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Tuesday, 7 December 2004

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

INDIGENOUS EDUCATION (TARGETED ASSISTANCE) AMENDMENT BILL 2004

Second Reading

Debate resumed from 6 December, on motion by Senator Colbeck:

That this bill be now read a second time.

Senator ALLISON (Victoria) (12.31 p.m.)—The Australian Democrats know that the Indigenous Education (Targeted Assistance) Amendment Bill 2004 is required for the funding of Indigenous schools and communities by January next year, so we do not want to stand in the way of funds reaching those schools and other institutions. That money is desperately needed by Indigenous students. However, we do want to put on the record our strong opposition to the way in which this government has gutted the Indigenous Education Direct Assistance Program. I also want to emphasise how severely lacking this supplementary funding is. The bill provides funding for the next four years for education and training of Indigenous students through two programs: the Indigenous Education Strategic Initiatives Program and the Indigenous Education Direct Assistance Program. It continues the away from home base element of Abstudy at 2004 levels and it introduces accountability arrangements involving extensive and detailed reporting on Indigenous education programs.

Our main concern with these changes is the very clear and real lack of improvement in funding for Indigenous education. This bill contains a mere five per cent increase in real terms on funding between 2002 and 2003. There are also concerns about the re-

distribution of funds to remote communities. Secondly, the extensive reporting requirements, which we effectively dealt with yesterday in the Vocational Education and Training Funding Amendment Bill, make it clear that the government is approaching Indigenous education funding with the same mainstreaming approach. The problem with Indigenous communities, particularly those in the more remote areas of Australia, is that they will not have the resources to fulfil the requirements of reporting. Thirdly, we think the election commitment to fund boarding places for students from remote communities and the additional city based apprenticeships and other tertiary training places represents yet another example of the government’s policy-on-the-run approach to Indigenous affairs. These programs do not address a whole range of very complex issues regarding remote Indigenous communities and we are yet to see the details of either program.

I think we need to remember that the education we are talking about here is for Indigenous Australians, who have the lowest literacy and numeracy rates in the country by a long way, and I might say lower than so many other countries as well. The Indigenous population is growing at close to twice the rate of non-Indigenous Australians. Contributions to Indigenous education should be increasing, in our view. We have the chance to exponentially improve the education statistics and, more importantly, the life opportunities of Indigenous Australians through education, given the burgeoning young population. I think we are yet to embrace this opportunity in a productive way.

Unfortunately, this legislation does not move in that direction at all. Although the hard work and commitment of many Indigenous and non-Indigenous educators must be acknowledged, the statistics remain shocking. Only half of young Indigenous people aged between 15 and 19 attend secondary
school. Only 10 per cent complete their year 12 qualifications—less than a third of non-Indigenous completion rates. Although the number of Indigenous people at universities has increased, the percentage of Indigenous university students has actually decreased over the Howard government’s years. Considering that the percentage of Indigenous young people is increasing at a faster rate than that of non-Indigenous people, we would expect the university trend to be going in the opposite direction. Universities are making up for the drastic inequalities in education standards of Indigenous people through special entry programs—70 per cent of Indigenous university students gained entry through special entry programs, compared with just 20 per cent of non-Indigenous students. We should clearly be addressing the inequalities at preschool, primary school and secondary school so that these programs become less necessary. I would also make the point that the specific funding provided through this legislation, although supplementary, is often the most relevant and targeted funding for Indigenous students. Until mainstream educational institutions and curricula reflect and include the experiences of Indigenous Australia, mainstream funding will not deliver equal benefits to Indigenous students.

It is the most disadvantaged Australians that the government is again short-changing with these amendments to the Indigenous Education (Targeted Assistance) Act. This government has a history of saving money on Indigenous education. In January 2000, changes to Indigenous education funding for Abstudy were estimated to produce savings to the government of approximately $75.2 million for the year 2000 alone. In the last funding quadrennium, from 2001 to 2004, these changes have clearly saved the government a substantial sum. The Indigenous Education Direct Assistance Program review of this year revealed that funding for the program in its previous form had not received any major increases in funding since its establishment in 1991-92. According to the Australian Education Union, even the indexation of the Indigenous Education Strategic Initiatives Program, or IESIP, is applied at a much lower rate than all other schools funding.

Given this history, I think we need to be clear about the money the government claims to be spending generously on Indigenous education. This eight per cent increase over the next four years is the only significant increase in the program’s 16 years. Given the distinct lack of growth in previous years, this is hardly substantial. The increase in supplementary recurrent assistance, or SRA, is due to increased enrolments, as the funding is on a per capita basis. Indigenous enrolments in the schooling sector alone increased by 5.4 per cent from 2001 to 2002. This so-called new money—$86.3 million—does not constitute extra expenditure on a per capita basis. SRA funding for education providers who are being reclassified from remote to non-remote areas and funding for students in cities will be frozen at 2004 levels. This is despite the fact that enrolments are increasing in regional and urban areas too. That means there will be a real loss to non-remote Indigenous students.

Given the government’s response to the idea of cutting funding to elite private schools, one might expect them to apply their ‘no losers’ policy to Indigenous students as well but, sadly, this is not the case. Since we are constantly being reminded of the fact that we are living in a time of record national prosperity, these cost-cutting exercises in one of Australia’s areas of greatest need are truly offensive. Essentially, the government are trying to spread existing funding further. What this means is that, where some improvements have been made so that those
particular Indigenous students do not appear to be the most disadvantaged Indigenous students, the government are directing the funding to Indigenous students that are even more disadvantaged—a new measurement of disadvantage that does not consider the rest of the population.

The risk of this approach is that any progress already made will be ruined, but the government seems prepared to take that risk. Instead of investing more money overall, the funding will just be rejigged and stretched further. I think it is necessary to outline a few of the ways in which the government’s changes risk sacrificing gains to stretch further and further. Firstly, the government is purporting to address disadvantage in remote communities by redirecting supplementary recurrent assistance funds from regional and urban Indigenous students to newly classified remote students. There is no doubt that remote communities require increased funding. However, the assumption on which this redistribution is based is that urban Indigenous people benefit significantly from mainstream education—a premise which is not supported by the statistics or the anecdotal evidence. There will be losers in this plan. Indigenous students in urban areas will receive less per student than in previous years.

Secondly, the Aboriginal Students Support and Parent Awareness—ASSPA—scheme will no longer be funded on a per capita basis but on the basis of applications. The per capita formula left decision making in the hands of parents and resulted in some very positive parent-school partnerships. The government’s media releases state that the DEST review of the Indigenous Education Direct Assistance Program found that formula based funding was ‘no longer an appropriate approach’. I will not be the first person to point out that a reading of this document reveals no such finding. However, it does include a statement that the ‘ASSPA program in itself is no longer an appropriate intervention’ to achieve the involvement of Indigenous parents in educational decision making. This is a dubious statement for the government to use, given that it comes with no supporting evidence.

Since the numbers of Indigenous students are growing, per capita formula based funding would also mean an increase in the total funding. So, instead, the government will now distribute funds on the basis of applications. This will mean that some ASSPAs will find it difficult to get any funding; some will not have applications approved and some will find it too difficult to apply at all—for example, those parents who do not write English. A competitive system such as this is likely to result in the most powerful ASSPAs receiving significantly more funding than others and will disempower the least educated of the communities. That was borne out by the inquiry into Indigenous education. When we went to some of the more remote communities, it was quite clear that there were some that just did not get their act together to write grant applications—and these will be the schools that miss out.

Thirdly, the funding for the Vocational and Educational Guidance for Aboriginals Scheme, or VEGAS—a scheme which supports projects in relation to future study or careers for school students, parents and Indigenous people in custody—is being rolled into the whole of school intervention strategy, along with other ASSPA schemes. The submission based funding, with a narrower set of guidelines, means many of the projects will simply no longer be funded. Fourthly, the funding for the successful Indigenous Tutorial Assistance Scheme will also be spread further. Instead of tutoring for all Indigenous students to prevent them falling behind on benchmark testing, the new structure will only offer tutoring to students in years 4, 6 and 8 when they fail to meet cer-
tain standards. Perhaps the government has not done its research, but the Productivity Commission’s 2003 statistics indicate that children who are behind in year 3 are less likely to remain at school beyond the compulsory age. Only 72 per cent of Indigenous students nationally, compared with a 90 per cent student average, achieve the year 3 reading benchmarks. This is clearly saying that we must catch Indigenous children before they fail the year 3 tests. It is also at odds with the tutorial scheme we dealt with yesterday which applies to mainstream schools and goes to every student who has failed that year 3 benchmark test.

The second main area of concern for the Democrats is the accountability provisions. We are obviously not opposed to accountability. Indeed, we understand that the states would be made to account for their expenditure on Indigenous education, and we welcome that. We agree that funding should make it to the people for whom it is intended. A finding of our Indigenous education inquiry was that some states and, in particular, territories were squirreling away this money and not using it on Indigenous people, so this is a welcome amendment. However, the government knows no bounds when it comes to accountability requirements on money for Indigenous people.

Given that the amendments of which I am speaking are purportedly about making Indigenous education providers more accountable, I want to emphasise the double standards in this government’s approach to accountability. On the one hand, much of what the government is doing to Indigenous education is by guidelines, not legislation for the parliament to consider, and yet we are being asked to pass legislation which demands an excessive amount of reporting by schools, Indigenous organisations and community groups under the veil of accountability, with no extra resources allocated for that purpose.

Through these amendments, the government is effectively reserving the right to require an education provider to collect data on performance indicators and targets—again with no additional resources. It also provides that funding recipients are required to report not only on the planned expenditure and the actual expenditure of Commonwealth funds but also on the way in which the recipient has advanced and intends to advance the objectives of the act from other non-Commonwealth funds—again with no additional resources. The Democrats recognise the need for better data collection in Indigenous education, but it seems that the time, energy and resources required to fulfil these reporting demands will come out of the funding for the educational initiatives themselves.

The $39 million over four years for the Indigenous Youth Leadership Program and the Indigenous Youth Mobility Program is another example of this government’s ill-conceived and hastily implemented policy on Indigenous education. Aside from being an absolute pittance, these programs do nothing about the state of proper schooling in remote communities or about the problems associated with low retention rates of Indigenous students in city boarding schools. One of the reasons identified by Noel Pearson for the very low retention rates of Indigenous students at boarding school was that they enter at an educational level far below that of their peers due to the poor education in their communities. That in itself should indicate to the government that the narrow approach to funding places in the city is unlikely to produce any different results.

In conclusion, the Democrats will of course support the passage of this bill, but only because the people who would suffer from a delay are the Indigenous students and communities relying on that funding. The funding is again provided at a minimum, as it has been for 16 years. We urge the govern-
ment to consider the points made in our second reading amendment and to engage communities in the decision-making process regarding the education of their children. I would also point out that this bill has been referred to the Senate Employment, Workplace Relations and Education References Committee, which will give the Aboriginal community a chance to have their say on these measures, even if it is after the bill goes through. We hope that the findings and recommendations of that committee will be properly considered. I move:

At the end of the motion, add:

“but the Senate:

(a) notes that:

(i) funding for the Indigenous Education Direct Assistance program has had no substantial increase since its inception 16 years ago and that in a time of record national prosperity, Indigenous education should be a matter of priority;

(ii) the changes to the Aboriginal Student Support and Parent Awareness (ASSPA) scheme and the Indigenous Tutorial Assistance Scheme (ITAS) are being imposed without any genuine consultation with Indigenous communities and with a disregard for the successful elements of these programs; and

(iii) the Government’s focus on remote communities actually involves a redirection of funding from urban and regional Indigenous students to very remote Indigenous students, rather than increasing the pool of funds for Indigenous education in recognition of the level of disadvantage of Indigenous students relative to non-Indigenous students; and

(b) calls on the Government to:

(i) provide a substantial increase in funding under the Indigenous Education (Targeted Assistance) Act 2000;

(ii) guarantee that targeted assistance funding is indexed at a rate comparable to other schools funding, and

(iii) consult with parents and teachers before going ahead with the restructuring of the ASSPA scheme and the ITAS”.

Senator CROSSIN (Northern Territory) (12.47 p.m.)—I rise to contribute to the debate on the Indigenous Education (Targeted Assistance) Amendment Bill 2004. No doubt people who know of my contributions in this chamber will know that this is a fairly passionate subject for me and has been now for the best part of nearly three decades.

The stated purpose of this bill is to amend the Indigenous Education (Targeted Assistance) Act 2000 in order to improve Indigenous education outcomes and to appropriate that money for Indigenous education that is over and above mainstream funding for the period 2005 to 2008. It does so through the provision of funding for both the Indigenous Education Strategic Initiatives Program, commonly known in the industry as IESIP—prior to that it was known as AEP, the Aboriginal Education Program—and the Indigenous Education Direct Assistance Program, the acronym of which is IEDA. These include elements of what was the Aboriginal Tutorial Assistance Scheme, which will now be known as the Indigenous Tutorial Assistance Scheme, and what is known as ASSPA funds. ASSPA stands for Aboriginal Students Support and Parental Awareness, and it now seems to be located under what is termed the Whole of School Intervention Strategy, about which I will talk more later.

We all would be only too well aware of the need to improve Indigenous education outcomes in this country. The social justice report of earlier this year was fairly scathing in what it had to say about the Howard gov-
ernment’s outcomes in the field of Indigenous affairs as a whole. While some things have improved, the gap between Indigenous and non-Indigenous people remains large and has not closed. This certainly applies across the various levels of education. In his second reading speech, the Minister for Education, Science and Training claimed:

Closing the education divide between Indigenous and non-Indigenous Australians remains one of this government’s highest education priorities. When I look closely at the implications of this bill, I fail to see how that will be the case. Associate Professor Boni Robertson, according to an article in the Campus Review, has said that funding for Indigenous education needs to be drastically increased considering the large percentage of young people in the Indigenous population and the discrepancy between the participation and graduation rates of Indigenous Australians across all levels of education and that of the non-Indigenous population. According to the article, she said of this bill that the slashing of affirmative action programs like ASSPA and other Indigenous education in schools this year needed to be urgently addressed. She also said that renewed funding by both sides of government to implement Indigenous language programs and address the extraordinary high levels of truancy, suspensions and inclusions of young Indigenous students from within the education system was of paramount importance to the ongoing development of Indigenous Australia. So there is no resounding support for the changes outlined in this bill, and Boni Robertson is one person who has spoken out about that.

However, notwithstanding the problems with the fine print of this bill, as is so often the case with this government, it thinks that outcomes will be improved by having more regulations, more accountability and more funding tied to performance indicators—in other words, more government intervention. We would not deny that accountability is important. We do need and want to know how funds are being used and we would like to know what is being achieved. However, as I will discuss later, the changes being introduced under this bill would appear to have been made with little consultation with the stakeholders, the Indigenous people of this nation, and one can therefore certainly question the educational value of the changes.

I have to say that uncovering the implications of the changes in this bill reveals one of the most incompetent exercises in consultation that I have known the officers of the Department of Education, Science and Training to undertake in the 6½ years that I have been fronting up to them at Senate estimates. We now know that there are 3,800 ASSPA committees in this country. We know that DEST randomly selected 400 of those, sent them a discussion paper and only got 10 responses. It is on the basis of that that these changes are being made. Why were 3,800 ASSPA committees not sent the documentation? Why were there not state or territory consultations and face-to-face consultations? Why were questions not asked about why only 10 responses were received? Did people not understand the changes? Were they not asked to respond to the changes? Were they sent a discussion paper for information only? To make the substantial changes that this bill implies after getting feedback from only 10 committees out of 3,800 shows a lack of scrutiny and accountability that I have not known from DEST officers in the 6½ years that I have been in this place.

I have had many representations from my Indigenous constituents in the Northern Territory, particularly from urban Darwin and Palmerston, who have expressed concern not only about the proposed changes to Indigenous education but also about the way in which those changes were made. They came
away from DEST-provided information sessions with far more questions and concerns than they went in with. I still believe to this day, having met parents from those ASSPA committees two weeks ago, that DEST still really has no idea how these changes are going to operate. The government has no plan as to how these changes are going to operate, and we are less than three weeks away from the start of the new year.

Let me first refer to the figures in this bill. Based on the government’s announcement on 5 April, this bill provides $641.6 million over the four-year period from 2005 and 2008, so it is in fact the next quadrennium of IESIP funding. Of this, $513 million is for maintenance of supplementary recurrent funding and $128.1 million is for ongoing and new strategic projects. So this is really an increase of only 16 per cent over a four-year period—a four per cent increase for each year—which hardly provides for any real growth, especially when one considers that demographically, certainly in my electorate, the number of Indigenous people, and hence Indigenous students, is rising very rapidly. One would think that funding for this real growth is essential if outcomes are to be improved.

Again in his speech the minister claimed that the government’s approach was to provide greater weighting of resources towards those with greatest disadvantage: those in remote areas. There is little real evidence of that in this bill. Although remote areas do get funded more than urban areas, this has been so for some time, to take account of the greater costs of service delivery in remote areas. Strategic funding will be continued at existing levels of $128.1 million—in other words frozen, in nominal terms. So this is hardly a generous funding bill. It is very hard to see how this funding approach will improve Indigenous outcomes or how it redirects resources to the most disadvantaged.

Successful projects such as the National Indigenous English Literacy and Numeracy Strategy, NIELNS, and the scaffolding program are continued, but one would have hoped that successful programs might have been expanded and funded for growth, not frozen at present levels.

The structured scaffolding approach to literacy has proved to be very successful. I have seen it in operation and I know the work of Brian Gray, the instigator of this approach, very well. It is especially successful for teaching Indigenous students in remote areas. It has demonstrated some excellent outcomes in improved student performance. But again, this bill gives little sign that there will be any growth in this program to improve outcomes for a larger number of students.

What most concerns both me and my Indigenous constituents, however, is the proposed changes under IEDA to programs such as ASSPA and ITAS, where funding arrangements are changed in a most significant way. Many of these changes that I alluded to earlier we discovered through the process of estimates. The changes are being proposed with minimal consultation. From a government that has abolished the ATSIS organisation, which gave Indigenous people their major voice, I guess it should not come as too big a surprise that there was minimal consultation on these changes.

Let me move to what some of these changes are going to be. In a media release on 5 April the Minister for Education, Science and Training, Dr Brendan Nelson, said: ...

— CHAMBER
remember, DEST randomly sampled 400 of those committees and got a response from 10 of them—
found that they have delivered quite poor outcomes educationally for Aboriginal students.

There is a group of people connected with ASSPA committees working in Darwin and Palmerston and the greater rural area, and I know that Warren Snowdon has been working with a similar group of people in Alice Springs. The work that they have done over the last four or five months is to be absolutely commended. They have formed a group of combined ASSPA committees to fight at every chance they possibly can the changes to this legislation. In a newspaper that they put out in June they say:

What Dr Nelson doesn’t say is that ASSPA has never been allocated the level of funding necessary to achieve the educational outcomes he is talking about. The facts are that in urban-based schools, ASSPA gets $110 per ... student a year. That’s $2.75 per student per week ($4 for secondary students).

Given those figures and the restrictive funding guidelines, it is completely unrealistic for the Howard government to expect ASSPA to achieve beyond that which it is currently funded to do.

In an age when this government talks about mutual obligation and quid pro quo for access to services by Indigenous people in response to funding from this government, this is an area that absolutely reeks of hypocrisy. It talks about welfare reform for Indigenous people. It talks about mutual obligation. It talks about increased rights and responsibilities Indigenous people need to undertake, yet it attacks the very committees that currently only get $2.75 per Indigenous student per week through the ASSPA committees. One has to seriously question the motivation of this government and, as I said, its absolutely hypocritical stance and the jargon it uses when it talks about welfare reform and mutual obligation. Mutual obligation, according to this government, is a one-way street. Indigenous people will be forced to walk it, and there will be no reciprocal obligation on behalf of this government, and this bill is the very first example of that.

If this government were genuine in its comments about welfare reform and mutual obligation, ASSPA committees would not be abolished or changed, they would be strengthened and their funding increased. But these people are going to have crawl up hill and down dale, put in grant submissions and compete for this funding. That means that some schools will miss out under these changed arrangements. The people that have been working flat out to try and bring about some equity and justice and to get their concerns highlighted are fantastic people like Delsie Tamiano from Palmerston High School. She has been a power of strength in the last couple of months in bringing Indigenous people together in urban centres to get them to understand the implications of these changes. I refer also to Robbie Robinson from Alice Springs, Cherie Holtze from Taminmin high, Mark Munnich, Sharna Raye from Palmerston High School, Sharna Taut from Malak Primary School, Gloria Craigie, Patty Raymond and Eddie McKenzie. There are a whole lot of terrific urban Indigenous people who are fighting for some extra money out of this government to maintain ASSPA committees and keep the system as it currently is, because they believe that they are achieving significant outcomes—outcomes that this government, through a flawed consultation process, has not bothered to look at or consider.

I was told in estimates hearings that consultations were also held with ATSIC and Indigenous education consultative bodies. Unfortunately, there is no Indigenous education consultative body in the Northern Territory, so I am not sure who this government talked to in the Northern Territory. So we
missed out on the consultations despite having the largest percentage of the national Indigenous population. I have to say again that the consultations were not good enough; they were cursory, badly handled and managed only minimally before DEST decided on some fairly major changes which are now of serious concern to Indigenous people in the Northern Territory. These changes have been publicised through information sessions, and I am told the minister wrote to all school principals and ASSPA committees. However, this is telling people of changes already made, over which they have not been consulted and for which they can see little reason.

From next year ASSPA committees as such will be abolished on the ground, according to the government, that they were not working efficiently to achieve outcomes. However, in many cases in the Northern Territory they were the only contact Indigenous parents had with the school. Let us never forget the reason why ASSPA committees were established—a history and a background which I am closely associated with. Of the 21 Aboriginal education goals, goal No. 1 was to encourage more participation by Aboriginal parents in their child’s schooling. Goal No. 1 was established in 1989. The outcome of that and the way in which it was implemented—in other words, the performance indicator—was the establishment of ASSPA committees that worked alongside school councils, where they could, and alongside school principals, and were given a discrete bucket of funding in order to set some educational outcomes. In some areas we know that involves breakfast programs so that kids can be fed before they start the school day. It was about homework centres, after-school-hours programs, additional excursions and extending that child’s educational program over and above what the school provided. Let us never forget the key reason why ASSPA programs were invented in the first place: it was predominantly to get Indigenous parents involved, committed and participating in their child’s education.

There are cases in the Northern Territory where ASSPA committees are the only contact, as I said, between Indigenous parents and the school. In urban areas where Indigenous students are usually in the minority in schools, they were the only school communities that Indigenous parents felt comfortable attending or speaking at. The DEST Review of the Indigenous education direct assistance program at page 40 states:

Improving the participation of Indigenous parents in school education is a national priority—oh yeah—to improve student outcomes ...

So this government seeks to abolish the very committees that encouraged that participation, and it talks about mutual obligation!

That same review on page 41 said:

There was support for the concept of the ASSPA program among those consulted. Many ... were of the view that ... it [is] one of the most important Indigenous education programs.

So what happens? This government is deciding to abolish them. Are we perhaps back to some hidden agenda of assimilation? I do not think that agenda is hidden anymore; it is well and truly out in the open. So from next year ASSPA funding is to be abolished. No longer will schools with Indigenous students automatically receive the funding amount according to the number of Indigenous students.

What we now know is that those committees, if they seek to exist, No. 1 have to become part of or associated with a school council, and No. 2 will have to put in a grant application to access those funds. In the case where you might have 10 or 20 Indigenous kids in a school and are looking at $110 per student per year, it is probably not a lot of
money. But in cases like Yirrkala in the Northern Territory that is $60,000—that is a hell of a decent sized grant application, I would have thought. Who is going to write it—the principal, staff at the school or Indigenous parents?

I put it to the Senate that Indigenous parents will not have the time. I put it to the Senate that staff are already overloaded with an administrative burden. So I do not understand, in this day and age, when Indigenous education participation and outcomes are at their lowest levels, why we seek to create more hurdles for people to access Indigenous education funding when the system was working fine and needed only to be strengthened and encouraged, not abolished or changed.

In conclusion, there are many aspects of this bill, particularly in relation to the ITAS funding, that I know my colleague Warren Snowdon has addressed in the other place. I am glad that the Senate has referred the implications of the proposed changes to funding arrangements contained in this bill to the Employment, Workplace Relations and Education References Committee for inquiry. The funding changes proposed in this bill need very close scrutiny. I hope the Senate committee will provide Indigenous parents with the chance to be consulted and to voice their views about the changes proposed in the bill. This government has never provided those parents with the chance to have a say about this matter. The Senate will take up those reins, step into the shoes of DEST and the government, and give those parents a voice. (Time expired)

Senator KEMP (Victoria—Minister for the Arts and Sport) (1.07 p.m.)—I had the opportunity to listen to some of the remarks made by Senator Crossin in her contribution to the second reading debate on the Indigenous Education (Targeted Assistance) Amendment Bill 2004. Of course, given that she is a senator for the Northern Territory, she takes a particular interest in these matters. Despite the fact that there is no doubt that Senator Crossin can make intelligent contributions to debates, I never get the feeling that she ever really tackles the central issues. Having listened very carefully to Senator Crossin’s comments, I did not get a feeling for where the real, fundamental problems were and what the Labor Party’s approach to those problems was. The Labor Party’s approach to Indigenous policy over the years has been marked ‘F’ for ‘fail’, in my view.

I will tackle some of the matters that Senator Crossin raised in her remarks. I think it is important, Senator Crossin, when you make a contribution to a debate, that you get your facts straight. I must say that in my consultation with officers I get the distinct feeling that on a number of key issues the facts of the case have eluded you. I would not say that you have deliberately ignored them, because I would not believe that you would do such a thing, but you perhaps need to carry out some further research in order to make sure that your facts are correct.

This bill amends the Indigenous Education (Targeted Assistance) Act 2000 in order to maintain and enhance the Australian government’s effort in improving education outcomes for Indigenous Australians over the 2005-08 funding quadrennium. The bill provides funding for both the Indigenous Education Strategic Initiatives Program and the Indigenous Education Direct Assistance program for the 2005-08 quadrennium. IESIP provides supplementary recurrent funding as well as funding for significant national initiatives and special projects. IEDA provides funding for the Indigenous Tutorial Assistance Scheme and funding to support a whole-of-school intervention strategy. The bill also provides for the continuation of the
away from base element of Abstudy for the 2005-08 funding quadrennium.

The bill provides additional funding for two new government initiatives: the Indigenous Youth Leadership Program, which aims to identify and develop future Indigenous leaders, focusing mainly on remote communities; and the Indigenous Youth Mobility Program, which will assist young Indigenous people who, with the support of their communities, choose to relocate to capital cities or major provincial centres to take up employment and training opportunities, targeting apprenticeships and other occupations such as nursing, accountancy, business management and teaching. This funding is part of a $2.1 billion package of measures aimed at improving Indigenous education outcomes over the next four years.

The issue of accountability is one which is often raised by senators. The bill includes provisions to strengthen the accountability arrangements for agreements made under the act. It specifies commitments and conditions, including financial and educational accountability conditions, that must be included in agreements. It includes a provision enabling the minister to intervene to address underperformance by funding recipients. The provisions include the introduction of school attendance benchmarks, measuring outcomes at the remote rural, provincial and metro level; the transparent reporting of expenditure on Indigenous education to ensure that all money provided annually gets to the intended recipients; and sanctions for failure to report.

One of the issues that Senator Crossin raised at some length—some would say at some tedious length but certainly at some length—regarded consultation on the IEDA review. The opposition questions the consultation process for the IEDA review. The final discussion points were sent to 400 ASSPA committees, all directors-general of education and Indigenous education consultative bodies and Indigenous support units. Sixty-two written responses were received, including, I point out to Senator Crossin, only 10 from ASSPA committees. In addition, 25 case studies were conducted, at least seven of which focused on ASSPA committees.

The opposition really needs to get its facts straight on this issue before launching into an attack on DEST. I am advised that the officers have done a very conscientious job. I point out that on 5 April the Minister for Education, Science and Training, Dr Nelson, wrote to all ASSPA committees to inform them of the changes to the way the government proposes to support them during the 2005-08 quadrennium. He informed them—and I quote:

The per student funding formula for ASSPA committees will be replaced by a proactive submission process that will require committees to work closely with schools to identify specific approaches to address Indigenous learning needs.

The opposition is critical of the government for directing its supplementary Indigenous education funding to those Indigenous students at greatest educational disadvantage—those in remote areas. That is a rather surprising attack, I would have thought. Let me assure the Senate that this government will unashamedly direct resources to these students, whilst at the same time maintaining a level of supplementary funding for Indigenous students in metropolitan areas. There is no doubt—

Senator Carr—So we’ll have more Indigenous students at Geelong Grammar, will we?

Senator Kemp—Senator Carr, you had your chance to make a contribution. You arrived in the chamber late, and that is why I am now speaking. This happens from time to time, but you should have been here if you
wanted to make a contribution. There is no doubt that Indigenous students in remote areas are faring far worse than Indigenous students in state capital cities and in Canberra. The report of the Commonwealth Grants Commission on Indigenous funding showed this quite conclusively.

Let me turn now to the second reading amendment. I have pretty much covered it in my remarks, but it will not surprise senators to hear that the government will be opposing the second reading amendment. I understand that the bill is being supported, despite the critical comments that have been made. I reiterate that I think all the criticisms I have heard have been misinformed and not based on the known facts. I urge a speedy passage for the bill.

Senator CARR (Victoria) (1.14 p.m.)—
by leave—I move:
Subparagraph (a)(i), omit “16”, substitute “8”.

This is a small amendment to the second reading amendment that has been proposed by Senator Allison. It would amend the 16 years to eight years.

The ACTING DEPUTY PRESIDENT (Senator Crossin)—The question is that Senator Carr’s amendment to Senator Allison’s proposed amendment be agreed to.

Question agreed to.

The ACTING DEPUTY PRESIDENT—The question now is that the amendment moved by Senator Allison, as amended, be agreed to.

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION AMENDMENT BILL 2004

First Reading

Bill received from the House of Representatives.

Senator KEMP (Victoria—Minister for the Arts and Sport) (1.16 p.m.)—I move:
That this bill may proceed without formalities and be now read a first time.

Question agreed to.

Bill read a first time.

Second Reading

Senator KEMP (Victoria—Minister for the Arts and Sport) (1.17 p.m.)—I move:
That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION AMENDMENT BILL 2004

This bill amends the Australian Security Intelligence Organisation Act 1979.

It is another important step in the government’s counter-terrorism efforts.

The safety and security of its population is the most important responsibility of any government.

Our response to the threat of terrorism has been comprehensive and wide ranging, including a national review of hazardous materials by the Council of Australian Governments.

Ammonium nitrate has been given priority because of its history of use by terrorists and its ready availability to the general public.

Of particular interest to Australia is that Jemaah Islamiyah had planned to use ammonium nitrate to bomb United States and other western targets in Singapore, including the Australian High Commission.

In June this year COAG agreed on a national approach to ban access to ammonium nitrate for other than licensed users.
The licensing regime will ensure that ammonium nitrate is only accessible to persons who have a demonstrated legitimate need for the product, are not of security concern and will store and handle the product safely and securely.

This scheme balances security considerations with the legitimate needs of industry and farmers.

This is a great example of state and territory governments working in partnership with the Australian government on our national security.

The Queensland government has introduced its licensing regime and similar regimes will begin to apply in all other states and territories over the coming months.

The licensing regime requires ASIO to furnish security assessments for the states and territories.

With the passage of this legislation, ASIO will be ready to fully perform this role when the requests start coming in from the states and territories.

ASIO is able to furnish security assessments to assist the states and territories in controlling access to the places where ammonium nitrate is stored.

This bill, the Australian Security Intelligence Organisation Amendment Bill 2004, expands and clarifies the circumstances in which ASIO can furnish security assessments.

These amendments will better underpin ASIO’s ability to furnish assessments in relation to a wider range of activities which may be carried out in relation to, or which involve ammonium nitrate—including purchasing, importing, manufacturing, storing, guarding, transporting, supplying, exporting, using, possessing, disposing, or handling.

It is important to note that for the security assessment regime to apply, a person’s ability to perform an activity in relation to, or involving ammonium nitrate must be controlled or limited on security grounds.

The amendments are proactive—they are intended to be sufficiently broad to cover, to the extent that is possible, issues which may arise in the future such as a person’s ability to perform an activity in relation to, or involving other hazardous materials.

The Bill expands and clarifies the circumstances in which ASIO can furnish security assessments for the states and territories, while also looking to the future.

The measures in the bill ensure, as far as is possible, that the security assessment regime will continue to operate flexibly and effectively in our changing security environment.

(Quorum formed)

Senator LUDWIG (Queensland) (1.20 p.m.)—I rise to speak on the Australian Security Intelligence Organisation Amendment Bill 2004. This bill forms part of a national licensing regime regulating the access and ownership of materials considered a threat to national security. The opposition will be supporting this bill; however, we will be moving amendments at the committee stage.

The bill was proposed by the Attorney-General in fulfilment of an agreement reached on 25 June 2004 at the Council of Australian Governments Review of Hazardous Materials, which agreed on a national approach to the banning of access to ammonium nitrate other than for specifically authorised users. Terrorists have previously used ammonium nitrate as the raw material for constructing explosives, as demonstrated by terrorist attacks in Oklahoma and Bali. More recently the terror group Jemaah Islamiyah allegedly planned to use ammonium nitrate to bomb the Australian High Commission in Singapore.

Australia produces about 900,000 tonnes of ammonium nitrate per year. At present ammonium nitrate is readily available and commonly used throughout Australia by both the mining industry as an explosive and the agricultural industry as a fertiliser.

The COAG agreement recognises the threat that any continuing unregulated access to or possession of ammonium nitrate could pose to Australian national security and the need for a national response that balances
security considerations with the legitimate needs of both industry and farmers. The agreement suggested that this could be best achieved through a licensing regime that regulated persons who may be authorised to use, manufacture, store, transport, supply, import or export security sensitive ammonium nitrate. SSAN fertilisers are those with greater than 45 per cent ammonium nitrate content. COAG agreed that the states and territories would use their best endeavours to ensure that the legislative arrangements for the licensing regime would be in place by 1 November 2004, with administrative arrangements to be finalised as soon as possible thereafter.

The Attorney-General indicated on 12 January 2004 that the Commonwealth was to develop a ‘model’ scheme based upon the Queensland initiatives in this area. As of today, only the states of Queensland and Victoria have subsequently introduced licensing regimes consistent with the COAG agreement. A licensing regime can be effective only if it is applied nationally. The partial implementation of a national scheme to date is failing to protect Australia’s national security. The federal government has consistently taken the view that the regulation of SSAN is a matter for the states. Expert advice suggests that that may be too narrow a view given international agreements regulating explosives. Nonetheless it is hoped that state and territory governments will quickly enact legislation to implement reciprocal licensing schemes.

The government is seeking through this bill to assist the implementation of present and future state and territory licensing regimes developed in accordance with the COAG agreement of 25 June 2004. The licensing regime will ensure that ammonium nitrate is only accessible to persons who have a demonstrated legitimate need for the product, are not of security concern and will store and handle the product safely and securely. As part of this licensing regime, the states and territories intend to conduct background checks on those persons who apply for licences.

In the normal course the states will be in a position to check criminal records, but they will require the assistance of ASIO in order to check ASIO’s terrorist databases. As amended, paragraph 35 of the Australian Security Intelligence Organisation Bill 2004 enables ASIO to provide security assessments in relation to persons who potentially have access to security sensitive ‘information’, security sensitive ‘places’ or a security sensitive ‘thing’. The expansion of paragraph 35 to include a reference to ‘thing’ extends the coverage of the bill to regulate activities that may not be associated with such a place. This could include, but is not limited to, the purchasing, supplying, importing, exporting, possessing, handling, using, guarding, transporting, manufacturing, disposing of or any other activity that may involve the handling or control of SSAN. Consistent with this expanded definition of prescribed administrative action, the bill has amended paragraph 39(2) to include the term:

... thing (other than information or a place).

Paragraph 39(2) provides an exception to paragraph 39(1)—that is the earlier paragraph—which prevents a Commonwealth agency from taking, refusing to take or refraining from taking prescribed administrative action on the basis of any communication in relation to a person made by ASIO that does not amount to a security assessment.

Currently, section 39(2) of the ASIO Act 1974 enables a Commonwealth agency to take action of a temporary nature to prevent a person’s access to any information or place in circumstances where a preliminary communication by ASIO has satisfied that Com-
monwealth agency that the requirements of security necessitate such action as a matter of urgency. The amended paragraph 39(2) enables a Commonwealth agency to also take such action in relation a person performing an activity in relation to or involving a thing, other than information or a place. While section 35(a) is passive in the sense that ASIO responds to a request for a security clearance, section 39(2) is active in that it empowers the Commonwealth to injunct or restrain an individual from undertaking a particular action.

