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Thursday, 2 December 2004

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

NOTICES
Presentation

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.31 a.m.)—I give notice that, on the next day of sitting, I shall move:

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

Copyright Legislation Amendment Bill 2004;
James Hardie (Investigations and Proceedings) Bill 2004;

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

Leave granted.

The statements read as follows—

COPYRIGHT LEGISLATION AMENDMENT BILL

Purpose of the Bill
The bill amends the Copyright Act 1968 (the Act) and the US Free Trade Agreement Implementation Act 2004 (US FTA Act) to further implement obligations under the Australia-United States Free Trade Agreement (US FTA) in respect of criminal offences, temporary reproductions, internet service provider liability and compensation for the extension of the term of copyright protection.

The bill amends the Act to broaden the scope of some criminal offence provisions added by the US FTA Act so that a prosecution is not required to establish that a person committed those offences ‘with the intention of obtaining a commercial advantage or profit’ in addition to ‘by way of trade’.

It also narrows the scope of the incidental copies exception to temporary copies made as a necessary part of the technical process of using a copy of a work or other subject matter.

The bill places a time limit on the application of the transitional provisions relating to the extension of the term of copyright protection.

Finally, the bill clarifies provisions that limit the remedies available against carriage service providers.

Reasons for Urgency
The US FTA is expected to enter into force on 1 January 2005. Prior to entry into force, both Australia and the United States must exchange letters confirming that domestic processes have been completed. Minor clarifying and miscellaneous amendments are required to be enacted urgently to remove any doubt that Australia’s obligations under the US FTA have not been implemented before letters are exchanged.

(Circulated by authority of the Attorney-General)

JAMES HARDIE (INVESTIGATIONS AND PROCEEDINGS) BILL

Purpose of the Bill
The bill facilitates a comprehensive investigation of matters arising from the New South Wales Special Commission of Inquiry into the Medical Research and Compensation Foundation (the James Hardie Special Commission of Inquiry) and any proceedings that may arise from those investigations. The bill expressly abrogates legal professional privilege in relation to certain materials, allowing their use by the Australian Securities and Investments Commission and the Commonwealth Director of Public Prosecutions in investigations of James Hardie and any related proceedings.

Reasons for Urgency
Over coming months, a detailed investigation into the issues raised in the James Hardie Special Commission of Inquiry will be conducted. It is expected that claims for privilege will be vigorously maintained in the context of this investigation. If the bill is to assist this investigation, it would need to be passed in the Spring 2004 sittings.

The Report of the James Hardie Special Commission of Inquiry was handed down to the New South Wales Government on 21 September 2004.
The Report identified a number of complex issues relating to the conduct of the James Hardie group, its directors and officers, and its advisers. A thorough investigation of the conduct of James Hardie, with proceedings brought where misconduct is found, is essential to maintaining community confidence in the Australian corporate regulatory regime.

(Circulated by authority of the Treasurer)

NATIONAL WATER COMMISSION BILL

Purpose of the Bill
The bill establishes the National Water Commission as a Commonwealth statutory authority.

Reasons for Urgency
At its 25 June 2004 meeting, the Council of Australian Governments agreed to the establishment of a National Water Commission.

Establishment of the Commission is a key platform of the National Water Initiative Agreement (NWIA) signed by the Australian Government and the Governments of New South Wales, Victoria, Queensland, South Australia, the Northern Territory and the Australian Capital Territory.

While the Commission is being established administratively pending passage of the bill, the NWIA commits parties to establishing the Commission as an independent statutory body by the end of 2004. Passage of the bill in the 2004 Spring sittings is required for the Commonwealth to meet this commitment.

The NWI Agreement sets out a number of key tasks for completion by the National Water Commission in its first year, including the evaluation of state and territory implementation plans for the Initiative by mid-2005, and the scheduled 2005 assessment of National Competition Policy water-related reform commitments.

The Commission will also provide advice and recommendations to the Government on projects to be funded under the Australian Water Fund, a major Australian Government investment in securing Australia’s water future.

(Circulated with the authority of the Prime Minister)

Senator FERRIS (South Australia) (9.31 a.m.)—On behalf of the Chair of the Standing Committee on Regulations and Ordinances, Senator Tchen, I give notice that 15 sitting days after today Senator Tchen shall move:

That the following delegated legislation be disallowed.


2. Crimes Amendment Regulations 2004 (No.1), as contained in Statutory Rules 2004 No. 164 and made under the Crimes Act 1914.

3. National Health Amendment Regulations 2004 (No. 2), as contained in Statutory Rules 2004 No. 186 and made under the National Health Act 1953.


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

Leave granted.

The summary read as follows—


These Regulations provide for background checks to be made on applicants for flight crew licences, permit the Secretary to declare a person to have adverse security status, and make other related amendments.

New regulation 7 provides that CASA may provide information, including personal information, to certain other Commonwealth organisations for the purposes of carrying out background and security checks. The Committee wrote to the Minister seeking advice as to whether the Privacy Commissioner was consulted with respect to this provision.

The Minister advised on 31 August 2004 that the regulations were put in place in an urgent manner in response to legal advice. The Attorney-
General’s Department and the Australian Government Solicitor were consulted in the process of developing the regulations. The Privacy Commissioner’s input was not sought.

The Committee considers that the response answered the question but has written to the Minister seeking further information on why the Privacy Commissioner was not consulted.

**Crimes Amendment Regulations 2004 (No. 1), Statutory Rules 2004 No. 164**

The Regulations prescribe periodic detention orders under the *Crimes (Sentencing Procedure) Act 1999* (NSW) and the *Periodic Detention Act 1995* (ACT) for the purposes of subsection 20AB(1) of the *Crimes Act 1914*.

These amendments commence retrospectively (from 1 September 1995 for periodic detention orders in the ACT—Schedule 1, and from 3 April 2000 for periodic detention orders in NSW—Schedule 2). The Committee wrote to the Minister seeking advice as to whether any persons have been subject to periodic detention orders for relevant crimes in the ACT or NSW during the relevant periods and if so, what the legislative authority for such orders was. The Committee also sought advice on the reason for the lengthy delay in clarifying the position of periodic detention orders in the ACT and NSW for the purposes of the Crimes Act.

The Minister’s response on 17 November 2004 argues that the retrospective operation of the amendments is beneficial because the alternative to periodic detention orders would be full time custody. The Committee considers that if that is the only alternative, then it appears that this is beneficial. However, it is not clear whether this is the only alternative and the Committee has written to the Minister seeking further advice on this matter.

**National Health Amendment Regulations 2004 (No. 2), Statutory Rules 2004 No. 186**


The Committee notes that these regulations respond to concerns raised by the Australian National Audit Office about the Constitutional validity of certain levies imposed by the Private Health Insurance Administration Council. The Explanatory Statement indicates that legal advice has been received about this matter. It is not clear, however, whether any action is required to validate the imposition of levies that have been collected prior to these amendments. The Committee has therefore written to the Minister seeking advice on this matter and requesting a copy of the legal advice referred to in the Explanatory Statement.

### NOTICES

#### Withdrawal

**Senator BROWN** (Tasmania) (9.32 a.m.)—I withdraw business of the Senate notice of motion No. 1 standing in my name for today.

**Senator NETTLE** (New South Wales) (9.32 a.m.)—I withdraw business of the Senate notice of motion No. 3 standing in my name for today.

### BUSINESS

#### Rearrangement

**Senator ELLISON** (Western Australia—Manager of Government Business in the Senate) (9.32 a.m.)—by leave—I move:

> That the routine of business from not later than 4.30 pm to 6 pm shall be government business only.

**Senator HARRADINE** (Tasmania) (9.33 a.m.)—I do not understand what the situation will be after 4.30 p.m. The government is now proposing that government business only be debated from 4.30 p.m. onwards. I understood that during the period from 4 p.m. there would be no quorums and no divisions. I think the matter should be deferred unless the minister can confirm that there will be no divisions or quorums called during that period of time from 4.30 p.m. onwards.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (9.34 a.m.)—The rule is that after 4.30 p.m. there
are no divisions. Quorums can still be called. That stands. Senator Harradine’s understanding is correct except that quorums can still be called.

Question agreed to.

NOTICES

Presentation

Senator CROSSIN (Northern Territory) (9.35 a.m.)—by leave—I give notice that, on the next day of sitting, I shall move:

That the following matter be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by 12 May 2005:

The implications for the Government’s proposed changes to the funding arrangements for targeted assistance in Indigenous education.

Postponement

Items of business were postponed as follows:

General business notice of motion no. 27 standing in the name of Senator Lees for today, relating to Asian elephants, postponed till 7 December 2004.

COMMITTEES

Finance and Public Administration References Committee

Reference

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (9.36 a.m.)—I, and also on behalf of Senators Bartlett, Brown and Lees, ask that business of the Senate notice of motion No. 2 be taken as formal.

The PRESIDENT—Is there any objection to this motion being taken as formal?

Senator HARRADINE (Tasmania) (9.36 a.m.)—I would like to hear stated in the Senate the reasons for this motion.

The PRESIDENT—There is an objection.

FOREIGN AFFAIRS: UKRAINE

Senator CHAPMAN (South Australia) (9.37 a.m.)—I move:

That the Senate—

(a) notes that:

(i) international observers, including the International Election Monitoring Mission of the Organisation of Security and Cooperation in Europe have reported that the recent presidential election in Ukraine has fallen well short of international standards,

(ii) reported irregularities include suspiciously high voter turnout in several regions, the fraudulent use of absentee voting, intimidation of voters at some polling stations, abuse of state resources and overt media bias,

(iii) in such circumstances the officially declared results of the election cannot be taken to properly represent the will of the Ukrainian people, and

(iv) a resolution to the current political crisis in Ukraine can only be achieved through a new election, which is conducted in a transparent manner that meets international standards;

(b) calls on the Government of Ukraine to:

(i) ensure the safety and welfare of all its citizens, including those taking part in peaceful demonstrations as part of the exercise of their democratic rights,

(ii) hold a new presidential election based on democratic principles that:

(A) ensures absentee ballots are cast in a free and democratic manner, and are not subject to abuse,

(B) allows both presidential candidates equal and unbiased access to the mass media of Ukraine in the period leading up to the new election date, and

(C) ensures that international observers participate at all levels of the election process to achieve a result that is acceptable to all parties;
(c) requests the President of the Senate to transmit this resolution to the outgoing President of Ukraine, Leonid Kuchma, the Parliament of Ukraine and the Ukrainian Ambassador to Australia; and
(d) urges the Australian Government to make further representations to the above effect.

Question agreed to.

IRAQ: HUMANITARIAN AID

Senator ALLISON (Victoria) (9.37 a.m.)—by leave—I move the motion as amended:

That the Senate—
(a) notes the release of the report *The enduring effects of war: health in Iraq 2004*;
(b) notes that the report finds:
(i) that the risk of death from violence in the 18 months after the invasion was 58 times higher than in the 15 months before the invasion, while the risk of death from all causes was 2.5 times higher,
(ii) 32 per cent of children are chronically malnourished and 17 per cent are underweight,
(iii) since April 2003, at least 400 women and girls, some as young as eight, have been raped during or after the war, and
(iv) in 2003 over a quarter of primary care centres closed, over half of primary care facilities no longer provide family planning services and between 30 per cent and 40 per cent of women deliver their babies without qualified help; and
(c) calls on the Government to:
(i) support a comprehensive, investigation of casualties and the state of health in Iraq, and
(ii) increase humanitarian aid to Iraq to address health needs, in particular the re-establishment of safe, accessible primary health facilities.

Question agreed to.

TANGENTYERE COUNCIL: 25TH ANNIVERSARY

Senator CROSSIN (Northern Territory) (9.38 a.m.)—I move:

That the Senate—
(a) congratulates the Alice Springs Aboriginal Housing Organisation, Tangentyere Council, on celebrating 25 years since its incorporation;
(b) notes that Tangentyere Council is one of the largest Aboriginal organisations in Central Australia, incorporating 18 Aboriginal housing associations;
(c) acknowledges the organisation was formed in the 1970s by Aboriginal people like Geoff Shaw and Eli and Wenten Rubuntja;
(d) recognises that Tangentyere Council has played a key role in providing basic services, such as running water and shelter, to Aboriginal people living on the fringes of Alice Springs and has ensured that there are now special purpose leases and permanent housing for their members; and
(e) congratulates the members and executive of Tangentyere Council, its Executive Director, William Tilmouth, and staff for their ongoing commitment, dedication and work.

Question agreed to.

FOREIGN AFFAIRS: WEST PAPUA

Senator BROWN (Tasmania) (9.38 a.m.)—I move:

That the Senate—
(a) notes that 1 December 2004 was West Papuan National Day, the 43rd anniversary of the 1961 West Papuan Declaration of Independence from Dutch colonial rule; and
(b) calls on the Australian Government to urge the Indonesian Government to lift the ban on the flying of the Papuans’ morning star flag.

Question put:
The Senate divided. [9.43 a.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes………….. 9
Noes………….. 50
Majority……… 41

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

NOES
Abetz, E.  Barnett, G.
Bishop, T.M.  Bolkus, N.
Boswell, R.L.D.  Buckland, G.
Calvert, P.H.  Campbell, G. *
Carr, K.J.  Chapman, H.G.P.
Colbeck, R.  Collins, J.M.A.
Coonan, H.L.  Crossin, P.M.
Denman, K.J.  Eggleston, A.
Ellison, C.M.  Evans, C.V.
Ferguson, A.B.  Ferris, J.M.
 Fifield, M.P.  Forshaw, M.G.
Hogg, J.J.  Humphries, G.
Hutchins, S.P.  Johnston, D.
Kirk, L.  Knowles, S.C.
Lightfoot, P.R.  Ludwig, J.W.
Lundy, K.A.  Macdonald, I.
Macdonald, J.A.L.  Marshall, G.
McGauran, J.I.J.  McLucas, J.E.
Minchin, N.H.  O’Brien, K.W.K.
Patterson, K.C.  Payne, M.A.
Ray, R.F.  Santoro, S.
Scullion, N.G.  Stephens, U.
Tchen, T.  Troeth, J.M.
Vanstone, A.E.  Watson, J.O.W.
Webber, R.  Wong, P.

* denotes teller

Question negatived.

MILITARY DETENTION: AUSTRALIAN CITIZENS

Senator NETTLE (New South Wales) (9.46 a.m.)—I, and also on behalf of Senator Brown, move:

That the Senate—

(a) notes the report of the International Red Cross into the treatment of prisoners at Guantanamo Bay, Cuba, and the report’s conclusion that interrogation techniques amounted to torture;

(b) expresses concern that such techniques, which contravene international standards, may have been used on Australian prisoners, David Hicks and Mamdouh Habib, who are being held at Guantanamo Bay; and

(c) calls on the Government to act immediately to return David Hicks and Mamdouh Habib to Australia.

Question put:

The Senate divided. [9.48 a.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes………….. 9
Noes………….. 53
Majority……… 44

AYES
Allison, L.F. *  Bartlett, A.J.J.
Brown, B.J.  Cherry, J.C.
Greig, B.  Lees, M.H.
Murray, A.J.M.
Ridgeway, A.D.

NOES
Abetz, E.  Barnett, G.
Bishop, T.M.  Bolkus, N.
Boswell, R.L.D.  Buckland, G.
Calvert, P.H.  Campbell, G. *
Carr, K.J.  Chapman, H.G.P.
Colbeck, R.  Collins, J.M.A.
Coonan, H.L.  Crossin, P.M.
Denman, K.J.  Eggleston, A.
Ellison, C.M.  Evans, C.V.
Ferguson, A.B.  Ferris, J.M.
 Fifield, M.P.  Forshaw, M.G.
Hogg, J.J.  Humphries, G.
Hutchins, S.P.  Johnston, D.
Kirk, L.  Knowles, S.C.
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Minchin, N.H.  O’Brien, K.W.K.
Patterson, K.C.  Payne, M.A.
Ray, R.F.  Santoro, S.
Scullion, N.G.  Stephens, U.
Tchen, T.  Troeth, J.M.
Vanstone, A.E.  Watson, J.O.W.
Webber, R.  Wong, P.

* denotes teller
Thursday, 2 December 2004

SENATE

Mason, B.J. McGauran, J.J.J.
McLucas, J.E. Minchin, N.H.
Payne, M.A. Ray, R.F.
Santoro, S. Scullion, N.G.
Stephens, U. Tchen, T.
Troeth, J.M. Vanstone, A.E.
Watson, J.O.W. Webber, R.
Wong, P.

* denotes teller

TRADE: US-AUSTRALIA FREE TRADE AGREEMENT

Senator NETTLE (New South Wales) (9.51 a.m.)—I move:

That there be laid on the table by the Minister representing the Minister for Trade, no later than 4 pm on Tuesday, 7 December 2004, the final letters and any attachments and annexures exchanged between the governments of Australia and the United States (US) of America to finalise the free trade agreement between the Australia and the US.

Question agreed to.

AVIATION: PASSENGER TICKET LEVY

Senator ALLISON (Victoria) (9.52 a.m.)—I move:

That there be laid on the table by the Minister representing the Minister for Employment and Workplace Relations, no later than 5 pm on 6 December 2004, any determinations made by the Minister under subsections 22(1) and (2) of the Air Passenger Ticket Levy (Collection) Act 2001.

Question agreed to.

INTERNATIONAL DAY OF PEOPLE WITH A DISABILITY

Senator GREIG (Western Australia) (9.52 a.m.)—I, and also on behalf of Senator McLucas, move:

That the Senate—

(a) notes that Friday, 3 December 2004, is International Day of People with a Disability;

(b) further notes:

(i) the valuable and willing contribution made by people with disabilities to the development, strength and diversity of the Australian community,

(ii) that people with disabilities continue to experience barriers to employment, education, premises, technology, transport, accommodation, support and services that diminish their access to full participation in the community, and

(iii) that many people with disabilities and their carers live in poverty with increasing concern about the adequacy of future income and social support; and

(c) calls on the Government to address barriers to participation by leading an active response to unmet need, reviewing funding arrangements through the Commonwealth-State/Territory Disability Agreement, providing increased access to education, employment and training options, reinstating a permanent Disability Discrimination Commissioner, and expediting the completion of standards under the Disability Discrimination Act 1992.

Question agreed to.

HUMAN RIGHTS: BURMA

Senator NETTLE (New South Wales) (9.53 a.m.)—I move:

That the Senate—

(a) notes:

(i) ongoing concern about the political situation in Burma,

(ii) the continued detention of Daw Aung San Suu Kyi and reports that this detention has been extended by the military regime in Burma, and

(iii) the recent release of student leader Minko Naing and his call for urgent action to pursue democratic reform and national reconciliation; and

(b) calls on the Government:

(i) to urge the Burmese junta to fully engage with the United Nations (UN) Secretary General Kofi Annan and the UN Special Envoy Tan Sri Razali Is-
mail in their work to find a political solution to Burma’s problems,

(ii) to reiterate Australian demands for the release of the National League for Democracy’s Vice-Chairman, U Tin Oo, and all the remaining political prisoners, and for the immediate and unconditional release of Daw Aung San Suu Kyi,

(iii) to support the Committee Representing People’s Parliament mandate as the legitimate body to convene a democratic Parliament in Burma, according to the 1990 election result, and

(iv) support the Burmese National League for Democracy’s call for the UN Security Council to convene a special session to consider what further measures the UN can take to encourage democratic reform and respect for human rights in Burma.

Question agreed to.

AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (No. 2) 2004

First Reading

Bill received from the House of Representatives.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.54 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.55 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (No. 2) 2004

In October 2003 the Government commissioned a broad-ranging review of Australia’s livestock export industry, with particular reference to the circumstances surrounding the MV Cormo Express incident. The Keniry Review recommended that industry should be responsible for research and development and management of quality assurance systems to support its members achieve best practice outcomes; and that these activities should be funded by a compulsory customs charge.

The Government concurs with this view and believes that the livestock export industry should also receive funding raised under the new statutory arrangements to help maintain its capability and continued viability.

The Government supports the livestock export industry submission that channelling the funds directly to its service delivery body would enable the industry to carry out marketing and R&D activities and improvements to animal welfare practices in a clearly accountable and transparent manner.

However, the Australian Meat and Livestock Industry Act 1997 currently limits the red meat industry to a single industry marketing body and a single industry research body as the recipient of levy or charge funds. Meat and Livestock Australia Ltd is currently that body. This arrangement does not allow disbursement of compulsory levies or charges to any other body.

The bill amends the Act to allow the Minister to determine more than one red meat industry organisation to be a marketing body and a research body and to receive revenue derived from compulsory levies and charges. This will allow for a livestock export marketing body and a livestock export research body.

The intention of the Act, whereby Meat and Livestock Australia Ltd (MLA) is the industry research body and the industry marketing body for the whole of the red meat industry, remains.

The Government will continue its dollar for dollar matching of payments to the industry research...
body, that is, to MLA, in respect of industry research expenditure. As was envisaged by the Government under the restructuring arrangements introduced in 1998, this will preserve the incentive for the provision of research services to be provided by the industry research body, while allowing for the live export industry sector to have ownership and control over its own R&D funds.

The bill was first introduced to Parliament last June and was referred to the Senate Rural and Regional Affairs and Transport Legislation Committee in August. The Committee recommended the bill be amended to tighten the accountability arrangements for the livestock export industry.

As recommended by the Committee the bill now includes a statutory requirement for the Minister to table in Parliament the livestock export service company’s annual report, the funding agreement between the Commonwealth and the company and an annual statement of the company’s compliance with the funding agreement.

The bill also includes amendments relating to the definition of “meat”, “live-stock” and “edible offal” to avoid the unintended regulation of meat and edible offal as a result of the broader range of live-stock species being regulated following the Keniry Review into Live-stock Exports.

The bill does not change the Act’s broader intentions of viewing the red meat industry as one industry while providing for autonomy and self-determination for the sectors within and for revenue disbursement arrangements.

Rather it responds to the specific needs of the livestock export industry and the criticisms and concerns about the continued viability of the industry.

The bill is aligned with other sets of amendments to the Australian Meat and Live-stock Industry Act 1997 and the Export Control Act 1982, which relate to licensing issues that will introduce tighter regulation across all aspects of the live-stock export trade.

Together these amendments represent an important step in the Government’s reform of the livestock export industry. They are part of a range of initiatives aimed at overcoming current deficiencies and facilitating improvements in the livestock export system and animal welfare practices.

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

SCHOOLS ASSISTANCE (LEARNING TOGETHER—ACHIEVEMENT THROUGH CHOICE AND OPPORTUNITY) BILL 2004

STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) LEGISLATION AMENDMENT BILL 2004

First Reading

Bills received from the House of Representatives.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.56 a.m.)—I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.56 a.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

SCHOOLS ASSISTANCE (LEARNING TOGETHER—ACHIEVEMENT THROUGH CHOICE AND OPPORTUNITY) BILL 2004

This bill renews the government’s commitment to school education for the next four years. This funding package delivers $33.0 billion for schools over 2005-2008. This is an increase of $9.5 billion over the current quadrennium and represents the largest ever funding commitment to Australian schools.
The bill secures funding for Australian government programs of financial assistance to the states and territories for government and non-government schools. It succeeds the States Grants (Primary and Secondary Education Assistance) Act 2000 which authorised funding and arrangements for the 2001-2004 funding quadrennium.

This bill reflects the government’s policy decisions related to the 2005-2008 school funding quadrennium. It is built on the principles that every student will be financially supported regardless of the school that the child attends and that no school will have its funding cut.

**State Government Schools**

Over the next four years the Australian government will deliver $10.8 billion in supplementary funding to state governments for their schools—an increase of $2.9 billion over the current quadrennium. This represents a 39 per cent increase over the current four-year period in general recurrent grants.

The generous average government school recurrent cost method of indexation will also be retained as the basis for determining the increases of Australian government funds to state schools, and also to non-government schools.

**SES funding**

The socioeconomic status (SES) funding model will be more deeply embedded as the basis for Australian government funding for non-government schools in Australia. From 2005 every non-government school, regardless of denomination, will attract funding according to the socioeconomic status of the communities that the school serves.

**Catholic Schools**

A major feature of this package is the provision of general recurrent funding of $12.8 billion over 2005-2008 for Catholic systemic schools, an increase of $3.7 billion or 41 per cent over 2001-2004. This includes an additional $368 million which will flow to Catholic systemic schools as a consequence of their joining the SES funding arrangements.

**Independent Schools**

Independent schools will receive a total of $7.8 billion in general recurrent funding—a 50 per cent increase over the current four-year period. The system of ‘funding maintenance’ will continue and a funding guarantee mechanism will be introduced to ensure that when schools’ SES scores are updated, no school will have its funding reduced.

**Election Commitments**

This bill implements several important election commitments, to provide additional funding for capital infrastructure for schools and to provide funding for non-government school term hostels.

**Capital Infrastructure**

The environment in which school children work and play and the standard of school infrastructure can have a marked bearing on the process of teaching and learning in schools. The Australian Government already contributes very significantly to school infrastructure funding in both State owned government schools and in non-government schools as a means of improving educational outcomes for Australian children. This bill continues that commitment by providing $1.5 billion in schools capital funding over the 2005-2008 quadrennium, which represents a 15% increase over funding provided in the previous quadrennium. Importantly, it includes an additional amount of $17 million over the quadrennium to provide specific capital grants for non-government schools in isolated areas and communities in the Northern Territory.

In addition, this bill implements the election commitment by providing a further $1 billion to restore and build Australia’s school buildings and grounds. Of this additional funding, $700 million will be provided directly to government schools. Each government school community will determine its priority projects, but examples of projects that will be funded include: classroom improvements, library resources, computer facilities, air-conditioning and heating, outdoor shade structures, playing fields, sporting infrastructure, play equipment, floor coverings, security measures and amenity refurbishments. Projects of this nature are often desperately needed by school communities, but never seem to make it on the priority list of state education bureaucracies. Delivery of the $300 million for non-government schools will be administered through Block Grant Au-
authorities using the same arrangements in place for mainstream capital grants funding.

This new $1 billion initiative will restore and build Australia’s schooling infrastructure—infrastructure that is needed for current and future generations and brings the total commitment to school infrastructure funding to $2.5 billion over the next four years.

**Non-government School Term Hostels**

This Government is determined to ensure that all students have equitable access to schooling and it provides substantial funding to help rural and isolated families with the additional costs of educating their children.

This bill also provides additional funding in recognition that it is becoming more and more costly for families in isolated and remote areas to educate their children. This Government will provide non-government school term hostels across Australia with a grant of $2,500 per child per year over the next four years. This additional funding will support rural communities by providing an affordable alternative to boarding school or distance education for rural and isolated families. The grants will assist these hostels to provide a high standard of care to rural primary and secondary school students residing at the hostels and contribute toward the viability of individual hostels.

**Special Purpose Grants**

This bill continues the Australian government’s commitment to improving literacy and numeracy for all Australian students. Students who are most in need of additional learning assistance will benefit from an estimated $2.1 billion for a new overarching targeted programme—the Literacy, Numeracy and Special Learning Needs programme.

The bill also includes $117.0 million to assist geographically isolated children, $245.8 million to assist newly arrived students of non-English speaking backgrounds and $114.2 million to improve learning outcomes of students learning languages other than English.

**Conditions of Funding**

A key feature of this bill is the strengthening of the performance framework for Australian government funding, which will reinforce the link between the funding provided under Australian government programs and improved outcomes for all Australian students. These requirements will underpin the Australian government’s national priorities in schooling, and include:

- Greater national consistency in schooling, requiring implementation by 2010 of a common school starting age and implementing common testing standards, including common national tests in English, maths, science, civics and citizenship education, and information and communications technology.
- Better reporting to parents by ensuring that school reports are written in plain language and that assessment of the child’s achievement is reported against national standards—where these are available—and is reported relative to the child’s peer group.
- Transparency of school performance so schools publish school performance information to provide parents with objective data and information.
- Greater autonomy to school principals so that school principals have a significant say over staffing issues in their own schools.
- Creating safer schools by the implementation of the National Safe Schools Framework in all schools.
- A common commitment to physical activity.
- Making values a core part of schooling including requiring schools to fly the Australian flag.

This bill represents a major investment in the future of our society. We remain committed to quality schooling for all Australian students regardless of the school that they attend, and we will continue to provide record funding to all Australian schools and schoolchildren. If we are to develop the skills and knowledge for Australia’s future then we need a genuinely national education system, proper recognition of quality teaching, greater freedom for schools at the local level, schools that are safe and are committed to teaching values, educational justice for Indigenous Australians, and a commitment to do something about schools that are not performing.
This legislation will strengthen all schools and build national consistency. Through improved accountability and outcomes this bill will ensure the health of the education sectors and the growth of our nation.

I commend the Bill to the Senate.

 STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) LEGISLATION AMENDMENT BILL 2004

The purpose of the Bill is to amend the States Grants (Primary and Secondary Education Assistance) Act 2000, to provide funding for the Tutorial Credit Initiative and to correct a technical defect in the Act.

Tutorial Credit Initiative funding

Literacy and numeracy are the most important foundation skills our children need during their education. When this Government came to office there was no national reporting of literacy and numeracy standards. We have now introduced national literacy and numeracy testing and benchmarking at years 3, 5 and 7. These have now become a critical part of the schooling system and a key indicator of academic performance. The Australian Government is also committed to ensuring that States and Territories provide information to parents about their child’s performance against the national literacy and numeracy benchmarks.

This Government is also taking steps to assist those students who do not meet the national literacy benchmarks. I recently announced the Tutorial Credits Initiative, to provide up to $700 to parents for tutorial assistance for children who have not attained the minimum reading skills as measured by the Year 3 national reading benchmark in 2003.

The Tutorial Credits Initiative will provide $700 worth of tuition to students on a one to one basis out of school hours by appropriately qualified, screened and vetted tutors. Parents will be able to redeem the tuition credit to choose the most appropriate type of assistance for their children. Brokers will be appointed through an open tender process to assist parents and assess and appoint tutors.

When I announced this initiative, only four states—Victoria, Western Australia, the Northern Territory and the Australian Capital Territory, reported to parents their child’s performance against the national benchmarks. Other States that have now reported to parents their child’s performance against national benchmark standards, will also be included in the trial.

In order to expand the number of states included in this trial initiative, additional funding is required under the National Literacy and Numeracy Strategies and Projects programme for 2004.

The 24,000 children across Australia who have not attained the minimum reading skills deserve the opportunity to receive additional tutorial assistance offered by the Tutorial Credits Initiative, and their parents are entitled to comprehensive information about their child’s progress.

Technical defect—SES funding phasing in arrangements

This Bill will also correct a technical defect in the Act.

The Act gave effect to the new socio-economic status (SES) based funding arrangements for non-government schools for 2001-2004. This historic reform has provided a more transparent, objective and equitable approach to funding non-government schools. General recurrent funding is distributed according to need and schools serving the neediest communities receive the greatest financial support.

Under the Act, schools with an SES funding level received increased funding phased in at the rate of 25 per cent of the increase each year. The intention of the original legislation, as passed by this Parliament in December 2000, was to fully fund schools at their new funding level by 2004.

There is, however, a technical defect in the SES funding phasing in arrangements as set out in the Act. This means that over 700 non-government schools, including schools which enrol some of the most disadvantaged young people in this country, cannot receive their correct entitlements under the General Recurrent Grants programme in 2004.

The proposed amendment in this Bill will enable the current Act to fulfil its original intent, so that
schools receive their correct funding entitlement for 2004.

Conclusion
The Howard Government is committed to improving the literacy and numeracy standards of all Australian children and ensuring that all parents receive information on their children’s literacy and numeracy achievement against the national benchmarks. This Bill confirms the Government’s commitment to a strong school sector which offers high quality outcomes to all students and choice to parents. Quality education is vital to Australia’s future. I commend the Bill to the Senate.

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

SUPERANNUATION LEGISLATION AMENDMENT BILL 2004
CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) AMENDMENT BILL (No. 2) 2004

First Reading

Bills received from the House of Representatives.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.57 a.m.)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will move a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.58 a.m.)—I move:

That these bills be now read a second time.

The amendments are designed to remove any doubt as to the validity of classification decisions made by the Classification Board or the Classification Review Board in response to deficient or defective applications for classification by law enforcement agencies, or (in the case of applications for review) applications by persons entitled to make such applications under section 42 of the Classification Act.

The Bill is designed to ensure that prosecutions for child pornography and related offences do not fail for technical reasons related to applications for classification.

While the Government is of the view that decisions made by the Classification Board and the Classification Review Board are valid even where there has been a fault in the application process, the Bill addresses a potential legal argument that a decision made in response to a defective application is invalid.

The Bill is designed to ensure that applications for classification from law enforcement agencies that have not met all the technical requirements of the Act will not result in a subsequent classification decision being invalid.

The amendments contained in the Bill will apply to classification decisions made before the commencement of these amendments, and are in that sense retrospective in their operation.

However, it is clear that this retrospectivity is appropriate and justified and will not lead to any substantive injustice.

Any errors that may have been made in the application process were purely technical and cast no doubt whatsoever on the correctness of the classification decision, which rested on the examination of the relevant product not the formalities of the application.

There is no legitimate reason why a person should be able to escape prosecution, conviction and punishment for a serious child pornography offence in those circumstances.

The Bill also removes any doubt as to the validity of decisions made or any later action taken by the Board, the Review Board or the Director in respect of the decisions validated by the Bill.

The full rigour of the classification decision making process will remain unchanged.

The Government is committed to the elimination of child pornography and this Bill will ensure that a person cannot avoid prosecution or conviction based on a technicality.

Debate (on motion by Senator George Campbell) adjourned.

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

COMMITTEES

Finance and Public Administration References Committee

Reference

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (9.58 a.m.)—I, and also on behalf of Senators Bartlett, Brown and Lees, move:

That the following matters be referred to the Finance and Public Administration References Committee for inquiry and report by 15 August 2005:

(1) The administration of the Regional Partnerships program and the Sustainable Regions program, with particular reference to the process by which projects are proposed, considered and approved for funding, including:

(a) decisions to fund or not to fund particular projects;

(b) the recommendations of area consultative committees;

(c) the recommendations of departmental officers and recommendations from any other sources including from other agencies or other levels of government;
(d) the nature and extent of the respective roles of the administering department, minister and parliamentary secretary, other ministers and parliamentary secretaries, other senators or members and their advisers and staff in the process of selection of successful applications;

(e) the criteria used to take the decision to fund projects;

(f) the transparency and accountability of the process and outcomes;

(g) the mechanism for authorising the funding of projects;

(h) the constitutionality, legality and propriety of any practices whereby any members of either House of Parliament are excluded from committees, boards or other bodies involved in the consideration of proposed projects, or coerced or threatened in an effort to prevent them from freely communicating with their constituents; and

(i) whether the operation of the program is consistent with the Auditor-General’s ‘Better Practice Guide for the Administration of Grants’, and is subject to sufficient independent audit.

(2) With respect to the future administration of similar programs, any safeguards or guidelines which might be put in place to ensure proper accountability for the expenditure of public money, particularly the appropriate arrangements for independent audit of the funding of projects.

(3) Any related matters.

I will speak briefly to the motion to outline the case for the reference of these matters to the Finance and Public Administration References Committee for inquiry and report. Senators would be aware that this is an issue that has been debated in the parliament and in the public arena for a couple of weeks.

During the last week or so I have attempted to negotiate a suitable reference with other senators who have an interest in these matters. With a lot of cooperation and goodwill we have tried to gain support for this motion. It is supported by Senator Bartlett, on behalf of the Democrats; by Senator Brown, on behalf of the Greens; and by Senator Lees. We have tried to come up with a reference which will deal with the public concern that has arisen regarding the operation of the Regional Partnerships program, with some of the decision-making processes that seem to have underpinned it and with the lack of transparency of some of those decision-making processes. It is very much the case that the parliament and the Senate have a legitimate interest in this issue, in the way that public money has been expended, particularly as it has been expended under discretionary programs like the Regional Partnerships program. There are a lot of questions about the operation of that program that need to be answered, and so far we have not been able to get a lot of those answers.

We propose to ask the Senate Finance and Public Administration References Committee to examine some of those issues. We think that is the appropriate committee to look at issues of public administration and the administration of particular programs. All Australians share an interest in making sure their taxes are used responsibly, that those funds are accounted for properly and that the proper mechanisms are in place to account for any grants that are made. There is a deal of public concern about some of the ways that some of these grants have been made, and it is appropriate that the finance and public administration committee take on the responsibility of inquiring into these matters. I would point out that this committee last year examined the operation of the Dairy Regional Assistance Program, with particular reference to one grant to a steel profiling plant. The report made a number of findings and recommendations. It reads:
The Committee recommends that Commonwealth funding to address regional disadvantage be distributed on the basis of objective funding considerations and that mechanisms be put in place to support intended policy outcomes.

It continues:

The Committee recommends DoTARS adopt transparent and systematic assessment procedures for regional program grants, incorporating an improved documentary record of assessment procedures.

This is an issue that the committee has been following. This is an issue that has been of concern with respect to previous programs. This is an issue the committee reported on. I might say that, despite the fact that the government opposed the referral of that reference at the time, it accepted all of the recommendations of the report when it delivered its response. The government in its response said it— and I quote:

... ensured these have been addressed in the policy and processes for the new Regional Partnerships Programme.

The government accepted the logic of the report of the committee. It said that these sorts of concerns would be addressed in the Regional Partnerships program. There is enough evidence and there are enough question marks over that program now so that it is appropriate that we see whether or not the government has properly adopted the recommendations of the finance and public administration committee about proper procedures being applied. This reference will allow the committee to continue its work to ensure that public funds are accounted for in a proper way, that proper checks and balances are in place and that governments are spending money not driven by political considerations but based on proper assessments with established criteria. Yesterday’s revelation that one of the main criteria used in making these grants had not been made public, had not been published on the web site and had not been made available for members of the public to understand and evaluate is of serious concern. These are matters that can be properly inquired into by the Finance and Public Administration References Committee. We have sought to give the committee appropriate terms of reference and allow it to inquire into all of those matters.

I would stress two things. Firstly, the committee will not in any way seek to deal with the allegations that have been made regarding criminal conduct; that is not its role, that is not part of the terms of reference and that is not the role of the Senate. It will look very much at the administration of government programs, at the accountability mechanisms that govern them and at whether those have been properly applied. Secondly, Senator Harradine expressed some reservation and concern that this might be best done during the budget estimates committee process. I would say this to him. The point he made to me only a week or so ago was that there was some concern about the shortness of the estimates process. We have only a week in the February round of estimates to cover all of the committees. While this may be a matter people can pursue at estimates, I think the case is pretty clear that the Finance and Public Administration References Committee is the best committee to inquire into these issues. It will have the time and the resources to do that properly. As I say, this will be a continuation of the work it started last year on the Dairy Regional Assistance Program.

I think this is the appropriate response from the Senate. It is the appropriate role of the Senate to hold the government to account to ensure that taxpayers’ funds are being expended properly and that proper accounting procedures are in place. I note that the Deputy Prime Minister, Mr Anderson, indicated that he had no problem with the Senate having an inquiry and that he thought it was part
of the proper process of the parliament and of the Senate. He declared he had nothing to hide and that therefore he had no problem with us having this inquiry. I would be surprised if the government were to oppose it, given that they support those sorts of accountability measures. Without labouring the point, I think this is an appropriate response from the Senate to the public concern about these issues.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (10.06 a.m.)—The Senate today is debating a motion to refer the administration of the Regional Partnerships program and the Sustainable Regions Program to the Finance and Public Administration References Committee. In other words, rural Australia is to feel the pain of Labor’s defeat at the last federal election. Labor has no leadership, no policies and no confidence. They do not have support for any of those things from the electorate so they resort to using rural Australia as a whipping boy. This is a move designed to attack the self-determination of rural communities who come up with plans to diversify and broaden their economic base so they can future-proof themselves against bad seasons, poor commodity prices or changes.

I have said this in the Senate before and I will say it again: when John Anderson took leadership of the National Party, his first public statement was that there are two Australias. The economy is moving at a rapid pace in the cities and suburbs of Australia but it is not moving that fast in rural and regional Australia. He wanted to put programs together that could give equality of job and economic opportunities to the electorate. This was the way he proposed to do it.

I am particularly disappointed by Senator Andrew Murray. I just want to make some reference to the Democrats. As long as the Democrats try to outflank the Greens to the left, they are going to get absolutely decimated. I say to the Democrats: if you are supporting this proposed resolution, you have not learnt your lesson from the last election. It is your proposed resolution too. You tried to go out to the left. You tried to outflank the Greens to the left. There is only room for one far left party in Australia. That is not what you guys were designed to do 25 years ago. You were designed to put some sense into the Senate. But all you have done for the last three years is to play second fiddle to the Greens. You got what you deserved—annihilation. That is what has happened. Senator Murray—I refer to you because I think you have more sense than the rest of the people over there combined—surely you could have given some wise counsel and said, ‘Hey, let’s not go there, because all we’re trying to be is “me, too” with the Greens.’

Labor wants to stop locals identifying their own solutions. Labor wants to punish local rural leaders who come up with ideas for local communities to survive and prosper. As former Labor senator Peter Walsh pointed out in today’s Australian, Labor’s idea of helping the bush is for Australia to sign the Kyoto protocol. The National Party is to be persecuted because it does the job it was elected to do—that is, represent the interests of regional and rural Australia. We are to be persecuted for doing what in many cases the Labor Party has come to us to do. After all, 76 per cent of all projects in Labor electorates have been approved, as opposed to 79 per cent for coalition electorates. There is not a significant difference there. The inquiry is going to stymie the ongoing work of these important programs. There are approvals coming through all the time. Just yesterday, I was asked to make an announcement in Rockhampton, which is in the Labor Party electorate of Capricornia. It was a very good program. Obviously Kirsten Livermore, the
federal member for that electorate, would have been supporting it. But I wonder if I should put that program on hold now.

Senator Carr—Was she invited?

Senator BOSWELL—I imagine she would be invited. I do not blame some senators for taking some actions, but is Labor saying that I should do that? Is that what Labor is saying—that the government should hold off because there is something amiss about these programs? That would be letting down a lot of people, including the local member, who, I would presume, asked for this program, perhaps in writing to the minister. The National Party is to be persecuted in a witch-hunt because it listened to representatives of rural Australia at the Regional Australia Summit who wanted innovative and flexible programs designed to meet the variety of circumstances facing regional communities. The National Party is to be persecuted because it listened and it delivered.

Why are Labor so bereft of leadership and policy that they are reduced to picking up the modus operandi of an Independent who is upset because he did not get invited to a government tea party? The reason is pretty obvious. If you are part of a government that listens and delivers then you are part of a local victory. If you only carp from the sidelines, chances are you will always be a gatecrasher, never an invited guest. Labor pin their hopes on the ways of an Independent. That is pathetic. The worst of it is that rural Australia will be the loser.

After this committee gets through with its witch-hunt, who will ever stand up in a local rural community again and say, ‘We need government to help our community’? Who will ever put up his or her hand and apply for funding in case they get put through the mill of a Senate inquiry? Who will ever follow through on a local job creation idea to keep young people in country areas if they have to front up before a Senate committee out for political blood? This motion is a terrible disincentive to rural and regional communities and to political leaders to ever devise innovative and flexible programs to help their constituents. Well done, Labor! What a Christmas present to farming families who have survived through drought, low commodity prices, high dollar values and oil prices, only to be hit with a low blow by a force that cannot face up to their own lack of leadership and their defeat.

This is a very sad indictment of the Senate—a particularly sad indictment. We expect that from the Labor Party and the Greens but we thought wiser counsel would have prevailed in the Democrats. I know Senator Murray must be embarrassed about this. I expect that he was defeated in his party room, because I know that he would have the decency not to put up this sort of proposed resolution. I know that he does have concern for rural and regional Australia, which is more than anyone in the Labor Party has. If you ever want to see the error of your ways, just examine the Senate result in Queensland, where the conservative vote went up by around 58 per cent. That was the conservative vote. It was probably a bit higher.

You have neglected rural Australia. You have paid the price out there and you will wear the consequences in the Senate when you come back in July. You are not scoring any political points. You are driving away the very little remaining support that you have in rural Australia. The National Party has put these programs up and you have attacked it on Dairy RAP and you are now attacking it on the Sustainable Regions Program and the Regional Partnerships program. All you ever do is attack anything that goes on in rural and regional Australia. No wonder you got such a miserable, depressed vote out there—eight or nine per cent in some electorates. I
do not know how you can look yourselves in the face when you put up these sorts of resolutions to score mean political points. You are not scoring them against the government. You have tried that for the last six years and you have failed. You keep doing it and you keep failing. All you are doing now is continuing your vendetta and taking out your vengeance on rural and regional Australia. You should be absolutely ashamed of yourselves and so should the Democrats—I know that Senator Murray would have been defeated in the party room—and the Greens.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.16 a.m.)—I know that the National Party is a little bit sensitive about this issue but that has got to be the most feeble defence or feeble attack—I am not quite sure what it was—that I have heard in a long time. Senator Murray can speak for himself but I am sure that the only fight we had in the party room was who got to put their name on the motion. I know that I am not leader for much longer but while I am leader my name goes on the motion, though as a certain fact Senator Murray had a lot more to do with shaping the content of it than I did.

I can just see it now. To all people in regional Australia the word will go out: Senate to inquire into government funding of Regional Partnerships program. There goes Christmas, they will all say. Our life is ruined. What a farce! To portray an attempt to inquire into whether or not taxpayers’ money is being properly spent and allocated as an attack on the bush is just ridiculous. If anything, a party that pretends to defend the bush should be happy to make sure that every last cent of money that is supposed to go to the Regional Partnerships program is spent as effectively and as transparently as possible. Whether you live in the city or the country, I have no doubt that, if you are aware of a program that is meant to spend money to help you, you want to be as confident as possible that the money is allocated in the most effective way and that it is not affected by political calculations, by pork-barrelling or by all of the other sorts of things that everybody in the Australian community continually suspects are behind public or government grants. We all know that every time a grant is given the entire community wonders whether there has been a wink or a nod or a nudge involved in somebody getting it and somebody else not getting it.

That does not help any of us. It does not help democracy when that public suspicion is there. It is human nature to suspect that and it is human nature sometimes for that to happen. The general community suspects that that is involved some of the time and all of us here know that it is involved some of the time. But we should be trying to eliminate it as much as possible. When you have clear-cut public allegations on the public record that this has clearly been a factor in the significant allocations of public money in an important program then of course you should investigate it. To suggest that investigating it is somehow an attack on rural Australia and on their self-determination is just sophistry at its worst. As for trying to portray it as some sort of attempt to out-flank the Greens to the left, what is left wing or right wing about trying to ensure public money is properly spent? All of us support that. These are the most ridiculous comparisons I have ever heard.

I know that the Democrats cannot talk about whose votes went down in the last election but, for all of their trumpeting in Queensland about winning a seat, the National Party’s vote in Queensland in the Senate went down—again. Much as it might gall them to acknowledge it, they got in on the tail of a huge increase in the Liberal Party vote in Queensland. I know that Senator
Brandis and Senator Boswell are best of friends again these days, but the fact is that they managed to get that extra seat because of the Liberal Party surplus, and the National Party vote went down again.

But I do not care about all that. I do not care about The Nationals and Liberals fighting for the rural vote. I do not care about the obvious tension between The Nationals and some of the rural Independents, like Mr Windsor or Mr Katter or Mr Andren. I am not interested. There is obviously a long history there and it is obviously bitter and personal. That is why having an independent inquiry in the Senate that looks at the facts and the details as outlined in these terms of reference is the way to go. This inquiry is not going to second-guess what the Federal Police did or what the public prosecutor’s decision was in relation to the allegations that Mr Windsor, the member for New England, made. The Senate is important and it can do lots of very valuable things but it should not replace a court, particularly in matters that are clearly political and party political or that impact on members of parliament and their political arguments. We can investigate the process of that inquiry by the Federal Police through estimates or other committees if we choose, and I suspect that people will do that. This inquiry is not about that and the terms of reference clearly distinguish it from that.

This is about expenditure of taxpayers’ funds and it is also, I might say, about how members of parliament are able to conduct themselves. I am sure that all of us—government, opposition, smaller parties and Independents—are regularly approached by constituents asking for support to get government assistance. That is part of our role; people expect us to help them to do that. And obviously if you are in government or if you are a minister you would naturally expect to have a better idea about how that support can bear fruit. Independents too, like Mr Windsor and Senator Harradine, must have been approached for help many times. Senator Harradine has survived here as an Independent in the Senate longer than anyone else in our history. I am sure he has been approached many times, and I am sure he has been successful many times and many other times not. But if you get to a stage where a group in the community is told that potentially they are not going to get funding if they have the support of a member of parliament from another party or of an Independent, that is getting far beyond anything that is acceptable.

I do not know if that has happened. But if it has happened, if it might happen, if there becomes a general expectation amongst the community that it is a reality, then it will affect the ability of members of parliament across the political spectrum to do their job and it will affect the ability of community organisations to be able to work with members of parliament. In my view—and it is not one that is shared by everybody—the key role of political representatives is not just to get in and try to whack through the policies that you put forward at election time; the key role is to facilitate the ability of the entire community, people who voted for you and people who did not, to be able to connect effectively with the political process. That should be the approach we take regardless of our ideological views on any particular issue.

If people in the community get a perception that being seen to be associated with particular members of parliament, with their own local member, will be detrimental to their being able to get taxpayers’ support that they would otherwise be entitled to, that their community will lose out on support because they associate with their elected member of parliament, then that becomes a serious perversion of the democratic process. Even forgetting about whether it is wasting taxpayers’ money, it corrupts the democratic process.
and some would argue it contravenes parliamentary privilege and breaches the law. That is where it gets beyond the day-to-day spats of competing political candidates and where it gets to a situation where the public can believe that they will lose out on support for their community in areas that they believe are important purely because they associate with their elected representatives—and that does get serious, and that is why I am concerned about it.

The Democrats have said all along that we did not believe the specifics of the allegations, the so-called bribery suggestions, were appropriate for a Senate committee, because we are not a court, we are not a police force and it is too politicised. But there are aspects of the process that we can look at. The broader allegations that have come to light about allocations of funding, not just in one particular case but in some other issues that have now come to the fore, are such that they are appropriate to examine. They could be looked at through the estimates process.

