court may preclude disclosure of information to the defendant and their legal representative. Disclosure can lead to penalties of up to two years in jail. Amnesty International said that the bill, in its current form, creates a process whereby an accused person may be tried and convicted on the basis of information never seen or heard by the accused or their lawyer. Amnesty International went on to say:

The rules of evidence … in the criminal justice system have been prescribed in order to minimize the risk of innocent individuals being convicted and punished. Making information secret denies people facing … serious allegations and potential jail sentences, the right to effectively defend themselves.

Currently, the Australian courts are able to ensure classified or sensitive material is used appropriately by confidentiality undertakings from parties and their legal advisers, by restricting access to documents or parts of documents, by court proceedings closed to the public and by restricting publications of those proceedings. This is recognised by international law and the international covenant, which allows internationally closed trials in some circumstances where national security is an issue.

However, the current definition of ‘issues of national security’ is so broad that it encompasses an area way beyond that which would be envisaged by the International Covenant on Civil and Political Rights. This bill empowers the Attorney-General to de-
termine what matters might be considered prejudicial to national security, with national security defined as ‘Australia’s defence, security, international relations, law enforcement interests or national interests’. Such a definition could encompass an extraordinarily wide set of circumstances, leading to situations in which principles of fair trials are unduly compromised and where the transparency and accountability of the legal process could be at risk. As the Australian Press Council pointed out in evidence to the Senate inquiry into this bill, the definition is of such a wide scope that it could include:

... a broad range of types of information which not only relate to matters of public interest but which are appropriate matters for public debate. Just a few examples would be contracts for government tenders, analysis or forecasts of the Australian economy, proposed trade agreements with foreign governments, planned changes to Australia’s telecommunications infrastructure, or reports of mismanagement within Australia’s immigration detention centres.

Amnesty International is also concerned that this bill requires the court to hold closed session hearings, which may detract from one of the requirements of justice—that it is both done and seen to be done. Depriving the court of the discretion to hold hearings behind closed doors if it believes it to be necessary but instead giving the Attorney-General the power to make that decision without written justification will undermine public confidence in the courts of Australia. It will enable the timing and course of proceedings to be determined by political considerations rather than the requirements of justice as assessed by the courts.

This bill breaks down the separation of powers and the independence of the prosecution from political interference. It gives the Attorney-General the ability to determine which witnesses should be allowed, what evidence can be tendered and if hearings should be closed—all on the nebulous grounds of national security. Again, national security is defined as widely and as loosely as ‘matters in the national interest’.

The Australian courts’ discretion is limited under the bill, with judges required to place national security above fairness to the accused—whatever ‘national security’ may mean. The main concerns of Amnesty International and other human rights and legal groups include—and I sum up here—the right to adequate time and to all evidence available to prepare a defence. This bill allows the Attorney-General to issue a certificate preventing the disclosure of certain sensitive information which may have a hearing on the ability of the accused to defend himself or herself.

There is also the right to call and examine witnesses. This bill provides that the Attorney-General by certificate and the court by court order may limit or prevent the defence’s access to witnesses whereby security-sensitive information may be raised. I again go back to that wide definition of what security is, which includes matters like international relations, national interests and law enforcement interests. There is the concern of the right of the accused to be present in all aspects of any trial against him or her, the right to a lawyer of the defendant’s choosing, the right to a public hearing and the erosion of the right to a trial by jury. On that last matter, the exclusion of the jury from seeing all the evidence and the testing of that evidence is written into this legislation.

I am sure the public has supported measures brought before this parliament to increase surveillance, police powers and punishment of people who are contemplating, are involved in or have carried out terrorist acts, but this legislation is not about that. It is much wider. It is about truncating a citizen’s right to a fair hearing when they are accused
of infringing national interests. It is as wide as that. As the representatives of the Press Council—not known for being radical, I might say—point out, the national interest could include matters such as government tenders, forecasts on the Australian economy, proposed trade agreements, changes to telecommunications infrastructure or mismanagement of detention centres. I would add that it may include such matters as protests on environmental issues, Indigenous issues or cultural issues—a whole range of things in which, in the Attorney-General’s view, the national interest could potentially be compromised, because the definition of national interest runs very clearly into what the government of the day considers is of interest to itself.

This is dangerous legislation. It is broadly scoped. It is not narrow or confined, for example, to matters of protection from terrorism or criminal activities. Inevitably, we must assess in considering legislation that, given time, unless it is tightened it will be used unfairly against Australian citizens, Australian legal representatives and Australian courts by the government of the day. It is the duty of legislators to define exactly what they mean and to be very clear and specific about it. The government has failed to do that. There is no cogent argument in what the government has brought forward for the wide and sweeping changes to hundreds of years of development of law and justice under British law and development over more than a century in Australian law which are contained in this legislation. I guess, whatever the Senate may do, that this is a forerunner to what we are going to see in the coming three years, as the government cuts across time-honoured civil liberties, rights and jurisprudence with legislation like this—totally unjustified, unwarranted and against the national interest.

Senator LUDWIG (Queensland) (5.46 p.m.)—by leave—I move the second reading amendment which I foreshadowed during my speech on the second reading and which has been circulated in the chamber:

At the end of the motion add:

“but the Senate calls upon the Government to implement a new federal protected disclosure regime, which will include appropriate protection for persons working with security sensitive information and national security matters consistent with the recommendations of the Australian Law Reform Commission.”

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.47 p.m.)—At the outset, I will comment on the second reading amendment moved by Senator Ludwig on behalf of the opposition. The amendment refers to a new federal protected disclosure regime, which was the subject of comment made by the Australian Law Reform Commission. Whilst the government will not support the amendment, the government will look closely at this when it considers its response to the report by the Australian Law Reform Commission. Whilst the government will not support the amendment, the government will look closely at this when it considers its response to the report by the Australian Law Reform Commission. By not supporting this amendment, the government is by no means dismissing the issue out of hand, but it is perhaps premature at this stage for the government to be indicating its position in relation to that without first having considered in detail the report of Australian Law Reform Commission and, more importantly, the response to that report.

I note that the issue of national interest has been mentioned by various senators in the debate on this national security legislation. I can appreciate the comments that were made about the application of national interest to the bill. It was the subject of comment by the Senate Legal and Constitutional Legislation Committee and it is an issue that the government has taken on board. There is a government amendment which we will be ad-
dressing shortly in committee, and I will not take it further than that other than to say that we have responded to the Senate committee’s recommendation positively.

More widely, of course, the National Security Information (Criminal Proceedings) Bill 2004 is very important in the government’s overall strategy of protecting our national security. The bill will strengthen the procedures for protecting information that may affect our national security. The bill will also protect an individual’s right to a fair trial. A court which has found that sensitive security related information should not be disclosed will have an alternative to simply dismissing the charge. It will be able to admit documents and information in a redacted form that protects national security but preserves the essence of the information. Consequently, the Commonwealth will no longer have to choose between risking the disclosure of sensitive information that relates to national security and protecting this information by abandoning the prosecution, even when the prosecution relates to alleged crimes that could have grave consequences for our national security.

The bill will significantly change the way that information that may affect our national security is used in federal criminal proceedings. It will not, however, jeopardise the very principle on which our legal system is based. The Australian Law Reform Commission submitted its final report, Keeping secrets: protecting classified and security sensitive information, to the government on 31 May this year. The ALRC was asked to inquire into measures used to protect classified and security-sensitive information in the course of investigations, legal proceedings and other relevant contexts. The aim of the reference was to examine whether existing mechanisms adequately protect classified and security-sensitive information or whether there is a need for further regulation in this area. The Attorney-General tabled the ALRC report on 23 June this year. The report, of course, made a number of recommendations, including the development of a legislative scheme to protect classified and security-sensitive information during court and tribunal proceedings.

The release of the ALRC report follows the release of a discussion paper, No.67, entitled Protecting classified and security sensitive information in January 2004. In developing this bill the government had the benefit of considering the ALRC’s recommendations regarding proposals for reform as outlined in the discussion paper. In light of the importance of having safeguards in place, the government decided to introduce the bill prior to receiving the final report. The bill was referred to the Senate Legal and Constitutional Legislation Committee, which reported on 19 August this year. The government has adopted several of the Senate committee’s recommendations. Among other changes, the government amended the bill to clarify that the courts will only exclude defendants and their legal representatives from closed hearings in limited circumstances and will retain the power to stay proceedings if the defendant cannot be assured of a fair trial.

The government recognises the importance of maintaining an independent judiciary and an accused’s right to a fair trial. The government believes that this bill strikes a balance between these fundamental principles and the Commonwealth’s duty to protect information that may affect our national security. This bill is much overdue. For some time now questions have been raised as to how information that may be sensitive to national security can be dealt with in a criminal prosecution. It is high time that we have this legislation in place so that there can be certainty for all. I commend this bill to the Senate.
Question agreed to.
Original question, as amended, agreed to.

Bills read a second time.

In Committee

NATIONAL SECURITY INFORMATION
(CRIMINAL PROCEEDINGS) BILL 2004

Bill—by leave—taken as a whole.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.54 p.m.)—At the outset of the committee stage I would like to table a supplementary explanatory memorandum relating to the government amendments to be moved to the National Security Information (Criminal Proceedings) Bill 2004. The memorandum was circulated in the chamber on 30 November 2004. I foreshadow that government amendments (1), (2) and (3) can be debated cognately, but amendment (3) will have to be put separately because the question will be in a different form. For that reason, I seek leave to move government amendments (1) and (2) together, albeit that I will be cognately debating (1), (2) and (3).

Leave granted.

Senator ELLISON—I move:
(1) Clause 7, page 5 (line 1), omit the definition of national interests.
(2) Clause 8, page 6 (lines 5 and 6), omit "... law enforcement interests or national interests", substitute "... or law enforcement interests".

The National Security Information (Criminal Proceedings) Bill 2004 applies to federal criminal proceedings to protect information that is likely to prejudice national security. As such, the definition of national security is pivotal to the bill and is used as the basis for non-disclosure of information in criminal proceedings. In its report of 19 August this year the Senate Legal and Constitutional Legislation Committee criticised the breadth of the definition of national security. Accordingly, government amendment (1) removes the definition of national interests from clause 7 of the bill. The phrase ‘national interests’ forms part of the definition of national security. Government amendment (2) amends the definition of national security in clause 8 of the bill, as the term in that clause is currently defined as:

... Australia’s defence, security, international relations, law enforcement interests or national interests.

Government amendment (2) is therefore a required consequential amendment, if you like, of amendment (1). It removes the further reference to ‘national interests’ and in so doing defines national security more narrowly.