On that basis we have some concerns that the term ‘thing’ mentioned in the legislation is too broad. We therefore suggest an amendment to the bill to include a new definition of ‘prescribed thing’ replacing ‘thing’ as set out in paragraphs 35 and 39. Amending the bill in this way, Labor believes, is good public policy. The reason that is important is that it keeps within the control of this parliament the range of things which will be the subject of potential security checks. In other words, it makes certain that this parliament has an oversight, because a regulation of that nature needs to be tabled and it is open to members in the House and in the Senate to move the disallowance of such a regulation. Indeed, in the unlikely circumstance that you can keep the disallowance motion and disallow the regulation, it provides a check on the excessives of the executive.

As we have witnessed with the way in which the debate about national security and counterintelligence has emerged in Australia, there have been instances where the Australian Labor Party has been rightly critical of overreach in legislation that has come before this place. In a number of instances the legislation has been amended in ways which have made certain that potential abuses could not occur. We have, I think, so far seen no demonstration in this country of overreach in the way in which the agencies responsible for national security have conducted themselves within the framework of the legislation we have passed. But, in a world where fear and reaction can sometimes lead people to propose and to take precipitative steps and where the debate about law and order readily whips up fears and passions in our community, it is important for this parliament to keep some kind of potential check in place so that we do not add too greatly to the number of Australian citizens over whom the security check by the intelligence agencies is run.

We do not want to be a country where to do the work of an ordinary citizen requires a person to be vetted, security checked, by our intelligence services. We want to restrict that requirement to the minimum that is necessary to promote the very interests that the government has articulated today—that is, the basic safety and security of our fellow citizens. We also do not want to provoke paranoia and fear that these powers may be overreached. Equally, there are a large number of other matters which, for very proper reasons, the states and territories already have controlled or limited access to. We should not leave a very large door open to a kind of creeping incrementalism where, in order to go about ordinary business, super-added to those existing regulatory arrangements is an obligation to be security vetted by ASIO.

Having an obligation for any new thing—be it plastic explosives, nuclear waste material or whatever—to come within this regime simply to be made the subject of a regulation so that members of this parliament can potentially move for disallowance is a cautionary check on the executive. It simply means that the power is not readily used without thought. Parliamentarians on both sides of the chamber who feel that there has been a move towards overreach can raise that issue.
The measure largely prevents the issue from arising, because it makes people think before they go one step too far. I strongly commend to the Attorney-General the adoption of the quite minor amendment proposed in this instance.

That is the broad framework of the opposition’s response—that we move more cautiously in this area and maintain the right of the Australian parliament always to supervise the actions of the executive. We should not move any further with a regime that either authorises or requires security vetting of Australian citizens beyond that which is demonstrated to be necessary, but at the same time we must make sure that those agencies have the full range of powers and capacities that they require.

Although the opposition acknowledge the Commonwealth’s participation in the states based scheme to regulate the handling of ammonium nitrate, we remain with significant concerns in respect of those areas where the Commonwealth does have responsibility. In the light of those concerns, the opposition are concerned about the delay that has occurred in tabling this bill or any similar bill. If you look at the length of time it has taken this parliament to deal with these issues, you can start perhaps at 9/11. More recently, looking at the Bali bombings, which occurred in October 2002, surely the significance of Australia being vulnerable to a similar ammonium nitrate terrorist device must have presented itself before the COAG agreement in June 2004. Yet the government has failed to act until now, again apparently resulting from a narrow view of the Commonwealth legislative competence under the foreign affairs power.

Press reports in 2003 documenting the ease with which a fertiliser bomb could be produced within Australia also failed to incite any action by the Commonwealth. Only one month post the COAG agreement, the press revealed that over two tonnes of ammonium nitrate had been stolen from farms in the Virginia area, north of Adelaide, over the course of a 12-month period. Earlier this year, South Australian police admitted that they might never find an additional 3.5 tonnes of ammonium nitrate that was reported stolen. To place these matters in perspective, the bomb utilised in the Bali bombing was allegedly in the order of only 150 kilograms. Recent computer modelling has conservatively suggested that a five-tonne fertiliser bomb detonated in a generic Australian city could kill up to 900 people and injure almost 10,000 more. Those large quantities of ammonium nitrate were stolen after the government had not only witnessed multiple foreign terrorist attacks utilising ammonium nitrate based bombs but had also been specifically advised by COAG of the need to regulate all stages of the ammonium nitrate supply chain.

As long ago as February 2002 the then federal Attorney-General, Mr Daryl Williams, participated in a radio interview during which a hypothetical scenario of a person endeavouring to buy two tonnes of ammonium nitrate was raised. Mr Williams said:

> Obviously that would start alarm bells and you would want to find out why they wanted to buy the explosives if they obviously weren’t a farmer or if they’re an urban dweller.

Perhaps the commentator overestimated the government on this occasion. Why has the government waited until now to act upon this issue when it was first raised in a COAG meeting between the states and the Commonwealth as early as 2002? On 12 January 2004 the Attorney-General promised that ‘the development of a national licensing regime was proceeding according to his program’. We are now a significantly long way away from 12 January 2004. On 12 January the Attorney-General also conceded that
there was an urgency to the issue as well and that it ‘takes a long time to get things done in this country’. That may well be so under a Liberal Party or under the current government. If only the coalition government were so forthcoming on other matters it would be far better.

Under a coalition government you would expect, at least on a broad number of issues, they could act far quicker than they have done in this instance. How could the Attorney-General in one breath declare that the issue required urgent and immediate attention and then in the next breath say that, despite seeming delays, everything was proceeding according to plan? That was on 12 January 2004. Why didn’t the government develop a plan to have this issue resolved years ago? They did nothing. Even more alarming is the fact that COAG has only recently commenced conducting a review of other hazardous materials that may potentially be used in explosive devices. More than three years after the September 11 attacks, and nearly a decade after the Oklahoma bombing, the government are only now beginning to consider regulating terrorists’ tools of trade. Only now has COAG sought to investigate other such potentially hazardous materials.

This bill, whilst necessary, is very much belated. It is a catch-up on national security. It is a check-up that first occurred years ago that should have been followed through but was not. Only now the government is turning its attention to it. The opposition can only hope that the government’s delay has not been too great. Obviously this bill is necessary. But, at the end of the day, it is a pretty limp-wristed approach by the federal government to a very serious matter. Australians should not be misled into thinking this bill represents anything like an adequate federal response to the significant national security issues that we all confront.

Senator GREIG (Western Australia) (1.36 p.m.)—The Australian Security Intelligence Organisation Amendment Bill 2004 expands the range of circumstances in which ASIO can provide security assessments regarding individuals for the benefit of the states and territories. Under the current regime ASIO is empowered to provide security assessments in relation to individuals who have access to security restricted information or places. However, following a COAG agreement regarding the regulation of ammonium nitrate in Australia, it has become necessary for ASIO to provide assessments in relation to individuals who have access to hazardous substances which are restricted on security grounds.

On 25 June this year COAG agreed to institute a national ban on ammonium nitrate other than for specifically authorised users. The ban is to be implemented by way of a licensing regime in each state to ensure that ammonium nitrate is only available to individuals who have a demonstrated need for it, are not a security concern and will store the substance safely. As an initial point, I would like to express the Democrats’ strong support for a ban on the purchase and use of ammonium nitrate other than for a limited number of legitimate uses. This is an issue which we have campaigned on, and we welcome the government’s decision to finally address the dangers posed by this substance. Given the potential for ammonium nitrate to be used in acts of terrorism—which has been known since at least 1995 when it was used by Timothy McVeigh to carry out the Oklahoma bombing—it is incredibly disappointing that the government has taken so long to introduce this legislation. In fact, it does amount to some degree of negligence on the part of the government. Senator Andrew Bartlett took up this issue with the government on 21 June this year, when he asked:
Why is it that, over 18 months after the danger of accessibility of ammonium nitrate for use as an explosive was identified as a significant risk, it can still be purchased over the counter without any sorts of controls or even a need to show ID?

Significantly, only four days later COAG finalised plans for the national ban.

The Attorney-General has indicated that he has intelligence suggesting that Jemaah Islamiah had planned to use ammonium nitrate to bomb the United States and other Western targets in Singapore, including the Australian High Commission. Legitimate uses of ammonium nitrate include mining; quarrying; the manufacture of fertilizer and explosives; educational, research and laboratory use; commercial agricultural use by primary producers; and services for the transportation, distribution and use of the product. Given that around a million tonnes of ammonium nitrate products are used in Australia each year, there is clearly a risk for this substance to end up in the wrong hands. It is, therefore, vital that Australia has a strict licensing regime to regulate the purchase, supply, import, export, possession, handling, use, storage and transportation of ammonium nitrate.

While we Democrats have no hesitation in supporting the strict regulation of ammonium nitrate use and the furnishing of security assessments by ASIO in conjunction with the regulatory scheme, we are concerned by the way in which this legislation has been drafted. Rather than providing for security assessments specifically in relation to the use of ammonium nitrate, this bill has been drafted in broad and ambiguous terms. The bill provides that a security assessment can be furnished in relation to:

... a person’s ability to perform an activity in relation to, or involving, a thing (other than information or a place), if that ability is controlled or limited on security grounds ...

We Democrats are concerned by the breadth of these terms. We acknowledge that the potential scope of the legislation will be limited by the fact that it will apply to activities that are controlled or limited on security grounds.

‘Security’ is defined in the act as protecting Australians from espionage, sabotage, politically motivated violence, the promotion of communal violence, attacks on Australia’s defence system and acts of foreign interference. Furthermore, it is limited by the fact that it will apply to activities that would affect security in connection with matters which are within the functions and responsibilities of the Commonwealth. Nevertheless, we remain of the view that the bill is too broad. In its current form it will enable the government to expand the range of ‘things’—to use the language in the bill—with very little accountability.

While we Democrats recognise that there may be other hazardous substances in relation to which security assessments will eventually be required, we are not prepared to give the government a blank cheque to expand this list. Our view is that anything in relation to which security assessments may be furnished must be prescribed by disallowable regulations. By requiring the government to list ammonium nitrate and other similar substances in the regulations, there will be some form of ongoing parliamentary oversight of this process. If there is concern about the furnishing of security assessments in relation to any particular substance or thing, the regulations listing that substance or thing will be able to be disallowed by our parliament. We Democrats had intended to move an amendment precisely with this effect during the committee stage; however, having consulted with the Labor opposition, we have discovered that they had given instructions for the very same amendment to be drafted. Consequently, we simply acknowledge and support that amendment. In
closing, we do welcome the introduction of this bill, which, unlike much of the government’s other antiterror bills, will actually help to make Australians safer. It is long overdue and we are disappointed by the government’s incredibly broad drafting of it, but, as I have indicated, we intend to rectify that situation during the committee stage.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.42 p.m.)—I thank senators for their contribution to the Australian Security Intelligence Organisation Amendment Bill 2004. This important bill is a step forward in protecting our national security. Senators Ludwig and Greig have made some points that I will refer to shortly. This bill will expand and clarify the circumstances in which ASIO can furnish security assessments and in doing so it will facilitate the full implementation of the nationwide licensing regime for ammonium nitrate. This regime will ensure that ammonium nitrate is only accessible by persons who have demonstrated a legitimate need for the product, who are not of security concern and who will store and handle the product safely and securely. The amendments to the ASIO Act will ensure that ASIO can adequately perform its role under this scheme to furnish security assessments for activities carried out in relation to or that involve ammonium nitrate. At the same time the amendments are sufficiently broad to cover issues that may arise in the future. In these ways the bill will help to ensure that the security assessment regime will continue to operate flexibly and effectively in our changing security environment.

I mentioned Senators Ludwig and Greig making some points and I will refer to those in turn now. Senator Ludwig was critical of the fact that only two states have implemented the national licensing regime while at the same time he suggested that the states are not the best placed to implement such a regime. The government believes that the licensing in this case is the responsibility solely of the states and territories. After all, the regulation of dangerous goods and explosives is a state and territory responsibility. All jurisdictions already have in place regulatory agencies for explosives and dangerous goods that will enable them to quickly bring ammonium nitrate under tight control. Those existing agencies will allow us to regulate ammonium nitrate nationally without creating new bureaucratic structures. Most jurisdictions have existing legislation or are quickly introducing new legislation and regulations to control ammonium nitrate. It makes sense, therefore, that states and territories have this responsibility. They have the mechanisms in place and they have the infrastructure. To do anything other than use existing state and territory regulatory authorities would mean duplication and would not be the most efficient way to implement a regulatory regime for ammonium nitrate.

The other issue that was raised was the belated response to the ammonium nitrate issue. This was a point raised by both Senator Ludwig and Senator Greig. It is important to note that this lasting regime involved liaison and agreement amongst all jurisdictions. This was a difficult and complex process, and in this context the length of time involved was not unexpected. The regulation of ammonium nitrate must balance security needs on one hand with legitimate commercial activities on the other. We needed to carefully consider the various options so as to achieve maximum effectiveness with minimal cost to legitimate users. We needed to consult with other Australian government agencies, with the states and territories and with private industry. We also consulted with overseas governments to benchmark international best practice. This consultation and policy development work was done as quickly as possible, bearing in mind that an effective and
balanced outcome is better than a hasty response. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator LUDWIG (Queensland) (1.46 p.m.)—by leave—I move opposition amendments (1) to (3) on sheet 4464:

(1) Schedule 1, item 1, page 3 (line 14), omit “thing”, substitute “prescribed thing”.

(2) Schedule 1, page 3 (after line 20), after item 1, insert:

1A Section 35

Insert:

prescribed thing means a thing, including any substance that is prescribed by regulation under this Act.

(3) Schedule 1, item 3, page 3 (line 30), omit “thing”, substitute “prescribed thing”.

These amendments have the desired effect of ensuring that the word ‘thing’ provides for parliamentary review. They ensure that that word can be prescribed by regulation under this act. There is always a consideration that, by regulation, the parliament can review any regulations that are subsequently made. The amendments do not confine the government’s ability to ensure that the Australian Security Intelligence Organisation Amendment Bill 2004 is effective. They provide good public policy to ensure that review can be done quickly and that things can be added to the list of prescribed matters to ensure that the legislation is contemporary. They also allow the parliament to oversee the federal executive to ensure that they do not overreach their positions and do not start prescribing things which might seem out of the ordinary or not relevant without some justification. These things can always be added with a bit of justification, a bit of explanation, from the executive as to why they are required. Providing that justification will ensure that such things can be dealt with properly and appropriately.

I seek the government’s support for these amendments. I think they are sound. They do provide good public policy. They do ensure that there is flexibility within the legislation and that the population, the general public, can feel assured that there is oversight remaining with the government on what may be regarded by some as quite extensive legislation. On those short points, I seek the government’s and the Democrats’ support.

Senator GREIG (Western Australia) (1.48 p.m.)—We Democrats echo the sentiments of the opposition and Senator Ludwig. We concur with the arguments put forward. As I said in my contribution to the second reading debate, we were looking very much to the same outcome in proposing that we draft similar amendments with the aim of achieving the same outcome. We are like-minded on this, and as such we will support the opposition’s amendments. We support them for the reasons Senator Ludwig has outlined and for the reasons I gave in my contribution to the second reading debate.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.49 p.m.)—The government does not see its way clear to support the opposition’s three amendments. I can understand what Senator Ludwig is saying, but when you look at the word ‘thing’ as it appears in section 35 of the bill you see that it is part of the definition of a prescribed administrative action. ‘Thing’ was used because it is important that there be appropriate flexibility within the legislation, particularly in our changing security environment. It should be noted that other parts of this definition of prescribed administrative action refer to access to information or place. They are words which are equally as broad. In this context the government does not con-
consider that it is necessary or consistent with the approach in the rest of the legislation to define ‘thing’ in the regulations.

The government has undertaken ongoing consultation with the states and territories about the form of legislation through which they each intend to implement the licensing regime. As appropriate, and within the applicable legislative regime of each jurisdiction, different terminology and definitions are used to achieve the same result—that is, the implementation of this licensing regime to ban access to ammonium nitrate for other than licensed users. By giving ‘thing’ a very specific meaning in regulations, there is a risk that the definition will become too narrow and inadvertently not cover all the different state and territory provisions. In view of that, it is fraught with difficulty and the government does not support the opposition’s three amendments.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

**Third Reading**

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (1.51 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

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**TEXTILE, CLOTHING AND FOOTWEAR STRATEGIC INVESTMENT PROGRAM AMENDMENT (POST-2005 SCHEME) BILL 2004**

**CUSTOMS TARIFF AMENDMENT (TEXTILE, CLOTHING AND FOOTWEAR POST-2005 ARRANGEMENTS) BILL 2004**

**First Reading**

Bills received from the House of Representatives.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (1.52 p.m.)—I move:

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

**Senator NETTLE** (New South Wales) (1.52 p.m.)—I seek to amend the motion so that the bills can be taken separately. Then we can deal with the issue of the Strategic Investment Program for the TCF industry separately from the issue of reducing tariffs which, in the Customs tariff amendment bill, are not sought to be put in place until 2010. A series of other tariff reduction cuts are already in place and will commence on 1 January 2005. There is no proposal in this legislation or anywhere else for there to be any study or analysis of the consequences of the existing tariff cut reductions that come in on 1 January 2005. So to deal with both the issue of a structural adjustment program to compensate people for the tariff reduction cuts that come into effect in 2005 and 2010 is premature. In order for there to be analysis and report reflection by the parliament on the consequences of the existing tariff cut reductions that come into effect on 1 January, I seek to amend the minister’s motion so the two bills can be dealt with separately.
I note that the Labor senators who were on the Economics Legislation Committee which considered this piece of legislation in August this year put forward as a recommendation that these two issues be dealt with separately—both the structural adjustment program for the industry, which relates to the tariffs coming into effect on 1 January, and then the subsequent issue of whether or not there should be further tariff reductions coming into play in 2010. It is a view that has been put forward as a recommendation by the Labor senators who were involved in that committee. It is also a view that was put forward to that committee by the Textile Clothing and Footwear Union of Australia in their submission and hearing before the inquiry in August this year. On that basis and in order for us to be able to evaluate what are the consequences of the tariff reductions coming into play in January, I request that the minister’s motion be divided so that the two bills are dealt with separately.

The ACTING DEPUTY PRESIDENT (Senator Bolkus)—We will divide the question. The question is that these bills be taken together.

Question agreed to.

The ACTING DEPUTY PRESIDENT—The question now is that these bills may proceed without formalities 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) (1.56 p.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.
confirmed the Government’s view that support must be focused on activities which will make a lasting difference. Investment in new plant and equipment, and in innovation, must be the priority. It also became clear that assistance should be weighted towards those parts of the sector facing the greatest adjustment, in particular clothing and finished textile firms.

The package is supported by peak bodies, such as Textiles and Fashion Industries Australia and the Carpet Institute of Australia, and leading companies.

The new Strategic Investment Program will be broadened and simplified. The current five grants will be reduced to two. New activities, such as brand support and non-production information technology, will be supported. With these changes, more firms can be expected to use SIP. SIP already supports most of the industry—firms receiving SIP account for 75 per cent of industry value-add and 63 per cent of jobs.

The subsidies offered in the new program—80 per cent for innovation and 40 per cent for capital equipment—are the most generous available to any industry. For the first five years, funding for SIP will be worth about $100 million a year. To direct support to firms facing the greatest adjustment, firms producing leather and technical textile products will only be eligible for grants for capital investment. In the main, these firms have not been affected by tariff reductions since the mid-1990s. For the same reason, funding after 2010 will be limited to firms manufacturing clothing and certain finished textile products (i.e. those firms still to face a tariff adjustment). $100 million will be available to this section of the industry after 2010.

For small TCF firms which may not meet the $200,000 threshold for SIP claims, a new $25 million TCF Small Business Program will be available.

The Government will also introduce a Product Diversification Scheme. $50 million in duty credits will be available over ten years as an incentive for firms to increase their local production as well as to diversify their product range. Introducing this scheme will require amendment to the Customs Tariff Act 1995 through the creation of a new Schedule 4 tariff item—this amendment is part of the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004.

The Government has already extended for 5 years the Expanded Overseas Assembly Provisions scheme, at an estimated cost of $27 million in revenue forgone.

As clothing and certain finished textile manufacturers will face a tariff reduction in 2015, the Government will further assist this sector through a $20 million Supply Chain Program. After 2010, competitive grants will be available to support major capital investments to strengthen the local supply chain for these TCF sectors. The program will be open to manufacturers of clothing and certain finished textile products (and their related textile suppliers) who would otherwise not be in receipt of benefits under the Post-2005 SIP.

In all, by the time the Government’s plan expires in 2015, the sector will have received about $1.4 billion in direct assistance (and about $13 billion indirectly through tariff protection).

It is essential to recognise that TCF tariffs cost the community up to $1 billion a year, disproportionately affecting low income households. The 2.1 million Australians living in households earning less than $301 per week spend twice as much of their income on clothing as other families.

For its part, the industry is clear that firms benefit far more from direct financial support for innovation and investment than through tariffs. For this reason, the Government believes that TCF tariffs should be reduced to the general manufacturing rate. Consistent with the Government’s 1998 decision, tariff reductions will be staggered to allow industry time to adjust. The Government’s policy is that all TCF tariffs should be 5 per cent by 1 January 2015. TCF tariffs will be paused at their 2005 rates for 5 years, and then the majority of TCF tariffs will be reduced to 5 per cent on 1 January 2010. The exceptions to this rule will be clothing and certain finished textile articles which will be reduced to 10 per cent on 1 January 2010, held at this level for 5 years and then reduced to 5 per cent on 1 January 2015.

To help firms, workers and communities affected by restructuring in the industry, the Government will establish a $50 million Structural Adjustment
Program. The Program will have three objectives: assisting TCF employees who have been re-trenched to secure alternative employment by providing streamlined access and additional assistance under Job Network programs; assisting TCF firms to consolidate into more viable entities, and to assist communities adjust—especially in TCF dependent communities. The value of the package is commensurate with the anticipated employment impacts.

This Government has taken a balanced approach in developing its policy. The policy assists firms to become more competitive by providing long term policy certainty; incentives to invest, innovate and diversify their product range; it reduces tariffs in a measured way via a series of tariff pauses which the industry can absorb; it will reduce the price of TCF goods over the long term; and it provides assistance to those who might be affected by restructuring.

The Government’s TCF plan is backed by ample funding. By any benchmark, $747 million is a significant amount of taxpayers’ money. With the sole exception of the much larger automotive industry, the TCF sector receives far more assistance than any other part of the manufacturing sector and this support will continue for the next decade.

Senator BUCKLAND (South Australia)

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I note the time we have available to consider the legislation and see that I will not have time to go into the substantive part of my contribution now. I would like to say on these two textile, clothing and footwear bills that there is a need for what the government is suggesting it will be doing and that the Strategic Investment Program, the SIP scheme, is one that, on first reading, is something that is well and truly required, but I just wonder if it is too late. In the substantive part of my comments at a later time I want to go into the impact on the whole textile, clothing and footwear industry in my home state of South Australia of factory closures, cutbacks in the number of people in the industry—that is, of those surviving parts of the industry—and the greater use of people working as contractors in the textile, clothing and footwear sector.

I will not, as I would have liked, be able to go into those sections that deal with outworkers or those people working in what we often hear described as sweatshops. These are the people who will be affected and who will not, in fact, get any benefit from any SIP scheme set up by the government. However, the grant that will be set up to provide for research and development is, I believe, well overdue. It is one that will go a long way to help industry develop in this country. It will assist industry to compete against the cheap imports which on many occasions are of far inferior quality to products that are being sold in this country.
Senator Sherry—It will help the current accounts too.

Senator BUCKLAND—As Senator Sherry says, it will help the current accounts somewhat. Indeed, the quality of the product that we are receiving and the number of people that are being disadvantaged by cutbacks in the industry are matters that we need to take into account. We can throw money at the TCF industry now but we cannot redeem some of the past practices that we have foolishly let go. It seems to me that when there is a factory closure, too many people are absent—

Debate interrupted.

QUESTIONS WITHOUT NOTICE
Regional Services: Program Funding

Senator O’BRIEN (2.00 p.m.)—My question is to Senator Ian Campbell, the Minister representing the Minister for Transport and Regional Services. I refer the minister to his attempt at a defence of Regional Partnerships funding and I ask whether he recalls his challenge to any critic of funding allegations to ‘go and buy himself a pair of Blundstones, get them a bit dirty and go and talk to the people who are trying to build regional Australia’. Is the minister aware that a Regional Partnerships grant of $220,000 has been awarded to a project based on Bondi in the electorate of Wentworth, one of Australia’s wealthiest urban localities and possibly the latte capital of Australia? Would the minister care to revise his own Blundstone challenge to a pair of thongs, a beach towel and Armani sunglasses?

Senator IAN CAMPBELL—I did sympathise with Stephen Smith when he was talking about the countdown of the number of question times on television recently. Clearly, from the quality of that question, Friday’s question time cannot come soon enough for Senator O’Brien and the members of the Australian Labor Party, who would probably do well if they went to Bondi themselves, had a good lie down and soaked up a bit of sunshine.

This is a question from the Australian Labor Party about programs within the regional services portfolio when yesterday, asking questions about that portfolio and those programs, they criticised Primary Energy Australia Pty Ltd in relation to their grants under the program that Senator O’Brien refers to in his question. Senator Wong, Senator Carr and, more recently, Senator O’Brien, have asked questions about four or five different programs that the company had sought assistance under. I remind Australian Labor Party senators, and in fact all senators, that companies from regional Australia who seek to develop programs that assist employment right across Australia, if they have proposals, quite often come to local, state and federal governments trying to find what sorts of programs are available to assist them to develop their ideas. Usually these ideas are aimed at improving the economy and the employment prospects for people within the region. We saw, in attacking this program yesterday, the Australian—

Senator Chris Evans—Mr President, on a point of order: I have brought this to your attention a couple of times this week, but I think ministers have fallen into the habit of just reminiscing, rambling and attacking the Labor Party rather than actually seeking in any way to answer the question. The minister was asked a question about the Regional Partnerships grant in Bondi. He has not at all attempted to deal with those issues. While I know you allow some leeway, it seems to me the leeway has got to the point where question time is becoming pointless. Please would you ask him to address the question.

Senator Knowles—Mr President, on that point of order: I draw the Senate’s attention to your statement yesterday about the types
of questions that are being asked by the Labor Party in question time. You said that, apart from the point that question time is meant to be a time for questions, senators’ questions would be far more effective and telling if they were not surrounded with statements, assertions, allegations, insinuations and other extraneous material. I put to you, Mr President, that that question that the Labor Party are now trying to rule that Senator Ian Campbell is somehow not answering contained all of those issues.

Senator O’Brien—Mr President, on the point of order: unfortunately, I was not here yesterday to hear your eminent words, but I would have thought that the question was entirely consistent with many questions asked on both sides of this chamber for quite some time. I was quoting the minister’s own comments in an answer to a question back to him and asking him to comment on that. I assert that that is in order and, indeed, there was no suggestion that the question was out of order when it was put and the minister rose to his feet.

The President—Thank you, Senator. I did circulate my statement yesterday to those senators who were not here. Just as I cannot direct ministers how to answer questions, I cannot direct senators how to ask them, but I would remind the minister that there are two minutes remaining and remind him of the question that was asked.

Senator IAN CAMPBELL—Bob Hogg, Michael Costello, Bob McMullan and a range of others do not need any help from me. I will just stick to the issues and the program. They are trying to denigrate the Regional Partnerships program because they do not like the government supporting employment projects, projects that reduce greenhouse gas emissions or projects or proponents that support communities and build capacity and jobs in regional Australia. Having failed in attacking—

Opposition senators interjecting—

The President—Order! Senators on my left: stop shouting across the chamber. And I remind the minister of the question.

Senator IAN CAMPBELL—The question relates to the Regional Partnerships program of the government, which has given grants to places right across Australia, including to the Marine Discovery Centre in Bondi, which is a program that supports these projects across Australia and builds jobs in regional Australia. The Labor Party want to tear the program down piece by piece. They are prepared to bring it down in Gunnedah and they are prepared to bring it down in Bondi. What I suggest to the Australian Labor Party is that, rather than tearing down the program and being oppositionist, destructive, negative, carping and whining, they be positive. If it means that they do not want to get their shoes dirty, good luck to them.

Senator O’Brien—Mr President, I ask a supplementary question. I would be interested if the minister could tell us how a grant of $220,000 to a Bondi project in the seat of Wentworth assisted regional Australia. Perhaps he could also tell us why the seat of Wentworth received more money under the Regional Partnerships program than 80 other electorates, including many in rural and regional Australia. Could it have anything to do with the Liberal Party’s bitter preselection battle in this blue-ribbon seat that led it to being such a contest?

The President—The last part of that question, Senator, was asking for an opinion and, as you know, that is not allowed. But I ask the honourable minister if he would answer the parts of the supplementary question that were relevant.
Senator IAN CAMPBELL—I will do my very best, Mr President, and thank you for your assistance and guidance. The Bondi Marine Discovery Centre has received a $201,000 grant. It is a proposal which will expand the primary school program and create secondary school programs, Indigenous coastal tours, film production, advertising, fit-out, launch, order and evaluation. The project was contracted on 7 October. It has commenced. It is another example of the government helping to improve the understanding of our environment, particularly by our younger generations. The program has also received funding from my own department, $18,282 from the Envirofund, $100,000 from New South Wales Fisheries’ recreational fishing trusts and a range of other grants. It seems to me like a very worthwhile program, and I commend the Labor Party senators to go and visit Bondi over the break.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I would like to draw the attention of honourable senators to the presence in my gallery of a delegation from the National Assembly of Vietnam, led by the Hon. Ngo Anh Dzung MP, vice-chairman of the foreign affairs committee. I warmly welcome you to the Australian parliament and particularly to our Senate chamber. I trust that your visit will be both informative and enjoyable.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Iraq

Senator FERGUSON (2.09 p.m.)—My question is to the Leader of the Government in the Senate and the Minister for Defence, Senator Hill. Would the minister inform the Senate of progress being made in Iraq in the lead-up to next year’s democratic elections? How is the Australian Defence Force contributing to this progress? Is the minister aware of any alternative policies?

Senator HILL—I thank Senator Ferguson for his question. I know he, as Chair of the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade, has a deep interest in these matters. The task of building a new Iraq, politically, economically and socially, after the overthrow of the tyrant Saddam Hussein is enormously complex and challenging. A new political structure, a new system of administration, new instruments for national security—external and internal—and a new economic infrastructure are necessary, and that is just a start. Saddam left little that could be built upon. In so many ways, it has meant building a new nation. The vast majority of the Iraqi people have relished the opportunity for democracy, security, freedom from oppression and economic opportunity. They deserve the support of the international community. They do have the support of the UN Security Council, and many billions of dollars have been internationally pledged to assist with reconstruction.

These tasks would be difficult enough without the opposition of a violent and cruel insurgency determined to defeat these reasonable aspirations of the Iraqi people, an insurgency particularly targeting those Iraqis taking public positions in building the new Iraq—politicians, judges, policemen, government workers and the like—and an insurgency which is also fighting to undermine the 30 January election, that expression of democratic choice, particularly through violent intimidation of the process and participants and through cruelly attacking the families of those Iraqis taking a lead.

Australia is part of a multinational force not only approved by the United Nations Security Council but encouraged by the Security Council to assist the Iraqi people with their task. It is dangerous and difficult work
but greatly appreciated by the broader Iraqi community. The Australian contribution is also greatly appreciated by others in the multinational force, particularly those such as the United States, which has committed so much in personnel and funding and has suffered great pain in terms of lives lost and injuries.

The Australian forces continue to be outstanding in their work, whether it is defending our officials, who are so critical to the political process, training the new Iraqi Army, providing health personnel—and our medical team at Balad received many of the wounded, military and civilian, from Fallujah and did a brilliant job—helping air traffic control at Balad, providing air transport including medical evacuation, maritime surveillance and interception and in so many other ways. Not only is their work of the highest professional standard but their good spirited and cooperative approach is appreciated by all. I was pleased last Friday to meet many of them and to convey the appreciation of the government and the Australian people and the best wishes of all of us. I realise that, particularly at Christmas time, this is a tough time for them and their families.

The Iraqi people are determined to press on with their election, despite the dangers and difficulties. I am told some 240 political parties have registered interest. Candidates’ lists are being prepared, registration of voters—including Iraqis outside the country—is proceeding, polling booths will be based on the school system and plans for printing the ballot papers are in place. I am told the independent electoral commission is doing a great job.

Lastly, I was asked about alternative policies. Apparently the new opposition defence spokesperson, Mr McClelland—the third in three years—and Mr Rudd are going to discuss these issues over Christmas. I also invite Mr Latham to take up the briefing that has been offered to him. (Time expired)

Regional Services: Program Funding

Senator BOLKUS (2.14 p.m.)—My question is to Senator Ian Campbell, the Minister representing the Minister for Transport and Regional Services. I ask the minister whether he can confirm that the Regional Partnerships grant awarded to the Marine Discovery Centre at Bondi is amongst almost $3 million in grants awarded to urban projects based in Australia’s capital cities. Can the minister confirm that more than $800,000 of Regional Partnerships funding has been allocated in metropolitan Adelaide, including $187,000 for a church redevelopment in the marginal seat of Makin? Can he confirm that more than $450,000 of Regional Partnerships funding has been allocated to metropolitan Brisbane electorates, including more than $138,000 for the establishment of a dog day care centre in that region? Can he also confirm that more than $480,000 of Regional Partnerships funding has been allocated to projects in metropolitan Sydney, including $82,500 for a division of the Hillsong Church in what the minister may describe as rural and regional Redfern? Just how regional are these partnerships, Minister?

Senator IAN CAMPBELL—I am happy to get detailed briefings on each one of those projects. What I invite the Labor Party to do is to analyse in their own terms these projects. They have all obviously matched the guidelines of the program. What I would like the opposition to do—I have invited them to do this day after day as they try to attack local community groups working to build opportunities, to build facilities and to build capacity and employment across Australia—is, rather than criticising, carping, whingeing and whining, to actually come clean and say which one of the projects they would stop. Will they stop the R.M. Williams centre?
Will they stop the equine centre? Will they stop the bio-fuels project in Gunnedah? Will they close down the Marine Discovery Centre in Bondi? Let us see how fair dinkum Labor are in relation to this program. We believe it is a good program to have the Commonwealth working in partnership with local communities—for example, in relation to the Bondi project which is funded under this program.

You have had the New South Wales government making contributions. You have had New South Wales fisheries. You have had the local council. In fact, you have got all three levels of government involved in this project. You have got three levels of government—Labor and Liberal—supporting the project. There is only one party out of step, as they have been with most of the community over recent months, and that is the Australian Labor Party here in the federal parliament.

Senator BOLKUS—Mr President, I ask a supplementary question. It is a fundamental question: how can multiple grants to inner city applicants be justified under a program meant to assist rural and regional communities? Is it because the projects that failed under other more appropriate program criteria were then channelled through this sham Regional Partnerships assessment process? Given the minister’s professed concern for the plight of rural and regional Australia, how can he now defend the allocation of millions of dollars of regional funding to marginal metropolitan and even inner city electorates in the weeks and months preceding the recent federal election?

Senator IAN CAMPBELL—These are programs that have been supported in some instances by local government, state Labor governments and the federal coalition government. The point that the Labor Party do not understand and do not want to accept is that they are all projects that involve a community process, that empower communities, that support local communities and that support projects that quite often do not get supported under other funding. It is entirely appropriate, if you are a community focused on building a new facility, creating new opportunities in regional areas, that you come to a government and try to find programs that match the project that you are seeking to create. If some projects fail under some programs but get supported under others, then good luck to the local citizens who get behind these projects, do the hard yards and get them up and running. You have got only one party here trying to drag them down: the federal Labor Party.

Indigenous Affairs: National Indigenous Council

Senator FIFIELD (2.19 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs. Will the minister advise the Senate of the role of the Howard government’s new National Indigenous Council? Is the minister aware of any alternative policies?

Senator VANSTONE—I thank Senator Fifield for the question. The government’s National Indigenous Council is an integral part and a very important part of the government’s reforms to Indigenous affairs. It will have its first two-day meeting in Canberra this week. Members of the council not only will meet between themselves but will have the opportunity to meet for a couple of hours with the ministerial task force so that Indigenous people get the opportunity to meet with all the ministers that have funding responsibility for Indigenous affairs. And, of course, the National Indigenous Council will meet with the Prime Minister. It will provide expert advice to the government at the national level. It will provide advice on general direction, on policy, on different programs and assessments of service delivery. It will
give us its views on the acceptance on the ground and the effectiveness on the ground of programs. It is a vital and integral part of our reforms to improve both the outcomes and the opportunities for Indigenous Australians.

I said in here many, many months ago—not long after being given this responsibility—that our prime motivation was to give value for money to first Australians. We intend to do that. We are moving to much better national and regional advisory relationships, but nothing—nothing—will be as important as establishing direct relationships with local communities through shared responsibility agreements, listening to what the communities have to say, giving them a real voice and sharing responsibility with them for the direction in which they want to go. Local problems will need local solutions.