Given the continuing growth of allegations, it is appropriate to look at them in a focused way with a focused committee over quite a period of time—and let us note that this committee would have a reporting date right through to 15 August next year, so that would enable a proper examination of the whole program.

We are all aware that the whiteboard saga has gone down in political folklore. Peter Costello, the current Treasurer, partly built his political reputation on being the incisive Liberal Party interrogator in that particular inquiry. Nobody suggested at that time—that perhaps the Labor Party, as the government at the time, might have suggested it was an inappropriate inquiry; I do not know, but they certainly would not have wanted it—that it was inappropriate and an assault on the self-determination of the community to inquire into whether or not Ros Kelly was properly giving out grants into whatever area it was—I think it was sports. That inquiry was not seen to be an attack on the self-determination of sporting clubs around the nation. They were not all saying, ‘Our Christmas is ruined because the parliament is going to inquire into this area.’ It is just ridiculous. It was not a left-wing conspiracy; it was not part of an attempt by the Liberals to outflank the Democrats on the left back in those days. How absurd!

Any time you get significant allegations on the public record of major distortions in the way public funding is distributed, particularly when it gets to the extent of elected members of parliament being seen as a detriment to getting support for grants, of course you should be examining it. It is not just a sophistry. I think it is absurd, it is an insult, to suggest otherwise. If that is a sign of the sort of attitude we are going to get from this government when they do have the numbers in the Senate from July next year then I think we should all be worried. For a government that got elected way back in 1996 on this laughable slogan ‘For all of us’, more and more there is the in crowd and the out crowd: if you are in the know, if you are with the elites in the government, then you are right: you will get your appointments, you will get your ambassadorships, you will get your grants; but if you are seen as on the outer, part of the mob that will just be continually smeared by this government, then you can forget about it, you will be left out in the cold. We are getting more and more of that over time. Perhaps that is just inevitably what happens whenever a government is in power for a long time. But if that attitude gets entrenched once the government gets control of the Senate then I think it will be a very dangerous development.

Of course there are political undertones to this inquiry but, as the terms of reference show, the inquiry is clearly about the alloca-
tion of funding and it also deals with the concerns that have been raised about whether or not practices are influencing the ability of members of parliament to do their job of supporting and facilitating the engagement of our community in the political process and in community life. We all repeatedly bemoan the growing community cynicism about parliamentary politics and about party politics. We all bemoan the fact that people feel that they cannot make a difference. There is nothing that is more guaranteed to make them cynical and make them feel like there is no point than if they get a belief that even being seen to be associating with their local member of parliament is going to ruin their chances of getting support. And I am not saying that that allegation is true. What I am saying is that unless that allegation and those broader allegations are properly investigated, people will assume they are true. In many ways I hope this is able to demonstrate that those allegations and those concerns are not true, because I would prefer the public to be able to be confident that there is not that degree of distortion in these sorts of funding decisions. I would prefer people’s cynicism to be proven wrong. I would prefer people to be able to feel more confident in the way they go about things.

As Mr Anderson said—and I have no reason to doubt him—he has nothing to fear from this. If the Senate wants to do it, it should do it. Frankly, I hope that in doing this the Senate can demonstrate that there is no significant political corruption of this particular program—I do not know about others but, from my point of view, it would certainly make me feel better—but if there is then we need to fix it up. Either way, to say that investigating it is inappropriate is just ridiculous. I fully understand why Mr Anderson, the member for Gwydir—and I have heard him speak a number of times on this—and Senator Macdonald are affected by this personally. I understand that they do not like the focus on this. I understand it can have an impact on their families—that is one of the unfortunate side effects. I do not like that side of these sorts of issues. I think the ability to look specifically at the funding program and the way the program operates, to look at that side of things rather than just targeting fights between individual members of parliament, is a better way to go. I recognise the impact it can have on them, particularly on their families, and that is unfortunate.

But if the Senate does not do this inquiry the issue is not going to go away. I think it is actually better for issues to be looked at in a proper and well thought through way and to be examined in detail, rather than just having allegations being made that become headlines the next day and are seen through the distorting prism of the media. That can often be a lot worse than a Senate inquiry. When a Senate inquiry gets into detail, into facts and into substance, it usually means the media are not interested anymore because substance is too hard, and I think that would actually make life a bit better.

I also have to say—not in relation to Mr Anderson personally—that this is a government this has given free rein to smearing people and groups across all parts of the community. A specific example I can think of is this government being openly told that making a range of allegations would cause tremendous suffering to somebody’s family but it went ahead with the smears anyway, despite knowing that it would cause a lot of distress to the person’s family. So it is a bit hard. The Deputy Prime Minister has been Deputy Prime Minister for quite some time and a senior member for a long time in a government that has smeared a lot of people in this country—individuals and groups—without having any concern about what it might mean to them or to their families. It is
a government that has not concerned itself with natural justice—another concern that Mr Anderson expressed. It is a government that has actually supported removing natural justice from a number of our laws, not least of which is the Migration Act. So you have to recognise that this government is far from clean when it comes to smearing people left, right and centre without any concern for the distortions in how that is portrayed through the inevitable media coverage and debate, and it has facilitated, encouraged and participated in that repeatedly in a whole range of areas. That does not detract from my understanding and sympathy for some of the distress that individual members might be feeling now, but it does temper it somewhat to recall the very many incidents in which various people within this government have been involved. I do not say that of Mr Anderson or Senator Macdonald as individuals but of the government they are part of.

But let us accept all that and pull it all back to what the motion is about. It is about looking at the administration of the Regional Partnerships program and the Sustainable Regions program, with particular reference to the process by which projects are proposed, considered and approved for funding. That is what it is about. It is something that could be done through estimates anyway, but putting it as a specific stand-alone inquiry will enable there to be the sort of focus that I believe is now needed, given the range of allegations that have now been made and are likely to continue to be made. It is the best way to clear it up once and for all, for better or for worse, in a process that will deliver some natural justice, give people a chance to respond to allegations on the public record and get things corrected.

People can make all the allegations they like in the House of Representatives without any scope for people to correct the record in the parliament. We have a process in the Senate that at least goes part way to addressing that. So I think the best way forward is to try to clear the air one way or the other and try to determine whether or not things have been done appropriately, whether or not members of parliament are being impeded in the way they do their job and the community is being short-changed by the ability to use their elected members of parliament and, above all else, whether or not taxpayers’ money is being used as effectively as possible to deliver the aims it is supposed to achieve or it is being used to buy votes. This is a government that has quite openly been willing to spend millions and millions of dollars of taxpayers’ money on advertising to buy votes—everybody knows that—so it is not surprising that there is a suspicion that perhaps they are willing to use other taxpayers’ money in the same way. Let us find out. Let us look at it. Let us put it all on the public record and let everybody choose for themselves on the basis of the evidence. How that is an assault on regional Australia is beyond me.

**Senator BROWN  (Tasmania)  (10.36 a.m.)—**There is a clear need for an inquiry by the Senate Finance and Public Administration References Committee into the administration of the Regional Partnerships program and the Sustainable Regions Program, and the evidence for that grows every day. Senator Harradine did move for estimates hearings this week, and that was opposed by the government and the opposition and supported by the Greens. The opportunity for that is now gone until February, and it is limited, as earlier speakers have seen. But there is a need for an inquiry as, day by day, information comes out about the government’s manipulation of this program in the way in which the moneys have been allocated in rural and regional Australia. I will read the first few paragraphs from Lenore
Taylor’s article in today’s Australian Financial Review:

The federal government has spent $36.3 million of its $308 million regional partnerships program under a previously unpublished guideline allowing it to fund projects which don’t fit the regular guidelines, but are judged to be in the national interest.

Among the 12 projects funded under this so-called Strategic Opportunities Notional Allocation (Sona) guideline are the dredging of a creek, a Slim Dusty museum and a national sugar industry assistance package.

According to a department brief released by the government yesterday, Sona guidelines can be used for projects which “may fall outside the administrative constraints of regional partnerships” but are nevertheless judged to be “of national or cross-regional significance” or projects which are responding to a “significant event such as a regional economic or social crisis.”

What we are seeing here is a secret guideline, outside those guidelines on the public record, giving the government—the minister of the day—the ability to make decisions which are not under those published, public guidelines. In other words, anything goes.

The article, quoting from the departmental document, goes on to say this:

“Sona is not an advertised element of the program and applications cannot be lodged under it—”

So we have this secret guideline—this catch-all allowing ministers to do what they like—which is not advertised and not known to applicants in the bush. And Senator Boswell says that this is hard on the bush! You are telling me it is! Here is a government deceiving the bush—fraudulently leaving the applicants in the bush to believe that there is a set of guidelines, that it is fair for all players, while, no, the minister has got another guideline under the desk which allows him to fund projects which are outside the guidelines that the public and the people in the bush know about. The article continued:

“the department uses it as a mechanism to provide the government with flexibility in relation to nationally significant projects, emerging needs or significant events,” the departmental document says.

So we have got a minister with ‘flexibility’—off the record, secret—pulling the rug from under the public perception that there is a set of guidelines that make it fair for everyone. That is outrageous. That is simply not acceptable. This is government manipulation and the debasing of a project which, on the face of it, seems to be fair to everybody. Talk about looking after the interests of the bush!

How come Senator Boswell did not make sure that that guideline was known to the people in the bush who were approaching the government to get funding for their particular projects according to a set of published guidelines? Was Senator Boswell privy to this secret guideline used by the government and, if so, why did he cover up on it? If not, how could it be that the leader of the National Party in the Senate did not know what the Deputy Prime Minister knew in the House of Representatives? I would ask Senator Boswell to come back in here and explain this secret guideline, because I believe he knew about it and did not tell his constituents. If that is the case, he has a case to answer.

He comes in here and talks about ‘gatecrasher Independents’. Let us look at the implication in that, because it was aimed very squarely at the very popular Independent member for New England, Mr Windsor. ‘Gatecrasher’ indeed! What an affront to the voters of New England that term by Senator Boswell is—the people of New England elected a member with a 20 per cent majority on 9 October and the leader of the National Party comes in here and calls that member a ‘gatecrasher’. That is an indication of how little Senator Boswell thinks of not only vot-
ers in New England but voters in the bush in general.

Senator Boswell and the National Party have let the bush down. They are so thick with the Liberal government, and indistinguishable from it, that in his own rhetoric the leader in the Senate pours scorn on voters in regional areas like New England—in Tamworth, in Armidale, in Glen Innes and in Tenterfield. They have elected a gatecrasher, he says. What an impudence and what a way to talk about people who hold the view that their Independent has a full right not only to take part in programs funded by the government but to be able to fairly represent them and be represented when the time of the payment of those programs comes about. We go back to the Financial Review article. It has revealed that one of the projects which apparently got funding under this secret guideline but outside of the guidelines as published was in the marginal Liberal seat of Dobell and was for the dredging of a creek. The article says this:

Tumbi Creek got two regional partnerships grants totalling $1.4 million in the lead-up to the federal election, despite the local area consultative committee’s judgement that dredging the creek was a low priority for the region. The federal government has said the second grant was necessary for the work to proceed because the state government had refused funding. The state government favoured a different solution to the problem. Since the election, heavy rains have partially cleared the siltation in the creek. Only one of the federal grants appears to have been funded under the Sona guideline.

If that is true, here we have the federal government overriding the local area consultative committee’s judgment. Where, here, is Senator Boswell standing by the rights of people in the bush? No, instead of that he is part of a cabal of ministers who override the judgment of the people in the bush. Witness what is going to happen with Telstra in the coming months one way or another under this government.

There is a pall of questions hanging over the administration of the Regional Partnerships program and the Sustainable Regions program. There is, on the face of it, political patronage interfering with those programs, advantaging some projects and disadvantaging others. That means disadvantaging the honourable people out there who put a lot of work into putting forward their projects under guidelines and who are being deceived by this government, which has another secret guideline under its desk which says, ‘No, this program can be manipulated for the political advantage of the government of the day.’ Was there ever a better reason for the Finance and Public Administration References Committee to have a look? I think not. These matters demand further inquiry—and who is going to make that inquiry? Certainly not a government dominated House of Representatives. We in the Senate have an obligation to look into this matter. The Deputy Prime Minister says he has no worries—even though he will not come before the inquiry. That being the case, the inquiry should proceed so that we can clear the air over what has become a very odious process of what should be the delivery of moneys in prioritised, sensible and publicly accountable and transparent ways to projects in the bush.

Senator HARRADINE (Tasmania) (10.48 a.m.)—The motion that we are considering now is a motion to refer to the Finance and Public Administration References Committee for inquiry and report by 15 August 2005 a list of matters relating to the Regional Partnerships program and related programs. I am concerned that the question of public moneys being expended should become very clear indeed. My concern is that, if we adopt this proposal, it could degenerate into an exercise of trawling the murky waters of alleged political patronage—and some of
the debate thus far has confirmed my concern—and that all of this could be done under parliamentary privilege. My fear is that then the credibility of the Senate processes could come under great stress. I know that if that happened the Senate could handle that and the officers could handle that. But there are processes already available, through the estimates committees.

Clearly, the estimates committee processes are most important in determining this particular question—that is, the alleged lack of transparency over the expenditure of public moneys. We want to know how much was spent in certain programs, how much was spent in others, what the processes were, what the criteria were, what the evaluation was and who was on the committee that did the evaluation—all regular things that are discussed at estimates committee hearings. I am obviously concerned about and interested to find out, as all of us are, where public moneys have been spent, what criteria were used and in fact what were the evaluation processes and the like. First of all, we have to seek and obtain the facts. Unfortunately, the Labor Party opposed my proposal for the estimates committees to meet this week. We should be meeting as estimates committees this week. The question of the Regional Partnerships program and the other programs would be under the spotlight now—today—if my proposal had been agreed to by the opposition, but unfortunately it was not.

Most years at about this time we have an examination, through the estimates committees, of the expenditure of particular government departments and instrumentalities. That is important but, unfortunately, it has gone by. But, if you want the pure facts of where the money has gone and why, you have got until tomorrow evening to put all this in writing—and I presume the opposition has done it—to the particular estimates committee secretary. Because of the resolution that was adopted here, the department, in this case, will need to provide the answers by 31 January. You can proceed from then on because, so far as I can recall, there are some estimates committee hearings in the early part of next year. At that time you will be able to analyse what responses you have got. In the estimates committee hearings you can question the public servants and the minister or the minister’s representative in the Senate. Again, the estimates committee is a better way to go, normally speaking. That is my proposal. I would like to exhaust all of those options before we proceed to the next step.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (10.54 a.m.)—I will make a short reply. I think it is fair to say that Senator Boswell’s contribution was unhelpful. He had no rational argument to oppose the formation of a committee; he just made some character assessments of the Greens and the Democrats. He failed to answer the key questions as to why the public and the Senate should not inquire into these very important matters using the proper processes of the Senate. I think the only substantive arguments put against the reference have been by Senator Harradine, and I know he takes a keen interest in these issues.

In response to Senator Harradine, I would say first of all that all week we have sought to gain his support, by corresponding with and contacting his office about the terms of reference and trying to involve him in the process of what we think is a very important inquiry. I would be very disappointed if Senator Harradine did not support this reference. It seems to me that it represents the sort of important work that the Senate has done over a long period of time. It is part of the role of the Senate which Senator Harradine has played an important part in developing over the last 20-odd years he has been
here, and particularly in recent years in terms of the committee process.

The argument that you can just leave it for the estimates process is not sustainable. Estimates will provide a useful addition to the work, but the reality now is that we have a wide range of issues regarding these programs that require proper examination. An estimates committee will not hear from witnesses, travel out to rural and regional Australia, examine the issues on the ground, and hear from those people affected and from those people who participated in the processes. All the estimates inquiries will do is hear from the public servants, who will come along to explain the government’s position. That is a valuable part of any process the Senate follows in trying to track down and examine issues, but the reality is that the Senate Finance and Public Administration References Committee is charged with the responsibility of monitoring these issues on behalf of the Senate. Part of its central charter is to inquire into the proper finance and public administration of these sorts of programs.

The point I made in my opening remarks was that this is a continuation of the dairy scheme work that was started last year by the committee, which followed through and made recommendations to the government—which the government said it accepted and which it now appears to have breached. This is a continuation of their work. I would make a very strong argument that this is the appropriate way for the Senate to deal with the matter. I accept Senator Harradine’s argument that part of the work should be done through the estimates process. But we will not be able to hear from witnesses, we will not be able to travel out to the regions affected, and we will not be able to get the other parties involved in the inquiry if we rely on estimates alone. I hope that his frustration that estimates hearings did not happen this week does not affect his judgment on these matters.

This is an important part of the Senate’s work. The terms of reference are perfectly balanced and have been done in consultation with as many of the senators as possible. They concentrate on the issues of the program and on the proper accountability mechanisms. Senator Harradine has some concerns about the motivation of some of the senators, about trawling through the murky waters of political patronage. I am sorry, Senator Harradine, but the issues which are thrown up by this matter include whether or not proper public processes and proper accountability measures have been followed. The finance and public administration committee have a good reputation, and their work will be a continuation, if they accept this reference, of the work they did last year.

Quite frankly, referring this matter to this committee is a proper expression of the processes of the Senate and a proper expression of the practices developed over the last 20 or so years, where the Senate has sought to act as a check and balance on government, to inquire into whether, and to ensure that, proper accountability measures are followed. That is very much what I see as part of the role of the Senate, I think it is very much how Senator Harradine has seen the role of the Senate, and I think most senators have seen it as one of the proper and primary roles of the Senate. This motion to refer the matter to the finance and public administration committee reflects that proper function and role of the Senate, one that I hope continues beyond 1 July next year. Nevertheless, it is an important part of our current function. I urge the Senate to support the motion.

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

The Senate divided. [11.03 a.m.]
AYES

Allison, L.F. 
Bishop, T.M. 
Brown, B.J. 
Campbell, G.* 
Cherry, J.C. 
Conroy, S.M. 
Denman, K.J. 
Forshaw, M.G. 
Hogg, J.J. 
Lees, M.H. 
Marshall, G. 
Murphy, S.M. 
Nettle, K. 
Ray, R.F. 
Sherry, N.J. 
Webber, R.

NOES

Abetz, E. 
Boswell, R.L.D. 
Chapman, H.G.P. 
Eggleston, A.* 
Ferris, J.M. 
Harradine, B. 
Humphries, G. 
Kemp, C.R. 
Lightfoot, P.R. 
Macdonald, J.J.J. 
Payne, M.A. 
Scullion, N.G. 
Troeth, J.M. 
Watson, J.O.W.

PAIRS

Cook, P.F.S. 
Faulkner, J.P. 
Kirk, L. 
Lundy, K.A. 
Mackay, S.M. 
Moore, C. 
Stott Despoja, N.

* denotes teller

Question agreed to.

FAMILY AND COMMUNITY SERVICES AND VETERANS' AFFAIRS LEGISLATION AMENDMENT (2004 ELECTION COMMITMENTS) BILL 2004

In Committee

Consideration resumed from 1 December.

The TEMPORARY CHAIRMAN (Senator Chapman)—We are dealing with Democrat requests for amendments (4), (5) and (6).

Senator GREIG (Western Australia) (11.08 a.m.)—After we left off on this yesterday Senator Evans chatted to me informally about some questions he might put to me about this. I wondered if he wanted to pursue those.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (11.08 a.m.)—I would like to indicate that Labor will be opposing the Democrat requests for amendments (4), (5) and (6).
that would be useful. Otherwise we will take that matter up privately.

Senator GREIG (Western Australia) (11.09 a.m.)—In answer to Senator Evans’s observations, he is quite correct. The definition of an interdependent relationship which has been circulated would probably be too broad for what we are trying to achieve here. The reason it appears the way it does is partly due to some clumsy communications between myself and the clerks. What has happened here is that the definition that has been brought forward is the one which we have been working with within superannuation legislation. There is a difference of process in terms of death benefits and what we are dealing with here, which is effectively a pension or a reversionary pension in terms of the payment of pensions to surviving partners, in this case veterans. The interdependence definition, whilst effective and adequate for superannuation, would—and I think Senator Evans is right—perhaps not be the best one to be used here. It might mean, for example, that a pension of this nature could be extended to a father and son, two maiden aunts, a neighbour or so on. This is, in fact, what does happen under the definitional processes of superannuation through the use of interdependence.

What we really need is a tighter, more specific definition. Perhaps a better one I could have circulated would have read something like ‘partner in relation to a person means a person who is living with, or ordinarily lived with, another person on a bona fide domestic basis whether or not legally married and includes opposite and same-sex couples’. I think that would be a better definition. I will not take the opportunity now to move an amendment as such on the floor because it is clear that, while the principle has some loose support from Labor although they are not voting in favour of the motion specifically, the principle I am advancing by way of amendment does not attract majority support in the Senate. So I will not take up any more time by moving an amendment to exchange my verbal definition for the written one. I think senators understand where I am coming from. Senator Evans’s point is correct.

I guess, more broadly, I would be interested to hear from Labor—they have commented on this once before—what formal process and what policy position they will take to the next election perhaps, if they did not to the last, in terms of how they might address the issue of pensions paid to veterans, specifically same-sex couples and particularly in the wake of the Edward Young decision and the criticism from the United Nations Commission on Human Rights. While it is clear that I will not have success here today in the Senate with this request for amendment, I would be keen to hear from both the government and the opposition about where they really do stand on this and what kind of policy framework they would either adhere to or advance.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (11.12 a.m.)—I thank Senator Greig for his comments. I think there is a technical difficulty with his amendment, but I do not want to hide behind our concern about that because, quite frankly, we were not going to vote for it even if it was technically correct. I have been very straight with Senator Greig about that. I was also a bit surprised that the amendment was limited to a particular subset affected by this bill—it is not a sort of general same-sex amendment but is limited to a particular group. It has become clear that Senator Greig is pursuing an outcome following Mr Young’s court case and its impact on veterans.

I want to put on the record that Labor went to the last election with a policy...
framework which involved a commitment to undertaking a comprehensive review of same-sex law reform—a commitment that we were going to audit all Commonwealth legislation with a view to trying to remove discriminatory provisions. I agree with Senator Greig’s comments yesterday that discrimination is unsupportable. We have always opposed the piecemeal approach of trying to amend a particular bill at a particular time. I know that provides frustration for Senator Greig, but we think that if the Commonwealth is going to change its position on the issue of same-sex couples and their entitlements under social security, tax and other laws then it needs to do it in a comprehensive and consistent way. That is not an attempt to hide from the issue, but one thing we all know about social security legislation is that one minor amendment has numerous flow-on implications and generally creates more trouble than it is worth. Particularly in the area of social security, I know that same-sex law reform will be both beneficial and disadvantageous for various couples—it will depend on how they are affected by that change—because of their current living arrangements.

Certainly we took to the last election a policy that in government we would undertake a full audit of Commonwealth legislation and that we would not support piecemeal amendments but try to deal with the issue in a comprehensive and proper way. I was very strongly committed to that. I certainly was aware of the discrimination in the defence forces against same-sex couples. My personal view was that that was unsustainable in terms of a whole range of measures—transfer allowances, superannuation, living allowances, et cetera. A number of Defence Force personnel had raised with me what they thought was unfair discrimination on the basis of their sexual preference. It is an issue that has to be addressed and my personal view is that it ought to be.

In terms of dealing here today with the Democrat amendments, firstly we have the technical problem. Secondly, we have always opposed trying to deal with this issue on a piecemeal basis in legislation. Thirdly, Labor is committed to passing the bill. We are not going to hold up the bill by sending it back to the House of Representatives because we know the government has not changed its position—unless the parliamentary secretary is going to leap up and suddenly change government policy. He certainly would make a name for himself in his debut as a parliamentary secretary if he changed the government’s position, so perhaps I should not preempt his contribution. But I suspect that the government’s position has not changed and I suspect that the change will not be led out of Tasmania if it does occur. Nevertheless, our view is that there is an important issue here of discrimination which we do not support. But we are not going to support the Democrat requests for amendments on this occasion for the reasons I have advanced.

In terms of Labor’s longer term position, I think it is fair to say we are still coming to terms with our electoral loss and we have not got our heads around how we are going to deal with this issue over the next three years. I think the current policy is to maintain the policy we took to the last election, but clearly there will be a lot of reassessment inside the Labor Party about how to respond, given that the prospect of government for us is now at least three years away. The policy that we took to the election sustained us through these debates in the year or so leading up to the election. Whether we continue with that for another three years or look at some other policy is a matter for consideration by the Labor Party over the next little while. For the reasons I have outlined Labor
will not be supporting the Democrat amendments.

Senator GREIG (Western Australia) (11.18 a.m.)—I thank Senator Evans for his response. It is worth looking at what is happening internationally in this area. In the last two weeks alone Britain, under the Labour government of Tony Blair, has passed the Civil Partnership Act recognising same-sex couples and de facto couples—a significant jurisdiction to have done so. So a comparable jurisdiction—another Commonwealth country, another Westminster formed government and another Labour Party—has progressed civil relationships, a terrific and overdue move and one I would encourage Senator Evans and his colleagues to consider.

At the same time, just in the last few days, our near neighbour New Zealand has introduced the Civil Union Bill, proposing to adopt a very similar system to that which I understand is now law in the UK. Within the last year we have seen Canada, another comparable jurisdiction, move to full marriage equality. It is clear that that does not have major party support in Australia, but we have had nothing to replace it.

Regrettably, our parliament has snuffed out the opportunity for same-sex couples to have a civil marriage, or for civil marriages between same-sex couples solemnised overseas to be recognised here. That is no longer possible—or not unless that law is to be repealed, and I do not believe it will be. There is now a vacuum; there is nothing that replaces that. We are one of the very few Western countries that have no national anti-discrimination laws on the grounds of sexuality and one of the very few countries in the Western world—indeed including Eastern Europe and Latin America—that has no partnership recognition for same-sex couples.

Senator Evans is correct to say that that means that there is a whole raft of discrimination in a range of areas. Veterans’ affairs is but one of them. I include superannuation. We must acknowledge that all the discrimination there has not been removed. Key elements have, but there are still some problems with it. I understand it does not, for example, follow through to reversionary pensions but is quarantined only to death benefits. There are still issues within the defence forces. There is still discrimination within social security. Immigration is particularly problematic. I have recently had an approach—I understand other senators have, too—from an academic who is, I think, based at the University of New England and who is trying to bring his partner out from New Zealand. He is to teach; I forget his particular area of expertise. He has been highly sought after by that university but his entry into this country is being hampered because of his relationship. I find that extraordinary in this day and age.

There are other areas of discrimination. Senator Evans raised the question: why quarantine this particular reform to veterans’ affairs and not apply it more broadly, to social security? It is worth touching on that for a moment. Social security is perhaps one of the only areas in which there exists an element of what we might call positive discrimination in that, because of the failure of government to recognise same-sex relationships, where there is a same-sex couple where one partner is working full-time the other partner, who may be unemployed, is entitled to the full amount of unemployment benefit. This situation does not apply to a heterosexual couple where one partner is working full-time the other partner, who may be unemployed, is entitled to the full amount of unemployment benefit. This situation does not apply to a heterosexual couple where one partner is working full-time and the other is unemployed. They would receive a reduced benefit because they are rightly seen as having a partner who is partly supporting them. But because of the wilful blindness of this gov-
ernment and previous Labor governments in not recognising those relationships, a curious benefit accrues there.

The question to me, quite rightly, is then: why am I not addressing that? To that I would say that, as an individual and as a party, I am not going to stand here and argue that the first reform for same-sex couples should in an area where a benefit is removed. I will argue that only when there is equality across the board. The gay and lesbian community—which does not speak with one voice, I must say, and nor does the heterosexual community—broadly understands that equality means equality across the board and that will mean for some people a paring back of benefits under future reform for the purposes of social security. But let us not make that the first reform. That would stick in my craw.

Senator Evans also made the point that Labor is not comfortable with or committed to reform on a piecemeal basis. That is not entirely true, with respect, Senator, because we have now done that with superannuation. As a portfolio area, that was excised from the broad range of other issues of discrimination and it was dealt with separately. I was able to prove, with my persistence, that that was possible even under a conservative government. I take some pride in the role that I played in doing that. I would also say to Senator Evans—and I am not saying this for the first time—that I wholeheartedly agree that sweeping, comprehensive national reform is the way to go. Let us do it all in one piece. I would be very happy to support any motion to do that this afternoon. But the fact is that we Democrats have had a bill on the Notice Paper in one form or another for nine years to do exactly that, but there is not the support in this chamber to bring that bill on for debate, let alone to support it.

Mr McClelland, who was then the shadow attorney before Ms Roxon, announced some months out from the last election, in an interview to the gay press in Melbourne, that the Labor Party would be committed in government to national antivilification laws, national antidiscrimination laws and partnership laws along a de facto model. I was delighted to see for the first time that kind of unequivocal support in black and white. I wrote to Mr Latham in response to that and I said, ‘This is a terrific policy. It doesn’t go as far as we Dems would have liked, but it is a significant step forward for the alternative government.’ I made the point to Mr Latham in my letter that all of the things which Labor was now proposing in a policy sense were contained within the Spindler bill—the bill to which I referred. They are already there in our bill. I asked if I could have his support, if for nothing else just to bring that bill on for debate. I effectively called on Mr Latham to demonstrate his bona fides on this by having some kind of debate on this before the election. Regrettably, I never had the courtesy of a reply.

I am a little cynical about Labor saying one thing but doing another, and that other being resistance. But I also take hope, when I focus internationally, in the extraordinary reforms that are happening in this area in so many other countries. Spain—a Catholic country—is moving to full civil marriage. I understand also that France has just done what Australia has done—that is, to extinguish civil marriage for same-sex couples—but it is now advocating civil unions for same-sex partners. I was staggered when President George Bush—a fervent campaigner in opposition to same-sex marriages—stated during the US election campaign that he personally was committed to civil unions for same-sex couples. That is a policy position that is now more progressive
than that which is held by the Australian Labor Party.

In closing, I have made my point. I have raised the issue once again of discrimination within veterans’ affairs. I accept that it needs to be dealt with more broadly in superannuation, but it ought to be done in a much more wholesale way in regard to all Commonwealth legislation that discriminates. I make the point again that my efforts to do that have been frustrated by this chamber. If and when we are to have a Labor government committed to this—and I would welcome that in advancing the policy—then it needs to look more closely at what is happening in comparable jurisdictions such as the UK and New Zealand. I ask the government to recognise that it really is quite extraordinary that Australia has fallen so far behind in this area. Even many conservative governments in other countries are moving towards partnership recognition and civil union for same-sex couples. It saddens me that our government cannot or will not do that and that the policy position of Labor is still more regressive than that of similar countries.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (11.26 a.m.)—I first note the comments of the Leader of the Opposition in the Senate. While he makes nice warm and fuzzy comments about not discriminating, he does show in his comments the discrimination that many north islanders display against my home state of Tasmania. He might look at history to see how much our state has contributed towards the very positive progress of this country.

Senator Chris Evans—It was an attack on the Tasmanian Liberal Party, not on Tasmania.

Senator COLBECK—I still think his discrimination is unfounded and perhaps he ought to look a bit closer and talk to a few of us a bit more as well. Obviously, the government will not be supporting the requests for amendments moved by the Democrats. I note that the Democrats have moved similar requests for amendments to previous veterans’ affairs bills, most recently the Veterans’ Entitlements (Clarke Review) Bill 2004 and the Military Rehabilitation and Compensation Bill 2004.

The Veterans’ Entitlements Act does not discriminate regarding the sexual preference of a veteran when granting benefits. However, the legislation does not recognise the partner of a veteran in a same-sex relationships as being a dependant who may claim benefits such as war widow or widowers pension or partner service pension. The proposed amendments impact on existing pensions and benefits under the Veterans’ Entitlements Act, not just on the proposed utilities allowance and seniors concession allowance, and the government does not accept that there is significant support in the veteran community for any change to existing arrangements.

Senator GREIG (Western Australia) (11.28 a.m.)—I want to respond to the contribution from Senator Colbeck. I really take offence—I know he did not mean it personally—at this argument coming from the government that there is no support for this from the veterans community because in my experience that is not only untrue but also irrelevant. I have spoken to and worked with many in the veterans community, including RSL members and more recently Vietnam veterans, who have no difficulty with this whatsoever and scratch their heads in disbelief that the government does not progress it. It is untrue to say that but, more importantly, it is utterly irrelevant. We do not defer to a particular section as to how we should advance government policy in human rights areas like this. It is a matter for government
leadership. It is too convenient for the government to say that a section of a particular group is opposed because that is simply an opportunity to hide behind its own prejudice and to try to project that prejudice onto others. If it were the case that the veterans community were overwhelmingly in favour of this reform, the government would still be opposed to it. I think it is important that we have that on the record.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

**Third Reading**

**Senator COLBECK** (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (11.31 a.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**WORKPLACE RELATIONS AMENDMENT (AGREEMENT VALIDATION) BILL 2004**

**Second Reading**

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

That this bill be now read a second time.

(Quorum formed)

**Senator SHERRY** (Tasmania) (11.34 a.m.)—We are now considering the Workplace Relations Amendment (Agreement Validation) Bill 2004. The Labor opposition supports the purpose of the bill in providing certainty for those certified agreements rendered potentially invalid as a result of a decision of the High Court in the Electrolux case. However, the Labor opposition believes the way in which the bill goes about providing that certainty could be improved. Far from resolving issues created by the Electrolux decision, the bill could allow that uncertainty to continue because many clauses of collective agreements are yet to be tested before the full bench of the Australian Industrial Relations Commission or by another authoritative court and may not be tested for some time. The bill also leaves uncertain whether industrial action previously taken in support of certified agreements which contain matters not pertaining to the employment relationship in protected action would thus render those certified agreements not be able to be the subject of further legal action.

The Electrolux decision has been the cause of a great deal of uncertainty in relation to certified agreements. The government’s bill does not completely address that uncertainty. For these reasons the opposition will move amendments to the bill which provide for greater certainty. I turn first to the provisions of the bill. The bill amends the Workplace Relations Act 1996 to validate agreements which were certified, approved or varied prior to the decision of the High Court in Electrolux of 2 September 2004. This judgment was based on section 170LI of the Workplace Relations Act, which provides that collective agreements can be certified by the Australian Industrial Relations Commission only if all matters contained in the agreement pertain:

... to the relationship between:

(a) an employer ... and

(b) all persons who, at any time when the agreement is in operation, are employed in a single business, or a part of a single business, of the employer and whose employment is subject to the agreement.

The High Court found that, for an agreement to be of the nature described in section 170LI, it must be wholly about matters pertaining to the relationship between the employer and the employees in their capacity as employees other than provisions that are incidental or ancillary to the employment rela-
tionship or machinery provisions. The majority judgments in Electrolux suggest that existing agreements which contain provisions that do not pertain to the relationship between an employer and employees may not be valid because the commission did not have power to certify them.

Prior to the Electrolux decision, there were conflicting precedents in the commission and the Federal Court about the nature of this requirement. Some agreements were certified, although they contained matters that may not now meet the test in section 170LL, as subsequently interpreted by the High Court in Electrolux. The bill applies to agreements which were certified, approved or varied on or before 2 September 2004. The bill provides that, where an agreement containing matters that do not pertain to the employment relationship were certified, approved or varied prior to the Electrolux decision, these matters are not to be considered as affecting the validity of the agreement. In effect, the offending provision or provisions will not stand but the balance of the agreement will.

The bill validates, firstly, certain agreements made under division 2 where the employer is the Commonwealth or a constitutional corporation; secondly, certified agreements made under division 3 in relation to an individual dispute or industrial situation; and, thirdly, Australian workplace agreements, AWAs. The bill will not validate those parts of an agreement that do not pertain to the employment relationship. Nor will the bill remedy other defects in the certification process. If an agreement is invalid as a result of some other flaws in its making, certification or approval, this bill will not render it valid. Nor does the bill validate any protected industrial action that was taken in relation to matters not pertaining to the employment relationship. The bill was referred to the Senate Employment, Workplace Relations and Education Legislation Committee. A hearing took place in Melbourne on Thursday, 25 November. The report of the committee was tabled on Monday, 29 November.

The decision of the High Court in Electrolux has created uncertainty in the application of many existing certified agreements. The High Court ruled that an enterprise agreement could only be certified by the commission if all of its provisions related directly to the employment relationship between the particular employer and its employees. If any provision offended that test, the whole agreement is rendered invalid. While the decision itself was largely confined to a particular provision relating to bargaining fees, the decision has much wider ramifications. There has since been considerable speculation and debate as to which provisions commonly included in enterprise agreements might fall foul of those provisions of the Workplace Relations Act that limit the matters that may be so included.

Because many enterprise agreements which have previously been certified by the commission are likely to contain a provision that potentially does not pertain to the employment relationship, many agreements may now be technically invalid. As a matter of general principle and a starting point, employers and employees should be entitled to freely and voluntarily reach agreement on whatever matters they want to, provided it is lawful to do so. That should be able to occur without unnecessary legal hindrance or bureaucratic complexity. Because of this, the capacity post Electrolux for ongoing hair-splitting by courts and tribunals in relation to what might be and what might not be matters pertaining to the employment relationship is an unwelcome development. As for Electrolux, it is imperative that uncertainty caused by the decision be resolved before parliament rises this year. A ‘do nothing’ ap-
proach is not a viable option. The real question is: what form of validation should take place?

The government’s bill proposes to resolve the uncertainty by retrospectively validating all those parts of certified agreements that pertain to the employment relationship, but only those parts. The problem with the government’s bill is that for some time there will remain considerable uncertainty as to which provisions of certified agreements remain valid and which do not. This is because many provisions are yet to be considered authoritatively by the full bench of the Industrial Relations Commission, by the Federal Court or, indeed, even by the High Court. Until each contentious provision is properly and authoritatively considered, it will remain unclear which parts of certified agreements are enforceable. Employers and employees will know that the agreement stands but not necessarily know which clauses are in and which are out. Labor believes that the better approach would be to validate the whole of existing certified agreements, allowing each provision to continue to have effect until the expiry date of the agreement.

Agreements already certified by the commission have been made in good faith between employers and employees. In approving these agreements, employers and employees have agreed on the entirety of their terms. If there is to be any validation—and the arguments in favour of providing certainty in this area are compelling—then parliament should give effect to the whole of the agreements reached voluntarily between the two parties on the basis of the substance that each is considered reasonable and appropriate for their individual circumstances.

The bill also fails to give certainty in relation to the legal status of industrial action taken in support of claims in certified agreements that may subsequently be ruled as not pertaining to the employment relationship. Given the considerable uncertainty in relation to which matters may and may not be included in collective agreements and the serious penalties that apply to lack of protected action, it is appropriate that certainty is provided in relation to protected industrial action already taken. Unions and their members who took industrial action in good faith, believing on reasonable grounds that it was protected, should have legal protection from any action which might, however unlikely, subsequently be taken against them. During the committee stage of the legislation, I, on behalf of the Labor Party, will move amendments to provide certainty in relation to protected industrial action that has already been taken.

In conclusion the Labor opposition supports the purposes of the bill in providing certainty for those certified agreements rendered potentially invalid as a result of the decision of the High Court in Electrolux. However, the Labor opposition believes the way the bill goes about providing that certainty contains shortfalls and could be substantially improved. In the event that Labor’s amendments, which I will move in committee, are not accepted, Labor will support the bill.

Senator MURRAY (Western Australia) (11.44 a.m.)—The Workplace Relations Amendment (Agreement Validation) Bill 2004 attempts to deal with the uncertainty and possible legal consequences concerning the validity of certified agreements under the Workplace Relations Act 1996. That uncertainty and possible legal consequences arose directly from a decision of the High Court in Electrolux Home Products Pty Ltd v. the Australian Workers Union and others, HCA40, on 2 September this year. As I understand it, the High Court’s decision in Electrolux determined three main issues: firstly, that industrial action is not protected
action if taken in support of claims where one or more of those claims does not pertain to the employment relationship; secondly, a claim for a bargaining fee to be paid to a union does not pertain to the employment relationship; and, thirdly, an agreement cannot be certified if it contains a provision that does not pertain to the employment relationship unless it is machinery in nature or is ancillary or incidental to a matter which pertains to the relationship.

While the High Court’s decision is welcome in that it has reinforced the original intent of the law with respect to section 170LI of the Workplace Relations Act 1996 that certified agreements must pertain to matters pertaining to the employment relationship of employers and employees, it has also led to considerable uncertainty. While not directly determined by the court, the High Court’s decision with respect to certification of provisions not pertaining to the employment relationship has led to the belief that certified agreements and AWAs, Australian workplace agreements, which include a matter which does not pertain to the employment relationship could now be void as a whole. One school of legal thought is that the court’s invalidation of even a peripheral or minor part of a certified agreement makes the whole agreement void. The effect of this uncertainty is that employees and employers do not know for sure whether their currently operating certified agreements are enforceable or if their agreements are valid in whole or in part.

While some unions have begun to approach employers to renegotiate agreements, and some in the electrical contracting industry have already negotiated new agreements, many employers are reluctant to undertake another negotiating process earlier than an agreement’s current expiry date due to the costs involved and concern that early protected action could be initiated with the declaration of a bargaining period. This is a sensible approach given that the life of a certified agreement is relatively short, at only three years. Why deliberately agree to cut that maximum period of three years short?

The purpose of this government’s bill is to provide legal validity to certified agreements and Australian workplace agreements certified, approved or varied on or before 2 September 2004. Rather than validate the whole agreement, the statutory validation is only with respect to matters that are permitted matters—that is, matters pertaining to the employment relationship or which are machinery matters or incidental matters or ancillary to matters which pertain to the employment relationship. Matters that are not pertaining to the employment relationship will be rendered void.

The Democrats accept the High Court decision as clarifying and confirming what the existing law means. We accept that it is reasonable that existing contracts should not be invalidated as a whole just because a minority of some contract clauses in some agreements are now rendered invalid by the High Court’s decision. We also accept that legislation to ensure that does not happen can reasonably be classified as urgent to address the uncertainty that employers and employees are currently facing. We have, however, questioned the mechanism chosen by the government and, after the Senate hearing and on reflection, believe that it would have been easier to validate the whole of the agreements warts and all until the agreements expire, a maximum period of three years but undoubtedly much less for the vast majority of certified agreements. This is not uncommon in commercial practice and in other legislation. A transitional period in those circumstances is usually allowed before the new regime applies.
Of course the government argue that it is not a new regime. Those clauses in the certified agreements, they say, should never have been certified in the first place. But that is not the fault of the parties to the agreements. It is the responsibility of the certifying authority, the Australian Industrial Relations Commission, to ensure that a certified agreement conforms to the law. The evidence to the hearing last week was that the Industrial Relations Commission may not have been as rigorous in this regard previously as they apparently have now become. The commission also has the problem of defining those employment matters that may be considered marginal or at the periphery. The evidence—again, at the Senate hearing last week—was that we can expect a test case to be run as soon as practicable to clear up as many areas of doubt as possible, and that would be welcome.

Several concerns have been raised by industrial relations practitioners and unions. The first issue is with respect to those clauses which have been in operation but will not be validated and will therefore be unenforceable. The employer is not obliged to honour them. Employees could therefore, in theory, lose aspects of the agreement that they had negotiated. I say ‘in theory’ because the real world practice will be that such an occurrence looks highly unlikely. Evidence received at the Senate inquiry into this bill confirmed that agreements through common law—for example, deeds, contracts or memorandums of understanding—can be made outside of the certification process, and in fact already do occur. We heard evidence from Mr Anderson, who is very experienced in this field, from the Australian Chamber of Commerce and Industry at the Senate inquiry into this bill. He said:

The overwhelming position of employers and Australian industry following Electrolux was to indicate to the unions with which they deal and have had agreements that they will continue to honour the terms of those agreements, notwithstanding questions about validity.

Mr Anderson went on to give a recent example where this had occurred:

A very good example is one of the first agreements that came before the commission in the weeks following the Electrolux decision—the Franklins-SDA agreement before SDP Hamberger. It was identified in the proceedings that there was a provision in the agreement which was arguably not pertaining and the union and the company agreed to remove that from the agreement, to continue to apply that as a matter of obligation between themselves and to reach a private common-law agreement in those same terms to do that. The agreement was, therefore, resubmitted to the commission in terms which would unquestionably allow for its certification, and it was certified.

Mr Anderson was, of course, unable to give an undertaking that all their members would behave in this manner, nor do I expect he would or should. Nevertheless, despite this real-world solution to what is at best a medium-term problem, uncertainty will still remain, particularly for employees and unions, as to what will happen with the offending clauses. There will also be a cost involved to all parties who wish to negotiate and establish an alternative agreement.

The other issue relates to protected industrial action. It has been argued that, by not validating the whole bill, previous protected industrial action could be challenged as unlawful because it was in pursuit of clauses now deemed as invalid. The government, the Australian Industry Group and the Australian Chamber of Commerce and Industry have said that, while it is theoretically possible, it is not only undesirable but highly unlikely. I also believe that it would be highly unlikely, undesirable and foolish if an employer chose to pursue such a course of action. Linda Rubenstein from the ACTU, in giving evi-
dence to the Senate inquiry, disagreed. She said:

... there would be no barrier that I can see to an employer seeking to sue a union for damages in relation to unprotected action taken on an earlier occasion relying on Electrolux. I do not know whether they would succeed or not but the CFMEU recognises, as I am sure all of us do, that to ordinary people and ordinary workers the threat of that kind of legal action is very frightening indeed. It would be a very strong bargaining chip.

The ACTU is probably directly reacting to the High Court’s view that industrial action is not protected action if taken in support of claims where one or more of those claims do not pertain to the employment relationship.

In my view, experience shows that that should be taken as a warning for the future rather than a harbinger of punitive action for past deeds or misdeeds. I asked at the hearing if there was a record of any individual or organisation ever being punished—note I use the word ‘punished’ in the sense of being jailed or fined—for taking protected industrial action later found to be unprotected, and the evidence was that that had never occurred. The eventualities that the unions envisage in this regard therefore look extremely unlikely. But just because they are extremely unlikely does not mean they should be dismissed, and there are certainly rumours reaching my ears that some employers are trying to muscle some unions in this respect. I believe that the threat of protected action taken in the past being successfully challenged at law is so unlikely that this point is minor, but it is one which will have to be attended to in this debate.

Turning to validation of the whole agreement, including the clauses not pertaining to the employment relationship, the ACCI and the government have argued that parliament would then be extending for the first time the content of industrial instruments to include non-pertaining matters—something quite at odds with the intention of the parliament for many years and quite at odds with the whole tenor of the High Court decision. Once again, this argument does not address the scale of clauses affected. The High Court directly identified but one non-pertaining matter—a claim for a bargaining fee to be paid to a union does not pertain to the employment relationship. Everything else was left as a general commentary.

Certainly the High Court clearly signalled—to the commission more than to any other, I suspect—that non-pertaining matters must not be certified. The court said that an agreement cannot be certified if it contains a provision that does not pertain to the employment relationship, unless it is machinery in nature or is ancillary or incidental to a matter which pertains to the relationship. I admit that, by validating whole agreements, one identified non-pertaining matter would be given ‘temporary’ legal validity—and perhaps a few others not so far identified. This would only be for those agreements that contain a matter that was previously thought to pertain to the employment relationship. At the very least that specific clause was uncertain and has only recently been ruled as not pertaining to the employment relationship.

We must always remember that any matters in question were previously considered by employees, employers and the commission, who certified the agreements, as ‘matters pertaining to the employment relationship’ and therefore wholly within the law. It struck me during the Senate inquiry that no one had identified any negative consequences of validating agreements in full that were presently operating, so I asked representatives from the department what would be the negative consequences if the bill simply stated that, where the Industrial Relations Commission had previously formed the view that the clauses did pertain to the employ-
ment relationship and a court had subsequently overturned them, agreements which were previously certified could simply stand until they ran out—and that is a maximum of three years, as we know. Rather than read out the whole interchange between me and the department, I will refer to the concluding remarks. I said to Mr Smythe:

Let me conclude in this way: you are not so much saying that there were obvious negative consequences; you have drawn up the bill in this way because you do not want to breach a principle as to the way in which these matters should be resolved.

Mr Smythe replied:

What the government is doing with this bill is confirming what the original legislative intent was. As Mr O’Sullivan has just said—and I think Mr Anderson from the ACCI also said it—to go further would be to make lawful what was not intended to be lawful in the first place.

I responded by saying:

So it is an issue of principle?

Mr Smythe responded with a yes. I have come to the view that validating all clauses until the agreement has expired would have alleviated uncertainty and would have been a cleaner way to do things. It would have prevented unnecessary costs in constructing a common-law agreement for the invalidated clauses to run parallel with the certified agreement—which is, I assume, what many employers and employees will now do. Giving effect to the full agreements which were voluntarily agreed to by both parties is a reasonable public policy position that is practical, cost effective and, as I established in the inquiry, has no negative economic consequences.

The government has chosen another route that achieves the same end, and the government is determined on its view. Given that the Democrats strongly support the government’s intent to achieve certainty, we are certainly not going to insist on what we would have thought would have been the better approach and we will be prepared to support the government’s approach. With the exception of union bargaining fees, the High Court’s decision left unresolved what matters on the margin or periphery do not pertain to the employment relationship—and that is why a test case with the commission will be necessary. Of course we should remember there is a wealth of jurisprudence which says what does pertain to the employment relationship, and I think that point was made very clearly in the government’s evidence, both in the written form and by Mr Smythe.

This bill does not attempt to address this issue, and there was no support from unions or industry groups to have the government dictate through legislation an exhaustive or even a non-exhaustive list of matters that do not pertain to the employment relationship. I think the government, quite properly, has taken the view that it remains the function of the commission and courts to determine what does or does not pertain to the employment relationship. All the government has effectively said, which we agree with and, I gather, Labor agrees with, is that matters which are found not to pertain to the employment relationship just simply cannot be in those agreements, and I think that is right. Mr Smythe, from the department, told the committee:

My view is that 100-odd years of litigation have settled a pretty reasonable core, so that most parties operating in the industrial arena—unions, employers and lawyers working in that area—know for the most part the things that pertain. The Electrolux decision has excited a little bit of interest about a few matters at the periphery. But, for the most part, 100 years of litigation have given the parties a pretty good idea of what pertains and what does not.