Government amendment (3) omits clause 12 of the bill, which contains the meaning of national interests. This government amendment would remove the final reference to ‘national interests’ in the bill. As I indicated earlier, the question to be put in relation to government amendment (3) will be quite different to that in relation to government amendments (1) and (2). Suffice to say this was a recommendation of the Senate committee. The government believes it is a reasonable recommendation, it accepts it, and accordingly these three government amendments reflect that acceptance.

Senator BROWN (Tasmania) (5.57 p.m.)—To summarise that, am I correct in assuming that the minister says that the national security is now defined as ‘Australia’s defence, security, international relations and law enforcement interests’?

Senator Ellison—Yes.

Senator LUDWIG (Queensland) (5.58 p.m.)—We are in a position to support those amendments. What they do is define more narrowly the definition of national security. It is one of those issues that now provides a tighter constraint on what the otherwise broad position might have been. We also find
that the expression ‘national security’ is included. I was benefited by the report *Keeping secrets: the protection of classified and security sensitive information*, which the Attorney-General perhaps should have assisted him with in the process but chose not to. The International Covenant on Civil and Political Rights, the ICCPR, which is binding on Australia, in article 14.1 includes the words ‘national security’. I will not read the entire provision, but it states:

The press and the public may be excluded from all or part of a trial for reasons of morals, public order ... or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances ...

In addition, in 7.10 it goes on to say:

Article 14(1) applies to both criminal and civil proceedings, and arguably also to administrative proceedings.

However, that is less clear. It goes on to say:

As the ICCPR allows for the closure of courts for national security reasons, it is important that the parameters of the term ‘national security’ are clearly defined.

In this instance, they have been more narrowly and more clearly defined, which allows that provision to operate adequately.

Similarly, article 10 of the Universal Declaration of Human Rights states:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

At 7.12 it states:

Some Australian legislation expressly provides for open hearings in courts and tribunals.

But of course that is tempered by the requirements that I have just outlined—this is more for the substantive debate that we will have in committee later—that there are circumstances of national security that might require other procedures to be adopted. But, in this instance, I think the tighter definition does give a greater effect to the bill and it provides a firm basis for it.

**Senator BROWN (Tasmania) (6.00 p.m.)—** I ask the minister if he could define for the committee what law enforcement interests will come within the definition of ‘national security’.

**Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.01 p.m.)—** In the definition section, ‘law enforcement interests’ has the meaning given by clause 11. That is listed as follows:

In this Act, *law enforcement interests* includes interests in the following:

(a) avoiding disruption to national and international efforts relating to law enforcement, criminal intelligence, criminal investigation, foreign intelligence and security intelligence;

(b) protecting the technologies and methods used to collect, analyse, secure or otherwise deal with, criminal intelligence, foreign intelligence or security intelligence;

(c) the protection and safety of informants and of persons associated with informants;

(d) ensuring that intelligence and law enforcement agencies are not discouraged from giving information to a nation’s government and government agencies.

That is a comprehensive definition, I would submit with respect to the committee.

**Senator BROWN (Tasmania) (6.02 p.m.)—** Does the meaning of ‘international relations’ include trade agreements?

**Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.02 p.m.)—** International relations is defined in clause 10. It states:

In this Act, *international relations* means political, military and economic relations with foreign governments and international organisations.
I suppose a trade agreement would fall within that description. You could term it an economic relation.

Senator BROWN (Tasmania) (6.03 p.m.)—But matters relating to trade agreements might become prescribed in terms of a future determination by the Attorney-General, in terms of evidence being brought against the defendant and therefore not made available to the defendant or their legal representatives in a future court action.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.03 p.m.)—There are existing legislative protections for sensitive information. The government believes these are inadequate, but senators might be interested to know that existing legislative protections entail the closed court requirement under section 85B of the Crimes Act and section 93.2 of the Criminal Code Act 1995. Those provisions permit a court exercising federal jurisdiction to order that proceedings be held in closed court and remain unpublished in certain circumstances. They provide that orders can only be made where they are expedient in the interests of the defence of the Commonwealth. These sections therefore may not be able to be used to protect security classified information that relates to the international relations of the Commonwealth—what I am saying is that there is a regime in place already. So what we are proposing really is a continuation of a principle which exists at Commonwealth law. In relation to what I think has been held by the Australian courts for some time now, any information which could cause embarrassment to Australia in its relations with other countries is sensitive. In this particular case we believe we need to clarify—and codify, if you like—the law as it relates to criminal proceedings in relation to national security, and of course they can include international relations.

Question agreed to.

The TEMPOARY CHAIRMAN (Senator Lightfoot)—The question is that clause 12 stand as printed.

Question negatived.

Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate) (6.06 p.m.)—I move opposition amendment (1) on sheet 4432:

(1) Clause 7, page 5 (after line 6), after the definition of security, insert:

substantial adverse effect means not insubstantial, insignificant or trivial.

Clause 19(2) has been amended to conform with the obligation placed on the court under clause 31 of the bill to consider a defendant’s ability to receive a fair hearing if an order is made by a court about the disclosure or non-disclosure of information in a closed hearing. Clause 31(7) outlines the factors that a court must consider when making orders under that clause. Clause (7)(a) in particular requires consideration of whether any such order would have a substantial adverse effect on a defendant’s right to receive a fair hearing, including in particular on the conduct of his or her defence. In consultation with the Law Council of Australia, clause 19(2) has been amended to reinforce that a court will not be prevented from ordering that a federal criminal proceedings be stayed following the making of an order under clause 31 if that order would have a substantial adverse effect on a defendant’s right to receive a fair trial. This amendment provides clarification of the importance of the bill in protecting not only the interests of national security but also the right of a defendant to receive a fair trial.

Senator GREIG (Western Australia) (6.07 p.m.)—This amendment is also relevant to opposition amendment (2), which puts beyond doubt that a court can make an order to stay proceedings if a section 31 order preventing the disclosure of information
would have a substantial adverse effect on the defendant’s right to receive a fair hearing. Opposition amendment (1) defines ‘substantial adverse effect’ as meaning ‘not insignificant, insignificant or trivial’. We Democrats do not see a great need for the amendment, given that a court would be well equipped to determine whether the section 31 order has a substantial adverse effect on the defendant’s right to receive a fair hearing. However, on balance, we do not oppose the amendment.

Question agreed to.

Senator LUDWIG (Queensland) (6.09 p.m.)—We might have to recommit that, because I thought we were dealing with clause 19, rather than clause 7. We actually dealt with clause 7 and amendment (1), not clause 19 and amendment (2), and what I spoke to was clause 19. I must have had an earlier running sheet with me at the time. I thought we were on clause 19; we were in fact on clause 7. By the time I sat down, I realised that we dealt with clause 7, not 19.

The TEMPORARY CHAIRMAN (Senator Lightfoot) —You got your amendment up anyway, Senator Ludwig.

Senator LUDWIG—Yes. It would not change anything other than what I would have added on that particular matter—

Senator Ellison—You can do it now.

Senator LUDWIG—Yes, that is what I thought. Given that we are in the committee stage, we can deal with both amendments given that one has already passed. The definition of the term ‘substantial adverse effect’ had been inserted into clause 7 in order to provide clarification of the weight that should be given to the ability of a defendant to receive a fair hearing. Both of them hinge on ensuring that there is a fair hearing in relation to the defendant, especially when a court is engaged in the process of determining what orders to make in clause 31(7). The definition of the word ‘substantial’ ensures that the defendant is not burdened with an unreasonable high test to activate the protective test contained in that clause. That was the crux of clause 7, which ensures that there is a fair trial.

Paragraph 19, which is also about a fair trial, is to ensure that paragraph 19(2), as I have said, has been amended to conform with the obligations placed on a court under clause 31 of the bill to consider the defendant’s ability to receive a fair hearing if an order is made by a court about the disclosure—or, in fact, the nondisclosure—of information in a closed hearing. That ensures that it provides clarification of the importance of the bill in protecting not only the interests of national security but the rights of a defendant to receive a fair trial. I might need to get a new running sheet to make sure I have an up-to-date one.

The TEMPORARY CHAIRMAN—You could still formally move your amendment. Rather than referring to ‘paragraph 19’, Senator Ludwig, you may be kind enough to refer to it as ‘clause 19’. You may equally be kind enough to formally move the amendment.

Senator LUDWIG—I move opposition amendment (2) on sheet 4432 revised:

(2) Clause 19, page 10 (line 28) to page 11 (line 2), omit subclause (2), substitute:

(2) An order under section 31 does not prevent the court from later ordering that the federal criminal proceeding be stayed on a ground involving the same matter, including that an order made under section 31 would have a substantial adverse effect on a defendant’s right to receive a fair hearing.

Clause 31(7) outlines the factors that a court must consider. In consultation with the Law Council of Australia, clause 19(2) has been amended to reinforce that the court will not be prevented from ordering that a federal
criminal proceedings be stayed following the making of an order under paragraph 31, especially if that order made under paragraph 31 would have a substantial adverse effect on a defendant’s right to receive a fair trial.

Both amendments—the one which has passed and this one, referring to clause 19—speak volumes for the necessity to ensure that a fair trial is provided. We ask the government to seriously consider that amendment and accept it in the spirit with which we have dealt with the National Security Information (Criminal Proceedings) Bill 2004. The government has been able to look seriously at the substantive recommendations made by the Legal and Constitutional Legislation Committee to ensure that at the end of this process we have a bill ensuring fairness to the defendants, fairness to the prosecutors and fairness to the overall system of protecting national security information.

Senator GREIG (Western Australia) (6.13 p.m.)—As I mentioned earlier, opposition amendment (2) to clause 19 puts beyond doubt the power of a court to make an order to stay proceedings if a section 31 order has been made to prevent the disclosure of information and it is considered that the order will have a substantial adverse effect on the defendant’s right to receive a fair hearing. We Democrats agree that it is important to highlight this power of the courts, as it provides a vital protection to the defendant’s right to a fair trial, so we can readily support the amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.14 p.m.)—The government do not see their way clear to support this amendment and the previous amendment. I refer back to the first amendment opposed by the government. We do not believe that the proposed words ‘substantial adverse effect’ add anything to the definition contained in the bill in relation to the balance which must be achieved in preserving the rights of the accused person.

Similarly, the government believes that, in relation to the proposed amendments to clause 19, the clause has been redrafted to make it clear that the court retains all of its powers to control the conduct of the trial, including that the proceedings should be stayed in the event that the defendant would not be granted a fair trial or guaranteed a fair trial, more importantly. This is so even where an order has been made under clause 31 relating to the disclosure of information or the exclusion of a witness.