As Theodora Narndu, one of the elders from the Wadeye trial site, said: ‘The trial has opened up the door. Before, it—the government—never opened that door for the Aboriginal people to give us a voice. So today—that is, when she was speaking—‘I feel that strong. I am a traditional landowner speaking from my heart. That is what I feel. I can see the door is wide open.’ This government is about opening that door to many, many more communities than Wadeye and the other trial sites. We want local people to have a real say, not just to listen to a few elected representatives.

While I am on that issue, I might turn to the issue of ATSIC. It just did not work. The National Indigenous Council will not repeat the experiment of that so-called representative body. I remind senators opposite that only 20 per cent of the people who could vote voted for ATSIC. Let me put that another way: 80 per cent of the people said it was not worth bothering. Mr Clark is the current commissioner of ATSIC, which we still have because Labor would not vote to get rid of ATSIC, having said it was their policy. I have some more to say about this matter. The ATSIC chairman, as a matter of interest—

Opposition senators interjecting—

Senator Carr interjecting—

The PRESIDENT—Order! Senator Carr!

Senator VANSTONE—Senators opposite seem to be more interested in yelling and screaming their views than in getting on board with the government for the future and the progress of Indigenous Australians. It might be of interest to senators to know that the chair of ATSIC, Mr Clark, became the chair by getting probably no more than 102 first preference votes as a regional councillor. When you add up all the first preference votes he needed to become the chair, you get a total of 140. Some people might think that getting 140 votes makes you a representative, but we do not—and he was not. Mr Clark got fewer votes than Senator Conroy. (Time expired)

Senator FIFIELD—Mr President, I ask a supplementary question. Could the minister further advise the Senate how the National Indigenous Council will serve Australia’s Indigenous community better than ATSIC?

Senator VANSTONE—Quite, Senator Fifield. Why the National Indigenous Council will serve the Australian community and the Indigenous community far more effectively is that they are not dependent on the votes of a few.

Senator Carr interjecting—

Senator VANSTONE—All these councillors are there because of their own skill and their own merit.

Senator Carr interjecting—

Senator VANSTONE—They are Indigenous Australians who have walked in those shoes, jumped those hurdles and climbed
those mountains. They have been successful in their own right. They are still successful in their own right and they can speak independently—

Senator Carr interjecting—

The PRESIDENT—Order! Senator Carr, shouting across the chamber is disorderly. You have continued to do it while this question has been answered, and I ask you to cease.

Senator VANSTONE—So these people, because of their own experience, their own skills and their own expertise are not answerable to a particular group. They do not have to make sure that more money goes to Charleville, to this region or to that region. They can speak for themselves, and I am sure that they will. It is very clear that there are other Indigenous Australians keen to get on board with shared responsibility arrangements and with giving Indigenous people the opportunity to shape their futures. (Time expired)

Howard Government: Ministerial Code of Conduct

Senator WEBBER—My question is to Senator Hill, the Minister representing the Prime Minister. I refer to the section of the ministerial code of conduct that addresses contact with lobbyists. Is the minister aware that the explanation given by Mr Ken Crooke about his attendance at a meeting with the Queensland government and A2 dairy marketers has now been disputed by the Queensland minister for primary industries? Can he confirm that the Queensland minister has publicly stated that Mr Crooke ‘did not indicate that he was working for Ms Kelly’ but rather ‘said nothing to lead us to believe that he was not still acting for A2’? Given that Mr Crooke was employed under the Members of Parliament (Staff) Act at the time, and in light of the specific requirements of the ministerial code of conduct, what action has the Prime Minister taken to resolve the many contradictions in Mr Crooke’s statement?

Senator HILL—If that question is whether I am surprised that a Labor minister from Queensland is attacking The Nationals then, no, I am not surprised. Am I surprised that he is attacking the staff of a member of The Nationals? No, I am not surprised by that at all. Do I believe that these regional programs are in the best interests of Australia? Yes, I do believe that. I believe it is important to have a government in this country that recognises the need to build infrastructure in rural and regional Australia to give them a chance to be competitive with the rest of the country. I am disappointed that the Australian Labor Party still does not appreciate the importance of that objective. No, we will not apologise for supporting rural and regional Australia. We will give them a fair chance. We are committed to that, and perhaps that is why they keep voting for us at election after election.

I do not ask the Labor Party to look to that objective in supporting rural and regional Australia. I ask them rather to look to support rural and regional Australia because it is in the best interests of the whole nation. There are only a couple of days to go, but it is not too late for the Labor Party to get out of the gutter and start looking more positively at what is necessary to benefit all Australians. One way to do that is to help the bush build its infrastructure, and that is one of the commitments for which this government is not going to apologise.

Senator WEBBER—Mr President, I ask a supplementary question. I remind the minister that my question was about the ministerial code of conduct. We will try again. Can the minister confirm that the ministerial code of conduct requires that contact with lobby-
ists does not ‘give rise to a conflict between public duty and private interest’?

Senator Abetz interjecting—
Senator Chris Evans interjecting—

Senator WEBBER—Now that it has been confirmed that Mrs Kelly employed in her office a lobbyist for a company seeking a grant from a program under her direct control, can the minister confirm that at no time did Mrs Kelly formally consult the Prime Minister on this matter although she is expressly required to do so by the code of conduct?

Senator Abetz interjecting—
Senator Chris Evans interjecting—

Senator WEBBER—In light of the unresolved questions about the lobbying activities of one of her staff, can the minister confirm that in accordance with the code of conduct Mrs Kelly is accepting responsibility for the actions of this staff member?

The PRESIDENT—Order! Senator Abetz and Senator Evans, if you want to have a conversation, go outside.

Senator HILL—It was difficult to hear all of the supplementary question with the interjections of Senator Evans in the front row, I have to say. If the supplementary question was whether this government stands by the code of conduct, yes, it does. Does it believe that it is important to separate private interests from public interests? Yes, it does. Do all coalition ministers accept that? Yes, they do. Are they adhering to it? Yes, they are. I suggest that the Labor Party worry more about its own deficiencies, even suggested recently by the Premier of Queensland, than these matters. Rural and regional Australia deserves our support. We will give it and we will not apologise for it.

Ansett Australia: Employee Entitlements

Senator ALLISON (2.30 p.m.)—My question is to the Minister representing the Minister for Transport and Regional Services. In September 2001 the government said it would underwrite Ansett worker entitlements and it set up the $10 ticket levy to do that. Can the minister now confirm that the government has made a $158 million profit so far on the levy plus the $289 million from Ansett asset sales? Minister, isn’t this double dipping? Does the minister recall Mr Anderson saying back in 2001 that there would be no double dipping by this government?

Senator IAN CAMPBELL—I thank Senator Allison for the question. I cannot confirm that that is the case, because it is not the case. No funds were retained by the government other than for the levy administration and the announced security funding package. The government has paid out $336 million to guarantee worker entitlements. The special employees entitlement scheme covered all unpaid wages and leave, pay in lieu of notice and eight weeks redundancy pay. The levy was not to pay for entitlements owed to workers above the community standard. The terms of the scheme were agreed by the administrators and the Australian Council of Trade Unions in the Federal Court hearing of September 2001. The government always intended that any surplus funds would be used to assist the aviation and tourism industries. The levy ceased in July 2003 with approximately $286 million collected. Once reimbursements were made to the government from the administrators, there was a surplus of $93 million collected. The government deferred payment of a further $67 million owed to it by the administrators providing additional funds to the workers.

The government has fully met its commitment to employees as well as its commitment to reinvest any surplus money from the air passenger ticket levy to the benefit of the aviation and tourism sectors. To this end, the minister announced on 4 December last
year that the Australian government would spend the $93 million surplus on a further major expansion of the nation’s aviation security regime. Issues on the remaining outstanding entitlements owed to former Ansett workers are matters for the administrators.

Senator ALLISON—Mr President, I ask a supplementary question. I believe the minister may have misled the Senate in his statement that no other funds had been taken from Ansett. I ask him to again check that so far this government has collected the levy plus $289 million from Ansett asset sales. Isn’t it the case, Minister, that your government has actually hoodwinked Ansett workers and the travelling public? Why doesn’t the minister use the asset sales money to pay the 9,500 Ansett workers who are still owed $212 million, and will he pay those entitlements by Christmas?

Senator IAN CAMPBELL—As I said, these are matters for the administrators.

Fisheries: Illegal Operators

Senator O’BRIEN (2.33 p.m.)—My question is to Senator Macdonald, the Minister for Fisheries, Forestry and Conservation. Does the minister recall issuing a press release on 24 October 2002, entitled ‘We are winning the war on illegal fishing’, just one of at least 134 press releases the minister has issued since assuming the role of fisheries minister which laud the Howard government’s record in tackling the problem of illegal fishing? Can the minister now confirm that he delivered a paper to the Natural Resource Management Ministerial Council on Friday last week in Melbourne entitled ‘National Fishing Industry Strategy’? Didn’t paragraph 2 of this paper include the statement that ‘illegal fishing appears to be increasing in Australian fisheries’? Isn’t this a direct admission that the minister has failed in his duty to curtail illegal fishing in Australian waters, and does he still claim to be winning the war on illegal fishing?

Senator IAN MACDONALD—I thank Senator O’Brien for a very important question on fisheries management in Australia—regrettably, we get too few of those. There are problems with illegal fishing in Australia, principally, I might say, in the state run fisheries which are run by the Labor governments. I do not want to make a politically partisan point out of a very serious issue. The federal government is helping the states in ways that I cannot speak too much about in trying to address some really serious problems in fisheries. The abalone fishery—not a Commonwealth fishery, I might say—is in significant difficulty through criminal activities. The states seem incapable of handling them, and the Commonwealth has taken a leadership role in that, as usual. There are other state run fisheries where there are problems with illegal fishing and, again, we want to work cooperatively. I am disappointed that apparently some of my state colleagues on the ministerial council feel it appropriate to leak that sort of information to try and have federal Labor colleagues make a fairly cheap political point out of it. It is a very serious issue, and we want to help.

I was disappointed that the state Labor ministers did not support another paper I had which would have allowed some equity and fairness to Commonwealth licensed fishers who were thrown out of business by state decisions—like Mr Beattie is doing in Queensland, shutting down fishing industries in Queensland and not giving one cent of compensation. Whereas the Commonwealth, in the Barrier Reef representative areas program where it has put fishermen in some difficulty, has a very generous structural adjustment package, the Queensland Labor government does nothing.
The question was about fisheries management and illegal fishing generally. The Commonwealth has been very successful in policing our fisheries down in the Southern Ocean—perhaps some of the most difficult seas in the world. We have just spent $90 million on a boat. Senator Ellison and I had the honour of launching it with its new guns a couple of weeks ago in Perth. That shows any illegal fishermen, particularly the international criminal cartels, that the Howard government is absolutely deadly serious about illegal fishing in its waters; that it will take very strong and determined action to deter that happening and, where it does occur, to apprehend those involved.

We do have a problem in the north of Australia as well, with Indonesian village fishermen—or what used to be Indonesian village fishermen—coming across the border to fish in Australia’s much better managed waters. In those waters, through the good management of the Australian Fisheries Management Authority, we have sustainable shark stocks. Shark fin is now selling in the Asian market at something like $US100 per kilogram. This gives great encouragement to Indonesian fishers to come across to our waters. But the Australian government has attacked that problem head on. Under the auspices of the Navy and its patrol boats, Customs and its patrol boats and Coastwatch, we have taken a whole-of-government approach that is doing particularly well having regard to this difficulty in the north. This year we have detained more Indonesian boats than ever before. We intend to continue to do that until such time as we can make those who would enter our waters illegally understand that there is no profit in coming illegally into Australian waters.

Senator O’BRIEN—Mr President, I ask a supplementary question. I thank the minister for his answer. Could he advise us whether he stands by the statement that he made in 2002 that we are winning the war on illegal fishing when in his answer he advised us that the type of illegal fishing in northern Australian waters has gone from the village type fishermen to a more aggressive fishing of some of the fish stocks? Can he demonstrate to the Senate how we can possibly be winning the war on illegal fishing, bearing in mind the activities that he has described, when the problem in northern Australian waters is actually getting worse?

Senator IAN MACDONALD—We are winning the war on illegal fishing, certainly in the Southern Ocean. The word around the traps in ports around the world from where the international criminal cartels operate is that it is not worth their while going into Australian waters anymore. I do not want to blow our own trumpet but it represents a great effort by the Australian Navy, the Australian Customs Service and the fisheries patrol officers, who all do a great job in protecting Australian waters. In the north there is a problem, but we are working on that. We are holding our own, and it is going to get better. We are doing a lot of work with the Indonesians and there is a lot more work that will occur. I would hope that the Labor Party, for once in its life, would be bipartisan regarding a matter that is very much in Australia’s national interest. (Time expired)

Health: Allied Health Professionals

Senator LEES (2.40 p.m.)—My question is to the Minister representing the Minister for Education, Science and Training, Senator Vanstone. Does the minister agree that medical work force shortages go well beyond shortages of doctors and nurses? Is the minister aware that there are also severe shortages of allied health professionals—in particular, of podiatrists? Despite this, the podiatry school at Curtin University in Western Australia has closed; the University of Western Sydney has closed its first-year intake
from next year; and the podiatry program of the University of South Australia is severely constrained by lack of funding. Will the minister ensure that there are sufficient funds available so that more allied health professionals can be trained, particularly podiatrists, and that they are able to be trained right across Australia in all states?

Senator VANSTONE—I thank Senator Lees for the question. She has had a long-standing interest not only in higher education but in allied health. I am advised that, across the whole sector, the government funds about 60,000 higher education places in allied health areas, excluding medicine and dentistry. In 2003 there were about 1,500 domestic chiropractic and osteopathy students and over 770 domestic students in podiatry.

The government has also allocated a significant number of new places in allied health areas. By 2008, for example, the government will be providing about 5,000 additional places in nursing. A figure of 104 new podiatry places by 2008 were allocated through this process. In terms of health places overall, the government will be providing more than 7,000 places to assist in meeting the needs of the allied health sector. That will go a long way towards alleviating some of the shortages and problems that have been experienced by a range of health professionals.

However, it is important to say that state and territory governments are going to have to examine pay and conditions for health workers in an effort to lift the retention rate of the existing work force, particularly nurses. The minister will be writing to the Vice-Chancellor of the University of Western Sydney, Professor Reid, expressing concern at the way in which the decision to suspend the intake of students in podiatry and osteopathy was announced. The minister will also be writing to all vice-chancellors advising them that he will be including an additional condition of grant funding in funding agreements, requiring that any closures of specialist courses be negotiated and agreed with the Commonwealth.

The department is developing a set of strategic principles for higher education priorities that will be used to inform the government’s decisions about and investment in higher education provision. The principles will provide the sector with guidance on how this additional clause in funding agreements will operate in practice. The department is also liaising with the health departments in all jurisdictions to ensure that we address health work force issues and shortages strategically.

Senator, I will send you some of my fabulous foot rub. I quite understand the need for good podiatrists—they are the most underrated people in the world.

Senator Patterson—It hasn’t been to the TGA!

Senator VANSTONE—It does not have TGA approval; it comes with no promises but I will happily send you some.

Senator LEES—Mr President, I ask a supplementary question. I thank the minister for her answer. It is pleasing to note that the government’s attention has been drawn to this issue. I asked specifically about the level of funding for allied health courses. The universities are arguing that they simply are not funded to the level they need to run allied health courses. For example, is the government prepared to consider funding courses such as podiatry to the same level that it now funds dentistry, because a lot of similar requirements are in place for both those courses?

Senator VANSTONE—I will take the detail of that question on notice. Senator, I cannot believe I heard you ask whether we were
prepared to fund podiatry to the same level that we fund dentistry. Dentistry is terribly expensive. I will ask the minister to give a detailed answer on the cost requirements for each course. If we have happy feet we can have a happy nation—podiatrists of the world unite! I am in favour of these people and I think they do a tremendous job. I am not opposed to it in any way, but we will see what the minister can tell us. Just as a little hint, Senator, it has been my experience that vice-chancellors will always tell you that there is not enough money to do what they want to do, and when their salary packages are open to public scrutiny we might all believe it.

Australian Defence Force: Drug Use

Senator CROSSIN (2.45 p.m.)—My question is to Senator Hill, the Minister for Defence. Can the minister confirm that, in September this year, a Defence Force magistrate dismissed a drug charge against an officer after ruling that the Army’s urinalysis drug testing system was unlawful? Isn’t it true that the magistrate had no other option because the government had not made regulations to legally authorise officers to collect urine samples for drug-testing purposes, and to this day still has not? Can the minister indicate whether any other charges or convictions have been overturned because of the absence of regulations authorising legal random drug testing? Can the minister confirm that his former assistant minister Danna Vale promised on 17 September 2002 to introduce regulations to legally authorise random drug testing and urinalysis in the Australian Defence Force? Minister, why is the ADF still waiting for the government to make these regulations two years after they were promised?

Senator CROSSIN—I hope the honourable senator supports the zero tolerance policy of the ADF and that there is no hidden agenda in this Northern Territory question. Apart from that, yes, a magistrate did dismiss a case. The magistrate found that the method adopted to require the taking of these tests was, and I am paraphrasing, ‘inconsistent with part 8A’, I think, ‘of the Defence Act’. It is true that Defence decided to bring in this system through command rather than through legislative prescription. Advice has been sought on the consequence of the ruling of that particular Defence Force magistrate, and the government is considering advice on this issue at the moment. Have other cases been dismissed? I am not aware of any other cases that have been dismissed. Otherwise, we will deal with the consequences of that particular finding in a way that gives the military the confidence they need to ensure that their zero tolerance drug policy, which is supported by the government, certainly supported by this side of the chamber, can be properly implemented and respected.

Senator CROSSIN—Mr President, I ask a supplementary question. Minister, I refer you to the October 2003 drug raid at Robertson Barracks, Darwin, where 47 personnel returned positive drug tests. Isn’t it the case that, because the regulations to allow random testing in the ADF still have not been introduced two years after they were promised by the government, the 47 personnel have had their convictions overturned? Has the minister received legal advice on these 47 overturned convictions and on whether the ADF is liable for claims of unfair dismissal or compensation for these personnel?

Senator HILL—The supplementary question does tend to confirm my suspicion that this is a question on behalf of somebody who gave a positive test. I am disappointed to hear that the Labor Party is yet again moving down this path rather than supporting—

Senator Chris Evans—Mr President, I raise a point of order. My understanding of
the standing orders is that it is not competent for the minister to cast an aspersion on the questioner or their motives. That is clearly what the minister was trying to do. He would also be well aware that Mr Bevis on behalf of the Labor Party put out a press release yesterday supporting a no drug tolerance position. In terms of the aspersion cast by the minister, Mr President, I ask you to call on him to withdraw it because it was clearly not in order.

The PRESIDENT—I do not believe the minister used any unparliamentary language. I remind him to return to the supplementary question.

Senator HILL—It is clear to me that the supplementary was designed to undermine the authority of command within the ADF. If that is the way the honourable senator on behalf of the Labor Party wishes to pursue her interests in question time, so be it. In my view it is not related to the issue of regulations under the Defence Act, because there are significant shortcomings within that provision that would have limited the capacity to test for the drugs in question. The military has chosen to proceed through command. There is an issue arising as a result of the Defence Force magistrate’s decision. That must be considered and the next step forward determined by government, and that is what government is considering at the moment. (Time expired)

Family and Community Services: Senior Australians

Senator JOHNSTON (2.51 p.m.)—My question is to the Minister for Family and Community Services, Senator Patterson. Will the minister inform the Senate how the Howard government is delivering on its election commitments to provide extra support to senior Australians? Is the minister aware of any alternative policies?

Senator PATTERSON—I thank Senator Johnston for his question. I am pleased to say that when you run a strong economy and when you manage the budget responsibly you can actually give social dividends to the community—to carers, to families and to seniors. From late next week, over 280,000 self-funded retirees with a Commonwealth seniors health care card will begin receiving their first $100 instalment of the new $200 seniors concession allowance promised during the election. From March next year, over 2.2 million people of age pension age will begin receiving the first instalment of their new utilities allowance payment of up to $100 a year for singles and $50 for each member of a couple. The new utilities supplement builds upon the pension payment reforms that the Howard government has delivered which set the maximum single rate of pension to at least 25 per cent of male total average weekly earnings.

As a result, since March 1996 single and partnered pensions have increased by 37 per cent, which represents an increase that is 15 per cent above inflation. Single pensioners are now $43.80 better off a fortnight and couples are each $37 better off a fortnight than they would have been under Labor’s indexation policies.

I am proud to have implemented and delivered the first of our commitments following the election which helps grandparents who are primary carers of their grandchildren. From 1 November, the work, study and training test was waived for access to child-care benefit for grandparents who are primary carers of their grandchildren. On 1 January 2005, those grandparents who receive income support will also be eligible for up to 50 hours of approved child care free of charge for each child—a significant assistance to grandparents with the primary responsibility of caring for their grandchildren.
I have already delivered my commitment to improve opportunities and flexibility for carers. We have increased the number of hours that carers may spend in work, training or study without losing qualification for carer allowance. I am also pleased that all state and territory ministers at the recent ministerial meeting accepted my initiative to help ageing carers plan for the future of their sons and daughters with disabilities—an issue that confronts many older people. In addition, following the Australian government’s offer of $72½ million, the state and territory ministers agreed to negotiate mutually acceptable arrangements to meet the respite needs of carers who are over 70 years of age and care for an adult son or daughter or sons and/or daughters—sometimes there are two adult children for whom they are caring.

On top of this, from April 2005 the government will increase the private health insurance rebate to 35 per cent for people aged between 65 and 69 and to 40 per cent for people aged 70 and over. These are all recent measures—either in the last budget or commitments in the recent election—to assist older Australians. You can do these sorts of things only when you run a strong economy, when you do not borrow against the next generation to pay for the current older generation.

In 2001, the Australian government offered the states and territories funding to provide concessions for self-funded retirees with Commonwealth seniors health care cards—concessions similar to those held by pension concession card holders. The offer was based on joint funding where we would pay 60 per cent and the states would contribute 40 per cent. Most state and territory governments ignored the Australian government’s additional offer of funding. I was not prepared to wait and we delivered. In some cases, states and territories are stripping concessions from pensioners. In Victoria, for example, pensioners have lost part of their motor vehicle concession.

Last election, the Labor Party tried to hoodwink the Australian public with their Medicare Gold policy—a policy which the incoming president of the Labor Party has called a ‘turkey’. Let me remind you that this policy is stuffed. It is a stuffed turkey and I hope it disappears over Christmas with the rest of the Christmas turkeys. (Time expired)

Education: Funding

Senator LUDWIG (2.55 p.m.)—My question is to Senator Vanstone representing the Minister for Education, Science and Training. I refer the minister to the Howard government’s higher education reforms. Is the minister aware that New South Wales is the only state that delivers police recruit education in the tertiary sector? Minister, isn’t it the case that the Howard government’s higher education reforms will mean the majority of New South Wales police recruits who undertake a diploma course in policing will now have to pay full fees? Minister, why is the Howard government taking action which will put police careers beyond the means of ordinary young Australians?

Senator VANSTONE—Senator, I think if you had asked me whether there is any state other than New South Wales that offers that type of tertiary training for police officers I would have said no, but I would probably then have had to check. I gather by your question that that is the case. If it is not, then there is some small course somewhere. I am sure the minister will provide information and confirm that for you.

As to the impact of the higher education reforms with respect to those students, I do not have any information. I will ask the minister if he can give a very swift response to your question. Policing plays a very important role in the Australian community.
Whether it is community policing, organised crime policing, international policing, whatever it is, we all depend on it and it is very important. I will ask the minister to give you a response as quickly as he can.

Senator LUDWIG—Mr President, I ask a supplementary question. I thank the minister for taking the question on notice to seek an answer from the minister. While the minister is doing that, I ask again: why is the Howard government seeking to prevent students from modest income families from entering the police force? Isn’t it the case that the Howard government’s action in charging up-front fees for police diplomas will make it even harder to attract young people to a dangerous and difficult profession? While you are taking the first question on notice, perhaps you could check whether the Minister for Justice and Customs alerted the Minister for Education, Science and Training to the damage that the Howard government’s higher education policy would do to police recruiting. If he has not done so, why not?

Senator VANSTONE—If the good senator would like me to work as his admin assistant and check up on a few other things from other ministers because he does not have the time and will not make the effort to chase them up, I am reasonably efficient and I am happy to give it a go for you! If anyone wants to talk about support for policing in Australia, particularly the Australian Federal Police, they need only look at the budgets for the Australian Federal Police prior to this government coming to power and look at them now. Then the good senators opposite might think twice about the value of the question that was just asked.

Centrelink: Job Network

Senator GREIG (2.58 p.m.)—My question is to Senator Kay Patterson as Minister for Family and Community Services. Can the minister advise whether Centrelink staff have been instructed to increase customer referrals to Job Network members before Christmas by strongly encouraging disability support pensioners and parenting payment customers to accept a referral and to avoid telling them that their participation is not compulsory unless asked? Minister, are Centrelink staff required to conduct any assessment of a customer’s suitability for referral to a Job Network member?

Senator PATTERSON—I do not know the answer to that question, Senator Greig. Mr Hockey would be able to answer that in more detail. I do not know about any instructions that Centrelink staff may or may not have been given. I do not always take for gospel something that is told to me by a constituent or in a telephone call. It may or may not be correct. I will ask Mr Hockey for any information, so I may respond to your question. I will get it back to you as quickly as possible, most probably after question time tomorrow.

Senator GREIG—Mr President, I ask a supplementary question. I ask the minister to check also whether the minister can advise whether Centrelink customers with a disability are informed about services available to them through specialised disability employment services. If they are, at what point are they informed and are they freely able to migrate to these services once a referral to a Job Network member has been accepted?

Senator PATTERSON—I will get an answer to that question as well. People who visit Centrelink now are treated very differently from when they visited the old DSS offices before 1996. They are totally different places. Because of the initiatives of former Senator Newman in the first instance and then the work that was undertaken with the development of Centrelink, people now
get much better services than they ever got under the old DSS.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Immigration: Rophin Morris

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (3.00 p.m.)—Senator Greig asked me a question the other day in relation to the Disability Discrimination Act. I have further information for him which I seek leave to have incorporated in Hansard.

Leave granted.

The answer read as follows—

Senator Greig asked:

Mr President, I ask a supplementary question. Is it not the case that the fact that the family had not sought a bridging visa had nothing to do with why their application was rejected? More importantly, given that the Australian government recently co-sponsored a United Nations General Assembly resolution on the development of a convention on the rights of people with disabilities, is the minister concerned that Australia’s apparently discriminatory immigration policy may place Australia in breach of current and perhaps future international human rights obligations in this regard?

Answer:

Australia’s immigration laws are consistent with Australia’s international human rights obligations. Section 52 of the Disability Discrimination Act (DDA) exempts decisions under the Migration Act and its regulations from the effects and operation of the DDA. The exemption has had long term and bipartisan support to enable the operation of health criteria as part of visa and entry requirements.

Immigration laws do not stop persons with disabilities from being granted visas. People with disabilities can and do migrate to Australia and Australia values their contribution. However the processes operate so that persons who are assessed as likely to impose significant impact on the community may be refused a visa, as Australia has stringent health criteria for people seeking to enter Australia, particularly on a permanent basis.

The health criteria work to protect Australia not only from diseases that present a communicable public health risk such as tuberculosis but also to limit entry of persons who are likely to require expensive, long term or scarce health and welfare resources into the future.

Immigration: Asylum Seekers

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (3.01 p.m.)—Senator Nettle also asked a question of me the other day. I have some further information for the senator, which I seek leave to have incorporated in Hansard for the Senate’s benefit. It may be of interest to senators to know that the person to whom she was referring was in fact given the opportunity to remove things from their luggage, unlike the assertion that she boldly made in this place.

Leave granted.

The answer read as follows—

Senator Nettle asked:

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?

Answer:
I am aware of the removal to which Senator Nettle referred, however it is not correct to say that this person had an application outstanding. This individual had exhausted all avenues of appeal and had sought my intervention on two earlier occasions and the removal was appropriate.

A lawyer acting for this person contacted my department on the day of his departure and indicated that a further intervention request would be lodged the next day. The lawyer did not provide any information about the substance of this proposed request.

A stated intention by an agent to lodge a request for s.417 intervention in the future is just that; is not itself a request.

For the Senator’s future reference, she may be interested to know that a request for s.417 intervention is not a legal impediment to removal under s198 of the Act.

In relation to the Senator’s question regarding the individual begging to remove evidence from his bags in relation to his conversion to Christianity, I am advised that the Department did not refuse to give him access to his bags. Indeed, the person in question was given access to his bags, including his check-in luggage, whilst waiting for his flight. He changed his clothes from this baggage and removed at least one other item from his baggage.

Abortion

Senator HILL (South Australia—Minister for Defence) (3.01 p.m.)—I have some further information in response to a question asked by Senator Allison on 2 December in relation to overseas aid funds and family planning activities. I seek leave to have the answer incorporated in Hansard.

Leave granted.

The answer read as follows—

Senator Allison asked the Minister representing the Minister for Foreign Affairs upon notice on 2 December 2004:

Why does the government prohibit the use of overseas aid funds for training people in delivering safe abortions?

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—The Minister for Foreign Affairs has provided me with the following information in response to the Honourable Senator’s question.

Australian support for family planning activities is based on the principle of voluntarism agreed at the International Conference on Population and Development (ICPD) in Cairo in 1994, and reaffirmed at ICPD+5 in 1999 and at ICPD+10 in May 2004.

The use of the aid budget for family planning activities is governed by the Guiding Principles for Australian Assistance for Family Planning Activities, reflecting the consensus reached at Cairo and ICPD+5 and ICPD+10.

These Guiding Principles emphasise freedom of choice and non-coercion. The four Guiding Principles are:

- Individuals should decide freely the number and spacing of their children and have the information and means to exercise this choice;
- Women and men should have access to the widest possible range of safe and effective family planning methods and should participate fully in defining the family planning services they need;
- Family planning programs should cater for all people who may be sexually active; and
- Australia’s assistance should actively work towards improving the quality of care in family planning programs.

In addition to the four Guiding Principles, the Government has two specific criteria in relation to supporting family planning activities through the aid program:

Australian aid funds are not available for activities that involve abortion training or services, or research trials or activities, which directly involve abortion drugs.

The Government seeks to support activities that provide information and access to safe, voluntary and affordable family planning options. The Government does not consider abortion to be a method of family planning; therefore information that promotes abortion as a method of family planning is not supported by aid funds.
planning or provides instructions on abortion procedures is not eligible for Australian aid funding. However, Australia-funded activities can provide medical treatment, support and counselling to women suffering from complications resulting from an unsafe abortion. In addition, Australian aid funds can be used to provide information on unsafe abortion as an issue relevant to promoting responsible family planning.

Australian aid funds can only be used to purchase monthly cycle oral contraceptive pills; emergency contraceptive pills, barrier methods (including condoms, diaphragms, cervical caps), Depo Provera (three monthly injectable), Copper T and Multiload IUDs and Implanon (hormonal implant).

The Government restricts the purchase of contraceptives with Australian aid funds to those contraceptives which are registered in Australia. In the cases of monthly cycle oral contraceptive pills, emergency contraceptive pills and condoms, it is not necessary that the particular brand or formula be registered in Australia. Australian aid funds can be used to provide information and training on a range of contraceptives used in project areas, including those not registered in Australia (for example, Norplant).

The rationale for limiting contraceptives that can be purchased using our overseas aid funds to those contraceptives which are registered in Australia is based on safety. By using contraceptives that are registered in Australia, we are assured that the contraceptives meet a world class standard and quality and that, therefore, will be safe and effective. It would be remiss of Australia to deliver anything less to our partner countries.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Answers to Questions

Senator O'BRIEN (Tasmania) (3.02 p.m.)—I move:

That the Senate take note of the answers given by the Minister for the Environment and Heritage (Senator Ian Campbell) and the Minister for Defence (Senator Hill) to questions without notice asked by opposition senators today.

It was quite amusing to see Senator Ian Campbell fall into the same trap that he put himself into previously. The first bit of advice I would give to Senator Campbell is: when you get a brief from the National Party, particularly from Minister Anderson about a program that he has shamelessly used to pork-barrel in National Party electorates and to assist the Liberal Party in electorates that they thought they could win or needed to defend, you should look very carefully at the brief and treat with caution the suggestion that was made to him, very obviously, that the form of defence was to attack the Labor Party and say, ‘This program is all about regional Australia; therefore the Labor Party is attacking regional Australia by questioning this program.’

It only took one response for that defence to fall to smithereens, to be absolutely shattered. What better example could there be of divergence of the Regional Partnerships program from regional Australia than the advice to the Senate of a program which appears on Mr Anderson’s department’s web site as being funded under that program—that is, the project, which has been identified finally by Senator Ian Campbell in his answer today, which is located at Bondi in the seat of Wentworth in metropolitan Sydney. Of course, other answers revealed that there are a number of other projects, valued at over $3 million, which happened to have leaked out of regional Australia into metropolitan Australia. When you examine the profile of those approvals you see that they have been in the main directed towards seats which the government needed to defend or which the government thought it had a chance of winning. That is the reality. Wentworth is a good example.

Who can forget that preselection battle between the disendorsed sitting member, Mr King, and Mr Turnbull. Mr Turnbull, of course, expended a great amount of money
and exhorted a whole lot of people to be branch-stacked into the Liberal Party for him to win preselection from a sitting member. The sitting member then fought back and said he would stand as an Independent. So is it surprising that we see $221,000 going into that great electorate of Wentworth, where some of the wealthiest people in Australia live, which contains some of the most expensive housing in the country—that great electorate of Wentworth that has been held by the conservative parties consistently since it was formed? Yet $221,000 is awarded to that electorate.

I wonder what Mr Abbott said, because his seat did not get any money. What did Mr Abbott do to Mr Anderson? His seat did not get a cracker. But Mr Turnbull’s seat got $221,000. Ross Cameron must be absolutely filthy—he could only get $20,000 in the seat of Parramatta. What would Ross Cameron be thinking now—‘What did I do wrong?’ He obviously regrets what he said to the Telegraph. He probably regrets not checking out who was sharing the flat. Since Senator Ian Campbell suggested last week to Senator Carr that he should go and buy himself a pair of Blundstones, get them a bit dirty and go and talk to people who are trying to build regional Australia, Mr Anderson was reported in the Australian on Saturday as saying that the Regional Partnerships program does not discriminate against particular parts of the country. What it discriminates against, in the main, are seats that are not of interest to the National Party and the Liberal Party. It discriminates against seats such as Warringah or other northern Sydney seats or Banks, Lowe, Blaxland, Reid or Werriwa, which did not get a cracker. What it demonstrates is that this funding program had a set of guidelines on the web site but a big ‘get out of jail’ loophole guideline overriding all of the rest, kept secret since September last year, which allowed the funding of a variety of programs that did not fit the original guidelines. (Time expired)

The DEPUTY PRESIDENT—I call Senator McGauran.

Senator McGauran (Victoria) (3.07 p.m.)—That was an indication of the interest I took in the previous speaker. The opposition really have been dragging this issue out for the last couple of weeks as they have nothing else to occupy their time. Where are the economic questions from the opposition? Wasn’t there a commitment, an understanding and a message sent to the opposition after the election about establishing their economic credentials? Isn’t that, by their own admission, exactly where they lost the last election? Yet, since the parliament has sat, we have not heard any economic questions; all we have heard is an attack on a legitimate and proper program established by the government for the regions.

The opposition have jumped on the bandwagon of the Independent member for New England, who first raised this issue. He has now been utterly discredited, but that has not stopped the Labor Party from ploughing on with their frivolous and dead-end attack upon the government on this program. This is their modus operandi. When they run out of puff, have nothing to say and are all tortured inside over leadership matters, what do they do? They single out the bush and the programs. Why not? They have very little support out there, and they know it. It is an easy thing for them to kick around. They have been doing it basically ever since the Labor Party began. Certainly the modern Labor Party have no affinity with the regions at all and this is yet another example.

The opposition tried the same thing in the last term. Who can forget their attack on another perfectly legitimate region based program that brought success—the Natural Heritage Trust? They spent weeks and weeks
of parliamentary time with fillers attacking the Natural Heritage Trust. Where did it get them? Nowhere at all. There was no penetration in the community because they knew what a great success the program was for the regions and for the environment. That program has been fully funded to this day. We are proud to back the Natural Heritage Trust just as we are proud to support, and will not step back from supporting, the Regional Partnerships program, formerly the Regional Solutions Program. We will not step back from it, Senator O’Brien. In fact, we are proud of it.