It was generally the view from the unions and industry groups that parties would prefer to use the commission in the first instance
and the courts to continue to determine non-pertaining matters. However, there was a view that it would be better for all parties if this were done sooner rather than drawn out over a number of years. As I alluded at the Senate inquiry, and as I have said before in these remarks I am making now, I would encourage the government to make recommendations to the Australian Industrial Relations Commission to conduct a test case on this matter. In the end the Democrats support the element of certainty and the intent of the bill. In the committee stage we will, of course, be dealing with Labor’s amendments and I will have an amendment which will circulate shortly.

Before I conclude my remarks I want to say that I was a little puzzled at quite a lot of media attention in this area, because it is a relatively confined, limited matter that we are determining here. It is the question of making sure that contracts which are already in play continue to have force, and there is nothing unusual about the Senate considering that. But I think that maybe—and maybe I am giving them too much credit—they sniffed that at the heart of this were some serious issues that were being explored. One is the continuing determination of all parties—unions, employer groups, government and other political parties—to stay away from defining matters which form valid employment matters and to continue to leave it to the commission and the courts. That flexible and pragmatic approach, as I have said previously, is very important.

But the other issue emerged in the evidence from the ACTU, who essentially were arguing that there should be no limit to what can be agreed between parties—employers and employees—and, of course, there are no limits, because you can agree to what you like at common law. But if you want to have the protection which is provided by the Workplace Relations Act, which allows you to take protected industrial action, including the protections from being hauled in front of the courts for what would otherwise be activity that could be frowned on, and if you also want to rely on the Trade Practices Act, which gives you relief from some of the competition principles which would otherwise apply, then under the Workplace Relations Act, in my view, the quid pro quo is that you will be limited as to the kinds of contracts, arrangements and agreements that you can arrive at. You cannot have it both ways. You cannot have the protections of the Workplace Relations Act and the Trade Practices Act given to you as collective bargainers and, at the same time, have the freedom which you would have under common law. There has to be some limitation and some restraint. I thought that was a very interesting topic that emerged at the inquiry.

Senator Barnett (Tasmania) (12.04 p.m.)—I speak in support of the Workplace Relations Amendment (Agreement Validation) Bill 2004. As chairman of the Senate Employment, Workplace Relations and Education Legislation Committee that held an inquiry into this bill just recently, I want to commend and congratulate Kevin Andrews for his swift action to bring this bill forward and into the parliament for passing, because it will validate existing agreements and it will also provide assurance and, I believe, peace of mind to the employers, the employees and the organisations that made those agreements in good faith.

This bill validates matters in certified agreements and AWAs that pertain to the employment relationship. Contrary to Labor’s proposal, if the bill were to validate those matters that do not pertain to the employment relationship it would go against the intent of the Workplace Relations Act; it would go against the long-held principle about what may be included in industrial instruments. The High Court ruling was con-
sistent with many years of legal precedent requiring industrial instruments made under the federal workplace relations laws to contain only matters pertaining to the employment relationship. This has not just been something that has happened since 1996 when the government introduced that particular bill, but it has been happening for a century in this country, where the boundaries of the Australian government’s workplace relations framework have been set with reference to matters that pertain to the employment relationship. So the High Court’s interpretation of this part of the act is consistent with High Court and other long-established legal precedents that apply to awards. It confirms the government’s original, continuing and current legislative intentions. The bill validates those agreements which were certified, approved and varied under the Workplace Relations Act prior to the High Court Electrolux decision. It also avoids the confusion and potential turmoil if nothing was done.

The unions that appeared before our inquiry—and indeed the Labor members of that inquiry, and I will come to them in a minute—proposed to have the bill amended to validate all clauses in all agreements certified by the commission prior to Electrolux. My view is that that would turn on its head our industrial relations system as we know it. It would be retrospective legislation and cause uncertainty and chaos across the country in the business community. I asked these questions of the department, and the amendment that is being proposed by the Labor Party is in fact retrospective legislation of the worst kind. The government members on this committee rejected that proposal on the grounds that it would be retrospective validation of an unknown number of Industrial Relations Commission decisions which were always contrary to the intentions of the act. That is totally unacceptable.

I want to highlight not only the government’s position but also Senator Marshall’s, Senator Wong’s and Labor’s position in this inquiry and in their report, because it is different from Stephen Smith’s comments of just a few days ago, where he said:

... it is imperative that the uncertainty caused by the Electrolux decision be resolved before Parliament rises this year. The “do nothing” approach is not a viable option.

That is what he said. Senators in the minority report—Senator Marshall and Senator Wong—have said that in their view there is no reason for the urgency. At 2.29 on page 23, it says:

Opposition senators are not convinced that legislation in response to the High Court’s decision is required as a matter of urgency.

Not only that; the minority senators in this report have a whole slab in their section on why they believe the bill is flawed. A matter of days later Stephen Smith, their relevant shadow minister, said that we need to deal with this and get it sorted out and passed prior to Christmas. Here we have a political party with two heads. On the one hand they are saying one thing and on the other they are doing something else totally to the contrary. They are duplicitous. Senators Marshall and Wong are actually puppets of the ETU and the CFMEU. The CFMEU appeared before our committee and the ETU’s views were put to our committee and they opposed the bill. Senators Marshall and Wong have made it very clear that they want to kowtow to and support their union masters—the ETU and the CFMEU.

Senator Ian Macdonald—I don’t think they would disagree with you even.

Senator Barnett—Of course they will not disagree with me, Senator Macdonald, but Stephen Smith disagrees with them. This is a party with two heads. The senators have obviously been rolled and their views have
been overtaken. There is a lot more that I could say. Clearly the Labor Party are split on this issue and they have been duplicitous. I would urge the Senate to pass this bill as a matter of urgency.

_Senator MARSHALL (Victoria) (12.10 p.m.)—_The Workplace Relations Amendment (Agreement Validation) Bill 2004 before us today is a response from the government to accommodate the Electrolux decision. The Electrolux decision clarified—from the High Court’s point of view anyway—that all matters in a certified agreement must only pertain to the employee-employer relationship; that any certified agreement which contains matters that do not pertain is questioned and made void if it contains those provisions and the agreement would fall away as if they did not exist, as if the agreement was never made at all. One of the further consequences of the Electrolux decision is that any industrial action that was taken at the time in pursuit of a certified agreement is therefore potentially deemed illegal because the Industrial Relations Commission did not have the power, according to the High Court, to certify those agreements in the first place.

The government claims that this bill is designed to provide certainty for the parties in industrial relations. It does no such thing. This bill is fundamentally flawed and needs substantial amendment to provide any certainty at all for both employees and employers. I will go through the reasons why the bill is flawed in a moment. We clearly know the real reason the government has put this bill up before us today. It was clearly to stop unions responsibly providing for their members new agreements to replace those that were made void by the Electrolux decision.

_Senator Santoro—That is an outrageous statement._

_Senator MARSHALL—_It is not an outrageous statement. To support that, the press release put out by the Minister for Employment and Workplace Relations says this:

The Government is determined to ensure agreements entered into by business are upheld and enforced. Unions in the electricity and construction industry have tried to take advantage of uncertainty caused by the Electrolux decision by pressuring businesses to renegotiate agreements which contain clauses which are union friendly and bad for business. The new legislation will remove the need for businesses to renegotiate their agreements.

The real issue here is that the need for businesses and employees to renegotiate their agreements was created by the High Court. It was the High Court that determined that agreements containing matters that did not directly pertain to the employee-employer relationship were void, as if they were never, ever made. There is nothing wrong with unions seeking, as a consequence of the Electrolux decision, to provide certainty for their members by seeking to enter into a new legal bargaining round within the framework provided for by the Workplace Relations Act. That is a responsible course of action. Nowhere in any of the submissions was it indicated that anything the unions were doing was illegal or inappropriate, because it was not. They were actually following the processes laid down by the Workplace Relations Act.

There are a number of flaws in this bill. The first flaw is this: far from providing certainty, this bill actually provides uncertainty. Future agreements which may be certified by a single member of the commission do not necessarily mean that all matters pertain, that they have been properly certified and that any protected action taken to support the agreement is protected. So all we see this bill actually doing, in this window of opportunity, is trying to validate part of the agree-
ment. It provides no certainty for any agreements being negotiated or certified from 2 September last year onwards. We still have the situation that, if this bill becomes law, all we will be able to say with any certainty about agreements certified before 2 September is that they have been properly certified—little else. We will not know which clauses are enforceable and valid and which clauses are not, because the problem will still arise as the different tribunals and courts determine and narrow down the scope of what does pertain to the employer-employee relationship. Clauses that have been properly certified by the commission may be deemed by future tribunals in future decisions to be invalid. If that is the case, the whole agreement becomes invalid again. There is no certainty provided in the negotiating process or the certification process. Simply because a commission certifies an agreement does not mean that that agreement will not be challenged in the future because some of the clauses may be a problem.

I want to give you an example. It is an example given by witnesses from Suncorp-Metway, who did appear before the legislation committee inquiry. They were concerned that a number of the clauses in their agreement may not pertain directly to the employer-employee relationship and that some of them were similar in nature to clauses that had already been ruled out by different tribunals. They were concerned about that, but this week their agreement was in fact certified by the Industrial Relations Commission and, on the day that it certified it, the IRC was indeed satisfied that all matters pertained. But future determinations, as I said earlier, may change that, so we will have a situation where the parties have negotiated an agreement in good faith, the employees have voted on it as a package, it has been certified by the commission and then, potentially a year down the track, a new ruling by the Industrial Relations Commission or the Federal Court—or even the High Court for that matter—may determine that one of the clauses does not properly pertain to the employment relationship and the agreement is then void. This bill provides absolutely no certainty in the negotiating processes provided under the Workplace Relations Act in that respect. That is the first significant flaw. It actually identifies quite clearly the distorted view of the government in this area and only reinforces the real reason that this bill has come before the parliament today.

Secondly, the bargain struck between employees and employers is disturbed by the validity of the agreement. If this bill becomes law, it will disturb the moral authority of agreements already validated and will retrospectively remove the informed consent of employees. It will also mean that persons who at the time of voting knew the consequences of giving approval will now have no certainty about the ongoing consequences of the effect of the agreements entered into in good faith. Clauses agreed and genuinely approved may be removed as a consequence of this bill becoming law, without the employees having any say in the matter. The bill will also stop the employees going back to the employer and saying, ‘Now that the package—this agreement—has been disturbed, we want to sit down and talk to you about a new package.’ So employees ultimately end up with a lesser package than was negotiated.

The process of negotiation in industrial relations is that both parties—the employees, their representatives and the employers—sit down and negotiate an agreement. Employees or employers do not then have an opportunity to cherry pick which clauses they would like to agree to or disagree to. It is voted on and approved and certified by the commission as an entire package. Different people—both employers and employees—
will put a different weight on the value of each individual clause when they make up their mind whether or not to approve the package. What this bill does is retrospectively go back and renegotiate the bargain that was already struck in good faith by employees and employers. It changes the bargain. It makes it less because it actually validates parts of it and invalidates other parts of it and takes some clauses out of the agreement. So the agreement that people voted on as an entire package is disturbed by this bill, and that is unfair.

This is one of the points that the Scrutiny of Bills Committee identified. It identified that retrospectively this bill is disadvantaging persons by changing the structure and the nature of the agreement that they entered into in good faith. It says:

The Committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee’s terms of reference.

Senator Barnett is actually a member of that committee. He signed off on this report. He supported this report, yet here he is in the parliament today saying, ‘That doesn’t matter.’ He is slavishly committed to the government’s agenda—and I have mentioned what the real agenda was—and he does not care whether it unduly trespasses on individual rights. He simply says, ‘The government wants to do this. It is an anti-union piece of legislation, so let’s go ahead regardless.’ I think the Scrutiny of Bills Committee has identified a serious flaw.

The third significant flaw in the approach of partial validation is that it has at least two important consequences. The first is that, far from providing the parties to such agreements with certainty, it creates greater uncertainty. This is because the pre-Electrolux agreements are to be validated only to the extent of those clauses that deal with permitted matters. Permitted matters include matters pertaining to the employment relationship. The question of which clauses in agreements already certified do or do not pertain to the employment relationship is the same as the one that arises in the certification of new agreements post Electrolux. There is no certainty that a particular clause in a pre-Electrolux agreement would be validated by this bill until that question is decided by a tribunal, just as parties to agreements awaiting certification cannot be sure that each clause within them will ultimately be found to pertain. Again, there is no certainty provided by this bill at all.

The Department of Employment and Workplace Relations says that it is simply a matter of drafting clauses in the appropriate manner so as to make them pertain. The courts have long held that these types of agreements are drafted not by lawyers but by persons who do not have such a careful eye in such matters. They are drafted by persons who are seeking to reach agreements affecting their workplace. They are drafted by employees, employers and their representatives, including unions. The ridiculous position that this government has created and that this bill does not fix is that you can have two clauses which have the exact same effect but, depending on how they are drafted, one may pertain to the employment relationship and one may not. That is what the department has put to us. That is the ridiculous situation that this government has created with this bill. This bill does not go anywhere near addressing those issues. We need a situation where those that are affected in their workplace can freely negotiate those agreements together. What you are creating is a lawyers picnic, because it is about drafting. If you get a clever lawyer to draft a clause in such a way that it will be deemed to pertain to the employee-employer relationship, it will get through, even though it may have the exact
same effect as a different clause drafted differently. I am not surprised that the government wants to do that, because it is nearly all lawyers on that side of the chamber, and I know how lawyers love to create more work for their own.

This becomes even more absurd when one has regard to the relevant principal objects of the Workplace Relations Act—the government’s act. Section 3 says:

(b) ensuring that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the ... enterprise level; and

(c) enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances, whether or not that form is provided for by this Act;

This bill does not ensure that the primary responsibility rests with the employer and the employees, nor does it enable employers and employees to choose the most appropriate form of agreement. This responsibility is taken out of the hands of those persons who are supposed to be entrusted with this responsibility—that is, the employers and the employees.

The fourth fundamental flaw is that this bill does not clarify the status of industrial action taken in support of certified agreements prior to the Electrolux decision. I am concerned to ensure that unions and their members who took industrial action in good faith, believing on reasonable grounds that it was protected, should have legal protection from any action which might be taken against them by employers. This government states in the second reading speech:

Parties could not have reasonably expected that protected action was available to support claims for non-pertaining matters.

That, again, is a most outrageous statement. Given that the full court of the Federal Court held that protected action could be taken in support of non-pertaining matters, it seems more than reasonable to expect that unions adopted a similar view. The full court of the Federal Court—a very high authority—determined that action could be taken in support of matters that did not pertain, and here is the government saying that people should have said, ‘Well, even though the full court of the Federal Court has said you can do this, we should actually question that, and when we are considering whether we should pursue our industrial rights under this act through protected industrial action, we should somehow ignore a decision of the full court of the Federal Court.’ It is ridiculous for the government to put that.

The government has indicated, again in the second reading speech:

However, the Government considers it would be highly undesirable for parties to exploit uncertainty in relation to past industrial action by initiating or threatening legal action.

That is also my aspiration, as I have indicated. That is why, again, the government and the minor parties should support the second Labor amendment that will be proposed in the committee stage. Our amendment does in fact validate that industrial action that was taken in good faith, knowing the authority of the full court of the Federal Court decision at the time. Irrespective of our joint aspirations in this regard, the bill does not give effect to the stated objective. Although the government believes that legislating to protect past industrial action, to the extent that the action was taken in support of non-pertaining matters, would be complex or practically difficult, the reasons for this are not obvious. We will provide the solution to you in the form of amendments, so you should support those, given that that is one of the stated objectives in the second reading speech. We will see how you perform on that.
I will summarise the points I have made. This bill does nothing to provide certainty. It does not provide certainty for the agreements pre the Electrolux decision, and it does not provide certainty for post-Electrolux agreements. Until the commission, the courts and other tribunals determine what does and does not pertain and until the ridiculous argument of the department that it is simply a matter of drafting is resolved, there will continue to be uncertainty.

What really needs to happen, and what cannot happen through this bill because it is fundamentally flawed in really providing the long-term certainty which we would like to see, is that agreements that were certified at that time—and if the commission is of the view that all the matters in the agreement at the time pertain to the employee-employer relationship—should be valid for the life of the agreement. That is the best way to achieve certainty. The basis of our first amendment is to say, ‘Let’s validate agreements in their entirety. The commission certified them in the full knowledge of the Workplace Relations Act, of other decisions of different tribunals and of the courts at the time. Those agreements were negotiated in good faith based on the law of the day and the decisions that were available at the time. They should be certified in their entirety.’ Only that will give the certainty which this bill claims to be seeking to provide but which it does not. This bill is purely there to try to stop unions quite rightly renegotiating agreements or replacing agreements that were voided by the Electrolux decision. There is nothing unlawful or improper about that.

I know there was a lot of talk that some unions were seeking to put in new claims. My understanding and advice is that no union sought to do that. Unions sought to roll over their existing agreements under a new timetable because the agreements would be starting again, and the only new clauses being put into those agreements related to issues that were already under negotiation with employers and employer groups and that affected the industry as a whole. They were the only new issues. Unions were simply seeking to provide the certainty which this bill claims to do but does not and put in place agreements to provide the foundation for the wages and conditions for their members into the future. We will be speaking on our amendments in the committee stage.

Senator SANTORO (Queensland) (12.30 p.m.)—In speaking to the Workplace Relations Amendment (Agreement Validation) Bill 2004 I note two constants in the Labor Party’s contribution to the debate on workplace relations, not just in this place but also in the other place: obstruction and deceit. What we noticed, again, from the contributions of the two members representing the Labor Party opposite were obstruction and deceit—the sort that has been occurring over three parliaments and is occurring again in the fourth parliament of the Howard-Costello government. Forty-one times, legislation which is pro business, particularly small business, and which would further incentivate, if I can use that word, small business to put on even more employees has been rejected by the Senate after being passed by the lower house. Again, the ALP comes into this place today to obstruct and to deceive.

To illustrate what I mean by ‘deceit’—and I want to examine in further detail what really motivates the Labor Party—there are headlines such as this in the Sydney Morning Herald which say, ‘New look Labor’s pitch to business’. That is the screaming headline. Another headline says, ‘Latham delivers wins to business’.

Senator Ferris—Where is the evidence?

Senator SANTORO—We have certainly not heard any evidence in this place today—
particularly in this place—that the Labor Party is fair dinkum. We had Stephen Smith clearly state in yesterday’s *Sydney Morning Herald* or one of the other Sydney papers that this bill needs to be passed before the end of the year because business is looking forward to the certainty that this bill represents. Despite all the talk from the two Labor senators who have spoken in this place today, their amendment totally negates the certainty for small businesses that this bill introduces back into the Workplace Relations Act.

That is what the Labor Party are all about. They want to deceive the Australian public into believing that somehow they have accepted that their Jurassic Park version of workplace relations, which was rejected by the people on 9 October, is not going to be part of the Labor Party’s platform. They want to convince the Australian public, and particularly small business, that the lesson of Jurassic Park style workplace relations has sunk in. So they go out and say that they are going to deliver for business. They are reported as saying that because it is such a radical change to their rhetoric that it has to be reported in this manner. Yet they come in here and do precisely the opposite.

Why? It is all about the agenda of hatred. It is hatred of small business. The Labor Party in this place and elsewhere understand and appreciate that small businesses generally do not support the centralist, collectivist philosophical and policy underpinnings of the Labor Party’s workplace relations agenda. They just do not accept those underpinnings. Small business people by nature are free spirits and free agents, and they want to make their own decisions. They do not want to be interrupted. They do not want their workplaces, the flow of production or the proper flow of sovereign decision making in small business to be interrupted by a union official coming in uninvited and without good reason. The Workplace Relations Act, as I am sure you, Madam Acting Deputy President Crossin, and others are aware, does contain provisions where legitimate intervention can occur by all sorts of parties, including unions. The point that I am making here is that the Labor Party just do not like small business. It is hatred of small business.

Also specifically contained within the argument put forward by members opposite is hatred of AWAs. AWAs are one of the great success stories of the Workplace Relations Act of this government. The statistics speak for themselves. Because we want to get this bill through the Senate before the parliament rises for the Christmas break, if not today, I have decided to curtail my remarks. There are some statistics on AWAs, and that is what we are talking about today—agreements. It is worth while putting on the record how good AWAs have been for Australian workers, those people who have benefited the most as a result of the good representation that they get from this side of the house. It is important to reflect on how good the implementation of coalition workplace relations policy and our looking after their interests have been for them.

This is a good moment to remind the Labor Party that last month nearly 25,000 extra AWAs were filed with the Office of the Employment Advocate—an office that Labor would abolish if they had the chance to do so. That was a record figure—up more than 7,000 on the previous month. It is a fact that AWAs are proving to be an absolute hit in Australian workplaces because individual contracts between employees and employers tailor terms and conditions of employment to suit the needs of both parties. It is not an approach that is collectivist based; it is an approach where the two parties, of their own free will, come together and negotiate something that suits both of them. More than half a million AWAs—569,364 to be precise—
had been filed since 1997 when the calculation was last made this month. It is instructive to put on the record that employees on AWAs earn on average 29 per cent more than those on certified agreements. Women on AWAs earn 32 per cent more than women who are working under certified agreements.

No wonder that Labor’s own preferred pollster, Rod Cameron, writing in the Age this month, condemned the ALP’s workplace policy as ‘backward-looking and totally out of step with community and work force trends’. I would respectfully suggest to honourable senators opposite who belong to the Labor Party that they start paying heed not just to Rod Cameron—their preferred pollster, who provides them with a lot of good advice based on reasonable polling within the community—but also to the decision that was made by the Australian public in terms of the future of the government on October 9.

This particular bill seeks to provide the certainty that Senator Marshall said it did not. The bill seeks to validate agreements that were made in good faith under the legislation as passed by the parliament. It does not seek to change the agreements, as I believe Senator Marshall kept telling this place. It is not a bill that seeks to introduce new material; it simply amends legislation to cope with the effect of the High Court decision which has been referred to abundantly in this place.

In conclusion, I would suggest that the Labor Party take on proper motives when considering debates such as this. They have to abandon their hatred for small business; they have to abandon their hatred for legislation which, as I have just demonstrated, works very well for the people whom they have stopped representing in the sorts of policies they have been putting forward. They have to somehow detach themselves from the fear of headlines such as the one that says, ‘Union fury over Labor moves’, in that case relating to tariff cuts. Nobody on this side is anti-union; but we are anti the irresponsible influence that union leaders particularly apply to Labor senators opposite. I would strongly recommend that, if those opposite want to be successful at a future federal election, they abandon those hatreds and those misplaced loyalties, particularly when those loyalties compromise the well-being of the very people they claim they seek to represent better than anybody else in this place—that is, employees working within Australian businesses, particularly small businesses.

Senator GEORGE CAMPBELL (New South Wales) (12.40 p.m.)—I want to make some brief remarks on the Workplace Relations Amendment (Agreement Validation) Bill 2004 currently before the chamber to draw attention to two particular aspects of the bill, which I think Senator Marshall may have already referred to. I want to make the point that, despite the claim by the government that this legislation seeks to remove uncertainty that has been created as a result of the Electrolux decision, that will not be achieved by the application of this bill. I also want to take this opportunity to make a couple of comments about Senator Santoro’s contribution and his use of the words ‘obstruction’ and ‘deceit’. Those of us who have been in this chamber since the coalition came to power in 1996 know the way in which the English language has been distorted in legislation which has been brought before this chamber in the area of industrial relations. It has been deliberately used to create the perception that bills on industrial relations are somehow achieving something different from what they actually set out to achieve. The classic example of that is the ‘fair dismissal’ bill. It went from being the unfair dismissal bill to the fair dismissal bill. We
have seen a similar use of language in a range of other legislation. So, if there has been any deceit practised in this chamber or in this parliament in the area of industrial relations, it has been practised very effectively by the senators on the other side of the chamber.

On the issue of the validation bill and the Electrolux decision, there are two issues that are of real concern in the application of this law. There is the fact that employees who have entered into agreements in good faith and who have traded off conditions of employment in a number of areas for other elements in a package on the basis that the total package of conditions will apply to them as a result of those negotiations—and who have had that tested against a ‘no disadvantage’ test, which is a critical element of judging the veracity of agreements entered into—may well be disadvantaged as a result of the application of this law. In fact they may well have conditions taken away from them that they entered into in good faith.

Consistently we have heard those on the other side of the chamber say in debates on industrial relations, ‘Our objective is to take the third party out of the relationship.’ They say that the relationship ought to be between the employee and the employer, and that both sides ought to be able to sit down and negotiate arrangements that satisfy the work force in their workplace, reaching agreement on a set of conditions that will make their workplace flexible, efficient and effective in competing in the marketplace. It is not possible to do that now because at any stage of the process the courts may come in and determine on a legal basis that there are matters that those individuals have negotiated that do not go to the employee-employer relationship.

When you travel around this country and visit factories—I have visited a lot of them in the past three years in my other role as shadow parliamentary secretary for manufacturing—you see that there are no lawyers about. The employers in many of these factories, the bosses, are usually people who have worked with their hands, graduated and set up their own companies. They then employ people with particular skills who are focused on their capacity to repair an engine or build a boat or whatever else they do. These are not people with legal qualifications. They are not people who sit down before they start a process of negotiation and read through the objects of the Workplace Relations Act to ensure that what they are setting out to negotiate complies with the requirements of the act. Nor do the employers do so.

These are people who sit around a table and say, ‘What are our problems, and how do we set about fixing them?’ Then they say, ‘Let’s do it with this way,’ and they sign off on an agreement. There is no way in the world that those individuals know whether or not they are in conformity with the requirements of the act. It seems to me that, provided the arrangements satisfy the needs of the individuals in that workplace, any issue they decide there should be an agreement on should be regarded as pertaining to the employer-employee relationship—in the real sense of the word and not in the strict, literal sense of the interpretation of the act. If this government were genuine about fostering enterprise bargaining and equity and equality in the negotiating process, then it would have sought to amend the act to make it much more flexible with regard to the way those negotiations can be carried out. Flexibility would allow people to genuinely reach agreement on the issues they think are relevant to them in their workplace, rather than there being some structure where others are able to intervene in the process and determine issues according to a precise legal definition of what is in the act.
In that respect, therefore, this legislation will not in my view remove the doubt from the industrial relations environment in the sense of ongoing agreements. The effective way of dealing with the validation of existing agreements would have been as Labor has put forward: to validate all existing agreements that have been entered into good faith up to their expiry date. At least that would have removed the uncertainty right across the board in respect of these agreements. Senator Santoro referred to the promotion of AWAs. Having seen some of the AWAs that have been negotiated over recent years, I would venture to suggest that, if the Employment Advocate were asked to go back and look at the AWAs he has registered, a substantial proportion of them would not meet the test that the High Court applied in the Electrolux decision. There would be matters in those agreements which would be seen to be outside of the employer-employee relationship. No-one has suggested that the Employment Advocate do that and those agreements will probably skate through without being under any challenge.

While I understand and accept that the government is attempting, in a limited way, to address a problem which has been created as a result of the Electrolux case, I think the approach to dealing with it has been inadequate and does not go anywhere near far enough to create the certainty that employers and employer organisations, unions and employees would like, and are entitled to, in this environment. What is more, this approach will in my view create a set of circumstances where there will be potential disbenefits for some employees in respect of the operations of the agreements which they entered into in good faith. I would urge the government to again look at Labor’s proposal to validate all of the agreements that are in existence up until their expiry date and to look at creating an environment whereby from that point onwards this issue of uncertainty can be dealt with in a more constructive way. That may well mean the need to embrace changes to the objects of the Workplace Relations Act.

Senator LIGHTFOOT (Western Australia) (12.51 p.m.)—In the modest time that is available to me I want to speak on the Workplace Relations Amendment (Agreement Validation) Bill 2004, particularly with respect to the adverse position that is created sometimes when mining companies from overseas come to Australia. I would like to begin by painting a picture of Xstrata, a Swiss company, and its Mr Marc Rich—Mr Marc very Rich evidently.

One thing that we can be sure of in the proposed takeover of the iconic and highly respected Western Mining Corporation by Xstrata is that, like all Swiss deals, there is no social payment, no beneficiaries in the medium term except the Swiss companies involved. They would all tear the guts out of the deer, just to get the kidney fat. The proposed grab by this unlisted Swiss company—unlisted in Australia at least—of the Western Mining Corporation is because of Australia’s world renowned mineral reserves. There is nothing wrong with that in principle, except that Western Mining has the biggest reserves—that is, scientifically delineated reserves—of minable uranium in the world, plus, as a bonus, copper—perhaps the biggest reserves in Australasia—and exciting reserves of gold to boot. And I would respectfully remind honourable senators that gold values are at their highest levels for 16 years and Western Mining Corporation has lots of it.

But the serious actual and potential advantage for the multimetall miner is uranium. Australia, through, significantly, the Western Mining Corporation, has the largest uranium
reserves in the world. Just as Saudi Arabia holds the biggest reserves of oil, Australia holds roughly the same percentage of uranium in the world. If the carnivorous global predator, Xstrata, gets its incisors around the throat of Western Mining, jobs will be lost—they have already flagged that—particularly at Western Mining headquarters in Melbourne. If the appalling treatment of the small Australian miner Precious Metals, and their Windimurra mine in central Western Australia, is an example of the shady global practices that Xstrata is prepared to stoop to and is anything to go by then we could expect mine closures or mine staff reduction and relocation of mining infrastructure so that a mine would be difficult to reopen.

This is what has happened to the unfortunate Windimurra vanadium mine—the largest vanadium mine deposit in the world—in central Western Australia’s outback. Xstrata bought out the mining rights to the deposit and then left Precious Metals with only an ongoing royalty. The only problem for Precious Metals is: no vanadium, no money. Xstrata not only closed the mine shortly after its acquisition and the deal was done but removed most of the plant and machinery used for mining so that it was almost impossible for the mine—as I said, the largest in the world—to reopen. With it went $30 million of start-up money given by the Western Australian government. This commercial banditry had the effect of not only losing jobs there, so desperately needed in the outback, but also boosting the global price of vanadium, which Xstrata then satisfied from its mines in southern Africa. All those jobs were lost at Windimurra. In my many decades of involvement in mining in Western Australia and other places, this is singularly the worst act of a foreign company, mining or otherwise, that I have witnessed in Australia. The same modus operandi could be used for the acquisition of Western Mining’s nickel operations, uranium, copper and gold.

If the trend that Xstrata has implemented at Windimurra expands to other mining areas in the nation, and is picked up or used with the perception that it is a bone fide manner of maximising profits by restricting supplies of metals or minerals that are currently in demand, particularly in China, then Australia, because of its high wage structure, occupational health and safety laws and reliance on high costs of imported mining machinery, could well see a disastrous outcome of any extension to the Windimurra premeditated monopoly. Western Mining is well known to me—I worked for the company in the 1960s when I was studying geology in Kalgoorlie. It has a global conscience; it is respected—even revered—by its work force. It could not have possibly conceived of a tactic like the audacious closure of a mine in Western Australia to maximise the return of another mine in another country by the same company.

There is in Western Australia a disturbing disquiet with respect to this global hunting fiscal predator. I trust the company will learn that there are certain rules, written and unwritten, that it must conform to in this country. We are not a Third World civilisation; we will not tolerate wholesale sackings of employees, nor the destruction of subcontractors, nor the scurrilous and unnecessary closure of our world-class mines. Foreign companies are most welcome here—stick to the rules, forget your Swiss arrogance, Mr Rich, and if you wish to stay here, it will pay you great dividends.

Senator HUTCHINS (New South Wales) (12.57 p.m.)—I wish to comment on both the implications and intentions of the Workplace Relations Amendment (Agreement Validation) Bill 2004, as they both reflect, once again, the Howard government’s divisive and ill-conceived approach to industrial relations.
This bill is the government’s response to the decision made by the High Court in the Electrolux case on 2 September this year. The court found that, for a collective agreement or AWA to be valid under the terms of the Workplace Relations Act, that agreement must solely address matters pertaining to the relationship between the employee and the employer. This bill thus validates agreements made before or on 2 September this year by validating only those matters in these agreements pertaining to the employment relationship in line with that finding.

Labor finds this bill limited in two unfortunate ways. First, the bill opens up more legal uncertainty than it resolves, as it allows the possibility that now every aspect of workers’ entitlements will be trawled through the courts. Second, the bill also destroys the good faith that workers and enterprise have developed in arbitrarily striking out parts of agreements that have been negotiated in good faith. In short, the government has arrogantly said it knows best.

The history of the Electrolux case demonstrates that the Howard government is once again the odd man out on the issue of workplace relations. Once again, this bill does not go nearly far enough in providing the certainty that Australians seek in their industrial relations system. Prior to the High Court’s judgment, the Full Federal Court found that protected action could be taken over matters that may be included in a future certified agreement. The full bench argued that Justice Merkel erred in finding that only matters pertaining, incidental or ancillary to the employment relationship could be the subject of protected action. The full bench found that this would preclude the judgment of the commission on what matters could rightly or wrongly be included in any agreement and as such would deny the commission its appropriate jurisdiction. Since then, the commission has made numerous decisions on what matters pertain to the employment relationship and those that do not. Until the High Court judgment, this decision was working well, with parties conducting agreements in good faith through the conciliation and arbitration process. Many of these agreements contained matters ordinary Australians would identify as part and parcel of the bargain struck nearly 100 years ago between labour and business. What came in originally in most state jurisdictions is the Master and Servant Act—something that I am sure that the coalition would like to go back to.

What the government has now said is that it will not respect the wishes of employees, unions, employers and the jurisdiction of the commission to decide what matters should be allowable matters in certified agreements. Rather, the government has run to the courts with a restrictive definition of the employment relationship and argued that this necessarily invalidates all these agreements conducted in good faith. Far from supporting the commission process, the government has come in and upturned the trust, confidence and relationships developed by parties through the certification process. Far from respecting the wishes of all parties to have a wider view of the employment relationship, the government has effectively manipulated the courts to pursue its radical degrading of the commission’s powers, developed through decades of industrial relations in this country. The upshot is that the government’s appeal to the High Court was motivated not out of a desire to seek certainty but out of a desire to once again complicate matters.

So let us now examine the implications of this bill for the industrial fabric of the country. The government has whipped up speculation that many agreements may now be invalidated due to the inclusion of matters ostensibly outside the employment relationship. Let us not forget that it was the government’s wish to appeal the judgment of the
full bench of the Federal Court that has led to this uncertainty in the weeks before Christmas. Let us not forget that it was the then government’s fault that many workers are now uncertain over whether their rights are enforceable in the stressful working hours leading up to Christmas. Let us not forget that all the good faith developed between employers and employees may well evaporate in these weeks because the government’s meddling has made the provisions of these hard-won agreements legally uncertain. That is why it is important that the parliament offers certainty to Australia where the government will not.

Labor’s amendments will sustain the good faith agreements developed over the last few years. They will sustain the understanding that it is best left to the parties to decide in their agreements what constitutes matters in their employment relationship, as developed by the practice of the commission. They will validate those agreements that have been previously certified and will allow the ambit of allowable matters to be decided by parties to the agreement. This has a deliberate advantage over the bill proposed by the government, as this bill defaults on questions of what would be matters directly implied as part of the employment relationship. Indeed, this opens up the fact that almost all aside from the most basic aspects of the employment relationship will be decided on appeal to the courts rather than through the commission process. What we shall then have is protracted disputation through the courts over many of the aspects of agreements that Australian workers have long taken as being part and parcel of the bargain between themselves and their employers. That is why the second aspect of the amendments that we have proposed will clarify the nature of the employment relationship and leave it up to the commission to decide its boundaries.

It is crucial to understand the significance of Labor’s proposed amendments to this bill. These amendments will rule out the possibility that every last detail in the numerous certified agreements affected by the Electrolux decision will now be dragged through the courts. The government’s amendments provide no such certainty. Labor’s amendments will respect the good faith of employers and employees. The government will undermine the trust between workers and enterprise and replace it with uncertainty. Labor’s amendments will protect the entitlements of workers to hard-won gains in agreements. The government will allow for those entitlements to be stripped away. As always in matters of industrial relations, the difference between the constructive approach of Labor and the divisive approach of the government is clear for all to see.

One must wonder why the government has led us down this track. Far from simplifying the industrial relations system, the government has now forced the parliament to clean up its legislative mess. The reality is that we do not have to look too hard for the reason why the government has pursued this agenda. It is there in black and white on page 2 of the government’s submission to the Senate Employment, Workplace Relations and Education Legislation Committee. It states: The Government agrees with the High Court’s decision. The Government does not consider that it is appropriate for instruments that are made and enforceable under the workplace relations framework to contain matters that are extraneous to the employment relationship.

The fact is that it is exactly the sorts of matters that employees and employers have agreed are part and parcel of the employment relationship that will be put in jeopardy by this bill.

But the agenda of the Howard government runs much deeper than this. The effect of this bill is that it will open up a legal nightmare
over what are allowable matters and what are not. The secret agenda of the government is to use this piece of rushed legislation as the velvet glove by which to erode workers’ rights in the federal sphere. By stressing this narrow and ill-defined conception of the employment relationship the government will no doubt argue that a number of matters which have been traditionally considered as part of the employment bargain struck through decades in Australia are now ‘extraneous matters’.

It is ironic that the conservatives are swimming against the tide in the long and proud history of industrial relations in this country. We on this side of the chamber are justifiably proud of the extension of social welfare through the rights of working people. What is more, most Australians agree that issues like sick leave, child care, job security, enterprise based training and dismissal rights are not extraneous matters. It is not an extraneous matter that workers will not be able to secure full-time jobs because management seeks ‘flexibility’ in hiring and firing casuals.

I know senators opposite might have to strain to imagine life as a casual worker, but I encourage them to imagine life for just one moment as one of Australia’s 2.4 million working poor. The working poor are those who are classified as in poverty, despite having one adult in the family in employment. They are casually employed, often in low-skill, low-wage service industries. They struggle to upgrade their skills, mainly due to the Howard government’s award stripping of enterprise based training entitlements. Often they find themselves at the mercy of the Howard government’s failing Job Network, being churned from one employment services provider to another. In fact, the only certainty that many of them face is that, once again, through no fault of their own they will struggle to make ends meet before their next pay day.

If this is the flexibility that the government think Australia needs then they need to think again. This bill is only the thin end of the wedge that this place will see once the veil slips in July next year. The legislative record of the government is there for all to see. At every stage they have attempted to introduce new divisions into our industrial relations system. At every stage they have eroded the rights that were developed by consensus in the commission. Now, in the shadow of the bills lined up before us—including unfair dismissal laws, allowable matters and the noxious ‘need for employment’ clause—their agenda has been exposed for what it was all along by this bill. That agenda will simply erode the rights of workers to seek nothing more than a fair day’s pay for a fair day’s work, the dignity that comes with job security and the promise of a better future for their children that comes with social mobility of enterprise based training. Whether it is by lowering wages through the flawed logic of the need for employment, making it easier to sack employees without due process or by taking away the ability of workers to better themselves, the agenda remains the same.

That agenda has been revealed in this place today with this unfortunate but necessary bill to clean up the legislative mess. We could never plunge Australia into industrial disputes in the weeks before Christmas, but the government has used this opportunity to cut away the legal basis for the long history of workers’ rights in this country. It has decided against the right path of certifying those agreements conducted in good faith by the parties; rather, it will open up new divisions. With these divisions the government will no doubt ram through its agenda to strip away the rights and conditions of workers, and the good faith delivered through enterprise bargaining and the unions. It has swapped consensus for convenience in driv-
ing its narrow agenda to determine issues such as sick leave, holiday leave, enterprise based training and job security as extraneous issues. How can we say that the social mobility of workers, now jeopardised by the second highest rate of casualisation in the OECD, is a callous extraneous matter?

In fact, in last week’s edition of the Catholic Weekly in Sydney, the front page referred to a speech by the Catholic Bishop of Parramatta, the Right Reverend Kevin Manning, attacking the idea that we need to have a change in the industrial relations system and attacking the fact that there is this rapid growth of casuals in our society. Bishop Manning’s speech indicated that he believed—and I think I am correct in saying this—that the only way to prevent this growth of the working poor is to have a strong system to allow for proper regulation of wages and conditions. We see by this bill today that that is being stripped away. As we know too well, on 1 July next year, we will have more and more legislation come before us that will rip away the rights and the dignity of men and women who work for a living in this country. It will be a sad day when that starts to occur. I hope that the men and women who will inevitably lose the security that they once had will remember that at the next election.

Senator LIGHTFOOT (Western Australia) (1.11 p.m.)—I seek leave to make a very short personal explanation.

Leave granted.

Senator LIGHTFOOT—During my contribution to the Workplace Relations Amendment (Agreement Validation) Bill 2004, I neglected to have recorded in Hansard that a company with which I am associated is holding some options in Precious Metals Australia. Those options were bought over the last few weeks.

Senator NETTLE (New South Wales) (1.11 p.m.)—The Workplace Relations Amendment (Agreement Validation) Bill 2004 is the government’s response to the High Court’s decision in the Electrolux case, but the bill fails to adequately address all the uncertainties that that decision has raised. The government could do more to address these uncertainties, but it has decided to leave these decisions and the sorting out of these matters to the courts and the Australian Industrial Relations Commission. The sorting out of these uncertainties could take many years.

The High Court’s decision in the Electrolux case in September this year raised three significant questions about the scope of certified agreements and what they may contain. The Workplace Relations Act provides that an agreement can be certified only if it is ‘about matters pertaining to the employment relationship’ between employers and employees. The court found that a provision for employers to collect bargaining fees on behalf of a union is not a matter pertaining to the employment relationship.

The court also ruled that any certified agreement that contains a matter that does not pertain to the employment relationship is invalid, and that any industrial action taken in support of a proposed agreement which includes these non-pertaining matters is not protected industrial action and is therefore open to civil sanctions. The court did not say exactly what other matters might not be permissible in a certified agreement—what it perceives to not pertain to the employment relationship—although there has been speculation that it could extend to dealing with the use of casual workers, labour hire, non-union contract employees, right of entry for union officials, deduction of union dues and training leave for union delegates. This means that any number of existing certified agreements may now be invalid.
The government claims to be addressing this uncertainty with this bill, but this is not the case. This bill simply guarantees that all certified agreements and all AWAs, Australian workplace agreements, that were in place before the Electrolux decision are valid, but any matters within those agreements that do not pertain to the employment relationship are unenforceable. That is manifestly inadequate. People need to know that all of the provisions in the agreement that they make in their workplace are valid. Unions, employees and employers also need to know what issues the government and the courts believe do not pertain to the employment relationship.

The government could have brought to parliament a list of matters that they believe do not pertain to the employment relationship, but they have chosen not to do this. The failure to specify the scope of non-pertaining matters disadvantages unions and employees who may wish to take industrial action in pursuit of a certified agreement. This is because such industrial action, as I said before, would not be protected if the agreement contains non-pertaining matters, thereby opening unions up to the threat of legal actions and penalties. There is no certainty provided for employees and their unions, and the government have offered nothing in this bill to take the guesswork out of the task in the hands of those groups.

The government could have ensured that all action taken in support of claims for a certified agreement, whether it contained matters pertaining or not pertaining to the employment relationship, was deemed legal. The government could have, as the Australian Council of Trade Unions has suggested, amended the Workplace Relations Act to:

Remove the requirement for industrial disputes and certified agreements to be about matters pertaining to the employment relationship ...

The Greens support the ACTU’s view, set out in its submission to the Senate inquiry into this bill:

Where a union and an employer have reached agreement on matters which they believe are relevant, the role of Government should be to ensure that these agreements are valid and enforceable.

In its submission to the inquiry, the CFMEU construction division states that this bill, by validating only part of an agreement negotiated before the Electrolux decision, effectively imposes an outcome on parties to a negotiation that the parties themselves might not have agreed to. This means that the parties cannot renegotiate any ‘non-pertaining matters’ and have them included as part of their agreement with rights of enforceability.

This is unsatisfactory in the view of the Greens and it is contrary to the intent of enterprise bargaining. The Greens agree with the CFMEU, who said in their submission:

If pre-Electrolux agreements are to be validated by legislation they should be validated to the full extent of their existing terms—

—that is, the basis on which they were negotiated between the two parties involved. Nor has the government dealt satisfactorily with the status of agreements made after the High Court decision. These may be invalid because they contain a single ‘non-pertaining matter’. The government has offered no guidance on the scope of such matters. The government might think that it is constraining unions and employees and further undermining collective bargaining and the ability of working people to protect their wages and working conditions to the advantage of business. But business also appreciates certainty, and most employers will not welcome the continuing uncertainty that this legislation creates.

This legislation is a poor effort in dealing with industrial relations issues from a gov-
ernment that claims industrial relations is its top priority during its fourth term. It raises the question: what can we expect from the Howard government on industrial relations in the coming years? We can expect the government to drag out every ill-conceived industrial relations bill it has tried and failed to secure parliamentary support for in the past nine years. The list is long because the Senate has had the good sense to reject much of the government’s regressive and divisive industrial relations agenda, such as the now infamous proposal to permit workers of small businesses to be sacked with no right of appeal. This has been rejected 41 times by the Senate, yet today we saw the Minister for Employment and Workplace Relations reintroduce this bill. The government’s agenda also includes reducing the number of matters that awards and agreements can cover, further restricting the right of employees to take industrial action and abolishing the right of small business employees to redundancy pay. Then there are the new proposals that the government has flagged, like placing so-called contract workers and small business—the largest employer—outside of the industrial relations system.

Let us have a look at what these proposals would mean for Australian workers. There is no case for removing the right to appeal an unfair dismissal—the right to appeal having been unfairly sacked by one’s boss. Such a measure would have harsh consequences for working people. Imagine a young woman working in a tearoom who raises an issue about being bullied by her boss. She is then sacked and has no right of appeal. Or imagine a mechanic who turns up a garage to work one day and is told, ‘You’re sacked.’ He is given no explanation, there is no discussion and he has no right of appeal. Or imagine the real life example of a child-care worker who was sacked four days after requesting maternity leave. The 25-year-old woman, pregnant with her first child, was represented by the Liquor, Hospitality and Miscellaneous Workers Union. They took action open to them at the time before the New South Wales Industrial Relations Commission and were awarded the maximum 26 weeks pay. In ruling last month, the commissioner, Ian Cambridge, said that the fact that the employer was a small business was no excuse for the company’s conduct. He said:

It is difficult to contemplate the prospect that an employer acting with such abhorrent disregard for the circumstances of a pregnant woman might somehow avoid responsibility for such actions because it is a small business.

But, under this government’s unfair dismissal bill, this woman, pregnant with her first child and awarded the maximum 26 weeks pay by the New South Wales Industrial Relations Commission, would be prevented from seeking any redress from being unfairly sacked from her workplace. This is not the fair and just workplace environment that Australians want.

The government wants to remove the right to redundancy pay for small business employees, arguing that small business is a special case. But the Australian Industrial Relations Commission in its ruling on this matter earlier this year capped the amount of redundancy payable at half that for larger businesses—eight weeks pay as opposed to 16 weeks—and it retained a provision for small businesses in genuine financial difficulty not to have to pay redundancy pay. If the government’s policy becomes law and an employee who has worked for 20 years for one small business employer is made redundant, they will receive nothing.

The government also wants to restrict the right of union organisers to enter workplaces to hold meetings and assist workers—meetings about occupational health and safety issues, meetings about a whole range
of issues that the employees in a workplace are interested in discussing collectively with their union. The government wants to tighten secondary boycott provisions that penalise unions and workers who take action in support of workers in other workplaces. For example, if there has been a death as a result of negligence on one building site and people at another workplace want to stand in solidarity with the death that occurred across the road, the government wants to tighten these provisions so that people are not able to show that solidarity or the need to improve the occupational health and safety issues in their own workplace so that they do not face similar circumstances. The government also wants to further restrict the right to strike by outlawing strikes in essential services, and we have seen some indication that the government intends that to include nurses, academics and a range of other members in public service. It also wants to increase the use of independent contractors to undermine collective bargaining.

From July next year, the government will control the Senate. The question is: will the coalition be seduced by big business and strident right-wing advocates of an industrial relations free-for-all who are already pressing for even more obnoxious measures, such as removing minimum wage setting from the commission and allowing parliament to regulate pay rates? Industrial relations experts John Buchanan and Ron Callus of Sydney University, wrote in the *Sydney Morning Herald* on 20 October that employers and managers already have the upper hand in the employment relationship. They said:

Australian employers already have one of the most favourable labour law environments in the world. Their freedom to choose whether to bargain with their employees and to lock them out exists in no other industrialised country. Their power is set to increase as that of unions and industrial tribunals falls, dismissing workers becomes easier and contractor forms of employment are nurtured. Power would also be centralised in Federal Parliament at the expense of the states and tribunals.

Business, including small business, is best assisted by an industrial relations framework that promotes and supports cooperative relationships with unions and employees—not confrontation, discrimination and exploitation. An independent body to help conciliate and, where necessary, to arbitrate disputes is in the interests of all players in the industrial relations system. But the Howard government cannot see this because it is distracted by its unrelenting desire to crush unions and collective bargaining in preference to requiring each individual employee to look out for themselves, most of whom have neither the wherewithal nor the bargaining power to strike a fair deal.

The government refuses to accept the pivotal role that unions have played and continue to play in a fair society and decent working environments. As former ACTU president and former Prime Minister Bob Hawke said last week, unions have much to be proud of and every working person is indebted to the union movement for their wages and working conditions. In his speech Mr Hawke said, ‘No other non-government organisation has made such a lasting contribution as the trade union movement.’ Instead of undermining the role of unions, the government ought to be directing its efforts to addressing the many longstanding, serious problems that beset the employment market and working lives, such as the continuing expansion of insecure, low-paid work that deprives people of basic conditions such as sick pay, holiday leave and the opportunity for advancement, and such as the rise of overwork. An International Labour Organisation report last month found that one in five employees in Australia works at least 50 hours a week.
The government should be addressing issues such as the poor distribution of paid work that is leading to whole areas of disadvantage in cities, where many families have no wage earner. The government should be addressing a taxation system that continues to direct more and more benefits to high-income earners instead of tackling the problem of high effective marginal tax rates for people moving from income support to paid work on low wages. It should be tackling the absence of a proper paid parental leave scheme in this country and the insufficient child-care places.