The opposition have proposed an amendment, the objectives of which we believe are already met by clause 19. All that the opposition amendment does is to add that an order made under clause 31 includes an order which ‘would have a substantial adverse effect on a defendant’s right to receive a fair hearing’. It is clear from clause 19 that matters considered by the court in making an order under clause 31 do not prevent the court from staying the proceedings on those same matters. Clause 31 clearly states:

One of the matters the court must consider in making an order under clause 31 is the effect of the order on the defendant’s right to receive a fair trial.

There is no need to complicate clause 19 by elaborating any further. I refer to the explanatory memorandum, which states:

… even if the court considers the defendant’s right to receive a fair trial in deciding whether to make an order under clause 31, the court is not prevented from later staying the proceeding on the ground that the defendant would not receive a fair trial.

Even if the court makes an order that the trial can proceed and there is no detriment to the defendant, the court is not prevented at some later stage in the proceedings from staying those proceedings if it becomes apparent that the defendant would not receive a fair trial.
For those reasons the government does not believe that the opposition amendment is necessary and therefore does not support it.

Senator BROWN (Tasmania) (6.17 p.m.)—Is the government saying that, in circumstances where a court determines that proceeding with a trial will lead to an unfair trial, the court should nevertheless proceed? If not, are there any circumstances in which the government believes that an unfair trial should proceed?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.18 p.m.)—Senator Brown has asked, ‘Does the government believe that the bill requires a court to proceed where it thinks that there will be an unfair trial?’ No. It is quite the reverse, and that is what I was saying. I was indicating that, even if the court considers this question of an unfair trial at an early stage in the proceedings and determines that it is not an unfair trial, there is nothing to stop it changing that view should events during the trial indicate that it has become an unfair trial. So the court has that flexibility. Clause 19(2) states:

To avoid doubt, the fact that the court considers a matter in making an order under section 31 does not prevent the court from later ordering that the federal criminal proceeding be stayed on a ground involving the same matter.

Normally, where a court makes an order, it could be regarded as functus officio—that is, you have dealt with the matter, that is the end of it and you cannot revisit it. That is often the case with decisions by officials. Here, we are saying that, even if a court makes an order under clause 31, it is still not precluded at any stage thereafter from considering the unfairness aspect of the trial and making an order contrary to the order it made earlier. So the legislation gives and preserves that flexibility for the court to change its mind should it feel that there is a requirement to do so.

Senator BROWN (Tasmania) (6.20 p.m.)—Is there a provision in the legislation, where the court determines that if a trial proceeded it would be unfair, for the Attorney-General to change an application to the court for either certain matters to be withheld from the defendant or the defendant’s lawyers or some other application to the court so that the court might then reconsider the decision it had made and proceed?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.20 p.m.)—I will clarify Senator Brown’s question. If the Attorney intervenes and issues a certificate, the Attorney then becomes a party to the proceedings, as I understand it. Is the question: once the Attorney intervenes, can the court recanvass the issue under clause 31?

Senator Brown—Can the Attorney withdraw the certificate?

Senator ELLISON—Yes, he can.

Senator BROWN (Tasmania) (6.21 p.m.)—That reveals another difficulty inherent in the legislation. The Attorney can, without detriment, effectively test the court by trying to prevent evidence being brought to the defendant’s notice and, if that interferes with the process of the trial, withdraw and at some stage later try again. There is no requirement on the Attorney to consistently make application for secrecy of information or for information to be withheld in the court proceedings. Clearly, if this is to be a fair dinkum process, if the Attorney determines that information ought not be available to the defendant then there is no reason why that should change. This opens the way for Attorneys-General to try withholding information in the hope that the court will agree and, if the court does not agree, then withdrawing the certificate and letting the trial proceed.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.23
I think I should make it clear that the Attorney’s certificate is subject to judicial oversight. If the Attorney threw these certificates into the court willy-nilly just to chance his arm there would still be judicial oversight, and any court would take a very dim view of that. If the Attorney issues a certificate and then withdraws it, the withdrawal would obviously have to be brought to the notice of the parties concerned, including the defence counsel and the defendant. If the Attorney were doing this without merit on a continual basis, that alone would be an abuse of process and the court could take consequential action. That would not be benign to the Attorney’s interests.

Question agreed to.

Senator BROWN (Tasmania) (6.24 p.m.)—by leave—I move Greens amendments (1) to (4):

(1) Clause 25, page 16 (line 3), omit subclause (4).

(2) Clause 27, page 20 (line 31), omit subclause (5).

(3) Clause 28, page 22 (line 6), omit subclause (7).

(4) Clause 29, page 24 (after line 21), at the end of the clause, add:

(6) It is a requirement of a closed hearing that a court notify in open court at a time proximate to a closed hearing the reason or reasons for holding the closed hearing.

These amendments give effect to several recommendations of the Senate Legal and Constitutional Legislation Committee. Recommendation 1 of the committee was that the three subclauses which require the court to hold closed hearings be removed so that the court retains its discretion to determine whether its proceedings are open or closed. Recommendation 2 of the committee report states:

The Committee recommends that the Bill be amended to include a provision requiring the court to provide a written statement of reasons outlining the reasons for holding proceedings in-camera.

Recommendation 7 states:

The Committee recommends that the Bill be amended to include a provision that requires the court, when making an order allowing information to be disclosed as being subject to the Attorney-General’s non-disclosure certificate, to be satisfied that the amended document and/or substitution documentation to be adduced as evidence would provide the defendant with substantially the same ability to make his or her defence as would disclosure of the source document.

The Greens amendments give effect to those recommendations. The fourth Greens amendment is based on recommendation 10 of the committee, which states:

The Committee recommends that the court assume a more active role in determining whether a defendant’s legal representative requires a security clearance before he or she can access information. The Committee recommends that the Bill adopt the recommendation by the ALRC that ‘the court may order that specified material not be disclosed to a lawyer unless he or she holds a security clearance at a specified level’.

Without this amendment the determination of who an accused can be represented by is in the hands of the executive and security agencies like ASIO, not the court. These are essentially the same agencies that are bringing the case against the accused. As recently as 18 November, the Law Council of Australia made public a statement headed, ‘The government vets and vetoes defendants’ lawyers’. Referring to this bill it said:

New national security laws dealing with the management of classified information in court proceedings, still pose serious concerns to the Law Council of Australia.

President Steve Southwood, QC, said today that the Bills as presently proposed would still restrict an accused person’s right to a lawyer of their
choice. ‘We remain concerned by the prospect of defence lawyers having to undergo a government sanctioned security clearance in order to represent clients in cases with alleged national security overtones,’ Mr Southwood said.

He said the legislation also required courts to give greater weight to national security, rather than an accused person’s right to a fair trial, when making orders about the non-disclosure of information or witness exclusions.

A bi-partisan committee had recommended this clause be removed ... It also recommended that courts retain the discretion to stay proceedings if the defendant cannot be assured of a fair trial, (Recommendation 6).

Mr Southwood said other important recommendations made by the Senate Committee had also been overlooked, including:

Courts won’t have the discretion to determine the extent to which a court transcript should be sealed or more widely available in applicable proceedings (Recommendation 4);

That defendants only be excluded from closed hearings in limited, specified circumstances (Recommendation 6).

It continued:

The court play an active role in determining whether a lawyer requires a security clearance— Further in the statement Mr Southwood said:

We’re not opposed to reasonable legislation which will improve court procedures in relation to managing security sensitive information. However, any changes to the current approach must be balanced against the need to ensure courts retain adequate discretion over the process and that the fair trial values essential to our system of justice are preserved. In our view, the Bills as presently constituted do not achieve such a balance.

I ask the minister what he has against these recommendations of the bipartisan Senate committee, backed up by the Law Council of Australia and put forward in these Australian Greens amendments. Specifically, why is it that a court should not determine whether a lawyer is eligible to appear for a defendant, rather than that being left to security agen-
the substantive hearing at a later date, whether the information should be protected.

We think the process is a fair one because it will ensure that there is a fair hearing. Of course, the court has the discretion, as I think was alluded to earlier, to say whether the certificate should or should not be granted. In other words, the court holds the key to the process, but it is not determined substantively as to whether the matters are determined by the court. If there is a requirement to have a closed hearing the court still retains the discretion at any stage to come back, depending on how those things unfold. The principles, as I have argued, do in fact ensure that there is the ability to have these closed hearings, and we rely substantively on the statement by the Law Council which accepted that, in the interests of national security, this may be necessary.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.34 p.m.)—A number of issues have been raised in relation to the Greens’ amendments. The government’s position at the outset is that it does not support these amendments. I will deal with those issues in turn. Certainly in relation to the question of the application of a closed court we believe there must be some definition in the bill. A typical subclause that Senator Brown is objecting to is 25(4), where it states that closed hearing requirements apply where there are a number of matters that are fulfilled in relation to the application of witnesses. Senator Brown’s amendments would take away that clear direction as contained in the bill. A typical subclause that Senator Brown is objecting to is 25(4), where it states that closed hearing requirements apply where there are a number of matters that are fulfilled in relation to the application of witnesses. Senator Brown’s amendments would take away that clear direction as contained in the bill. A court considers whether disclosure of information subject to a certificate would prejudice national security—and I think that is the item that Senator Brown’s subject concerns—where a witness statement that is the subject of a certificate would prejudice national security is disclosed and whether information to be provided by a witness relates to national security.

Senator Brown is saying that, in those sorts of circumstances, the court should have the discretion as to whether to have a closed hearing. The government believe that we should have the certainty in the legislation to give the court clear direction from statute that the hearing will be closed. That then takes away the need for the court to exercise that discretion, or in fact to give any statements for the reasons it decided to have a closed hearing. We believe that is the very issue that causes the problem: allowing the court to make that decision and then requiring it to give statements then reveals that information, which was the very information that the government was wanting to keep confidential because of its national security implications.

When we are dealing with other countries on the question of intelligence, we want to give them the assurance that any information they provide to us will be treated in a manner that is appropriate for such information. The Brigitte case was mentioned. Obviously, if we were given information from a foreign country we would have to assure them that our statute contains clear direction and certainty as to how questions of national security will be dealt with. That will then give them the assurance that they can provide us with that information. To cast that onus upon the court invites certain questions as to statements of reasons. That would place the court in an embarrassing position. In any event, it should be something that is contained within the legislation and that is quite certain and transparent in the way it is described.

Uncleared counsel—that is, counsel who do not have a security clearance—cannot receive access to information which relates to or which may affect national security.
Senator Brown mentioned there are implications with this. If his amendments do not get up then lawyers can be excluded from a closed hearing because they are not security cleared. Someone else is making that decision; someone else is thereby affecting the right of a lawyer to appear. I think that is what Senator Brown is saying by virtue of these amendments.