What we like about this program is that it is a bottom-up program. These regional and rural grants have been fashioned around the regional summit of 1997 because we believe they have to come from the bottom up. These programs have to be recognised by the local community, supported quite often by the local council, state government and certainly those most successful area consultative committees, where local leadership gets together to find out what the region requires. This is a real bottom-up program. It has been an enormous success and we are proud to say that we back it. The National Party, most of all, are proud to say that we back it. We have come under attack for supporting this program, but we are unashamedly supportive of this program and unashamedly spokes men and women for our regions. We are unashamedly trying to win the budget dollar, wrestling over the budget dollar.

Senator George Campbell—East Melbourne?

Senator McGauran—I wonder if those on the opposite side of the chamber will ever understand that when you are in government there is only one cake and there is a wrestle for the dollar. That is why rural and regional members, National and Liberal, do go in to bat for their local constituencies with regard to budgetary allocations. We have been very successful, thank you very much. You highlight our success every day in the parliament.

I suggest you go to Bondi, lie on the beach and have a rest, as was suggested by Senator Macdonald, then come back and start working on your economic credentials. Drop these fillers. They are a complete waste of time. You know that. Experienced politicians—and there are one or two over there now; I will name Senator Forshaw as an experienced politician—know these fillers do not get traction. This is just a filler before Christmas. You have an opportunity in the new year to establish your economic credentials.

Senator Bolkus (South Australia)

I have to say at the start that it is a bit rich to be lectured on financial responsibility by a bloke who had to be saved by a special favour from the ANZ Bank with respect to his financial irresponsibility. In question time today we saw more evidence of this government-rorted, taxpayer-funded program. This program was rorted by the government in order to win favour at the last election. This program took money from the taxpayer in an endeavour to con them and to buy their votes. It is more evidence of the government using taxpayer funds—as Senator O’Brien said, no matter what it takes—in this case for no baser purpose than to buy votes.

The program was geared to development and to development in rural and regional Australia. We saw through evidence today and over the last week or so that the program’s outcomes were far distant from its designed objectives. The program’s objectives were development, regional development and rural development. Its outcomes in so many circumstances were not the needs of the electorate but the needs of government members in marginal seats. As we saw in
question time today, we have the funding of a dog day centre, so aptly called Happy Tails, in Brisbane; we have funding for a church body to fit out a centre from which Hillsong can deliver its employment and mentoring programs to the Redfern community; and we have in my state of South Australia funding of almost $800,000 in metropolitan electorates—not in rural and regional Australia.

South Australia is a great example. We should look at South Australia in terms of how a program which could have done a lot of good in addressing the needs of rural and regional South Australia was diverted to accommodate and give priority to the needs of government members. There is real need in rural and regional South Australia. In places like the Pit lands to Port Augusta and Port MacDonnell there are communities in real need. Places like Port Lincoln and Clare are burgeoning economies also with infrastructure needs.

But what do we have? We have the funding of some selected programs in accordance with the electoral priorities of government members. I am not saying that the projects that were funded are not worthy of funding; what I am saying is that under this program they should not have been given the priority that they were. This is a program for rural and regional South Australia, for rural and regional Australia. If projects like these can be funded under this program, what about all the other community groups that also had meritorious claims but did not apply because they believed the government's literature that this program could not be accessed by them? What we have is a misappropriation of funds for rural and regional Australia.

As I said, in the state of South Australia close to $800,000 in funds has gone to metropolitan Adelaide. When you look at those projects, you find that six football clubs, two soccer clubs, one church group and one metropolitan transport hub in metropolitan Adelaide received funds. One program for rural students and one project in Morphett Vale, which may in its operation cover rural and regional South Australia, received funds. The Parrakie Football Club got $35,000; the Modbury Junior Football Club got $60,000; the Ingle Farm football club got $35,000; the Golden Grove football club got $30,000; the Para Hills Knights soccer club got $25,000; and the Modbury soccer club upgrade got $25,000. All those clubs are in the seat of Makin. To top it off, $187,000 went to the Golden Grove church redevelopment, which is also in the seat of Makin. So footy clubs won out—but just some football clubs.

What about those football clubs in electorates like Hindmarsh? What about those sports and soccer clubs in inner city Adelaide, in Thebarton and Mile End? They worked under the apprehension that this program was not for them. They worked under the apprehension that Thebarton, Mile End, Lockleys and Henley Beach were not part of rural and regional South Australia, and clubs in those places did not apply. In Adelaide the Kilburn community and sports club—another sports club—got $250,000; the Ovingham sports club got $30,000; a boarding house for Indigenous students at Northfield got $17,000; and a project for the identification of transport logistics and employment opportunities in Enfield got $44,000. Those places are nowhere near rural and regional South Australia. As well as that, a program in the seat of Kingston, in Morphett Vale, got $99,000. That may actually have an outcome for rural and regional South Australia. Sports clubs have needs. This is not the program for them to have those needs met. (Time expired)
Senator Bolkus laid at this government and at a particular senator on this side with respect to financial irresponsibility and mismanagement. Those allegations came from a senator who was part of a government that in 1996 left the Australian people with a $96 billion debt. He was a key performing minister—or underperforming minister—during that time.

Senator George Campbell—What is the debt now? It is $406 billion.

Senator Barnett—That debt has been paid off to the extent that it is now less than $30 billion. The government has not only paid off that debt but also has the ability to fund specific programs, Senator George Campbell, to the extent of $5 billion extra each year. That is a Labor debt that has been paid down. Senator Campbell knows that fact, as does the public, because it is on the public record. Senator Bolkus, when he asked a question in question time today, said that we used the Regional Partnerships program to target key marginal seats. The Labor Party attack was specifically based on the stage 2 redevelopment of the Bondi Marine Discovery Centre, which is in the seat of Wentworth in Sydney. That is known as a blue-ribbon Liberal seat. He talked about the pork-barrelling of marginal seats. His argument contradicts itself. It is lost.

Senator O’Brien in his address today talked about the preselection battles for the seat of Wentworth, but he failed to talk about his own preselection battle. He lost the support of the Left, with David Price, who is the State Secretary of the Labor Party in Tasmania, dumping him from the No. 1 spot to the No. 3 spot. Senator O’Brien, those in glass houses can throw stones. That is what happened. You were fortunate enough to retain that position, after a bit of a scramble. Then you started attacking the Hon. Tony Abbott and former parliamentary secretary Ross Cameron and hitting them with a wet lettuce leaf. Let us look at some of the facts, particularly on the Marine Discovery Centre at Bondi. Let us see who has been supporting this very important project. Do you know who has been supporting it? The state Labor government in New South Wales.

Senator Ferris—Fancy that!

Senator Barnett—Fancy that! Before you asked your question today, Senator O’Brien, did you ask the state Labor government why they made that allocation, why they spent that money and why they wanted to support such an important tourist venture as the Marine Discovery Centre? I will tell you how much they spent: $100,000, just in 2004. Who else supported it? The local council. There was grassroots support for a local project. The Waverley Council made a community grant over a period of three years. That would make you think it would have a little bit of credibility, a little bit of support, from the local community. Of course the Australian government wants to get behind it and say: ‘Yes, this is good. It is good not only to create jobs and development in the area but to make this a particular and special event.’ Eight hundred and fifty thousand-odd overseas tourists visit each year.

Bondi was the centre of the Olympics in the year 2000. Are you opposed to such events? Let us ask the Labor Party about that. I was there with my family and I enjoyed the events at Bondi. It was a wonderful location for the beach volleyball. It was a great success. Indeed, the Olympics in 2000 were a great success and a credit to all Australians, particularly the Australian government and the state government at the time.

These are the things that have been neglected in the arguments that have been put by the Australian Labor Party. We want to suggest to the opposition that they get out
there, get their hands dirty and talk to the people concerned—the local community groups that want to support these projects. They know how important they are. The Marine Discovery Centre met the criteria. That is on the public record. They have met all the criteria. The application was received and it was successful. I want to pay tribute to the volunteers who got behind it as well. They received a little bit of support during the International Year of Volunteers in 2001. The contribution of volunteers should not be forgotten and the Australian government is getting behind them, as it is behind this special community project. There are plenty of projects in Tasmania that Senator O’Brien knows about, and I would like him to go on the public record and nominate the specific projects in Tasmania that he opposes. *(Time expired)*

Senator GEORGE CAMPBELL (New South Wales) *(3.22 p.m.)*—I also wish to speak on the motion to take note of the answers to the questions asked by Senator O’Brien during question time, and particularly to deal with the issue of the Marine Discovery Centre at Bondi Beach. I also, like Senator Barnett, looked at the DOTARS web site to see what this program was.

Senator Barnett—Your colleagues didn’t.

Senator GEORGE CAMPBELL—The title of the program, Senator Barnett, is Regional Partnerships. The state is New South Wales and the location is Bondi. I have to admit that I was a little surprised, given that I live 10 minutes away from Bondi. It is a great privilege to get up and speak on this issue as a constituent of the seat of Wentworth and to learn, through this debate, that I am part of regional Australia. The minister, Senator Ian Campbell, in his response—and Senator Hill in his response to an unrelated question—asked why we are attacking regional Australia. They said: ‘This is about jobs in regional Australia. Why does the Labor Party single out the bush for particular attention?’

I am a great supporter of the bush. I think the people in regional and rural Australia are great people. They are great battlers and they deserve all the help they can get. They get very little in real terms from this government, and they have got very little in real terms from this government since 1996. But, when it comes to electioneering and being able to target seats that potentially may change hands in an election, this government becomes very focused on what its programs are intended to do. That is why you have a mix of programs entitled Regional Partnerships being used to fund projects in seats in metropolitan Australia that are determined to be marginal or under threat.

Wentworth is about as metropolitan as you can get. It would have the highest number of millionaires in this country within its boundaries. It would have the most expensive real estate in this country within its boundaries. It is hardly a seat that you would say is suffering from disadvantage and despair. I walk around it every week. I happen to enjoy living in Wentworth. I happen to particularly enjoy Bondi. I can tell you about all the best coffee shops and the best lattes in the country—not in regional Australia, in the country. The Zoo Bar in Bondi Junction is one, and Centennial Bites down at Clovelly is another one. They were all visited by their local member, canvassing for votes, during the last election. I can name them one after another—the Gelato Bar in Campbell Parade, the Thai Flora Restaurant in Hall Street—there is a multitude of them. People in Wentworth will not starve or go short of a decent cup of coffee. The current member has probably bought coffee for every person who lives in the seat of Wentworth. During the last election campaign he was seen con-
stantly wandering in and out the coffee shops of Wentworth canvassing votes for himself. To suggest that the people of Wentworth or Bondi need to soak up $220,000 worth of a program that I presume was initially designed to assist the people of regional Australia is an absolute absurdity.

I am sure that the people at the Marine Discovery Centre in Bondi are very grateful for the $220,000, and I am sure they do a very good job in travelling around the schools of the area to promote knowledge about marine life. Most of the kids in the area spend their life at Bondi Beach anyway; they go and experience the marine life first-hand. They are out on their surfboards from early in the morning until late at night at Bondi, Bronte, Coogee—all the beaches around that eastern suburbs area. It is obvious that this was an election ploy to transfer these moneys into those electorates that the government thought were vulnerable. It had nothing at all to do with promoting partnerships in regional Australia or assisting to build jobs in regional Australia. (Time expired)

Question agreed to.

Ansett Australia: Employee Entitlements

Senator ALLISON (Victoria) (3.27 p.m.)—I move:

That the Senate take note of the answer given by the Minister for the Environment and Heritage (Senator Ian Campbell) to a question without notice asked by Senator Allison today relating to the entitlements of former Ansett employees.

The fact is that this government has profited as a result of both the levy and the way in which it is claiming asset sales on top of that levy. The minister, I think, misled the chamber, and my staff confirmed this, by saying that the government had not collected additional money. Let us just go through it. It is quite complex. The government set up a levy scheme back in September 2001. At that time it was expected that the administrator of Ansett would contribute to those worker entitlements through the sale of assets—through winding up the company, in other words. At the time, Minister Anderson was asked by journalists, ‘You won’t be double-dipping, will you?’ The minister assured those journalists that this was not to be the case. It has become the case.

The government has collected $286 million through the Ansett ticket levy. Of the $336 million which it loaned, in the first instance, to the Ansett administrators, $208 million has already been paid back. That provides a net profit of more than $150 million, which the government has chucked into general revenue and used to fund a whole range of unrelated projects. Those projects were loosely related to aviation, but, if the travelling public who paid an extra $10 in their levy every time they travelled in this country had known, no doubt they would have been a bit angry about the fact that it paid for things like security training for regional airport staff and multiagency counter-terrorism exercises at regional airports—not so much because they were not worthy projects but because the Ansett employees are still owed $212 million in entitlements that they are not able to be paid. The minister has the cheek to suggest that it is entirely up to the Ansett administrators. It is not, because the government has made itself the highest priority creditor. Even though it has raised all this money from the levy, it is still effectively saying, ‘We’ve not been paid everything we paid you.’

KordaMentha, who are the administrators of Ansett, cannot pay further entitlements, even though Ansett employees are owed about $212 million, until they have paid back the full $336 million. But remember again that the levy has raised more than $286 million over and above that. So, effectively, the government is hoodwinking both the general
public and Ansett employees and profiteering at the expense of those employees. The minister says they have all been paid up. Maybe they have been, but only to the government’s own very restrictive level of entitlements that it said it would pay. For instance, there is a maximum of eight weeks redundancy pay, as I understand it, whereas many of those employees were Ansett employees for years and years, well beyond that entitlement. There is $212 million there that should be paid by this government to those workers, and it should happen before Christmas. This is the appropriate time to do it.

Furthermore, the government should advise the Ansett administrators that it will no longer collect any further moneys from the sale of assets because this is neither reasonable nor fair. The government is simply taking advantage of its position. I understand that back when the levy was set up it was not understood how much the assets would raise, so there was some doubt. But the government has just taken advantage of that and will keep insisting—I understand that there is about $60 million still to come—that that money be paid to it instead of being paid to employees. The handling of the Ansett workers’ entitlements has been a sorry mess. We know there has been an enormous amount of distress on their part in not being able to access those entitlements. (Time expired)

Question agreed to.

PETITIONS

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

Immigration: Asylum Seekers

To the Honourable President and Senators assembled in parliament:

This petition of certain citizens of Australia draws to the attention of the Senate:

There are still many kids held in immigration detention in Australia. Most have been there for over two years. A detention centre is no place for children to grow up.

We therefore pray that the Senate asks the Minister for Immigration to exercise her power to immediately release these children and their families from behind the razor wire.

by Senator Crossin (from 83 citizens).

Medicare: Services

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

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

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

by Senator Crossin (from 257 citizens).

Military Detention: Australian Citizens

To the Honourable the President and members of the Senate in parliament assembled.

The petition of the undersigned shows:

That the treatment of Hicks and Habib is not in accordance with Geneva Convention Guidelines applying to prisoners of war.

Your petitioners ask that the Senate should:

Ensure that Hicks’ and Habib’s rights are met under the guidelines of the Geneva Convention, as it applies to prisoners of war.

Send a deputation to George W. Bush asking that Hicks and Habib be returned to Australia.

Ensure that Hicks and Habib be entitled to civil trials in Australia if charged with any crime.
by Senator Kirk (from 480 citizens).

Petitions received.

NOTICES

Presentation

Senator Ellison to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the Customs Act 1901, and for related purposes. Customs Amendment Bill 2004.

Senator Ellison to move on the next day of sitting:


Senator Ellison to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the Criminal Code Act 1995 to provide for offences relating to trafficking in persons, and for related purposes. Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004.

Senator Ridgeway to move on the next day of sitting:

That the Senate—

(a) congratulates Mr John Bulunbulun on winning the Australia Council’s Red Ochre Award which honours an Aboriginal or Torres Strait Islander person who, throughout his or her lifetime, has made outstanding contributions to the recognition of Indigenous Australian art at both national and international levels;

(b) notes that Mr Bulunbulun is a practicing artist of more than 30 years and an important ceremonial leader and singer around his Arnhem Land community of Maningrida;

(c) also notes that Mr Bulunbulun was a pioneer for the protection of artist rights following a landmark court case he fought and won against a manufacturer who illegally reproduced his work, the celebrated ‘T-shirt case’ and that he continues to advise fellow artists on copyright, protocols and responsibilities, particularly about depictions of dreaming and totems in their work;

(d) further notes that:

(i) Indigenous cultural expression is a fundamental part of Indigenous heritage and identity, and unauthorised use of Indigenous art and cultural expression can be inappropriate, derogatory and culturally offensive,

(ii) individual Indigenous artists are custodians of the knowledge and wisdom their work incorporates and reflects, therefore Indigenous moral rights are collective rights that are inalienable from their community of origin, and

(iii) Indigenous artists are particularly vulnerable under Australian law, which offers virtually no protection for the moral rights owned collectively by Indigenous communities; and

(e) urges the Government to take immediate action to amend the Copyright Act 1968 to ensure the adequate recognition and protection of Indigenous communal moral rights.

Senator Sherry to move on Thursday, 9 December 2004:


Senator Cherry to move on the next day of sitting:

That the following matters be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 10 March 2005:

(a) the provisions of the Australian Communications and Media Authority Bill 2004 and the Australian Communications and Media Authority (Consequential and Tran-
sitional Provisions) Bill 2004 and related bills;
(b) whether the powers of the proposed Australian Communications and Media Authority and the Australian Competition and Consumer Commission will be adequate to deal with emerging market and technical issues in the telecommunications, media and broadcasting sector;
(c) whether the powers of Australia’s competition and communications regulators meet world best practice, with particular reference to the United Kingdom regulator Ofcom and regulators in the United States of America and Europe; and
(d) whether legislation is needed to prevent cross ownership between delivery of communications and media content.

Senator Greig to move on the next day of sitting:
That—
(a) the time for the presentation of the report of the Legal and Constitutional Legislation Committee on the Disability Discrimination Amendment (Education Standards) Bill 2004 be extended to 8 February 2005; and
(b) that the terms of reference be varied to allow for the examination of whether the bill:
(i) provides full legislative support for the introduction of the Disability Standards for Education,
(ii) permits existing rights under the Disability Discrimination Act 1992 to be undermined, and

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (3.35 p.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 Customs Amendment Bill 2004.
I also table a statement 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 statement read as follows—

Purpose of the Bill
The bill prescribes commercial quantities for drugs in Schedule VI of the Customs Act 1901 for which a commercial quantity is not currently prescribed.

Reasons for Urgency
The Customs Act 1901 (Customs Act) includes serious drug offences, such as drug importation offences. The maximum penalties for those offences vary depending on the quantity of drug involved. Offences involving ‘trafficable quantities’ of prescribed drugs carry penalties of up to 25 years imprisonment, whereas those involving commercial quantities of prescribed drugs carry penalties of up to life imprisonment. The different penalty levels reflect the relative seriousness of, for example, importing a commercial quantity of a drug compared to importing a smaller trafficable quantity.

The drugs to which the offences apply, and the corresponding quantities, are set out in Schedule VI to the Customs Act. However, that schedule does not prescribe commercial quantities for all of the listed drugs.

Recently, there have been instances where large quantities of drugs for which the Customs Act does not prescribe a commercial quantity have been imported into Australia. The Commonwealth Director of Public Prosecutions has advised that, in the absence of a prescribed commercial quantity, it has not been possible for judges to consider imposing life imprisonment penalties and they have been limited to the maximum penalty for offences involving trafficable quantities, being 25 years imprisonment.

There has also been judicial criticism of the fact that there are no commercial quantities prescribed for some drugs listed in Schedule VI of the Cus-
toms Act. For example, in a recent case involving the importation of large quantities of ‘ice’ (methamphetamine), the judge commented that he would have imposed a larger sentence if the legislation provided for it.

It is proposed to prescribe commercial quantities for drugs in Schedule VI of the Customs Act 1901 for which a commercial quantity is not currently prescribed. This will ensure courts can impose appropriate sentences where large quantities of drugs are involved until the new serious drug offences commence, which is expected to be in the latter half of 2005.

Without these interim measures in place, it is possible that those who import large quantities of drugs may escape appropriate penalties. This scenario is not in line with the expectations of the Australian community.

Senator Allison to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) a meeting of former Ansett employees in Sydney on 27 November 2004 called on the Government to ‘cease making financial gains’ whilst entitlements are still owed to former employees,
(ii) both Ansett workers and the general public were told by the Government at the time of the establishment of the Special Employee Entitlements Scheme for Ansett Group’s Eligible Employees (SEESA) that the revenue from the Ansett ticket levy would be used to fund the payment of Ansett workers entitlements and that on 17 September 2001 the Deputy Prime Minister (Mr Anderson) told journalists that the Government would not ‘double dip’ in establishing SEESA,
(iii) after underwriting a $336 million loan to Ansett administrators, the Government has collected $286 million through the Ansett ticket levy and recouped $208 million through Ansett asset sales, has effectively double dipped, and has made a $150 million profit from the scheme,
(iv) $212 million is still owed in entitlements, and
(v) the administrators of Ansett, Mr Men-tha and Mr Korda, are unable to pay entitlements to former Ansett employees until such time as they have repaid the full $336 million loaned by the Government; and
(b) calls on the Government to:
(i) cease collecting repayments under SEESA from the administrators until Ansett workers are paid their entitlements in full, and
(ii) use the surplus of the Ansett passenger ticket levy to pay outstanding Ansett worker entitlements as was the stated purpose rather than redirecting these funds to aviation security initiatives.

Senator Brown to move on the next day of sitting:
That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 11 May 2005:
(a) compensation arrangements for wheat growers after the writing-off of the Iraqi wheat debt, with particular reference to:
(i) how decisions were made, and
(ii) the impact on wheat growers individually and generally; and
(b) any related matters.

Senator Nettle to move on the next day of sitting:
That the Senate—
(a) notes:
(i) that the inaugural Dr Andrew McNaughtan memorial lecture was delivered on 7 December 2004, which also marks the 29th anniversary of the Indonesian invasion of East Timor,
(ii) Dr McNaughtan’s major contribution to the struggle of the East Timorese people, including his work to achieve economic justice in relation to the
Timorese claim to oil and gas reserves in the Timor Sea,

(iii) the remarks of Timorese Foreign Minister, Mr Jose Ramos Horta, who said last week that Australia’s reduced compensation offer to Timor Leste ‘amounted to an unacceptable blackmail’; and

(iv) the patronising and inaccurate comments by the Minister for Foreign Affairs (Mr Downer) in response to East Timorese dissatisfaction with the Australian Government’s compensation offer when he said ‘East Timor wouldn’t be an independent country if it wasn’t for Australia’; and

(b) calls on the Government to:

(i) negotiate a fair and equitable maritime boundary with Timor Leste according to current international law and the provisions of the United Nations Convention on the Law of the Sea,

(ii) respond to the request by Timor Leste for more regular meetings to settle the maritime boundary dispute between the two countries within a more reasonable timeframe,

(iii) return Australia to the jurisdiction of the International Court of Justice and the United National Convention on the Law of the Sea for the adjudication of maritime boundaries, and

(iv) commit to hold in trust revenues from disputed areas immediately outside the Joint Petroleum Development Area of the 20 May 2002 Timor Sea Treaty for further apportionment between Australia and Timor Leste after the maritime boundary dispute between the two countries has been settled.

BUSINESS

Rearrangement

Senator FERRIS (South Australia) (3.37 p.m.)—by leave—At the request of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I move:

That the time for the presentation of the report of the Legal and Constitutional Legislation Committee on the Copyright Legislation Amendment Bill 2004 be postponed to a later hour of the day.

Question agreed to.

NOTICES

Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Stott Despoja for today, proposing the reference of matters to the Legal and Constitutional References Committee, postponed till 8 December 2004.

Business of the Senate notice of motion no. 2 standing in the name of the Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Hutchins) for today, proposing the reference of matters to the Foreign Affairs, Defence and Trade References Committee, postponed till 8 December 2004.

General business notice of motion no. 17 standing in the name of Senator Brown for today, relating to Tasmanian forests, postponed till 8 December 2004.

General business notice of motion no. 27 standing in the name of Senator Lees for today, relating to Asian elephants, postponed till 10 February 2005.

General business notice of motion no. 33 standing in the name of Senator Brown for today, relating to kidnappings in Colombia, postponed till 8 December 2004.

General business notice of motion no. 44 standing in the name of Senator Ludwig for today, relating to counterfeit passports, postponed till 9 December 2004.
COMMITTEES
Employment, Workplace Relations and Education References Committee
Reference

Senator MURRAY (Western Australia) (3.39 p.m.)—I move:

(1) That the matter of unfair dismissal be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by 14 June 2005, with the following terms of reference:

(a) to examine:

(i) the international experience concerning:

(A) unfair dismissal laws, and

(B) the relationship between unfair dismissal laws and employment growth in the small business sector,

(ii) the provisions of federal and state unfair dismissal laws and the extent to which they adversely impact on small businesses, including:

(A) the number of applications against small businesses in each year since 1 July 1995 under federal and state unfair dismissal laws, and

(B) the total number of businesses, small businesses and employees that are subject to federal and state unfair dismissal laws,

(iii) evidence cited by the Government that exempting small business from federal unfair dismissal laws will create 77 000 jobs in Australia (or any other figure previously cited),

(iv) the relationship, if any, between previous changes to Australian unfair dismissal laws and employment growth in Australia,

(v) the extent to which previously reported small business concerns with unfair dismissal laws related to survey questions which were misleading, incomplete or inaccurate,

(vi) the extent to which small businesses rate concerns with unfair dismissal laws against concerns on other matters that impact negatively on successfully managing a small business, and

(vii) the extent to which small businesses are provided with current, reliable and easily accessible information and advice on federal and state unfair dismissal laws; and

(b) to recommend policies, procedures and mechanisms that could be established to reduce the perceived negative impacts that unfair dismissal laws may have on employers, without adversely affecting the rights of employees.

(2) That the committee be authorised, with the approval of the President, to commission independent research, as desirable or necessary, to investigate each of these terms of reference.

Question agreed to.

HANUKKAH

Senator LUDWIG (Queensland) (3.39 p.m.)—I move:

That the Senate—

(a) notes that on 7 December 2004 the Jewish festival of Hanukkah begins at sunset; and

(b) wishes a happy Hanukkah to the Australian Jewish community.

Question agreed to.

MULTICULTURALISM

Senator LUDWIG (Queensland) (3.39 p.m.)—I ask that general business of motion No. 43 today, which condemns Sydney Lord Mayor Clover Moore and relates to multiculturalism and the celebration of Christmas, be taken as a formal motion.

The DEPUTY PRESIDENT—Is there any objection to this motion being taken as formal?
Senator Brown—I have an objection unless the minute by Lord Mayor Clover Moore, which I have circulated, is incorporated into Hansard.

The DEPUTY PRESIDENT—As I understand it, leave has been granted for that, Senator Brown; therefore, there is no objection to the motion being taken as formal.

Senator LUDWIG—I move:
That the Senate—
(a) condemns Sydney Lord Mayor Clover Moore for inappropriately using multiculturalism as a shield for stripping back Christmas celebrations;
(b) notes:
(i) the damage that is done to multiculturalism by this kind of misguided action,
(ii) multiculturalism does not mean abandoning your own beliefs or culture out of deference to imagined offence to a different culture, and
(iii) that Christmas itself is multicultural, celebrated as it is across Europe, North and South America, parts of Asia, Africa, the Pacific and wherever Christians may be;
(c) embraces the spirit of Christmas and encourages the people of Australia, whatever their beliefs, to practise the Christmas message of peace and goodwill to all; and
(d) wishes a safe and merry Christmas to the people of Australia.

The document read as follows—

ITEM 3D. FESTIVE SEASON CELEBRATIONS AND CHRISTMAS DECORATIONS
FILE NO:
DATE: 6/12/04
MINUTE BY THE LORD MAYOR
To Council:
As Councillors will be aware, there has been considerable public interest in the City’s Christmas decorations and events in recent days, with some misinformed criticism driven by a fabricated quote wrongly attributed to me. In view of the level of interest in this issue, I propose to deal with it as the first item of business.
The City is spending over $900,000 ($300,000 more than last year) decorating the city and celebrating the Christmas season, followed by spending another $5 million on New Years Eve celebrations and the Sydney Festival during January, closely followed by Chinese New Year.

While there has been a view expressed that the City is not doing enough there is also a contrary view in the community—indicated by many of the letters published in the Sydney Morning Herald today—that the expenditure of ratepayer’s money on these type of activities is already more than adequate.

Council has to strike a balance between competing views in the community, making a reasonable and justifiable decision concerning the expenditure of public money.

Councillors will understand that this year’s decorations and celebrations were planned many months ago and the expenditure approved by the former General Manager. I am informed that past practice has usually been to have decorations specially commissioned and then generally reused for about 3 years, and there has been no major departure this year from what has happened in previous years.

To ensure there is no misunderstanding, I will now place on the public record the Council’s Christmas and festive season activities.

The City’s celebrations commenced on 25 November with the lighting of the Christmas tree and a concert attracting 7,000 children and their families in Martin Place, with me arriving in a Christmas sleigh with Santa. We ran a children’s colouring in competition with the prize lighting the official Christmas tree.

The Martin Place Christmas tree is 20 metres tall, and took 9 days to install. It has 180 gold and silver baubles, 120 stars and 19,000 lights.

The City has also decorated Chifley Square, Sydney Town Hall and Pitt Street Mall and is still in the process of installing 545 banners to decorate the streets, based on a “Christmas lights” theme and “seasons greetings” translated into the 8 most frequently spoken languages within the City boundaries. The banners will be located in...
George Street, Martin Place, Taylor Square, Anzac parade, Green Square and Kings Cross.
We are also having roving Christmas street performers around the CBD shopping precinct on weekends during December.

Most importantly, we are also holding free family Christmas concerts in the City’s expanded areas in Rosebery, Alexandria, Rushcutters Bay, Glebe and Surry Hills, with Santa, carollers, a big brass band, MC Justine Clarke from Play School and special performances at each location.

I attended the Alexandria Park Twilight Christmas Concert last Friday night and can report that it was a fantastic event and very much appreciated by the local community.

The City is in partnership with the major retailers who have supported the city’s concerts, and as has happened in previous years, 400,000 copies of a full colour magazine promoting Christmas events, transport, trading hours, gift ideas, church services and Christmas stories has been produced by Fairfax in association with the City.

Perhaps some of the views expressed in the past few days have been driven by nostalgia, and public disappointment at a reduced level of retailer commitment to Christmas displays in recent years. People’s memories of their childhood Christmases often revolve around the type of displays that retailers used to put on—the Santa grottoes and window displays that we rarely see anymore.

Yes, most of us do remember those things fondly—but I don’t believe that it is actually the City’s responsibility to reproduce the sort of retail display that seem now to be a thing of the past. This is essentially a commercial and marketing decision made by individual retailers.

However, I am happy to raise this with the city’s retailers to ensure that they are given the opportunity to consider their displays and participate in planning for next year’s celebrations.

I am advised that in other major cities of the world which are often cited as examples of great Christmas decorations, the bulk of the decorations are provided by the retailers themselves, rather than by government.

I’d also like to put on record my real concern that we should not lose sight of the fact that Christmas is about the birth of baby Jesus and it is a spiritual and religious festival. We should not be preoccupied with commercial and material things—how many hundreds of thousands of dollars we are spending on temporary decorations. I believe we should focus on the more important and enduring aspects—like generating peace and goodwill towards others—and caring about everyone in our community, including the disadvantaged. As elected representatives, we should be more focused on those far less fortunate than ourselves, rather than the number of Christmas lights suspended over the Pitt Street Mall.

I’m pleased to report that the Council is also conducting a number of very important but lower key Christmas functions and activities for the less fortunate, including:

- Delivery of Christmas Hampers to approximately 300 Meals on wheels clients
- A Christmas luncheon with traditional Christmas lunch, entertainment and a variety of treats including chocolates, Christmas cake and cherries to take home at each of council’s 9 Aged and Disability Activity Centres;
- Each Activity Centre has been given funds to purchase Christmas decorations
- A free BBQ dinner and then a tour of the Christmas lights in suburbs famous for their decorated houses for approximately 120 aged residents
- A Christmas luncheon cruise for around 50 Meals on wheels Volunteers
- Groups of aged residents have been taken on special Christmas shopping outings
- Assistance with providing transport to a variety of Christmas activities and concerts
- Providing transport for the Crystal Set Choir to perform at nursing homes
- Hosting a Christmas function at the Redfern Community Centre to be attended by local residents with a BBQ meal, activities, Santa, Christmas stockings and lollies for the children.
As well as these and many other community-based Christmas activities, the Council has many public events planned for the entire festive season.

The celebrations will continue through New Year’s Eve with the award-winning, fireworks displays and the Sydney Festival in January, right up to Chinese New Year.

On New Year’s Eve there will be 2 fireworks shows again this year, with an earlier one for children at 9pm and the traditional midnight display. This year the bridge effects have been devised by sculptor Neil Dawson, and it will continue to be one of the world’s most watched New Year’s Eve displays.

As co-sponsor of the Sydney Festival the Council is playing an important role in enriching the cultural life of the city, allowing people to enjoy 23 free events and encouraging people to visit Sydney. The festival is one of the most attended events in Australia and it is a 3 week celebration of arts and culture, with 52 events featuring the best local and international theatre, music, dance, opera, multi-disciplinary and visual arts.

In supporting all of these events, the City is spending around $6 million of ratepayers’ money.

RECOMMENDATION

That arising from consideration of a Minute by the Lord Mayor to Council on 6 December 2004, on Festive Season Celebrations and Christmas Decorations, it be resolved that Council note the many actions and events undertaken by the City of Sydney—to celebrate the festive season in 2004-2005.

(SGD) COUNCILLOR CLOVER MOORE MP

Lord Mayor

Question agreed to.

Senator Brown—I wish to record the Greens’ opposition to paragraphs (a) and (b) of that motion but not to (c) and (d).

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.40 p.m.)—by leave—Along similar lines to Senator Brown, I wish to record that the Democrats do not support the condemnation of the lord mayor, but we certainly would not want to be seen to be opposing a motion wishing people a happy Christmas. Similarly, whilst we do not oppose the motion wishing the Jewish community a happy Hanukkah, I want to put on the record that I do not think we should make a precedent of wishing happy celebrations for every religious festival in the Australian community. We could be doing something pretty much every day, and I would be worried about the precedent it might set.

COMMITTEES

Legal and Constitutional Legislation Committee
Extension of Time

Senator FERRIS (South Australia) (3.41 p.m.)—At the request of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I move:

That the time for the presentation of the report of the Legal and Constitutional Legislation Committee on the Disability Discrimination Amendment (Education Standards) Bill 2004 be extended to 8 December 2004.

Question agreed to.

Community Affairs Legislation Committee
Meeting

Senator FERRIS (South Australia) (3.42 p.m.)—At the request of the Chair of the Community Affairs Legislation Committee, Senator Knowles, I move:

That the Community Affairs Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 9 December 2004, from 10.30 am, to take evidence on a matter relating to the Department of Health and Ageing.

Question agreed to.

Treaties Committee
Reference

Senator GREIG (Western Australia) (3.43 p.m.)—I move:
That the Senate—

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

(b) notes correspondence from the secretary of the committee to the Clerk of the Senate, dated 16 July 2003, which:

(i) stated that 'as far as the Committee is aware, there is no such proposed agreement' and that it had 'therefore decided to defer commencing the inquiry into the matter referred until the text of such an agreement is made available to the Committee', and

(ii) however, acknowledged that 'the Committee is empowered to inquire into any question relating to a treaty or other international agreement, whether or not negotiated to completion, referred to the Committee by either House';

(c) further notes:

(i) the report on ABC Radio’s PM program of 28 August 2002, that the US had written to the Australian Government, requesting it to enter into the proposed agreement and that, according to the Minister for Foreign Affairs, the Government was ‘sympathetic’ to the request,

(ii) the report on Network Nine’s Sunday program of 8 September 2002, in which the then Attorney-General indicated that the US had requested Australia to enter into the proposed agreement and that the Australian Government had no objection to the proposed agreement, and

(iii) evidence from Department of Foreign Affairs and Trade officials on 19 February 2004 that negotiations with the US were ongoing and that, at that time, the most recent meeting had been in December 2003; and

(d) recalls that on 30 August 2004, it again referred the proposed agreement to the committee for inquiry and report by 30 April 2005;

(e) notes that:

(i) the committee had not commenced the inquiry prior to the proroguing of the 40th Parliament, and

(ii) the reference lapsed with the proroguing of the 40th Parliament; and

(f) refers the proposed agreement, with particular reference to the following matters, to the Joint Standing Committee on Treaties for inquiry and report by 30 June 2005:

(i) whether the proposed agreement would breach the terms, or be otherwise inconsistent with the spirit, of the Rome Statute which Australia has ratified,

(ii) the effect of the proposed agreement, either itself or in conjunction with similar agreements between the United States and other states, on the ability of the International Criminal Court to effectively fulfil its intended function,

(iii) the implications of any extradition provisions in the proposed agreement and whether the proposed agreement would require the re-negotiation of existing extradition agreements to which Australia is a party, and

(iv) the implications of the proposed agreement with respect to Australia’s national interest.