Instead of addressing these issues, the Minister for Workforce Participation is off in search for new draconian anti-worker and anti-union legislation that he can introduce into parliament post July next year. I hope that across Australia trade unions are preparing with other members of the community to defend the interests of working people from the government’s attacks. I know that earlier in November the first mass meeting called by the Electrical Trades Union in Victoria to discuss the impact of the Electrolux decision, this bill that we are dealing with now, and how the union would deal with that issue attracted around 4,000 people.

The ETU has negotiated with employers an industry-wide new certified agreement—another outcome for fairness of conditions and certainty for employers that the Howard government will try to prevent in future by abolishing industry-wide or pattern bargaining. The community wants fairness and cooperation, not exploitation and confrontation. Fair-minded business people want cooperation, not exploitation and confrontation. Working people want fairness and cooperation. But the Howard government is bent on exploitation and confrontation, as we saw down at the docks during the MUA dispute, because it wants to deliver for the big end of town at the expense of working people, their families and their unions, and at the expense of constructive relationships between workers and businesspeople. The government feels that it needs to deliver for what it believes is its constituency, the big end of town, regardless of the impact that will have on the rest of the community.

For nine years the Senate has prevented the most regressive elements of the government’s policy from becoming law in industrial relations. From next July this important check on government will cease because the coalition will be able to pass legislation in its own right. But the Greens will continue to work in the parliament, in workplaces and in the community and with unions and working people to defend the right to collectively bargain and to defend the right to fair treatment, the right to safe workplaces and the right to fair wages and conditions. We will work for an industrial relations system which promotes fairness and cooperation over this government’s agenda of exploitation and confrontation.

Senator ABETZ (Tasmania—Special Minister of State) (1.29 p.m.)—I thank honourable senators for their contributions to the Workplace Relations Amendment (Agreement Validation) Bill 2004. The bill seeks to amend the Workplace Relations Act to ensure the validity of agreements which were certified, approved or varied under the Workplace Relations Act prior to the decision of the High Court in the Electrolux case. In that case the High Court found that an agreement certified under the Workplace Relations Act must only contain matters which pertain to the relationship between the employer and employees.

The government welcomes the long-term certainty which the High Court’s overwhelming decision, a 6-1 decision, has provided to agreement making. The Electrolux decision has most likely meant that agreements certi-
fied by the Australian Industrial Relations Commission which contain provisions which do not pertain to the employment relationship may now be invalid. The aim of the bill is to restore the validity of certified agreements and AWAs certified, approved or varied prior to the Electrolux decision.

The policy underlying the Workplace Relations Act is that agreements should only contain matters that relate to the employment relationship. If there is no restriction placed on what matters agreement could be reached on, agreement making would become seriously burdened by delay and complex negotiations. Most importantly, the sky could become the limit in relation to the matters that could be involved in these agreements. As a result, the government welcomes the High Court’s finding in the Electrolux case that non-employment related matters cannot form part of a certified agreement.

The High Court’s decision has also confirmed decades of jurisprudence in this area and the commission’s application of section 170LI of the Workplace Relations Act. However, the result of the decision is that agreements certified by the commission which contain provisions which do not pertain to the employment relationship may now be invalid. Employers, employees and unions share a common concern that agreements reached prior to Electrolux may now be invalid and unenforceable. The bill proposes to restore the validity of those agreements. While the Electrolux decision is concerned with certified agreements and contains no direct reference to AWAs, the government believes that there is an equivalent need to ensure validity and, hence, certainty for the parties.

The provisions of the bill have been outlined in detail in the second reading speech. There has been a union campaign surrounding this, in particular by the Electrical Trades Union, ably represented in this chamber by Senator Marshall—and I note his contribution—and the CFMEU, ably represented in this place by Senator Wong. If I understood Senator Marshall’s contribution correctly, he was saying that there is nothing wrong with unions taking advantage of the fact that the enterprise bargaining agreements are void and, therefore, pursuing new claims.

Senator Marshall interjecting—

Senator ABETZ—Yes, Senator Marshall is confirming that. I wonder whether he thinks it would be appropriate, therefore, for employers to similarly say, ‘We can now pursue new claims and not pay the wage increases that had previously been agreed to.’ I am sure the Electrical Trades Union and Senator Marshall would see that as an outrageous breach of the goodwill that may have been established between the parties.

If you want to run a successful industrial relations regime in this country, it has to be fair to both sides of the debate. That is what we as a government have done so well over the past 8½ years. The Labor Party come in here as the advocates for the trade union movement; that is their right. But we come into this place seeking to be an arbiter and the independent provider of laws for the benefit of trade unions, employers and, most importantly, individual workers. That is why we as a government take such a different approach to industrial relations.

Having listened to the comments of Senator Nettle, I would say that her contribution was—to coin a phrase—extreme, not green. I think if the Australian people were hearing a few more of these sorts of speeches they would realise that the Greens are in fact a reincarnation of Leon Trotsky. I thought the Trotskyites had fallen a long time ago, even before the Iron Curtain had fallen.

The Greens have resurrected themselves in this place with quite bizarre, emotive and...
extreme language. Supposedly this government has been crushing the trade union movement for the last 8½ years. I want to tell this place that, in the last 8½ years, we have had the lowest rate of industrial disputation since 1913, which was the first time that records were kept in this country. The Howard government has presided over the lowest rate ever of industrial disputation in this country. At the same time, we have presided over a $200 per fortnight increase in real wages for ordinary Australians. We have also, at the same time, presided over a 1.4 million increase in the number of people employed in Australia, where the unemployment rate is now at 5.3 per cent.

Of course, according to the Greens, that is a record of confrontation and a record of crushing the unions. Despite what the facts tell us, despite what workers on the streets will tell us, despite what the 3,000 timber workers at the Albert Hall in Launceston in Tasmania personally told the Prime Minister, the Greens will continue with their Trotskyite type mantra, which went out, as I said, even before the collapse of the Iron Curtain.

I want to compliment two senators. I have made some comments about Senators Marshall and Nettle. I compliment Senator Santoro, a former distinguished industrial relations minister in Queensland. Most would credit him with being the best ever Queensland industrial relations minister, and I thank him for his contribution. I also thank Senator Barnett for his contribution and the point that he made—and it was a very telling point—that the Labor Party still do not have their act together. As he pointed out, the member for Perth, in addressing the ACTU, said:

... it is imperative that the uncertainty caused by the Electrolux decision be resolved before Parliament rises this year. The “do nothing” approach is not a viable option.

You can see the contrast. The shadow minister for workplace relations said that, yet the other opposition spokespeople, Senator Wong and Senator Marshall, say the bill will be of no assistance in addressing the problems created by the Electrolux decision. So the problem is not the legislation; the problem is the 6-1 decision of the High Court, which has simply reinforced the jurisprudence that was long accepted as governing workplace relations.

Here we have the Labor Party rent asunder yet again by internal factions. I can understand that the Electrical Trades Union and the CFMEU have gone on a particular course. As the puppet masters they are able to determine the contributions of Senators Marshall and Wong in the committee report. But until the Labor Party sheds that approach to industrial relations and considers being a party ready for government by taking all aspects of the industrial relations equation into account you will find not only that people will continue to desert the Australian Labor Party at elections but also that people will continue to desert the trade union movement. The majority of workers these days are offended by some of the extreme approaches of people like Craig Johnston and others who think that the trade unions can be a law unto themselves.

Most people now believe that you need a sensible balance. We as a government have achieved that sensible balance and that is why I said before that we are able to point to a very good record in the area of industrial relations. The government has introduced the bill to provide certainty to those employers and employees who have entrusted their working agreements to the federal agreement making system. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.
In Committee

Senator SHERRY (Tasmania) (1.40 p.m.)—by leave—I move opposition amendments (1) to (4) on sheet 4427:

(1) Schedule 1, item 1, page 3 (lines 24 and 25), omit “, to the extent only that the agreement deals with permitted matters.”.

(2) Schedule 1, item 1, page 4 (lines 9 and 10), omit “, to the extent only that the variation deals with permitted matters.”.

(3) Schedule 1, item 2, page 6 (lines 1 and 2), omit “, to the extent only that the AWA deals with matters pertaining to that relationship,”.

(4) Schedule 1, item 2, page 6 (lines 22 and 23), omit “, to the extent only that the variation agreement deals with matters pertaining to that relationship,”.

The amendments on sheet 4427 have the effect of validating the whole of the existing certified agreements and AWAs, allowing each provision to continue to have effect until the expiry date of the agreement. Labor believes that the amendments will provide greater certainty for employers and employees by giving effect to the whole of the agreement previously reached between them.

If Labor’s amendments are accepted the validity of agreements will not depend on the outcome of further legal consideration by the commission, the Federal Court or the High Court in relation to whether particular clauses pertain to the employment relationship. As I said in my contribution to the second reading debate, the Labor Party is about certainty—but certainty in all its aspects. I commend the amendments to the chamber.

Senator MURRAY (Western Australia) (1.42 p.m.)—Right from the start the Democrats took the view expressed originally by Labor’s portfolio holder—firstly, that this matter was genuinely urgent and, secondly, that it was in the public interest for certainty to be delivered with respect to these matters. The question then was: what is the best route to provide that certainty? Having gone through the inquiry process and heard the evidence, the Democrats ended up with the same conclusion as Labor: that it would be cleaner and easier to validate all agreements that are currently operating. The agreements have a relatively short life and once they were over you would move to the new understanding. This is particularly so given the fact that only one specific item was identified by the High Court as being invalid and therefore it is a relatively peripheral matter for many agreements. It is not peripheral from the point of view of the union people, who attach a lot of weight to it, but it is peripheral in the scale of the full agreement.

However, the government have chosen an alternative route which has its own policy integrity and its own philosophical strength. We just think Labor is right. However, both the Labor portfolio holder and I are of the view that the matter is urgent and if the government are determined to proceed with their approach—I will not speak for the Labor portfolio holder because his counterpart in the Senate can speak for him himself, but I have seen what he has said in print and I have spoken to him—the Democrats will not insist on passing these amendments. We think these amendments are better but, because it is an urgent matter, we do not wish to see a bouncing process go on with respect to them. So we are going to vote against the amendments, although we support them, because insisting on them would just be a symbolic act. Accordingly we will vote against the amendments.

Senator ABETZ (Tasmania—Special Minister of State) (1.44 p.m.)—I indicate to the chamber that the government opposes the amendments, and opposes them strongly. The amendments would overturn the agreements that are currently in place—all the jurisprudence that has been in place for about a century. The boundaries of the Commonwealth’s workplace relations framework
have been set with reference to matters that—and this is the important word—pertain to the employment relationship. That is the very important aspect that we are dealing with. Senator Sherry’s amendments say that, despite that century’s worth of jurisprudence and the attempt by some to put things into agreements that are in breach of what has been the understood law for a considerable time upheld by the High Court in a decision of 6 to 1, you should now allow all these agreements to remain in force. In other words, you would then have two sets of agreements running concurrently with some pertaining and some not pertaining to the employment agreement.

Why would an opposition party want such a circumstance? What sorts of matters are not pertaining to the employment agreement? What sorts of matters would be validated by the Labor amendments? Surprise, surprise! It is all pro trade union—financial benefits to the trade unions such as bargaining agents fees and payroll deductions for union dues that have been found to not pertain to the employment relationship. So, once again, we have the Australian Labor Party coming in here doing the work of the trade union movement to try to maintain the coffers of the trade union movement in the face of the ever-declining membership, which I think is now down to well below 20 per cent. Workers in Australia are determining that they do not want to be involved in trade unions. They are leaving them, and so Labor is trying to fight a rearguard action to maintain bargaining agents fees and payroll deductions for union dues. All this bill seeks to do is to reflect the current state of the law, and the Workplace Relations Act clearly states that an agreement must be:

... about matters pertaining to the relationship between:

(a) an employer ... and

(b) all persons who ... are employed in a single business, or a part of a single business, of the employer and whose employment is subject to the agreement.

We would have uncertainty writ large. Senator Sherry says that his amendments would provide certainty, but they would write uncertainty into the industrial system in very large, bold capital letters. We as a government see the urgency of maintaining the integrity of the system and not by the imprimitur of this place deliberately validating sections of agreements that were never intended to be allowed under the industrial system for a very long time. So we as a government will be opposing the amendments.

Senator MARSHALL (Victoria) (1.48 p.m.)—That contribution by the Special Minister of State shows how ignorant he is about industrial relations and the development of industrial relations in this country. Section 170LI of the act, which is the relevant section that talks about matters pertaining to the employee-employer relationship, has been there for some time. It has been up to the Australian Industrial Relations Commission to determine the application of that section of the act, and they have been doing that consistently over a period of time. You say, Minister, that we are trying to overturn 100 years of jurisprudence, and that is completely wrong. The High Court decision talked about one particular issue—bargaining agents fees, which have not been around for 100 years; that issue has been around for one or two years—so it was not seeking to overturn anything in that respect.

You are saying that we now have a High Court decision that says two things. One is that it has somewhat narrowed the scope of what should be determined as a pertaining matter and then interpreted by other tribunals on what should define the scope of the employee-employer relationship. The decision has then gone on to say that any agreements
that were certified with those clauses which have now been narrowed become void. With this bill, you seek to overturn one part of the High Court decision while maintaining the other. Quite frankly, I think that is a little hypocritical, and then to accuse us of trying to overturn a 100 years of jurisprudence is just stupid. You seek to overturn the part of the High Court decision which you do not like and maintain the part of the High Court decision you do like. The argument is very clear: employees and employers in good faith negotiated agreements which then made a bargain, a package, and employees and employers did not have an opportunity to cherry pick. That package was voted on as a package. Different people, including employers, will put different values on all sorts of elements of that package. This bill seeks to renegotiate that bargain retrospectively. You delete elements of that bargain by applying your bill in the unamended fashion as it now stands.

You also talked nonsense when you said that the only things that do not pertain go to the question of things that benefit trade unions directly and not employees. That, again, is startling in its ignorance. It goes to a whole range of things that involve third parties—for example, salary-sacrificing arrangements are not to be allowed. That does not benefit any trade union. It is a way of managing a wages structure that generally benefits both the employee and the employer.

The other area is health benefit payments. These payments will be disallowed by this decision, and that is being interpreted by different tribunals at the moment. Any benefit paid to the family of an employer will not be allowed under this arrangement, because the employee’s family does not have an employee-employer relationship. Minister, the list goes on and on, and for you to try to portray this as simply something that the unions have in their own interests is absolute nonsense and clearly demonstrates your ignorance of industrial relations.

The only genuine way to provide absolute certainty is that when the commission certify agreements in the full knowledge and operation of the Workplace Relations Act 1996 they do so based on the decisions of different tribunals and courts at the time. Those agreements run for a limited time—a maximum of three years—and those agreements in their entirety should be certified and then maintained. No legislation should retrospectively undermine that bargain, which was freely negotiated and agreed to by the parties.

Our amendments do that in those certified agreements that have been caught up between the time they were made and when the Electrolux decision was handed down on 2 September last year. I think it is very gratuitous of the minister to continue to run the union-bashing line. That is all he wants to do. He is free to do so, but he ignores a significant disadvantage that is going to apply to a significant number of employees and employers, because many of these provisions which will now be disallowed give benefits to the employer also.

Senator Sherry (Tasmania) (1.53 p.m.)—My colleague Senator Marshall is correct. I do not know that it was actually ignorance; I think it was deliberate, ideologically based selective bias and incorrect claims. It is as simple as that. Senator Marshall outlined, rebutted and responded well, and we do not accept the claims made by Senator Abetz. They were simply wrong, and I think he knew it. Time is pressing on, so I thank Senator Marshall for his contribution.

Question negatived.

Senator Murray (Western Australia) (1.54 p.m.)—by leave—I move Democrat amendments (1), (2) and (3) on sheet 4444 revised:
(1) Schedule 1, item 1, page 3 (lines 7 to 9), omit the heading to Division 10A, substitute:

Division 10A—Validation of certain pre-2 September 2004 agreements, variations, industrial action and lockouts

(2) Schedule 1, item 1, page 4 (after line 12), after section 170NHB, insert:

170NHBA Validation of certain industrial action and lockouts

(1) If:

(a) a person has organised or engaged in industrial action or locked out employees from their employment; and

(b) the industrial action or lockout would have been protected action within the meaning of Division 8 but for the fact that it was for a purpose of, or for a purpose that included a purpose of, supporting or advancing a claim made in respect of a matter that was not a permitted matter;

then, to the extent that the industrial action or lockout occurred on or before 2 September 2004, it is taken to be protected action within the meaning of that Division.

(2) However, subsection (1) does not apply, and is taken never to have applied, to the extent that its application would have resulted in an acquisition of property within the meaning of paragraph 51(xxi) of the Constitution.

R(3) Schedule 1, page 6 (after line 26), at the end of the Schedule, add:

3 Application provision

The amendments made by this Act do not apply in relation to industrial action, or a lockout, if, before the commencement of this Act, a court has found the industrial action or lockout not to be protected action (within the meaning of Division 8 of Part VIB of the Workplace Relations Act 1996).

In view of the time, I am willing to move them without covering the issues concerned. I think they were covered in the second reading debate, but of course if senators wish me to explain them more I will. What I have done is to adapt Labor’s original amendment. My office has discussed with the government and with the opposition the best way to fulfil an end, and my understanding is that there is concurrence in the chamber for this approach. I will say more later if it is wished.

Senator SHERRY (Tasmania) (1.55 p.m.)—Can I just clarify: are we dealing with sheet 4444 revised?

Senator Murray—For the record, this is revised sheet 4444, and amendments (1) to (3) have been moved together.

Senator SHERRY—The Labor opposition regards it as the second best option, but we have debated the issues extensively and I do not intend to make any further comment on them.

Senator ABETZ (Tasmania—Special Minister of State) (1.55 p.m.)—From the government’s point of view, the Democrat amendments are not necessary but, having said that, we will not oppose them.

Question agreed to.

Senator SHERRY (Tasmania) (1.56 p.m.)—I move amendment (5) on sheet 4427:

(5) Schedule 1, page 6 (after line 26), at the end of the Schedule, add:

3 After Division 8 of Part VIB

Insert:

Division 8A—Validation of industrial action taken in support of certain agreements made before 2 September 2004

170NBA Validation etc. of certain industrial action

If:

(a) industrial action has been taken; and
that industrial action would have been protected action pursuant to section 170ML but for the fact that it was taken in support of claims wholly or partly pertaining to matters other than permitted matters; then that action is taken to have been protected action.

Labor certainly believes it is appropriate that this amendment applies to protected industrial action already taken. Unions and their members, who took industrial action in good faith, believing on reasonable grounds it was protected, should have legal protection from any action which might subsequently be taken against them.

The Liberal government has omitted such a validation from its bill on the basis that it would be legally complex to do so. Labor’s amendment shows that validation can be effected quite simply. From opposition, we can draft that amendment; the government should be able to do it. The amendment provides that, if industrial action has been taken and that industrial action would have been protected action but for the fact that it was taken in support of claims wholly or partly pertaining to matters other than permitted matters, the action is to be taken to have been protected action. It is a very, very fair approach. It is balanced. I commend the amendment to the committee.

Senator MURRAY (Western Australia) (1.57 p.m.)—We will be voting against the Labor amendment.

Senator ABETZ (Tasmania—Special Minister of State) (1.57 p.m.)—Ditto.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (1.58 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

MINISTERIAL ARRANGEMENTS

Senator HILL (South Australia—Leader of the Government in the Senate) (2.01 p.m.)—I inform the Senate that Senator the Hon. Ian Campbell, the Minister for the Environment and Heritage, the Minister representing the Minister for Transport and Regional Services and the Minister representing the Minister for Local Government, Territories and Roads, will be absent from question time today. Senator Ian Campbell has a long-standing family obligation. During Senator Ian Campbell’s absence, Senator the Hon. Ian Macdonald will take questions on behalf of the portfolios of Environment and Heritage, Transport and Regional Services and Local Government, Territories and Roads.

QUESTIONS WITHOUT NOTICE

Regional Services: Program Funding

Senator McLUCAS (2.01 p.m.)—My question is to Senator Ian Macdonald, the Minister representing the Minister for Transport and Regional Services. I refer the minister to the Regional Partnerships funding program. Can the minister confirm that, prior to the election, the then Parliamentary Secretary to the Minister for Transport and Regional Services had delegated authority to approve certain grants? Did she exceed that authority when she fast-tracked and approved a $1.26 million grant for A2 Dairy Marketers during the election campaign?

Senator IAN MACDONALD—I thank Senator McLucas for that question. The A2 milk program that Senator McLucas refers to operates in her part of the world, in the Atherton Tableland. Senator McLucas will
know that the dairying industry in that area is doing it a bit tough. I think all of us are trying to find ways to help the dairying industry. The thrust of Senator McLucas’ question was: did the parliamentary secretary have authority and did she exceed that authority? I do not have any particular brief on that, but I know Mrs Kelly very well. She is a very competent operator. I am quite confident that she would not in any way exceed any authority that she may have. I do not know that she was delegated the authority—as that is simply outside my knowledge—but I would suspect, Senator McLucas, that if you say that then that would be correct.

The Regional Partnerships program really does help in country Australia. It is something that we on the government side value. It is also valued by those of us who live in country Australia, as I do, because it helps to promote country Australia; it provides jobs and it ensures the longevity of towns. That is a bit different from the proposal to build an Indigenous cultural centre in Senator McLucas’ home town of Cairns, which was put forward by the Labor Party without any investigation. I am sure Senator McLucas was not consulted about that. If she had been consulted, she would not have allowed them to launch this proposal at the Tjapukai cultural centre in Cairns. She would not have allowed this silly proposal of Senator Lundy’s and Senator O’Brien’s to set up something, using government money, in competition with the Tjapukai cultural centre.

Of course, the first one to comment on the Labor Party’s quite crazy proposal was the Tjapukai cultural centre, which said: ‘We don’t want this. All you’re doing is using government money to compete with a private enterprise operation that has been very successful.’ Senator McLucas, you know the Tjapukai cultural centre. It is a great institution. It has done a lot of good work in promoting Indigenous culture. It is next door to the Skyrail, which goes up through the forest. It is a great project. With respect to those parts of the question that I do not have personal knowledge of, I will refer them to Mr Anderson and see if he wishes to give a reply.

Senator McLucas—Mr President, I ask a supplementary question. Why did the government fast-track the grant application from A2 Dairy Marketers? Did the parliamentary secretary’s decision to approve the grant contradict the advice the Deputy Prime Minister, Mr Anderson, gave to concerned dairy farmers and producers in Innisfail on 3 September this year when he said that this project ‘would not proceed until all other options had been resolved’ and that ‘nothing will happen while we’re in caretaker mode’?

Senator Ian MacDonald—With due respect to Senator McLucas, I have long since avoided relying on Labor Party senators’ comments on what particular coalition members may or may not have said. It would be very unwise of me to make further comment on things alleged to have been said by Mr Anderson without referring to him. Suffice to say that I think this demonstrates that the coalition is keen to help in country Australia. Country Australia appreciates that. I have to tell you, Senator McLucas, that many in country Australia cannot understand the continual and continuous attacks by the Labor Party on people in country Australia. I know the rest of your colleagues do not know what country Australia is about, but at least you live in the big city of Cairns, which is outside the capital cities, and I would have thought you might have had a better empathy with country Australia. (Time expired)

DISTINGUISHED VISITORS

The President—Order! I draw the attention of honourable senators to the presence in the gallery of a former distinguished
senator from South Australia, Rosemary Crowley. Welcome back.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Foreign Affairs: Law Enforcement

Senator SANDY MACDONALD (2.07 p.m.)—My question is to the Minister for Justice and Customs, Senator Ellison. Minister, will you update the Senate on the Australian government’s efforts to help restore law and order in our immediate region?

Senator ELLISON—This question from Senator Sandy Macdonald is indeed a timely one. Today marks a significant milestone in the shared history of Papua New Guinea and Australia. Today, for the first time, uniformed Australian police will be patrolling Port Moresby alongside the Royal Papua New Guinea Constabulary. That is a milestone. That is a result of 15 months hard work and discussion with the authorities in New Guinea. Currently there are 44 Australian police officers assisting in Port Moresby, with a further 28 due to arrive on 19 December. These numbers will substantially increase during 2005.

This policing package forms an integral part of the enhanced cooperation program that we have entered into with Papua New Guinea. This policing program will involve new police vehicles in a repair and replacement program for the existing police fleet in New Guinea, a refurbishment of the eight Port Moresby police stations, sourcing and supply of new uniforms and equipment, and, importantly, the development of a standard operating procedure program with the PNG police in relation to internal disciplinary breaches, workplace integration and operational activity.

The Howard government is totally committed to assisting in the region in relation to matters touching on security and law enforcement. This operation will enhance greatly the restoration of law and order in Papua New Guinea and follows on from the successful deployment of Australian police in Bougainville some three months ago. There are reports that that is proceeding well. The Australian Customs Service is also doing a very good job in PNG, where it has been now for some months.

This program is essential for our relationship with PNG and signifies to the region that the Howard government is serious about committing to assisting in the region in relation to matters of law enforcement. That is demonstrated also by our commitment in the Solomons, where an outstanding job has been done by the Australian Federal Police and Australian Protective Service, working with other police forces in the region. Of course, there is also the fine record that we have of Australian police in East Timor, where we have seen over a substantial period of time an outstanding contribution by Australian police.

As a result of this commitment to the region, the Howard government decided early this year to form an international deployment group. This recognised the importance of policing in our region and recognised that we would be deploying police to countries in our region to assist in capacity building and matters of law enforcement. This program in New Guinea is good news for the region, good news for New Guinea and very good news for our relationship with Papua New Guinea, which goes back a very long time.

Regional Services: Program Funding

Senator MOORE (2.11 p.m.)—My question is to Senator Ian Macdonald, the Minister representing the Minister for Transport and Regional Services. Can the minister confirm that the Regional Partnerships program guidelines rule out grants to projects that compete with existing businesses unless it
can be demonstrated there is unsatisfied demand for the new product or service, or the product or service is to be provided in some new way? Is it the case that Dairy Farmers is Malanda’s largest employer? How was the likely impact on Dairy Farmers’ operation at Malanda assessed during the assessment of the A2 Dairy Marketers’ Regional Partnerships application? Given that that company went into liquidation three weeks after the $1.26 million grant was announced, how did the application satisfy the department’s probity and viability requirements?

Senator IAN MACDONALD—Again, I am surprised that a Labor senator from Queensland would raise the issue of not giving grants to projects that compete with existing private enterprises. I said in answer to Senator McLucas’s question that that is exactly what the Labor Party did. The Tjapukai cultural centre is a very efficient, very good tourist attraction in Cairns and North Queensland. It is a private enterprise and attracts a certain clientele. The Labor Party—Senator O’Brien and Senator Lundy—rock in there and ask them if they could use their place to make this major—

Senator Chris Evans—Mr President, I rise on a point of order. Maybe the minister is struggling today because he has to represent another minister but he is representing the government. He was asked a specific question about a specific grant and whether the guidelines were met, considering that a large amount of taxpayers’ money was involved. Could you ask him to be relevant to the question? If he wants to have a blow-out on the Labor Party, there are plenty of other opportunities for him to do so, but this is question time and he ought to be relevant to the question about what happened to taxpayers’ money.

The PRESIDENT—The minister has in excess of three minutes to answer the question. I remind him of the question.

Senator IAN MACDONALD—I do want to get on to the question but it just amazes me that the Labor Party would highlight those sorts of activities when the Labor Party used the venue of a particular facility, by kind permission of those people—I am sure they did not know what the Labor Party were going to announce—to announce that a Labor government would fund something that was in direct competition with the Tjapukai cultural centre. This encouraged that centre, I might say, to issue its first comment, which was that this was a pretty silly sort of policy. I am told it was absolutely the worst policy announcement of the Labor Party in the campaign.

Senator Abetz—No, the forestry one was.

Senator IAN MACDONALD—We will check up.

Senator Chris Evans—On a point of order: I again raise the question of relevance. After you directed him to answer the question, he has now had another minute and he has continued to rave on without bringing himself to answer the question. If question time is to have any relevance, he has to at least try to address the question.

The PRESIDENT—Senator, you know that I cannot direct a minister how to answer a question. I reminded him of the question and I believe that he was coming to giving an answer to that question.

Senator IAN MACDONALD—I wish that the Leader of the Opposition would not object, because I have been attacked by my colleagues for misleading parliament in saying that that was the worst policy announcement. There is a lot of dispute as to whether it was the gold card or the forestry policy. In relation to the application for A2, the application was not progressed by the department.
as it did come to light that the company was in financial difficulty at the end of September. The application went through the normal due diligence assessment and the advice received by the department was that the new entity would not be viable. Subsequently, the A2 Dairy Marketers went into voluntary liquidation. It does show that the process works. The department always conduct the appropriate due diligence assessments and, in the course of that, certain things came to light.

Senator MOORE—Mr President, I ask a supplementary question. Can the minister further confirm that the government was aware of pending court action against the A2 Dairy Marketers when it awarded the company the $1.26 million on 9 September this year? If so, why did the government approve the grant before the outcome of the legal action against the company was known? Can the minister confirm that the company is now in receivership? I believe he did in his original answer. Is the assessment of the A2 Dairy Marketers grant an example of the ‘independent and rigorous’ assessment to which he told the Senate on Monday that all Regional Partnerships applications are subject?

Senator IAN MACDONALD—I can assure the senator that the government’s processes are far better than those employed by the Labor Party with Ros Kelly. You remember the whiteboard? Mrs Kelly used to give away grants in the Labor government by writing on the whiteboard which Labor seat wanted some money. That was their assessment process. That is how the Labor Party did it. It was not done by their departments but done on a whiteboard in the minister’s office. I remember the way we had to drag that out of them at estimates committees to get the real truth. The coalition does not work that way. The department conducted due diligence tests and came to a conclusion as a result of that, and I think that demonstrates that the processes put in place do actually work.

Forestry: Policy

Senator MASON (2.17 p.m.)—My question is also to Senator Ian Macdonald as the Minister for Fisheries, Forestry and Conservation. Will the minister outline to the Senate the coalition’s approach to forest policy and securing employment and sustaining smaller communities that rely upon the timber industry? Is the minister aware of any alternative policies?

Senator IAN MACDONALD—I thank Senator Mason. The coalition’s approach to forestry policy is to address Australia’s huge trade imbalance in forest and wood products, to ensure good conservation outcomes and to secure the jobs of decent hardworking Australians and the communities that support them. The Howard government’s 2004 election policy clearly demonstrated the coalition’s approach and demonstrated that it can be achieved. One million hectares of the 1.2 million hectares of old-growth forest in Tasmania will be reserved from logging as a result of the coalition’s policies. Timber workers and timber communities will have security, and in Tasmania we have reached the right balance. The Australian public actually supported the Howard government’s approach, which was demonstrated in the October election when the coalition won two additional forestry seats in Tasmania and got themselves an extra Senate seat in Tasmania. Labor lost those seats because Mr Latham listened to Bob Brown rather than Labor’s constituency.

Unfortunately—and Senator Mason, a Queensland senator, will be disturbed by this—Labor has not learned the lessons from Tasmania and it would appear that another Labor forest policy disaster is brewing in our home state of Queensland. The Premier’s office in Queensland is running the show.
Advice from Queensland government ministers is being ignored. The five Beattie government ministers in the most relevant portfolios support a transition from state-owned hardwood forests to plantations in the western hardwoods region. This policy is backed by industry and the ACTU. Senator Ludwig has conveniently ‘disappeared’ because it is the AWU—and Senator Ludwig’s dad is the AWU man and Senator Ludwig is in this chamber because of the AWU—who want to help the forest workers but your Premier, Senator Ludwig, seems to be ignoring them again. The relevant ministers and their departments have been rolled by the Premier’s George Street latte set on the basis that a transition to plantations would involve the slaughtering of—now wait for this—‘baby trees’! They are against it because it would involve the slaughtering of baby trees. I know that they are concerned about old-growth trees but now we are on to baby trees—I will feel sorry for the teenager trees shortly. Never mind that the green movement have previously supported the use of smaller logs in this region. Never mind that smaller logs are routinely used in RFAs elsewhere. The Queensland Premier has swallowed this baby trees argument, something that will only increase our state’s reliance on foreign imported timber, and that is something that I know Senator Mason will be concerned about.

As usual it is the human cost that Labor is ignoring. Without any consultation at all some 300 Queensland jobs are about to be sacrificed by Labor in a dozen towns where the council and the timber mills are the only major employers. Most of these workers are AWU workers. It seems that as well as the CFMEU supporting the Liberals it now looks like the Queensland AWU will be supporting the Liberals because we care about those jobs in country towns. The Labor Party in Queensland, as it did with Mr Latham, is abandoning its union base, abandoning these decent hardworking Australians in the interests of mad forest policy. The coalition has a sensible approach to forest policy. Mark Latham demonstrated Labor’s incompetence and now, unfortunately, the Queensland Premier is following his example. *(Time expired)*

Regional Services: Program Funding

**Senator O’BRIEN** (2.22 p.m.)—My question is also to Senator Ian Macdonald, the Minister representing the Minister for Agriculture, Fisheries and Forestry. Can the minister advise whether Minister Truss was consulted by Minister Anderson or Mrs Kelly in relation to the decision to grant $1.26 million to A2 Dairy Marketers under the Regional Partnerships program? What role did Mr Truss’s department play in the assessment of the A2 Dairy Marketers’ application? In particular, what role did the department play in assessing the likely impact of the A2 operation on Dairy Farmers’ nearby Malanda plant?

**Senator IAN MACDONALD**—Again, Senator O’Brien highlights the concern the coalition have for people in country Australia and the lengths we will go to try to assist people with legitimate projects. In relation to the specific question that Senator O’Brien has asked, I do not have any information on that and Mr Truss’s brief to me from the Department of Agriculture, Fisheries and Forestry does not refer to that. I will make an inquiry to the department, Senator O’Brien, and if there is anything useful I can give you I will get back to you.

**Senator O’BRIEN**—Mr President, I ask a supplementary question. Thank you for the undertaking to take the question on notice, and I look forward to the answer. Whilst inquiring about that information, could the minister ask Mr Truss to address this question: given the subsequent collapse of A2
Dairy Marketers following the company’s conviction for false advertising, what consideration has Minister Truss given to compensating those dairy farmers who may have purchased A2 cows on the strength of the government’s decision to grant the company $1.26 million through the Regional Partnerships program?

Senator IAN MACDONALD—I understand from those media reports that Senator O’Brien has referred to that some Queensland dairy farmers are facing financial loss as a result of the liquidation of A2 Dairy Marketers. These farmers are reportedly owed money for the delivery of milk to the company for which they have not been paid. I am sympathetic to those producers and, indeed, to any individuals who have suffered financial loss due to the company’s going into liquidation. However, the farmers involved in supplying milk to A2 Dairy Marketers made a commercial business decision to do so, and I am sure they would understand the risks associated with commercial arrangements of this nature. Ultimately, it is not appropriate for the government to become involved in legal processes surrounding the liquidation of this particular company.

Abortion

Senator ALLISON (2.25 p.m.)—My question is to Senator Hill, the Minister representing the Minister for Foreign Affairs. I ask: is the minister aware that 200 million women have no access to contraception in developing countries? Is the minister aware that each year around 20 million unsafe abortions take place around the world and lead to 80,000 maternal deaths in developing countries and many more health complications and disabilities? This being the case, Minister, why does the government prohibit the use of overseas aid funds for training people in delivering safe abortions?

Senator HILL—I will refer the question to the Minister for Foreign Affairs and get an early response.

Senator ALLISON—Mr President, I ask a supplementary question. I thank the minister for getting back with an early response and ask if he could also advise the Senate: what is the rationale for limiting the contraceptives that can be purchased using our overseas aid funds to those that are registered in Australia?

Senator HILL—I will add that to the question that I am referring.

Regional Services: Program Funding

Senator CARR (2.26 p.m.)—My question without notice is to Senator Hill, the Minister representing the Prime Minister. I ask: with reference to the obligations imposed on frontbenchers under the ministerial code of conduct, can the minister confirm that Mr Ken Crooke was a senior member of the staff of the former Parliamentary Secretary to the Minister for Transport and Regional Services, Mrs Kelly? Wasn’t Mr Crooke employed by Mrs Kelly when Mr Crooke acted for both her and A2 Dairy Marketers during negotiations for a Regional Partnerships grant this year? Can the minister advise the Senate on what date Mr Crooke commenced employment in Mrs Kelly’s office? Isn’t it the case that Mr Crooke was on the staff of Mrs Kelly when he represented the A2 company at negotiations with representatives of the Queensland government on 8 July 2004?

Senator HILL—I do not like referring questions, but obviously there is detail in that question that will require a considered response. I do not know Mr Crooke. Generally speaking, though, it is disappointing that the Labor Party, despite a fourth election loss, has still not learnt the importance of rural and regional Australia, has failed to understand the particular challenges and difficul-
ties faced by rural and regional Australia and has failed to note the constructive and positive efforts by the Howard government in supporting those in rural and regional Australia. And that, of course, is reflected in the very low electoral support that the Labor Party is getting from outside the cities. Whilst it is legitimate to ask for details of any particular grant application—

Senator Sherry interjecting—

Senator HILL—It is legitimate. Unfortunately from the Labor Party’s perspective what it is doing is entrenching the perception within rural and regional Australia that this is a party that has no interest in their issues at all—no concern for their issues at all. There are difficulties in employment, there are difficulties in infrastructure, there are difficulties in building economic opportunity in rural and regional Australia, and the public of this country know that this government has gone out of its way to, in effect, kick-start rural and regional Australia so that they can then compete fairly with others. We on this side of the chamber believe that the responsibility of national government is not just to those in the cities but to all in Australia, particularly those who have not been doing so well in rural and regional Australia. They have had many difficulties in recent years—difficulties from droughts, difficulties in transport and difficulties, as we know, with the temptation to centralise business within the cities. At least with the Howard coalition government you have a national government that recognises these problems and is prepared to do something about it.

And what is the response from the Labor Party? It is just simply to knock those efforts, to undermine the constructive efforts to build a competitive rural and regional Australia. The Labor Party can continue; we do not mind. We do not mind if they ask these questions all next week, and if they come back in February they can go back onto it again, because all they are doing is entrenching the perception in the eyes of those from the bush that they are hated by the Labor Party. That will not do the Labor Party any good. What the Labor Party ought to do is try to develop some policies that help those in the bush, and then they would be starting to get onto a constructive path. But, of course, you have a Labor Party that are so focused on their own internal disorder that they are certainly not going to be addressing issues of constructive policy for a very long period of time. So, with those few general comments, I will refer the detail of the question to the minister.

Senator CARR—Mr President, I thank the minister for taking that question on notice and I ask a supplementary question. Is it the minister’s contention that people in rural and regional areas are not concerned with the propriety and probity of government grant allocations? I ask further that he take on notice—because he cannot answer the rest of the question—to seek advice on whether Mr Crooke still works for Mrs Kelly. If he is not still working for Mrs Kelly, on what date did his employment cease? Has the Prime Minister investigated Mr Crooke’s involvement with A2 Dairy Marketers, including any role he had with the company in connection with the activities that led to the recent conviction of that company for false advertising? I further ask: can he confirm that on 8 July Mr Crooke, as a director of the Asia Pacific Corporation, was actually involved in negotiations with the Queensland government with regard to the A2 company?

Senator HILL—All of that could have been included in the primary question, but I will add it to that which I am referring. What I do know about those in the bush is that they want a fair go from government. They are getting it from this coalition government, and that is being undermined by the Labor Party. It demonstrates how little the Labor Party
has learnt in the last 8½ years. It has had four election losses and it still wants to kick those in the bush in the guts. The Howard coalition government will support those in the bush. They deserve a fair go, and they deserve better than what they are getting from the Australian Labor Party.

Immigration: Asylum Seekers

Senator NETTLE (2.32 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs. Is the minister aware that in Iran conversion to Christianity is a crime that is punishable by the death sentence? Is the minister aware that her department recently forcibly deported a young Christian convert asylum seeker from Baxter detention centre back to Iran even though he had an application for humanitarian intervention outstanding? Does the minister know that on arrival this young man was arrested at the airport by Iranian authorities and questioned for 48 hours and is now being summoned to face an Iranian court because of his conversion to Christianity? Can the minister explain why the Australian government forcibly deported this man into what is clearly a very dangerous and possibly deadly situation?

Senator VANSTONE—I am familiar with the case to which I think you are referring but, without giving names, I cannot be certain. If it is the matter that I think you are referring to there were two people who were going to be departing. We received advice that one of those people had converted to Christianity, and his claim with respect to that matter had not been considered by the RRT so that removal did not proceed. In relation to the other person, the matter had been considered by the RRT and had not been considered to be a genuine conversion. I know that sounds harsh in the sense that we—as in humans generally; I do not mean people from the West and of Christian origin—naturally like to believe the best in others, but it does sometimes happen that people form a view that they can say one thing or another and will be allowed to stay in Australia. The short-form answer to you is that if it is the matter you are talking about it was tested before the RRT and found to be wanting. I should also say that we do not send people back, in any event, to countries where we believe they will be at risk, and I am pretty sure there have been other removals in this sort of context. As to what happened on arrival, no, I do not have that advice. I will seek advice with respect to that matter and get back to you.

Senator NETTLE—Mr President, I ask a supplementary question. Is the minister aware that this young asylum seeker, whose bags were packed by DIMIA officials, begged whilst on route of representatives of DIMIA who had packed the bags for the evidence in the bags about his conversion to Christianity to be removed from the bags? Is the minister aware that the department refused to do this and that this evidence is now being held by the Iranian authorities and is undoubtedly forming the basis of the case in which he will face a court and a death penalty? Does the minister plan to deport other Iranian asylum seekers in the same way that she has deported many Iranian asylum seekers in similar circumstances back to danger and possible death in Iran?

Senator VANSTONE—I have not been specifically made aware, but I would assume that DIMIA officials would in fact pack someone’s bags. That is a matter of course and it happens. With respect to the latter part of your question and the allegations that you have put in it, no I am not aware of them. I might just offer a small piece of advice: if you have allegations that you regard as serious and you want them investigated, you might in future consider raising them privately so that they can be investigated with-
out the alleged perpetrators of the actions understanding what is happening. But, of course, if you want to put a priority on getting yourself a headline, you are welcome to do that. In any event, I will take up your allegations.

DISTINGUISHED VISITORS
The President—Order! I draw the attention of honourable senators to the presence in the gallery of Dr Ibolya David, the Deputy Speaker of the Hungarian National Assembly, accompanied by His Excellency Mr Lajos Fodor, the Ambassador. Welcome to our Senate and welcome to Australia. I trust that your visit will be both enjoyable and informative.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE
Fuel: Prices
Senator Lundy (2.37 p.m.)—My question is to Senator Minchin, Minister for Finance and Administration and the Minister representing the Treasurer. Can the minister explain why, despite the Australian Institute of Petroleum stating that the price of crude oil per barrel has decreased from $70.10 on 1 November to $57.20 on 2 December 2004, the fall in the price of crude oil has had minimal impact on the price of petrol? Why is it that, despite this decrease of 18.4 per cent in the cost of crude oil, the cost to the consumer at the petrol bowser has dropped in the vicinity of only four per cent? Minister, given that the price of crude oil represents 90 per cent of the product cost before taxes and is a primary factor in influencing refined petrol prices, doesn’t it follow that a decrease in crude oil prices should translate to a decrease in bowser prices, particularly given the current strength of the Australian dollar in US terms? Minister, why are these factors not influencing bowser prices for Australian consumers of petrol products?

Senator Minchin—I thank Senator Lundy for her question. That is more a question to me as Minister representing the Minister for Industry, Tourism and Resources. I am advised by the Minister for Industry, Tourism and Resources that, if you look at the price of petroleum in Australia, the average retail price in Australia is relatively low—we are ranked fourth lowest among OECD countries. It is certainly true that the price for oil has fluctuated markedly. Petrol prices have been relatively high and we for a long time have had oil pricing geared to international prices, but the price at the bowser is a function of many things other than the price of crude oil. Indeed, if you examine the margins for petrol retailers—and having been the minister for industry, I am familiar with them—they are incredibly small. You will know that independent retailers in particular complain long and loud about the incredibly intense competition in that industry—competition provided by the likes of Coles and Woolworths now entering that industry with margins that are incredibly small. Independent retailers need to bulk up their margins because they have lower volumes and their businesses do not necessarily have the advantage of being able to rely on the trade that goes through the retail sector for other products that many of the service stations now have.

The price of petrol at the bowser at any one time is influenced by a whole range of things, including the marketing strategies of the major refiners, which cause prices to fluctuate from time to time. Because of these various influences, you are never going to get a translation of the movement in the crude oil price at any one time directly into the bowser. But it remains the case that Australians do enjoy relatively low petrol prices in a situation where the retailers of petrol are operating on very thin margins. The refiners themselves operate on thin margins. I recall
leaving that portfolio wondering why anyone was in the business of refining in this country, because they do not make any money out of it. Indeed, one of the issues for Australia is how to ensure that we retain a refining industry, because I do think it is of strategic importance.

It is an industry that is typified by high competition at the retail level, as evidenced by the activities of Coles and Woolworths and their success in providing discounts. It has been a very successful strategy, and the independents are increasingly moving into that strategy of providing discounts themselves. It is also an industry that is typified by very thin margins at the refining level and is subject to the movement in crude oil prices. But I think it is untrue to say that anyone is necessarily profiteering. If, indeed, they are, they will have the ACCC all over them. As you know, the ACCC takes a very keen interest in this industry. Allan Fels certainly did in his time there and Graeme Samuel does as well.

I am not quite sure what you are alluding to. If you are alluding to some deficiency in the regulatory arrangements—the consumer protection arrangements—I think you should identify those. We on this side believe that, generally speaking, Australians do benefit from relatively good petrol pricing and that we do have satisfactory regulatory arrangements in place. If you wish to allude to how they could be improved, we are all ears.

**Senator LUNDY**—Mr President, I ask a supplementary question. The minister did not explain the missing net 14.4 per cent decrease that has not been passed on to consumers. Minister, why is it that oil companies are continually blaming rising petrol prices on the rising cost of crude oil and are always very quick to react to an increase, yet when the cost comes down the market is so slow to pass on those decreases to consumers? Minister, given your advocacy of the role of the ACCC in your answer, will the government now follow Labor’s lead and call on the Australian Competition and Consumer Commission to investigate the petrol prices being passed on to consumers, which are clearly not reflective of the current drop in the price of crude oil?

**Senator MINCHIN**—I reject the assertions made in your question. If the ACCC believes there is any basis on which it should intervene or look at this industry it will do so. I certainly know from evidence in Adelaide that petrol prices fluctuate markedly. They can move 10c in one day. As I say, that is a function of marketing strategies and the intense competition in that industry, and you cannot expect an immediate transfer of a movement in the crude oil price to the daily price of petrol.

**Immigration: Detainees**

**Senator BARTLETT** (2.44 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs. My question relates to the group of people in the Baxter detention centre who are reportedly engaged in a hunger strike. Can the minister detail how many people are involved in the hunger strike currently and how long it has been going? Is it the case that the hunger strikers have been imprisoned in immigration detention in Australia for over three years so far? Will the minister consider exercising her discretion to enable these people’s claims to be reconsidered rather than refusing to consider them while the wait continues for court decisions to be concluded?

**Senator VANSTONE**—Senator, I do have a brief here. It is just that the numbering is not making it easy for me to get to that. In general, I am aware of the situation you are talking about at Baxter, of a number of people who are allegedly not eating, and
of what those people want. The details, however, of their health I do not believe I have. In fact, I am sorry; I have been caught by a bad numbering of my files so I am unable to give you what details I have, but I will get them for you later. It jumps—

Opposition senators interjecting—

Senator VANSTONE—Opposition members can express some dissatisfaction about that; I am sorry about that too. It is just that I could not find the number at the time. Senator, the basic proposition I put to you is that going on a hunger strike is not advisable to anybody and it is certainly not a way to get an immigration matter reconsidered. We will not give in to this type of, in effect, bribery by anybody. People who want their claims considered would do well to go off such hunger strikes and have their matter heard in a sensible and reasonable way. We did not give into the alleged hunger strike on Nauru last year, and we will not be setting a practice of doing it on this occasion.

Senator BARTLETT—Mr President, I ask a supplementary question. I acknowledge the minister’s difficulty and would appreciate it if she could provide more detail to the specific questions that I have asked. Perhaps to ensure that there is no misunderstanding, in asking whether or not the minister would consider exercising discretion in relation to these cases I am not in any way suggesting she should do so as a result of the hunger strike; I am merely trying to get an indication from her as to whether or not such a course of action is actually possible. When detainees are repeatedly told that there is no prospect of their claims being considered and they just have to wait an indeterminate length of time for a court process to finish, they can form an opinion that there is no hope and no alternative, and they can take these very inadvisable actions like hunger strikes. Given that the minister has previously exercised discretion while court cases have been under way, is it the case that the minister can do that in this situation? (Time expired)

Senator VANSTONE—Senator, I would not answer even if the brief were here. In relation to that part of your question, I would not answer it other than with respect to each individual, because these matters are considered on a case by case basis. There may be a few circumstances—none come to mind, but I am not denying there are any—where, even though a matter is still on foot, you would give consideration to some alternative claim. You say there is no hope; but the people in Baxter have had their claims heard—and in many cases have had them heard and heard again and again—and are appealing and taking every possible legal mechanism to stay in Australia. The fact that they need to appeal again and that they have been there that long is an indication that in previous hearings they have been rejected, so let us just get that perspective on it. I will have a look at the matter. I will have a look at each of these individual ones. If there is anything that I think merits them being considered while they have got a matter on foot, I will of course reconsider it. If there is not, I will not. (Time expired)

Regional Services: Program Funding

Senator McLUCAS (2.48 p.m.)—My question is to Senator Patterson, the Minister representing the Minister for Ageing. Can the minister confirm that Senator Sandy Macdonald was nominated by the Minister for Ageing as her official representative at the opening of the Grace Munro centre in Uralla shire? Is the minister aware that Senator Sandy Macdonald has made numerous public statements this week that it was a decision of the Uralla Shire Council not to include Mr Tony Windsor MP as part of the official opening of the Grace Munro centre in the
electorate of New England? Is the minister also aware that the mayor of Uralla issued a press release yesterday saying the council never had a problem including Mr Windsor in the official party and that their decision not to—and I quote the mayor—‘was made in light of a request from Senator Macdonald’? Given that Senator Sandy Macdonald at least appears to have made misleading statements about his role representing the Minister for Ageing, what action will Minister Bishop take to require Senator Macdonald to correct the public record?