It is important to remember that everyone who has access to information that is likely to prejudice national security possesses the appropriate clearance to do so. It does pose a threat to Australia’s security if information has to be imparted to people who do not have that clearance. Legal representatives who require access to such information must undergo the same vetting process as everyone else, including Commonwealth lawyers who gain access to material. The same rules apply to everyone. I think that again demonstrates the equity in this approach. It is not simply saying: ‘Anyone who is with the government has that access and, if you are not, you don’t have it.’

In the case of privately funded defendants, the United Nations Human Rights Committee jurisprudence confirms that article 14.3(d) of the International Covenant on Civil and Political Rights will be breached if an accused has no choice in their legal counsel. It also indicates that a choice between two state appointed lawyers will not be sufficient. Accordingly, a defendant must have a real choice of legal counsel. We believe that this legislation will not interfere with that choice of counsel because the fact remains that all legal counsel who are involved in these hearings have to have security clearance. The defendant can still choose a lawyer who does not have security clearance, but of course there are ramifications in relation to that choice. The choice could involve a lawyer who would not have access to the information. That is spelt out very clearly. For all those reasons the government cannot support the Greens’ amendments. We believe that they would make the system unworkable.

Senator BROWN (Tasmania) (6.41 p.m.)—This is at the heart of the matter. What the Greens, by way of their amendments, are saying—and they echo what the Australian Law Council is saying and what the Senate committee found—is that we put our trust in the courts. We say that the courts are quite able to determine those matters that ought to be kept out of public view and even from defendants, because national security might otherwise be compromised. The minister says the courts would be embarrassed by that onus. No, I do not think so. I think the government would be embarrassed by the court not making a decision, potentially, which the government wanted made. That is were the embarrassment lies.

This is an intrusion by politics and the executive into the rights of courts in this country. It should be the determination of the court as to whether national security will be infringed by defendants or others becoming aware of information that might come before the court. The government should be able to present that information to a court, put its case and have the court determine whether or not its case is sound. Without that, we have the situation where the government simply says to a court, ‘This information cannot be revealed, and you cannot do anything about it.’

The minister cites arrangements with other governments on intelligence gathering. Let that be put before the court and let the court make that determination, otherwise we have political decisions made as to whether or not information will go before a court. The Attorney-General of the day ultimately makes that decision, and that is why there is objection to this legislation. We have political decisions being made about what evi-
 tendency will appear before a court. We say: ‘Trust the courts. Let the government put its argument to the court and have the court make that determination.’ That is a much fairer system and one which the public can have much greater reliance upon than leaving it to the politician who happens to be appointed Attorney-General of the day.

Then there is the matter of whether a lawyer can be excluded from the court because they are a security risk. Once again what the Law Council is saying, what the Greens’ amendment is saying and what international law would have is that that is a matter that the court can properly and responsibly determine. It should be a matter that is given due and fair weight by a court and not a decision made by politicians. But under this legislation that decision will be made by politicians—that is, the politician appointed by the Prime Minister as the Attorney-General of the day—with the prime ministerial override, I might add, as to who is a fit lawyer and who is not. Can you imagine that? And the courts cannot do anything about it.

This is a very dangerous erosion of the rights of courts to determine evidence, who shall or shall not appear before them and who is or is not a fit person to appear before them. If the national interest dictates that a court should make a determination either on evidence or the integrity of a qualified lawyer in this country then let the government bring the evidence before the court and let the court make that determination. This is a very serious matter.

Let it be legally determined by the justice system. But this legislation says, ‘No, let it be a political decision made by the government of the day.’ Now that is dangerous. We are dealing with legislation that is not here just for today, tomorrow or the next six months or that has a sunset clause; we are permanently withdrawing a century or more of the rights of our legal system and are interfering with the balance between politics and the legal system that is part of the fabric of this democratic nation. We should not stand for it.

I ask the minister: how many lawyers are adjudged unfit to appear before a court for security reasons in this country? Is there a list? If there is not, how is the Attorney-General going to make this determination? Is every lawyer going to be vetted in turn after they have been appointed? What is the process? If there is a list, how many people are on it? This chamber should have that information. If we get into the business of having a government determine who is or is not a fit lawyer to defend somebody that the government is prosecuting then we need to know how the government makes that determination. Lawyers have a right to know how that determination is made and, moreover, how deep into the legal profession this government assessment of who is fit or who is not goes.

I ask the minister: what is the process for determining which lawyers are a security risk and which are not? Who makes that determination and on what evidence? Who gains that evidence and for how long? How is that information on lawyers stored at the moment? What access does the Attorney-General or, indeed, anybody else in government have to that information?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.48 p.m.)—Just briefly, that determination or assessment is made by a section of the Attorney-General’s Department—vetting services contained within the PSCC within the Attorney-General’s Department—and of course that information is confidential. That is the body that carries out the vetting of the solicitor concerned.
**Senator BROWN** (Tasmania) (6.49 p.m.)—Firstly, could the minister please inform the chamber how that section of the Attorney-General’s Department operates. Secondly, could the minister please give the criteria that are used in making such determinations about lawyers qualified in Australia. I ask again: could the minister tell the chamber how many lawyers are currently listed under determinations made by this section of the bureaucracy?

Progress reported.

**DOCUMENTS**

**Consideration**

The government documents tabled earlier today and general business orders of the day Nos 164 to 171 relating to government documents were called on but no motion was moved.

**ADJOURNMENT**

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! There being no consideration of government documents, I propose the question:

That the Senate do now adjourn.

**Eureka Stockade: 150th Anniversary**

**Senator MASON** (Queensland) (6.52 p.m.)—I rise this evening to speak about one of the great historical and cultural frauds perpetrated against the Australian people. It has been noted before on many occasions, but the coming 150th anniversary of this event provides a good opportunity to start reclaiming from the left-wing pantheon one of Australia’s most historic and iconic events. In the United States the Grinch might have stolen Christmas, but in Australia the Labor Party stole the Eureka Stockade. And now is the time to take it back.

It never ceases to amaze me how this simple yet powerful story has been stolen by those on the left of Australian politics and how a giant myth was created to portray the events in Ballarat those 150 years ago as some sort of watershed in the history of the labour movement, socialism and radicalism. Nothing could be further from the truth. Yet the fact that many Australians think of the Eureka Stockade as class warfare turned particularly violent tells us less about what actually happened than about the Left’s dominance in shaping our country’s perception of itself.

Let us look briefly at the facts. The Ballarat miners who assembled at the Eureka Stockade were not downtrodden workers rising up against their capitalist oppressors; they were all entrepreneurs, many of them shareholders in small mining companies and syndicates. They rose up not against ruthless employers—for they were all self-employed—and not over long working hours or unsafe working conditions. No, the target of their anger was the government, and their grievances were oppression by the authorities, heavy and unfair taxation, and lack of political representation. One cannot imagine a more—dare I use the present day labels—liberal constituency pursuing more traditional liberal objectives.

The Eureka Stockade miners could be described, in terms the Leader of the Opposition, Mr Latham, would understand, as our country’s very first aspirational voters. Except, of course, they were not voters yet, and that was one of their grievances. Mr Latham talks about the need for the Labor Party to reclaim the army of the self-employed—contractors, franchisees and entrepreneurs—who over the years have drifted away from the Labor Party. The miners of 1854 were exactly these people. Yet only yesterday, Mr Latham described Eureka as ‘the struggle of the workers’. The Labor Party, sadly, still does not get the past, just as it does not get the present and just as it does not get the future. So the Left has succeeded in turning the Ballarat miners—those unsung heroes and pioneers of the fight for freer markets and
smaller government—into the spiritual forebears of the AMWU, the painters and dockers union, and the BLF. That is what has happened, but the bottom line is: were those people alive today they would vote for the Liberal Party—the party of small business, the party of enterprise, the party of less government intervention and the party of less regulation.

The Eureka miners were not unionists with chips on their shoulders; they were, to borrow from Robert Menzies, the ‘forgotten people’ of the mid-19th century. In today’s language, they were the Howard battlers. That is why I appeal to my colleagues on this side of the chamber: do not be afraid of the Eureka Stockade; do not give up on it and do not let one of our history’s great moments remain the Left’s plaything. See the Eureka Stockade for what it really was, and not what our left-wing cultural gatekeepers have proclaimed, and reclaim the night of 3 December 1854 as one of our own.

Let us have a closer look at the grievances of the Ballarat miners to see why today’s Liberal Party would wholeheartedly support their struggle for justice and a fairer deal. As the pre-eminent historian of the Australian gold rushes Professor Geoffrey Blainey argues, at the heart of the miners’ struggle was the system of unfair licensing and taxation that they had to work under. The size of land they could dig was unfairly and unreasonably restricted. They were forced to pay high licence fees to the government—what Professor Manning Clark called ‘that bloody licence tax’—and they had to pay it regardless of whether they found gold or not. The ham-fisted enforcement of the licence regime was causing constant inconvenience and interruption to the miners’ work. And worst of all, the Ballarat miners found themselves frustrated without any possible recourse. They were at the mercy of laws made by the government in distant Melbourne, by men who were not accountable to them and whose decisions they could not influence through democratic means.

Thus, the Eureka Stockade has nothing in common with the Paris Commune, the Bolshevik revolution or even the Queensland shearsers strike which gave birth to the Australian Workers Union and the Australian Labor Party. In fact, the miners had much more in common with the American revolutionaries of 1776, whose rallying cry of ‘No taxation without representation’ was echoed almost exactly 78 years later in Ballarat. The Ballarat miners were revolutionaries too, but just because you are a revolutionary does not mean you are a leftie. In fact, participants in all the successful revolutions—those of England’s Glorious Revolution, the American Revolution and Eastern Europe’s Velvet Revolution—were certainly not.

It would be tempting to see the Eureka Stockade as a quintessentially Australian celebration of heroic defeat, a sort of Gallipoli in the dusty Victorian bush. Some 30 miners died that night while fighting the police and many more were imprisoned and dragged through the court system. But although the stockade was pulled down their revolt bore an almost instantaneous fruit. Within a few years the demands of the Ballarat miners had nearly all been met.

The 150th anniversary of the Eureka Stockade is much more to me than simply a historical milestone. My great-great-grandfather, Edmond Condon, who in 1852 sailed to Australia from his native Ireland, was one of the miners inside the Eureka Stockade. Edmond Condon took part in the uprising at Eureka along with, among others, his friends Darby Dwyer and Jack Walsh. On the fall of the stockade the three of them ran to Broan Hill and, as they told the story, they were ‘bunged at all the way’, but only Jack Walsh was wounded. Although he regularly
smoked in bed, Edmond Condon lived a long life. His obituary in the Bealiba Times in 1922 recalled:

He was one of the defenders in the Eureka Stockade at Ballarat under the late Mr Peter Lalor on that memorable day in 1854 when the exasperated miners made such a stubborn fight against what they considered the tyrannical conditions under which they were compelled by the mining regulations of that time to obtain their licences.