Question agreed to.

AUSTRALIA-UNITED STATES FREE TRADE AGREEMENT

Return to Order

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.44 p.m.)—by leave—I make a short statement on behalf of the Minister for Trade in response to a Senate order for the production
of documents. The letters and attachments exchanged between the governments of Australia and the United States to finalise the Australia-United States free trade agreement were placed on the Department of Foreign Affairs and Trade web site at 10 a.m. on Friday, 3 December 2004. I believe that addresses the issue.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.45 p.m.)—Mr Deputy President, I raise a point of clarification of the statement just made by Minister Ellison regarding compliance with the return to order of production of the attachments and annexures to do with the free trade agreement. Does publication on the web site equate to those things being laid on the table? The order made by the Senate was that they be laid on the table. I recognise they have now been made public, which was the aim of the order, but does it actually equate?

The DEPUTY PRESIDENT—Senator Bartlett, I have got the answer for you. The answer is no; it does not equate to being laid on the table.

COMMITTEES

Treaties Committee
Corrigenda

Senator EGGLESTON (Western Australia) (3.45 p.m.)—On behalf of the Chair of the Joint Standing Committee on Treaties, I present corrigenda to the 61st report of the committee on the Australia-United States Free Trade Agreement.

Membership

The DEPUTY PRESIDENT—The President has received letters from an Independent senator seeking variations to the membership of certain committees.

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (3.46 p.m.)—by leave—I move:

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

Community Affairs References Committee—

Appointed—

Substitute members:
Senator Allison to replace Senator Lees for the committee’s inquiry into aged care
Senator Murray to replace Senator Lees for the committee’s inquiry into children in institutional care

Participating member: Senator Lees

Native Title and the Aboriginal and Torres Strait Islander Land Fund—Joint Statutory Committee—

Appointed—Senator Lees.

Question agreed to.

NATIONAL WATER COMMISSION BILL 2004

TAX LAWS AMENDMENT (SUPERANNUATION REPORTING) BILL 2004

First Reading

Bills received from the House of Representatives.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.47 p.m.)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.47
I table a revised explanatory memorandum relating to the National Water Commission Bill 2004 and 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—*

**NATIONAL WATER COMMISSION BILL 2004**

It is my great pleasure to speak to this Bill to establish a new national institution dedicated to advancing the sustainable use of water in Australia.

The Bill establishes the National Water Commission as an independent statutory body, with two key functions:

- assessing the implementation and promoting the objectives and outcomes of the National Water Initiative Intergovernmental Agreement; and
- advising on financial assistance to be provided by the Commonwealth under the Australian Water Fund.

I want to provide some further context for each of these inter-related roles for the new Commission. First, let me place them in the wider context of water in Australia.

**Water in Australia**

It’s well known that we are the driest inhabited continent on earth, with the second highest per capita water usage of any country in the world.

The basic fact is that our water resources do not match the patterns of either our production, or our urban settlements. Just over a quarter of the continent accounts for around 80 per cent of Australia’s total run-off—predominantly Tasmania and in the northern parts of Queensland, Western Australia and the Northern Territory. The most intensively irrigated river basin—the Murray Darling Basin—comprises nearly 14 per cent of Australia’s area, but accounts for only 6 per cent run-off.

Add to this picture the diverse nature of our water resources. As the preamble to the National Water Initiative puts it:

“Australia’s water resources are highly variable, reflecting the range of climatic conditions and terrain nationally. In addition, the level of development in Australia’s water resources ranges from heavily regulated working rivers and groundwater resources, through to rivers and aquifers in almost pristine condition.”

A further layer can be seen in the pattern of Australia’s water use. Agriculture uses around 70 per cent of total water used in Australia. Domestic consumption and industrial activity make up the remainder. And of course, water provides important amenity value to many Australians for recreation and tourism. Water also has inherent ecological value, and cultural value to some indigenous communities.

Against this background, there are several factors converging in Australia now to place enormous pressure on some of our major water resources. These factors include: drought, our fast-growing cities, dryland salinity, continued growth in irrigated agriculture, and climate change. Moreover, we have an obligation to future generations of Australians to be wise stewards of those water resources which are not yet showing signs of stress or overuse (for example in northern Australia).

Taken as a whole, this picture of Australia’s water resources simply underscores the need to improve our national effort in managing these resources. This is why water reform remains so critical.

**National Water Initiative**

At the outset, let me say that the Australian Government supports an effective National Water Commission because it is critical to driving continued reform of water management and water use in Australia.

Truly national water reform commenced with the original COAG Water Reform Framework agreed by Commonwealth and State governments in 1994. Governments have extended these commitments, and raised them significantly by signing the National Water Initiative in June 2004. In particular, the establishment of investment certainty for water users was identified as being a fundamental requirement for the realisation of National Water Initiative objectives.
It’s worth noting that for over a decade now, the cause of national water reform has enjoyed strong bipartisan support at the federal and state political levels. This reflects too a coalescing of the views of almost all stakeholders—irrigators, scientists, environmental groups—around the need to refresh the original COAG agenda through the National Water Initiative.

The introduction of the National Water Commission Bill today indicates the Government’s commitment to getting on with the job. I know that the recently appointed CEO of the interim Commission, Mr Ken Matthews, is already meeting with State officials to update them on establishment of the Commission and to indicate the partnership approach which he intends to bring to the Commission’s operation. And the Government stands ready to receive from State and Territory governments their nominations to fill the three Commissioner positions, as agreed in the National Water Initiative.

The Government’s intention is that the National Water Commission will be a key driver for national water reform. To achieve this, the Bill assigns several key functions to the Commission, including to:

- evaluate governments’ progress in implementing the outcomes, objectives and actions under the National Water Initiative, and report to COAG on their progress;
- conduct the scheduled 2005 assessment of commitments under the National Competition Policy water reforms, which was to have been undertaken by the National Competition Council; and
- undertake an initial stocktake of Australia’s water resources and water management arrangements.

**Australian Water Fund**

The National Water Commission’s role in advancing water reform is not restricted to these functions. Importantly, the Bill also assigns to the Commission a central role in relation to the Australian Water Fund.

The Government has pledged $2 billion over five years to establish the Australian Water Fund. This is in addition to the $200m provided to recover water for the Living Murray Initiative, and significant resourcing for the Natural Heritage Trust and the National Action Plan on Salinity and Water Quality. The significance of this decision is that there are now major, additional, national resources available to help advance the objectives and outcomes of the National Water Initiative.

In developing the Fund, the Government has recognised that progress needs to be made at several different levels; hence there are three quite distinct funding programmes all aimed at achieving practical on-the-ground outcomes.

Firstly, $1.6 billion will be invested over five years in the Water Smart Australia Programme to accelerate the uptake of smart technologies and practices in water use across Australia. The Government has identified a number of projects that would be funded, subject to a number of conditions such as contributions from State governments and the private sector; and provision of appropriate due diligence (in other words evidence that projects are viable). These projects include:

- securing the long-term future of South Australia’s water supply;
- assisting NSW and Victoria with structural adjustment for over-allocated groundwater systems; and
- developing a viable Wimmera-Mallee pipeline project to replace the world’s largest open channel water supply system with a network of pipelines; and
- investing in water savings and efficiency measures in the Macalister Irrigation District to recover water for stressed rivers.

Investment under the Australian Water Fund will be made on the basis that it is consistent with, and helps to achieve, the principles, outcomes and actions of the National Water Initiative and the Living Murray Initiative. State and Territory governments which have signed up to, and are implementing, the NWI will be eligible to make bids, as well as local authorities and private proponents.

The second programme to be funded from the Australian Water Fund will see investment of $200 million in the Raising National Water Standards Programme. The programme will lift Aus-
Australia’s national capacity to measure, monitor and manage water resources over the long term. Investment under this programme will assist in achieving the outcomes of the NWI and will support projects such as a nationally consistent water accounting system, and working with communities to conserve rivers with high environmental values.

The Commission will make recommendations on projects put forward under these programmes of the Fund for the Government’s final decision. The Commission will also administer these programmes of the Fund.

The third programme is the Water Wise Communities Programme, which will invest $200 million over five years to promote a culture of wise water use. Community organisations will be provided with grants of up to $50,000 allocated on a competitive basis to deliver on-the-ground results that increase water use efficiency, improve river or groundwater health or improve community education on water saving.

The Department of Environment and Heritage will administer the Water Wise Communities Programme in conjunction with the Department of Agriculture, Fisheries and Forestry.

The Australian Government’s intention is that by combining the reform evaluation role and the programme delivery role, the National Water Commission will play a key and constructive part in improving water use and management in Australia.

National Water Commission

Lastly, let me say something about the way in which the Government expects the Commission itself to operate.

As mentioned earlier, the Bill allows for Commissioners to be nominated by the Commonwealth, and by the States and Territories. The Bill also requires the Commissioners to act in the best interests of the Commission—it certainly does not envisage a disparate set of Commissioners each representing and advocating different sectoral or government interests. The cause of water reform needs to rise above that, and so does the Commission.

The Bill also provides that the Commission meet at least 8 times per year, and with a full and ambitious work programme.

By placing this body in the Prime Minister’s portfolio, the Commission will be able to bring to water issues the profile and significance which that entails. The Prime Minister has identified water as one of his top personal priorities for this term of Government.

The National Water Commission will be instrumental in ensuring that water issues in Australia continue to capture the public’s imagination and energy in working towards practical water solutions. The importance of water to securing Australia’s economic and environmental future demands no less.

TAX LAWS AMENDMENT (SUPERANNUATION REPORTING) BILL 2004

This Bill makes amendments to the Superannuation Guarantee (Administration) Act 1992.

The Howard Government has demonstrated our commitment to a superannuation system offering choice of fund, incentives to save and flexibility to assist people to retire when they are ready. For instance, under the co-contribution scheme—which the Labor party promised to abolish at the last election—the Government contributes $1.50 for every $1 of voluntary personal contributions, to a maximum $1500 for employees on incomes up to $28,000.

This Bill demonstrates this Government’s commitment to reducing compliance costs for employers. As announced in the Prime Minister’s statement titled Committed to Small Business on 6 July this year, we are removing the superannuation guarantee reporting requirement from the superannuation guarantee arrangements for all employers, not just small business employers. It is proposed that these amendments should take effect from 1 January 2005. Employees will still be provided with information on at least an annual basis from their superannuation fund and many will receive information more frequently on payslips as required by various Australian workplace legislation provisions and awards.
Full details of the amendments in this Bill are contained in the explanatory memorandum. I commend this Bill.

Debate (on motion by Senator George Campbell) adjourned.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.48 p.m.)—I move:

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

Senator Brown—Mr Deputy President, I raise a point of order. I wonder if the minister could indicate what later hour that might be.

Senator ELLISON—This will be listed in accordance with the list that we have circulated to Independent senators and the opposition. There is a list of bills which we are seeking to deal with during this sitting week, and of course we received these messages a moment ago from the other place. They will take their place on the Senate red. We have the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004, as I understand it, which is currently in the second reading debate at the moment. Then we will go to the Tax Laws Amendment (Superannuation Reporting) Bill 2004, which is one of the ones that we have just dealt with in this message. Then we will go to the Copyright Legislation Committee on the provisions of the National Water Commission Bill 2004 be postponed to a later hour of the day.

Question agreed to.

TAX LAWS AMENDMENT (SUPERANNUATION REPORTING) BILL 2004

Report of Senate Economics Legislation Committee

Senator EGGLESTON (Western Australia) (3.51 p.m.)—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I present the report of the committee on the provisions of the Tax Laws Amendment (Superannuation Reporting) Bill 2004, together with documents presented to the committee.

Ordered that the report be printed.

TEXTILE, CLOTHING AND FOOTWEAR STRATEGIC INVESTMENT PROGRAM AMENDMENT (POST-2005 SCHEME) BILL 2004

CUSTOMS TARIFF AMENDMENT (TEXTILE, CLOTHING AND FOOTWEAR POST-2005 ARRANGEMENTS) BILL 2004

Second Reading

Debate resumed.

Senator BUCKLAND (South Australia) (3.52 p.m.)—Before the second reading debate on the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 and the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004 was interrupted by question time today,
I was making reference to employment numbers in my own state of South Australia. Perhaps it is sometimes hard for some of us, with our backgrounds, to look at these sorts of bills without giving consideration to the effects they have on workers and their families. I also mentioned a number of closures of clothing or textile factories. Whilst I cannot be specific about those people working in sweatshop situations in the industry, which we know exist—some illegally—I can say that Levi Strauss lost 90 workers in South Australia recently and Fletcher Jones lost 40 in the south-east.

I was also in the process of commenting that it seems that when there is good news to sell on any industry, including the textile industry—whether there is a new range of clothes, an expansion of factory production or new machinery in a factory—there always seems to be a government minister there with the local member, so pleased to be seen and photographed shaking hands with the workers. But that is not so when it comes to the closure of these factories, some of which I have visited. During the closure of Fletcher Jones in Mount Gambier, not even the local member showed his face or made comment about the situation these workers were placed in.

I mention Mount Gambier because it is one of those rural and regional centres—it is not a Bondi Junction retail outlet or producer; it is a true rural and regional centre and the second largest city now in South Australia. Many of those workers had been in those jobs in that factory for their entire working lives of many years. Some had been there 20 years going on 30 years, producing garments for the Australian market. It is hard to talk to those people and ask them, ‘What do you do after this?’ Happily, some of them have found employment in other areas, but not in the areas that they are trained for. When my late mother was in the work force she pursued her career as a tailor and found that that was the only thing she wanted to do. My mother had a couple of other jobs, and I know she was never happy in them because they were not her chosen vocation. These people were thrown to the wilderness and there was no support from the local members or the ministers who were there when there was good news to tell. That was disappointing.

South Australia has taken a big hit. In fact, as for the known work force in South Australia there are 257 in the clothing sector. As I also said earlier, there is a growing trend towards contractors doing the work at home and calling people in only when they are required. That figure has now grown to 98. So there are 257 in the real work force, if you like, and then 98 contractors, and that figure is growing, because we are told that that suits the needs of industry. I will not go into the footwear sector, which is in an even worse situation and is also suffering.

As I said before, where the government will now be working towards these research and development funds to give some relief to what are further reductions in tariffs, those tariffs will not really take full effect until 2010. That gives the industry time to prepare for the future. The textile and clothing industry never ceases to amaze me. We are always looking for the cheaper products that come in from overseas when in fact we can do it to a better standard here in Australia. I am not entirely sure that you can put it down to wages being the barrier against the industry progressing in Australia. I think funding is required for some research and development into better and more effective ways of dealing with a changing industry. I suppose I am the wrong one to talk about fashion, but I tend to think that the industry is driven by fashion, so there is a lot of change going on all the time. The money that will be available for these companies through the research and
development funding may be a little bit late, but it certainly will not go astray. I trust that the industry will give consideration to the effect that they have on the Australian economy and use that money wisely to properly build an industry that is the envy of the world. I think they could. They certainly have, or had, the people, and hopefully many of those people can go back into the work force in that industry.

We are not opposing this bill. There are many things wrong with it if you really put it under the microscope, as there is with most things, but on this occasion there is the opportunity to work with the industry and with the funding that is being made available to them to get something right for a change. I trust that the government are serious about what they are suggesting will occur and I trust that the industry will work with government and with those people who are there to help them use the money to develop the industry further.

It is widely agreed that the investment must be for innovative processes—and innovative thought processes as well—if the industry is to survive, and it has to survive until 2010 before we can do very much. If the industry just sees this as a handout to help it until 2010 and is not looking to use that investment money wisely and to develop the industry, I would say we are on the verge of seeing the end of the textile industry in this country. That would be a shame and it should be monitored very carefully by the government.

There have been many structural adjustments in this industry in the last two or three decades. The removal and the reduction of the protective barriers were initiated by the Hawke government in 1987, and they have driven much of the change that has taken place. I often think that, as in other industries I have been involved with, you open the gate and say, ‘We want to see structural change of the industry.’ If it is done wrong, it is done wrong forever, and I tend to think that the textile industry might have been one of those that did not do it—I cannot say wrong—as right as they could have to give the industry the opportunities that exist in Australia.

If my family is any judge at all, there is certainly a market for clothing, shoes and other textile products that come through the industry. When you see a place like Sheridan being reduced by 150 people, it is almost not on the market. But you go to the store, as I did recently with my wife, to buy the Sheridan sheets that we have had since we married—different ones, by the way; it is the only brand that we have had in the house—and we cannot get them. We can get something that looks identical to them, but it has a different brand name. They are imported, and I think that is a real shame and something that we should not be proud of.

Labor support the passage of the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 and the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004. We believe that, as I have said many times before, if the industry is serious about it and the government is serious about it—and I tend to think that it may be serious about this particular issue—then we do have an opportunity to not only save the industry as it is now but also expand it and look to better things in the future.

**Senator RIDGEWAY (New South Wales)**

(4.03 p.m.)—I also rise this afternoon to speak to the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 and the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004. The TCF industry is a critical one, as
we all know, and the Productivity Commissi-
on dealt with this particular issue. They
reported on it in 2000-01. Australia’s 5,000
TCF firms have generated a turnover of
some $9 billion and provided factory based
employment for at least 58,000 Australians.
The commission also noted that there is also
the equivalent of as many as 25,000 full-time
employees engaged in outwork.

As the Productivity Commission report
pointed out, TCF manufacturing in Australia
covers a diverse range of activities, including
early stage processing of leather and natural
fibres; the production of textiles; the trans-
formation of leather, yarns and textiles into
clothing and footwear; carpets and other fab-
ric products for the home and office; and
technical textiles such as shadecloth, medical
and sanitary products, filtration products and
insulation materials. The report also noted
how important the TCF sector is in certain
states and, more particularly, in regions ac-
counting for six per cent of all value-added
production and nine per cent of total em-
ployment in Victoria’s manufacturing sector.
There is also significant TCF production in
regional centres such as Albury-Wodonga,
Wangaratta, Geelong, Bendigo and Devon-
port.

The report of the Productivity Commis-
sion review of TCF assistance was released
last July. The government considered the
commission’s recommendations and in No-
vember last year the minister, the Hon. Ian
Macfarlane, announced that there would be a
five-year pause on tariff reductions from
2005 for the TCF industry and that that
would be followed by a gradual 10-year pro-
gram of tariff reduction. Tariffs will be main-
tained to the 2005 level until 1 January 2010;
however, in 2010 the 10 per cent tariff on
cotton sheets, woven fabrics, footwear and
carpets, and the 7½ per cent tariff on sleep-
ing bags, table linen and footwear parts will
be reduced to five per cent. The 17½ per cent
tariff on clothing and finished textiles will be
reduced to 10 per cent in 2010, and this 10
per cent tariff will be reduced to five per cent
in January 2015.

Essentially, it is all being done to enable
the industry to adjust to the new tariff ar-
rangements, and the government has an-
nounced that a $747 million assistance pack-
age will be implemented. Of that, the pack-
age includes $500 million for an extension of
the TCF Strategic Investment Program to
2010; $100 million for an extension of SIP
for the clothing and finished textile sectors to
2015; $50 million for a 10-year structural
adjustment program to assist displaced
workers; $50 million for an import credit
scheme; and, lastly, $25 million that is set
aside for a 10-year grants based program for
small business.

This is an issue that I have been following
for many years. I have certainly been in-
volved in inquiries and I have met with peo-
ple in the industry. The Australian Democrats
believe that the strategic investment program
is a valuable industry support mechanism. It
has had a positive effect on the industry as it
has adjusted to major tariff reductions in the
last 10 years. The extension of the scheme
for a further five years does have unanimous
support in this place. The Democrats,
though, have expressed our support for the
extension of the program, and we would be
very pleased to vote for legislation that
would achieve that as an outcome.

However, the Australian Democrats do not
support making this extension conditional
upon a further program of tariff reductions.
We support the position that has been put
forward by the TCFUA—that is, that the
federal government is seeking to force the
industry to accept tariff reductions as the
price of further industry assistance, despite
there being no evidence that this will result
in benefits to Australians. We do not believe
that it is necessary at this point in time. We believe that a more suitable approach would be to extend the SIP until 2009 and then review the need for a further round of tariff cuts post 2010 close to that time. Guaranteed tariff reductions that will not come into effect until after this round of SIP funding expires do not need to be included in this legislation, so we see that, really, as an anomaly.

The Democrats’ industry policy states our belief that manufacturing and industry have been undermined by an array of government policies, including the reduction in tariffs, the restrictions on the research and development tax concession, the cuts to industry assistance programs, an unsympathetic tax system and a failure to engage in strategic industry and regional development planning. The Democrats believe that the fundamental problem is this government’s, and previous governments’, blind faith in market solutions and untrammelled competition policy.

We do support the freezing of any further reduction in tariffs and reducing them only if our trading partners are doing the same. As stated in a submission to the Senate Economics Legislation Committee’s inquiry into these bills, this industry has experienced substantial employment losses over the past decade. That is no secret, and I think we are all well aware of that. Policies that seek to decrease tariffs further when our trading partners are not following our lead—in my mind at least—exacerbate the problems that currently exist.

The TCF industry has been vocally lobbying on these bills. Representatives from the big end of the TCF town have negotiated this package with the government, accepting a program of tariff reduction and the need to know exactly the terms under which this will happen over the next 10 years. It seems to me that this will enable them to strategically plan their investment and development activities to develop niche areas and expand their export activities to ensure the long-term sustainability of their own particular part of the industry. They are understandably concerned about certainty and the need to base their future capital investment decisions on the fact that they are being guaranteed reimbursement through the SIP. They have been particularly concerned about the timing of the bills and were keen to see them progress through the parliament even before the election. These firms are unlikely to be affected by the proposed tariff reductions. One of the lobbyists that I met with put this to me: ‘The tariff reductions are so small I could lose more than that each day based purely on currency fluctuations.’ For firms the size of the firm that person represents this is certainly true, and I think we ought to keep this in mind in how we deal with these bills and with issues for the future concerning this industry.

The vocal lobbying on these bills has come from firms that represent only a small percentage of the total industry—fewer than 500 of the more than 4,000 firms that engage in the TCF business. The remainder of the 4,000 that I talk about are smaller firms. They range in size from very small to medium sized enterprises. These firms do not get the benefit of the strategic investment program. Given that this is a scheme that reimburses major capital investments, these firms do not spend enough money to get any money from the SIP pool. When it comes to fairness, we ought to keep that in mind. It seems to me that when you talk about tariff reductions they will be disproportionately affected by these cuts. Smaller margins and the volumes of production render them much more sensitive to fluctuation in tariff levels, and the potential for job losses in their case can be significantly high. The TCF Union—I think rightly—has lobbied hard in the names of these smaller firms, arguing that, while the
SIP is unanimously supported, coupling this scheme with mandatory tariff reductions probably is unnecessary and will disproportionately affect those firms at the small end of the industry, with a potentially devastating effect on employment especially in regional areas like the ones I mentioned earlier.

I understand that, on the one hand, business owners and employers within the industry are keen to have some certainty in turn, and that is understandable. They have accepted a program of tariff reduction and the need to know exactly the terms under which this will happen over the course of the next 10 years. This will enable them to strategically plan their investment and development activities to ensure their long-term sustainability. On the other hand, employees of the TCF industry are justifiably concerned about the real prospect of job losses under these new arrangements. They also raised the question about whether or not the structural adjustment program will provide enough incentives for transitions where there are job losses.

The National Secretary of the TCF Union has also expressed serious concerns about the government’s proposed amendments to the program—that the reduction in funding of SIP will possibly see the loss of up to 30,000 jobs in the TCF sector by 2010. A significant loss of jobs over that period of time ought to be a cause for concern for all Australians. As I mentioned earlier, the government has promised $50 million for a 10-year structural adjustment program to assist displaced workers as part of its plan for post-2005 arrangements. The government’s media release describes this as a program to ‘offer case-by-case help to workers who are affected by large plant closures’.

At first glance, this would seem to be insufficient for what is likely to be a major program of labour market adjustment. If, for the sake of argument, we were to accept the TCFUA’s figure of the loss of 30,000 jobs as a result of these changes to the industry, that $50 million figure would essentially amount to $1,667 per newly jobless worker over the course of the next 10 years. I believe the government has failed to prove that the transitional assistance component of its proposed changes to the assistance scheme is sufficient to help employees develop and adapt their skills or to retain or find new jobs. Again, that ought to be cause for concern.

I also want to mention the issue concerning the Homeworkers Code of Practice. During the inquiry into this bill the committee heard disturbing and heartbreaking evidence about outworkers in the garment industry working terrible hours for very little pay and under dreadful conditions. We heard about a woman who receives $7 an hour to sew swimwear and who sometimes has to work up to 16 hours a day to support her family. These conditions are having a terrible impact on her health. We also heard the story of an outworker in the fashion industry who has made ladies blouses for at least the past 15 years. She used to receive $11 per garment but in the last five years she has received only $5.30 per garment, and the work has become more complicated. For instance, for some of the garments—not that I would know much about these things, not purchasing blouses—she has to join as many as 13 pieces together. She usually starts work at six o’clock in the morning. If there is the stress of an urgent order, she has to start work when she wakes up at three o’clock or five o’clock on that day.

We fight hard to ensure that all Australians have a decent working environment, and it is disgraceful that there are people in this country who are treated so very badly by their employers. There was a report into outworkers in the garment industry in 1997, before I came to the Senate. In the years
since that report came out the government has done virtually nothing to implement any of the recommendations to make life better for garment workers. It is a disgrace that we still hear stories about the continued and systematic of exploitation of outworkers in the TCF industry. The Australian Democrats believe that all participants in the TCF industry should sign up to the FairWear Home-workers Code of Practice or an equivalent code of practice and end the exploitation of outworkers in this industry. This should be a mandatory condition to receiving SIP funding under this legislation.

I want to conclude by expressing my extreme disappointment in the opposition. I believe that, desperate to prove some form of economic credentials in the wake of their recent election loss, they sold out on their key principles to their constituents, not so much to the union but to the potential 30,000 people who would presumably support them and who may well be out of work. I believe that, if they had stuck to their guns and insisted that the tariff reduction provisions in this bill be de-linked from the extension to the SIP program, there was leverage to negotiate with the government to pass that part of the bill that we all agree on and to delay the tariff reduction component until a later date. I think it is fairly clear—the writing is on the wall—that they have decided to let this get through. No matter about all the passionate speeches we have heard in this place about this issue over the past year, all of the effort that went into the committee inquiry and report has pretty much come to nil.

I sincerely hope that the anticipated outcomes of this legislation are not as dire as some of us might fear. If they are, I think we have only ourselves to blame because the inquiry was pretty clear in elucidating many of the issues. The policy response does not seem to be commensurate with what we had on the table and is certainly not with what we have before us on this occasion.

Senator STEPHENS (New South Wales) (4.18 p.m.)—These bills give effect to key elements of the package of measures that the Howard government announced for the textiles, clothing and footwear industries in November 2003. The Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 extends the TCF strategic investment program for a further 10 years effective from 1 January 2005. Under this program, $575 million will be provided to support eligible industry investments in R&D expenditure. The SIP bill also provides for the establishment of a $25 million TCF small business program. The Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004 provides for further TCF tariff reductions in 2010 and in 2015.

The substance of the bills currently before the Senate was introduced by the government on 16 June this year, and on 24 June both bills were passed in the other place after a Labor amendment to split the bills was defeated. On the previous day, the bills had been referred by the Senate to the Senate Economics Legislation Committee. That committee reported on 30 August and included minority reports from Labor and Democrat senators. Senator Ridgeway has elaborated on those concerns. But the 2004 federal election was called before the Senate could consider either the bills or the report, so the bills should be seen as a single package. Legislatively, they are linked through the commencement clause in the SIP bill.

Before addressing the bills in detail I would like to say something about the recent history of the TCF industry and the competitive challenges it will confront in the future. The TCF industry provides a wide range of goods, including basic yarns and textiles,
carpets, clothing, footwear and sophisticated technical textiles. The profile of TCF firms is equally diverse, ranging from large factories employing hundreds of people to a multitude of small to medium sized enterprises. While estimates vary, TCF firms employ at least 58,000 people in the formal sector and another 25,000 or so outworkers. The industry’s revenue in 2000-01 was over $9 billion. TCF firms make a substantial contribution to a number of regional economic centres, including Geelong, Ballarat and Bendigo, Victoria; Albury, New South Wales; Devonport, Tasmania; and the Gold Coast, Queensland. Many TCF manufacturers can also be found in our major capital cities.

In the decade following World War II, steep protective barriers and other forms of industry support shielded the TCF industry from international competition. These policies skewed and distorted the development of the industry, encouraging an inward-looking orientation and a fragmented, high-cost and ultimately unsustainable industry structure.

Since the early 1970s, Australia’s TCF industry has been progressively exposed to greater competition, and Labor governments have played a decisive role in this process. Change in the TCF industry has also been driven by market forces. Responses within the TCF industry to these policy changes and market trends have not been uniform. Some TCF firms have adapted well, building a strong competitive advantage in niche areas, including some technical textiles, but others have struggled in the face of imports from low-cost competitors.

In overall terms, there has been some rationalisation in the industry. Between 1996-97 and 2000-01, TCF employment and production levels fell and TCF imports secured an increased share of the local market. Over the same period, however, TCF firms lifted productivity levels and increased exports, albeit from a low base, but high levels of protection have not inoculated the industry from employment reductions and greater import competition. While the TCF industry has plainly been through a difficult period of adjustment, there can be no turning back to its highly protected, high-cost and uncompetitive past. The key to the industry’s survival and prosperity lies in investment and innovation, in high value-added production and niche marketing and in phased adjustment away from uncompetitive activities. This is the only way to ensure secure, sustainable jobs for the thousands of Australians employed by TCF firms.

In November 2003 the Howard government announced a $747 million package of measures for the TCF industry. Key components of this package included an extension of the strategic investment program, SIP, for a further 10 years effective from 1 January next year. Under the new version of the SIP, the number of grant types will be reduced from five to two, with subsidies to be provided for capital investment type 1 grants, representing a 40 per cent subsidy, and R&D expenditure type 2 grants, with an 80 per cent subsidy. Also, there is a $25 million TCF small business program for companies that cannot meet the $200,000 threshold for SIP claims. There will be further reductions in TCF tariffs in 2010 to 2015, with tariffs applying to all TCF products, except for clothing and finished textiles, falling in 2010 to five per cent—the general manufacturing rate. Tariffs on clothing and finished textiles will fall to 10 per cent in 2010 and five per cent in 2015. There is also a $50 million structural adjustment program to assist displaced workers and encourage community restructuring.

The bills now before the Senate implement the first three elements of this package—the extension of the SIP, the establish-
ment of the TCF small business program and the tariff reductions in 2010 and 2015. The government’s TCF assistance package provides substantial support for needed investment and innovation within the industry. It is worth noting that the government’s proposed further TCF tariff reductions will not take place until 2010, giving affected firms time to prepare and adjust. Under already existing legislation, tariffs for all TCF producers—save for makers of clothing and finished textiles—will fall to between five and 10 per cent on 1 January 2005. While tariffs for clothing and finished textiles remain substantially higher, this part of the industry is being given longer to adjust—until 2015—to reach the target tariff rate of five per cent.

Tariff reductions inevitably entail adjustment pressures for local TCF firms. It is increasingly widely recognised, however, that they will not be the main source of competitive pressures that these firms face in coming decades. The short- to medium-term outlook for the TCF industry is being shaped by three non-tariff related factors: the appreciation of the Australian dollar; regional and global trade liberalisation trends, including a possible free trade agreement with China; and other non-tariff barriers affecting Australian TCF exports.

I turn to Labor’s position on the TCF bills. Labor supports the package of the government’s TCF bills currently before the Senate. Passage of the SIP bill will deliver much-needed certainty for the TCF industry. With this legislation in place, TCF firms throughout Australia can plan, finetune and implement their investment strategies with confidence. As I mentioned earlier, further TCF tariff reductions in 2010 and 2015 are part of the government’s TCF legislative package.

On 15 November this year the shadow minister for industry, infrastructure and industrial relations wrote to the Minister for Industry, Tourism and Resources suggesting that the government split its two TCF bills. This would have allowed the time-sensitive SIP bill to be passed before the end of the year and consideration of the TCF tariff bill to take place in 2005. The minister confirmed that the government would not accept Labor’s proposal to split the TCF bills. The minister subsequently indicated that the government would agree to Labor’s proposal that a review of the TCF industry be conducted in 2008. Some of those opposed to Labor’s position on this legislative package have drawn attention to language adopted at the ALP national conference in January 2004 which called for TCF tariffs ‘to be held at current levels pending a review to be undertaken by a new Labor government’ and flagged Labor’s opposition to ‘the government’s TCF legislation to be introduced ... prior to the next election which further reduces tariffs’.

The simple, yet powerful, point I would make about this language is that it was premised on Labor winning the 2004 federal election. With that election lost, we have rethought our approach. In particular, we have confronted two unarguable facts. First, with the government securing a majority in the Senate from 1 July 2005, further tariff reductions for the TCF industry will be an inevitable legislative consequence of this parliament. Second, failure to pass the government’s TCF legislative package before the end of the year will delay the extension of the SIP—denying the TCF industry much needed certainty and disrupting investment plans predicated on SIP assistance.

An important outcome of the opposition’s discussions with the minister was his agreement to hold a review of the TCF industry in 2008, if in government. In a letter to the shadow minister for industry, infrastructure and industrial relations dated 29 November, Minister Macfarlane states:
The Government is prepared to agree to a Review on the operational effectiveness of the TCF post-2005 Assistance Package in 2008 in return for the Australian Labor Party’s support for the passage of these Bills.

The Review would consider the effectiveness of the programs in assisting the industry to improve its competitive position and would take into account changes in the global competitive conditions at that time. It would not extend to the Government’s program of tariff reductions or the level of financial assistance made available to the industry as part of the TCF post-2005 Assistance Package.

Given the lack of support from the industry and the Australian Labor Party for this Review being conducted by the Productivity Commission, I am proposing that the Review be undertaken by government officials, either from my portfolio or from relevant Government Departments.

The minister subsequently gave this undertaking to the House of Representatives. The effect of this commitment from the minister is that a review of the TCF industry is now a bipartisan commitment. On the basis that Labor wins the next election, such a review will still take place.

Labor is strongly supportive of a proposed 2008 review. The review will be well timed, taking place after the extended SIP program has been in operation for three years but before the 2010 round of tariff reductions comes into effect. The review represents an excellent opportunity to take stock of the competitive pressures that the TCF industry will face in coming years, including pressures resulting from the state of the Australian dollar, the expected ASEAN-CER FTA and a possible FTA with China. It will also enable the government’s TCF assistance package to be carefully scrutinised, including those elements of this package which Labor has reservations about.

I will single out two aspects of the government’s assistance package for particular attention here: first, the 10-year, $50 million structural adjustment program, SAP, to assist displaced workers and encourage industry restructuring; and, second, the exclusion of leather and technical textile firms from R&D grants under the SIP. The $50 million quantum of assistance provided under the SAP is geared to the government’s estimates of expected job losses in the TCF industry. According to the government, the SAP supplements assistance already available through the Job Network and in addition provides customised support for retrenched TCF workers. The program replaces the TCF labour adjustment program, or LAP, which operated between 1990 and 1996.

Serious questions have been raised about the SAP’s size and effectiveness. In submissions to the Senate Economics Legislation Committee, the Victorian state government and the City of Geelong, for example, expressed concerns that the SAP, which over its 10-year life will provide an average of $5 million per annum, might not be adequate to meet expected demand for this assistance. The TCF Union of Australia has also been critical of the SAP, arguing that it has not been properly consulted on this scheme. During his discussions with the shadow minister for industry, infrastructure and industrial relations on the government’s TCF legislative package, Minister Macfarlane indicated that he would be happy to discuss the design and implementation of TCF labour adjustment measures with the relevant unions. He said he had an ‘open door’ to the unions and would be happy to discuss any concerns that they might have about these measures. Given his commitment, the opposition urges Minister Macfarlane to meet with the TCF Union of Australia and other interested unions as soon as possible.

Another part of the government’s TCF assistance package which has attracted critical attention is its exclusion of leather and technical textile producers from R&D grants un-
der the extended SIP. This matter was raised by Labor senators in the Senate Economics Legislation Committee report on the government’s TCF bills. The government’s rationale for this exclusion is that SIP support is intended for those parts of the TCF industry facing the most serious adjustment pressures. Leather and technical textile firms, which are already subject to five per cent tariffs, do not, in the government’s view, fall into this category. The leather and technical textile industry associations—the Technical Textile and Nonwoven Association and the Australian Association of Leather Industries—have disputed this, arguing that their members must continue to invest in R&D, and therefore access the type 2 grants, to be internationally competitive. This matter, together with the effectiveness of the structural adjustment program for displaced workers, should be examined carefully in the 2008 TCF review.