Senator Patterson—Mr President, on a point of order: I would say that question reflected on a senator and should be ruled out of order.

The PRESIDENT—I listened to the question carefully. I am not sure whether it is in order for a senator to ask about another senator. I think I would have to have a look at that. But there are parts of the question I think the minister could answer, and I ask her to do so.

Senator Chris Evans—Could I say, Mr President, on the point of order, that the question went directly to Senator Sandy Macdonald’s role in representing the minister; the question related to his role in representing her and went to those issues. I think it is directly relevant to the minister’s responsibility that Senator Macdonald was asked to represent her, so for that purpose I think the minister ought to answer the question.

Senator Patterson—Mr President, I believe the question casts an aspersion on my colleague Senator Sandy Macdonald.

Senator George Campbell—It hasn’t been ruled out of order.

Senator Patterson—Even if it is not ruled out of order, I still will say—and it is not in any conflict with you, Mr President—that it cast an aspersion on a colleague of mine. It just happens that when you happen to be in government—and the Labor Party will not know that for a very long while—you have the privilege of going to the opening of facilities. I had to go, in opposition, to the opening of many aged care facilities where I would have liked to have been involved because I had, in some cases, organised and harassed to get them their beds and some people said, ‘It would be more appropriate for you to open this than the Labor Party. They’ve never been here.’ So in government you get the privilege of going to open facilities, and I do not know whether Mr Windsor was or was not invited. I will find out from Ms Bishop, and if there is anything that I could add to the question I will do so, but I am not really inclined to do much about it, given the aspersion that was cast on my colleague.

Senator McLucas—Mr President, I ask a supplementary question. Does the Minister for Ageing condone this attempt by the Deputy Leader of The Nationals in the Senate to pressure the Uralla Shire Council to exclude the member for New England from a public function in his own electorate? Does this incident of exclusion of the local MP from the opening of the Grace Munro centre indicate a more widespread policy being put in place by the Howard government where funding decisions or public functions can be manipulated by government representatives according to whether the applicants or local government succumb to political pressure?

Senator Hill—Mr President, I rise on a point of order. Firstly, the point made by Senator Patterson about the reflection upon the honourable senator, I think, stands. Secondly, this is not a question relating to the minister’s responsibility at all; it is an attack on Senator Sandy Macdonald. If Senator McLucas wishes to do that, there are proper procedures within this place to do so, but not under the guise of a supplementary question.
Senator Chris Evans—On the point of order, Mr President: the question goes directly to Senator Sandy Macdonald’s role in representing the minister at an official function. He was sent to represent the minister. If Senator Macdonald feels he is under some sort of attack, he can provide a personal explanation to the Senate. He has had a week to do so; he has chosen not to. This is a direct question to the minister about her responsibilities representing the Minister for Ageing and about the Minister for Ageing’s role in opening that facility.

The President—On the point of order, I believe the minister has already indicated that she will find out what the role was in representing. I do not think there is any need to have any more detail provided. I cannot see how the minister can know what another senator is doing. She has already indicated that she will inquire as to what that action was. If the minister wishes to add any more to that, she may.

Senator Patterson—It is not my responsibility. I represent the minister here. We have opened hundreds of nursing homes since we have come into government. I do not know who was invited to every opening of every nursing home. I know there have been a lot of nursing homes opened—more than under Labor and of much better quality than under Labor. As I said, I will find out. But I do object to the aspersion being cast on Senator Sandy Macdonald.

Education: Higher Education

Senator Murphy (2.54 p.m.)—My question is to the Minister representing the Minister for Education, Science and Training, Senator Vanstone. It relates to a review of indexation provided for at section 198 of the Higher Education Support Act 2003. I understand that the minister has decided to conduct an internal government review of indexation, involving his department, the Department of Finance and Administration and the Department of the Prime Minister and Cabinet. Why has the government decided on an internal review and not an independent, open and transparent review, which would ensure a much greater acceptance by all relevant parties?

Senator Vanstone—My advice in respect of the review of indexation arrangements in the higher education sector is that the review is, as you say, being undertaken by the department in consultation with the Department of the Prime Minister and Cabinet, the Department of Finance and Administration and the Department of the Treasury. That is clearly understandable. I am advised that a written invitation will be extended to the Australian Vice-Chancellors Committee to provide a submission to the review, that the review will be completed by February next year, that the government intends responding to the review by April, and that it will give effect to its response when introducing the higher education support amendment bill in the May sittings next year. That is the detail I have.

Senator Murphy, I understand that you asked why it will not be done by an independent body. Someone who chooses to retire from parliament could write a book on the value of independent bodies. What oppositions usually mean by that is some people that they can try and control. It carries with it, unfortunately, an assumption that the federal public servants who are undertaking this review are not of the highest quality and would not do their job well. I go back to 1996, when we first came into government. I can assure you that one of the best public servants I worked with was an openly Labor supporter, who gave us the best advice on how to reform higher education. Public servants, irrespective of their political persuasion federally, do a very good job. I am sure you were not meaning to cast aspersions on
them, but I am just encouraging you to have a little bit more confidence in their professionalism than your question indicated.

Senator MURPHY—Mr President, I ask a supplementary question. I note your response, Minister. I do not endeavour to cast aspersions on any public servants, but, as I said, it would probably provide for a better outcome if the review were seen to be more independent than what is proposed by the government. I also ask: given that the Australian Bureau of Statistics was the department previously asked to develop an indexation model—and, in fact, it did—why hasn’t the ABS been asked to conduct the review, or at least participate in it? And can the minister inform the Senate if all universities, not just the AVCC, have been invited to participate in the review and of the period of time they have been provided to present submissions?

Senator VANSTONE—I do not have the detail of other invitees. It has been my experience that when any review is undertaken, while there might be specific departments that are involved, that does not preclude them seeking advice from authorities like the ABS and others. I am not saying that is going to happen, but it may well. I will ask the minister if he can give you a list, if he can respond to you directly, of the other invitees to the review.

Veterans’ Affairs: Audit

Senator HOGG (2.58 p.m.)—My question is to Senator Hill, the Minister representing the Minister for Veterans’ Affairs. I refer to the Auditor-General’s report No. 15, which uncovers massive financial bungling by a range of government departments and entities. Why did the Department of Veterans’ Affairs operate an illegal operating overdraft in 2002-03 in breach of its contract with its bank? Did the minister know of and/or approve such an arrangement?

Senator HILL—I am having a bad day today. I will refer that to the Minister for Veterans’ Affairs.

Senator HOGG—You are having a bad day, Minister, so I have a supplementary question which you may well take to the minister at the same time. In respect of the overdraft, what was the interest rate payable and total interest bill paid for this illegal overdraft scheme? Why was such an expensive funding operation entered into?

Senator HILL—I will obtain an answer from the minister.

Health: Disability Services

Senator KNOWLES (2.59 p.m.)—My question is to the Minister for Family and Community Services. I ask the minister whether she would inform the Senate how the Howard government is providing more opportunities and increased assistance to people with disabilities and if she is aware of any alternative policies.

Senator PATTERSON—I thank Senator Knowles for her question and acknowledge her long and abiding interest in issues affecting people with disabilities. The Australian government is committed to a focus on ability to take the ‘dis’ out of disability. The International Day of People with a Disability is held on 3 December every year—tomorrow. I notice Senator McLucas is wearing her ribbon. We will be wearing ribbons every day soon. It is a United Nations sanctioned event and a day to celebrate the ability of people with disabilities. I hope that all members and senators will acknowledge that day tomorrow.

The Australian government’s vision for supporting people with disabilities is to provide more opportunities for participation in the economic and social life of the community, and to achieve better outcomes for those individuals. As part of recognising International Day of People with a Disability my
The department has produced a teachers resource kit to raise awareness of disability issues with teachers and students and an annual disability calendar, which celebrates the ability and contributions to society of all people with a disability. The Australian, state and territory governments have committed around $16.2 billion over the five years of the third Commonwealth-state and territory disability agreement, with the Australian government’s share being nearly $5 billion. I recently launched the Australian Federation of Disability Organisations, which will provide a national voice for people with disabilities.

Since the Howard government’s introduction of legislation to maintain pension rates at no less than 25 per cent of male total average weekly earnings, we have seen increases in payment of both the disability support pension and the carer payment by $43 per fortnight. This is more than the increase in the cost of living—$43 a fortnight more than would have otherwise been the case under the old indexation. The number of jobseekers assisted through disability employment assistance has increased by greater than 60 per cent. Currently, proposed changes to the disability support pension are stalled in the Senate. These reforms are about delivering quality services, greater opportunities and fairer wages for people with disabilities. The reforms will help those who are able to work 15 hours or more a week at full award wages. These changes will not apply only to new DSP applicants, and will not impact on people with a severe profound disability.

The 2004-05 budget included a further $99 million over four years for disability employment services to strengthen the disability employment sector, to support services in moving forward with the reforms and to improve the living standards of very vulnerable workers. I am also pleased to say that all state and territory ministers at last week’s cross-jurisdictional meeting accepted the Australian government’s plan and offer to help ageing carers plan for the future of their adult sons and daughters with a disability who are growing older. The carers are growing older and they are asking questions that we, as state and Commonwealth governments, need to be able to answer. They are not easy questions or easy answers, but it is time we faced up to them. We are going a little more slowly at the ministerial meeting but it is back on the agenda and I have told the ministers that I am serious about it.

In addition, following the Australian government’s offer of $72.5 million the state and territory ministers agreed to negotiate mutually acceptable arrangements to meet the respite needs of carers over the age of 70 years who are carers of sons and daughters with a disability. These people have cared for their sons and daughters for 30, 40 and 50 years and are asking for respite. They deserve it. I have asked the states to work quickly to ensure that we have this $72.5 million for giving respite to those carers.

The ALP has said that it is committed to improving disability services but when you look at their policy it is about reviews, summits, analysis and targets—there is nothing about real practical help. We need to ensure that people with disabilities get the help they deserve. (Time expired)

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Federal Election: Member for New England

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.03 p.m.)—I was asked a question on 30 November 2004 by Senator Kirk in relation to
the Australian Federal Police. I seek leave to incorporate further details in *Hansard*.

Leave granted.

*The details read as follows*—

During Question Time on 30 November 2004, Senator Kirk asked me a question regarding the Australian Federal Police (AFP) protocols which deal with complaints against Federal Members of Parliament.

Following further advice from the AFP, I wish to inform the Senate that I can confirm the existence of AFP protocols which deal with complaints against Federal Members of Parliament.

The protocols do not require the Australian Federal Police to advise the Minister for Justice and Customs of referrals from the Australian Electoral Commission in relation to breaches of the Commonwealth Electoral Act 1918.

As Mr Windsor’s complaint involved a direct referral from the AEC to the AFP, I was not informed at the time of the referral of the investigation, however I was advised on 17 November 2004 of the investigation and further advised on 22 November 2004 of its termination.

On 22 November, I was also advised that Mr Anderson and Senator Macdonald would not be interviewed. As previously stated, I do not intend to canvass this matter any further, as this is a matter for the AFP and Commonwealth Director of Public Prosecutions.

**QUESTIONS WITHOUT NOTICE:**

**TAKE NOTE OF ANSWERS**

**Regional Services: Program Funding**

**Senator McLucas (Queensland)** (3.04 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald) to questions without notice asked by Senators McLucas, Moore and O’Brien today relating to the Regional Partnerships program.

It has been explained today to the people in this chamber and to the people listening that in Far North Queensland there has been an extraordinary debacle with A2 Dairy Marketing. It is a series of events that can only be described as bizarre or ridiculous.

On 9 September, exactly one month before the federal election, Mrs De-Anne Kelly, the then Parliamentary Secretary to the Minister for Transport and Regional Services, turned up at Millaa Millaa on the Atherton Tablelands—a long way from her own electorate—and announced a grant of $1.26 million to a company known as A2 Dairy Marketing. You can imagine the surprise of a number of dairy farmers and of the owners of Malanda milk factory when they heard of that announcement. These people, who had heard of the proposal, had travelled to Innisfail some time earlier and paid considerable money—Senator Boswell knows this—to attend The Nationals dinner to get access to Mr Anderson. They raised the matter with him and they were assured by Mr Anderson that the project would not proceed and that nothing would happen whilst the government was in caretaker mode. They were appeased. They were comforted by the Deputy Prime Minister of this country so they went back on their merry way.

They were astonished on 9 September when Mrs Kelly said that this project had been fast-tracked. Without prompting she said—and I suppose this is what sparked the interest in this matter—that due diligence process had been adhered to. I am sorry! Due diligence, my foot! If you can say that the events that unfolded after this show that due diligence occurred, I am sorry!

A company spokesperson from Dairy Farmers’ Malanda milk factory said that it would have been prudent for the federal government to have waited until legal action the Queensland government was taking against A2 milk, which was under way in the Queensland courts, had been resolved. That case went to the claims that A2 milk had some special health benefits. It was extraor-
ordinary that they were then found guilty in that matter. They were found guilty and fined $15,000 for false and misleading advertising telling people about these claims about A2 milk. On 30 September, following that, the government axed the grant. There was a press release from Mr Anderson. There was no comment from Mrs Kelly, she just disappeared off the face of the earth. The result was that, on one hand, the Malanda milk factory was quite pleased with what had occurred but, on the other hand, a number of dairy farmers had gone out in the interim and, at considerable expense, purchased the cows that produced this A2 milk—which has been found by the Queensland courts not to provide the amazing health benefits that they were told about.

We have heard a lot today about how the coalition care so much about regional communities—that they are the only party in this chamber who do anything right for the people of the bush. It is amazing that they can make those sort of comments given that they potentially jeopardised the operation of one of the largest employers on the Atherton Tablelands along with their suppliers—and I notice that Senator Boswell is nodding—and that they have sent mixed messages to farmers, who have expended money purchasing these cows. Those farmers will take no comfort from Senator Macdonald’s comments today that this was made as a completely commercial decision. This is not about consideration for people who live in the bush; this is about vote buying. This was about shifting votes in the Atherton Tablelands away from the Independent member to their candidate. People in Far North Queensland, like those in New England, will welcome the inquiry which was agreed to today. (Time expired)

Senator CHAPMAN (South Australia) (3.09 p.m.)—What we have really seen in the questions that were put to Senator Ian Macdonald today and the remarks made by Senator McLucas is the politics of envy writ large on the part of the Labor Party through their opposition to government support for rural areas. That is what this is all about. The Labor Party are simply completely out of touch with the needs of rural Australia. That, of course, was reflected very much in the result of the recent federal election. I can only cite the situation in my home state of South Australia as an example. Wakefield, which had become a nominally Labor seat on the redistribution, was in fact lost by the Labor Party and won by the Liberal Party as a direct result of this sort of attitude by the Labor Party, whereby they treat rural areas and rural people with complete disdain. This is because the Labor Party are dominated by the urban elites.

I suggest that Senator McLucas takes a good, hard look at the article in the Australian newspaper this morning written by former federal Labor finance minister Peter Walsh. He really puts the finger on the Labor Party and the way in which they have lost touch with real people. They have lost their way and they have lost touch with the real people of Australia. The way in which they have raised this issue in the chamber today simply reinforces the fact that the Labor Party are out of touch. They are floundering around looking for issues that do not exist. They are creating fantasies. The central issue is that they are completely out of touch, particularly with regard to rural people. Regional Partnerships is a very significant program as far as rural Australia is concerned. Since that program took effect on 1 July 2003, some 440 projects have been approved with a total value of $100,493,000. A total of $308 million will be available through the Regional Partnerships Program over the next four years from 2004-05 to 2007-08.

The Regional Partnerships program is having a positive effect on regional commu-
nities. It is having a beneficial impact. It funds a range of projects which make an enormous difference to the ways in which communities function, ranging from restoring local halls or providing a volunteer bus service to major infrastructure investments, all of which, of course, contribute significantly to economic growth opportunities. That is what the government has done in relation to this issue that the Labor Party have sought to raise today. Regional Partnerships has also funded a number of projects with a broad cross-regional or national focus. These include improved skills for rural and regional teachers through the National Centre of Mathematics and Science Teaching at the University of New England and the expansion of the Victorian based rural law online web advisory service to all states and territories.

Importantly, every dollar of Regional Partnerships funding has generated another $3 of investment from other partners. For every $17,000 worth of benefits, the government has supported the creation of another new job in the community. This investment by the government demonstrates its ongoing commitment to the people of rural and regional communities. That is where the contrast lies: between the government doing beneficial things as far as rural and regional committees are concerned and the Labor Party simply carping on about issues that do not exist. I come back to the results of the last election. The seat of Wakefield has a rural element—as, indeed, does the seat of Kingston in the southern areas. There was a very strong vote for the government and a very low vote for the Labor Party in those areas simply because voters know that the Labor Party does not—

Senator O’Brien—It was a 100-vote difference. I would not call that a very low vote.

Senator Chapman—I am talking about the rural part of that electorate, Senator O’Brien, not the overall result. It is because Labor completely neglects the needs of rural communities that the bush and rural areas will not give their support to the Labor Party. In the cases of Wakefield and Kingston, both seats in South Australia—Labor seats won from the Labor Party by the government at the last election—that was clearly a significant factor in the result. I know that my colleague Senator Ferris has the capacity to reinforce that through her own direct experience of working in the Wakefield electorate in support of our very good candidate the new member David Fawcett. I have a similar experience in relation to our candidate and now member for Kingston, Mr Kym Richardson. That simply reflects Labor’s failure. (Time expired)

Senator O’Brien (Tasmania) (3.14 p.m.)—One would have thought from the government’s contributions we heard in question time today in response to opposition questions that the Regional Partnerships program deals exclusively with the provision of funds to projects in rural and regional Australia. I am sure that is the impression the government is trying to give. Senator Chapman was trying to say that, because the government focused on rural and regional Australia, there was a much larger vote for the government in rural and regional Australia. There are exceptions to that, but I do not want to depart from what this debate is about, which is the way the government chooses to fund particular areas of the country in the government’s own interests and not in the national interest. I want to talk about Senator Chapman’s suggestion that the ALP is dominated by urban elites. They would be the sort of people who live in the seat of Wentworth—would they not?—the richest electorate in the country.
Senator Ferris—What’s that got to do with anything?

Senator O’BRIEN—Have a look, Senator, and you might find out that the seat of Wentworth received $221,000 in funding under the Regional Partnerships program. The good people of Wentworth, as far removed from rural and regional Australia as you can get, received funding—I suspect unnecessarily—

Senator Ferris—How do you know that?

Senator O’BRIEN—It’s on the web site that they received $221,000 in funding. The seat of Wentworth is the richest electorate in the country. The government has been talking about Labor’s latte connection. I would have thought the most expensive latte in this country would probably be in the seat of Wentworth, and yet $221,000 was provided for a project at Bondi! But let us get back to South Australia, and the $341,000 in funding for projects for the seat of Adelaide. I do not recall any agricultural pursuits in the seat of Adelaide, unless there a few things growing in the parklands outside the mile square. That is not rural and regional Australia. It is a seat that the government knew was in jeopardy. It is a seat that the government sought to protect by providing it with funding, just as it sought to provide assistance to Mr Turnbull in Wentworth using Regional Partnerships funding.

Let us look elsewhere. I have never heard of the seat of Brisbane being considered a rural or regional seat, yet there is $180,000 identifiable under the Regional Partnerships program for projects in the seat of Brisbane. Mr Deputy President Hogg, I know you are familiar with the boundaries of the seat of Brisbane, and perhaps when this debate concludes you will be able to tell me which, of all the rural or regional aspects of Brisbane, makes it relevant for Regional Partnerships funding. I am sure there are very good projects in all of these electorates, but why would they be funded under the Regional Partnerships program? Perhaps it is because when the projects do not fit anywhere this is a way the government can throw some money into an electorate where it thinks it might have a problem.

We will look at the profile of expenditure in these electorates. Compared to some areas of spending, $221,000 is not a great deal of money, but about 80 electorates fared worse than the seat of Wentworth under the Regional Partnerships program. In other words, the majority of electorates fared worse under this program than the seat of Wentworth—the wealthiest electorate in the country. Let us do away with the smokescreen that the government has been putting up about this. When we asked questions today about A2 and about the milk industry in Malanda we got the usual malarky from government senators about their credentials in rural and regional Australia. When we examine the expenditure profile for the Regional Partnerships and Sustainable Regions programs it will be revealed that the government is pork-barrelling, pure and simple. Electorally sensitive seats are being targeted by the government for the expenditure of public funds—funds that are supposed to be the subject of the rigorous guidelines published on the department’s web site.

Senator SCULLION (Northern Territory) (3.19 p.m.)—I rise to my feet somewhat astounded. When I came back to this place, I looked across at senators on the other side and, in my little black chip of a heart, I felt a little sorry. They are all looking pretty depressed after almost the worst electoral flogging in political history. Here we are a week later and they have already forgotten the lessons. What happened in regional and rural Australia, what happened in a couple of the timber seats in Tasmania, is an absolute testament to the fact that the Labor Party has
lost the plot in rural and regional Australia. I cannot believe that I have been sitting here listening to more bashing of the bush. Let’s bash the bush! I do not understand how this can possibly do anything other than further insult regional and rural Australia. It totally disrespects their need for this directed funding to help them out with the essential economic development they depend on. Thank the Lord rural and regional Australia depends on us because it has been up to this government to come up with these absolutely excellent programs. We have been a vital and strong advocate for regional and rural Australia. We have come up with the Regional Partnerships program. It is an excellent program.

As we have heard from my colleague, the Regional Partnerships program in the first tranche of 2003 provided over $100 million. We are about to provide another $308 million. That is not going into major projects, as we have heard from the other side. The vast majority of these projects are ones I have assisted in opening. It is wonderful to look around at the smiling faces of the small volunteer fire brigade who have now been provided with a fence, and a shed to put their gear in. It might not sound much to the Labor Party; it might be unimportant and trivial to the Labor Party. But I have spoken to these volunteer firefighters—because I am someone who is out there at the coalface—and they are delighted with the efforts of this government. But, according to honourable senators opposite, this is a conspiracy; it is obviously pork-barrelling!

All I have to say is that it is not surprising to me that there are more coalition seats that had outcomes. Principally, we got the vast majority of the seats because people know that we are going to provide better leadership. Not only that; it should be self-evident that coalition members are in touch with their constituencies: they had 567 applications. They thought about it and they said, ‘Now this is what we should do—we should make sure that we get those applications in.’ But the Labor Party only had 148 applications—that is, if we chuck in the Independents. It should be no surprise that this is not a conspiracy; this is simply a reflection of demographics. We have more people out there that care about regional and rural Australia and that is why they are elected. That is why there are electorates that are getting more benefits.

It is absolutely astounding that we now have a conspiracy theory. This is one of the greatest partnerships, one of the greatest programs, for regional and rural Australia. The opposition have just had absolutely the biggest touch-up of all time and they are going down the road of making exactly the same mistakes again. We have nine programs in my own electorate, the Northern Territory, and those programs have just made so much difference to the people, to their lives and to how they go about their business. They are looking forward to making sure that we get more programs. They come to see me and they say, ‘Senator, can you assist us a bit with the application? Do you think this meets the guidelines? Can you supply us with some information about the application?’ I get a lot of those sorts of inquiries through my office, principally because I am actually out there in the electorate and, of course, we enjoy a lot of confidence in the bush.

We have a government who, unlike the Labor Party, support regional and rural Australia and who support these very good programs. As I have said, the efficacy of these programs shows in the bush. We are actually doing better. There is a sense of community. We continue to bleed and move towards urban Australia and it is these very important projects that deal with and underpin the social and economic comfort and health of
these communities. They are just so important.

I cannot believe that the opposition still will not learn. The term has only just begun. It is not too late to change your mind and start supporting the bush rather than carry on with these ridiculous stories about pork-barrelling. Do you know how to get more stuff into your electorates? Get more electorates. Impress people in the bush. That is the way you are going to get a little more support. But to lose an election so incredibly badly and then, in the first set of sittings, come before this place and say, ‘There’s some sort of conspiracy’, is absolutely ridiculous. (Time expired)

Senator MOORE (Queensland) (3.24 p.m.)—I also rise in the debate on the motion to take note of responses given by ministers in this place today on specific questions about the way a grant was processed. This is not some sham attack on the bush and I am frankly getting quite tired of the government hiding behind allegations of attack, dislike of the bush and this puerile questioning about whether people on this side of the house have any knowledge or awareness of regional issues.

I stand in this place today with a long family history in the dairy industry. I am tired of people over there casting aspersions about interest and knowledge. On this particular issue—the particular grant that was being questioned today—we were asking about the probity and integrity of the process. We were asking the same questions that the people in the bush are asking because if these programs are going to work—if there is going to be an effective partnership—there must be some trust in the process. That is what we are demanding.

We are not questioning whether there is need in the community. We know there is need in the community; we accept that there is need right across Australia. This particular program, as Senator O’Brien has pointed out, is run not only in certain parts of the country but everywhere. We accept the fact that the minister said that we had legitimacy in asking the question—thank you, Minister—but we also want to know how this process operated. Minister Ian Macdonald told us that he was aware, and the government was aware, that people in the dairy industry were ‘doing it a bit tough’. Thank you, Minister; we know that and the people in the dairy industry know that. It was people in the dairy industry that were asking about the probity of the process in which it was proclaimed that there was going to be funding—because the funding was not actually given. It was proclaimed publicly, with a photo opportunity, that there was going to be a significant allocation of funding to one particular milk company on the Atherton Tableland. It was the people in the industry that questioned that. They were concerned about the way this process was run. They were concerned about the possible competition with a pre-existing company on the tableland.

Senator McLucas has lived in that area; she knows the area and she knows how these people fight to maintain their living in that particular part of the world. So the parliamentary secretary goes to the area with great fanfare and announces that there is going to be a significant allocation of funding to one particular firm to encourage dairy farmers on the tableland. That is very noble. But what we want to know is: what was behind that request? What was the process that led to the decision to give that money? Was there due process as we have listed in parliamentary guidelines and guidelines for departments? Was there significant consideration of all the issues before that promise was made—interestingly, during an election campaign? What we want to know is what scrutiny was given to the credentials of the company, to
the impact of the decision to give that money to that part of the world and whether those dairy farmers who the government say are ‘doing it a bit tough’ have actually been disadvantaged by this decision.

So much for whether we know about and care for the bush. What we want to know is whether the government understands the impact of its decision. We believe there are some farmers who have now, and I quote the minister, ‘made a commercial decision which is going to leave them in further difficulty’. Was that commercial decision made as a direct result of an expectation that a new industry was going to be created on the tableland? If so, how can those people trust the process? Is that valuing the people in the bush? Is that giving them a true response from their government or their political representatives?

What we on this side of the house want to know, as people who have lived and grown up in different parts of the world, is: where is the due probity in the process? When will we find out exactly what the parliamentary secretary, in making this announcement, knew about pending legal action in the Queensland judicial system? When will we find out whether they knew about the credentials of the people who were lobbying on behalf of this particular company? When I tried to find out more about this particular company, I found that their web site had disappeared from the Internet. I tried to look up something about A2 and the web site had gone. I say to the government: we have the legitimacy to ask the questions and you have the responsibility to give us the answers, not just here but in the wider community. (Time expired)

Question agreed to.

COMMITTEES

Reports: Government Responses

Senator HILL (South Australia—Minister for Defence) (3.30 p.m.)—I present six government responses to committee reports as listed on today’s Order of Business. In accordance with the usual practice, I seek leave to incorporate the documents in Hansard.

Leave granted.

The documents read as follows—

Government Response to the Report on Australian Wool Innovation Limited Application and Expenditure of Funds Advanced under the Statutory Funding Agreement dated 31 December 2000

Introduction

Following questioning at Senate Estimates Committee on 26 May 2003, this issue was referred to the Senate Rural and Regional Affairs and Transport Legislation Committee.

The Australian Government Department of Agriculture, Fisheries and Forestry, along with the Australian Wool Innovation Limited (the Company), WoolProducers, a former director of the Company and the former managing director appeared before the Committee. The Department also provided a significant amount of material to assist the Committee’s deliberations.

The Minister for Agriculture, Fisheries and Forestry (the Minister) and the Company extended the original Statutory Funding Agreement (SFA) on two occasions. Firstly, it was extended in December 2003 for three months to allow time for the Committee to report and it was again extended in March 2004 to allow time for the Government to consider its response to the Committee’s report.

Below is the Government’s response to the Report on Australian Wool Innovation Limited Application and Expenditure of Funds under the Statutory Funding Agreement (the report).

Recommendation 1.

The Committee recommended that:
The question whether AWI used company money to campaign for sitting directors during the 2002 Board election, in breach of Corporations Law, should be referred to the Australian Securities and Investments Commission.

**Government Response:**
Agreed. The Minister will write to the Australian Securities and Investments Commission (ASIC) providing a copy of the report and drawing to ASIC’s attention the views of the Senate Committee.

**Recommendation 2.**
The Committee recommended that:
The Statutory Funding Agreement should have a condition that all the company’s expenditure (not only the expenditure of ‘the Funds’) should be controlled by the Statutory Funding Agreement.

**Government Response:**
Not agreed. The Government accepts that the SFA should cover all expenditure from the Funds (those being statutory levies and Commonwealth matching payments) and that this should be extended to monies derived from the Funds. The Government will refine the definition of Funds in future agreements accordingly. However, the Government does not consider that the SFA should cover expenditure from funds that the Company obtains from other industry sources.

**Recommendation 3**
The Committee recommended that:
The Minister should direct AFFA to pursue compliance and other reports pursuant to all Statutory Funding Agreements.

**Government Response:**
Agreed. The Minister wrote to the Secretary of the Department of Agriculture, Fisheries and Forestry asking that he ensure that all the obligations of Statutory Funding Agreements are being enforced.

**Recommendation 4.**
The Committee recommended that:
The Minister should give consideration to referring any breaches of the Corporations Act by AWI to the Australian Securities and Investments Commission.

**Government Response:**
Agreed. See response to Recommendation 1.

**Recommendation 5.**
The Committee recommended that:
Prior to a new SFA being agreed with AWI the Minister should review the effectiveness of remedies for breaches of the agreement currently available through the Wool Services Privatisation Act 2000.

**Government Response:**
Agreed. The Minister obtained advice from the Australian Government Solicitor (AGS) on this issue and revised the SFA accordingly. AGS has advised that the revised draft SFA “contains the remedies exercisable by the Commonwealth that we would expect to see in an agreement of this nature”.

**Recommendation 6.**
The Committee recommended that:
The definition of ‘agri-political activity’ should be amended to explicitly include internal as well as external political activity.

**Government Response:**
Agreed. The Government will amend future agreements accordingly.

**Recommendation 7.**
The Committee recommended that:
The SFA should incorporate a requirement mandating that expenditure be consistent with the strategic plan, the operational plan and the R&D Guidelines.

**Government Response:**
Agreed.

**Recommendation 8.**
The Committee recommended that:
The Minister should give consideration to incorporating conditions in existing and future Statutory Funding Agreements as suggested by recommendations 2, 6, 7 and other relevant suggestions in this report.

**Government Response:**
Agreed on the basis of the Government’s response to Recommendations 2, 6 and 7. The Gov-
Government will, of course, consider other relevant suggestions in the report as appropriate.

Senate Committee Report Foreign Affairs, Defence and Trade References Committee Bali 2002—Security threats to Australians in South East Asia

Government Response

General Response to the Report:
The increased threat of global terrorism since 11 September 2001 has changed the international security environment for all Australians. Given this environment, the Government continues to attach the highest priority to the provision of accurate and properly assessed travel advice about potential safety and security-related risks. Travel advice enables the millions of Australians who journey overseas each year to make their own informed decisions about travel. It is incumbent upon Government to ensure that the advice remains credible in the public mind and is not blunted by a perception that risk is being overstated. To this end, the Department of Foreign Affairs and Trade (DFAT), together with the Australian Intelligence Community, will continue to review the way in which assessed threats are presented and disseminated to the Australian traveller. Elements of the report prepared by the Senate Committee inquiry into security threats to Australians in South East Asia will prove a useful reference point in assisting in this process.

The Government notes the Committee’s conclusion that ‘there was no clear warning in the form of specific intelligence which, if identified and acted upon, would have provided an opportunity to prevent the Bali bombings or to act to protect those there at the time’. The Government also endorses the Committee’s finding that the Bali disaster was not ‘a result of some culpable lapse by Australian Government agencies or individual officials’.

The Government also welcomes the finding that ‘anyone reading the travel advice, even just the headline summary … would understand that there was a generic terrorist risk, that bombs had exploded in the past, including where tourists gathered, and that further explosions may be attempted’.

As the Committee notes, none of the statements by the Government in the month leading up to the attacks reflected information about Bali or any prior knowledge of a terrorist attack on bars or nightclubs. If the Government had had such information, it would have acted to prevent the attacks.

It is important to note that the Committee has put to rest claims that relevant information had been made available to the Government, or that threat advice was ignored. As the Committee says, “these reports and allegations were either simply erroneous or lacked foundation, or were highly contestable opinions”.

While the Committee comments that the specific reference to Bali may have inadvertently reinforced what it describes as a prevailing, erroneous view that Bali was a safe haven, it also acknowledges the clarity of hindsight in coming to this judgment.

The Government reiterates that the factual statement in the travel advice that “tourist services are operating normally elsewhere in Indonesia, including in Bali” was included as a response to a very common question asked by Australian travellers when they saw that civil unrest and violent demonstrations were taking place in other parts of Indonesia. It was not intended to detract from the first sentence of the travel advice highlighting the risk of terrorism throughout Indonesia.

Recommendation 1
The Committee recommends that, with a view to ensuring the country’s future arrangements between intelligence assessments, threat assessments and travel advisories are optimal, consideration should be given to the establishment of an independent commission of inquiry with specific terms of reference to address these and related matters.

The Government does not support the establishment of an independent commission of inquiry to consider the relationship between intelligence assessments, threat assessments and travel advisories. The Committee’s report has already acknowledged that ‘in its travel advisories DFAT employed the relevant level of warning and language that corresponded to the threat being con-
veyed by the intelligence agencies’ at the time of the Bali bombings.

Government Senators on the Committee have already noted that they could not fathom how, ‘given the extensive evidence canvassed in the Report’, it could be asserted that the travel advice (at the time of the bombings) could be considered inadequate.

A further commission of inquiry would either duplicate work already done or replicate the functions of existing Senate processes. Questions about intelligence before the Bali bombings were addressed in the Blick Inquiry and questions concerning the travel advice have been thoroughly reviewed by the Senate inquiry.

As the Committee acknowledges, the Government has worked, since Bali, to strengthen even further its arrangements for the production and dissemination of travel advice. Shortly after the Bali bombings, at Mr Downer’s initiative, the Department of Foreign Affairs and Trade (DFAT) took steps to strengthen its consultative arrangements with ASIO, which produces threat assessments, to provide additional assurance that intelligence information is fully integrated into our public advice.

Flowing from this initiative, the arrangements that now exist between DFAT and ASIO for the declassification of intelligence material for use in the preparation of travel advice are well integrated. A number of substantial enhancements have been put in place, including:

- a 24-hour National Threat Assessment Centre (NTAC) has been established, providing rapid threat assessments on all intelligence received by Australian agencies
- where ASIO’s threat level is at high, DFAT’s advice will, at a minimum, recommend that Australians exercise a high degree of caution. NTAC sees and comments on all travel advice drafts where the threat assessment level is at high
- representatives from all members of the Australian intelligence community as well as the AFP, PM&C and DFAT meet weekly as the Terrorism Threat Coordination Group (TTCG). Chaired by the head of NTAC, and involving other agencies, such as the Department of Transport and Regional Services, as required, the TTCG considers emerging threats and assists in coordinating the intelligence response to those threats
- communications arrangements between DFAT and NTAC allow for immediate notification of emerging threats to ensure that travel advice can be amended whenever required, regardless of the time or day.

Recommendation 2

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

The Government acknowledges the importance of ensuring that travel advice is widely disseminated to Australian travellers. The Government does not, however, support mandatory obligations on travel agents nor can the Government agree to the public release of classified ASIO threat assessments. These threat assessments are already fully reflected in the travel advice, which constitutes an unclassified report on security-related threats in overseas destinations.

As part of the Government’s efforts to encourage industry promotion of travel advisories, the Minister for Foreign Affairs and the Australian Federation of Travel Agents (AFTA) launched the Charter for Safe Travel on 11 June 2003. The Charter meets the objectives intended in the Committee’s recommendation without the cost and increased resources required by a legislative approach and mandatory obligations. Market survey work conducted as part of the smartraveller campaign shows that approximately 90 per cent of travel agents already claim to encourage their customers to access government travel advisories. Under the voluntary Charter, travel agents recognise their shared commitment with the Government to assist Australians overseas to travel safely. While it is the responsibility of the indi-
vidual traveller to prepare adequately for overseas travel, travel agents who join the Charter recognise the invaluable part they can play to assist this preparation. As part of their service to their clients and to the Australian public, they commit to:

- provide travellers with consular travel advice
- encourage travellers to take out adequate travel insurance
- inform travellers of the preparations they need to make before travelling
- work together in partnership with Government and other travel professionals to promote safe travel.

The Charter currently has more than 1,600 members and the Government remains focused on heightening the Charter profile and increasing its membership. In July 2003, the Australian Federation of Travel Agents (AFTA) made partnership with the Charter a requirement of AFTA accreditation, which will see all members of AFTA (currently 2,223) joining the Charter by the end of 2005. The Government has made it a priority to work closely with AFTA in order to spread awareness of travel advisories and safe travel messages. This includes regular editorial contributions to the AFTA Traveller magazine and active participation in the AFTA General Conference.

Since the launch of smartraveller, DFAT officers have participated in sixteen holiday and travel expos in capital cities across Australia to work with industry to promote travel advisories. DFAT staff have also provided training to a large number of travel agents in Sydney and Melbourne, as well as 100 branch managers from the Student Travel Association (STA), about travel advice.

In May 2004 the Government established the smartraveller Consultative Group, comprising DFAT and travel industry representatives, to provide a forum for advancing the aims of the Charter, enable the travel industry to offer suggestions on improving the presentation, format and clarity of travel advice, and strengthen the reach of key smartraveller messages.

Of course, the Government does not rely solely on the travel industry to disseminate travel advice. Through the $9.7 million smartraveller campaign, travel advice is brought to the public’s attention through print media, television, and the internet. The travel advice is available through the internet, an automated telephone service and via smartraveller kiosks located at Australian international airports and passport offices. Market survey work indicates that 70 per cent of Australians intend to consult the Government’s advice prior to travel. The Government now receives on average 160,000 hits a week on the smartraveller website and 46,000 Australians are enrolled to receive travel advice updates by email subscription.

Travel advice is kept current and, where the situation at a destination is fluid, frequently updated. While viewing the travel advice 24 hours before departure is a useful measure, Australian travellers are encouraged to subscribe to the travel advice on the internet and to register their presence overseas through the on-line registration process. In this way, significant changes to travel advice can be brought to the attention of Australian travellers.

Recommendation 3

The Committee recommends that DFAT subject a representative selection of its Travel Advice to examination by an independent assessor with qualifications and experience in linguistics, literacy and communication. The assessor shall report to the minister on the intelligibility and accessibility of the language in which information is conveyed in travel advisories.

The Government recognises the importance of using plain language and a readily comprehensible system of grading of risk in different locations in its travel advice. DFAT routinely reviews the presentation, format and general approach to travel advice on a regular basis, particularly given the Government’s concern to ensure that the advice remains credible in the public mind. In response to feedback from the travelling public and the travel industry, DFAT is implementing a range of changes to travel advisories. In particular, the travel advice is being made clearer through the introduction of new sub-headings to differentiate safety and security threats, putting them in plain English and introducing other textual changes. For lower risk countries, DFAT is adjusting language to make it clearer that the behaviour being
recommended equates to that which is practised in Australia.

This is an ongoing process of reform which will include in its next phase consultation with linguistics and communication experts with a view to improving the intelligibility and accessibility of travel advice language.

**Recommendation 4**

The Committee recommends that

- the Commonwealth government prepare a green paper on the establishment of a national compensation scheme for victims of terrorism related crimes that fall within the Commonwealth jurisdiction; and

- the national council of Attorneys-General develop a proposal for the harmonisation of state laws dealing with compensation for victims of crimes so as to provide for circumstances such as terrorist attack.

The Government does not support this recommendation. The Government has concluded that financial and other assistance should continue to be considered on a case by case basis, focusing on specific needs, such as that which has been provided by the Government to date for the survivors of the Bali tragedy.

The Government is sympathetic to the suffering of the Bali victims and their families and provides a wide range of ongoing assistance to meet the health care and other needs of those affected by the Bali tragedy rather than a general lump sum assistance scheme. The Government was responsive to the immediate needs of victims and families and provided substantial assistance, including with the cost of airfares and accommodation for people travelling to Bali as a result of the attack or who needed to travel within Australia to provide support to loved ones in hospital as well as assisting with the cost of funerals. In addition, the Government donated $1 million to the Australian Red Cross Bali Appeal, which was launched in October 2002 to assist Australians directly affected by the Bali bombings and, through the Indonesian Red Cross (PMI), to assist the Balinese people in their disaster recovery and preparedness.

The government has also provided a range of other financial assistance and ongoing support to those affected including meeting medical and other costs associated with injuries that are not otherwise covered by Medicare and private health insurance, such as for counselling and rehabilitation, and assisting with the costs of travel and accommodation and providing support to those attending the first anniversary commemorations in Bali and Canberra. The government will continue to monitor the needs of those affected by the tragedy and to provide ongoing assistance, such as emergency financial assistance and personal support, to those affected through a network of family liaison officers.

**Government Response to the Report of the Joint Standing Committee on Foreign Affairs, Defence and Trade**

‘Watching Brief on the War on Terrorism’

The Government thanks the Joint Standing Committee on Foreign Affairs, Defence and Trade for its inquiry into and report on the preparedness of Australian, state and territory governments and agencies to respond to and manage the consequences of a terrorist attack in Australia. The Government’s response to the report’s five recommendations is outlined below.

**Recommendation 1:** The Committee recommends that the Government review the rationale for emergency response equipment allocations to the States and Territories under the National Counter Terrorism Agreement, taking into account the relatively more significant requirements of the larger jurisdictions.

**Response: Agree in part.**

Under the Agreement on Australia’s National Counter-Terrorism Arrangements signed on 24 October 2002, all jurisdictions recognise their joint responsibility in contributing to the development and maintenance of a nation-wide capability to counter terrorism. The nation-wide counter-terrorism capability is developed through utilisation of the policing and emergency management capability funded by the states and territories; and operational and policy capacity of relevant Australian Government agencies funded by the Commonwealth. This is supplemented by a
special fund to maintain and develop the nationwide counter-terrorism capability, provided and administered by the Australian Government on the basis of advice from the National Counter-Terrorism Committee (NCTC).

In addition, from time to time the Australian Government provides specific targeted funding allocations to address identified priority areas. For example, as part of the 2004-05 Budget, the Government announced a proposed cost-shared funding arrangement with the states and territories, up to the value of $30 million, for a package of emergency management measures focussing on urban search and rescue capability. The Government is currently working with the jurisdictions in developing this package.

Prior to the establishment of the NCTC, the Standing Advisory Committee on Commonwealth/State Cooperation for Protection Against Violence (SAC-PAV) administered funding to enhance counter-terrorism capabilities in jurisdictions. The essence of these earlier arrangements was ‘equity’ in the provision of various training courses, exercises and equipment to ensure that all states and territories were being equally developed. However, some funding was also directed on a justifiable needs basis. For example, in the lead up to the Sydney 2000 Games, NSW Police received additional funding for exercises and equipment. This was the also case in the lead up to the Commonwealth Heads of Government Meeting in Queensland.

The NCTC has recognised a greater need to move from the previous ‘equity’ model, to that of a ‘justifiable needs’ model. The NCTC Constitution, Attachment D Statement of Financial Guidelines, states that the special fund is allocated by the Australian Government to ‘...provide a basic viable counter-terrorism capability, built upon extant state and territory capabilities, commensurate with the general level of risk to Australia.’ This special fund is allocated ‘...where there is a justifiable and demonstrable need for expenditure. Parity in expenditure should only occur as a means to ensure the balancing of the nation-wide counter-terrorism capability.’

To underpin this change from an ‘equity’ model to a ‘justifiable needs’ model, the NCTC has embarked on a programme of defining the basic viable national counter-terrorism capability, from which the requirements for the various counter-terrorism capabilities can be measured in all jurisdictions. This will enable the NCTC to continue to assist states and territories to develop their counter-terrorism capabilities to the defined basic viable level.

Accordingly, the Government is reviewing capability requirements and defining minimum viable capabilities to provide a basis for funding allocation decisions. However, the aim will be to efficiently allocate resources across all jurisdictions to build a basic viable counter-terrorism capability, rather than to focus on particular additional requirements of the larger jurisdictions.

Recomm 2: The Committee recommends that DOTARS should carry out a security risk assessment of Hobart airport to determine whether 24 hour surveillance capacity is required.

Response: Agree: all airport security risk assessments are subject to ongoing review.

The security risk assessment of individual airports, including Hobart Airport, is an ongoing iterative process, rather than a single event or activity. This process is conducted by the Office of Transport Security in the Department of Transport and Regional Services (DOTARS) in close consultation with the Australian Security Intelligence Organisation and the Attorney-General’s Department to determine, amongst other things, the appropriate level of surveillance capacity required. In reviewing individual security risk assessments, existing threat levels in the aviation sector and the national counter-terrorism alert level are taken into consideration.

Recomm 3: The Committee recommends that the National Counter Terrorism Committee ensure, by means of a National Agreement if necessary, the interoperability of communications for police and emergency services across Australia.

The Committee also recommends that EMA negotiate with the states to pursue memoranda of understanding with commercial broadcasters to provide emergency messages to the community similar to those being arranged with the ABC. The Committee urges the completion of memoranda of understanding as a matter of priority.
Response: Agree in part.

The Australian Government recognises that these are important issues and agrees to the intent of recommendation 3. Given their complex nature, however, the development of long-term solutions will require the coordination of a number of government agencies and departments, ongoing negotiation with the states and territories and with communications authorities such as the Australian Communications Authority and the Australian Broadcasting Authority.

To this end, the Department of the Prime Minister and Cabinet is currently working with a number of key government departments and agencies to consider a range of government communications issues, including communications interoperability and the broadcast of emergency messages, with a view to determining which agencies are best placed to develop and implement solutions. The states and territories are being closely consulted as part of this process to ensure their views are taken into account and that consistent approaches are adopted to issues which impact across jurisdictions.

Recommendation 4: The National Counter Terrorism Committee should assess and report on the arrangements put in place between state and territory authorities and the private owners of critical infrastructure within each jurisdiction to ensure the adoption of best practice security principles for infrastructure protection.

Response: Agree.

The Australian Government has been working closely with state and territory governments and with private sector owners of critical infrastructure to ensure that protective security arrangements are appropriate, consistent and accord with best practice. Draft National Guidelines for the Protection of Critical Infrastructure from Terrorism (the national guidelines) have been developed in consultation with these parties and are now at an advanced stage.

In December 2002, the NCTC finalised the Principles for a National Counter-Terrorism Strategy for Critical Infrastructure Protection (the principles document), which sets out the responsibilities of governments and government agencies in order to ensure consistency. The NCTC also commissioned the development of the national guidelines, which build upon the principles document, and on the cooperation between business and government on critical infrastructure issues.

This cooperation has been facilitated through the Trusted Information Sharing Network for Critical Infrastructure Protection (TISN), which brings together all levels of government, key security agencies, and industry representatives to exchange information and develop cooperative arrangements for protecting infrastructure under an all-hazards approach. Key priorities for the TISN include the identification of critical infrastructure, the identification and mitigation of risks and the promotion of best practice arrangements.

On 25 June 2004, the Council of Australian Governments (COAG) agreed that the draft national guidelines should be the subject of industry consultation. The consultation process included consideration of the national guidelines by the TISN and has now been completed.

It is intended that the information provided in the guidelines will be consistent in its approach with principles of good corporate governance, and with an emphasis on undertaking risk assessments and appropriate planning. The draft guidelines will not be prescriptive for the private operators and owners, but are intended to help businesses put in place appropriate protocols and security arrangements. Given that a large proportion of critical infrastructure is owned and operated by the private sector, it was important to ensure that these businesses provided input into the development of the national guidelines.

The national guidelines will shortly go to COAG for final endorsement, subject to which they will be distributed to the owners and operators of critical infrastructure and to the Australian, state, territory and local governments, which will work closely together to encourage the private sector to adopt them.

Recommendation 5: The committee recommends that the Department of Transport and Regional Services (DOTARS) should review the security arrangements in place at all airports subject to its regulation on a regular basis and report on them in DOTARS annual report.
Response: Agree in part.

DOTARS continuously assesses security arrangements at airports through a programme of compliance audits. DOTARS is reviewing its procedures for measuring aviation security performance in the DOTARS annual report in light of the Government’s response to the recommendations in the 2003 Australian National Audit Office Report on Aviation Security. However, there would be risks associated with including information about aviation security arrangements in a publicly available document such as the department’s annual report.

Government Response to Report 53 of the Joint Standing Committee on Treaties

The Government thanks the Committee for its consideration of the treaties tabled, and gives the following responses to the Committee’s recommendations 7, 10 and 11:

Agreement on Medical Treatment for Temporary Visitors between the Government of Australia and the Government of the Kingdom of Norway

Recommendation 7

The Committee recommends that the Government investigate ways of improving data collection for the purposes of monitoring costs associated with similar agreements.