Thus, you can see that my family has a long and proud tradition of bourgeois revolutionaries fighting for the rights of ordinary Australians. So it is not just for the sake of historical justice and accuracy but also for the sake of the memory of my great-great-grandfather that I want to reclaim Eureka from its left-wing sectarian imprisonment and give it back to Australia’s mainstream, where it very proudly belongs.

World AIDS Day

Senator STEPHENS (New South Wales)
(7.01 p.m.)—I am sure that we are all aware here in this chamber that tomorrow, 1 December, is World AIDS Day. As a global epidemic, Human Immunodeficiency Virus-Acquired Immune Deficiency Syndrome, HIV-AIDS, takes its place with the bubonic plague of the Middle Ages for the millions of lives that it has claimed. The fact that 22 million people have died of AIDS so far but over 36 million are infected means that the worst is yet to come. The AIDS pandemic is distinctive among lethal epidemics in that most of the lives it takes are of adults from 20 to 40 years of age. In Africa the vast majority of people in this age group are parents, so HIV-AIDS has been responsible for deteriorating national and household income, the unravelling of the social safety net of the extended family, and the creation of millions of orphans.

Last Friday night I attended a fundraising dinner held by a young woman in the nearby country town of Goulburn. It was a great night, well patronised by the local community. Kenyan dancers took us into another world; African art and artefacts drew us all into the competitive fun of a private auction; and there were some serious words spoken by local people and by the Kenyan High Commissioner, Mr Lanyasunya. It was the sort of fundraiser that most people in this chamber have attended to support the work of their constituents. But what made this particular event remarkable was its inspirational organiser, Jacinta Conroy.

Jacinta is a lively, fun-loving 24-year-old. She has lived in Goulburn all her life. She plays in the local band, teaches violin to kids of all ages, and she has a big heart. If you saw her walking down the street you would not think there was anything exceptional about her. You would see a fine-looking, poised young woman quietly going about her business. But Jacinta Conroy is exceptional. No, she does not have AIDS: she has a social conscience and the conviction and courage to do something to make the world a better place. The purpose of the function she organised on Friday was a dinner to raise money for children suffering from or affected by AIDS in Kenya. Very commendable, I imagine you thinking. But Jacinta’s commitment does not stop with collecting money and sending it off to Africa. In fact she is going to take it with her to the small community of Mutumbu where she is going to put her energy, talent and compassion to work in an effort to help the children in orphanages and community schools there. She plans to use the skills of local musicians to establish music programs and she will also be travelling around the country studying programs put in place by World Youth International.

Why Kenya? HIV-AIDS is a national disaster for the people of Kenya, children and adults alike. Kenya is estimated to have the ninth highest prevalence of HIV in the world with about 14 per cent of the adult popula-
tion infected. Projections indicate that by 2005 there will be about 820 deaths per day from AIDS in Kenya. There are an estimated one million orphans in that country, and the millions of new infections each year among young adults guarantee that high rates of orphaning will continue for years to come. The Census Bureau estimates that there are currently about 15 million children under 15 who have lost at least one parent to AIDS in Africa and that by 2010 this number will be at least 28 million. By comparison, research suggests that in most developing countries about two per cent of children under 15 years were orphans before the era of AIDS.

In Kenya AIDS affects many more children than just orphans. For each child who has lost a parent to AIDS there are one or two children of school age who are caring for an ill parent, acting as breadwinners for the household, or otherwise unable to attend school because of AIDS. Children who are not orphaned are also affected when orphans are brought into their homes or, obviously, when they themselves are infected.

As we all know, HIV-AIDS is the subject of considerable global attention in the international press and in international policy making as well as in the aid community. In these forums it is common to depict and analyse HIV-AIDS as an economic, social and development catastrophe. What is less understood is that it is a human rights crisis underlining the importance of combating discrimination against HIV-infected persons. As HIV-AIDS in Africa has become a crisis of historic proportions, human rights law including law on the rights of children should inform important public health policy options such as large-scale mandatory testing. Work from UN bodies and others on AIDS and human rights has emphasised that the engine of the epidemic in many parts of the world is sexual violence and subordination of women and girls and recommends that AIDS policy and law must include measures that protect the rights of women.

The UN International Development Fund for Women, UNIFEM, echoes the work of many social scientists in asserting that the epidemic ‘would not have reached such vast proportions’ if women in Africa and around the world were able to refuse unwanted and unprotected sex.

Delegates from 45 countries recently endorsed a report made to the United Nations Commission on the Status of Women that concluded:

Women’s and girls’ relative lack of power over their bodies and their sexual lives, which is supported and reinforced by their social and economic inequality, makes them more vulnerable in contracting and living with HIV/AIDS.

On another human rights front, a vocal worldwide civil society movement is currently promoting the right of persons living with AIDS in developing countries to have access to the same antiretroviral drugs that are widely used in wealthy, developed countries. These human rights analyses of HIV-AIDS, essential and ongoing, have not for the most part focused on children affected by AIDS and the ways in which the epidemic threatens children’s human rights. The plight of children orphaned by AIDS has been the subject of many journalistic accounts and program documents, but there have been few studies of legal and policy protections of children’s rights related to HIV-AIDS. Picture the life of a girl whose parents have died of AIDS: she goes to live with an aunt, who dies of AIDS, and is then cared for by grandparents, who die of old age. Ask yourself: how vulnerable is this child? How likely is she to contract AIDS herself? And who is looking after her human rights?

Children have the right to survival; physical, social and cultural development; health; and education. These rights are guaranteed under the Convention on the Rights of the
Child, the International Covenant on Civil and Political Rights, especially article 24, and the African Charters on Human and People’s Rights and on the Rights and Welfare of the Child, all of which Kenya ratified. But the family based and community-level support and protection that orphans and other vulnerable children have traditionally had recourse to is unravelling in Kenya and other AIDS affected countries. So who will fight to protect their rights? While the contribution of people like Jacinta Conroy is invaluable, it is vital that governments also take measures to ensure protection of the rights of children affected by HIV-AIDS. Because HIV-AIDS so often impoverishes and stigmatises the children it affects and claims the lives of so many in their extended family, AIDS-affected children face many obstacles to staying in school and thus fulfilling their right to education. They are further disadvantaged in many ways by the unscrupulous and unlawful appropriation of property that they are entitled to inherit from their parents, and in Kenya they are rarely able to take legal action to protect their inheritance rights.

These problems are compounded in Kenya by apparently poor access for children and young adults to appropriate and clear information about HIV-AIDS, which puts children at risk of being unable to protect themselves from HIV transmission. While Kenya needs to strengthen protections of the rights of AIDS affected children, it is far from alone in this responsibility. At the fund-raising auction I attended, the High Commissioner for Kenya, Mr John Lanyasunya, spoke of the approach to AIDS taken by Uganda, Kenya’s neighbour to the west. Here government leaders recognised as early as the mid-1980s the threat of HIV-AIDS and acted to stop it. In 1986, Uganda became the first country in Africa to collaborate with the World Health Organisation Global Program on AIDS to create an intersectoral national AIDS control program. The successes in reducing the rates of transmission in Uganda are most often attributed to the government’s leadership and that is where our support can make a difference: Australia should encourage and support the Kenyan government’s efforts to ensure that AIDS-affected children are protected from abuse, neglect, disinherittance, hazardous labour and premature withdrawal from school. And on World AIDS day we should all be speaking out for that.

Zimbabwe

Senator MURRAY (Western Australia) (7.11 p.m.)—On Monday, 22 November 2004 I received an email from a well-placed man I have known for over 30 years, a dedicated and committed Zimbabwean. I thought what he had to say worth repeating in the Australian Senate, as a signpost to the dreadful situation in that country. It is not just a commentary on what has happened there, and is happening there, but includes a commentary on international institutions and often negative outcomes. For obvious security reasons I will not attribute this piece, but I will repeat his words:

We have just had a team from the International Monetary Fund here. Headed by the Director for Africa they stated that their reason for coming to Zimbabwe was a last ditch attempt to head off the compulsory expulsion of Zimbabwe from the IMF for non-payment of our debt to the IMF.

Their press release following the visit talked of a meeting with President Mugabe and a restatement of the Fund’s position on Zimbabwe and what we needed to do to pull us back from the edge.

These multilateral institutions operate on the basis that their members are all independent governments and that their own debt in each country is a first priority when it comes to debt servicing.

There is scant regard paid to the circumstances under which the debt was originally incurred or
the direct consequences of the debtor countries own actions and self inflicted damage.

So you have the IMF and the World Bank and their many affiliates, dealing with countries like the Congo. Even though the Congo hardly has a government and is about as a corrupt and incompetent a collection of people you can find anywhere.

Because they describe their activities in these terms, the multilateral institutions work on the assumption that what they are doing in the world economic system is good, irrespective of the mounting evidence to the contrary.

Before Independence in Zimbabwe, the then settler regime had no relations with any of the multilaterals. Forced to rely on their own resources and ingenuity, they established a small, reasonably honest government, which administered the country’s resources and economy with remarkable efficiency.

When we came to independence in 1980 we had a currency which was stronger than the US dollar and the British pound in local markets, there was virtually no black market for anything, the country had a small export orientated economy which delivered to its people an income per capita that was second only to South Africa in the region.

Our food was the cheapest in Africa and our small but sophisticated medical and education system delivered services that were unrivalled on the Continent.

We now live in a country where all of those foundations have been swept away. We have a large, inflated government that is corrupt from the top to the bottom, our local currency is worthless, our export industries are in ruin and one third of our total population has fled the country—mainly for political and economic reasons.

We are now near the bottom of the log in terms of income per capita and our social infrastructure is in a shambles—producing school graduates that can hardly read or write and are not functionally numerate.

We have seen the fastest collapse of life expectancy of any country in the world that is not embroiled in conflict.

The reasons are not sanctions as the Mugabe regime sprouts at every opportunity—the Rhodesians spent 15 years under UN mandatory sanctions and survived, they are not colonial—we never were a colony in the strict sense of the word, we were a self governing dominion within the Commonwealth from virtually 1923.

They were not conflict—the Rhodesians fought a savage, no holds barred civil war for 8 years before they succumbed to international and regional pressure.