The competitive environment facing the TCF industry has changed markedly over recent decades. The pace and scale of change will only intensify in the coming years as globalisation deepens, China and India continue their emergence as major economic powers, consumer preferences evolve and technology is transformed. The survival and future health of Australia’s TCF industry depends on investment, innovation, a highly skilled work force and international competitiveness. If there is one overarching lesson from the 20th century’s economic history it is that protectionism is not a sustainable industry strategy and not an effective way to guarantee jobs. Australia’s economic success over recent decades has been built on openness to global trade and investment flows, greater competition in local markets and the emergence of a more innovative, entrepreneurial and efficient business culture.

The Hawke and Keating governments’ economic reforms played a decisive role in fostering these changes. The TCF industry and its employees have taken significant strides in meeting the restructuring challenges set by those Labor governments. The Howard government’s TCF assistance package provides continued support for the industry’s efforts and its workers’ efforts. The success or failure of this package will hinge on its capacity to foster a competitive, efficient and dynamic TCF industry—an industry able to offer sustainable jobs to the thousands of Australians who work in its factories and workshops. Labor supports the passage of the two TCF bills before the Senate. They will ensure certainty for the TCF industry and foster investment in sustainable jobs. And Labor strongly supports the proposed TCF review in 2008. I commend the bills to the Senate.

Senator NETTLE (New South Wales) (4.37 p.m.)—Both the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 and the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004, when taken together, implement the changes to industry assistance for the textile, clothing and footwear sector and at the same time impose further tariff cuts. There is absolutely no justification for linking these two bills. That has been said many times by the Labor members of the Senate Economics Legislation Committee that looked at this legislation and by 24 out of the 42 submissions to that particular inquiry. Something I attempted to do earlier today was to stop the unnecessary linking of these two bills, for which there has been no justification. Indeed, the Labor senators on the committee recommended that the bills be dealt with separately. They recommended that the Labor Party decline to pass the customs bill. Of course they have reversed their position and now plan to support another round of hefty tariff cuts that will cost thou-
sands more jobs, with the potential to make the industry so small that it becomes unviable.

If this is another attempt by the ALP, post election loss, to make itself more attractive to business then it is misguided, because the industry assistance package put forward in this legislation does not assist those businesses that are most in need—that is, small- and medium-sized businesses—nor does it provide anywhere near adequate assistance to TCF workers, who, according to the experience of the sector over almost three decades, will have considerable difficulty finding work if they lose their jobs as a result of the tariff changes.

The Greens will oppose the customs bill, but we will also be moving an amendment to ensure that, if the bill passes, the provisions cannot take effect until such time as the government conducts a review of the impact on the sector of bilateral and multilateral trade agreements and the 2005 tariff cuts. Given the previous speaker’s contribution and justification for why Labor is supporting this reduction in tariff cuts, we look forward to the ALP’s support for that review. Although the structural adjustment bill is inadequate, we will support it, but we will urge the government to examine additional measures proposed in the Senate Economics Legislation Committee inquiry into this bill, such as a requirement for labour impact statements to be provided by businesses in receipt of funds under the program; a requirement for proper labour market adjustment programs; a requirement that those people who receive funding under the bill meet the Fair Wear code of conduct with regard to the treatment of, and wages and conditions for, out-workers; and access to the structural adjustment program for small business.

The textile, clothing and footwear sector is a substantial component of manufacturing in Australia. It directly employs 64,000 people, or seven per cent of the manufacturing work force. It accounts for four per cent of manufacturing turnover. According to a Productivity Commission report released last year, exports—including wool scouring, leather tanning and dressing—are worth $1.1 billion per year. An indication of the impact of earlier tariff cuts can be seen in the fall in turnover in the sector, down almost 16 per cent in the 10 years to 1999-2000, whilst employment declined by 37 per cent.

The Textile Clothing and Footwear Union of Australia, in their evidence to the Senate committee that looked at this legislation, said that from 1986 to 2000 there was a halving of the number of workers employed in the TCF industry. Many of those workers have been unable to find other jobs. There was a study carried out last year by Monash University entitled The long goodbye: TCF workers, unemployment and tariff deregulation. It looked at what happened to 400 workers in the TCF industry in Victoria who lost their jobs between 1999 and 2003. Half of these workers never found another job. Those who did had fewer hours, lower wages and less favourable conditions than they had enjoyed working in the TCF industry.

Both men and women had lost their jobs, but women had a disproportionately greater load of the job losses because the TCF sector is dominated by women, many of whom are migrants who have been in the industry for most, if not all, of their working lives. I had a delegation of TCF workers from Victoria come and visit me and Michael Organ last year. One of the women from there told me about her circumstances. Not only had she and many other women in her community lost their jobs in the TCF industry and factories in their small regional towns; many of them had husbands who also worked in the same factories. So they had been hit with a
double whammy, with their families losing their entire source of income. 

The TCF sector comprises many small- to medium-sized businesses. According to the Productivity Commission report, businesses employing 20 or fewer people account for a quarter of the sector’s production and one-third of its jobs. Gerard Kitchener, who is the National Industry Policy Adviser to the TCFUA, in his evidence to the Senate committee into the bills stated that he believed that 80 per cent of companies in the TCF industry employed fewer than 20 employees. I really worry for the future of an industry when I consider together: the upcoming international trade agreements, with the likely consequence of the Australian marketplace being flooded with cheaply made clothing products from elsewhere in the region; the impact of job losses on women, particularly women from non-English-speaking backgrounds, in regional parts of this country; the impact on the whole regional community through these job losses; and the government’s intention to make it easier for employers in small businesses with fewer than 20 employees, which make up 80 per cent of the TCF industry, to be able to sack their work forces. Already we have reports saying that 50 per cent of TCF workers who lose their job cannot get another one. If this government’s unfair dismissal legislation is passed then they will have no avenue for redress if they are unfairly dismissed.

The TCF sector is of particular importance to local economies in a number of regions—to name a few, Geelong, Bendigo, Wangaratta, Albury-Wodonga and Devonport. In addition, there are many substantial employers in both Sydney and Melbourne. The Prime Minister reportedly told Melbourne radio in April this year that he understood the importance of the textile industry, particularly in regional areas. He said:

We want to keep a strong textile industry in Australia, but we’ve also got to have regard for the levels of assistance that it receives relative to the rest of manufacturing.

Yet we see this government, who are driving the TCF sector offshore and whose actions have resulted in such significant job losses within the sector, now proposing that there be further tariff reductions.

The government has had no difficulty in shovelling billions of dollars every year to big companies through corporate welfare. Indeed, the coalition bought its way back into office on 9 October with an unprecedented spending spree that contradicted the constant refrain of the need for fiscal responsibility. Yet when it comes to genuine assistance for the TCF sector, for the employees and for small and medium sized businesses, the government is acting like Scrooge at Christmas time. It has found $747 million for business for a 10-year program but precious little for the workers who stand to lose their jobs—jobs which some of these people have held for most, if not all, of their working lives.

The TCF sector has endured a series of tariff cuts for decades, and a further round of tariff cuts takes effect on 1 January 2005. On top of this we will have the impact of the Australia-US free trade agreement under which US trade barriers will stand—barriers like the yarn forward rule, which allows for the make-up of garments in overseas countries so long as the home country made the fabric or the yarn that is used. Singapore’s experience has been that they have found the yarn forward rule so hard to clear that they no longer even bother to apply for tariff reductions; they simply pay the tariff. They cannot meet the tariff-free status with the US yarn forward rule in place, a rule that will exist for Australian manufacturers as a result of the Australia-US free trade agreement.
The Australian TCF sector has substantially increased its exports in its drive to remain viable, but it is struggling against other countries that have retained their tariffs to protect their domestic industries. This makes it extremely difficult for Australian companies to compete in the export field. In addition, there is likely to be an impact from the Australia-Thailand free trade agreement and there is the prospect of a bilateral agreement with China and possibly a multilateral agreement with ASEAN members. All of these agreements have the potential to place even further pressure on the TCF sector in Australia.

The words of those affected convey the social impact of this government’s blind drive to eliminate tariffs. The Geelong Advertiser some time ago quoted a woman who fled war-torn Croatia with her family and who now works in a carpet factory in Geelong. She said:

When I started here seven years ago, I could hardly talk and didn’t know about the job or how to speak to people. A girl I worked with for six years here taught me. I have good friends here. I love Geelong, I love working here … and now I am better with my English.

She went on to say:

I feel happy to go to work each day. Every day I thank God I have work and I hope to keep my job for many years.

For those who have lost their jobs, life is much harder. A Bendigo woman in her 40s told the Monash University study looking at people who had lost their jobs in the TCF industry in Victoria:

When I started, there were six or seven textile factories in Bendigo. There’s only one left now … you think: where’s the job? What am I going to do? Where am I going to go?

A woman in Moe said: ‘Making us relocate is wrong. Why should we have to relocate our whole life to get another job?’ The Monash University study found that:

... across urban and rural settings, person after person spoke of loving their jobs. Sometimes it was because she liked to do the job well; sometimes it was because she liked to be with ‘friends (like) sisters, family’. Sometimes it was because he felt he had no place in the world if he was not a man out there earning for his family. Always, there was pride expressed in ‘doing a job well’. “We like to do our job well.” said a middle aged garment worker born in Greece. She sat up straighter, and smiled when she said this, and the women around her nodded ...

TCF workers need a committed program of genuine assistance that meets the specific needs of individual workers if they are to find new jobs, having lost their jobs as a result of tariff reductions. This may sound difficult, but the most significant skill requirements for people who have been forced out of the TCF industry have already been identified. As Michelle O’Neil from the TCFUA told the Senate committee hearing:

... some really critical points for workers, such as providing both vocational training and English language and literacy training. There are a high number of workers in this industry whose first language is not English and who need not only new skills but also the capacity to read and write in English to be able to access other jobs.

At the Senate committee inquiry Michelle O’Neil quoted the Monash University study which found:

... most focus group respondents said they were given no or inadequate information about entitlements and little information about what to expect from, and how to work with, Centrelink. This was particularly the case for those people whose first language was not English. The percentage of workers who received any formal assistance in terms of non-financial assistance such as retraining was below 20 per cent. So less than 20 per cent of workers received any formal assistance. Of the workers who had found employment, the great bulk of them had found only casual, insecure or part-time employment, and not one of the participants had found work that was paying the
same or better wages. So every person who had lost their job—
over the four years of this study—
and had then found one ended up in employment where their income had reduced, and the great bulk of that was casual employment.

This does not have to be the case, and Michelle O’Neil, in her evidence to the Senate committee, went on to describe a situation which could be the case if there is genuine government investment in real structural adjustment programs that assist the workers at the coalface with their individual needs. She described the situation this way:

We had a very successful program that was run a couple of years ago after a major retrenchment at a place called Bradmill in Yarraville, Victoria. We managed to negotiate with the receivers of that business to run an assistance program that was called ‘Life after Bradmill’ to assist some 400 workers who lost their jobs as part of that company changing and reducing its work force. From that study, we found that the great bulk of workers had never written a CV in their lives and that the majority did not have English as a first language and had never entered a Centrelink office or any other training institution. It was only with very intensive direct support that they managed to access English language training and other jobs ...

Every economic policy has a human consequence; it affects people’s lives. TCF workers made jobless because of the government’s drive to eliminate tariffs have the right to proper assistance to find other work, and regional communities that rely on the sector for their economic wellbeing deserve proper support.

This government is big on talk about the need to encourage people back into the work force and about the rise in the number of people drawing the disability support pension. But when it comes to addressing structural change in the labour market, this government is found wanting. It is interesting to note that the government has no difficulty committing itself to the continuation of one of the most destructive, unsustainable industries in the country—the logging of old growth forests for woodchips for export. The Prime Minister promised in Launceston in October that no single forestry job would be lost under a re-elected coalition government, but the government has not committed to putting the forestry industry on a viable, long-term footing to ensure the preservation of both our ancient forests and long-term jobs. But it is very different for TCF workers, many of them women, many of them from a non-English-speaking background and many of them with few other skills for earning a living. The government is prepared to sacrifice these workers to the uncertainties of the global market.

Senator MURPHY (Tasmania) (4.53 p.m.)—I want to make a brief contribution with respect to the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 and the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004. They are, of course, very important bills, particularly with regard to the strategic investment program funds. There are a couple of things that I want to raise, and I guess I will raise them further with the government when the bills reach the committee stage. They are matters that relate to the overall operation of the program. Of course, we know that there is a significant amount of money and it is very important for this industry to receive these funds to assist it both to adjust and to meet the continuing competitive pressures we are seeing in goods being brought in from overseas.

With regard to the competitive aspect, in the funding provided for in the bill it is interesting to note that there is little focus being given to the opportunities that can and do exist in export to overseas countries, particularly to countries like China. The govern-
ment, through some agency such as Aus-
trade, has a responsibility to ensure that in-
dustries such as the TCF industry are given
great opportunity to maximise the opportuni-
ties that exist in exporting to overseas coun-
tries. Because they do exist. Often it is the
case that individual companies have neither
the expertise nor the financial capacity to
make inroads into those markets.

In visits I have made to China, I have
looked at the retailing of clothing and foot-
wear in some of the major department stores
in the big cities—that is, stores like David
Jones or Myers here. You will see that a great
deal of the clothing available on the retail
racks there is far more expensive than it is
here. These are name brands. We have an
opportunity to actually create some name
brands in this country to provide to people in
those countries that can afford to pay money
for imported clothes—indeed, that are in fact
looking for imported clothing. They do not
want to buy clothing manufactured within
their own country. They are looking for
something different. They are no different to
people in other countries who want to buy
something that somebody else has not got. I
would have liked to see a bit of thought
given in this package to how those sorts of
markets can be accessed and further devel-
oped.

With regard to the structural adjustment
program, I had a meeting with the Minister
for Industry, Tourism and Resources on
22 June, at which I raised a number of con-
cerns with him about certain aspects of the
bills. In particular I raised concerns I had
about the structural adjustment program,
which was formerly known as the labour
adjustment program, which ran from I think
1990 through to 1996. The minister re-
sponded in writing on 29 July. I would like
to read his response to the chamber. He said
this:

I would also like to clarify the assistance, which
would be provided to displaced TCF workers
under the proposed TCF Structural Adjust-
ment Program (SAP). I share your view that this is a
critical part of the package. The level of available
funding for the TCF SAP is $50 million over ten
years, nominally at $5 million per annum but with
flexibility to shift any unspent monies in a par-
ticular year forward to subsequent years. This
flexibility is required because it is highly likely
that employment losses in the industry will be
“lumpy” and unpredictable in nature.

The level of funding for the TCF SAP is com-
mensurate with the best analysis of likely job
losses in the industry. In its final report the PC—
the Productivity Commission—
quoted employment losses of up to 9,563 over the
15 year period from 2005 to 2020. This was based
on the adoption of the PC’s recommendations.
This modelling has been subsequently updated to
take account of the actual policy announced by
the Government and the analysis concludes that
employment losses will be 5,815.

The TCF SAP is intended to supplement rather
than substitute for existing assistance. The Gov-
ernment, via Job Network, has in place a national
network of private and community organisations
dedicated to finding jobs for unemployed people.
Most retrenched TCF workers would be eligible
for Job Network services but some may not be
fully eligible (for example those who do not qual-
ify for income support due to working spouses or
do not pass the income and asset test).

The TCF SAP will broaden Job Network to take
account of the particular needs of retrenched TCF
workers, who tend to be mature aged and from
non-English speaking backgrounds. The TCF
SAP will enable retrenched TCF workers to ob-
tain immediate access to Intensive Support cus-
tomised assistance, irrespective of whether or not
the retrenched TCF worker would otherwise be
eligible for Job Network services. In normal cir-
cumstances a job seeker would have to wait up to
12 months to receive this support. This means that
retrenched TCF workers will receive substantial
and individually tailored employment assistance
as well as access to complementary employment
and training programs and to a supplemented Job
Seeker account. The range of complementary employment and training programs includes appropriate vocational and preparatory job training, and language skill courses.

This program contrasts markedly with the TCF Labour Adjustment Program (LAP) that operated from 1990 to 1996 and was predominantly focused on assisting people in Melbourne and Sydney. Under the TCF LAP there were strict eligibility requirements that meant benefits could only be accessed if a retrenched TCF worker had worked 24 out of the previous 36 months in the TCF industry, and support was only available for 12 months. Additionally, as you noted in our meeting, workers were not allowed to return to the TCF industry. There will be no such restrictions under TCF SAP.

I believe the combination of TCF SAP and the existing Job Network structure has the capacity to more greatly improve the job prospects of retrenched TCF workers than a revamp of the former TCF LAP.

I appreciate the minister’s explanation but it still leaves the concern I have. The previous program had its problems: a significant amount of money was expended and a great deal of it did not deliver any real outcome. That is why it is so important that this particular program gets it right.

I expressed concern to the minister with regard to union involvement. There seems to be no clear plan to have a group of people who will look at what previously worked under the LAP, because there were some things that did work. I urge the government and the minister to include the relevant trade union, the TCFUA, at the table to ensure that the things that did work are implemented. It is important that the people on the ground representing those workers, who understand better than most the needs of those workers, be included in the process.

As far as job losses are concerned, the minister in his letter stated with respect to the government’s analysis that the modelling had been subsequently updated. The Productivity Commission in its report referred to the loss of 9,563 jobs, and the analysis of the updated modelling concluded that this figure would be reduced to 5,815. That represents a significant difference. I will be interested to hear from the government during the committee stage what happens if the figure is higher than 5,815. What happens if the figure is 7,000 or 10,000? What funding will be made available and how will it be made available?

I believe there are many questions that remain unanswered at the moment. I would have thought that the opposition, in looking to approve this legislation, would have been more mindful of this aspect of the package and would have pursued the issue more strongly than it seems to have done. It should have tried to put in place a clearer and more concise approach to how we will deal with workers who are displaced as a result of the proposed changes.

On the occasions when I met with industry representatives they raised with me that they are yet to be advised about how the package will work. We assume—and I think the minister says, in effect—that the program will work as it has previously. I think the industry would be interested to know—they may know by now; I have not heard that they know—what the eligible expenditure, the five per cent total eligible revenue, will comprise.

Those are the questions I would like to ask when we get to the committee stage. I hope the government will respond by giving some answers that are clearer than the answers I have received so far from the minister. The package does need to be passed because it is important that companies that have been receiving assistance be able to commence their forward planning. It is probably a little unfortunate that this issue was not dealt with earlier.
The other important matter involves the structural adjustment package. It would be very useful if we were able to say what specific types of programs will be involved. Given that we have already had experience of this from 1990 to 1996, we ought to be able to say, ‘Yes, this is how we will deal with the issue of English language training; this is how we will deal with employment retraining; these are the sorts of areas that we will focus on.’ I cannot understand why some more concise explanation cannot be given regarding these issues. It would be very helpful if that could occur when we reach the committee stage.

Senator MARSHALL (Victoria) (5.05 p.m.)—Labor is supporting the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 and the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004, not because we believe they represent good policy but because we recognise the reality of the political situation. Voting the bills down would have no effect on tariffs and would only serve to delay the implementation of the strategic investment program scheme, known as SIPS. We do support the SIP scheme, albeit with modifications, and we do want to provide certainty and assistance for an industry that is facing an extraordinarily difficult future.

In terms of principle, Labor rejects this crude effort by the conservatives at social and economic engineering. These bills and the Howard government approach have made, and are making, TCF industries the sacrificial lamb of Australian industry. The Howard government’s approach to TCF industries is kamikaze, contradictory and callous. The conservatives have turned tariff reductions into a bizarre chess gambling game where they pick the industry winners and the workers who are winners, and decide which industries get sacrificed and which workers get burnt. TCF companies and workers are pawns that have been advanced way out in front and are waiting to be cut down.

Australia is an interesting case in the world of TCF tariffs and tariff reductions. The reductions foreshadowed in this legislation are not about economic gains. They are not for product innovation gains, they are not for job gains and they are not for consumer gains, because all of these will be in the negative. They are all about ideology only. It is a government strategy that will inevitably see the decimation of the Australian clothing, footwear and textile industry. These bills are about reducing tariffs applicable to clothing and certain finished textiles to 10 per cent from 1 January 2010 and to five per cent from 1 January 2015. The customs bill also seeks to reduce tariffs applicable to other textile clothing and footwear goods to five per cent from January 2010, and the other tied bill sets out amendments to the SIPS.

Labor does not see TCF industries as pawns and we do not see TCF industries as expendable or doomed. We see a viable future for the Australian clothing, footwear and textile industries. We think it is essential that our country maintains these industries. Labor recognises the need for competitiveness but not in forcing the industry offshore to achieve it. Labor believes that we must ensure the TCF sector grows and creates jobs in the communities in which these industries are located—and good jobs for future generations in all these areas. Labor’s approach is about helping to maintain TCF industries and assisting them to adjust. We want to see a set of principles and practical implementation plans in place to help TCF industries make a transition, not a plan to soften the extinction of these industries in Australia.
We want adequate support for labour market adjustment and maintenance of a critical mass for TCF manufacturing in Australia, improved export market access, increased R&D and the development of a highly skilled work force. Labor supports a continuation of the strategic investment program until 2015 but believes it should be reconfigured to give greater reward to innovation in product design, productivity and delivery. Labor’s approach is about helping those communities which sustain TCF industries to adjust—particularly those in regional and rural Australia. We need to slow the rate of tariff reductions, making them more gradual and giving employers and workers time to adjust. A proper and rigorous case for any future reductions should also be made before any decision is taken because at the moment there is no case whatsoever.

There are 64,000 Australian workers in TCF industries, many in regional areas that rely heavily on this industry. The industries are critical to many regional towns, including Ballarat and Geelong in Victoria, Devonport and Launceston in Tasmania, Wollongong in New South Wales and so on. The effects will be felt particularly in Victoria where about half of the industry is based. As a Victorian senator, this concerns me greatly. The worst five areas affected will all be in Victoria: Barwon and Geelong, Melbourne, the Wimmera, the Central Highlands, Loddon-Campaspe and the Ovens Murray.

Modelling commissioned by the Productivity Commission on future tariff reductions, undertaken by Econtech, estimated that 5,000 jobs will go in Melbourne and about 1,500 will go in Western Victoria. The National Institute for Economic and Industry Research, NIEIR, estimated the loss of a total of 6,300 TCF jobs plus 19,600 indirect jobs in Victoria alone. These communities are being sacrificed by this government’s proposed post-2005 arrangements. Why are they doing this? Let us look at some of the logic and reasoning that they have put forward. The government argue that they want to make TCF industries more competitive but I wonder how this will occur. The Productivity Commission has acknowledged, following econometric modelling, that, whilst in the past there were some economic gains to be made in TCF tariff liberalisation, that debate has now shifted. The Productivity Commission has made it clear that it cannot be assumed that further liberalisation will result in any substantial economic gain. The Productivity Commission report states:

... removing special support for TCF production would provide little measurable ‘allocative efficiency’ gain.

But it is not just the Productivity Commission saying this. The NIEIR study says the same; so, too, the Centre for Policy Studies and the Victorian Department of Finance and Treasury. They all say that any gains would be negligible—less than four-hundredths of one per cent or even negative gains. They all agree on that. And they all agree on one other thing: there would be massive job losses and serious effects in regional Australia. They all agree on that too.

The government says that, as a result of reduced tariffs, there will be lower prices for consumers but the Productivity Commission has not established that any competition resulting from tariff reductions would lead to lower prices for Australian consumers either. No-one has established that case. Recent free trade agreements with Thailand and the USA will have a severe effect on Australia’s TCF industries from next year, compounding current problems facing the industry today. Should a free trade agreement be negotiated with China, as the government seems intent on doing, the effect on Australia’s TCF industries will be enormous. The global industry is also facing the abolition of quotas in the European and US markets in January.
2005, the implications of which are profound for all TCF industries outside of China.

So the coming couple of years in particular are set to be extremely unstable for Australia’s TCF industries. Surely, this is not the time to be considering this legislation. There is no reason why these tariff cuts should be made now. There have already been substantial tariff reductions in recent years, and tariff reductions which have already been legislated for 2005 remain in effect until 2010. Even if you support further tariff reductions, there is no need for tariff reduction legislation to be in place until 2009. And there is absolutely no logic in tying these two bills together.

One of the key arguments put forward by the federal government for tying the tariff legislation to the industry assistance measures is that industry assistance is compensation for the effects of tariff reductions. Besides contradicting its own argument that all tariff reductions are beneficial for the industry, the government’s argument is flawed because not all of industry receives industry assistance. There is no logical reason to tie the SIPS legislation for post-2005 assistance to tariff reduction legislation, which does not come into effect until 2010. The federal government is seeking to force the industry to accept further tariff reductions as the price for further industry assistance, with no evidence that this will result in benefits to Australia overall.

The Productivity Commission’s economic modelling also shows that the removal of TCF assistance will result in the deterioration of Australia’s current account deficit through an increase in imports. If we go on past experience, we can clearly see this. The Productivity Commission has said that in the 10 years of tariff adjustments between 1991 and 2001 there was a reduction of national output of around $1 billion. This is a policy for more of the same. The current account deficit is one of Australia’s major economic weak points. This policy will simply exacerbate the problem.

The decision also does not make sense when we consider Australia’s international trading policy and direction. By unilaterally cutting tariffs on TCF products at this unnecessary time we are throwing away a valuable bargaining chip available to us in future trade negotiations. Blind Freddy can see that this legislation will compromise Australia’s negotiating position in future bilateral and multilateral trade negotiation rounds. The illogicality of the conservatives astounds me. At a time when Australia’s TCF industries are being prevented from accessing key international markets because of high tariffs and non-tariff barriers affecting their export products, we are expecting them to adapt to lower trade barriers in the domestic market. It is just not fair. To tie general tariff reductions to industry assistance is to blindly pursue an ideological approach to industry policy that benefits no-one. The gains are all theoretical, illusory, ideological gains bringing satisfaction to the minds of this conservative government. But the costs are not illusory. They are very real and they are felt by people and communities.

The TCF industry has experienced substantial employment losses over the past decade. Policies that seek to decrease tariffs further when our trading partners are not following our lead will only exacerbate the problem. Neither the federal government nor the Productivity Commission have ever presented any evidence regarding the economic costs of job losses because their economic modelling has a base assumption that all displaced TCF workers find other jobs, despite all the evidence to the contrary. Similarly, they have presented no evidence regarding the economic cost to regional Australia of further job losses. Whilst the Productivity
Commission outlines the modelling done for the PC on regional implications, this modelling is based on no net job losses in regional Australia. The assumption is that if Victoria loses jobs, other states gain. The best modelling we have to go on suggests that regional workers displaced by TCF closures find it harder to find new employment, especially where TCF assumes a high proportion of the total work force, as it does in Victoria.

A study by Monash University’s Centre for Work and Change in the Global Era, WAGE, gives strong evidence of the employment problems TCF workers face. There is no recognition by the federal government in their TCF package, or by the Productivity Commission in their review, that women have borne the brunt of job losses over the past decade. Full-time female employment has suffered the most since tariff rates began reducing in the late 1980s. In 1985 there were 67,000 full-time women employed in TCF jobs. This had reduced to 30,000 in 2002. Male full-time jobs over the same period fell from 37,000 to 31,000. The fact that many of these workers are also older and from non-English-speaking backgrounds contributes to their difficulty in finding new employment. Past research by Weller and Webber in 2001 demonstrated that a large proportion of employees in the TCF industries are older unskilled women from non-English-speaking backgrounds who find it extremely difficult to regain employment. The research showed that five years after being retrenched one-third of workers studied were still unemployed and only one-third had found commensurate employment.

Labor want to see properly targeted labour adjustment programs that will ensure re-employment and keep people in Australia’s regional communities. We want to see properly targeted labour adjustment programs based on reality, based on the facts. There is a lot that we need to know before we can properly weigh up the pros and cons here—things that the conservatives and the Productivity Commission appear not to have even thought about. As the TCFUA—the organisation, the union, that deals face to face every day with people affected by tariff reductions—has said before, the Australian community needs to know the answers to some very detailed questions about these matters.

The Australian community needs to know the economic cost of a sacked worker being on unemployment benefits. What does it cost to pay welfare and what revenue is lost through less taxation? What spending power is lost to the economy overall by this reduction in income? What is the flow-on effect of job losses to other business through both the closures of businesses and the loss of spending power? Are there resultant social costs through people spending long periods unemployed? Are these social costs, including sickness, depression, alcohol or other drug abuse taken into account? When TCF factories close is there a calculation about the loss of business other businesses suffer as a result? Are the flow-on effects calculated for those companies who no longer supply or service machinery or provide raw materials? Are the effects on their suppliers calculated? Is the cost to regional Australia of workers and their families having to move to seek other employment ever calculated?

The huge reduction in employment in TCF industries as a result of tariff reductions has had a massive effect on Australian families, particularly on women. There has been a reduction of approximately 37,000 full-time female jobs, and about 6,000 male jobs. The federal government is in denial about the effects of unemployment on TCF workers and their families. A study by the Centre for Work and Change in the Global Era of over 300 displaced TCF workers in August 2003 found that the mean time since retrenchment
was 39 months—more than three years. Only 54 per cent of those surveyed had found work and only one in five had found work broadly commensurate with their former TCF job in terms of hours, pay and conditions. Although 96 per cent had worked full time before retrenchment, only 21 per cent now work full time, with the mean number of hours worked per week after retrenchment being 27 hours.

One-fifth of the sample has found only casual employment after losing their jobs—approximately the same number as have found full-time employment. Sixty-six per cent had received no financial assistance from the government since retrenchment. Of those who had received financial assistance, 29 per cent had received unemployment benefits. To properly assist these TCF workers who are displaced we need a properly funded labour adjustment program. The federal government’s current TCF package does not address this issue.

The Strategic Investment Program Scheme is discriminatory towards families in certain segments of the TCF industry. SIPS favours particular industry sectors and is disproportionately favourable to the largest TCF companies. The government should expand the scheme to enable the inclusion of a broader range of companies. This can be achieved by lowering the eligible expenditure threshold from $200,000. Only about 400 of the 4,900 TCF companies receive SIPS, yet all 4,900 companies are being asked to absorb the costs of tariff reductions. To access SIPS, companies must have eligible expenditure in excess of $200,000 in order to qualify for assistance. Many companies that otherwise may meet the SIPS guidelines cannot meet this threshold and therefore are excluded from the scheme. Many of the 4,500 TCF companies which do not receive SIPS funding are family companies, and TCF tariff reductions affect the families of all these companies—owner families and the workers whose families are dependent on the wage income. A lower threshold would increase the amount of eligible companies receiving assistance and would also ensure that TCF clothing companies currently underrepresented in receiving SIPS would receive a more proportional share. Small companies with fewer than 20 employees constitute about 80 per cent of TCF enterprises, yet in 2002-03 companies of this size comprised only 25 per cent of the companies actually receiving SIPS funding. Any new scheme must address these disparities and assist all Australian families affected. Our approach is about helping families and family companies stay in business, not just focusing on the giants in the TCF industries.

And let us not forget a very vulnerable group of workers which could also be decimated by this government legislation—outworkers. Outworkers in TCF industries are some of Australia’s most exploited workers. Outworkers are very often mums trying to earn income to support their families, to support their children. Sometimes the outworkers are indeed children. This legislation is only likely to exacerbate their plight.

The Productivity Commission estimates that it would cost 75c per Australian per year to assist the TCF sector. It is my clear view that if we were to ask Australians whether they would be prepared to pay this to maintain these industries in this country the overwhelming answer would be yes. The good sense of Australians is infinitely superior to the poor logic of this conservative government. When there is clearly no proven case, when the public authorities, academics, private think tanks, commentators and analysts, union and industry stakeholders are all saying there is no benefit to Australia or Australians, why would you sacrifice this industry? Why would you sacrifice Australian companies and jobs? Why would you throw away
international trade bargaining chips? *(Time 
expired)*

**Senator HARRADINE** (Tasmania) *(5.25 
p.m.)*—I spoke about the Textile, Clothing 
and Footwear Strategic Investment Program 
Scheme legislation earlier this year and I 
took the opportunity then to express my con-
cern that the Strategic Investment Program 
Scheme funding—which, as we all know, is 
very good funding by and large and I think 
has broad support—was to be linked to tariff 
cuts to take place in 2010 and 2015. There is, 
as I argued, no need to decide the tariff cuts 
now. I listened to particularly the contribu-
tion by Senator Murphy, and I was apprecia-
tive of that because he knows the industry. I 
repeat: there is no need to decide upon the 
tariff cuts now as we are being asked to. I do 
not think the case has really been made for 
further tariff cuts, and I agree with what the 
opposition said in March, the last time we 
dealt with this: why not review the situation 
closer to the time and then decide whether 
there is a benefit in tariff cuts?

I am surprised that the opposition has now 
apparently decided to support both the SIPS 
funding and the tariff cuts after its strong 
opposition to the legislated tariff cuts earlier 
this year. As Senator Carr commented on that 
occation:

> We take the view that there should be no further tariff cuts without a comprehensive review of the TCF industries. We take the view that there should be a proper inquiry into the effects of reductions in tariffs up to 2010 and that that should occur before further tariff cuts are undertaken.

Senator Carr highlighted the fact that the 
Productivity Commission has stated it is not 
able to show that further tariff reductions 
would generate a net national benefit. If 
there isn't a net national benefit, why cut 
tariffs?

Of course, the government has been in-
transigent in linking the SIPS payments and 
funding to tariff cuts. When dealing with 
concerned industry groups looking to make 
sure of continued SIPS funding, all it has 
done is to send those industry members on to 
the opposition, Independent senators, the 
Democrats and Greens to act as government 
lobbyists. The various industry groups that 
have approached me and my office have said 
that they do not want tariff cuts but that they 
would wear tariff cuts some years into the 
future if they had to in order to get certainty 
own on funds through SIPS. They were con-
cerned that the government was so uncom-
promising but were not able to persuade the 
government to shift its position. So the gov-
ernment is willing to use industry groups to 
try to blackmail senators into supporting a 
bad measure because a good measure is 
linked to it and may be lost. I am sad to see 
that the opposition has caved in to that 
blackmail and that the government has not 
allowed us a vote on each of the two bills on 
their separate merits.

As far as Tasmania is concerned, there are 
about 1,500 TCF workers in Tasmania, with 
around 10 per cent of Devonport's work 
force employed in the industry. As was said 
by Senator Marshall, the last speaker, and by 
others, the back-up industries are also facing 
job losses. So the impact of tariff cuts on 
workers in this area is certainly of concern to 
my state. Workers losing jobs might be 
forced to look for work elsewhere and leave 
the state, taking their families with them. 
Any job losses have a big effect across the 
community. The lives of real people are af-
fected by these decisions. The unions, of 
course, who represent the workers on the 
ground in the various TCF industries around 
the country, are quite opposed to further tar-
iff cuts.

My concern about tariff cuts on workers’ 
jobs has really not been addressed. I would 
find it very difficult indeed to vote without 
the necessary review and examination, and in
fact against the will of the Productivity Commission. There is no proven national benefit for cutting tariffs. I would find it very difficult to support this legislation which cuts tariffs, but of course I support very strongly the continuation of SIPS funding.

I believe that we ought to at least bat the legislation back to the House of Representatives. Let us see who stands up on this occasion when faced with the predictability of job losses as a result of tariff cuts. This should be exposed, but obviously it will not be, and I understand why—the opposition have decided on what they will do. At least I would have thought it would be important to highlight this particular measure as unacceptable blackmail.

Senator ABETZ (Tasmania—Special Minister of State) (5.33 p.m.)—I thank honourable senators for their contributions in the second reading debate on the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004. Undoubtedly there will be matters that will be raised during the committee stage. I thank those senators who flagged those issues during the second reading debate, because it allows us to have some answers prepared in anticipation of those questions being raised again during the committee stage.

As honourable senators would be aware, I am a senator from Tasmania. There are a number of TCF industries in Tasmania, such as Blundstones, the Australian Weaving Mills at Devonport and Ulster Tascot. As a result, I and my colleagues, especially the new members for Braddon and Bass, have been following this debate very closely and are supportive of the measures being introduced in the Senate today. From my personal perspective, especially welcome is the new small business program, which will provide, if I recall correctly, up to $25 million worth of assistance.

A number of senators have made contributions, and there has been an ongoing debate in this country about tariffs for now a considerable time. I recall, albeit not all that clearly, that in 1975 the then Whitlam government took the axe to tariffs in a very high-handed fashion which saw literally hundreds of people in my home state of Tasmania being thrown out of work. That is why this government, in seeking to reduce tariffs, is providing, and linking with a reduction in tariffs, assistance to these various industries. It should be remembered that basically one man’s tariff is another man’s tax and, as a result, a burden is placed on every Australian in relation to the placement on tariffs—

The ACTING DEPUTY PRESIDENT (Senator Bolkus)—Keep on going, Senator Abetz. Don’t be provoked. It is very hard not to be provoked by Senator Conroy sometimes.

Senator ABETZ—Do we have an agreement?

The ACTING DEPUTY PRESIDENT—There are no amendments.