The Department of Health and Ageing is aware of the limitations on data collection and monitoring of medical treatment under the reciprocal health agreements. The Department will maintain consultations with the States and Territories with a view to improving data collection. Similarly, the Department will consult with Norway, and other countries covered by health agreements, on the monitoring of medical costs for Australians in those countries.

Convention on Highly Migratory Fish Stocks in the Western and Central Pacific Ocean

Recommendation 10

The Committee recommends that in future international Treaty negotiations of this kind, Australia seek to give preference to more rigorous language of the kind contained in Article 5(b) ‘best possible scientific evidence’ in contrast to the ill defined terms of Article 5(c) ‘precautionary approach’ with the consequent definitional and commercial uncertainty that this ill defined term carries at the international level.

In international treaty negotiations dealing with risk, the Australian Government places emphasis on the need for science-based assessments of such risk. Where scientific evidence is insufficient or unavailable and there are serious threats involved, a precautionary approach may be appropriate. The Government is aware of the definitional and commercial uncertainty that can be associated with the term “precautionary approach” and notes the Committee’s recommendation. Article 6 of the Convention (Application of the precautionary approach) recognizes this uncertainty and seeks to enunciate the procedures for application of the precautionary approach under the Convention (including by way of detailed reference to relevant sections of United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks —UNFSA). This aims to place some discipline and rigour on the use of a precautionary approach under the Agreement.

Recommendation 11

The Committee recommends that Australia support and encourage through the preparatory conferences the aim of ensuring that countries that are proposed as members of this body ratify the Fish Stocks Agreement.

The Department of Agriculture, Fisheries and Forestry, as the lead agency in the Preparatory Conference process for the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean acknowledges the benefits that members of the Commission being parties to the United Nations Fish Stocks Agreement offers to the effective management of stocks in the region. Consequently, within Regional Fisheries Management Organisations, the Department will broadly promote the comprehensive regime for the conservation and management of straddling

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and highly migratory fish stocks afforded by the United Nations Fish Stocks Agreement.

Government Response to Report 55 of the Joint Standing Committee on Treaties

The Government thanks the Committee for its recommendation of the treaties tabled, and gives the following responses to the Committee’s recommendations 3 and 6:

Double Taxation Agreements

Recommendation 3

Further to comments made at paragraphs 2.34 and 2.35, the Committee recommends that the Government give greater consideration to the timing of the introduction of legislation to bring proposed treaty actions into force, so that the incidence of enabling legislation being introduced prior to the conclusion of the Committee’s review is reduced.

The Government acknowledges the Committee’s concern and its role in the treaty making process. The Government will make every effort to ensure that the Committee has due time to consider all treaty actions before relevant implementing legislation is introduced. The Government notes, however, that due to the national interest, this may not always be possible. It remains open for Parliament to delay considering such legislation until the Committee has reported.

In order to reduce the incidence of enabling legislation being introduced to Parliament before the conclusion of the Committee’s review, the Department of the Prime Minister and Cabinet will write to portfolio Legislation Liaison Officers about treaty enabling legislation.

Stockholm Convention on Persistent Organic Pollutants (POPs)

Recommendation 6

The Committee recommends that the Government, in consultation with relevant parties, consider the formation of a negotiating forum, of a size and management as may be appropriate, to include State and Territory governments, in order to address concerns raised by the Queensland Government in its submission.

The Government will ensure that consultation takes place with all State and Territory Governments and other stakeholders in relation to the development of a National Plan of Implementation and a National Action Plan dealing with unintentionally emitted POPs. These National Plans fulfil obligations under the Stockholm Convention. The Government will continue to undertake consultation throughout implementation of the Stockholm Convention, consistent with its approach in consideration of ratification.

Government Response to Report 60 of the Joint Standing Committee on Treaties

Dr Andrew Southcott MP
Chair
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Dr Southcott

I have received a copy of the Joint Standing Committee on Treaties’ Report 60 for Treaties tabled on 2 March 2004 and would like to thank the Committee for their deliberations on Australia’s withdrawal from the International Fund for Agricultural Development (IFAD).

I accept the Committee’s Recommendation 5 and propose to proceed with formally withdrawing from the Agreement Establishing the International Fund for Agricultural Development.

I would like to clarify my Department’s position in response to Recommendation 4 which questions whether remarks in paragraph 5.65 of Report 60 were made by Departmental officials and whether this is the Department’s approach to treaty making. At a meeting on 27 November 2003 with three IFAD staff who have Australian citizenship, Australian Embassy officials confirmed that the decision to withdraw had been made at Ministerial level. The IFAD staff were advised that this decision would be put to the JSCOT which would make its own conclusions and provide appropriate advice to the Government, and that Government would then make a decision as to how to respond to that advice.

Up to and during that meeting, there appeared to have been a continuing misunderstanding by...
IFAD staff that my decision to proceed with withdrawal was still under consideration.
Embassy staff confirmed that my decision had been made, but that there was still a treaty withdrawal process that had yet to take its course.
I trust this satisfies the Committee with regard to Recommendation 4 of Report 60.
Yours sincerely
Alexander Downer

Rural and Regional Affairs and Transport Legislation Committee

Report: Government Response

Senator O’BRIEN (Tasmania) (3.30 p.m.)—by leave—I move:

That the Senate take note of the document.

I welcome the fact that the government has now responded to the report by the Rural and Regional Affairs and Transport Legislation Committee following its inquiry: Australian Wool Innovation Limited—expenditure of funds under statutory funding agreement. This inquiry was very important because it exposed a web of mismanagement at Australian Wool Services—a web of mismanagement that I know Senator Ferris took a great deal of interest in and made a great effort to expose, as did other members of the committee. The inquiry exposed a litany of inaction over a two-year period by the Minister for Agriculture, Fisheries and Forestry, Mr Truss, and his department in the face of a growing body of evidence that all was not well at AWI. This was an organisation responsible for the expenditure of $55 million collected in levies from wool growers and $16 million provided by the Commonwealth in matching funds.

As early as February 2002 the minister was told that the accountability and control systems in place were inadequate, yet he did not take action. The minister was also warned of the problems through a series of articles in the Weekly Times, the Land and other newspapers serving the rural sector. It was not a problem that was merely internal to the company, Australian Wool Innovation, as the department tried to tell the committee. This was clearly a problem in which levy payers and taxpayers had a vital interest. It was a direct and immediate problem for the minister. Unfortunately, this minister finds it difficult to take action in a timely manner when it is required. As was the case with the drought reforms, the US beef quota and the Cormo Express fiasco, the minister sat on his hands until the situation was almost beyond control. It is clear that the legislation and the statutory funding agreement for AWI did not give adequate protection for either levy payers or taxpayers, with the minister and his department asleep at the wheel.

The committee made a number of important recommendations for improvements to the way statutory funding agreements should operate, which not only are relevant to the AWI situation but also should be looked at in relation to similar agreements in other industries. The committee formed the view that all expenditure by these private companies should be in accordance with the terms of their statutory funding agreements. It recommended that such agreements should include a requirement that all expenditure be in accordance with the strategic plan and the research and development guidelines.

With this mountain of evidence available and the clear recommendations of the committee on the table, it would have been reasonable to think that the minister would take these concerns into account when he framed the legislation and statutory funding agreements that have appeared in more recent times. Unfortunately, these lessons seem to have been wasted on this minister. The first versions of the legislation and funding agreements for the dairy and live export industries did not contain adequate protection of the interests of either levy payers or taxpayers. Once again, it fell to Labor to sug-
gest—and indeed insist on—improvements to the documentation that should ensure that we do not have another AWI situation.

I welcome the fact that the government has now agreed to take on board all but one of the recommendations the committee made in its report. But merely implementing these recommendations will not overcome the other major problem exposed during this inquiry. It became quite clear in the course of the inquiry that this minister has difficulty taking action in a timely fashion, even when he is confronted with a mountain of evidence that urgent action is needed to protect the interests of taxpayers and levy payers. This inquiry established that, when the alarm bells were ringing for AWI, for the levy payers and for the taxpayers, this minister simply could not hear them.

Senator FERRIS (South Australia) (3.35 p.m.)—I want to take just a couple of moments to address the issue of the government’s response to the report: Australian Wool Innovation Limited—expenditure of funds under statutory funding agreement, which Senator O’Brien has commented on. As Senator O’Brien correctly said, the Rural and Regional Affairs and Transport Legislation Committee investigated this issue, and I think it is fair to say that all members of the committee took the view that questions in relation to AWI arose from issues raised in the budget estimates process and required answers. I would like to recognise the fact that, of the recommendations that our committee made—all eight of them—the minister has agreed with all but one. The one he has not agreed with goes simply to a small detail in relation to the statutory funding agreement and not a significant issue. The most important issue arising out of this inquiry is reflected in recommendation 1. Recommendation 1 reads:

The question whether AWI used company money to campaign for sitting directors during the 2002 Board election, in breach of Corporations Law, should be referred to the Australian Securities and Investments Commission.

This was very important. I would say it was the nub of much of what we inquired into. I am very pleased to say that Minister Truss has agreed to write to the Australian Securities and Investments Commission, providing a copy of the report and drawing ASIC’s attention to the views of the Senate committee. This was a crucial issue during our inquiries. It referred to a large amount of money that was made available from levies compulsorily collected from wool growers in very difficult times for the benefit of their industry. This money was used for a self-serving purpose by a number of directors, which, when we did the inquiry, appeared to us to be in clear breach of ASIC regulations. I am very glad to see that Minister Truss has sought the advice of ASIC in relation to that recommendation. I think it is a very important issue and one that very clearly applies to a number of the independent agencies that have many millions of dollars in compulsorily acquired levies from rural industries. It is very important that it be clarified.

A number of other areas covered in our other recommendations—there were eight of them—have been agreed to by the minister. I think it is quite unfair of Senator O’Brien to criticise the minister as not having been up to speed on this issue. When it was drawn to the attention of the department during the estimates process and Senator O’Brien and I agreed to form a subcommittee to take up these issues and pursue them, we did so with a great deal of reluctance, in a sense, because it is very difficult in these sorts of circumstances to tell wool growers that their hard-earned levies are being mismanaged. But we did uncover some very important shortfalls in the AWI and I am very glad to see that the minister is taking them up.

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

Report: Government Response  

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.39 p.m.)—by leave—I move:  
That the Senate take note of the document.  

The Bali atrocity is, of course, in the consciousness of all Australians and has gone down in our nation’s history as a defining event. It continues to make itself felt throughout our nation in various ways, obviously in particularly painful, ongoing ways to those people who were directly affected by that event. The Senate committee inquiry into that event and into security threats in Australia and South-East Asia in general, whilst contentious in parts—and that is not surprising, given the emotions that always come to the surface following events such as that—was also, I believe, very valuable in getting some information into the public arena and in moving beyond the immediate shock and imagery of the situation to some of the broader policy and government issues.

I should say I was not part of that inquiry. My colleague Senator Stott Despoja played a key part in establishing that inquiry and was involved in the conduct of the inquiry over a period of time. Whilst still working, she is not able to be present today to speak to this motion owing to travel restrictions. But it is an issue that affects all of us.

The government response is a comprehensive response to the various recommendations—more comprehensive than government responses often are—and that should be acknowledged. Broadly speaking, their responses to some of the recommendations are reasonably well thought through, although I am not necessarily saying that I am in agreement with them. But there is one area that I am disappointed with—that is, the government’s refusal to support recommendation 4 of the committee report. A lot of the publicity around this inquiry focused on whether or not the travel advisories were appropriate, whether or not there was information that the government was aware of that they did not pass on or whether there were breakdowns in the system. It is important to look at those matters.

With the benefit of hindsight, as I think everyone has acknowledged, there are areas that can be and are being improved. Above all else, I would say that many more Australians now take the time to look at travel advisories. The reality is that, whatever the travel advisory may have said in the past, many people would not have bothered looking at or paying much attention to them. Now, I am sure, many Australians do pay attention to travel advisories. At the end of it all, they still make their own decision about whether to travel or not. That is as it should be but people should have at least as accurate information as possible to form their judgments on. That area is an important one.

The area that I am in some ways more concerned about is the response of the government to the explosion and to helping the people who were affected by it. That is an ongoing issue. People are still being affected and people are still needing help. Some people will need help for the rest of their lives. Whilst we all hope there is never another event like this, there is always the possibility—some would say probability—that there will be. We need to ensure that, as much as it is possible, survivors, victims and their families are given prompt and effective help in every way possible. So I am disappointed that the government has not supported that recommendation in any way. It has not even supported in spirit the recommendation which suggested the government explore establishing a national compensation scheme for victims of terrorism related crimes and calling on the national council of Attorneys-
General to develop a proposal for the harmonisation of state laws dealing with compensation for victims of crime in circumstances such as a terrorist attack.

That second part of the recommendation, to deal with the national council of Attorneys-General developing harmonised laws for the compensation of victims, was not even addressed. It was just rejected and there was no further explanation at all as to the reason. The first part, suggesting that the Commonwealth at least develop a paper considering the establishment of a national compensation scheme for victims of terrorism related crimes, was also rejected. I think that is very unfortunate.

The government’s response is that they do not support this. They believe that financial and other assistance should be considered on a case-by-case basis. I am sorry, but I do not think that is good enough. I am sure that there was evidence presented during this inquiry—and I am aware of some myself separately—of people who do not believe that they have got adequate assistance. That is not necessarily money or compensation payments; sometimes it is information or access to other forms of support. Those are areas where we do need to do as much as possible. We have to acknowledge that the trauma created by events like this can live with people for a lifetime. It can affect families and friends and a wider group of people and, if we do not deal with those things as effectively and as quickly as possible, the shockwaves, the ramifications and the consequences are much greater than they otherwise would be or need to be. It is easy to say and hard to do—I acknowledge that. But we have got to at least accept, I believe, that we need to be doing a lot more.

During the election campaign I tried a couple of times to emphasise flaws in our compensation and insurance schemes in Australia for certain victims of crime and people in certain situations. One-off payments such as the government may provide and suggest may be appropriate for people are often not adequate. One-off compensation payments are often not adequate for people that have lifelong health consequences. They need ongoing support. We need to look at establishing support more widely, in my view, than just for the victims of terror related crimes to ensure that there is proper assistance for people who are victims of crime in general where there are no other insurance mechanisms to assist them if they have ongoing medical expenses. They can be extremely expensive and can go on literally for 50 or 60 years of a person’s life down the track, and impact on their families and on carers.

I am very disappointed that there has been a blanket rejection of the recommendation to look at establishing a compensation scheme for victims of terrorism related crimes. Obviously we want to do as much as possible to prevent such crimes occurring, but if they do occur in the future we have to make sure as much as we can that there is adequate help for people. A national compensation scheme is a far more reliable way than just relying on government to decide on a case-by-case basis what sort of help they will provide. It makes people in that situation have to beg for assistance. It provides an extra level of stress not to know for sure what is available and to have to just rely on what the government of the day may decide they want to pay, in what way they want to pay or what type of help they want to provide. So whilst a case-by-case approach may sound more efficient in some ways, the reality undoubtedly will always be that a whole range of factors will come into play determining what sort of help is provided by government and not all of those factors will be related to ensuring that people’s needs are appropriately met.
So that is a very disappointing response from the government. In an inquiry that was valuable and where a lot of the focus was on the adequacy or otherwise of travel warnings, I think the part of the whole Bali tragedy that has not got the attention it deserves is what happens to the people afterwards and whether there are ways we can better help people and their families. We are still a long way short in this country in a whole range of areas in acknowledging the impact and the role that carers and support people play in helping others who have been harmed by incidents or illnesses or disabilities, and this is another example of that. So I would urge the government to reconsider that broader issue as well as the narrow rejection that they have come forward with here in relation to this issue.

Question agreed to.

Joint Standing Committee on Treaties
Report: Government Response

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.49 p.m.)—by leave—I move:

That the Senate take note of the document.

The 60th report of the Joint Standing Committee on Treaties deals with treaties tabled on 2 March this year. I want to take the opportunity to repeat the concern the Democrats and I have with one aspect of that. The majority of the committee found that it was appropriate for the government to proceed with what they were talking about doing, which was to formally withdraw from the International Fund for Agricultural Development, IFAD. As a member of that treaties committee I put in a dissenting report—at least I am fairly sure I did. I remember disagreeing so I hope I got around to writing a dissent. From memory, there were others on the committee who also dissented. The government, not surprisingly, accepted the committee’s recommendation given that the committee’s recommendation was to support what the government wanted to do. So in that sense the response is not surprising. But this is simply a final opportunity to express my concern about the government’s action.

It is not the most significant thing by any means in the whole area of development assistance and international aid that the government has withdrawn from the International Fund for Agricultural Development, but I believe that it was not the best approach. Even if you accepted the government’s view that putting money into the fund at this stage was not the best use of development assistance, to completely withdraw from the entire organisation was an unnecessarily extreme approach. It is one that I do not believe was justified at all. It is not common to unilaterally withdraw from agreements, from treaties and from various organisations that we have been part of—in some cases, including this—for many years unless there is a very strong reason. Nothing the government put forward suggested that there was such a calamitous situation that we had to disassociate ourselves entirely from the organisation, particularly given that the option was there for us simply to not contribute money for a period of time to see whether or not the organisation addressed some of the issues that the government believed were of concern.

I think it was an overreaction and one that had other agendas to it as part of the government’s deliberate attempt to disassociate itself from multilateral international aid efforts, and I do not think that sends a helpful signal either. I would be more willing to believe the government’s genuineness in relation to this action if it had shown any sign of giving extra priority and extra resources to overseas aid and to overseas development assistance more broadly. One of the government’s rationales was that it wanted to reprioritise money into areas where it believed it
would make more of an impact on development assistance. That is a fair enough argument. You could debate whether or not it was accurate, but it is a fair enough argument to at least put forward for consideration. But when it is not accompanied by any broader action by this government to give extra priority to overseas development assistance it is hard to believe that it was anything other than just a pointed diplomatic snub with other messages attached to it—given that, as I said, we did not need to withdraw. We could have just not put in money, and that would have still met the government’s alleged concerns.

It should be repeated—and I think this is an area of debate that has slipped too far off the agenda in recent times—that a very low level of international overseas aid has come from the Australian government, going back well into the past, back to the time of the previous Labor government as well. We have an ongoing very poor record when it comes to the level of overall assistance we provide for overseas aid and development assistance. There is always a debate about whether that could be better spent, but that should not be used as a cover for not spending the money at all. We provide unacceptably low levels of assistance, and that has continued for far too long, going back well over a decade now. I believe it is time to re-emphasise that as a point of public debate and of significant concern. Unless we can start to do more to redress growing global inequality then a lot of broader problems will affect not just the people who live in those poorer countries but Australians as well. It is in our own interest to do more in this area, and I believe that we are failing to do that as a nation. Certainly this particular action by the government in this area does not do anything to assist that.

Question agreed to.

COMMITTEES

Membership

The DEPUTY PRESIDENT—Order! The President has received letters from a party leader and an Independent senator seeking variations to the membership of committees.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (3.55 p.m.)—by leave—I move:

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

Economics Legislation and References Committees—

Appointed—Participating member: Senator Brown

Environment, Communications, Information Technology and the Arts Legislation and References Committees—

Appointed—Participating member: Senator Brown

Finance and Public Administration Legislation Committee—

Appointed—Participating member: Senator Brown

Finance and Public Administration References Committee—

Appointed—

Substitute members: Senators Murray, Barnett and Johnston to replace Senators Ridgeway, Watson and Heffernan for the committee’s inquiry into the operation of the Regional Partnerships program

Participating member: Senator Brown

Foreign Affairs, Defence and Trade Legislation and References Committees—

Appointed—Participating member: Senator Brown

...
Legal and Constitutional Legislation and References Committees—

Appointed—Participating member:
Senator Brown

Rural and Regional Affairs and Transport Legislation and References Committees—

Appointed—Participating member:
Senator Brown.

Question agreed to.

ASSENT

A message from His Excellency the Governor-General was reported, informing the Senate that he had assented to the following laws:

Customs Amendment (Thailand-Australia Free Trade Agreement Implementation) Act 2004 (Act No. 130, 2004)


HEALTH INSURANCE AMENDMENT (100% MEDICARE REBATE AND OTHER MEASURES) BILL 2004

Second Reading

Debate resumed from 1 December, on motion by Senator Colbeck:

That this bill be now read a second time.

Senator McLUCAS (Queensland) (3.56 p.m.)—The policy which leads us to be debating the Health Insurance Amendment (100% Medicare Rebate and Other Measures) Bill 2004 was announced during the election campaign on 6 September as a direct counter to Labor’s new deal to save Medicare announced earlier on the same day of the campaign. It was a policy announced with one single intent, and that intent was to counter Labor’s policy lead in health both during the campaign and more generally. It was not as a well thought through health strategy designed to deliver better health outcomes. It was a simple electoral fix aimed at blunting the evening news of that night, which would have been reporting very positively Labor’s strategy to lift bulk-billing rates, to improve access to dental services for older Australians and to ensure cooperation between the various sectors of the health system so that health outcomes for Australians would have been improved. This bill reflects a political strategy, not a health improvement strategy.

It is interesting to note that when the Minister for Health and Ageing introduced the bill in the other place he repeatedly referred to increasing the rebate from 85 to 90 per cent of the scheduled fee. I understand that the Hansard had to be tidied up, but the tapes make it very clear that Mr Abbott was repeatedly saying that the increase would be from 85 per cent to 90 per cent. It begs the question: why? Why would he make such a fundamental error? Perhaps it was that the minister had a plan to do just that, to lift the rebate to 90 per cent not to 100 per cent, but when the strategy unit of the coalition saw Labor’s new deal to save Medicare their 90 per cent strategy was just not going to cut the mustard, it was not going to shift focus away from Labor’s new plan. So now we have a 100 per cent rebate on the Medicare scheduled fee, not because it is good health policy but because votes had to be shifted. It is also intriguing that the government took until 6 September to announce the policy, given the myriad of policy iterations that we have had over almost two years of this government.

People will recall A Fairer Medicare. They will remember it as a convoluted package. It was almost universally decried by doctors, hospitals and the allied health sector and, most importantly, by health consumers. It was a policy based on Mr Howard’s first principle when it comes to Medicare in Australia, which is to pull Medicare right apart. He said it in 1993, and it is still there in his mind. Let us not also forget the advertising
spree that occurred after A Fairer Medicare: $15.7 million was spent out of the health budget on telling Australians that Medicare would be fairer under this strategy. It was $15.7 million that would have been better used in delivering health services to Australians. But, as we all recall, A Fairer Medicare was to no avail. The polling was not good; it was not cutting through. So, not only did we lose the package, A Fairer Medicare, but the government threw out the minister and sent in Mr Abbott. Then, as you will recall, we got MedicarePlus, a slightly different set of strategies, but with a very similar outcome. The outcome was to be, and will be, a two-tiered health system, with a complex safety net which is extraordinarily expensive to administer.

You will also recall that MedicarePlus changed; it merged into a new title, Strengthening Medicare, without any clear explanation from this government as to why. The real reasons for this transition from MedicarePlus to Strengthening Medicare are very interesting. The word is that the focus groups that were asked to test the words ‘MedicarePlus’ took the view that this policy title meant that the government was requiring that we would have Medicare plus more out of patients’ pockets—and how right those focus groups were. This is exactly the government’s policy position. With decreasing bulk-billing rates and increasing out-of-pocket costs a reality for all Australian health consumers, how could they come to a different view of the government’s intention?

Let us also not forget the second round of advertising which ran almost right up to the announcement of the election. That lot cost us $20 million. I cannot count the number of people who expressed to me during that advertising campaign their annoyance at the repetition of that advertising campaign as it appeared on their television screens, in their newspapers and on their radios. It was an offensive waste of money that could have been better spent on health services. I am not the only one who thinks that; the people who spoke to me also think that. It was blatant political advertising that should have been paid for by the Liberal Party, not the taxpayers of Australia. In those two iterations of health policy, $36 million was spent on advertising trying to persuade the community that this government was interested in delivering quality health services to them. This expensive election commitment is recognised as poor public policy and inflationary. There is nothing in this legislation to ensure that any part of the $1.7 billion is handed on to patients, or that bulk-billing rates will increase.

Labor has concerns about this legislation, its impact on Medicare and the government’s long-term commitment to 100 per cent Medicare. There seems to be some confusion in Minister Abbott’s mind about the intent of the bill, beyond the confusion of whether it is a 90 per cent or 100 per cent rebate. When he introduced the bill in the House of Representatives, he said that 100 per cent Medicare will make visiting the doctor more affordable, but there is nothing in this bill to ensure that any part of the $1.7 billion is handed on to patients. He refuses to give any guarantees that this bill will boost bulk-billing. ‘Decisions about bulk-billing,’ he says, ‘will be up to individual doctors.’ Somewhat conversely in his second reading speech he said: ‘There should be more bulk-billing, because bulk-billing doctors will secure higher rebates ...’ Well there may be, but this bill spends $1.7 billion with absolutely no guarantee that there will be. He said: ‘Let me stress that all patients will benefit from this measure.’ But in fact it is doctors who will benefit from this measure, with no guarantee that any patients at all will benefit. To quote Mr Abbott,
the government has invested ‘a great deal of money’ over the past 12 months to boost GP incomes. And that is possibly true. When Labor asked his office and the department for justifications for his claim that doctors’ incomes will increase by $20,000, we found that there is no evidence to be had. It appears that he just conjured this figure out of thin air.

In the meantime, the AMA is urging members not to let this increased rebate take them back to the ‘treadmill of bulk-billing’. It is disappointing that the President of the AMA, Dr Glasson, has trumpeted ‘the beginning of the end of bulk-billing’. But, sadly, he is right, and while the AMA might be pleased that the government is helping them discard bulk-billing as a relic of the past, the Australian people are not. I note that Dr Glasson’s view about bulk-billing is not shared by all doctors, particularly by many GPs. Other doctor groups and many individual GPs have expressed their disappointment with the position of the AMA and their desire for the retention of bulk-billing, especially at high levels. A recent survey of GPs, however, has shown that more than 80 per cent are now charging a standard fee in excess of $40, so even under the best of circumstances, patients will still be out of pocket. A second survey has found that more than 80 per cent of GPs now bulk-bill only some of their patients. The consequences will be that fewer people will get the medical care they need because they cannot afford to visit the doctor. More people will miss out on preventive health checks and too many people will end up in our emergency departments at public hospitals.

The decrease in GP attendances has concerned me for a long time. Over the life of the last parliament, six million fewer GP attendances occurred than were projected. This is a statistic that should have us all concerned. Why is it that people are not going to their doctor? In my view, the answers are fairly clear. They go to the availability of a bulk-billing doctor and the out-of-pocket costs that the consumer will have from visiting a non-bulk-billing doctor. Is it that we are looking into our pockets and purses and not finding the average $40 up-front fee and making the decision that the annual check-up can be put off for a while, that the Pap smear can wait, that the prostate check-up can also be put off and that we might get through this winter without a flu shot? Nobody prefers to have a Pap smear or a prostate check-up, and the additional disincentive of finding $40 for the pleasure of doing so may be the answer to those six million fewer GP visits that the statistics bear out. This statistic should be of concern to us all, and in my view it has a direct correlation to the availability of bulk-billing doctors and to the out-of-pocket costs. In fact, the forward estimates for this bill support the fact that GP attendances are decreasing. There is no growth factored into the forward estimates, with less spending in 2007-08 than in 2005-06.

Somehow this government has managed to spend $1.7 billion in a rash election promise which lacks both effective health policy outcomes and sound economic principles. As if to highlight the lack of economic credibility, the forward estimates also omit the costs of the provision to increase the fees paid by the Department of Veterans’ Affairs for GP services from 100 per cent to 115 per cent of the equivalent Medicare fee—$83 million was just forgotten. Veterans with the gold card and their GPs might have reason to be concerned if this funding is not forthcoming.

This legislative increase in the Medicare rebate from 85 per cent to 100 per cent will mean an additional rebate of $4.60 for a standard 15-minute GP consultation. Across all GP services the average additional rebate is $5. Where the service is bulk-billed this is in addition to the bulk-billing incentives of

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$5.10, or $7.65 for concession card holders and children under 16. The government argues that this package provides a benefit to those patients whose doctors do not bulk-bill, but that is only true if the doctor hands on part or all of the increased rebate. The average out-of-pocket cost of seeing a GP who does not bulk-bill is now $15.24. If the GP hands on all of the additional rebate to the patient, the average out-of-pocket cost will be around $10—that is, $15.24 less the $5. But there is nothing in this proposal that requires the GP to do so, and the expectation from most health economists is that GPs will absorb the additional rebate, albeit over time.

The passing of this legislation will pose some very difficult questions for GPs. GPs do not like having to change their charging regimes, and I understand that; they have already had to make significant changes over the last three or four years, and they do not like doing it. That is for a good reason: their patients do not like change. Their patients want certainty; they want to know what they are going to be charged when they attend the doctor. Patients do not like repeated changes in the billing practices occurring. But I am afraid this legislation does not give certainty to doctors in determining what their billing practices may be into the future.

Many GPs have welcomed the Howard government’s 100 per cent Medicare package, but there is concern that the level of indexation does not match the increase in doctors’ costs and that the benefits of the package will erode over time. Despite requests, the Department of Health and Ageing has not supplied the Labor Party with details of how it has arrived at the annual cost of the measure. It has indicated that the figures are indexed by the current WCI5 index of around two per cent a year and has admitted that the number of GP visits will continue to fall over time. The department has confirmed that it has not modelled the effect of this package on GP incomes—that is, the department has not chosen to make any assumptions on what percentage of the rebate increase GPs will absorb into income and what they will pass on to patients. If a GP who sees an average of 7,000 patients per annum—that is the national average—kept the full rebate increase, their income growth would be around $35,000. Minister Abbott has been quoted as saying that this package will increase GPs’ incomes by about $20,000. That means that he is expecting doctors to keep around $3 and hand on $2 to their patients. But apparently the department has not conducted modelling that can be analysed or tested.

Last month the AMA announced their annual recommended fee schedule, which is from a higher base but indexed at 3.41 per cent. A survey conducted in November for a GP journal found that 52 per cent of GPs were planning to increase their fees, with more than 80 per cent of GPs surveyed now charging a standard fee in excess of $40. Doctors groups will continue to push for higher indexation and for implementation of the recommendations of the Attendance Item Restructure Working Group, which would better reward GPs for longer consultations. But Mr Abbott has already indicated that there will be no major health reforms, no MBS restructure and no more money. Realistically, with the election over there will be no more attention paid to Medicare until the next election looms.

Labor will support the technical amendment made to this bill to correct an error in drafting with respect to the eligibility for the Medicare safety net. We will also support the provision that will ensure that the current relativity between the payments to GPs for gold card holders and everyone else is maintained and not eroded. However, as I said earlier, we note that the bill does not specify the cost of this measure.
Labor has serious concerns about the long-term impact of the central provision of 100 per cent return on rebates on Medicare itself and on patients’ out-of-pocket costs. I think we have made the case that this is poor health policy and it is poor economic policy. It is also this government’s excuse so they will not have to address needed health care reforms in primary health care delivery, no matter how crucial that issue is.

We note that the bill does not stipulate what services will be covered in the schedule that will be brought to the Senate in regulation form, but it amends the Health Insurance Act 1973 to enable a Medicare benefit of 100 per cent of the schedule fee to be paid for certain services, as described in regulations. Can I say that Labor will be looking very closely at those regulations when they come before the chamber, to ensure that the government’s policy position is adhered to and that the policy is applied equally to all items.

The Howard government, however, can claim that this measure is subject to an election mandate, given its high exposure in the election campaign. We can hope that at least in the short term some patients may experience a benefit from the measure because their GP will pass on some, or hopefully all, of the rebate increase. For this reason Labor did not oppose this measure in the House of Representatives and we will not oppose this measure in the Senate today, but we do want to record in some detail our very real concerns about the bill. It is the government’s mandate, however, and they must take full responsibility for its consequences.

Senator Barnett (Tasmania) (4.15 p.m.)—I note that the last speaker, Senator McLucas, indicated that it is a government mandate that is being implemented through the Health Insurance Amendment (100% Medicare Rebate and Other Measures) Bill 2004. I thank her for acknowledging that we have a mandate, and we will implement it. I congratulate Tony Abbott, the relevant minister, and the government on acting quickly to implement the mandate. From 1 January 2005 the rebate for GP services will be increased from 85 to 100 per cent of the Medicare schedule fee. That builds on the government’s Strengthening Medicare strategy, and it commits $1.8 billion over four years to the measure. What Senator McLucas did not put on the public record was an apology to the Australian people with regard to Labor’s Medicare Gold policy, which was a complete failure. She did not apologise for their vehement opposition to the 30 per cent private health insurance rebate and the increase that the government has proposed for Australians aged 65 and over. I think the Labor Party should apologise, and it should now come on board and support those initiatives.

As a member of the Senate Select Committee on Medicare, it was quite clear to me and to others that were watching and listening that the Labor members were seeking for the Australian health system to be nationalised. They want a nationalised health system, whereas, at the moment, we have a good balance between public and private. You see, the measure that we have in terms of Medicare will not affect GPs’ eligibility for bulk-billing incentives and for other payments from the Australian government through other programs. In my own state of Tasmania, GPs can still claim an extra $7.50 each time they bulk-bill Commonwealth concession card holders or children under the age of 16. In fact, we are the only state that has blanket coverage. I acknowledge that and thank the Howard government for that. Certainly Tasmanians do the same, and they did that at the election on 9 October.

I want to make a couple of comments with regard to the AMA. I was guest speaker at their Christmas meeting just last week in Hobart. It was ably led by Dr Michael Aizen,
who is the president of the AMA in Tasmania, and Rodney Cameron-Tucker, who is the executive director. It was a good function. We had discussions and meetings with regard to a whole range of health policies. I can assure you that they are very supportive of this particular initiative. In terms of the health policies that are benefiting the state of Tasmania, we are investing $12 million into a new medical school. We announced last year that we are adding 21 new medical places for that medical school. It is going from 61 medical places to 82 medical places, which is tremendous. The Australian government will be injecting an extra $220 million over the next five years into Tasmania’s public hospital system. All those things are happening, and I will comment further on them.

Access to GPs is improving. It has been difficult in Tasmania because there are many rural and regional areas. In terms of our Strengthening Medicare initiative, we now have an extra doctor at Exeter on the West Tamar. It has taken quite a bit of work to make that happen. Dr Andrew Clarke is quite relieved. We have more doctors for the north-east, based at Scottsdale. Together with the Liberal Senate team, we have worked very hard to ensure that under our Strengthening Medicare package we have more doctors and nurses in those rural and regional parts of Tasmania and indeed across the country.

What Labor fails to acknowledge and does not want to accept is that Strengthening Medicare is already working. A few weeks ago Labor saw the results in the increase in the bulk-billing rates and could not believe them. Those bulk-billing incentives have paid a dividend. In Tasmania we received the largest increase of 14.8 percentage points, up to 63.2 per cent. That does not make it rosy, but it is still a huge improvement. It is easy to see that Labor has been embarrassed by that fact.

In conclusion, I want to thank Tony Abbott for his leadership. I want to thank the government and acknowledge the work of Christopher Pyne. He is demonstrating excellent understanding and leadership as Parliamentary Secretary to the Minister for Health and Ageing. Finally, I support the recent announcement by the Prime Minister to have a review of our health system—the Andrew Podger AO review. In terms of the improvement to the delivery of our health services, I think that will be good. The Health Insurance Amendment (100% Medicare Rebate and Other Measures) Bill 2004 should be supported without amendment. It will deliver many benefits for the people of Australia in the delivery of efficient and effective health services.

Senator ALLISON (Victoria) (4.21 p.m.)—We are dealing here with the Health Insurance Amendment (100% Medicare Rebate and Other Measures) Bill 2004—a bill that the government says will make medical services more affordable than ever before. I think that is rather an unwise claim on the part of the government. However, the claim has been made, and the success or otherwise of this measure will be measured against that claim. As we all know, Medicare is a critical component of the Australian health care environment. It provides a taxpayer-funded universal rebate system for primary and specialist health consultation fees. It currently pays 85 per cent of the schedule fee to patients. The problem is that, for the last eight years or so, doctors have been charging well above the schedule fee, complaining that its indexation has not kept pace with their expectations, their professional status as specialists, in the case of GPs, or what is described as rising health costs over that same time.

I think it is also fair to say that there was an expectation that Mr Howard, a long-term critic of Medicare and a supporter of private
enterprise, would act to improve doctors' incomes, but he did not—at least not until bulk-billing rates became a monthly feature in our newspapers and a political problem that had to be solved. The bulk-billing rate dropped substantially, from 79.3 per cent in 1995-96 to 67.6 per cent in 2003-04. It was also the case that overall numbers of consultations fell annually, when you would expect them to be increasing, and that out-of-pocket costs spiralled over that period. More people have poorer prospects of accessing a bulk-billing doctor, although the most recent figures show a very slight increase in rates as a result of measures introduced by the government.

We also saw, in the last couple of weeks, figures showing the results of the shortage of doctors—extreme in many places, but overall around the country the number of doctors per 100,000 people is now 800 less than it was about 10 years ago. So the actual rate of doctor provision has also been in decline. As bulk-billing fell, the level of copayments for GP services grew, rising from an average of $7.93 per consultation in 1995-96 to $13.98 in 2003-04. Of course, it is not just the case that there have been rising copayments for GPs; it is also the case—in fact, more so—for the specialists in our system. Since 1996, the level of copayments for specialist services has risen from $15.82 to $30.55 in 2003-04. In response to these damaging figures and community concern about access to GPs and the cost of medical care, the government introduced its A Fairer Medicare package. The government’s plan then was to allow private health insurance to cover out-of-pocket costs.

A Fairer Medicare was considered by the Senate, and the government failed to persuade the majority in this place that it was a good idea. I think it is useful for us to speculate what would have happened had this original package been introduced on 1 July 2005. Presumably, it would have passed intact, and we would be looking at a massive extension of private health insurance in this country and the lack of fairness that goes with the concept.

The government then dropped its preferred privatisation approach and came up with MedicarePlus—which went on to be renamed ‘Strengthening Medicare’—a $1 billion package over four years of bulk-billing incentives for children and concession patients, with an additional $5 in metropolitan areas and $7.50 in designated outer metropolitan, rural, regional and remote areas. The government also introduced its two open-ended safety nets, the latter proving to be extremely inflationary, particularly for specialists like obstetricians. Now we are dealing with an across-the-board increase in Medicare rebates at a cost of $1.8 billion—an arbitrary one-off increase in the rebate of about $5 per consultation.

Welcome as this increase is in terms of total increases in the dollars that are committed to health, the Democrats say that it does not address the major problem—that is, spiralling doctors’ fees, particularly specialists’ fees, and the fall in bulk-billing rates. We have argued in this place that too much of the Medicare debate is around bulk-billing rates and not enough about encouraging doctors to stick to the schedule fee or looking at how Medicare could be redesigned to be more comprehensive, integrated in a primary health care system and better suited to the needs of the 21st century. I will come back to that issue.

Before I do so, let me say that the measures to be introduced by the Health Insurance Amendment (100% Medicare Rebate and Other Measures) Bill 2004 are, according to the government, designed to make GP services more affordable than ever before. The bill will increase the rebate from 85 per cent
to 100 per cent of the Medicare schedule fee for all consultations, whether or not they are bulk-billed. According to Mr Abbott, the theory is that, if your GP bulk-bills then they will receive about $5 more for treating you, giving the average GP a pay rise of $15,000 a year. On the other hand, if you are already paying up-front to see your GP then, rather than getting back $26.25 from Medicare, under the new deal you will be able to claim $30.85. This means that for many people the gap between what they get back from Medicare—currently it is about $15 a visit, on average—should drop to about $10. In theory, this increase to the rebate should alleviate the higher fees paid by patients who are not bulk-billed. But what will really happen and what effect it will have on costs for the average person is very much open to question.

If we look at the effects of some past initiatives, it may give us some indication. Since the introduction of the government’s bulk-billing incentives there is some evidence that bulk-billing rates have increased—67.6 per cent in March 2004, rising to 70.2 per cent in June 2004, and 71.4 per cent in September 2004. This seems to suggest that bulk-billing rates are affected by increases in the schedule fee. On the face of it, that looks promising for the success of the rebate. But—and it is a big but—the earlier increases to the schedule fee were of course tied to bulk-billing. In other words, to get extra money the doctor needed to bulk-bill under 16-year-olds and concession card holders. The AMA has said that the bulk-billing rise is due to the extra payments for bulk-billing, and that is pretty self-evident. So the government offered monetary incentives to GPs to increase the percentage of patients they bulk-billed, which they did.

But this time around, the government has chosen to ignore its own evidence and to ignore the recent increases in bulk-billing rates that have followed on from that increase in the rebate. This time the government is just increasing the rebate, whether or not the GP bulk-bills. It is possible that this increase to the rebate will help maintain bulk-billing rates in the short term. Those doctors who are currently bulk-billing may continue to do so—after all, they will be getting more money for doing this, and this is on top of earlier incentives for bulk-billing groups that the government decided were entitled to be bulk-billed. But there is no real incentive for those GPs who are not bulk-billing to start to do so.

As an aside, I note that the President of the AMA, Dr Bill Glasson, commented on the government’s proposals and said that they ‘allow flexibility’ between those doctors who want to bulk-bill and those doctors who do not. So the question is: how long will it be before the pressures on bulk-billing come back again? Less than a week after the Howard government was re-elected, the AMA recommended an increase of $2 in its recommended fee for the cost of a standard doctor’s visit. That essentially erodes much of the benefit of the $1.8 billion government election promise already, both for the GP and for patients. Of course, the AMA itself has said that these new measures will ‘release GPs from the shackles of compulsory bulk-billing in the new year’—a move ‘welcomed by the AMA’. Bulk-billing has never been compulsory; nonetheless, that was its comment and I think it should alarm those people who think it is important for bulk-billing to be accessible to as many people as possible.

The government has steadfastly refused to develop a proper negotiated indexation system for the schedule fee, and now that schedule fee means very little. Presumably the next time there is pressure to increase the rebate, instead of looking at the schedule fee—which is of course the basis on which the 85 per cent rebate was applied and on
which the 100 per cent rebate is now to be applied—are we going to see a further increase in the percentage? For instance, if this is taking us from 85 per cent to 100 per cent, the next time there is a complaint from doctors, the next time there is a significant increase in the cost, will we see the percentage go up to 115 per cent? Will it be another arbitrary handout that shirks the real issue—that is, containing the schedule fee?

This is very similar to the decision that was made earlier this year on the operational grants for aged care, where the government announced supplementary grants. Instead of dealing with the underlying problems of indexing that operational grant and looking at the real costs of providing aged care, the government announced a supplementary grant which made it look as if it was doing something but which will of course lead to another hiatus a few years down the track.

Whilst the debate about Medicare over the last couple of years has been about bulk-billing rates, there are of course some who will never get access to bulk-billing—like most people in rural areas and people in some metropolitan areas where doctors do not want to work. For such people, keeping overall fees down to a reasonable level is a much more important issue. The government argues that, if you are paying up-front to see your GP, the extra $5 or so provided in this legislation is money in your pocket. But we know that that depends on how doctors react to this rebate, and that is by no means certain. Many doctors will no doubt keep their present fees. However, some will almost certainly increase them—especially those who feel undervalued and who are not yet charging at the highest rate. Where doctors are in short supply—and there are long waiting lists in some areas—this will mean that doctors are in a relatively strong bargaining position to raise their fees.

In the months following the introduction of the new incentives, out-of-pocket costs continued to rise—albeit somewhat more slowly. To see a GP, people who are not bulk-billed are now paying, on average, $15.24 over and above the rebate, which is about 12 per cent more than this time last year. Doctors, it seems, are collecting the $5 and $7.50 bonuses for bulk-billing children and the needy but they are charging other patients much more. Other past evidence suggests that doctors tend to absorb rebate rises by increasing their fees to match patient benefits. So I think it is likely that we will see higher doctors’ fees for those people who are not able to access bulk-billing.

According to a survey of 450 GPs in New South Wales and Victoria conducted for the *Sun-Herald* in October, 59 per cent of GPs surveyed intended to increase their fees in the next six months and a further 15 per cent of those GPs surveyed said they intended to reduce their bulk-billing work. Given that many in the medical profession and government are arguing that bulk-billing is overrated and that the most important thing is that everyone has access to a doctor they can afford to see, even if it is not free, why is the government introducing a measure that not only is extremely unlikely to have any meaningful effect on bulk-billing rates but also is likely to increase costs, rather than keep them affordable?

We would also argue that there is a pressing need—and it is very disappointing that we have $1.8 billion to spend and the government has not looked at other options—to look at other ways of making Medicare more relevant. For example, there could be better collaboration between state and federal governments in providing health care. We have seen some small examples of that—out-of-hours clinics, for instance—but very little by way of universally applied options that might improve people’s access. We have not seen
any expansion of options for community based clinics where salaried doctors might work, for instance.

We have not seen any more investment in preventative health care or any expansion of primary health care options, such as allied health professionals. Having psychologists deal with people with depression and other disorders makes much more sense than having these people see GPs. Including midwives in the Medicare rebate would make more sense. There is an enormous shortage of obstetricians in this country, and they are the ones who are pushing up their fees enormously, yet 80 per cent of women with healthy pregnancies and healthy babies could well be assisted by midwives practising in the community as opposed to those who are in hospitals. We could have nurse practitioners doing a great deal more than they currently do, and we could be addressing the appalling state of Indigenous health in this country. We could also be looking at oral health and mental health needs, both of which are grossly underfunded.

In conclusion, Australia needs to be looking much more at models of care that provide us with the sort of health care that we need. We need to be looking at other ways of funding doctors and our primary care practitioners rather than at just simply the fee-for-service arrangements that we currently have. We need a government to demonstrate leadership and to tackle the hard and increasingly urgent issues by looking at our system as a whole rather than playing around with haphazard and arbitrary increases to the rebate and complicated and unsustainable safety net arrangements.

I was at the Press Club lunch this week and heard parliamentary secretary Chris Pyne criticising Labor’s Medicare Gold package—not that we have not criticised it, but his main area of criticism was that it was an open-ended cheque. There is nothing more open-ended and inflationary than the safety net that has been agreed. The Democrats will be attempting to amend this legislation. We would like to see the measures in this bill confined to bulk-billing consultations. We think that makes a lot of sense, and I will be hoping to see support in the Senate for doing so.

Senator MARK BISHOP (Western Australia) (4.37 p.m.)—The Health Insurance Amendment (100% Medicare Rebate and Other Measures) Bill 2004 brings to a temporary end a three-year saga concerning the gold card, which has been needlessly endured by the veteran community. In that time the government has failed repeatedly to fully support the gold card. Political fear just prior to the election environment jolted the government to address the problem. This bill, as it applies to the gold card, is essentially a political fix.

That observation also applies to the general Medicare policy, which this bill attempts to address. Indeed, it is amazing to consider the almighty reversal in policy from this government. We can all remember the diatribe from the current Prime Minister about abolishing Medicare. Medicare was first on the chopping block as a result of his narrow approach. There was no place for public health care in a philosophy which predominately backed a private model.

The undermining began when the government propped up the private health insurance funds with massive tax breaks for those who could afford it. The plot was to simply let Medicare die as bulk-billing diminished. Stealth was the weapon of choice to kill Medicare, and that was clearly the ideological approach. But ideology does not always work—political clout does. Australians made clear their attachment to universal health
care; hence the abandonment of the ideology—certainly for the time being.

The Howard government now says it has become the champion of Medicare and bulk-billing, but this bill shows why that is not necessarily the case. There is nothing in this legislation that strengthens Medicare. There is nothing to ensure that any of the $1.7 billion will be passed on to patients. Medicare, we are told, is all the government’s idea and Australians should be grateful for this enlightened policy. Total humbug, of course, but it does show the effectiveness of change in our political system.

Despite the pain of defending Medicare, we on this side are pleased to see the ALP policy for universal health care adopted. That does not mean that there is going to be any end to the skulduggery. Australians remain alert to the fact that this approach is not far below the surface. Once government revenues begin to tighten, doctors’ claims for pay increases might meet a little more opposition, and the whole sorry saga of bulk-billing will return to the political agenda. Then we will see another last-minute rescue, probably immediately prior to the next election. The pattern is plain to see.

Today I would like to address the last part of the bill which provides for an increase in gold card fees. The bill increases the gold card fee from 100 per cent to 115 per cent of the schedule fee. This effectively returns the margin over Medicare previously available for GPs accepting the gold card. For the record, with the next indexation taken into account, that margin is $7.62 for level A consultations, $8.62 for level B consultations, and $12.78 for level C consultations. It should also be noted that about 78 per cent of consultations for veterans are at level B, and that rate, as I said, is $8.62.

GPs claim this is the result of more complex disabilities emerging in the veteran population. The sceptics, however, observe that publicly available research shows veterans enjoy about the same level of health as their non-veteran peers in the same age cohort. They also note that the level of consultation is wholly within the discretion of the practising GP. So there is some degree of myth about the attachment of GPs to the health care of veterans. It is probably correct to say that it is a straight commercial matter.

GPs demonstrated this when they went on strike against the Department of Veterans’ Affairs early in 2003. They simply staged a walkout, saying that their fees were insufficient. They left thousands of veterans and war widows high and dry. Dentists now threaten the same successful tactic. Medical specialists embarked on this course some time ago. There is no confusion in their representations: it is about the fees or the money involved—that is, it is a straight commercial matter where veterans provide great leverage.

The most recent chapter in this saga occurred prior to the last election. The government, as part of its ad hoc decisions to save bulk-billing, introduced a new schedule of fees called MedicarePlus. This was version one, and version two quickly followed. Both versions increased payments to doctors who bulk-billed, but these changes left veterans and the gold card out of step. The MedicarePlus schedule of fees was almost the same as the gold card schedule. In some cases it was better. GPs, through the AMA, made it plain that they would charge Medicare rather than the gold card where the Medicare card had a higher fee. They no longer spoke of special respect for veterans.

Nevertheless, the gold card remains the flagship of veterans benefits in the area of health. It is at the heart of veterans health care. It is always at the centre of all arguments of those seeking changes to the status
of their service. This is perfectly understandable because the gold card is free private health insurance for life, for all conditions. It is due recognition to those Australians who served overseas. It provides for those with serious disabilities from their service. It also assists widows whose partner was a veteran. It is a badge of service and, of course, it is greatly prized.