No, this collapse in our economy, our social infrastructure and society is totally self-inflicted. We have no one else to blame but ourselves. We decided to live beyond our means; we decided to undermine the rule of law and the sanctity of our own constitution.

We subverted our Courts and neglected our civil service. We wasted our scarce resources on the senseless war in the Congo and on patronage extended to a political minority on whom the State depends for survival.

No, our scars are self inflicted and just for once, I would like to hear someone—anyone, from any of the multilateral institutions say so. The United Nations, the United Nations Development Programme, the IMF and the World Bank, the Asian Development Bank. Anyone.

But there is nothing but silence and double speak such as we heard this week from the IMF.

I would have thought that a much higher priority for Zimbabwe than the servicing of IMF loans would be feeding the people, treating the victims of the Aids pandemic, providing for the million children who are Aids orphans.

What about the thousands of pensioners who have not had their pensions paid for the past year or even longer, many of whom are starving and dependent on others for survival?

What about the billions of dollar (real dollars) of assets stolen from their rightful owners with no prospect of compensation or legal redress? I would have thought that the IMF should demand these priorities as preconditions to membership, not simply the repayment of debt by a starving nation that is on its knees.
We all know that only democratic states that respect the rule of law have any chance of success in economic and social terms. Where are the stated priorities of these multilaterals on these issues?

If we are going to bring delinquent governments like the Mugabe regime into line, we all have to speak the same language and play the same tune. Instead we have the State owned Herald with banner headlines stating that the IMF has thrown Zimbabwe a lifeline.

Giving Mugabe the slightest hope that he will be forgiven for all that he has done will only perpetuate the agony, not solve the problem.

Just this past week we have seen the Zanu juggernaut at work—setting the democratic clock back another 20 years, harassing the opposition and civil society at every opportunity and subverting the rule of law and virtually every tenet of sound democratic practice.

We are not making progress—we are going backwards, economically, socially, politically. We are losing ground on every front and it is our people who are paying the price.

We expect the international community and its representative organs to defend the principles of freedom and progress whenever they are given the opportunity.

So when the IMF comes to Harare and engages the State and defends its position with double speak instead of plain talking, we have every reason not to trust them with our future.

To those words of his I will add that racism brought Rhodesia undone. Racism has also brought Zimbabwe undone. Rhodesia was never the racist abomination that apartheid South Africa was. Rhodesia’s racism was more paternalist and elitist, but it was undeniably discriminatory and offensively exclusionist. That racism led to the civil war of liberation. Enter Robert Mugabe, a leader in the war of liberation—yet another racist, not just towards whites but to the Ndebele and other nations in Zimbabwe.

Mugabe’s leadership long ago degenerated into a corrupt, murderous, incompetent tyranny. His government’s crimes against Zimbabweans are legion. The damning indictment of so many of Africa’s politicians and leaders is that they have stuck by him. This is particularly so of South Africa. Pressure from them would have minimised the terrible regional, social and economic consequences of Mugabe’s rule—consequences which are so destructive and harmful to Zimbabwe and its neighbours. I do hope that Australia will continue to apply pressure and assist the situation so that at some stage in the near future Zimbabwe will be able to move on from Mugabe and his dreadful government.

Australian Stem Cell Centre

Senator MURRAY (Western Australia) (7.20 p.m.)—Mr Acting Deputy President, I have been given a copy of a speech which was to be made by Senator Natasha Stott Despoja, who, as you know, has been given leave of absence. I seek leave to incorporate Senator Stott Despoja’s speech.

Leave granted.

Senator STOTT DESPOJA (South Australia) (7.20 p.m.)—The incorporated speech read as follows—

On Monday, November 22 I was honoured to open the Australian Stem Cell Centre’s Second Annual Scientific Conference in Sydney. This conference featured a distinguished and impressive array of international speakers, such as Professors Weissman and Itescu and Doctors Allsop, Scadden and Watt in addition to our Australian scientists who are among the world leaders in their field.

The conference’s timing was significant—coming almost 2 years after the very public and, at times, acrimonious debate over stem cell research in this Parliament. As honourable Senators would recall, the debate—one of the longest in Parliamentary history—was challenging and controversial with no prospect of consensus over allowing the extrac-
tion of embryonic stem cells from excess ART embryos that had been donated with informed consent.

I was an active advocate for the legislation including co-authoring the Senate report in favour of the bills. And I am glad to have played a role in ensuring the passage of the legislation.

I believed then—as I do know—that there are sound grounds to encourage research that may alleviate disease; that there is intrinsic value to understanding biological processes such as cell differentiation and regeneration, independently of whether that yields direct medical applications; and, a sound, nationally consistent regulatory framework is necessary to provide publicly accountable oversight of research on excess ART embryos that otherwise would be allowed to succumb.

My support was not predicated on miracle ‘cures’ being around the corner.

Unpredictability and uncertainty are intrinsic characteristics of scientific research. Whether scientists will fully or partially address the myriad of challenges such as overcoming immunological rejection or the ability to safely control cell differentiation in the short, medium or long term is simply not known at this stage.

It is premature to make overblown claims about cures generated by stem cell research. We simply do not know enough about the how, what or why of potential therapies as yet. But while we must be realistic, it would be unethical not to invest in possible treatments: to invest in hope, understanding and potential.

In the past few years, we have seen some amazing advances in stem cell research within Australia and internationally. Last week’s conference was a chance to celebrate and promote those achievements.

One of the most exciting advances for Australia has to be that Australian scientists cultured embryonic stem cells from an Australian embryo in Australia this year.

Just last month, Professor Alan Trounson raised the concept of replacing human eggs with rabbit eggs in therapeutic cloning for the production of embryonic stem cells.

Recent Australian reports have stated around half of bone marrow stem cell transplantations had been successful for patients suffering from leukaemia and other blood cancers.

US scientists have reported the injection of embryonic stem cells into female mice has saved their offspring from a lethal heart problem, while the Canadians have reportedly found pancreatic stem cells—although I believe there is still some debate over that one.

This year, we have also seen the UK open a national stem cell bank; Sydney Cellular Therapies Laboratory open at Westmead hospital in Sydney; and the Human Fertilisation and Embryology Authority change its mind on so-called ‘saviour siblings’.

In the two and a half years since its establishment, the National Stem Cell Centre, now the Australian Stem Cell Centre, has made many significant achievements, not the least of which was securing its future through a $55 million grant announced by the Prime Minister in May.

The centre is one of only two National Centres for Excellence announced as part of the Government’s Backing Australia’s Ability program.

In the past year, the Centre has honed its research interests and initiated eight Project Agreements and three strategic commercial arrangements to support those projects. The lodging of five US patent applications is another indication of significant progress.

I am sure the ASCC team eagerly awaits the completion of their Monash University laboratories around Easter next year.

The establishment of the independent ethics advisory committee—Stem Cell Ethics Australia—headed by world-renowned Reverend Colin Honey—will play an important role in informing a balanced debate on stem cell issues.

This remains one of the Centre’s greatest challenges as it continues to initiate new research projects.

Balanced debate will be essential on an international and domestic level.

I am not sure if colleagues have been aware of the debate on cloning at the United Nations: an issue...
I have been pursuing without clear responses from the Government.

Australia did a back flip on this issue at the UN: after initially opposing the Costa Rican motion which proposed a ban on all forms of cloning, we co-sponsored it, despite this pre-empting our own review process.

As colleagues might be aware, the review of the Research Involving Human Embryos Act and the Prohibition of Human Cloning Act in Australia is due shortly.

As the review of both Acts will be a joint review, the Minister’s choices will be important in shaping the composition of the review committee. I ask the Government if the Minister has already presented the details of the proposed review to the Prime Minister?

One of the successful amendments I moved during the passage of the legislation calls for the reviewers to consider and comment on the recently released ALRC report, Genes and ingenuity: Gene Patenting and Human Health. The report recommended the review also examine the issues of the exploitation of intellectual property rights over stem cells when they consider the establishment of a National Stem Cell Bank. I think there are many good reasons to consider the establishment of a National Stem Cell Bank, including boosting Australia’s leading role in international stem cell research into the future. However, I am sure the debate over the stem cell bank will again draw criticisms from some sectors of the community.

Stem cell research is still a prickly issue for some in the community, although public support for this important research is steadily being won over as people are progressively educated about the potential benefits.

Interestingly, a recent study by Swinburne University found that almost 65 per cent of Australians supported stem cell research conducted by public sector scientists, but only 36 per cent supported research by private Australian companies.

The same study found 66 per cent of people supported research with adult stem cells, 54 per cent approved of using stem cells extracted from surplus IVF embryos, while only 36 per cent of people were in favour of using stem cells from cloned embryos.

I was honoured to meet Christopher Reeve and pay tribute to his work tonight in this adjournment debate. His death marks a significant stage in the stem cell debate.

When he spoke about the positive aspects of therapeutic cloning technologies in layman’s terms at a Sydney dinner, many people said to me “that’s a great idea, do we have that?” I explained our legislation specifically bans Somatic Cell Nuclear Transfer, indeed, that our legislation is quite conservative. I often think that had Superman visited Australia 6 months earlier we might have seen a different outcome.

Reeve’s and others activism helped raise the profile of stem cell research to a level where it became a major campaign issue in the US election which, in turn, gave it international publicity.

Stem cell research issues have also drawn attention from other high profile advocates with Governor Schwarzenegger and Mel Gibson having a public argument about the Californian Proposition 71 to provide $3 billion of funding for stem cell research over 10 years. Brad Pitt even lent his support to the proposition which Reeve was heavily involved with, as was, I believe, Professor Weissman.

The proposition, which will see the building of a “California Institute for Regenerative Medicine”, was supported by 59 per cent of the Californian people. With President Bush’s conservative stance on stem cell research, California’s investment has been likened to a “gold rush” that will attract researchers from the rest of the US.

I hope we do not lose any more of our Australian scientists overseas because of this.

It is a credit to the ASCC that they have been open and transparent—taking into account commercial considerations—in their research and have embraced the broader roles prescribed by the Government such as the promotion of biotechnology research.

Last week’s conference was just one of the results of the ASCC’s efforts to promote Australian biotechnology. I was also particularly pleased to see the ASCC Postgraduate Scholarship Program.
commence this year, with ten scholarships being awarded. Students definitely need them.

All these initiatives go to the heart and the major challenge of these debates—ensuring the community is well informed and not afraid of the technology.

Mr President, I look forward to the commencement of the review of the legislation and to receiving more information from the relevant Ministers as to what is planned.