Senator ABETZ—If the suggestion is that there might not even be a committee stage, that might be even better. But, having said that, the arguments are fairly clear as to why the government has been seeking to reduce tariffs. Tariffs in the TCF area are considered to cost consumers up to $1 billion a year, which is about $150 a year for each household. Therefore, there is a need to make these reductions. But we seek to bring them in in a phased period with certainty so that industry can adjust. I commend the bill to the Senate.

Question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.
NATIONAL WATER COMMISSION BILL 2004

Report of Senate Environment, Communications, Information Technology and the Arts Legislation Committee

Senator McGAURAN (Victoria) (5.38 p.m.)—On behalf of the Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee, Senator Eggleston, I present the report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee on the provisions of the National Water Commission Bill 2004, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

COPYRIGHT LEGISLATION AMENDMENT BILL 2004

Report of Senate Legal and Constitutional Legislation Committee

Senator McGAURAN (Victoria) (5.39 p.m.)—On behalf of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I present the report of the committee on the Copyright Legislation Amendment Bill 2004, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

TAX LAWS AMENDMENT (SUPERANNUATION REPORTING) BILL 2004

Second Reading

Debate resumed.

Senator STEPHENS (New South Wales) (5.39 p.m.)—The Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002 and the Superannuation Guarantee Charge Amendment Bill 2002 were passed in 2002. Amongst the changes these bills introduced was the introduction of quarterly payments of superannuation guarantee contributions by employers. Quarterly payments were introduced for a number of reasons, including the safety and financial advantages more regular payment provided for employees, gains in government revenue and administrative advantages for the ATO. At the time, approximately 90 per cent of employers were paying on a quarterly or monthly basis, so the changes impacted only on the remaining 10 per cent—overwhelmingly small businesses.

As part of the introduction of quarterly payments, a further requirement that employers report superannuation guarantee contributions paid on an employee’s behalf to that employee within 30 days of the payment was introduced. This measure was seen as enabling the employees to follow up quickly where the employer might be defaulting on SG contributions. Labor had for some time been arguing for these changes and, prior to the government introducing the bills in 2002, had moved amendments on two occasions. After a year of quarterly payments and reporting to members, the government has now introduced legislation that removes the requirement to report to members superannuation guarantee contributions paid on their behalf.

The removal of the reporting requirement was announced by the government during the election as part of its small business policy. The government’s view is that reporting to employees creates an unnecessary compliance burden on employers and, in particular, small business. The government admits that by removing the requirement there will be a higher burden placed on superannuation funds that will have to deal with greater numbers of inquiries regarding the payment of contributions but believes that it is more important to reduce the burden on employers. The removal of the reporting requirement creates a major gap in the safety net for
employees. The reporting enables the employee to keep track of his or her superannuation guarantee contributions. If they are reported regularly, it gives the employee the opportunity to follow up before the situation becomes irretrievable. If an employee is only notified annually by the fund, which is the most common situation, it may well be too late to remedy that situation.

There are significant non-payment problems in relation to the superannuation guarantee, and often the problem is not identified until the business concerned is bankrupt or in the hands of a liquidator. Whilst it is difficult to obtain an accurate number of superannuation guarantee payment defaults on business failure, it is certainly in the tens of thousands each year. Many workers have lost years of superannuation in these circumstances. Most often they are those workers who can least afford to lose their superannuation savings—low-income workers and those who will face difficulty finding employment after the collapse of their employer’s business.

Labor’s comprehensive employee entitlements protections scheme would have provided full compensation. Although the employee may still contact the fund to find out if contributions are being made, it is unreasonable to expect employees to do this on a regular basis and it is also unreasonable to place the extra burden on the funds—an extra burden that will involve costs which in turn will reduce fund returns and ultimately the retirement nest eggs of Australian workers. Superannuation industry organisations and superannuation funds across the board have attacked the proposed change as a watering down of the safety provisions. Of particular concern is the so-called choice of superannuation legislation commencing 1 July 2005. Nonetheless, there is an argument for exempting from the reporting requirements employers who have a high turnover of employees. Examples have been given to Labor of some employers in the rural sector that employ seasonal and/or transient employees and the hospitality industry, which has a high turnover of casual employees.

There is some irony in the government’s stated concern about the impact of superannuation legislation on employers when from 1 July 2005 employers will be hit by a massive new wave of regulation as a consequence of the so-called choice of super fund. New forms, new regulations, extra costs and additional legal liability will come with so-called choice—but more of that closer to the time. Labor is most concerned about the effect the removal of the reporting requirements will have on the ability of employees to monitor the payment of their superannuation guarantee contributions. Labor will reluctantly support this bill but will move during the committee stage of the bill to have it amended to ensure that the ATO reports on the levels of non-payment of superannuation contributions, as follows:

(1) Schedule 1, page 3 (after line 10), at the end of the Schedule, add:

3 At the end of section 44
Add:

(2) A report prepared in accordance with subsection (1) must include:

(a) the number of employers who have failed to pay one or more of their employees’ superannuation guarantee contributions by the date required by law;

(b) the number of employees whose employers have failed to pay their superannuation guarantee contributions by the date required by law;

(c) details of the total amount of superannuation guarantee contributions outstanding at the close of each reporting year;

(d) the number of defaulting employers who paid outstanding superannuat-
tion guarantee contributions after
the payment date required by law;
(e) the number of actions taken by the
Australian Taxation Office to en-
force the payment of unpaid super-
annuation guarantee contributions;
(f) the number of actions taken by the
Australian Taxation Office to en-
force the payment of unpaid super-
annuation guarantee contributions
that were fully or partially success-
ful;
(g) the total amount of outstanding su-
perannuation guarantee contribu-
tions recovered at the close of the
reporting year.

These will be requirements for inclusion in
the annual report.

Senator CHERRY (Queensland) (5.46
p.m.)—The Tax Laws Amendment (Super-
annuation Reporting) Bill 2004 is in some
respects a surprise. It removes an election
promise the government made in 2001 and
replaces it with what is clearly a very oppor-
tunistic election promise they made before
the last election. It is a surprise because the
legislation to actually introduce quarterly
reporting on superannuation and quarterly
reporting in respect of employer contribu-
tions back to employees was only debated in
this place two years ago. In fact it is a pity
that Senator Coonan, the then Assistant
Treasurer, is not in the chamber today be-
cause I want to read back into the
Hansard
what she said when introducing this report-
ing requirement on 27 June 2002. She said:

The new regime will provide much more cer-
tainty to employees. More frequent contribu-
tions will create higher superannuation benefits be-
cause of compounding interest, a lower risk of
workers losing superannuation entitlements if a
company falls over and more timely evidence of
noncompliance making it easier for the ATO to
detect those employers who are failing to pay, and
will lower the risk that a member’s death and
disability insurance where it is provided by a su-
per fund might lapse between annual contribu-
tions. Furthermore, the bills require employers to
report to their employees the amount and destina-
tion of their SG contributions. This will encour-
age employees to take an interest in their super-
annuation and alert them to any noncompliance
sooner.

It is also worth noting that, as I said, this was
actually part of the government’s 2001 su-
perannuation election policy. I want to quote
now from the Prime Minister’s press release
of 5 November 2001 announcing his A Better
Superannuation System policy. He said:

In order to ensure fairness between employees
and to encourage employers to make regular su-
perannuation contributions, the Coalition will
require all employers to make at least quarterly
superannuation contributions on behalf of their
employees.

All of this makes it quite clear that the gov-
ernment recognised not only that superannu-
ation should be paid to employees quarterly
but also that employees needed to know that
they were receiving it. Really that is a fund-
damental part of education. In fact when the
government announced this backflip back in
July 2004, when they decided to remove the
requirement to report to employees, they
were panned by not only the unions—
the
usual suspects—but also pretty much the
entire superannuation industry and large
chunks of the press. It is not often I find a
Financial Review
editorial criticising the
government, but after this particular an-
nouncement was made the Financial Review
got to press. On the one hand it was very
positive about the government’s superannua-
tion agenda, such as the government’s co-
contributions scheme, which was increased
in June last year and cut the surcharge, and
the introduction of choice of funds legisla-
tion. On the other hand, the Financial Re-
view
editorial of 9 July this year said:

The super week has been soured by political
opportunism. Prime Minister John Howard
abruptly announced a reversal of the rule that
employers have to notify fund members each quarter that their contributions have been paid into their super fund ... Every employer has to pay the amounts each quarter anyway, so the burden consists mainly of having to write to employees. Small employers do struggle in industries with a lot of itinerant employees, but why not tackle these problems with a suitable “best endeavours” clause?

Instead, we have seen the minister in charge of superannuation, Helen Coonan, who talks endlessly about safety in super and reducing the amount of “lost” super, praising this overreaction. Even though it will take away the most basic protection—that members know contributions are actually paid—the minister believes “a combination of practices and safeguards found throughout other ... legislation will allow employers and employees to remain informed about superannuation”.

How does the government expect fund members to take greater interest in their super, track their money or choose the right fund if they’re told about their account balance only once a year? That is a pretty good summary of the issues tied up with this legislation. I think it is a real pity that we see this legislation coming forward from the government at this particular point in time. The actual explanatory memorandum attached to this bill is, in my view, misleading about the impact of this bill. It says quite clearly in the regulation impact statement:

The provision of information to employees will be maintained by a combination of reporting provisions in other Australian workplace legislation that requires reporting on payslips, and annual reporting from superannuation funds.

The ACTU, in their submission to the Senate committee looking into this bill, said the problem is that employees not covered by an award or whose award or agreement does not provide for superannuation contributions to be made do not have an entitlement to information about superannuation contributions. There is a real problem that the industrial relations system does not provide the information that the explanatory memorandum says it does. In addition, the ACTU points out:

It is not correct that state legislation necessarily provides for superannuation information to be supplied in payslips. In New South Wales, South Australia and Queensland, payslips are required to contain information about contributions but not the funds to which they are paid.

So we see that what the explanatory memorandum is saying about this bill is not in fact what it does. The simple fact is that a large number of employees will now again no longer have much clue as to where their superannuation is going. This makes it much more difficult for choice of funds to operate effectively and for the education of employees to actually be effective. I want to also quote the contribution from the Association of Superannuation Funds of Australia to the Senate committee because I think it made a very important point. It said:

The superannuation industry saw the reporting obligation as particularly useful in tackling the problem of lost superannuation accounts as it will help employees keep track of their contributions. At an even more basic level, contributions reporting is a form of employee education as it is quite likely that an employee will take more notice of information about what the employer is paying to a fund on their behalf when it is associated with current entitlements to salary and wages. It is perhaps more difficult for fund communications to claim this level of attention.

So you can see that the superannuation industry, the unions and, indeed, the financial press recognise that reporting back to employees was a fundamental part of developing security and certainty in superannuation and reducing that huge body of $7 billion in lost accounts in this country. We in the Democrats recognise that you need to reduce compliance costs to business, and I think that is appropriate. You do not want to impose a compliance cost on business unless it is absolutely necessary, and whenever you do you
seek to minimise that compliance cost as much as possible.

The advice from the *Australian Financial Review*’s editorial was that we seek to ensure that best-endevours reporting is picked up. The advice from ASFA is that we at least expand out the reporting on payslips to make sure that that picks up reporting back to employees. Indeed, if we are going to take the actual assertion in the explanatory memorandum that payslips is where all this stuff is reported, why don’t we actually say that if they report in payslips they do not have to report? That would actually pick up a large chunk of the compliance problem and reduce it significantly whilst actually confining the compliance issue to that very small number of employees not covered by awards and not covered by agreements which include superannuation clauses that provide for reasonable reporting back to their employees. Indeed, if we are going to take the actual assertion in the explanatory memorandum that payslips is where all this stuff is reported, why don’t we actually say that if they report in payslips they do not have to report? That would actually pick up a large chunk of the compliance problem and reduce it significantly whilst actually confining the compliance issue to that very small number of employees not covered by awards and not covered by agreements which include superannuation clauses that provide for reasonable reporting back to their employees. That would actually significantly reduce the compliance cost burden and ensure that we were making a contribution to reducing the incidence of lost accounts and reducing the incidence of people not knowing where their superannuation is going.

That is why in the committee stage the Democrats will be moving an amendment, which I have just circulated, to actually broaden the reporting requirement in this particular bill to cover this and to recognise that a reporting requirement is met where the information is provided on payslips or in a form that the employee can reasonably understand, such as a letter. For the very majority of employers who already provide this information through payslips, that would mean that the actual compliance cost would not be there, and hopefully it would encourage employers to put this information in payslips, which would be the best place for it to be provided. It would at least ensure that there is reporting back to employees so that they can in fact track their superannuation.

This is a very disappointing bill. When this legislation was introduced two years ago, it had unanimous support in the Senate. We had all been calling for a long time for quarterly reporting. We had all been calling for a very long time—I have been involved in superannuation debates going back to 1993—for efforts to actually reduce the incidence of lost accounts. This legislation to introduce quarterly reporting as well as quarterly payments was actually a very positive step towards reducing the incidence of lost accounts. It is a pity that, as part of a small business compliance measure, the importance of that has been lost. It is a pity that we are going to actually see less, rather than more, reporting and that we are going to actually let business off the hook over developing decent and reasonable reporting back to their employees.

As I said, we have a whole bunch of ideas on how to actually reduce the compliance cost. Recognition through payslips is one idea, and that is the subject of the amendment that I will move today. It could also be done through the tax system, to augment the tax reporting which employers are already required to do. It could be done in other ways to actually ensure that the report does get back to employees in a way that minimises the cost to employers. That debate has not been opened. As the *Australian Financial Review* editorial said, this is very much about an opportunist statement—a bit of a big bang announcement following up on the Prime Minister’s small business compliance announcement back in July last year.

I am pleased that Senator Coonan has joined the debate in the chamber. It is certainly disappointing to see this legislation coming forward. The Democrats will be opposing this legislation. That does not mean we are not open to discussing how to reduce the compliance costs of superannuation reporting; we are very open on that issue. But
let us have a debate about how we actually balance, on one side, the importance of compliance costs and, on the other side, ensuring the employees get the information they need to actually protect their superannuation and make it safe and secure. Let us not engage in these opportunistic, simplistic solutions which may benefit certain categories of small business but will actually reduce the certainty and security facing employees in this country in terms of their superannuation. Particularly with the choice of funds legislation coming, it is absolutely crucial that we ensure that employees have more information to make informed decisions about their superannuation rather than less.

I will ask the minister to address, in her second reading debate comments, what the government intends to do to overcome the very large hole that is now going to appear in superannuation reporting and to ensure that, when the choice of funds legislation comes in, employees do not lose the information they are receiving through quarterly reports. How are employees going to be informed of what they have actually received, given that the assertions in the explanatory memorandum are not correct about the role of the award system and the role of state legislation? How are you going to ensure that employers are encouraged to continue to provide this information so that employees can in fact follow their superannuation and make reasonable and informed choices, and so you actually reduce the incidence of lost accounts?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (5.59 p.m.)—I thank honourable senators who participated in the second reading debate on the Tax Laws Amendment (Superannuation Guarantee) Bill 2004. The small business sector has for some considerable time been concerned at the administrative burden of the superannuation guarantee employer reporting requirement. The government recognises the high cost faced by employers in complying with this requirement, particularly those employing high levels of casual and itinerant workers. The government has responded to these concerns, which it regards as well founded, with amendments that will remove the requirement for employers to report to employees under the superannuation guarantee arrangements from 1 January 2005. This initiative will significantly reduce paperwork and costs for employers and remove duplication of information for many small businesses.

Some senators have raised concerns that this amendment will have adverse consequences for employees. In fact, I think both of the speakers in this second reading debate have raised this issue. Obviously the government disagrees with this proposition or this bill would not be coming forward in its current form. The basis for the government’s disagreement is that, whilst it is important that employees remain informed and engaged in relation to their superannuation entitlements, there is already a combination of practices and safeguards found throughout other Australian legislation that will allow employees to remain informed about their superannuation. Currently, superannuation funds provide members with at least annual reports, showing both employer and member contributions. Only information from funds provide the certainty to members that contributions have been received by the fund and allocated to the correct account, and members can contact their funds as frequently as they wish.

There are also a number of provisions in Australian workplace legislation and awards that require employers to report superannuation contributions more regularly on pay slips. These amendments will not affect those obligations, nor will they affect an em-
ployer’s obligation to make superannuation contributions at least quarterly. That brings us to consider the extent to which the notification, in addressing the concerns of small business, can be modified. The Workplace Relations Act 1996, for example, requires employers operating under federal awards, certified agreements and Australian workplace agreements—as well as Victorian and territory employers—to provide information in relation to superannuation contributions on pay slips. That requirement exists already. Queensland and South Australia have similar provisions requiring employers to disclose information about certain superannuation contributions on pay slips. So the government recognises the importance of employees knowing that their superannuation entitlements are being met and having a sense of ownership over their retirement savings. We have talked about that a great deal in debates on superannuation over the past three years. As I have already noted, employees will continue to receive at least annual statements from their superannuation funds and, importantly, even critically, they can contact their funds as frequently as they like to satisfy themselves that their entitlements have been received by their funds and allocated to their accounts. This level of conclusiveness is not provided by current employer reports.

I was disappointed to hear that Senator Cherry is not supporting the bill in its current form. I was hoping that the good sense of the objectives behind this bill would receive support, given the great importance of keeping compliance costs at a level that is not unjustifiably burdensome on our business community and of getting the balance right between keeping employees informed of their contributions and meeting the need for business efficiencies and reducing the compliance burden. We are all aware that small business continually complains about compliance. If I may just foreshadow, it seems that the amendments that are being proposed ignore the fact that the objective of this bill is to significantly reduce the compliance burden on employers, particularly small businesses. We will get to it later but I think I can apprehend Senator Cherry’s amendment, and my response to it is that it simply does not achieve this objective and is not aligned with the government’s intent in this bill. The amendment would fail to assist small business and would maintain an onerous quarterly reporting requirement that has in effect been made redundant by the existence of other measures and safeguards that I have outlined in my remarks. For all of these reasons the government will be urging the Senate to pass the bill without amendment.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator STEPHENS (New South Wales) (6.06 p.m.)—On behalf of Senator Sherry, I move opposition amendment (1) on sheet 4466, as amended with a slight typographical correction:

(1) Schedule 1, page 3 (after line 10), at the end of the Schedule, add:

3 At the end of section 44

Add:

(2) A report prepared in accordance with subsection (1) must include:

(a) the number of employers who have failed to pay one or more of their employees’ superannuation guarantee contributions by the date required by law;

(b) the number of employees whose employers have failed to pay their superannuation guarantee contributions by the date required by law;

(c) details of the total amount of superannuation guarantee contributions
outstanding at the close of each reporting year;

(d) the number of defaulting employers who paid outstanding superannuation guarantee contributions after the payment date required by law;

(e) the number of actions taken by the Australian Taxation Office to enforce the payment of unpaid superannuation guarantee contributions;

(f) the number of actions taken by the Australian Taxation Office to enforce the payment of unpaid superannuation guarantee contributions that were fully or partially successful;

(g) the total amount of outstanding superannuation guarantee contributions recovered at the close of the reporting year.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (6.06 p.m.)—I think it is appropriate that I place on record the basis for the government not agreeing to Labor's amendment. It is for the reason that I was beginning to develop in my earlier comments: it really does represent a determination to throw the baby out with the bathwater when you have regard to the objective of this bill, which is to significantly reduce the compliance burden on employers, particularly small business. It is ironic that, having agreed to this very sensible piece of legislation that is going to remove an unnecessary administrative burden on employers, Labor now seem determined to put that at risk by moving this amendment.

It is worth noting that the Commissioner of Taxation currently provides substantial information referred to in the proposed amendment. That information is in the annual report, which is made public on the ATO web site. In the 2003-04 annual report this information appeared on pages 69 to 71: 9,923 employers were audited as a result of employee notifications; 16,200 employers were audited as part of data-matching activities; 2,153 employers identified as high risk were contacted about their quarterly obligations before a liability actually arose; other proactive activity included providing speakers at 14 industry conferences and the issuing of a number of ATO and other publications; and $380.8 million was raised in superannuation guarantee liabilities and $234.6 million was collected. In many instances, the amount remaining uncollected is still being pursued.

The ATO estimated that employers paid $37.3 billion in superannuation contributions in 2003-04. This figure was provided by APRA.

For these reasons, conclusively, the government say this amendment is unnecessary, is not well drafted, will add complexity to the law and will of course impose compliance costs on the ATO. All of these drawbacks with the amendment, in our view, make it something that the government are not going to support. I do want to stress that in this whole field of superannuation we have had many debates over the past three years—I have moved on to another portfolio, but I retain a keen interest in the area—and I think we have achieved a great deal by negotiation and by being able to tease out, discuss and debate in this chamber several amendments for the benefit of the system. So I would say, with some justification, I feel, that the government are not being bloody-minded about this. We will not be supporting this amendment. If I could just pass on a little piece of advice to Senator Stephens, who is probably taking this through for Senator Sherry: if Labor is really serious about restoring its relationship with business it should now pass this bill unamended.

Senator STEPHENS (New South Wales) (6.10 p.m.)—The Labor Party certainly agree that there are some practical problems associated with the current reporting requirement
that all employers notify all employees of the superannuation guarantee contributions that have been made on their behalf. I made reference to that in my speech in the second reading debate. Difficulties undoubtedly occur in some industries with a high turnover of employees, and we noted the examples of the hospitality and the agriculture industries. Labor suggest that a more appropriate approach to these problems is a carve-out, using regulation of those industry sectors where there is a real and substantial problem, instead of the blanket approach of removing the reporting requirement from all employers. This is a reasonable and sensible approach which I note that the minister has said will not be supported by the government.

It is hypocritical of the government and some industry associations who have made submissions to complain about additional paperwork and costs for business, when the introduction of so-called fund choice on 1 July 2005 will lead to a far greater increase in paperwork and costs than the measure under consideration in this amendment. Quarterly payments were introduced for a number of reasons, one of which was safety—a consumer protection measure in anticipation of the proposed introduction of a fund choice regime. There are significant nonpayment problems in relation to superannuation guarantees, and often the problem is not identified until the business concerned is bankrupt or in the hands of a liquidator. Whilst it is difficult to obtain an accurate number of the superannuation guarantee payment defaults on business failure, it certainly is, as I said before, in the tens of thousands each year. Many workers have lost years of superannuation in those circumstances, and they are the workers who can least afford to do so.

At the very least, a regular reporting mechanism should be provided to facilitate the identification of defaulting employers and to track the size of the default problem. A requirement that the ATO in its annual report clearly indicate the number of noncomplying employers, the number of employees affected by noncompliance at the level of enforcement and the actual recovery of unpaid superannuation guarantee would have achieved this. I am very disappointed that the government will not accept the amendment.

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

The committee divided. [6.18 p.m.]
(The Chairman—Senator J.J. Hogg)

Ayes…………… 34
Noes…………… 29
Majority……… 5

AYES

Allison, L.F.
Bishop, T.M.
Buckland, G. *
Carr, K.J.
Collins, J.M.A.
Crossin, P.M.
Faulkner, J.P.
Greig, B.
Hogg, J.J.
Lees, M.H.
Lundy, K.A.
Marshall, G.
Moore, C.
Murray, A.J.M.
O’Brien, K.W.K.
Ridgeway, A.D.
Webber, R.

NOES

Abetz, E.
Boswell, R.L.D.
Calvert, P.H.
Chapman, H.G.P.
Coonan, H.L.
Ellison, C.M.
Ferris, J.M.
Heffernan, W.
Johnston, D.
Lightfoot, P.R.

Bartlett, A.J.J.
Brown, B.J.
Campbell, G.
Cherry, J.C.
Conroy, S.M.
Denman, K.J.
Forshaw, M.G.
Harradine, B.
Kirk, L.
Ludwig, J.W.
Mackay, S.M.
McLucas, J.E.
Murphy, S.M.
Nettle, K.
Ray, R.F.
Stephens, U.
Wong, P.

Barnett, G.
Brandis, G.H.
Campbell, I.G.
Colbeck, R.
Eggleston, A. *
Ferguson, A.B.
Fifield, M.P.
Humphries, G.
Kemp, C.R.
Macdonald, J.A.L.
Question agreed to.

Senator CHERRY (Queensland) (6.23 p.m.)—I move Democrat amendment (1) on sheet 4473:

(1) Schedule 1, item 1, page 3 (lines 6 and 7),

1 After subsection 23A(2)

(2A) A report prepared in accordance with subsection (2) can be in the form of:

(a) pay advice; or

(b) letter; or

(c) any form in which the information can be communicated effectively to the employee.

This particular clause seeks to broaden the flexibility of the reporting requirement on quarterly superannuation. In particular, it seeks to ensure that reporting to an employee through a pay slip is deemed to be compliance with this legislation. What that means is that an employee will actually be told either through a letter from their employer or through some other form, as the act currently requires, or by their pay slip, into what fund their superannuation is going.

This puts into place very formally the provisions which the minister was speaking about in her comments earlier and which are also included in the explanatory memorandum, where it says that there are requirements that allow for superannuation to be reported in pay slips. The minister said in her closing comments that this is a requirement of award legislation and of state payroll legislation. As I pointed out in my speech in the second reading debate, there are holes in that reporting system. In respect of the award system, because of the award simplification process many awards no longer include clauses requiring the actual notification of payment of superannuation. In particular, the award only requires the pay slip to include the information where the award clause actually says that. I would have thought that the vast majority of employees who are covered by the workplace relations system are not covered by a requirement in the award clause that superannuation contributions and the award fund be included.

The minister also pointed to state legislation about payroll payments. It is worth noting again that New South Wales, South Australia and Queensland are required to contain certain information about contributions but they do not include information about the fund to which the contributions are to be paid. So we have a significant hole in the award system in that it only requires the information be included in the pay system if the award clause actually says that that is the case. We have a significant problem with state legislation in that three states that have reporting of superannuation do not require the fund to go on the pay slip.

What we are simply saying in relation to the minister’s comments about ensuring that the reporting be done through pay slips is: ‘Okay, fine—if they do report through pay slips then they are deemed to meet this reporting requirement,’ so that there are no holes in the system. Pick it up through pay slips and it is done. If the award clause says you must report it through pay slips then, fine, you comply with the legislation. If state legislation requires you to do it, fine, you comply with legislation. If they do not, then either you do it through a pay slip or you
give the employee a letter or some other form of communication. I commend this amendment in particular to the Labor Party, because it is your policy. I will read out the policy released by Nick Sherry and Simon Crean in November last year:

All contributions, made by either the employer or the employee, are included on an employee’s pay slip at the time of payment.

Employers are already required to report SG contributions made on behalf of an employer to accumulation funds within 30 days of the contributions being made. Labor will extend this to require reporting of all contributions made to an accumulation fund through an employer.

The Labor Party said that this was important to protect superannuation fund members and to ensure that they knew where their superannuation was going. So this amendment we are moving today is the Labor Party’s policy at the last federal election. It is also the intent of what is expressed in the explanatory memorandum. From that point of view, I commend it to the Senate. I think it is an important amendment and I hope that the Senate supports it. In moving this amendment I ask the minister whether she will acknowledge that there are holes in the award system where the award does not include a clause requiring information in respect of payment of superannuation and whether she also recognises the hole in respect of state legislation in that it does not require the fund to be noted on pay slips?

Senator CHERRY (Queensland) (6.28 p.m.)—I intend dividing on this question and I was proposing to do that at 7.30, when we return after the dinner break. Would the minister give me a little more information? In terms of the claim in the explanatory memorandum that reporting through pay slips is covered by provisions in Australian workplace legislation and also through state legislation, would she acknowledge that both of those reporting requirements have holes and that a significant part of the work force does not receive that information through pay slips?

Sitting suspended from 6.29 p.m. to 7.30 p.m.

The TEMPORARY CHAIRMAN (Senator Bolkus)—The question is that the Democrat amendment be agreed to.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (7.31 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

COPYRIGHT LEGISLATION AMENDMENT BILL 2004

Second Reading

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

That this bill be now read a second time.

(Quorum formed)

Senator CONROY (Victoria) (7.34 p.m.)—Mr Acting Deputy President, you would recall the debate we had in this cham-
ber back in August for the passage of the Australia-United States free trade agreement. During that debate Labor amended the FTA bills. Those amendments were necessary to ensure the FTA did not undermine our Pharmaceutical Benefits Scheme and to protect local Australian content on television. There was great controversy at the time about Labor’s amendments in regard to the PBS. The Prime Minister said they would be unworkable, they were a mistake, they were not consistent with the spirit of the agreement and they would cause us great problems with the Americans; Labor was trying to sink the FTA. That was what the Prime Minister was suggesting. If the FTA failed to come to fruition because of Labor’s amendments it would be Labor’s fault.

We are debating this Copyright Legislation Amendment Bill 2004 today not because of any mistake on the part of the Labor Party, not because Labor’s PBS amendments have threatened to prevent the US FTA being implemented—no, not at all. Rather, this bill is necessary to address this government’s incompetence. This bill is required to address all of the mistakes that the government made in its US FTA implementation bill, although it also appears to go further than that. It was not Labor’s amendments that threatened the US FTA. It was the government’s incompetence, the government’s mistakes, the government’s failure to correctly amend Australian law to ensure that we complied with our obligations under the US free trade agreement. Accordingly, in light of the government’s failure, I move the following amendment to the motion for the second reading of this bill:

At the end of the motion, add:

“but the Senate:

(a) notes:

(i) with concern, the failure of the Government to previously correctly implement its obligations under the United States Free Trade Agreement Implementation (USFTA) Act;

(ii) with concern, that this Bill has the potential to enable persons other than copyright owners or exclusive licencees to force an internet service provider to take down allegedly infringing copyright material from their system and that this potential new ground for ISP liability is not contained in the USFTA Act;

(iii) that this Bill was sent to the Legal and Constitutional Committee which heard evidence that the Bill may disrupt the balance of interests between copyright owners, users and internet service providers;

(iv) that the Government intends to respond to these concerns through Regulations that will flesh out legislative safe harbour provisions and will consult with stakeholders in the preparation of these provisions;

(v) the commitment by the Government to keep implementation of the safe harbour scheme under close review and, as necessary, consult with stakeholders on any issues that may arise, including appropriate responses;

(vi) that Labor’s amendments to the Australia-US FTA are not contrary to the terms of the FTA, our international obligations under WTO TRIPs and are not referred to in this Bill;

(vii) with concern, that the diplomatic note of exchange from the US refers to Labor’s amendments and the Senate therefore calls on the Government not to weaken in response to US pressure and to reaffirm its commitment to Labor’s amendments to protect the pharmaceutical benefits scheme and local Australian content for television; and

(b) calls on the Government to restate its view that Australia has a different
approach to the US on the criminalisation of pirated satellite signals in the home and to therefore give an explanation of its commitment to the US to undertake a review of Australia’s domestic policy relating to criminalisation of all forms of satellite signal piracy, including unauthorised distribution or receipt of signals by commercial establishments and within the home, that shall conclude no later than 1 July 2005”.

The government says that this bill is necessary to make various minor and clarifying amendments to the Copyright Act and the US FTA Implementation Act. These amendments are not minor and clarifying. Indeed, items 11 and 13 of the bill that address the copyright obligations of Internet service providers have, we understand, appeared without consultation with the Internet industry and come as a complete surprise. The text of the FTA commits Australia to a scheme for determining ISP liability based on the safe harbour concept—that is, if they meet certain conditions, ISPs will not be liable for breaches of copyright that may occur on their network by users. The text of the FTA is broad. ISPs may be liable if:

... they fail to act expeditiously to remove or disable access to the copyright material once they become aware that the material/s infringing, or become ‘aware of facts or circumstances from which the infringement was apparent’.

The government’s FTA implementing legislation apparently did not adequately reflect this requirement. This bill therefore sets out further conditions that ISPs will have to meet to access the safe harbour. The bill raises complex issues affecting the balance of rights between copyright owners, copyright users and ISPs.

The Australian Digital Alliance and the Internet Industry of Australia have expressed considerable concern about the potential impact of these amendments. It was for these reasons that Labor sent this bill to the Senate Legal and Constitution Affairs Legislation Committee for examination. Just as Labor had to establish a Senate Select Committee on the US FTA to give the public the opportunity to have their say on the FTA, Labor was required to refer this bill for examination by committee.

At the hearing of the committee held last night, the Australian Film Industry Coalition advised that the arrangements in the bill do ensure a fair balance between owners and users. These arrangements are essential, they suggested, to ensure artists, performers and owners of copyright are adequately rewarded for their efforts. These are very valid points. However, it was also suggested that there are major problems with the bill. In particular, it will undermine the FTA safe harbour scheme, removing immunity for ISPs who act in good faith under the new arrangement and remove important protections for ISPs’ customers. Internet users may no longer be able to prevent their legitimate material from being taken down.

The committee heard evidence that these new provisions go further than Australia’s obligations required by the FTA. If we are to encourage the development of a knowledge based economy in Australia, this is not the way to do it. If we are to encourage an open and free flow of information across the Internet, this is not the way to do it. Officials from the Attorney-General’s Department advised the committee that many of the concerns raised by ISPs would be addressed in accompanying regulations. However, these regulations have not yet been made available. The Senate is not in a position to scrutinise them.

We are, once again, put in a position of assessing legislation without the accompanying regulations that will affect the operation and
impact of the legislation. Notwithstanding the inadequacy of this arrangement, Labor accept an assurance received today from Minister Vaile that the concerns of ISPs and copyright users will be resolved through regulations. The government has made it quite clear that these regulations will flesh out the legislative safe harbour provisions and the rights and obligations of copyright owners, users and ISPs. Labor also take assurance from Minister Vaile’s commitment that:

... the Government will keep implementation of the scheme under close review and, as necessary will consult with stakeholders on any issues that may arise, including appropriate responses.

Mr Acting Deputy President, I seek leave to table the letter that the shadow trade minister received today from Minister Vaile, as it is the intention of the shadow minister to table the letter in the other place.

Leave granted.

Senator CONROY—The exchange of diplomatic notes between Australia and the US on 17 November was the final step between our two countries to bring the FTA into force on 1 January 2005. The content of those letters was very instructive for the references that have been made to key areas of Australian public policy. The government appears to have made further commitments to the US on key areas of public policy without adequate—indeed any—consultation with Australian stakeholders. Notwithstanding Labor’s rock solid legal advice that our amendments to the PBS are compliant with the text of the FTA and our obligations under the WTO TRIPs agreement, the US has expressed concern in their letter. Specifically, the US has said Labor’s amendments:

... impose a potentially significant, unjustifiable, and discriminatory burden on the enjoyment of patent rights, specifically on owners of pharmaceutical patents.

The US goes on to:

... urge the Australian government to review this matter, particularly in light of Australia’s international obligations.

Labor’s amendments to protect the PBS, were developed on the basis of sound legal advice, released publicly, fully scrutinised and supported by the accompanying legal counsel advice. No such advice was released by the government to support their argument that Labor’s amendments may have contravened the deal. Nor has the US released any advice to support its claims.

The government supported Labor’s amendments. It is therefore the responsibility of the government to recommit to those amendments and to push back on any US attempts to challenge those amendments in the future. It is incumbent upon, and the responsibility of, the government to respond robustly if the US were to challenge Labor’s amendments at some point in the future. Those amendments were based on sound legal advice. They were supported by the government and passed by the parliament. They were necessary to protect the PBS and must not be diminished in any way by any future action the US—or the government—may take.

The US has made it clear that the exchange of letters between Australia and the US enabling the FTA to come into force on 1 January was dependent upon this bill successfully passing through this parliament. This raises a very serious concern. Once again, we are confronted by this government’s continuing arrogance and lack of respect for the authority of this parliament. The parliament is not here merely to rubber stamp decisions of the executive. Once again, the Senate is being presented with a bill as a fait accompli. The bill was developed in full consultation with the US to ensure that they were satisfied with the laws
that this government intended to introduce. Minister Vaile attached a copy of this bill to his letter to Ambassador Zoellick. The government consulted the US—a stakeholder in the FTA, but another country. The government consulted with the US on the contents of key elements of this bill before consulting fully with its own citizens, its own stakeholders. We have again been presented with another signed and sealed deal with accompanying legislation that the parliament must rubber stamp.

For these reasons Labor is committed to introducing a new mechanism for parliamentary scrutiny of free trade agreements. Prior to commencing negotiations for bilateral or regional free trade agreements, a Labor government will table in both houses of parliament a document setting out its priorities and objectives. This will include an assessment of the costs and benefits of any proposals that may be negotiated. Once the negotiation is complete, the government will table in parliament a package including the proposed treaty, together with any legislation required to implement the treaty domestically. Labor is committed to giving the Australian public an effective democratic and transparent process to review any FTA being negotiated to ensure it is in Australia’s national interest.

Labor will not conduct FTA negotiations in the secret manner pursued by this government. This government’s arrogance and contempt for the parliament is unacceptable and must not be allowed to continue.

Senator NETTLE (New South Wales) (7.46 p.m.)—I seek leave to incorporate Senator Ridgeway’s contribution to the second reading debate on the Copyright Legislation Amendment Bill 2004.