The government, through the Minister for Health and Ageing, focused only on Medicare. The government chose to ignore the veterans gold card. This, we suspect, was due to the myopia of the health bureaucracy. They have long regarded separate health systems for veterans as redundant in a world of universal health care. This is an interesting attitude and one worth exploring. The origins of health care stem from the enormous task that faced our community at the end of World War I. Many young Australians returned home badly maimed. At that time there was no basic public health system which could cope with the enormous demands. Additionally, the specific care required was often highly specialised. It centred on wound management and care for the limbless, the blind and those with ongoing serious illnesses. A network of repatriation hospitals grew from defence hospitals and continued right up until the last 10 years.

These hospitals cared for and treated veterans. They were part of the Department of Veterans’ Affairs. They were considered special institutions which reflected the community commitment to dedicated care for veterans. Despite the rapid growth in public health this chain of repatriation hospitals continued as a Commonwealth responsibility. They had their own special ethos and were commonly regarded by veterans as ‘ours’. Veterans rightly have always regarded their service to the nation as not only different but unique. These institutions, as part of the Department of Veterans’ Affairs, were a public demonstration of their commitment to that service.

But it became increasingly obvious that centralised health services were no longer the most convenient or efficient model. As well, publicly managed institutions went out of favour as governments sought to outsource or devolve service delivery downwards. Alternative sources of state public and private health care were available and they continued to grow. In many cases these alternatives were just as suitable and were located far more conveniently. Despite initial misgivings the sale and transfer of the repatriation hospital network has been a success—it has been the best of both worlds. Former repatriation hospitals retained their specialised care and priority for veterans but their monopoly was largely removed. For partners and families this was of great value as travel in our cities can be quite difficult, particularly for our ageing World War II generation.

Along with this, the electronic card system developed. This streamlined management and facilitated more diverse provision of care. Rationalisation of these cards, which denoted different levels of entitlement for health care, also took place from time to time as part of government policy changes. From this emerged the gold card, which was given firstly to ex-prisoners of war and the totally and permanently incapacitated. War widows then became eligible, and then its use was extended to those with severe disabilities who also received some part of the service pension. In more recent times we have seen eligibility extended to all those who are over 70 years with qualifying service. It has also been made available to ADF personnel seriously disabled from their service. Thus a limited and, in some senses, declining group of veterans became a much larger group—particularly in the last three to five years, when the numbers have increased by almost
300 per cent. For the AMA and GPs this became a Trojan horse. The population for which they had done a special deal suddenly doubled and in some cases tripled. It is no surprise therefore that their attitude became less accommodating and less charitable.

The range of health services attached to the gold card is almost limitless. So it should be of no surprise that veterans health care is a major business. The total budget this year, for example, is almost $4.4 billion. Of this, over $700 million is paid to medical practitioners, and $1.67 billion is paid to public and private hospitals. A further $520 million is paid for other health care. Aged residential care costs $770 million and DVA administration takes another $110 million. In anybody’s terms, these are massive amounts of public money. It simply illustrates the huge cost of military service over and above the direct defence effort required at the time of engagement. This could be called the downstream cost of war. Unfortunately, it is not something ever considered when costs are estimated at the time of engagement. An even greater cost is compensation, which this year will be $2.8 billion—not including service age pensions. This represents human loss, either through disabilities or through loss of a husband or a parent.

So veterans health is big business. But it is not a business that is well known or understood. In considering it we must be aware of its origins. We must be aware of its very special nature within our current system. It is built on the public commitment to care for those who serve our nation’s defence. It is historic but remains absolutely relevant in terms of its tradition and commitment to generations who might go to war in the future. That is why the gold card has become such a sensitive issue in recent years. That is why the government panicked in its election commitment to increase GP fees to 115 per cent. And that is why the Howard government is still in trouble with respect to specialists. Veterans are now very seriously inconvenienced by lack of access to specialist care. For the specialists it is a straight commercial matter. They get more revenue from Medicare and private health funds. They say they treat veterans and widows below cost, and that stretches too far their commitment to the care of the veteran population.

In Tasmania, as all veterans there know, specialist care is simply inordinately difficult to obtain. Orthopaedic care, I am advised, is available only as a public patient, which means joining the waiting list. Access to specialists in Tasmania has always been difficult—predominately due to the size of the population—but now commercial reality has made it even more difficult. If the government wants to honour the gold card in that state, it has no option but to pay up.

So far all that has been offered is that from 1 January next year the fees will increase by 15 per cent for consultations and 20 per cent for procedures. Whether that will be sufficient is, of course, at this stage unknown, but the feedback my office and I are receiving from the AMA and interested parties in Tasmania is that it will not be. Specialists’ relations with DVA are poor, and they have made the point repeatedly that other business is now more commercially attractive.

I am therefore pessimistic about future prospects. But worse, veterans will continue to suffer. The gold card in Tasmania is, at least, devalued currency, and veterans feel let down. They believe the public commitments to them are not being honoured. As expressed by my colleagues, the opposition support the bill but, as far as the veterans gold card is concerned, we note that this saga will continue.

Senator NETTLE (New South Wales) (4.53 p.m.)—The Health Insurance Amendment (100% Medicare Rebate and Other
Measures) Bill 2004 implements the coalition’s election policy to increase the Medicare rebate for consultations provided by general practitioners. It is a long way short of 100 per cent Medicare. The government claims that the measure will make GP services more affordable, but that is far from certain. In fact, the AMA has recommended GPs increase the fees they charge. This means that increasing the Medicare rebate to 100 per cent of the schedule fee will be meaningless for the many patients who cannot find a bulk-billing doctor. In some places, 70 per cent of the population cannot find a bulk-billing doctor and they will continue to pay out-of-pocket expenses. Contrary to the Minister for Health and Ageing’s recent refrain that these expenses have fallen, in many parts of Australia people are being charged a sum that is twice the schedule fee. The measure this bill implements will make next to no difference to these people when they visit their GP.

Just like the ill-conceived Medicare safety net, which this bill also addresses, this measure simply provides more cash to doctors with no public health outcome. It is part of the government’s drive to privatise our public health system. This drive includes the differential GP rebate that focuses on bulk-billing some people, not all Australians, and which was extended to certain marginal seats just before the election was called; the 21 per cent rise in the patient charge for essential medicines that takes effect from next month; and the wasteful $2.4 billion a year private health insurance rebate which the government now wants to extend at a cost of $1 billion over four years and which the ALP says it will now support after having denounced it during the election campaign.

These measures result in a massive transfer of public health funds to the private sector. Australians are increasingly left to pay for health services they expected their taxes would fund through the public system, while the government’s policy delivers more profits to insurance companies, private hospitals and private medical practitioners. The Greens are not opposed to private health care, but we say the priority for public funds should be public health care. Public funds spent on health services should deliver public benefits, such as timely access to quality care based on medical need, not capacity to pay. The Greens’ vision for health care is fair and economically responsible, and is supported by the recently released OECD report on private health insurance.

The coalition government finds itself in a difficult position when it comes to our public health system. It is led by a prime minister who abhors the concept of universal access to fee-free public services for essential health needs. Yet this is the principle that underpins Medicare. Australians, unlike the Prime Minister, support Medicare. They see the personal, social and economic benefits of providing essential health services through progressive taxation. So the Prime Minister decided that his earlier blunt, public condemnation of Medicare, and bulk-billing in particular, was not politically palatable. Instead, the government seeks to destroy Medicare by stealth, little by little, measure by measure.

The Minister for Health and Ageing, Tony Abbott, boasted this week that the Howard government had invested $11 billion in health in just over a year—since he has been health minister. The critical question people are asking is: where has it gone? It has gone towards election bribes, towards ill-conceived measures and straight into the pockets of private health insurance funds. Not only does Minister Abbott think out-of-pocket expenses are inevitable; he thinks they are desirable. Speaking during the debate on this bill earlier this week, he said: No-one likes to pay gaps. Everyone would prefer, if possible, to pay nothing and, if we have to pay
something, to pay as little as possible, but the fact is that there is no such thing as free medicine. All health services have to be paid for, either by taxpayers or by patients, and it is no bad thing that there are at least some price signals in our health system, because it makes patients conscious of what they are getting and is a significant deterrent against overservicing and overuse of our health services.

Not only are these remarks astonishing; they are alarming. To have the health minister discourage people from seeing a GP when they need to or from buying their prescription medicines is not only socially indefensible; it is economically irresponsible. Preventative medicine is the best medicine and it is good economics. ‘Price signals’ in areas of essential services disadvantage low-income earners and their families. In the case of health, they disadvantage people with serious and chronic illnesses. The mother of a small child with measles does not need to be reminded about ‘price signals’; she needs to be able to afford to take her son to the doctor.

The government’s price signals—abandoning bulk-billing for many Australians—have led to a fall of seven per cent over the last six years in the number of GP services. The minister said he was confident that the government’s policies would cause the number of GP services to rise ‘at least for the next couple of years’. There is no reason to suspect that the government’s policies will increase affordability of GP services and, even if they did, the minister is not confident it would last very long. The government’s approach is short-sighted—suited to the electoral cycle but not to building a robust, socially just and economically responsible health system.

As we know, low-income earners are more likely to have an illness or chronic condition than high-income earners, but ill health can strike any one of us at any time. Therefore, we all have an investment in ensuring that there are no financial barriers to any Australian who needs essential public health services. That is why the Greens argue so strongly that we should be promoting bulk-billing for everyone and not just for some people, as the government has done with the differential rebate. It is incomprehensible how the health minister can say with a straight face, ‘Bulk-billing is important and should be widely available,’ when his government has done so much to restrict access to bulk-billing.

The Medicare safety net is another poor piece of health policy. The Greens argued against the Medicare safety net from the start because we could see what the government refused to see—that the safety net would be expensive and it would encourage higher fees. The government originally forecast the safety net to cost $120 million this financial year, but Treasury figures released just before the election revealed that the anticipated cost has doubled already. If the trend continues then the safety net will cost more than $1 billion over the next four years. This is more than double the original $440 million forecast.

The government’s economic irresponsibility continues when it comes to the Pharmaceutical Benefits Scheme. The government has reportedly ensured that US drug companies will be able to take legal action to stop generic drugs entering the Australian marketplace. This arrangement—part of the final round of negotiations to secure the implementation of the US-Australia Free Trade Agreement—will undermine the Pharmaceutical Benefits Scheme, which relies heavily on generic medicines.

The government has also taken the short-sighted view of imposing a higher patient charge on sick people as a quick fix to ensuring that the Pharmaceutical Benefits Scheme is secure for the long term. Making sick peo-
people, many of them on low incomes, and people with a chronic illness pay 21 per cent more for their essential medicines from next month is no good for their health or the nation’s health budget. User charges hurt poor people most, and they undermine efforts to keep people healthy or make them well again. The health department estimated that five million fewer scripts would be filled as a result of lifting the patient charge so much.

Not content with the imposition of such a high price signal through increasing patient charges, which was made possible when Labor reversed its opposition to the rise, Treasurer Costello is talking about further increases in the patient charge, purportedly to keep the PBS sustainable. This is the same government that in an election campaign miraculously found $831 million in PBS savings by imposing a cap on the price the government will pay for generic medicines. The Prime Minister admitted that the government had not looked at this particular saving within the PBS before increasing the patient charge by 21 per cent. This casts great doubt on just how diligent the government has been in looking for ways to keep the PBS sustainable whilst guaranteeing its objective of making essential medicines available to all Australians at affordable prices. The Greens proposed an inquiry into the sustainability of the Pharmaceutical Benefits Scheme over a year ago now and were not supported in such a call.

On top of imposing hardship on people filling scripts for PBS medicines, the government wants to squander almost half a billion dollars more on increasing the private health insurance rebate for older Australians. Prime Minister John Howard said a year ago that the government did not plan to increase the rebate but a week before calling the election he changed his mind. The rebate uses public funds to subsidise private health insurance premiums. The benefits go largely to high-income earners who would be able to buy health insurance anyway without the rebate. The rebate already costs $2.4 billion a year and the cost rises every time the government allows the private health insurance funds to increase their premiums.

Now the government wants to increase the rebate from 30 per cent to 35 per cent for people aged between 65 years and 69 years and from 30 per cent to 40 per cent for those aged 70 years and older. This would cost at least $445 million over four years, and more as premiums rise. This is a totally uncapped, financially irresponsible expenditure of public health funds. The Labor Party described this proposed rebate increase as a waste of public funds when it was announced. Labor leader Mark Latham left little room for doubt about the ALP’s view when he said:

This is a government that wants to privatise health in this country ... Labor is not going to tolerate that. Labor will always have a priority of putting our scarce public money into public health, into universal access, so that people have got the fundamentals of Medicare available to them all the time.

But now the ALP have decided that the government has a mandate to waste public health funds in this way, so they have indicated they will support them.

An OECD report into private health insurance which was released last month demonstrates the corrosive effects of a policy that promotes private health insurance as a major element in the health system. It leads to a two-tiered health system where people with private insurance obtain faster access to health services than those who use the public system. This has major social implications. Under this government we will see a further erosion of the principle of access to health services based on medical need as it continues to shovel more and more public money to advantage those who have the wherewithal to buy faster access through purchases.
ing private health insurance. Everyone would be better off if the funds went to public health, because the public health system treats everyone according to their medical needs rather than their capacity to pay.

Early next year the Senate will reach a crossroads with Medicare when it considers whether to entrench the redirection of public funds to private health care by increasing the private health insurance rebate for older Australians. The long-term implications of this choice are profound. Australian National University academic Gwen Gray presents the choice starkly in her recently published book *The Politics of Medicare*. She says:

... the health system as reshaped by the Howard government cannot work. The combination of Medicare and a large private sector is a highly unstable arrangement which cannot survive. Eventually the Commonwealth will be forced either to spend even more tax money to subsidise private insurance or to abolish Medicare altogether.

The private health insurance rebate increase is to be examined by a Senate inquiry, and I hope that the Labor Party will reconsider their support for this measure and join the Greens in deciding to prioritise public health for public health money, not private health insurance. The Greens’ election health policy proposed increasing the Medicare rebate for GP services by around $5 along with other measures to promote better access to primary health care. We will not be opposing this bill, although we do have a second reading amendment. I move the second reading amendment on behalf of the Australian Greens:

At the end of the motion add:

“But the Senate notes that the Government has:
(a) failed to support bulkbilling for all Australians;
(b) privatised Australia’s health system; and
(c) undermined the principle of universality which is the foundation of a socially just and economically responsible health system”.

**Senator FORSHAW** (New South Wales) (5.09 p.m.)—It is not my intention to speak for long in this debate on the *Health Insurance Amendment (100% Medicare Rebate and Other Measures) Bill 2004* today. Firstly, as has been made clear, the opposition is supporting the thrust of this bill. Secondly, my colleagues, particularly Senator McLucas and Senator Bishop, have outlined in some detail a range of issues that relate to the whole question of this government’s approach to Medicare over a number of years since it has been in government. I cannot let the opportunity pass, Madam Acting Deputy President Moore, without saying a few words. In this chamber I like you have taken an interest in those issues and, as a member of the Senate Select Committee on Medicare, we had the opportunity to hear first-hand from people right across the community—practitioners, the specialist services, members of the community, health interest groups and a range of others—about the problems they saw with the government’s approach to Medicare.

However, I must first respond to what has just been put by Senator Nettle on behalf of the Greens. There was an invitation there to join the Greens—I can tell you that is something I will not be doing—but also there was a criticism of the Labor Party for having put a position during the election campaign when we released our policy of increasing the Medicare rebate to 100 per cent of the schedule fee where doctors bulk-billed and that we are now supporting this measure of the government to extend the impact of the increase for the rebate of the schedule fee to 100 per cent for both patients who are bulk-billed and patients who pay up-front and then claim the rebate back from Medicare. Senator Nettle had a bit of a go at us for doing
that, and then right at the end she said the Greens are actually supporting the bill. I continue to be amazed sometimes at the contortions that the Greens go through.

This bill does not address the fundamental problems that now exist with Medicare in respect of bulk-billing. This bill, as we know, increases the rebate to 100 per cent of the schedule fee for GP services. That amounts to $4.60 on a standard GP consultation. But this bill does not do anything to increase the level of bulk-billing, and that is something that we have been talking about for a number of years as we have seen the rates of bulk-billing decline across this country, particularly in rural and regional areas. You can go to towns in all states where there is no doctor who bulk-bills, and I have been to places where doctors do not bulk-bill anyone, not even pensioners or concession card holders. I know of situations on the North Coast of New South Wales where concession card holders, health care card holders and pensioners may have to travel 50 or 60 kilometres to one of the major cities like Coffs Harbour, Grafton, Taree or Lismore to see if they can get a bulk-billing doctor.

This measure, whilst it is welcome in the sense that it will increase the amount of rebate for a doctor who is bulk-billing a patient and so the doctor will get some increase in his or her return, means that a patient who pays up-front when they go to the Medicare office to claim their rebate will also get an increase on what they are getting now. It does not do anything more. It does not encourage doctors to increase the number of patients that they might bulk-bill, and it is certainly not going to encourage a doctor who does not bulk-bill to suddenly start bulk-billing. Why would you if you were a GP who is currently charging $50 up-front for a standard consultation? If you bulk-billed you would get $25 back. Many of the doctors have said that is not a sufficient return today, so they will not bulk-bill. They will charge the $50 up-front and allow the patient to claim the rebate. If the difference is that a rebate of $25.60 will go to $30 or thereabouts, how many doctors are going to say, ‘Yes, for that extra $5 I am suddenly going to change the whole nature of my practice and bulk-bill’? They are just not going to do it.

As you know, Madam Acting Deputy President Moore, as a member of the Senate Select Committee on Medicare, the legitimate complaint of GPs is that they have to charge fees commensurate to their practice costs, which have increased dramatically in recent years. There are a whole lot of reasons for that, technology being one, compliance costs being another. But the schedule fee has not kept pace with GPs’ costs. It just has not, and we know that. That is the major problem in this whole debate. GPs believe—and I agree with them—that the schedule fee is well below what they charge. This proposal does nothing about that. We had a policy we put to the people which would have increased doctors’ incomes, particularly in areas where the rate of bulk-billing is low. Our policy would have increased doctors’ incomes by substantial amounts per year—in excess of $25,000 in some cases.

Senator McGauran interjecting—

Senator FORSHAW—Senator McGauran says he does not remember them. Senator McGauran, you obviously have not been paying attention. We had that policy and your party attacked us for it. We were trying to help GPs—small business men. We were trying to help these doctors and your party rejected our ideas.

Senator McGauran—Why don’t you help the patients?

Senator FORSHAW—That would have helped the patients, Senator McGauran, because the patients would have been more
likely to have been bulk-billed under those arrangements than they will be under these arrangements. This policy, this proposal, is not going to do anything to increase rates of bulk-billing.

Another problem is that it does not do anything at all about specialist fees. We know that specialists by and large do not bulk-bill at all—or, if they do, they only bulk-bill concession card or health card holders—and the fees that specialists charge are obviously much, much higher. This is one of the major reasons why the government brought in its scheme to cover out-of-pocket costs. There has been nothing done by this government to try and assist people to be bulk-billed by specialists. It has just been ignored.

In an excellent speech by Senator Allison, where she went through some of the details of earlier proposals to reform Medicare or to supposedly improve Medicare or, as it was said at the time, to make it fairer, she referred to the proposal to allow the private health insurance industry to provide gap insurance for out-of-pocket hospital costs. That proposal just did not fly. Everyone rejected that, except the private health companies of course, and we saw the demise of Senator Patterson as the minister. She lost her portfolio and it has now gone to Mr Abbott.

The approach of this government all along has been to try and wean people away from Medicare by propping up private health insurance. They make no bones about that. What they do, however, is try and say that they are really defenders of Medicare. It is all on the record. I have said it many times and so have many others. The government and this Prime Minister have had an ideological obsession with opposing Medicare since it was introduced by the Hawke government. They have tried every way possible to undermine it, to even abolish it. They said they would get rid of it. The only time they have ever been honest about Medicare was when Mr Howard said to the Australian public, ‘We will get rid of Medicare,’ and the coalition did not win that election in 1993, or earlier elections either. You got beaten because the people were never going to cop it. So you knew that in order to crawl your way back into office you had to put Medicare in the bottom drawer and say, ‘We actually support Medicare,’ and now that you are in office you have done very little to sustain it. I am afraid that under this government, whilst you continue to just put forward these little measures—this one of course will be of benefit to some—at the end of the day the commitment is not really there. I will be looking with interest to see what happens to doctors charges and fees over the next 12 months.

What will happen, I predict, is that a lot of this increase in the rebate will not ultimately be passed on to the patient. They will ultimately be met with higher fees. We have already been put on notice again by the private health insurance industry. Despite the 30 per cent rebate, despite the proposal by this government to increase the level of that rebate for older Australians, they are queuing up again to ask for more increases in premiums—another five, six or seven per cent. They have got their hand out every year. Thank God that the National Party are not in there, because they would probably be doing what they are doing in a few other areas. They would be just throwing the money back at them. I conclude with those remarks. We are supporting the bill, but this government cannot hold its head high at all when it comes to supporting Medicare.
similar to those expressed by the opposition and some other senators, but I think it appropriate to correct the record in respect of the contribution made by Senator Barnett, who seemed to want to congratulate himself and the government for things they did not really do.

_Senator Kemp interjecting—_

_Senator MURPHY_—I note Senator Kemp is in the chamber and his cries in protection of Senator Barnett. It is a bit disappointing that a senator would choose to come in here and try to lay claim to things that they did not actually do. It is also a bit dishonest. Senator Barnett thanked the government for the introduction of the $7.50 incentive payment for Tasmania, which is paid across Tasmania as a region. It is the only state or territory in the country to receive that payment. It was not a government initiative but Senator Harradine in particular and other Independents who pushed for this particular incentive. He was supported by the other two Independent senators and me in negotiation with the government to improve—albeit probably only slightly, but we did seek improvements—what was known then as MedicarePlus.

Senator Barnett went on to talk about the $12 million for the medical school. The $12 million for the medical school was actually negotiated with the government through another bill—that is, the higher education bill—and again it was the Independent senators who brought on the $12 million for the medical school in Tassie, and it was a very good move. Senator Barnett went on to say that we now have an extra doctor in the West Tamar region, north of Launceston. Of course, we know that the previous Minister for Health and Ageing, Senator Patterson, and what was known as the Rural, Remote and Metropolitan Areas index, which applied then, were immovable. Indeed, Senator Barnett argued in the local press in Launceston that the RRMA index scheme was there to stay and that to get an extra doctor down at Exeter, in the West Tamar region, we had to have some other form of innovative thinking. When Mr Abbott became the minister, I in particular negotiated with him and he at least was able to grasp the nettle about the stupidity of the RRMA scheme. Senator Barnett could not. He argued that this was the scheme and that it was there to stay. As I said, it is a little dishonest to come in here and suggest that somehow he and the government have brought about this change.

_Senator Kemp_—That’s a bit of sour grapes.

_Senator MURPHY_—Sour grapes it ain’t, Senator Kemp. The reality is that I do not mind people laying claim to fame for things they have actually done and being honest about it. But do not try to lay claim to things you have not done or that you have played no real part in, and that is the point here—including those things that this bill will bring about such as the inclusion of allied health services and dental treatment for the chronically ill. The Medicare safety net is another thing that I think Senator Barnett mentioned. When I refresh my memory about MedicarePlus, I think the safety net was set at levels of $1,000 and $500. They were lowered substantially at the insistence of Independent senators in this chamber, and the government agreed to that.

_Senator McGauran_—You’ve all done so much!

_Senator MURPHY_—Through you, Madam Acting Deputy President, I say to Senator McGauran that we did a sight more than you did. You actually supported MedicarePlus as it stood, as you will do with a whole range of other legislation. When 1 July comes to pass next year you will have a chance to stand up and be counted in this
chamber and to actually demonstrate whether The Nationals have any capacity to act in defence of those people who live in the rural and remote areas in this country and to genuinely demonstrate that you stand apart from the government, albeit that you are in coalition with it. You can do that. I will watch with interest to see whether you in particular Senator McGauran make any speeches against any government proposals you might disagree with.

The Health Insurance Amendment (100% Medicare Rebate and Other Measures) Bill does make some improvements, and I support it for that reason. But there is a long way to go in the medical debate in this country. I hope that, at some point in time, we will come up with a health policy that will deliver better outcomes.

A point about specialists was raised by Senator Forshaw. There is another very important aspect to specialist treatments and that relates to the cost of medical supplies and the replacement parts, for want of a better description, which are used and which are fully covered by Medicare. I noted with interest the cost of a small stainless steel screw used, I think, in a prosthetics operation. It was a ridiculous cost for such a small piece of equipment that was fully covered, yet when we look at the amount of time and training that specialists have and the amount they are paid and the process of allowing what is a recoverable cost under Medicare there are discrepancies there that we need to have a serious look at.

This might be a challenge for Senator McGauran. He might like to do a bit of research and look at those problems, and maybe he might be able to convince the government that something needs to be done, because there is something that needs to be done. Again, I will watch with interest to see whether the National Party have got any intestinal fortitude when it comes to standing up to the government—

Senator McGauran—We are the government.

Senator MURPHY—That is an interesting comment: ‘We are the government.’ We will watch with interest, because you do not present yourself to the public as the government. You say you are there to stand up for country people. I hope, Senator McGauran, that you will be able to do that after 1 July next year.

Senator KEMP (Victoria—Minister for the Arts and Sport) (5.30 p.m.)—Normally I would thank honourable senators for their contributions to the debate but I think they were distinctly patchy, from the ones I have heard. I listened very closely to Senator Michael Forshaw, a man who normally says things that are worth tuning into, but this time his contribution would have to be marked F for fail. For Senator Forshaw’s information, the government is committed to protecting and strengthening Medicare—quite contrary to what you said, Senator—and to delivering high quality and affordable health care to all Australians. Senator, you spoke about the 1993 election—and you know it hurts us when you speak about 1993—but I would point out to you in a caring manner that we have won four elections since then, and health has always been an important subject of debate. The Australian community, quite contrary to the claims you have made, have obviously supported our position rather than yours. I noticed Senator Murphy seeking to claim credit for a variety of things—and I do not blame him; it’s a tough game, politics—and making wild threats and accusations against The Nationals. I am not sure that is a great help, Senator Murphy, but we listened to you, as we always do. We welcome the support that the Labor Party is giving to this bill, and we note...
that, despite the criticisms, the support will be given.

The measures in the Health Insurance Amendment (100% Medicare Rebate and Other Measures) Bill 2004 will make medical services more affordable in two ways. Firstly, the government is investing more than $1.7 billion over four years to make GP services more affordable for Australians. From 1 January 2005 the Medicare rebate for general practitioner services will be increased from 85 per cent to 100 per cent of the Medicare schedule fee. This means that for the standard GP surgery consultation there will be an increase in the Medicare rebate of $4.60 for each patient visit. All patients will benefit from this measure. There should be more bulk-billing—quite contrary to what was said in some of the contributions from the other side, because bulk-billing doctors will secure higher rebates—and there will be more money in the pockets of patients where doctors do not bulk-bill. This measure will be complemented by an increase in the fees paid by the Department of Veterans’ Affairs for GP services provided to eligible veterans and war widows. This measure builds on other recent government initiatives aimed at making GP services more affordable, such as bulk-billing incentives targeting Commonwealth concession card holders and children under 16 years of age. Secondly, this bill confirms the government’s original policy on the Medicare safety net and FTB A. This amendment will allow the minister to determine that all families who are eligible for the FTB A are also eligible for the lower safety net threshold. Australia has one of the best health systems in the world. Australians trust Medicare and they can trust this government to make a good system even better through measures such as those in this bill.

Question agreed to.

Original question, as amended, agreed to. Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator ALLISON (Victoria) (5.35 p.m.)—by leave—I move Democrat amendments (1) and (2) on sheet 4423:

(1) Schedule 1, item 1 (line 10) after “paragraph”, insert “and where those services are bulk-billed”.

Note: bulk-billed is defined in the Health Insurance (General Medical Services Table) Regulations 2004.

(2) Schedule 1, item 3 (line 19) after “to”, insert “bulk-billed”.

I do not wish to extend this debate but I wish to say that the purpose already identified in our speeches in the second reading debate is to confine the benefit—that is, the $4.60—to those consultations which are bulk-billed, in order to provide an incentive for doctors to give people access to consultations at no extra cost. As I said in my speech, we do not believe there are any incentives for doctors to either contain their fees or bulk-bill their patients, and we think it is fanciful to suggest that this extra on the rebate is going to do anything much more than go straight into the pockets of doctors. I strongly urge my colleagues in the chamber to support these amendments.

Senator McLUCAS (Queensland) (5.37 p.m.)—Labor acknowledges the intent of the Democrats’ amendments to link bulk-billing to the increase in the rebate, but I refer to my comments in the second reading debate when I said that the government can claim that this measure is subject to an election mandate. Labor hopes—and I emphasise ‘hopes’—that there may be some support for patients through this measure, but we are sceptical that it will be a long-term and sustainable measure. However, as I said, we recognise that the government can claim that this
measure is subject to a mandate, so I cannot provide support to the Democrats’ amendments.

Senator KEMP (Victoria—Minister for the Arts and Sport) (5.38 p.m.)—We welcome the Labor Party’s support for the government’s position, which is of course to oppose these amendments. The Labor Party’s support has been given, albeit a trifle grudgingly. It is certainly accepted and we know where the votes will lie. I point out to Senator Allison that, over the last year, the government has introduced significant incentives for GPs to bulk-bill Commonwealth concession card holders and children under 16 years of age. These incentives continue to apply. I believe there are a number of those—I will not go through them—and the bulk-billing incentives have been well received and have been instrumental in reversing the decline in bulk-billing, as my colleagues have pointed out. There have been rises in bulk-billing rates since the incentives were introduced, and the national bulk-billing rate rose to 71.8 per cent in the September quarter of 2004, so we will not be supporting the linkage that is proposed by Senator Allison.

The government’s election commitment will make GP services more affordable to all Australians, and all patients will benefit from this measure. Senator Allison, GPs are more likely to bulk-bill as a result of the higher rebate. Where GPs do not bulk-bill, patients will have lower out-of-pocket costs as they receive the higher rebate. Where a patient is charged a fee by their GP, the patient will receive the 100 per cent rebate from Medicare. For a standard GP consultation the Medicare rebate will increase by $4.60, as I pointed out in my summing-up speech. Where the service is bulk-billed the 100 per cent rebate will be paid to the GP as well as the bulk-billing incentives of Strengthening Medicare, where those apply. I have stated the reasons the government will not be supporting the Democrat amendments.

Senator NETTLE (New South Wales) (5.40 p.m.)—The Australian Greens will be supporting these amendments because we support bulk-billing and incentives for bulk-billing.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator KEMP (Victoria—Minister for the Arts and Sport) (5.41 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (No. 2) 2004

Second Reading

Debate resumed.

Senator O’BRIEN (Tasmania) (5.41 p.m.)—I am glad to rise to speak on the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004 and to change the nature of the debate from that which has gone on previously

Senator McGauran—Supporting a mandate then, are you?

Senator O’BRIEN—It is tempting to take an interjection from another member of The Nationals who has such little association with regional and rural Australia that he needs a road map every time he leaves Canberra to find his electorate office.

This bill is the second major piece of legislation designed to implement the recommendations of the Keniry inquiry, which was set up in the wake of the Cormo Express fiasco. The review of the livestock export sec-
tor undertaken by Dr John Keniry made a number of recommendations that focused on strengthening the regulatory framework for this sector. Most of those changes were contained in a piece of legislation dealt with by the last parliament: the Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004. Labor amended that bill to strengthen the accountability of the industry through the minister to the parliament and to the community. The bill we are considering today is designed to give effect to the second aspect of recommendation 2 of the Keniry review, which states:

Industry should be responsible for research and development and management of quality assurance systems to support its members translate best practice standards into outcomes consistent with best practice:

its activities should be funded by compulsory levies.

This bill provides a legal framework for the collection and disbursement of a new compulsory levy, which will fund the research needed to drive the improvements in the way this industry conducts itself, especially research into ways of ensuring the ongoing welfare of animals being shipped and traded.

This bill is similar to one that the government introduced in August but failed to get through all stages of the parliament before the election. That bill was referred to the Senate Rural and Regional Affairs and Transport Legislation Committee for examination and the legislation we have before us today is a revised bill that incorporates the sensible recommendations made by that committee. Once again, Labor has been able to use the processes of the parliament, through the Senate committee system, to improve legislation that has been put forward by this government. In the end the recommendations of the committee were supported by both Labor and coalition members of the committee. The government has now incorporated most of the recommendations of the Senate committee in the bill before us today.

The bill provides the basis for introducing greater flexibility for the disbursement of funds derived from the collection of compulsory levies by allowing for an industry organisation representing livestock exporters to be determined as a marketing body and as a research body for the purposes of receiving revenue derived from a compulsory levy applied to the livestock export sector and enabling the matching funds provided by the Commonwealth for research and development to continue to be provided to the industry research body. It is expected that the minister will determine LiveCorp as the industry marketing body and as a research body for the purpose of receiving revenue derived from a compulsory levy. The bill will allow the compulsory levies to go directly to LiveCorp. LiveCorp would then decide how those funds will be used within parameters set up by the legislation and subject to the provisions of a statutory funding agreement.

In the past, most research in this industry has been channelled through Meat and Livestock Australia. While under this new legislation LiveCorp will now be responsible for its own research and development, it is expected that much of its research and development will continue to be channelled through Meat and Livestock Australia. This is because only Meat and Livestock Australia, and not LiveCorp, is eligible to receive dollar-for-dollar matched Commonwealth funds for research. In its explanatory memorandum, the government has stated that it does not anticipate that these new arrangements will result in any increase in the matching Commonwealth funding for Meat and Livestock Australia. The government has based this assumption on the premise that LiveCorp is unlikely to increase the contribution it makes to MLA above the current level derived from the existing voluntary levies.
levies. In evidence given to the committee, Commonwealth officers offered the view that the limitation on the Commonwealth dollar-for-dollar matching funds for MLA research and development is an incentive to keep contributions at current levels and not to increase them.

I want to turn now to two matters that emerged during the committee’s deliberations on the previous bill and which I found most disturbing. First, evidence was presented to the inquiry that the minister’s strategy to put this compulsory levy in place actually breached a longstanding memorandum of understanding with Australia’s red meat sector. The memorandum of understanding was between the red meat sector and the Commonwealth, and it is a legally binding document. It ought not to be ignored or changed at the mere whim of a minister. That memorandum defines the roles and responsibilities of all parties to the agreement. It details funding arrangements, it details planning and service delivery arrangements and it sets out industry reserves as well as research and development arrangements. In relation to industry levies, the memorandum of understanding provides for an orderly process of implementation and consultation with signatories to the agreement. That process is contained in annexure D to the memorandum of understanding.

I want to go to the details of that agreed process—a process that was abandoned by the minister in the preparation of his legislative response to the Keniry report. The memorandum of understanding contains a requirement that the minister write to all peak industry councils, affected companies, Meat and Livestock Australia and the Red Meat Advisory Council and advise them of his intention to introduce a new levy. That, as I have said, is a legally binding requirement. Then, within 30 days—unless these groups can satisfy the minister that a levy is not required—he can set levy rates that will appropriately fund industry programs as required by the memorandum of understanding. The Red Meat Advisory Council is then required to commence a review of the memorandum of understanding and the meat industry strategy plan to identify any changes that may be required as a result.

It does appear that this legally binding process was completely ignored by this minister in the preparation of his response to the Keniry review. The committee heard from officers of the Department of Agriculture, Fisheries and Forestry that the process was not followed because the minister was not operating within the terms of the memorandum of understanding on the LiveCorp levy process. This is an extraordinary revelation. The minister chose to ignore a term of the memorandum of understanding he has with the red meat sector. He ignored a legal requirement to consult with those who will be most affected by his decision.

The second matter that was exposed during the hearing on this bill’s predecessor in the last parliament was the failure of the minister to progress consideration of this levy in a timely fashion. The minister was told of LiveCorp’s financial problems back in February. He told LiveCorp in March that a levy would be required. But here we are, nearly at the end of the year, and the legislation is only now before the parliament. This has left an air of uncertainty about the financial health of LiveCorp and around the funding of a number of important ongoing research projects. Labor has done all that it can to facilitate the passage of this legislation within our responsibility to the public and the industry for ensuring that appropriate accountability mechanisms are in place. Only the minister is to blame for the delay in getting this levy in place and for failing to secure the future for LiveCorp’s research and marketing activities.
Since 1996 the Howard government has privatised the research and development functions of key sectors, including the meat, horticulture, wool, pork, egg and dairy industries. Labor has not opposed privatisation but it has objected to the minimal accountability arrangements proposed by the government. These accountability requirements are part of both the legislation and the statutory funding agreements between the service body and the Commonwealth, but Labor amendments have strengthened the accountability arrangements as enabling legislation has proceeded through this place.

In relation to the statutory funding agreement with Dairy Australia, Labor did force changes that required the tabling of the company's annual report, as well as financial statements related to the compulsory levy and matching grant expenditure. The industry service bodies are directly accountable to industry members through the provisions of Corporations Law. There is, therefore, accountability to the government, and eventually to the parliament, through the statutory funding agreements. Labor amendments in the past have strengthened accountability arrangements, including, in respect of the dairy industry, the tabling in parliament of industry owned company annual reports and financial statements related to the levy and matching grant expenditure.

Labor were not satisfied with the accountability measures included in the similar bill presented to the previous parliament. We did not believe that they measured up to those that we have insisted upon in the past, particularly those with Dairy Australia. That is one of the reasons we referred the bill to the Senate committee. It is amazing to me that the recent experience the government has had with similar privatisations has not led it to avoid problems. Again, the government has tried to foist the original bill, with all its faults, on the industry and on the parliament. Labor will always insist on strong and appropriate accountability mechanisms for money collected as compulsory levies and where matching Commonwealth funding may be involved, even—as in this case—if that matching funding comes indirectly through another organisation. I am pleased that the government has finally taken on board Labor's concerns. They are concerns that I have raised many times in this chamber. A number of significant improvements have been made to the bill and the related statutory funding agreement. The accountability provisions now included in the bill and the statutory funding agreement are at least equivalent to similar measures that Labor has forced on the government in the past, such as those measures which I said now apply to the operation of Dairy Australia. As a consequence, we are in a position where we will be able to support this legislation.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (5.54 p.m.)—We have only five minutes to go, as I understand it, before our time for consideration of government business runs out. I will not have enough time in that period to give full justice to the topic before us.

Senator Macdonald—Just table your speech and get on with it!

Senator BARTLETT—I am sure that, given the Senate proceedings are being broadcast, the public would rather hear the views of the Democrats rather than just have them tabled or incorporated, Minister. I am sure the minister would concur—he might not agree with anything else I am about to say—that this is an important topic which should not be dismissively waved aside just because it is close to six o'clock on a Thursday.

The Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004, as Senator O’Brien said, was introduced in the
last parliament in a similar form and was sent to the Senate Rural and Regional Affairs and Transport Legislation Committee for a brief inquiry. In large part it flows on from the review that was conducted into aspects of the live animal export industry, following the notorious Cormo Express incident, now over 12 months ago. The incident involved tens of thousands of sheep being required to sail from port to port in the Middle East on the Cormo Express because they could not be unloaded in any particular port. Once again, it was something that brought to light the continuing public concern about and opposition to the livestock export industry.

I should remind the Senate that it is a concern that has been present in significant proportion in Australia for many years. Last year saw the tabling of well over 100,000 signatures of Australians who were opposed to or concerned about the animal welfare problems, and indeed the employment consequences of the livestock export industry. Indeed, those concerns were raised by the Senate in the report of the Senate Select Committee on Animal Welfare in the mid-1980s—and I should look back at the date of the report, because it might be getting close to its 20th anniversary—when the report into the live sheep trade was prepared and tabled in the Senate.

Even at that stage, there was very strong concern expressed by the committee as a whole about the unacceptable impact of the live export trade on animal welfare. From memory, I think there was a line in the report along the lines of, ‘If we were to assess the trade purely on animal welfare issues alone, then there is no question that the trade should be banned.’ Obviously there are other, economic issues and I accept that. In the same way that people who are concerned about animal welfare are continually asking that that issue be acknowledged and given acceptance, those of us who concur with that view, such as I do, should acknowledge that there are other issues that should not be forgotten, including the economic impact on those whose jobs and livelihood rely on this trade.

Having said that, we should not ignore the fact that, clearly, jobs have been lost in Australia in slaughterhouses and meat processing sectors by the expansion of exporting live sheep and cattle, rather than slaughtering and processing them here in Australia. Excuses have been given over the years as to why that has to occur, such as they do not have enough refrigeration in the Middle East so they have to slaughter the animal there and eat it while it is still fresh. That is repeatedly given as an excuse, even though I have seen the photos and the film footage of the wonderful refrigeration counters in many of these Middle Eastern countries. Some of these countries are actually the richest per capita in the world. It is a farcical excuse that keeps getting borne out. Another excuse is that for cultural reasons the animals have to be slaughtered in a special way over there and they only take that sort of meat. It is true that halal slaughtering is required and desired, but the fact is that this slaughtering process exists in Australia and is accredited. So there is very little reason for that excuse. Because of the time and because I believe some committee memberships need to be dealt with, I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMITTEES
Membership

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

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (6.00 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 members: Senators Carr and O’Brien to replace Senators George Campbell and Moore for the committee’s inquiry into the Regional Partnership program

**National Capital and External Territories—Joint Standing Committee**—
Discharged—Senator Lundy
Appointed—Senator O’Brien.

Question agreed to.

**DOCUMENTS**

*The ACTING DEPUTY PRESIDENT (Senator Lightfoot)*—Order! It being 6.00 p.m., the Senate will proceed to the consideration of government documents.

*Australian Electoral Commission*

Debate resumed from 18 November, on motion by Senator Buckland:

That the Senate take note of the document.

*Senator LUDWIG (Queensland)* (6.02 p.m.)—I rise to speak on the Australian Electoral Commission report for 2003-04. There arose an incident in respect of the Electoral Commission, and perhaps I can go into it in a little bit of detail. Under the Electoral Act there is provision for penalties, offences and those sorts of things. Perhaps it is easier to take the Senate through the detail. Two days ago, in question time, Minister Ellison was asked a question about the date on which he was notified by the Australian Federal Police that there was a criminal investigation into Mr Anderson and Senator Sandy Macdonald and the date on which he was advised of termination of the investigation. Minister Ellison said on both counts that he could not recall the dates and would check with his office and notify the Senate.

It took Minister Ellison a couple of days to get back to us in relation to that, which was quite understandable, and he provided a statement today at the conclusion of question time in relation to the question that had been asked by Senator Kirk. It came down to a point regarding the Australian Federal Police protocols that deal with complaints against federal members of parliament. This was a complaint made to the Australian Electoral Commission under their act. His statement said:

Following further advice from the AFP, I wish to inform the Senate that I can confirm the existence of AFP protocols which deal with complaints against Federal Members of Parliament.

The protocols do not require the Australian Federal Police to advise the Minister for Justice and Customs of referrals from the Australian Electoral Commission in relation to breaches of the Commonwealth Electoral Act 1918.

Therein lies the nub of the issue—that is, when a matter relates to the Australian Electoral Commission, under the protocols the Australian Federal Police are not required to notify the minister. But I will come to that particular issue in a moment. Minister Ellison’s statement went on:

As Mr Windsor’s complaint involved a direct referral from the AEC to the AFP, I was not informed at the time of the referral of the investigation, however I was advised on 17 November 2004 of the investigation and further advised on 22 November 2004 of its termination.

On 22 November, I was also advised that Mr Anderson and Senator Macdonald—that is, Sandy Macdonald—would not be interviewed. As previously stated, I do not intend to canvass this matter any further, as this is a matter for the AFP and Commonwealth Director of Public Prosecutions.

That is the answer that was given by Senator Ellison. We do not take issue with that in particular. What we do want to look at is the protocols. I refer to a speech given by the
Commissioner of the Australian Federal Police, Mr Keelty, on 28 August 2001. Although the answer given by Senator Ellison raises a number of issues that do require answering, it appears there is an exception to the policy in respect of the AEC. Mr Keelty said:

An exception from this policy is made in the case of the Australian Electoral Commission (AEC) because of the special position that the AEC holds in relation to breaches of the Commonwealth Electoral Act. The AEC may require the AFP—that is, the Australian Federal Police—to investigate Opposition members, Government members and or their respective campaign workers regarding possible breaches of the penal provisions of that Act. For this reason, it is crucial that the AEC continue to be seen as an independent body and free from political influence.

It would be helpful if the minister would table the protocols so that we could see whether in this instance there was an exception. His statement raises more questions than it answers. It does not go to the issue of whether the minister followed the protocol, whether there is an exception in that respect or whether there is a requirement or need to clarify this matter a little further. And, of course, it does not go anywhere near the issues of whether the Australian Federal Police should or should not have sought interviews with Senator Sandy Macdonald or Mr Anderson. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Australian Law Reform Commission

Debate resumed from 18 November, on motion by Senator Buckland:

That the Senate take note of the document.

Senator WEBBER (Western Australia) (6.07 p.m.)—Mr Acting Deputy President, I seek leave to incorporate a speech by Senator Stott Despoja.

Leave granted.

Senator STOTT DESPOJA (South Australia) (6.07 p.m.)—The incorporated speech read as follows—

I rise to speak on Government document the Australian Law Reform Commission report, Genes and Ingenuity: Gene Patents and Human Health (ALRC 99).

I welcome the completion of the ALRC’s final report as an important step in the biotechnology law reform debate and thank them for their wonderful work.

I have long campaigned for an investigation into patent laws in relation to genes and gene sequencing and, more recently, the issue of stem cells and their derivatives. I hope this report plays a key role in furthering the public debate on these issues.

I have a particular interest in this ALRC report because I initiated the preceding inquiry by the ALRC and Australian Health Ethics Committee (AHEC) which examined the protection of human genetic information (Essentially Yours: The Protection of Human Genetic Information in Australia, ALRC 96, 2003). That inquiry identified a range of concerning intellectual property issues and provided the impetus for this ALRC inquiry to be established.

My second reading amendment to the Research Involving Human Embryos Bill 2002, which established the ALRC investigation of Gene Patenting and Human Health (DP68), also called for the reviewers of that Act and the Prohibition of Human Cloning Act 2002 to consider and comment on the ALRC report. The ALRC recommended that 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.

While I understand the terms of reference for this review are still being finalised, the intent of the Senate was quite clear on this matter and I will take this opportunity to reinforce the importance of it.

My amendment was agreed to by a conscience vote, as noted by Senator Evans in discussion of the amendment, and the Minister should give greater weight to this 2nd reading amendment as
the will of the Senate than would normally be the case of a partisan 2nd reading amendment.

I look forward to the commencement of the review and the announcement of its final terms of reference.

It is disappointing, though that this ALRC report was not released immediately after its completion on June 30. I find it intriguing that the Government delayed the public release of the report until August 31, the final day of Parliament and two days after the election had been called, when it could have released it as early as August 3. This has not been explained by the Government and appears to have been yet another example of the Howard Government withholding politically sensitive information from the Australian people and dodging Parliamentary scrutiny from the Senate.

I did not want negotiations over the Free Trade Agreement with the USA to influence the ALRC’s work and pre-empt the Australian debate on gene patenting, but unfortunately, this report was constrained from the beginning. The terms of reference required the ALRC to have regard to Australia’s existing or proposed international obligations in relation to patent law and practice. The Executive Summary states:

‘Further, to propose specific laws for genetic materials and technologies may have had implications for Australia’s compliance with obligations under various international trade agreements. As a result, some of the recommendations are aimed at improvements in the patent system in general, including a suite of reforms directed at patent office practice.’

Regardless, the report’s discussion of the impact of the AUSFTA on our law and scientific practices would have been extremely useful to inform the Parliamentary debate over the legislation to implement the AUSFTA, which was passed on August 13, ten days after the report could have been released.

During the debate over the AUSFTA legislation, I drew the Senate’s attention to the absence of this report and to how useful it would have been during discussion of the ALP’s amendment regarding patents.

The Senate inquiry looking into these matters, prior to the Parliamentary debate, relied heavily on the advice of the Department of Foreign Affairs and Trade (DFAT). Their report into the AUSFTA implementation legislation concluded—‘3.214 The Committee is satisfied that fears about ‘harmonisation’ of Australian and United States patent law are probably unfounded. It bases this conclusion on DFAT’s assurances that the AUSFTA will not change the nature of what is patentable in Australia.’

But, section 4.31 of the ALRC report states:

‘The provisions of the AUSFTA have implications for reform of Australian patent law. Amendments to the Patents Act are necessary to give effect to some provisions of the AUSFTA, for example, to preserve the criterion of a ‘patentable invention’ as a ground for revocation of a patent.[47] In other cases, where the AUSFTA reflects existing Australian law or practice, the agreement may act as a constraint on future change.’

Who are we to believe? A Department involved in the negotiations of the AUSFTA or the ALRC experts? Would the ALP have passed the AUSFTA legislation had they known the ALRC’s findings on patents? All important questions that will probably never be adequately answered.

Despite the stated reluctance to recommend changes to Australian patent law, seven of the report’s 50 recommendations call on the Federal Government to amend the Patents Act 1990.

The Government must respond to the ALRC recommendations through developing a new policy that will allow the genetic sciences to continue their research without undue need for patent lawyers at every step of the innovation process.

This world class report took 18 months for the ALRC to prepare, the many issues it covers deserve considerable public and parliamentary consideration and debate. Unfortunately, since receiving the ALRC’s world class report, Essentially Yours: The Protection of Human Genetic Information in Australia (ALRC 96, 2003) in March 2003, the Government has sat on its hands. This is not satisfactory government; biotechnology is moving at such a rapid rate that the Government can no longer ignore community concerns on these issues.
The ALRC has provided the necessary guidance on this issue, it now requires Government action.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (6.10 p.m.)—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Australian Customs Service

Debate resumed from 18 November, on motion by Senator Buckland:

That the Senate take note of the document.