Health: Breast Cancer

Senator MOORE (Queensland) (7.20 p.m.)—This evening marks a fairly special date for me: exactly 12 months ago today I was told that I had breast cancer. Hearing that said to your face is a very confronting moment, and there is no preparation for it. You can know about the issue and you can have studied it. I was very fortunate because I was not taken by surprise about the issue of breast cancer. I was lucky enough to have been a member of the Australian Public Service. During the eighties, a wonderful organisation within the Australian Public Service called Queensland Women in the Public Service gathered women together on a range of social justice issues as well as development and training issues and worked to give information and make women feel stronger. One of our causes in the late eighties was the then relatively unknown issue of breast cancer in the community. We knew it existed—people we knew had been diagnosed. But the range of options available was relatively unknown, as was the fact that hearing that you did have cancer was not necessarily the end of your chances; it could be just a way to make a change to your life. Even with that background, having known about the issue and having met and spoken with many women and their families, there is nothing that prepares you for that moment when you are told that you are one of those women—no longer just someone who is offering support and advice but rather someone who is living with the issue.

Tonight I need to give an amazing range of thankyous to so many people. When I was told that I had the condition I went along and had the normal tests—all the things that I knew about—but no-one can prepare you for knowing that it was going to be you going to the clinics, talking to the people and having those numerous test results in front of your face. The other thing is that within three days of being told that I had this condition I was able to be admitted to hospital to have surgery. It was another very difficult time, because when you are going through that preparation phase you do not know how bad it is going to be. You wait and you have to trust. There is no option to trusting in that situation. I was so fortunate to be able to have the services in Brisbane of the Wesley breast clinic there to help me. Amazingly, even though hundreds of women are going through that clinic every day, there was a sense that that clinic, those nurses, those doctors and those support staff were there for me. That is one of their strengths: they make you feel so valuable.

So many people now know the process in terms of the support that is available, the medication and then that magic moment when you have to go through the radiography, an issue that I had not faced until that time. Once again, there is that tremendous sense that you are fortunate because you are able to have that support and because you are sharing this service with so many other people. I do not think words can possibly explain the feeling of those daily visits to the clinic, sitting waiting for maybe two minutes within the system and those huge machines that cost millions of dollars that are there working to make you better.

When you are sitting there waiting to have your treatment, in a waiting room with up to
40 people and their friends and supporters, who are going through the same grind day after day—some getting good news, and you share the good news—you actually get to know the people over the 12 weeks of daily treatment. You get to know the people who are sharing this experience with you. You can sense when people have had good news and when they have had not-so-good news. It is funny, because my natural response was to try to keep this very close, very private and not to talk to people—to try and get through with what I hoped would be dignity and calm. That was accepted as well.

I said that it was very difficult to hear the news. The other aspect that is just as difficult is sharing that news with other people, telling other people that you have this illness—that no longer are you someone who knows about it but that you really know about it because you are living with it.

Recently on the ABC in Brisbane we had a series of information sessions on talkback radio. One of the local disc jockeys was talking about his own experience of finding out about a friend of his who had breast cancer, and the fact that he did not know what to say. This opened a stream of talkback calls that went on for several days, because people wanted to talk about their own experiences. They wanted to know, they wanted to share and they wanted to explain that there are no right words. People can think they have the right words and the right approach, but there are no right words.

I usually hate statistics, but the amazing statistics are that in Australia in 2000—which is a bit of a long time ago, but these are the most up-to-date figures—a total of 11,314 women and 86 men were diagnosed with breast cancer. Those are the people who actually went through the process and found out that they had this condition. Those 11,314 women and 86 men were all facing this condition in different ways but they all had to tell their families and friends about their condition. Suddenly they were a statistic, and that is pretty damn confronting—to find out that you are a statistic, that people are counting you and that they are looking at your ‘survival rate’, a term I hoped I would never hear. But the term ‘survival rate’ came out. I have been told that I am very fortunate. Because of the knowledge I had through working with Queensland Women in the Public Service, I was aware of the need to check regularly, to think about the possibility that I might have a condition.

When I felt something that was not right, I immediately went to the doctor. Despite all the information and education programs that there have been over the last 10 to 15 years, recent surveys have found that still there is some kind of blockage for many women against taking the step between knowing or thinking there is something wrong and actually seeking treatment. If there can be one message that can go out, it is this: please, please, when you think there is something that is not working right, when you feel a lump, when you are not sure, go to the doctor. One of the clear things that has come out in the research in the last few years is that the earlier people seek help, the greater their chance of survival will be.

I want to mention tonight a wonderful community based organisation which is linked to the Wesley Hospital in Brisbane, and it is called the Kim Walters Choices Program. This is a free community support program that has been set up in memory of a great woman, a young woman, Kim Walters, who unfortunately did not have a ‘survival rate’. But her family and her friends needed her memory to be celebrated, and the things that can be done are now part of the daily lives of many people who are facing this condition. People can access the range of choices to the extent they may need or they
can just say hello. The choices program is there to give support to women, to men who also have this condition and to their families and friends. It supports kids of women who have the condition, who just want to talk about how they feel or want to be part of a playgroup. The program teaches new exercise programs, because one of things about breast cancer is that the treatments sometimes seem almost as bad as the condition and you have to survive a whole range of processes. Programs such as the Kim Walters Choices Program help you through that, making you strong when you want to be strong and letting you be weak when you need to be weak because they have accept ance and knowledge.

The Kim Walters program relies on community donations—and there have been community donations. I particularly want to mention the amazing work that schools are doing. Often the schools’ fundraising work is being stimulated by knowing someone, a family member or a teacher, who is a breast cancer person—not a survivor, not a sufferer, but a person with breast cancer. My nieces go to school at St Hilda’s Southport where they focused all their fundraising activity this year on breast cancer because one of their teachers has breast cancer. These kids had fundraisers and have worked together because they know they can make a difference. Research and support helps. Please remember that the people around you may be living with this condition and they need your support. We must have ‘survival rates’ and we must have choices.

Senate adjourned at 7.30 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

Audio-Visual Copyright Society Ltd (Screenrights)—Report for 2003-04.
Audio-Visual Copyright Society Ltd (Screenrights)—Errata.
Australian Fisheries Management Authority—Report for 2003-04.
Australian Pesticides and Veterinary Medicines Authority—Report for 2003-04.
Australian Postal Corporation (Australia Post)—Statement of corporate intent 2004-05 to 2006-07.
Australian Submarine Corporation Pty Limited (known as ASC Pty Ltd after 1 October 2004)—Report for 2003-04.


Military Superannuation and Benefits Board of Trustees—Report for 2003-04.


Queensland Fisheries Joint Authority—Report for 2002-03.


Tabling

The following documents were tabled by the Clerk:

Australian Prudential Regulation Authority Act—Non-Confidentiality Determination No. 6 of 2004.


Export Control Act—Export Control (Orders) Regulations—Export Control (Fees) Amendment Orders 2004 (No. 4).


Taxation Determinations—Notices of Withdrawal—

TD 93/124.
TD 94/57.
TD 95/24.
TD 96/31.
TD 97/13.
TD 98/14.
TD 1999/30.

Taxation Ruling TR 2004/16.
QUESTION ON NOTICE

The following answers to questions were circulated:

**Customs: SmartGate System**

*(Question No. 3102)*

Senator Ludwig asked the Minister for Justice and Customs, upon notice, on 29 July 2004:

1. Did SAGEM Australasia Pty Ltd recently win a contract to work with the Australian Customs Service on its SmartGate border control system.
2. How many other companies submitted tenders for this contract.
3. Who decided on the winning tender.
4. When is SmartGate expected to be in operation.
5. What is the cost of the tender.
6. What training is needed to operate SmartGate.
7. What information technology backup will be available during the implementation and subsequent operation of SmartGate.

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

1. Yes. Customs conducted an open Request for Proposal procurement process for a Strategic Partner for the development of automated border control in late 2003, which resulted in a Head Agreement being signed with SAGEM Australasia Pty Ltd in May 2004.
2. 11 companies submitted proposals.
3. Tim Chapman, National Manager Passengers Branch, Australian Customs Service approved the evaluation committee’s recommendation of the preferred proponent.
4. SmartGate is a trial, not a production system. The trial commenced at Sydney International Airport in November 2002 and will be extended to another airport and additional users in late 2004.
5. The agreement with SAGEM Australasia that resulted from the Request for Proposal procurement process provides the framework for specific contracts to be formed but it does not guarantee any work. Under the Head Agreement there is a notional amount of $500 000 for works in 2004/05.
6. SmartGate was designed to be very intuitive and new users are provided with a Help Card at the time of their enrolment. All Customs officers working at the related airports attend SmartGate briefing sessions and those directly related to the operation of the kiosk undertake specialised training.
7. In the event of any failure of the system, the backup is to revert to existing manual processing systems utilising the passenger processing IT system.

**Attorney-General’s: Biometric Technology**

*(Question No. 3104)*

Senator Ludwig asked the Minister representing the Attorney-General, upon notice, on 29 July 2004:

1. Have any funds earmarked in the 2004-05 Budget for biometric technology been paid to contractors; if so: (a) which contractors; (b) what was the contract for; and (c) when did the contract commence.
2. For each contract, which department will benefit from the biometric technology.
3. How were the tenders selected.
(4) Who was on the selection panel for each of the tenders.

(5) Are tenders being sought to provide biometric security technology for the following areas: (a) critical infrastructure; (b) immigration; (c) the Australian Customs Service; and (d) the Australian Federal Police.

(6) If tenders are being sought, can a list be provided of contracts currently sent to tender.

(7) If tenders are not being sought, are there any plans to contract out tenders for these areas; if so, what for and when; if not, why not.

(8) Is the Government committed to introduce this technology on a wide scale in order to improve security of Commonwealth departments; if so, what steps has the Government taken to ensure this is achieved.

(9) (a) When does the Government intend to implement biometric security measures in Australian airports; and (b) what is the expected cost.

(10) (a) Which department will have overall control of the biometric technologies within the airports; (b) what will the cost be for information technology support; (c) is this an additional and annual cost; and (d) is the Government aware of any intellectual property issues surrounding this technology.

**Senator Ellison**—The Attorney-General has provided the following answer to the honourable senator’s question:

1. The Australian Government committed $9.7 million in the 2004-05 Budget towards a package of research and development for the use of biometrics at the Australian border by the Department of Foreign Affairs and Trade (DFAT), the Australian Customs Service (Customs) and the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). The Office of the Federal Privacy Commissioner (OFPC) is also a valuable participant in the development of this technology.