Senator LUDWIG (Queensland) (6.10 p.m.)—On the subject of the Australian Customs Service report for 2003-04, I am sure all senators present in the chamber tonight are aware of the massive cost blow-out in the cargo management re-engineering project, caused by the Howard government’s mismanagement. I remind senators in the chamber of a promise made quite some time ago by a certain minister who said:

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

That statement was made by the Minister for Justice and Customs, Senator Chris Ellison, on 21 June 2001. It is now December 2004. The Christmas decorations are up and everyone is out and about in shopping centres across the country—except us.

The CMR project was supposed to cost the taxpayer in the order of $35 million, but due to perhaps ministerial mismanagement or incompetence—I do not know which—that cost has now blown out to $145 million. In truth, it is only exceeded by Senator Hill’s $8 billion black hole, but it is still shocking. We are still waiting for the minister to deliver on his promise. We certainly know what Minister Ellison will be asking Santa for this Christmas: he is hoping for a big sack of money so he can stuff it into the black hole that is the CMR project.

On another issue, the 2003-04 annual report indicates that in the order of $5.7 million was spent on a consultancy frenzy at taxpayers’ expense. On analysis, the annual report shows that 43 per cent of consultancy expenditure was for contracts not put out to public tender, while 47 out of the 55 consultancy contracts were not even advertised publicly. The fact that so many were not advertised does raise questions. I put the government on notice that Labor will be pursuing answers to these questions through the parliament and the estimates process. It seems that small to medium sized enterprises were locked out of the Customs consultancies due to the lack of advertising or public tendering process.

Like everything else with the Howard government, it is a case of ‘do as I say and not as I do’. The Howard government talks about being the friend of small business but, in practice, it handles these things in a way that leaves many small businesses out of the loop. It is a clear case of the Howard government’s arrogance when so many Customs contracts are directly engaged or selectively tendered and most small contracts have been awarded on a who-you-know basis.

Minister Ellison should explain why so many of these consultancies were not publicly advertised or open for public tender. I think some of the figures speak for themselves. Of the type of tender that was taken, the total value of publicly advertised tenders was $3,253,194. In percentage terms, that was 56 per cent of the total value. Those not publicly advertised were in the median of $2,509,115. That relates to 44 per cent of those contracts put out to tender which were not publicly advertised.

Of the type of engagement—that is, whether it was direct engagement or a selec-
tive tender or public tender—33 per cent of the total was direct engagement. There was no ability for small to medium size businesses to get an edge. Only 10 per cent were selective tenders and 57 per cent were public tenders. There needs to be greater scrutiny by this arrogant government as to how it lets contracts in Customs so as to ensure that small to medium size businesses can have a go, because this annual report indicates that consultancies cannot get the tenders that are put out by this government.

Question agreed to.

Department of Immigration and Multicultural and Indigenous Affairs

Debate resumed from 18 November, on motion by Senator Buckland:

That the Senate take note of the document.

Senator LUDWIG (Queensland) (6.15 p.m.)—In respect of the Report for 2003-04, including reports pursuant to the Immigration (Education) Act 1971 and the Australian Citizenship Act 1948, I would like to turn to a couple of issues raised in the citizenship and multicultural affairs portfolio within the Department of Immigration and Multicultural and Indigenous Affairs. I know they will interest those in the chamber tonight—and hopefully the Radio National listeners as well. The recent ANAO report into the citizenship function of DIMIA highlights multiple problems that seem to have occurred under the watch of Senator Vanstone and the previous minister, Mr Gary Hardgrave, and require significant work to be undertaken by this government. While the report says the management and promotion of citizenship services is generally well managed there remain serious concerns in relation to the risks of fraud and, particularly, identify theft.

In a survey of 159 applications for citizenship, the report found three cases where the signature of the person attesting to the identity of the applicant differed between that on the photograph and that on the declaration on the application form. Three files did not even have photographs attached. In a third of these cases there had been no check of whether the person was in Australia at the time. The department clearly lacks a proper approach to security issues.

In the case of descent applications, 14 case files were examined by the Australian National Audit Office. These relate to people born outside Australia who are applying for citizenship. A police check was only conducted in only two out of three cases. In two cases there was no photocopy of an original ID or evidence that an ID check had even been done. Clearly this documentation is important as the department requires these types of documents to establish eligibility in descent cases so that the grant of eligibility can be determined from the information held by DIMIA. At a time when we are trying to heighten our security measures these lax checks and ID loopholes are of concern and the minister is, in this instance, not doing enough to ensure that the department has proper processes in place.

Unfortunately for Mr McGauran, Mr Hardgrave has also left unfinished work in relation to the proposed changes to the Australian Citizenship Act, which were flagged in July this year. It appears the previous minister was too busy organising citizenship ceremonies at Bunnings Warehouse to progress important reforms in the Australian citizenship area. Rather than release the reforms so that we can get on with the task of dealing with the real issues of concern, the minister was busy trivialising the nature and meaning of Australian citizenship. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Consideration

The following orders of the day relating to government documents were considered:
Sydney Airport Demand Management Act 1997—Quarterly report on the maximum movement limit for Sydney Airport for the period 1 April to 30 June 2004. Motion of Senator Buckland to take note of document agreed to.

Reserve Bank of Australia—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Australian Radiation Protection and Nuclear Safety Agency—Quarterly report for the period 1 January to 31 March 2004. Motion of Senator Buckland to take note of document agreed to.


Repatriation Medical Authority—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Final Budget Outcome 2003-04—Report by the Treasurer (Mr Costello) and the Minister for Finance and Administration (Senator Minchin), September 2004. Motion of Senator Buckland to take note of document agreed to.

Australian War Memorial—Report for 2003-04. Motion of Senator Buckland to take note of document called on. On the motion of Leader of the Australian Democrats (Senator Bartlett) debate was adjourned till Thursday at general business.

Defence Housing Authority—Corporate plan 2004-05 to 2006-07. Motion of Senator Buckland to take note of document agreed to.

Australian Strategic Policy Institute—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Department of Foreign Affairs and Trade—Reports for 2003-04—Volume 1—Department of Foreign Affairs and Trade. Motion of Senator Buckland to take note of document called on. On the motion of Senator George Campbell debate was adjourned till Thursday at general business.


Repatriation Medical Authority—Report for 2003-04—Corrigendum. Motion of Senator Buckland to take note of document called on. On the motion of the Leader of the Australian Democrats (Senator Bartlett) debate was adjourned till Thursday at general business.


Department of Industry, Tourism and Resources—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Australian Wine and Brandy Corporation—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Australian Trade Commission (Austrade)—Report for 2003-04. Motion of Senator Buckland to take note of document called on. On the motion of Senator George Campbell debate was adjourned till Thursday at general business.


Department of the Prime Minister and Cabinet—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Australian Centre for International Agricultural Research—Report for 2003-04. Motion of Senator Buckland to take note of document called on. On the motion of Senator Webber debate was adjourned till Thursday at general business.

Australian Industrial Relations Commission and Australian Industrial Registry—Reports for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Remuneration Tribunal—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Department of Communications, Information Technology and the Arts—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


National Archives of Australia and National Archives of Australia Advisory Council—Reports for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Australian Film, Television and Radio School—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Australian Communications Authority—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Film Australia Limited—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Australian Broadcasting Corporation—Report for 2003-04. Motion of Senator
Buckland to take note of document agreed to.
Australian Postal Corporation (Australia Post)—Equal employment opportunity program—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.
Australia Business Arts Foundation Ltd—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.
Australian Postal Corporation (Australia Post)—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.
Office of Film and Literature Classification—Classification Board and Classification Review Board—Reports for 2003-04. Motion of Senator Buckland to take note of document agreed to.
Great Barrier Reef Marine Park Authority—Report for 2003-04. Motion of Senator Buckland to take note of document called on. On the motion of Senator Webber debate was adjourned till Thursday at general business.
Film Finance Corporation Australia Limited—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.
Family Court of Australia—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.
Australian Transaction Reports and Analysis Centre (AUSTRAC)—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.
Industrial Relations Court of Australia—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.
Australian Film Commission—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.
Department of Family and Community Services—Report for 2003-04—Volumes 1 and 2. Motion of Senator Buckland to take note of document agreed to.
Commonwealth Director of Public Prosecutions—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.
Australian Greenhouse Office—Report for 2003-04. Motion of Senator Buckland to take note of document called on. On the motion of Senator Webber debate was adjourned till Thursday at general business.
PSS Board—Public Sector Superannuation Scheme—Report for 2003-04. Motion of Senator Buckland to take note of document called on. On the motion of Senator
George Campbell debate was adjourned till Thursday at general business.

CSS Board—Commonwealth Superannuation Scheme—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Acts Interpretation Act—Statement pursuant to section 34C(6) relating to the extension of specified period for the presentation of a report—Department of Finance and Administration—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Australian Research Council—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Repatriation Commission, Military Rehabilitation and Compensation Commission, Department of Veterans’ Affairs and National Treatment Monitoring Committee—Reports for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Department of the Environment and Heritage—Report for 2003-04, including the final annual report of the Australian Heritage Commission. Motion of Senator Buckland to take note of document called on. On the motion of Senator Webber debate was adjourned till Thursday at general business.


Australian National Training Authority—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Aboriginal and Torres Strait Islander Services—Report for 2003-04. Motion of Senator Buckland to take note of document called on. On the motion of Senator Webber debate was adjourned till Thursday at general business.


Gurang Land Council (Aboriginal Corporation)—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Aboriginal Legal Rights Movement Inc.—Native Title Unit—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

North Queensland Land Council Native Title Representative Body Aboriginal Corporation—Report for 2003-04. Motion of Senator Buckland to take note of document called on. On the motion of Senator Webber debate was adjourned till Thursday at general business.

South West Aboriginal Land and Sea Council Aboriginal Corporation—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.
National Oceans Office—Report for 2003-04. Motion of Senator Buckland to take note of document called on. On the motion of Senator Webber debate was adjourned till Thursday at general business.

Australian National Training Authority—Report for 2003. Motion of Senator Buckland to take note of document agreed to.

Inspector-General of Intelligence and Security—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Department of the Treasury—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Public Lending Right Committee—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Australian Broadcasting Authority—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Bundanon Trust—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Public Service Commissioner—Report for 2003-04, together with the report of the Merit Protection Commissioner. Motion of Senator Buckland to take note of document agreed to.


Australian Institute of Marine Science—Report for 2003-04. Motion of Senator Buckland to take note of document called on. On the motion of Senator Webber debate was adjourned till Thursday at general business.


Administrative Appeals Tribunal—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Federal Magistrates Court—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Federal Court of Australia—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Food Standards Australia New Zealand—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Comcare Australia—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Sydney Harbour Federation Trust—Report for 2003-04. Motion of Senator Buckland to take note of document called on. On the motion of Senator Webber debate was adjourned till Thursday at general business.


Commissioner of Taxation—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Social Security Appeals Tribunal—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Aboriginal Hostels Limited—Report for the period 29 June 2003 to 26 June 2004. Motion of Senator Buckland to take note of document agreed to.

International Air Services Commission—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Corporate governance—Review of the corporate governance of statutory authorities and office holders—Government response. Motion of Senator Buckland to take note of document agreed to.


Companies Auditors and Liquidators Disciplinary Board—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Australian Institute of Aboriginal and Torres Strait Islander Studies—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Advance to the Finance Minister—Statement and supporting applications for funds for June 2004. Motion of Senator Buckland to take note of document agreed to.

Department of Finance and Administration—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Commissioner for Superannuation (Com-Super)—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Australia-Indonesia Institute—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Reserve Bank of Australia—Equity and diversity—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Australian Institute of Criminology and the Criminology Research Council—Reports for 2003-04. Motion of Senator Buckland to take note of document agreed to.

National Native Title Tribunal—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Crimes Act 1914—Controlled operations—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

National Witness Protection Program—Report for 2003-04 on the operation of the...
Witness Protection Act 1994. Motion of Senator Buckland to take note of document agreed to.

Department of Employment and Workplace Relations—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Coal Mining Industry (Long Service Leave Funding) Corporation—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

APEC—Australia’s individual action plan 2004. Motion of Senator Buckland to take note of document agreed to.

**COMMITTEES**

**Consideration**

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

Employment, Workplace Relations and Education Legislation Committee—Interim report—Inquiry into the proposed amendment in the form of Schedule 1B to the Workplace Relations Amendment (Codifying Contempt Offences) Bill 2004. Motion of Senator Webber to take note of report agreed to.

Employment, Workplace Relations and Education References Committee—Interim report—Inquiry into Indigenous training and employment. Motion of Senator Wong to take note of report agreed to.

Employment, Workplace Relations and Education References Committee—Interim report—Inquiry into lifelong learning. Motion of Senator Wong to take note of report agreed to.

Legal and Constitutional References Committee—Interim report—Inquiry into Australian expatriates. Motion of Senator Wong to take note of report called on. On the motion of Senator Webber debate was adjourned till the next day of sitting.

Community Affairs References Committee—Interim report—Inquiry into aged care. Motion of Senator Wong to take note of report agreed to.

Community Affairs Legislation Committee—Report—Tobacco advertising prohibition. Motion of Senator Wong to take note of report agreed to.


Foreign Affairs, Defence and Trade References Committee—Interim report—Inquiry into the effectiveness of Australia’s military justice system. Motion of Senator Webber to take note of report agreed to.

Finance and Public Administration Legislation Committee—Report—Annual reports (No. 2 of 2004), September 2004—Corrigendum. Motion of Senator Webber to take note of document agreed to.


Rural and Regional Affairs and Transport References Committee—Report—Australian forest plantations: A review of Plantations for Australia: The 2020 Vision—Corrigendum. Motion of Senator Webber to take note of document agreed to.

Finance and Public Administration References Committee—Interim report—Inquiry into government advertising and accountability. Motion of Senator Webber to take note of report agreed to.


Environment, Communications, Information Technology and the Arts Legislation Committee—Interim report—Budgetary and environmental implications of the Government’s energy white paper. Motion of Senator Webber to take note of report agreed to.

Rural and Regional Affairs and Transport Legislation Committee—Report—Provisions of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004. Motion of Senator Webber to take note of report agreed to.

Rural and Regional Affairs and Transport Legislation Committee—Report—Annual reports (No. 2 of 2004), including final report on the administration of the Civil Aviation Safety Authority, September 2004. Motion of Senator Webber to take note of report agreed to.

Legal and Constitutional Legislation Committee—Report—Annual reports (No. 2 of 2004), September 2004. Motion of Senator Webber to take note of report agreed to.

Foreign Affairs, Defence and Trade Legislation Committee—Report—Annual reports (No. 2 of 2004), September 2004. Motion of Senator Webber to take note of report agreed to.

Finance and Public Administration Legislation Committee—Report—Annual reports (No. 2 of 2004), September 2004. Motion of Senator Webber to take note of report agreed to.

Environment, Communications, Information Technology and the Arts Legislation Committee—Report—Annual reports (No. 2 of 2004), September 2004. Motion of Senator Webber to take note of report agreed to.

Employment, Workplace Relations and Education Legislation Committee—Report—Annual reports (No. 2 of 2004), September 2004. Motion of Senator Webber to take note of report agreed to.

Economics Legislation Committee—Report—Annual reports (No. 2 of 2004), September 2004. Motion of Senator Webber to take note of report agreed to.


Administration of Indigenous Affairs—Select Committee—Interim report. Motion of Senator George Campbell to take note of report agreed to.

Legal and Constitutional References Committee—Report—The road to a republic. Motion of Senator Stott Despoja to take note of report called on. On the motion of Senator Webber debate was adjourned till the next day of sitting.

National Capital and External Territories—Joint Standing Committee—Report—Difficult choices: Inquiry into the role of the National Capital Authority in determining the extent of redevelopment of the Pierces Creek Settlement in the ACT. Motion of Senator George Campbell to take note of report agreed to.

National Capital and External Territories—Joint Standing Committee—Report—Indian Ocean territories: Review of the annual reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage. Motion of Senator George Campbell to take note of report agreed to.

DOCUMENTS Consideration

The following orders of the day relating to reports of the Auditor-General were considered:

Auditor-General—Audit report no. 10 of 2004-05—Business support process audit—The Senate order for departmental and agency contracts (calendar year 2003 compliance). Motion of Senator Webber to take note of document agreed to.

Auditor-General—Report for 2003-04. Motion of Senator Webber to take note of document agreed to.

Auditor-General—Audit report no. 11 of 2004-05—Performance audit—Commonwealth entities’ foreign exchange risk management: Department of Finance and Administration. Motion of Senator Webber to take note of document agreed to.


Auditor-General—Audit report no. 13 of 2004-05—Business support process audit—Superannuation payments for independent contractors working for the Australian Government. Motion of Senator Webber to take note of document agreed to.

Auditor-General—Audit report no. 14 of 2004-05—Performance audit—Management and promotion of citizenship services: Department of Immigration and Multicultural and Indigenous Affairs. Motion of Senator Webber to take note of document called on. On the motion of Senator Ludwig debate was adjourned till the next day of sitting.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! There being no further consideration of committee reports, government responses and Auditor-General’s reports, I propose the question:

That the Senate do now adjourn.

International Volunteer Day

Senator BARNETT (Tasmania) (6.21 p.m.)—I rise tonight to pay tribute to a precious and irreplaceable cornerstone underpinning our society, and that is our volunteers. On Sunday, 5 December I commend all Australians to reflect on the value of our volunteers as we pay tribute to them on International Volunteer Day. I firmly believe that the efforts of volunteers in Australia provides the moral spinal cord of our economic and social fabric. It is the volunteer character of this activity that provides us with one of our greatest human and moral
assets as a nation, especially in times of need and crisis. The Macquarie Dictionary defines a volunteer as ‘someone who enters into any service of their own free will, or who offers to perform a service or undertaking’. In 1985, the United Nations General Assembly declared 5 December to be International Volunteer Day. While in 1996 some 69 countries observed International Volunteer Day, by 2003 more than 125 developing and industrialised countries marked the day.

In Australia, International Volunteer Day has been designated as a day for the recognition of volunteer involvement. Australian communities and workplaces will embrace the volunteer spirit by participating in events organised by Australian Volunteers International. These events will include at the St Mary’s Community Health Centre, in my home state of Tasmania, the Nursing in Developing Countries exhibition, which will display memorabilia from volunteer placements in the Solomon Islands and Pakistan.

Why the fuss? Why is volunteering such a big deal and worthy of profound acknowledgement—apart from saying thank you? I am constantly amazed at the statistics on volunteering. Australian Bureau of Statistics data shows there are well over four million volunteers in Australia aged 18 and over, representing more than 30 per cent of the adult population, or almost one in three adult Australians. In my home state, an estimated 38 per cent of the adult population are volunteers, which is an outstanding record.

A paper done for Volunteering Australia by Duncan Ironmonger calculated the value of volunteering work in 1997 to have been a massive $41.7 billion, or almost eight per cent of Australia’s GDP—yes, donated free of charge. Other more conservative estimates are that the value of volunteering is $24 million or $66 million per day. Either way, the value to Australia of volunteering is immense and quite a significant omission on the balance sheet of public administration in Australia.

In December 2002, I prepared a paper on volunteering entitled ‘Volunteering in Australia—how can we help’ which included many recommendations, such as restoration of small equipment grants for volunteering organisations—which I am thrilled to say has happened—as well as small tax breaks for volunteers. The Howard government has demonstrated its commitment to supporting community service throughout our nation through the restoration of those vital small equipment grants, and I am pleased to say the government has also demonstrated its commitment through the provision of $100,000 in my home state to help Volunteering Tasmania develop a resource kit for volunteers.

The government also has pledged to spend $16 million over the next four years to establish a national emergency volunteer support fund, aimed at boosting the recruitment, skills and training base of volunteer organisations at the front line of emergency services management—a fund which the Attorney-General, the Hon. Philip Ruddock, referred to again today. These organisations will be able to apply for grants to fund capital equipment and formal emergency skills training.

I want to thank Maxine Griffiths, the Executive Director of Volunteering Tasmania, for the tireless, wonderful work she, the board and the staff of Volunteering Tasmania do for volunteering in my state. I also want to recognise the work of Sha Cordingley, the Chief Executive Officer of Volunteering Australia, for the work she and her team do.

The $100,000 project in Tasmania is part of the very successful Tasmanian package and grew out of the close working relationship I hold with Volunteering Tasmania. The
Tasmanian Liberal Senate team got right behind it. The resource kit will include practical guidance and support for volunteers and volunteer organisations on issues such as getting started, recruitment of volunteers, orientation, support and management, information and training, codes of practice, insurance tips and tips on grant applications.

On the issue of public liability insurance, I have hosted several public forums in Tasmania over the last few years, which have been supported by Volunteering Tasmania and the Tasmanian Small Business Council. They were most productive and have concluded in the preparation of a 20-odd page survival kit, which has been made available to volunteering organisations and small business.

With International Volunteer Day just days away, I take this opportunity to promote the notion of a volunteering medal. We recognise volunteers in an ad hoc fashion for various awards, but rarely do we recognise them nationally for their volunteering efforts. Volunteering is part of the Australian furniture—we know it is there and that pleases us, but we expect it to always be there. It is often out of mind because it does not need a payment. Taking volunteerism and volunteers for granted is dangerous and wrong.

The Australian honours system consists of several award categories, the most well known of which are the four levels in the Order of Australia. The Order of Australia recognises citizens for their service to Australia or to humanity, irrespective of whether their service is provided in a paid or an unpaid capacity. A specific ‘volunteer medal’ in the Australian honours awards, either as a category within the Order of Australia or as a category on its own, would highlight the role that volunteers play in Australian society. A volunteer medal would provide increased recognition in the community and would be a suitable gesture at a national level to commemorate International Volunteer Day. Of course, the giving of such an award would need the careful consideration of issues such as what defines volunteering, how candidates are rated, whether the medal should be cast within the Australian honours system and so on.

Volunteerism was recognised in the biblical story of the good Samaritan, often taught in Sunday school or primary school, and in the Bible message ‘love thy neighbour as thyself’—helping a mate when they are down, irrespective of whether the volunteer knows them personally or not. Churches, charities and a multitude of service and community groups all contribute. More often than not this contribution is unseen.

The contribution is made by the quiet but persistent achiever. These people give of themselves, expecting little or nothing in return but the pleasure of knowing they have contributed to a better community and a better Australia. In every phone book in Australia, there are hundreds of listings of incorporated and unincorporated organisations whose objectives are to give without seeking a reward. Their objectives are purely non-financial—to offer generosity and to lend a hand. Service organisations and their many members expend time and resources to assist these organisations and meritorious causes.

Both fire and ambulance services throughout Australia, particularly in rural and regional centres, rely on volunteers. In Tasmania there are an estimated 5,000 volunteer firefighters, while nationally there are 350,000 volunteers involved in emergency organisations such as rural fire services and state emergency services. The training undertaken by these volunteers is often regular and nearly always selfless, requiring not only the cost of time but financial sacrifices in travel and transport costs, such as petrol, phone and postage. The cost of the psychological ef-
fects of on-the-job volunteerism is incalculable, but most volunteers of course would say it is positive.

Yet the need is great, and growing. We can do more. We all have a responsibility to review the financial, time and other contributions we make to the lives of others. It is time for each of us to pause and ask, ‘What gift can I make—a sacrificial gift, a love gift, a tithe from my income?’ Volunteers want to serve. They want to help, and many want the personal satisfaction of giving back a small amount of what benefits they derive from Australia’s economy and this great nation. A vast majority would not dream of seeking publicity, some form of compensation, reimbursement or thankyou for what they do, because they want to remain anonymous and simply experience the joy of giving. They know that the saying ‘it is better to give than to receive’ is true. However, this is no reason for the rest of the community to blithely accept such charity and not offer some form of tangible recognition through their elected representatives.

My speech is not about undermining or ruining the concept of volunteering by suggesting that we pay people to volunteer, because that would be absolutely counterproductive, a contradiction in terms and I believe a majority of Australians would reject such a move as unnecessary and unwelcome. My proposal is, however, about Australians acknowledging the contribution made and saying thank you, not only for the human value placed on volunteering but also for the staggering financial value they contribute to this country. It is about the Australian community collectively doing their bit for volunteering in a systematic and reasonable way.

**International Day of Disabled Persons**

**Senator Barnett** (Tasmania) (6.32 p.m.)—I seek leave to incorporate an adjournment speech by Senator Chris Ellison on the International Day of Disabled Persons.

Leave granted.

**Senator Ellison** (Western Australia—Minister for Justice and Customs) (6.32 p.m.)—The incorporated speech read as follows—

My colleagues in this Chamber would be aware that since 1999 I have been involved in the Politician Adoption Scheme. The Scheme is run by the Developmental Disability Council and I was adopted by Stephen Franklin and his family. The condition suffered by Stephen manifests itself in severe physical disabilities and mental handicaps. Yet Stephen’s family, particularly his mother, Carol, have shown incredible strength of will to provide Stephen with the best possible care and they have fought tirelessly for his rights and the rights of others with disabilities. Today we celebrate the achievement of people with disabilities, like Stephen, and their families in the International Day of People with a Disability.

Stephen’s transition into his group home has been a resounding success. So much so, that the home is being extended to accommodate others. Stephen has flourished in his home and I’m sure he will be very happy there for many years to come.

The Scheme’s co-ordinators, the Developmental Disability Council, are looking to extend the Politician Adoption Scheme beyond Western Australia and I would urge those present to participate if possible. I have found the Scheme to be incredibly informative and rewarding through my acceptance into the Franklin family. I would highly recommend it.

It is important that today we recognise the contributions made by people with disabilities and also the vital support provided by their families.

**Women’s International League for Peace and Freedom**

**Senator Moore** (Queensland) (6.32 p.m.)—Yesterday in a room in this building the wonderful women from the Women’s International League for Peace and Freedom, WILPF, launched a web site. Their web site
was designed to draw awareness to, and understanding of, United Nations Security Council resolution 1325. This resolution was passed unanimously by the UN on 31 October 2000, not that long ago. This resolution is the only document that specifically highlights the impact of war and conflict on women and girls and the importance of the involvement of women in the peace-building processes.

It took a long time to have the people of the world pull together through the United Nations process not only to develop this resolution but also to ensure that members of the United Nations voted for it and secured its passing. It was a wonderful moment that we should remember with pride because Australia was there. It did not happen overnight; it happened over a long period. Certainly, experiences of the Beijing conference in 1995 were important in the development of the international understanding of the way that women communicate and the way they can bond together to put an incredibly important resolution through the United Nations processes.

This resolution is a commitment made by the United Nations and is a platform from which individuals, non-government organisations, governments and international institutions can advocate for the inclusion of women in all aspects of conflict, peace and security. In 2005 we are leading to the Beijing Plus 10 process and we will be looking at how we as a world have changed and how women and their values have been celebrated across the world in that time. As we have moved through this decade the key issues of war, conflict and peace have been very confronting and we need to understand them. We, as women and as people who support women, expect that the role of women in all aspects will be identified and used effectively. Certainly that must be important for Australia.

The Australian government has had a strong role to play. On each anniversary of resolution 1325 our United Nations representative has made a strong statement about how Australia has played its part in the process. On the recent anniversary, on 28 October 2004, a statement by our representative, Mr John Dauth, clearly recognised the role that Australia had played. He said, quite accurately:

We are proud to reaffirm our commitment to resolution 1325 ... which remains a landmark document both for the Council in its recognition of the true dimensions of peace-building and for its international recognition of the particular burden women and girls bear as a result of conflict.

I will not burden this group by going through horrific statistics on the impact of war and conflict on civilians. We have the evidence before us now of what is happening in Iraq. Iraq has the media cameras there so we are able to see, when allowed, the impact of bombing and conflict and the way that that always impacts on civilian populations, families, women, girls and children. But this conflict happens not just where the TV cameras and journalists can get. Part of the implementation of resolution 1325 means that we, as part of the international community, must know what is happening across the world and be aware when these conflicts are occurring.

Whilst we will always have to make judgments about being involved in wars, basically we need to know that war has a horrific effect on communities. Certainly from my point of view war does not have any victors. We spoke about that in this place when we debated the national decision on our involvement in Iraq. There were numerous arguments put forward from all sides of the chamber about the need for war and the impact of war, but we agreed that, no matter what happened, women and children were going to be victims of this conflict. They
were not combatants; they were victims caught up in something they could not escape.

Hopefully, the anniversary of Beijing in 2005 will not be just a time to get together and say, ‘Splendid. This is what we have done,’ and file it away and look for the next conflict or crisis. We need to have the ongoing involvement of communities across the world acknowledging that we are able to do things better and accepting the universal truth that our goal is peace. That is what the wonderful women of WILPF have been working towards since the early days of World War I. These women from across the world gathered in Europe—I am still amazed at how they could travel in those days—and committed themselves to working across international boundaries to ensure peace. You could say that since World War I there have been lots of wars so maybe they have not been all that successful in achieving peace across the world, but what they have done is remarkable.

The members of WILF—and they are the women of WILF and the people who support them—are committed to ensuring that effective dialogue is created and maintained on what the causes of war are. There are all too many similarities over the years, but we are trying to find ways of making sure that we can effectively work for peace. We—and I am a long-term member of WILF—are committed to achieving total and universal disarmament with the goal of non-violent conflict. Naturally, we support the United Nations and the specialised agencies within the United Nations which focus on particular issues. We know the good work that has been done by the groups that look after children and hunger. Amazing work has been done in trying to get rid of the landmines that are still scattered across areas of conflict.

The impact of war on civilians is seen in no greater way than in the ongoing loss of life and horrific injuries that are caused by landmines after actual war zones are allegedly made peaceful. There is something particularly scary about that concept: the majority of landmine injuries and deaths occur in areas which are supposed to be in a state of peace. Once the fights are allegedly over, the bombing has stopped, the armaments have been cleared and the armies have moved away, what is often forgotten is that some of those weapons of war continue to have a life well beyond the war.

Only last sitting week, we received an international report on the impact of landmines across the world. It is sickening reading to see what is continuing to occur, but through our process, through understanding United Nations Security Council resolution 1325 and through working with organisations like WILF, we as individuals can make a difference. Already across the Australian community we are seeing people dedicating their time to raise money, to give resources, so that they can help in some way to ensure that some of these horrid weapons are cleared and that we will not have ongoing cases of small children and people trying to rebuild their lives being maimed and murdered by yesterday’s war implements. That has got to be wrong.

The WILF web site—and we are excited in WILF that we have actually got a web site; it is our attempt to move forward with the communication process—is looking at resolution 1325 and calling on people to understand what is there and to see what that resolution is about. It is about the participation of women in the peace process; gender training in all peacekeeping operations—and that is important for our own forces who are working; the protection of women and girls and the respect for their rights; and gender mainstreaming in the reporting and imple-
mentation systems of the UN relating to conflict, peace and security. Surely, that is something in which we can all be involved and something that our community can hope for in the future.

Eureka Stockade: 150th Anniversary

Windimurra Mine

Senator TCHEN (Victoria) (6.41 p.m.)—Tonight I wish to speak briefly on two matters of interest recently raised by other senators in this chamber. The first matter is the 150th anniversary of the Eureka Stockade. This has been the subject of a number of speeches both in this chamber and in the House of Representatives. It was first mentioned by Mr Mark Latham, the Leader of the Opposition, on 29 November, as well as the anniversary of the gathering at Bakery Hill. Since then the Eureka Stockade has been the subject of speeches by Ms Catherine King, the member for Ballarat, and by Senator Mason and Senator Gavin Marshall in this chamber.

Tomorrow, 3 December, will be the anniversary of the storming of the Eureka Stockade and the ending of that rebellion on the field variously described as the birthplace of Australian democracy, the first statement of Australian republicanism and even the beginnings of Australian multiculturalism. Perhaps in some way to distract us there are those to whom it was simply a hiccup on the way to Australia developing in an orderly way as a nation and a short-lived outburst by a small number of troublemakers which was decisively put down and pacified by the fast-responding authorities.

I do not want to add tonight to the retelling of the story of Eureka, which other speakers have done very well, but I want to make a few points. All the speakers seemed to take contradictory positions. Perhaps I should exempt Ms Catherine King from this because her speech was very balanced and inclusive, and I commend her for it. However, I note, for example, that in Mr Latham’s reply to the Governor-General’s speech, which is a very important occasion, he said that the Eureka Stockade:

... says so much about the Australian character and identity: our love of the underdog and support for those who have a go; our willingness to stand up for our rights, to not buckle in the face of authority; our tradition of defiance, dissent and the larrikin spirit that makes us truly Australian.

I have no argument with that either, because I think there is quite a strong element of truth in it. However, on occasions like this there is always the danger of people with ulterior motives hijacking a national event. I think Senator Mason regards the stockade simply as a great historical and cultural fraud perpetrated against the Australian people by the Labor Party and their stealing the occasion. I think it is a bit more than that. I think we are in danger of seeing not just the Labor Party stealing it but the event being stolen from the Labor Party.

I want to raise this point because today’s newspapers report that the Eureka Stockade commemoration organisation has invited Mr Terry Hicks—the father of Mr David Hicks, who is at Guantanamo Bay at the moment—to lead the walk for one of the major events of the Eureka Stockade celebrations and give an address at the dawn service. I do not have any problem with Mr Terry Hicks; he has done a very conscientious and admirable job defending his son. I do not have any problem with the walk organisers inviting Mr Hicks to perform this role in the Eureka commemorations, because in 1999, shortly after I became a senator, the organising committee invited me to speak in that role. I attended and gave one of the shortest dawn speeches that there has been. This was for the simple reason that when I did some research on the Eureka Stockade I found that although there was a multicultural presence on the gold-
fields in Ballarat—there were quite a number of different nationalities within the stockade itself during the early stages and quite a large number of Chinese diggers on the goldfields—there was not one Chinese miner in the stockade, so I had nothing to say about the stockade.

That the Ballarat committee in their wisdom chose to invite me on that occasion demonstrated that the committee is perhaps not very discriminatory in whom they appoint. However, on this particular occasion the founder of this dawn walk, Mr Graeme Dunston, is quoted to have said that the organising committee chose Mr Hicks because his fight for his son was similar to the miners’ battle for their rights. I think that is perhaps pushing the similarity a bit too far. Mr Hicks’s fight for his son shows good parental love, but it is not a fight for freedom as such. The reason for Mr David Hicks being incarcerated in Guantanamo Bay is quite different to what the Eureka Stockade was about.

Senator Marshall—Being imprisoned without charges?

Senator TCHEN—I see Senator Marshall is now in the chamber. He responded to Senator Mason’s earlier speech on Tuesday and talked about how the Eureka Stockade was a defining moment in Australia’s development as a nation. I do not mind you hijacking this as your icon because, whatever you do, you cannot deny the rest of the nation of it, but you are in danger of having your icon hijacked by other people with other agendas. I think that is something that the Labor Party need to pay particular attention to.

I want to turn to the second issue I wish to raise tonight. It was this morning, during a debate on a bill on workplace relations, I think, when Senator Ross Lightfoot spoke in this chamber about what has happened in Western Australia with the takeover of a small mining company called Windimirra. Windimirra, a vanadium mine, was taken over by the Swiss company Xstrata—now bidding for Western Mining Resources—and they then closed down the mine, removed all the mining equipment from it and supplied their customers from their mines in other countries. Consequently, all the jobs have been lost in this small town of Windimirra in Western Australia. When Xstrata took over Windimirra they agreed that the company would receive royalties for ongoing exports. But, once they closed down the mine, the company had no income and, having removed all the equipment, it meant the mine could not be restarted. This is a disgraceful affair. What is surprising is that this matter was raised in the chamber by Senator Lightfoot rather than by the Labor Party. (Time expired)

AUSTRAC

Senator LUDWIG (Queensland) (6.51 p.m.)—I rise in this adjournment debate tonight to talk about the AUSTRAC annual report. As I said earlier this evening, Customs officers and the Federal Police have been doing an excellent job of late in relation to the identification and seizure of drugs. Of course, this is just one facet of drug law enforcement. Of equal importance is tracing drug money that has been laundered and tracing funds to and from criminal and terrorist organisations.

As a result of the announcement of the new international anti-money laundering and counter-terrorist financing standards in June 2003, the Australian government authorised the review of Australia’s anti-money laundering regime to update Australia’s legislative requirements to meet the new standards. This review is being conducted by the Attorney-General’s Department. The number of suspect transaction reports received this year has increased by up to 42 per cent. It would
seem therefore imperative that the Attorney-General’s review be finalised and delivered. However, that is not the case. We wonder whether Senator Ellison is even talking to the Attorney-General about the need for this review. It is needed, it should be dealt with and it should be completed now. Until the review is completed, AUSTRAC is unable to get on with its real role. The scope of AUSTRAC’s future work is dependent on the outcome of this review. How can it plan, how can it determine its strategies for the coming years and how can it get ready for new international standards that might arise unless the Attorney-General completes his review and maps out what AUSTRAC’s requirements are?

The simple facts are that, if access to finance is cut off, terrorists cannot purchase weapons or bankroll their operations. If access to finance is cut off, criminals are denied access to their ill-gotten gains. This really brings truth to the saying that crime does not pay. There is no doubt, however, that the longer we wait for this review the harder it will be for AUSTRAC to fulfil its duties properly. It is high time the Howard government pulled its act together, got behind its agency and expedited the review so that AUSTRAC can act on the recommendations and get on with its job.

Senate adjourned at 6.54 p.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

- Australian Communications Authority Act—Radiocommunications (Charges) Amendment Determination 2004 (No. 2).
- Australian Communications Authority Act and Radiocommunications Act—Radiocommunications (Interpretation) Amendment Determination 2004 (No. 3).
- Environment Protection and Biodiversity Conservation Act—
- Notices of proposed accreditation of the—
  Southern Bluefin Tuna Fishery Management Plan (as amended), dated 10 November 2004.
  Torres Strait Tropical Rock Lobster management arrangements, dated 11 November 2004.
- Fisheries Management Act—Southern Bluefin Tuna Fishery Management Plan Amendment 2004 (No. SBT 05).
- Great Barrier Reef Marine Park Act—
  Regulations—Statutory Rules 2004 No. 333.
- Medical Indemnity Act—Regulations—
- Military Superannuation and Benefits Act—
  Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 3).
- Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 4).
Telecommunications Act—
  Telecommunications Numbering Plan Variation 2004 (No. 8).
  Telecommunications Numbering Plan Variation 2004 (No. 9).
Trade Practices Act—Regulations—
Statutory Rules 2004 No. 332.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Superannuation: Small Business**

(Question No. 76)

**Senator Brown** asked the Minister representing the Treasurer, upon notice, on 18 November 2004:

With reference to the Australian Taxation Office (ATO) and the non-payment of superannuation contributions by small businesses: Given that it is reasonable for an employee to fear that an employer may not look kindly on the act of informing to the ATO, why are employees who ‘blow the whistle’ given no form of reassurance, written or oral, that their names will not be revealed to the employers in relation to whom they are reporting.

**Senator Coonan**—As the question deals with matters administered by the Australian Taxation Office, I have asked the Commissioner of Taxation for advice. The advice to the honourable senator’s question is as follows:

The Commissioner of Taxation advises me that the scripting used by the ATO Contact Centre operators asks the employee if they give permission for the ATO to use their name. If the employee advises that they do not wish for their name to be disclosed, then the ATO does not reveal the identity of the complainant when dealing with the employer. In these instances, the ATO assures the employee that this will not occur.

**Superannuation: Small Business**

(Question No. 77)

**Senator Brown** asked the Minister representing the Treasurer, upon notice, on 18 November 2004:

With reference to the Australian Taxation Office and the non-payment of superannuation contributions by small businesses: In cases when an employer is found guilty of non-payment of superannuation for one tax year, why is that employer not investigated for non-payment in other years.

**Senator Coonan**—As the question deals with matters administered by the Australian Taxation Office, I have asked the Commissioner of Taxation for advice. The advice to the honourable senator’s question is as follows:

The Commissioner of Taxation advises me that it is the practice of the ATO to not only investigate the period referred to by the employee, but also to audit the records of prior or subsequent periods. Where a complaint is made in respect of just one quarter under the quarterly Superannuation Guarantee regime, the ATO will investigate several quarters as well as financial years prior to 1 July 2003.

**Superannuation: Small Business**

(Question No. 78)

**Senator Brown** asked the Minister representing the Treasurer, upon notice, on 18 November 2004:

With reference to the Australian Taxation Office (ATO) and the non-payment of superannuation contributions by small businesses:

1. Why are complainants not routinely issued with receipts or reference numbers to help them keep track of the details of their complaints.
(2) Would such records assist with any disputes with the ATO in relation to complaints that have not been followed up properly.

**Senator Coonan**—As the question deals with matters administered by the Australian Taxation Office, I have asked the Commissioner of Taxation for advice. The advice to the honourable senator’s question is as follows:

(1) Upon receipt of complaints, the ATO issues a unique reference number to the employee that will assist them with any follow up correspondence or calls to the ATO regarding their complaint.

(2) The complainant is able to use this unique reference number at any stage of the investigation to enquire about the progress of the audit. It should be noted that privacy provisions preclude the ATO from divulging specific details of any action being taken against the employer to an employee.

**Superannuation: Small Business**  
*(Question No. 79)*

**Senator Brown** asked the Minister representing the Treasurer, upon notice, on 18 November 2004:

With reference to the Australian Taxation Office (ATO) and the non-payment of superannuation contributions by small businesses: Why are employees not offered information or feedback on the progress of investigations they have initiated and likely outcomes that could help them with decisions regarding whether to continue their employment.

**Senator Coonan**—As the question deals with matters administered by the Australian Taxation Office, I have asked the Commissioner of Taxation for advice. The advice in relation to the honourable senator’s question is as follows:

Cases where employees are concerned that their superannuation entitlements have not been met are investigated by the Australian Taxation Office (ATO) as an integral part of the ATO’s compliance strategy.

The process of establishing whether an employer has met their obligations under the superannuation guarantee legislation can be lengthy. This is because it may involve any of the following actions:

- obtaining information by writing to the employer;
- undertaking a field audit of the employer;
- prosecuting the employer if the necessary information is not supplied;
- raising a default assessment if a statement has not been lodged and we have to gather sufficient information to raise an assessment; and/or
- undertaking legal recovery action if sufficient payments have not been made.

Moreover, as each case is different, the actions taken by the ATO may vary from case to case. As a consequence, it is not possible to advise on likely outcomes for employees where the ATO is investigating an employer for possible breaches of their superannuation guarantee obligations.

In addition, the secrecy provisions contained in section 45 of the Superannuation Guarantee (Administration) Act 1992 (SGAA) impose an obligation of secrecy on persons who acquire information on the affairs of another person. As the superannuation guarantee charge imposed on an employer is a tax, and in accordance with other tax obligations, the ATO is unable to discuss an employer’s possible SGC tax obligation with a third party (that is, an employee).

While the ATO is bound by certain secrecy provisions, the nature of the superannuation guarantee charge requires the ATO to consider the competing interests of the two parties – the employee’s interest in the outcome and the employer’s right to have the ATO act confidentially in regard to their taxation and financial affairs.
To this end the ATO provides the employee with information in the following circumstances:
where sufficient superannuation contributions had been made by the employer and the details of the superannuation fund to which the contributions had been made is known, then these details could be passed on to the employee;
where the employer has both lodged a superannuation guarantee statement and made a payment of the superannuation guarantee charge, the employee can be advised of the amount of this payment and if the Commissioner is satisfied that the account belongs to the employee, he will deposit the entitlement directly into their superannuation account;
where the employer is insolvent/bankrupt and the ATO has received advice from an Official Receiver in Bankruptcy or the liquidator as to the extent of the likely distribution, then this information is passed on to the employee.

Superannuation: Small Business
(Question No. 81)

Senator Brown asked the Minister representing the Treasurer, upon notice, on 18 November 2004:
With reference to the Australian Taxation Office (ATO) and the non-payment of superannuation contributions by small businesses:
(1) In cases where the ATO requires a particular number of complaints before starting an investigation, who decides how many complaints are required.
(2) What happens in cases when the employer employs only a small number of people, too few to make up the required number of complaints.
(3) How many people must complain to initiate an inquiry.

Senator Coonan—As the question deals with matters administered by the Australian Taxation Office, I have asked the Commissioner of Taxation for advice. The advice to the honourable senator’s question is as follows:

(1) There is no particular number of complaints required to initiate an investigation against an employer. The ATO treats each individual complaint seriously and therefore seeks to actively resolve each individual instance of a complaint being lodged. Therefore, an employer will be audited resulting from an employee complaint, irrespective of the number of employees that initiate the complaints.
(2) and (3) Refer to answer (1)

Superannuation: Small Business
(Question No. 82)

Senator Brown asked the Minister representing the Treasurer, upon notice, on 18 November 2004:
With reference to the Australian Taxation Office (ATO) and the non-payment of superannuation contributions by small businesses:

(1) Why are the proceeds of fines that the ATO collects from companies that are in breach of the requirement to pay staff superannuation not distributed to the employees who are often left out of pocket.
(2) While the ATO states that it requires the company to pay the employees’ contributions as well, if these companies go bankrupt before the contributions are paid is it the case that the ATO is paid but the employees are not.
**Senator Coonan**—As the question deals with matters administered by the Australian Taxation Office, I have asked the Commissioner of Taxation for advice. The advice in relation to the honourable senator’s questions is as follows:

(1) The Superannuation Guarantee Charge (SGC) is a tax and employers can reduce their liability to the SGC by making sufficient superannuation contributions to a complying superannuation fund or retirement savings account for each of their eligible employees.

Where an employer does not make sufficient superannuation contributions they are subject to the SGC payable to the ATO. The SGC comprises the employer’s individual superannuation guarantee shortfall for the quarter, the employer’s nominal interest component for the quarter and the employer’s administration component for the quarter. Once the SGC payment is received from the employer the ATO pays the individual superannuation guarantee shortfall and the nominal interest component of the SGC to the employee’s complying superannuation fund or retirement savings account or directly to the employee.

Further, as the SGC is a tax related liability for the purposes of the Taxation Administration Act 1953 where an employer has not paid their SGC debt they will be subject to a general interest charge (GIC) and potentially an additional penalty depending on the taxpayer’s behaviour. For SGC purposes the GIC is paid to the employee for the loss of earnings on the amount of the superannuation guarantee shortfall (which forms part of the SGC) not paid by the employer within a certain time. The additional penalty is retained by the ATO as it is a penalty on the employer for not meeting their tax obligations.

(2) Previously, the SGC had no priority where an employer became bankrupt. As such, the SGC debt was placed as an unsecured creditor reducing the ability for the ATO to recover the amount of the SGC. It should be noted that the Commissioner has always had a priority for the SGC amount where a company goes into liquidation and is ranked as a secured creditor in line with salary or wages for the employee.

In 2002/03 amendments were made to the Superannuation Guarantee (Administration) Act 1992 and the Bankruptcy Act 1966 to enable a priority of the recovery of SGC debt in cases of bankruptcy. These changes now mean that the ATO is in a better position to recover any SGC owed by employers who become bankrupt.

Where the SGC is recovered by the ATO, the superannuation guarantee law and the ATO’s receivables management policy ensures that the employee’s superannuation guarantee entitlements are paid before other employer related tax debts.

**Superannuation: Small Business**

(Question No. 83)

**Senator Brown** asked the Minister representing the Treasurer, upon notice, on 18 November 2004:

With reference to the Australian Taxation Office and the non-payment of superannuation contributions by small businesses:

(1) Why are employees not provided with basic advice about what to do if their employer is not making superannuation contributions, for example ‘keeping payslips because it is an offence under corporations law to falsify records’.

(2) Are employees told what they should do if they have evidence that their employer is falsifying records.
Senator Coonan—As the question deals with matters administered by the Australian Taxation Office, I have asked the Commissioner of Taxation for advice. The advice to the honourable senator’s question is as follows:

(1) The scripting used by the ATO contact centre operators informs employees to approach their employer and superannuation provider to confirm whether payment has been made. If having done these checks, the employee is still of the view that their employer is not contributing sufficient Superannuation Guarantee contributions, then the complainant is encouraged to contact the ATO to lodge a complaint.

(2) Where an employee believes that the employer may have falsified records pertaining to taxation or superannuation obligations, the Commissioner may undertake further reviews or audit activity to establish the employer’s compliance. Where the employer is a company, this may fall for consideration under the Corporations Law, administered by ASIC.

Environment: Endangered Species
(Question No. 86)

Senator Brown asked the Minister for the Environment and Heritage, upon notice, on 17 November 2004:

With reference to the proposed importation of nine Asian elephants from Thailand by a consortium of Australasian zoos:

(1) Is there a proposal by a consortium of Australasian zoos, including Taronga Zoo and Melbourne Zoo, to import nine Asian elephants from Thailand?

(2) Is this proposal part of a broader plan to establish a herd of up to 64 Asian elephants in Australia?

(3) Is it correct that: (a) under the Convention on International Trade in Endangered Species, Asian elephants may only be imported into Australia for conservation breeding purposes, and not for commercial purposes; (b) Asian elephants have never been bred in Australian zoos; and (c) international attempts to breed elephants in captivity have been largely unsuccessful, with few, if any, conservation benefits.

(4) Is it correct that elephants in zoos routinely suffer from serious health and behavioural problems.

(5) Will the Minister approve the current application to import the nine elephants.

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

(1) Yes.

(2) The planned maximum population of 64 would be held across both Australia and New Zealand.

(3) (a) No. (b) Yes. (c) There have been limited breeding successes for Asian elephants internationally, although co-ordinated regional attempts at breeding for the purposes of conservation have only recently commenced and the future results of these attempts are unknown.

(4) A number of serious health and behavioural problems have been recorded in the past for elephants in zoos around the world, including:
- foot and skin disorders;
- shortened life expectancy compared with wild elephants;
- low rates of breeding success, including high rates of infant mortality;
- aggression towards humans and other elephants; and
- behavioural problems such as swaying or trunk-swinging, which demonstrate a lack of social and environmental stimulation.
The assessment of the proposed imports will include consideration of what measures have been put in place to mitigate against these problems and how likely it is that they will occur in the future.

(5) My Department is currently undertaking a careful and comprehensive assessment of the applications to import elephants to determine whether or not all requirements under the Convention on International Trade in Endangered Species and the Environment Protection and Biodiversity Conservation Act 1999 can be met by the proposal.