The contractors paid from 1/7/04 - 28/8/04 are set out as follows:

**DFAT:** Yes

(a) Unisys
(b) Support for the Biometric Research and Development Project
(c) 12 August 2002

**Customs:** Yes

(a) Cognitec Systems
(b) Face recognition software maintenance and support for the Biometric Research and Development Project
(c) 5 July 2002

**Magnetic Automation**

(a) Hardware installation for the Biometric Research and Development Project
(b) Tri-agency joint program manager for the Biometric Research and Development Project
(c) July 2002

**Candle ICT Recruitment**

(a) Tri-agency joint program manager for the Biometric Research and Development Project
(b) 13 July 2004

---

QUESTIONS ON NOTICE
### QUESTIONS ON NOTICE

**DIMIA:** Yes

<table>
<thead>
<tr>
<th>(a)</th>
<th>Jebel Consulting Group Pty Ltd</th>
<th>Jebel Consulting Group Pty Ltd</th>
<th>PAXUS Australia Pty Ltd</th>
<th>Candle ICT Recruitment Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)</td>
<td>DIMIA Program manager for the Biometric Research and Development Project</td>
<td>DIMIA Business Architect for the Biometric Research and Development Project</td>
<td>DIMIA Solution Architect for the Biometric Research and Development Project</td>
<td>Tri-agency joint program manager for the Biometric Research and Development Project</td>
</tr>
<tr>
<td>(c)</td>
<td>22 September 2003</td>
<td>6 April 2004</td>
<td>1 July 2004</td>
<td>13 July 2004</td>
</tr>
</tbody>
</table>

**OFPC:** No

2. N/A for the research and development project outlined at (1) above.

3. DFAT, Customs and DIMIA have adhered to the Commonwealth Procurement Guidelines for the procurement of the contracted services:
   - DFAT undertook a competitive evaluation process
   - Customs undertook a competitive evaluation process and directly engaged contractors.
   - DIMIA directly engaged contractors.

4. DFAT: John Osborne- Director Passport Systems and Technology, Terry Hartmann- IT Manager, Mark Wallis- IT Adviser
   - Customs: For the evaluation process – Fiona Fraser- former Director Traveller Strategies, Matthew Bannon- former Manager Traveller Strategies and John Potter- former Manager Traveller Strategies. N/A for the direct engagements
   - DIMIA: N/A

5. (a) – (b) N/A for the research and development project outlined at (1) above.
   (c) No. Customs conducted an open Request for Proposal procurement process for a Strategic Partner for the development of automated border control in late 2003, which resulted in a Head Agreement being signed with SAGEM Australasia Pty Ltd in May 2004 (see SENATE Question on Notice No. 3102).
   (d) The AFP has not sought any tenders for biometric security technology.

   **DFAT:** Yes

6. DFAT tender processes are underway for Public Key Infrastructure (PKI) and the acquisition of Chips for the Australian Passport. A tender process is being developed for the integration of facial biometrics in passport issuing and processing systems.

7. N/A for the research and development project outlined at (1) above.

8. Individual agencies have applied various levels and types of biometric technology to security purposes where their risk analysis and risk management practices have indicated this is the most effective and efficient type of security procedure to apply to treat the security risks identified. However, for many agencies biometric technology is not a cost effective risk treatment measure. This may change as technology matures.

9. (a) – (b) As outlined at (1) above, the Government is trialling biometric technology for international travellers through the package of research and development for the use of biometrics at the Australian border by DFAT, Customs and DIMIA. The results of this cross-portfolio research and development program will inform decisions about implementing this technology in the future.
(10) (a) Currently Customs is the only agency trialling biometric technologies within airports.
(b) Information technology support for current trialling of biometric technologies within airports by Customs is estimated to cost $6300 per month.
(c) No. This cost of information technology support is a component of the funding allocated to Customs as part of the cross-portfolio package outlined at (1) above.
(d) Yes.

**Defence: Contracts**
(> Question No. 65)

**Senator Chris Evans** asked the Minister for Defence, upon notice, on 17 November 2004:
For each Defence establishment, can the following information be provided: (a) whether contracts have been let for garrison support work; (b) the name of the organisations that are undertaking the work; (c) the nature of the activities covered by the contract (for example, cleaning, catering, security, laundry etc); (d) the date the contract commenced; (e) the date the contract ends; and (f) the value of the contract.

**Senator Hill**—The answer to the honourable senator’s question is as follows:
(a) Yes. This work has been let on a regional basis with the exception of Tasmania, which lets contracts for each activity.
(b), (d), (e) and (f).

<table>
<thead>
<tr>
<th>REGION</th>
<th>ORGANISATION</th>
<th>START DATE</th>
<th>EXPIRY DATE</th>
<th>ANNUAL CONTRACT VALUE / FY ($m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Southern Victoria</td>
<td>Transfield Services</td>
<td>1 Sept 99</td>
<td>1 Sept 05</td>
<td>62.0</td>
</tr>
<tr>
<td>Riverina Valley</td>
<td>Tenix</td>
<td>Feb 98</td>
<td>Feb 05</td>
<td>16.5</td>
</tr>
<tr>
<td>Sydney West/South</td>
<td>United KG</td>
<td>11 Jun 97</td>
<td>10 Jun 05</td>
<td>15.6</td>
</tr>
<tr>
<td>Sydney Central</td>
<td>BAE</td>
<td>Feb 00</td>
<td>Apr 05</td>
<td></td>
</tr>
<tr>
<td>ACT/ SNSW</td>
<td>ESS Support Services Worldwide</td>
<td>19 Jun 00</td>
<td>18 Jun 05</td>
<td>28.4</td>
</tr>
<tr>
<td>Central Northern NSW</td>
<td>Serco Sodexho Defence Services</td>
<td>8 Oct 99</td>
<td>7 Nov 05</td>
<td>30.2</td>
</tr>
<tr>
<td>South Queensland</td>
<td>Spotless Services Australia Ltd.</td>
<td>11 Jun 97</td>
<td>10 Jun 05</td>
<td></td>
</tr>
<tr>
<td>North Queensland</td>
<td>Transfield Services</td>
<td>3 Dec 97</td>
<td>31 Jul 06</td>
<td>07.7</td>
</tr>
<tr>
<td>South Australia Woomera</td>
<td>BAE Systems</td>
<td>1 Aug 04</td>
<td>31 Jul 09</td>
<td>30.7</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Transfield Services</td>
<td>15 Mar 99</td>
<td>31 Jan 07</td>
<td>30.9</td>
</tr>
<tr>
<td>Northern Territory/Kimberley</td>
<td>Serco Sodexho Defence Services</td>
<td>15 Mar 99</td>
<td>31 Jan 07</td>
<td>23.8</td>
</tr>
<tr>
<td></td>
<td>Other Contractors</td>
<td>Various</td>
<td>Various</td>
<td>01.9</td>
</tr>
</tbody>
</table>

**QUESTIONS ON NOTICE**
<table>
<thead>
<tr>
<th>REGION</th>
<th>ORGANISATION</th>
<th>START DATE</th>
<th>EXPIRY DATE</th>
<th>ANNUAL CONTRACT VALUE / FY ($m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tasmania</td>
<td>Chubb Security Australia General Window and Cleaning Collex Sersonbeck Corporate Maintenance Solutions</td>
<td>Various</td>
<td>Various</td>
<td>.12</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>341.1</strong></td>
</tr>
</tbody>
</table>

(c) Access Control Services
    Accommodation Management Services
    Air Support Services *
    Cafeteria Services *
    Cleaning Services
    Clothing Store Services
    Fire Fighting and Rescue Services
    Grounds Maintenance Services
    Hospitality and Catering Services
    Laundry and Dry Cleaning Services
    Management of Petroleum, Oils and Lubricants and Associated Support Services
    Pest and Vermin Control Services
    Powerhouse and Over-the-side Services *
    Range and Training Area Management Services
    Sport and Recreational Services
    Stores Management Services
    Surge Support Services
    Transport Services
    Waste Management Services
    Workshop Services *
    * Provided at selected regions only

**Defence: Project Sea 1390**

*(Question No. 67)*

Senator Chris Evans asked the Minister for Defence, upon notice, on 17 November 2004:

With reference to Project Sea 1390:

(1) Can an assessment be provided of how this project is proceeding.
(2) Have the problems that caused the project to be delayed by 2 years been overcome.
(3) Is there a chance that the project could be further delayed.
(4) When will the upgrade of the HMAS Sydney be completed.

(5) (a) When will the upgrade of the ships subsequent to the HMAS Sydney commence; and (b) for each ship, when will the upgrade be completed.

(6) (a) How much scope is there for Defence to absorb additional costs if there are further delays or design variations; and/or (b) will further delays or design variations lead to a budget blowout.

(7) Given that only 4 ships are being upgraded instead of the 6 planned, will the budget for this project be revised downwards; if not, why not.

(8) Can details be provided of all incentive payments or bonuses that could be payable to the contractor for this project.

(9) Given that the project is 2 years overdue, why is the Commonwealth still liable for incentive payments and/or bonuses.

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

(1) The project is progressing steadily and significant contractor effort is now being applied. HMAS Sydney completed its docking phase in late March 2004 and the installation and production work continues. The ADI current focus is to finish production activities, and then to commence the combat system integration. ADI has recently advised an estimated completion of contractor sea trials in mid-May 2005. This remains within the overall revised schedule.

(2) The schedule delay was attributed to a number of factors including the complexity of the command and control software design and integration. ADI made contractual changes to have greater autonomy over the combat system design and delivery and adopted a staged approach to delivering the combat system software. Steady progress has been made since these changes were implemented.

(3) The upgrade project is a significant and complex undertaking. As with all such projects, the level of uncertainty and risk is carefully monitored by the Commonwealth and managed by the prime contractor. At this time, delays are being managed within the revised schedule. However, future unforeseen delays can never be ruled out. The contract contains a delivery window to allow for such occurrences.

(4) Mid-May 2005, but with a contract delivery date of 17 June 2005.

(5) Commonwealth handover of the first follow-on FFG for upgrade is linked to successful completion of contractor sea trials of the lead ship. The commencement and completion dates of other two remaining ships are subject to negotiation with the Navy and ADI, cognisant of the Navy’s operational requirements and ADI’s industrial capacity to meet project completion by 2008. The exact timing for the reduced scope of four ships is currently being negotiated with ADI.

(6) (a) The project contingency remains adequate. (b) See above.

(7) As the prime contract is a fixed price arrangement, contract savings are still to be negotiated with the prime contractor.

(8) Specific details of incentive payments are commercial-in-confidence (see response to Question W7 part c from the Additional Estimates 2003-04 hearing in March 2004).

(9) The performance incentive provisions of the contract have been restructured so that ADI is focused on schedule performance and the incentives are weighted towards achievement of an 18-month target schedule with payments reducing to zero at 24-months delay. It is to both Defence and ADI’s benefit to achieve earliest viable delivery of the required capability.