Leave granted.

Senator RIDGEWAY (New South Wales) (7.46 p.m.)—The incorporated speech read as follows—

I rise this evening to speak to the Copyright Legislation Amendment Bill 2004.

I would like to begin by saying that, in my view, we should not be dealing with this Bill today. This is an immensely complex Bill, which will have a major impact on Australian copyright industries. The Senate is being asked to enact this Bill without due consideration, without taking a thorough look at these provisions and working out what their impact will be. This is a house of scrutiny, and the opportunity for scrutiny is being denied.

The question of liability for Carriage Service Providers is the most talked-of example, but the fact remains that there are many other problems with this Bill as well. The Parliamentary Library Briefing—which was released only this morning—raises a number of other issues that need to be considered. Will the test for ‘temporary reproductions’ cause confusion within Australian law? Will there be unintended consequences? Could the provisions with respect to the definition of ‘profit’ be drafted more clearly? Why has the non-commercial end use of encoded broadcast not been included in this Bill, when it is clearly required by the FTA? These questions, and many more, need to be examined thoroughly by a Senate Committee.

Delaying this Bill will NOT invalidate the US Free Trade Agreement. The Agreement has been signed, the letters have been exchanged. The deal WILL come into force on 1 January irrespective of what is decided here today. No matter what our Minister has agreed to with the US behind closed doors, no matter what compromises have been made or concessions offered, this Parliament has a right to do its job properly.

The events of this week do not constitute the Senate doing its job properly. The Government released the text of the Bill only days ago, after what seems like only the most cursory of consultations with Industry. The Minister describes the Bill as making ‘minor and technical’ amendments, a claim that is patently false. We then find out that the Industry was consulted on a version of the Bill that didn’t even include the most controversial provisions. They were sneaked in at the last mo-
ment. These are not the actions of a Government who has nothing to hide.

What has been promised to the US that we don’t know about? I can only wonder.

Then the Senate refuses to exempt this highly technical, extremely complicated Bill from the cut-off. The Selection of Bills committee holds an extraordinary meeting to refer this Bill to a special committee—with a 24 hour reporting deadline. The Legal and Constitutional Affairs Legislation Committee met for two hours last night. Two hours! The provisions of the Bill are so complex that the first witnesses—who had only been allotted 25 minutes to give evidence—were kept before the Committee for a full hour. Even then, they were asked to provide substantial amounts of further evidence on notice. The same story followed for the second and third witnesses.

By the time we got to the Attorney-General’s Department and DFAT witnesses, only FIFTEEN minutes were available for questioning. Needless to say, the Committee did not get the answers it was looking for. In fact, I would go so far as to say that the hearing raised more questions than it answered.

The Committee doesn’t even have time to issue a report. No, instead we are tabling the Hansard, as if that proves that there was a process of scrutiny undertaken at any point. What anyone who reads this Hansard will find is that last night’s hearing was confusing and dealing with very complicated matters. Each Senator on that Committee, both Government and non-Government expressed their incredulity that the provisions of this Bill clearly go beyond the requirements of the Free Trade Agreement.

Why are we being asked to enact these shockingly onerous provisions, when the FTA doesn’t even ask us to? Why are we being asked to scuttle the internet industry in Australia, when we are not required to by the Agreement, and in fact, what we are proposing goes WAY beyond what the US has imposed in its own country!

This Bill is a mess. It needs to be thoroughly considered and debated, not rushed through this place in the final week of sitting. If the Government couldn’t get its act together to draft these provisions before now, that is not the Senate’s fault.

We have to do our job properly, and it is for that reason that I will be proposing a second reading amendment that will refer this Bill to the Senate Legal and Constitutional Affairs Committee for a full and proper Inquiry after the second reading stage.

As we discussed in August, the IP chapter of the Agreement is the most significant—with the most far-reaching reforms which will have a direct and serious impact on Australian innovative industries. Some of these changes, such as the ratification of the WIPO treaty, are positive reforms. However, aspects of the chapter relating to extension of the copyright term, provisions relating to anti-circumvention devices, and liability of ISPs relating to copyright infringement are very dangerous developments.

We are changing the future of Australian copyright law through a trade agreement, rather than through thorough, reasoned, considered debate here in our own country about how we want our future media landscape to be structured. These changes are being implemented for strategic political and trade objectives, as items to be horse-traded in negotiations—a compromise here, a concession there—rather than with an eye to what is best for Australia. This is an unacceptable way to go about policy development. These commitments have been locked in, with no opportunity for the Australian people to have their own say.

The fact remains, however, that even IF we supported the USFTA, the specific provisions of this Bill are sufficiently controversial that the Bill should be opposed in its own right.

I want to spend a moment discussing the various sections of the Bill, and the potential problems that may arise. Then I will turn to the most controversial aspect of the Bill, and that is the provisions relating to Carriage Service Provider liability.

This Bill amends the wording of the general exception for the making of temporary reproductions. However, under these provisions, the protection from infringement would only apply to temporary reproductions made as a necessary part of a technical process of use. The problems with this test lies in the definition of the terms ‘temporary’ and ‘necessary’—a matter I had intended to
pursue further at the third reading stage, but given that this Bill now has Opposition support, we have made the judgement call that there will be no point us bringing up these very important matters.

The Bill also amends the criminal offence provisions of the Copyright Act, to do with making infringing copies of copyright material to obtain profit. It changes the test that is required to be met to prove that profit has been obtained. Rather than simply replacing one version of the test with the version mandated by the FTA, the Government is seeking to implement an ‘either/or’ test, which may produce some unexpected results as courts try to grapple with the differences between the two elements.

The Bill also criminalises the showing of illegally obtained encoded broadcast material (such as subscription television or radio) for commercial advantage or profit. However, the Bill does not provide a criminal offence for the non-commercial (that is, personal) end-use of infringing broadcasts, which is clearly required by the Agreement. The United States view that Australia has not complied with AUSFTA is almost certainly correct. While the Australian provisions fulfil this requirement for commercial purposes, the question of personal use has been ignored completely. Why the Government would deliberately choose to avoid implementing the FTA in this case is a mystery.

The USFTAI Act established a new regime for determining when Carriage Service Providers (businesses that provide internet or telecommunications services) might be liable for copyright infringements by users over the CSP’s network or service. The effect of the existing CSP provisions is to create a ‘safe harbour’ of conditions where a CSP can avoid liability if certain criteria are fulfilled or certain processes are followed. This Bill amends the USFTAI Act tests for ‘financial benefit’ and ‘awareness’ that determine whether a CSP has ‘safe harbour’ protection.

The new provisions relate to ‘Category C and D’ activities—which relate to hosting websites that may contain copyright infringing material, or linking to sites that contain copyright infringing material. While the Bill applies to all ‘carriage’ service providers, Category C and D apply mainly to Internet Service Providers (ISPs).

The new aspects of the ‘financial benefit’ test are problematic in themselves, but given that I only have a short time here today, I will defer further discussion of this matter. I want to focus instead on the provisions of this Bill that establish that mere awareness of category ‘C’ or ‘D’ activities creates liability. These are the most controversial aspects of this Bill.

Under AUSFTA, the awareness test is linked to the process for notification of infringement. This process provides a system for copyright owners to send ‘take-down notices’ informing ISPs of copyright infringements across their network. It also provides an opportunity for the alleged infringer to provide a counter-notice refuting the allegation. Different obligations arise for ISPs depending on the nature of the take-down notice and whether a counter-notice is received. Also, AUSFTA requires that monetary remedies be available against people providing false information in notices and counter-notices. In the original USFTAI Bill, this ground of liability was going to be established by regulation, together with the specifics of the ‘take down notice’ system as it will operate in practice.

There were serious concerns about the potential effect of this system in the original USFTAI Act, although some players in the industry were content that the scheme provided for a fair balance of the rights and obligations of copyright owners, ISPs and copyright users.

However, this new Bill goes even further than the original Act, and upsets this balance. Under the new provisions, ISPs must take material down if they are aware that material is infringing, or if they are ‘aware of facts or circumstances that make it apparent the material is likely to be infringing’. This removes the copyright owner from the equation, and places the entire responsibility for enforcing the scheme onto ISPs. ISPs will be required to take action on even the slightest suspicion that a copyright infringement may have occurred. ISPs will be responsible for making decisions on infringement or not—and their liability is at stake. The onus will be on the ISP to err on the side of
extreme caution—taking all suspect material down to avoid liability from legal action by copyright owners. However, if they do take material down which is later proven not to have infringed copyright, the copyright user will be able to sue for damages.

We have not yet seen a copy of the proposed regulations that will provide the detail of how this scheme will operate in practice. The Senate is being asked to enact the punitive aspect of this test, but with no detail of any checks and balances that may be provided in the regulations. This is unacceptable—and yet another reason why consideration of this Bill should be delayed—we must see the proposed Regulations before this Bill can be passed.

In his second reading speech, the Minister claimed that industry had been consulted on this Bill, and were satisfied with its provisions. However, this has been shown to be false. Representatives of the internet Industry Association have publicly expressed their deep concern about this new test. While they were consulted on an earlier version of the Bill, these new provisions have been included in the final Bill without any consultation at all. The IIA are supported by the Australian Digital Alliance and the Australian Vice Chancellor’s Committee in their opposition to these provisions.

So far, the Attorney-General and Trade Minister have not been forthcoming with convincing explanations as to why these provisions are necessary. They are not required by the AUSFTA, they go further than the USA’s own system under the Digital Millennium Copyright Act, and will create major burdens on Australian ISPs.

This Bill is a mess. While parts of it may be interpreted as enacting the AUSFTA more effectively (not that this is a good thing!), other parts go far further than the FTA, and others still stop short of implementing the deal at all. We have no idea what has been agreed behind closed doors between Vaile and Zoellick, and whether compromises have been made in regard to the IP chapter of the Agreement to make up for concessions to do with pharmaceuticals. The Bill cannot be supported, and at the very least must be amended to overcome the more onerous aspects of its provisions.

As I discussed earlier, I firmly believe that we should not be dealing with this Bill at this time. I had intended to move a Second Reading Amendment to refer this Bill to a Committee for thorough consideration before the Senate is asked to deal with it any further. However, the Opposition has indicated that they will not support our proposed amendment, so we have elected not to move it. I must say, I am very disappointed with the Labor Party in this matter. Not content simply with letting the FTA through in August—albeit with token amendments that will achieve very little—they are now going to let through a bill that they actually KNOW will do significant harm. We had also prepared amendments that would have removed Items 11 and 13 from the Bill, which would have enabled us to still implement the terms of the FTA, but refrain from doing real damage to the Australian internet industry, but the Labor Party has rolled over.

Why are we even here for the next six months? It seems to me that the Government doesn’t need to wait until July 2005 to gain control of the Senate—they already have it. The ALP is willing to let anything get through this place—even when they know full well that they are condemning sectors of Australian industry to ambiguity, confusion, and unquantifiable harm.

I would like to end by recording my apologies to the Industry representatives who worked so hard to bring us up to speed on this Bill so quickly—I thank them for their assistance, and express my regrets that we weren’t able to achieve a better result.

Senator NETTLE (New South Wales) (7.46 p.m.)—The US-Australia free trade agreement is a disaster for Australia’s economy, culture and society. The impact of the agreement is even clearer with this Copyright Legislation Amendment Bill 2004, which will further transform Australia’s intellectual property law to align it with the worst aspects of the US copyright law. It was clear from the beginning of the negotiations that, despite government claims, any agreement reached on the trade agreement would benefit US corporations at the expense of Australian industry, workers and consumers.
The final deal was a dud for Australian agriculture and manufacturing industry and traded away important regulation of access to cheap medicines and intellectual property.

Earlier this year the government, with the support of the opposition, rammed through the implementing legislation for the deal, despite widespread public opposition to the agreement. We now know that even the weak amendments passed by the Senate regarding the evergreening of pharmaceutical patents are likely to be challenged by the United States. US Trade Ambassador Zoellick, in his recent letter to the Minister for Trade, Mark Vaile, released by the government last week, states:

If subsequent practice reveals problems with the full exercise of US rights I have discussed above, Australia should expect that we will take appropriate remedial action.

This is exactly the danger the Greens and other critics of the trade agreement warned of. The US will use the agreement as a stick with which to break open the Pharmaceutical Benefits Scheme, undermine generics and force up the price of medicines for sick Australians—all this so that big US pharmaceutical corporations can boost their profits.

While there has been a lot of debate about the PBS and the cultural components of the free trade agreement, in many ways some of the key issues in the agreement have not been properly explored yet. While the government claims the agreement is about free trade, this intellectual property component of the trade agreement—the harmonising of our laws with the US intellectual property laws—means less free trade and more government enforcement of private monopoly rights. Chapter 17 of the free trade agreement covers trademarks, patents and copyright. Most of the clauses on intellectual property reproduce those in the United States Digital Millennium Copyright Act 1998 and those in the Singapore and Chile free trade agreements. They are part of an ongoing agenda of the United States to push through bilateral trade agreements that enhance the control and ownership of US corporations in the IT and entertainment industry.

The US wanted these changes, because according to a new book by trade experts Linda Weiss, Elizabeth Thurbon and John Mattews:

The intellectual property protected sector is now by some accounts the largest sector of the entire US economy. Everything from life forms to movies is covered in this sector. Its exports now exceed the exports of automobile, automobile parts, agricultural and aircraft industries combined. This is the real reason for the US concern to extend and strengthen IP rights. The copyright-protected sector on its own—covering films, TV programs, home video, digital video-discs, business and entertainment software—was estimated to be worth 5.2 per cent of US GDP in 2001, US$535 billion. In the same year, this sector achieved foreign sales of US$89 billion, making it the leading export sector in the United States ...

Thus in the area of intellectual property, the US has a very definite agenda backed by very real economic interests.

The US Free Trade Agreement Implementation Act 2004 implemented this agenda in Australian law: for example, extending the life of copyright from 50 to 70 years, the so-called ‘Disney’ clause. The Greens opposed this legislation and the IP component of this legislation not only because it increased the powers of US corporations but also because it did not even include some of the few protections that do exist in the United States for users and consumers in the form of fair use and the free speech provisions that exist in the US constitution. The Australian Libraries Copyright Committee explained at the time:

The detrimental consequences of this will be felt broadly amongst educational, consumer, cultural and research institutions. Without expansion of the fair dealing provisions to balance the
stronger copyright owner rights, institutions functioning for the benefit of the public, will bear the burden of a longer copyright term, more stringent copyright owner rights, and tougher penalties for incidental, minor and non-commercial breaches of Copyright. This will expose institutions to greater costs and greater risks. Ultimately this will adversely affect the end users of these institutions, who will not be able to access the same level of knowledge via copyrighted material.

The agreement in the legislation also went well beyond what Australia had even signed on to in the highly criticised WTO agreement on trade related aspects of intellectual property rights, known as TRIPS. Australia and Australians will not benefit from these laws if they come into force on 1 July next year. Australia already has a balance of payments deficit when it comes to intellectual property. We are a net importer of ideas and technology and our payments of royalties to foreign companies exceed our income in 2002 by more than $A1 billion. Thanks to the Howard government we now have some of the most unbalanced and restrictive intellectual property laws in the world, with holders or owners of copyright—that is, primarily big business—holding all of the cards at the expense of users and consumers such as libraries, universities, Australian industry and ordinary consumers.

But post the election in United States the US has come back for more. The Minister for Trade, Mark Vaile, has caved in yet again, agreeing to changes to Australia’s intellectual property law that go even further than international agreements and even further than the US law in protecting the US corporate owners of intellectual property at the expense of users and consumers. Why? The US are going to do whatever they can get away with in terms of furthering their own agenda, and it seems that the Howard government are all too willing to cooperate. The clauses contained in the bill—and the US has managed to get the Australian government to agree to them—will go far further than international agreements. They will set a new benchmark for the United States when it comes to their negotiations either with bilateral agreements or with multilateral agreements.

The government claim that the changes contained in this bill are merely technical or minor. But that is not what the industry groups or consumer groups are saying. Groups as diverse as Optus, Telstra, libraries, universities and the Australian Consumers Association are all very concerned by the proposals put forward in this legislation. In particular, changes which will effectively remove the safe harbour provisions that were introduced in the earlier legislation, the implementing bill, mean that diversity on the Internet will be threatened.

The bill includes provisions which will do a range of different things. They will broaden the scope of offences to which criminal provisions apply to commercial piracy that does not occur in a trade context and strengthen the criminal regime for business end-user piracy, increase the obligation of copyright users to go behind the person or corporation named on the item to find out if there are additional copyright owners, narrow the scope of the incidental copies exception to temporary copies made as a necessary part of using a copy of the work and limit the transition period in which copyright users can claim compensation due to the extension of copyright from 50 to 70 years. But the provisions that the Greens and community groups are particularly concerned about regard the liabilities of Internet service providers, and these are complainants whom we believe can have the greatest impact. However, other industry groups have been pointing out concerns about other parts of this legislation as well.
Changes to copyright law forced by the US free trade agreement made earlier in the year imported from the US the so-called safe harbour scheme for Internet service providers. This scheme meant that ISPs, the Internet service providers, that operated within the guidelines and the requirements of the safe harbour would not be subject to liability for infringing copyright from materials through the hosting of a user’s web sites or services. This included the transmission of infringing material, the caching of material, the hosting of web sites with infringing material and the linking to infringing material.

Internet service providers under the existing legislation must still remove infringing material if they have actual knowledge of an infringement, but they are not required to monitor their web sites and servers for infringing material. For example, if they receive a court order requiring them take down material, they need to comply. But they do not need to go looking for that material on their sites. However, items 11 and 13 contained in this bill will mean that the safe harbour provisions will go out the window. Item 11 and item 13 of the bill will have a significant and detrimental effect on the Australian IT industry and, more importantly, on ordinary consumers and users of the Internet. Item 11, which is the same as item 13, states:

The carriage service provider must act expeditiously to remove or disable access to a reference residing on its system or network if the carriage service provider:

(a) becomes aware that the copyright material to which it refers is infringing; or—

(b) becomes aware of facts or circumstances that make it apparent that the copyright material to which it refers is likely to be infringing.

Similar clauses in the Digital Millennium Copyright Act 1998 in the United States have led to a burgeoning industry of take-down notices and claims which have meant that Internet service providers are forced into taking off line web sites and services rather than risking potential legal action.

The key problem with these items is that they force ISPs to take action regardless of the substance of the claim, or risk legal action. Claims can be spurious and unfounded yet, because they are not tested in a court prior to the ISP needing to take action, they are wide open to abuse. Some ISPs have been served with tens of thousands of take-down notices. Often these notices are automatically generated by software which searches the Internet for potential infringements. According to the Internet Industry Association, which represents a range of industry players including Optus and Telstra through to the smaller IT companies, this bill will cause huge problems. They say, ‘Internet service providers will be caught between a “rock and a hard place”—liable to copyright owners if we don’t act, liable to customers if we do.’ The careful balance of the rights of copyright owners, users and ISPs is severely undermined.

The Electronic Frontiers Foundation, EFF, a leading advocate for organising Internet rights and freedoms, have compiled a list of examples of some of the abuses that have occurred under similar provisions in the US Digital Millennium Copyright Act. This has meant that information in the public domain has been taken down. For example, Wal-Mart have used take-down provisions to stop web sites occurring that compare their prices to the prices of their competitors; the Church of Scientology have served take-downs on web sites that host articles critical of the Church of Scientology; and the owners of trademarks have tried to use take-downs against their competitors.

The number of notices served on one company can often, as I said before, number
in the thousands or, indeed, the tens of thousands. A conference was held at the University of New South Wales in April this year, at which Sarah Deutsch, from Verizon, a major American ISP, told the symposium:

A US ISP received from January to today—that is, from January until the end of April this year—over 30,000 notices, only two of them actually related to materials that were on its system of network. So these were all non-compliant notices and in the past 12 months the same ISP—which received 30,000 notices from January to April—received over 90,000 notices.

So this is the number of notices that we are talking about being automatically or otherwise—but predominantly automatically—generated. The Australian Consumers Association has described this proposed regime as a ‘recipe for disaster’. They say it ‘turns Internet service providers into a policeman of other people’s copyright, solely based on some sort of assertion of ownership’. The Australian Digital Alliance, which represents libraries and universities, say that a scheme such as that contained in this bill ‘has to address the potential for owners to send out spurious take-down notices without reasonable claim to a copyright breach’, and they have called for these clauses to be removed—something that the Greens will address in amendments.

The problem, of course, is that ISPs have no real way of testing the claims of take-down notices and will always err on the side of caution and immediately remove material subject to notification. They will always do this regardless of the rights or wrongs of the claim, because they do not want to risk the big legal battles that we have seen recently in cases such as the music industry’s pursuit of Kazaa, the Internet file-sharing software company. Of course, such take-down notices could also be used politically with, for example, a take-down notice being served on the ISP of a political opponent’s web site. The result, even if only temporary, could mean that the web site would be off line for weeks. It could, for example, be at a crucial or important point in an election campaign. The effect is a reduction in diversity and freedom of speech on the Internet and a huge impost on Australian IT’s small and large business.

The Greens’ amendments will remove from the bill the provisions which would effectively shut down the safe harbour for Internet service providers in Australia. Those are items 11 and 13 of the bill. The effect of removing these items will not prevent the enactment of alternative provisions in the future, so the government would be able to do so by regulation, as was originally envisaged in the legislation—certainly in the consultations that occurred with the industry. Hopefully, it means that government will consult further with industry and address the problems these items will cause.

This legislation is unnecessary and unwelcome. It will take us even further down the path of the US monopoly copyright law but without the protections. In the cases I am talking about, it will be worse than the US law. It is not at all about protecting Australian consumers and the IT industry but everything about helping giant US media and IT corporations. The Greens opposed the US free trade agreement implementing legislation, and we will also be opposing this bill today as well as moving the amendments I have outlined and others that are yet to be circulated. We will continue to campaign in support of genuine fair trade rather than free trade. We will also campaign for a better deal for Australian industry and ordinary people who are affected by such agreements, not just on the IP component of the legislation.
that we are talking about today but also more generally.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.04 p.m.)—I thank all senators for their great contributions to the Copyright Legislation Amendment Bill 2004.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.04 p.m.)—by leave—I wish to record the coalition senators’ vote against the second reading amendment.

Original question, as amended, agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator NETTLE (New South Wales) (8.06 p.m.)—Firstly, I have a series of questions for the minister that relate to the Australian Greens’ first lot of amendments on sheet 4467. The first questions I have relate to the letters exchanged and released on Friday. The last sentence under point 6 ‘Pharmaceutical patent notification’ in the letter from Minister Vaile to Bob Zoellick reads:

We assure you that, through the operation of these arrangements now and in the future, the advance notification required by section 26B(1)(b) of the Therapeutic Goods Act will be given prior to entry into the marketplace to allow patent holders sufficient opportunities to apply to a court for injunctive relief to prevent the entry into the marketplace of potentially infringing products.

Could the minister explain what the phrase ‘sufficient opportunities’ in point 6 of that letter means? How does the minister define the sufficient opportunities that are outlined here? This is what we are working from. We had a bill. Now we have an exchange of letters. In order to understand it, we need to be clear of the intention in the exchange of letters, because that is now the direction that is provided. So perhaps the minister could firstly explain ‘sufficient opportunities’.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.10 p.m.)—My advice is that that letter is an accurate reflection of the current situation and changes nothing. In other words, the listing under the current scheme provides sufficient notification.

Senator NETTLE (New South Wales) (8.10 p.m.)—I am just a bit confused by the minister’s answer because, if the letter adds nothing, why do we have it? The purpose of the letters is to clarify and make clear the position of the negotiated agreement between the two governments. We have the legislation, but clearly one of the two parties involved did not believe that it was adequate to deal with the issues. They have resolved fur-
ther issues, and that has resulted in the exchange of letters that were tabled in parliament yesterday. I am confused by the minister’s answer that they do not add anything, because that raises the question: why do we have them? I do not know if the minister wants to add anything more to that before I go on.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.11 p.m.)—The two countries have separate legislative regimes and the letter seeks to clarify Australia’s.

Senator NETTLE (New South Wales) (8.11 p.m.)—I have quite a lot of questions here which go to trying to understand the purpose of the letters. If some questions need to be put on notice, I am quite happy to do that. I am seeking as full an explanation as I can get of the terms in the letters so that we understand the implications. I quite accept that the minister might not be in a position to be able to provide those right now. I might keep going with the questions and we will see how we go. If they need to be put on notice, that is fine. The next question relates to the letter going the other way—that is, Bob Zoellick’s letter to Minister Vaile. Again, it is point 6 of the letter and again it is about pharmaceutical patents. The letter states:

Article 17.10(4) of the Agreement requires Australia to ‘provide measures in its marketing approval process to prevent’ generic producers from marketing a product, or a product for an approved use, where the product or use is covered by a patent. It also requires Australia to ‘provide for the patent owner to be notified’ of any request for marketing approval of a product or use during the term of the patent.

Can the minister explain what the phrase ‘marketing approval of a product’ is intended to mean? I am asking the question to get some understanding of the scope of this particular provision in the letter.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.13 p.m.)—If Senator Nettle turns to the next page, page 3, she will see that it states:

... how the new notification required by Australian law fits into Australia’s arrangements for the Therapeutic Goods Administration and Pharmaceutical Benefits Scheme listing processes already in place.

So, once again, it is a clarification that the existing law meets the requirements under article 17 of the agreement.

Senator NETTLE (New South Wales) (8.14 p.m.)—My understanding is that the first paragraph on page 3, which you directed me to, relates to notifications regarding entry into the marketplace of a potentially infringing product, whereas the one before relates to a request for marketing approval of a product or use during the term of the patent. One paragraph seems to relate to where there is a belief that an infringement of the patent may have occurred whereas the first paragraph I drew the minister’s attention to does not mention anywhere an infringing of a patent being a precondition to this requirement existing.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.15 p.m.)—My advisers do not understand the question, and nor do I.

Senator NETTLE (New South Wales) (8.15 p.m.)—Can you explain why the provision in item 6, at the end of page 2, does not refer to a precondition that the generic product or use for which marketing approval is being sought infringes upon or potentially infringes upon a patent? The point that you directed us to in the second paragraph, after I first asked that question, talks about infringement of a patent, but this requirement for the notification of a request for marketing approval for a product does not seem at any
point to refer to a likely infringement having occurred.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.16 p.m.)—I am informed that, in relation to item 6, notification is required if a generic is going to market while a patent is in place. If there is no patent in place then notification is not required.

Senator NETTLE (New South Wales) (8.16 p.m.)—If the generic product or use for which the marketing approval is being sought does not infringe or potentially infringe upon a patent, then why should the holder of the patent that relates to the generic product be notified about an application for marketing approval?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.17 p.m.)—If there is not a patent, there is no need to notify.

Senator NETTLE (New South Wales) (8.17 p.m.)—I understand that. What if there is a patent but it is not clear whether the patent has been infringed? Is there a requirement to notify? I understand the concept of notifying where there is a claim that the patent has been infringed but, where the patent exists but there is no belief that it is going to be infringed, is there then a requirement to notify for marketing approval?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.18 p.m.)—All that is required for the marketing approval is that, where a patent exists, the person lodging the application certifies that they have notified the patent holder. That is all they have to do.

Senator NETTLE (New South Wales) (8.18 p.m.)—Is there any time frame or requirement in which the patent is coming to an end and they need to notify because they have an intention of marketing the product?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.19 p.m.)—They have to do one of two things: they have to notify the Therapeutic Goods Administration that they believe there is no patent or, if they believe there is a patent, they have to notify the TGA that they have notified the patent holder. It is A or B.

Senator NETTLE (New South Wales) (8.19 p.m.)—I turn now to another issue. During the election campaign the coalition announced a 12.5 per cent cut to the price of pharmaceuticals once a generic brand came onto the market. At the time I recall that there were some speculation about the United States’s comments that they perceived this to be a breach of the obligations that Australia had under the US free trade agreement. Can the minister outline the Australian government’s view as to whether this affects Australia’s obligations under the free trade agreement?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.20 p.m.)—The Australian government has said that this has nothing to do with the free trade agreement, and the US government has agreed.

Senator NETTLE (New South Wales) (8.20 p.m.)—This is the difficulty that these free trade agreements get into: one party believes that there has been a breach of obligations and the other one does not. That is the purpose of the disputes mechanism. For example, there is the issue of the Labor amendments on the PBS still being subject to that. We have heard statements by United States Trade Representative Bob Zoellick saying that they will be taking that issue up with the disputes mechanism—or they will monitor it and reserve their right to take it up
because they think it does breach the agreement.

I acknowledge the minister’s answer that this government does not believe there are any implications as a result of the announcement on generic drugs during the election campaign for our obligations under the free trade agreement. Has the government received a commitment from the United States government that they do not seek to reserve their right to follow the implementation of this election announcement and, at a subsequent time, enter into a disputes mechanism process about whether or not it infringes on Australia’s obligations under the free trade agreement?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.22 p.m.)—There has been absolutely no discussion between the governments in relation to that within the context of the FTA.

Senator NETTLE (New South Wales) (8.22 p.m.)—Now I am really confused. I thought your first answer was to say that the Australian government did not believe there had been a breach; the US had agreed to that. Then your second answer was, ‘We haven’t discussed the issue.’ Maybe you could clarify that.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.22 p.m.)—The governments have agreed that it is not an FTA issue, and that is what I said. It is not a discussion that has taken place within the context of the FTA. So there has been a discussion and both governments have agreed that it is not an issue that affects or is within the FTA. So to the extent that that gives you comfort that they will not at some stage do something about it, then I hope you feel comforted. We certainly do.

Senator NETTLE (New South Wales) (8.23 p.m.)—Thanks for that answer. I suppose all we can presume is that PhRMA group, the US pharmaceutical lobby, did not have success—if that is what the minister is telling me—in convincing the US government that this was a breach of obligations, because that was certainly the view they expressed internationally in the media at the time the coalition made that announcement. So if the minister, in his answer, is assuring the Senate that that is not a view held by the American government, that is good.

I now move Australian Greens amendment (1) on sheet 4467:

(1) Schedule 1, page 9 (after line 11), after item 41, insert:

Therapeutic Goods Act 1989

41A After section 26D

Insert:

26E Cost effective medicine pricing

In order to clarify its commitments under the US Free Trade Agreement (the Agreement) the Australian Government acknowledges that, notwithstanding anything in the Agreement, in its interpretation, the cost-effectiveness system of medicines pricing under section 101 of the National Health Act 1958 will continue to form the basis of the Pharmaceutical Benefits Scheme.

Further it is the view of the Australian Government that Annex 2C of the Agreement does not interfere with the capacity of an Australian Government to implement the principle of universal access by Australians to affordable, essential medicines which is also the basis of the Pharmaceutical Benefits Scheme.

Similarly, it is the view of the Australian Government that reward of pharmaceutical innovation as mentioned in Annex 2C of the Agreement must be assessed, amongst other factors, against a new medicine’s overall benefit to the
Australian community when compared against existing medicines.

Similarly, it is the view of the Australian Government that Annex 2C and Chapter 17 (on Intellectual Property) of the Agreement implicitly include reference to the Doha Declaration on TRIPS and Public Health.

Finally, it is the view of the Australian Government, that Article 17.10.4 of chapter 17 (on Intellectual Property) of the Agreement does not permit the practice known as "evergreening" of brand name pharmaceuticals.

I will address specifically what this amendment does. The amendment is to the original act, the US Free Trade Agreement Implementation Act 2004. We are adding a new section, 26D, at the end of schedule 7, to the Therapeutic Goods Act 1989. The amendment is designed to ensure that public health takes precedence over private profit. It puts in writing in Commonwealth legislation interpretations which are entirely consistent with what the Australian government has told the Australian public—that is, nothing in the US-Australia free trade agreement undermines the Pharmaceutical Benefits Scheme and the primacy of public health.

The first paragraph deals with the issue of cost effectiveness. This paragraph ensures that the primary basis for a decision to list a drug on the PBS will be its cost effectiveness. It is designed to act as a buffer against the provisions of annex 2C of the agreement that require the Australian government to ‘make available an independent review process that may be invoked at the request of an applicant directly affected by recommendation or determination’. The government has said that this review process will not undermine the PBS. If this is the case, there can be no objection to stating this principle plainly in the act, as is in the Greens’ amendment.

The second paragraph of the Greens’ amendment deals with the issue of universal access. The Pharmaceutical Benefits Scheme is a vital part of Medicare that is designed to ensure that all Australians can obtain essential medicine at affordable prices. This principle must be paramount. There can be no compromise on it. Unfortunately, we have already seen the coalition government undermine the affordability of the PBS by imposing, with the support of the opposition, a 21 per cent increase on the patient charge, effective from next month, and the Treasurer has flagged that there will be more large rises. Co-payments in health hurt the sick and low-income people most of all. The Greens believe that we need to review how we finance the Pharmaceutical Benefits Scheme; hence our moving for an inquiry into this, which was not supported by any other party. In the meantime we insist that the principle of universal access by Australians to affordable essential medicines be safeguarded from potential adverse impacts of the US-Australia free trade agreement, hence the second paragraph in the Greens’ amendment that we are currently discussing.

The third paragraph of our amendment is about price effectiveness. The Greens are concerned about the provisions of annex 2C,
particularly 1(d) of the Agreed Principles, which suggest:

the need to recognise the value of innovative pharmaceuticals through the operation of competitive markets or by adopting or maintaining the procedures that appropriately value the objectively demonstrated therapeutic significance of the pharmaceutical.

This provision could be used by US drug companies to try to obtain higher prices from the Australian government for medicines accepted for listing on the PBS than a product warrants by arguing that innovation itself should attract a premium. One of the important principles for listing on the PBS currently is that the government will not pay a higher price for a new medicine simply because it is new; it must be better than the existing listed medicines. This use of a comparator in determining a listing price is critical to keeping the cost of PBS medicines low and affordable for all Australians. If the Australian government starts paying more for a medicine simply because it is new, the PBS will become unsustainable.

The fourth paragraph in the Australian Greens’ amendment deals with the Doha declaration on trade related aspects of intellectual property rights—the Doha declaration on TRIPS and public health. The Doha declaration gives nations the right to make public health a priority over intellectual property rights. It empowers states to determine what constitutes a national emergency, thereby triggering exceptions to the pharmaceutical intellectual property protections in TRIPS. This is about life and death situations, the life and death of people particularly in low-income countries. For example, Australia’s involvement in the provision of AIDS drugs, if there were an HIV epidemic in Papua New Guinea, may be an example of one of these emergency situations. The US-Australia free trade agreement represents an attempt by the US to undermine the Doha declaration by introducing a lesser standard through a series of bilateral trade agreements with more restrictive provisions. If we allow this attempt to undermine the primacy of public health to stand, we will see the US ultimately argue that this new lesser standard should replace the standard set out in the Doha international declaration—that is, a tougher global standard on compulsory licensing.

In this trade deal with the US we have agreed that the Australian government will only be able to compulsorily license cheap generic drugs in a public health crisis of extreme urgency. That is a different threshold level than that which exists in the Doha declaration. Does this mean that we have to wait until the situation is out of control before the government can provide affordable drugs to deal with such a situation? Why did we agree to a provision restricting our capacity to provide cheap generic drugs to deal with public health emergencies in neighbouring countries? Australia is being complicit in the deliberate US global strategy to block competition from cheap but equally effective generic drugs through a network of bilateral trade agreements modelled on the Australian precedent. This amendment ensures that the principles of the Doha declaration will be honoured and that the Australia-US free trade agreement will not be used to undermine this global commitment to put lives ahead of profits.

The final paragraph of the Greens’ amendment deals with the issue of evergreening. This paragraph is designed to ensure that US drug patent holders cannot frustrate the entry of generic drugs into the market. The Greens are concerned about how the notification provisions in section 7 of the Therapeutic Goods Act will operate. Will they enable a patent holder to apply for an injunction on a spurious ground in order to delay a generic drug from entering the market? Perhaps a company so notified will use
an injunction to buy time to make a minor change in the form, but not the substance, of a product and apply for a new patent, thereby preventing a generic product from being available. This practice of extending the life of a patent product, known as evergreening, is one more way that the free trade agreement might add to the cost of the Pharmaceutical Benefits Scheme without having any discernable public health benefit. Such a process will cost the Australian government, which buys drugs for the PBS, and patients will have to pay a charge at the time of filling the PBS script.

The government says that we should not be concerned about the prospect of evergreening. It says that Labor’s amendments to the implementation bill earlier this year to address this issue were unnecessary. We note, however, that the US continues to disagree about the interpretation of the agreement on this point. The US Trade Representative, Robert Zoellick, in his letter to Minister Vaile that we were discussing earlier, said:

Under these amendments, pharmaceutical patent owners risk incurring significant penalties when they seek to enforce their patent rights. These provisions impose a potentially significant, unjustifiable, and discriminatory burden on the enjoyment of patent rights, specifically on owners of pharmaceutical patents. I urge the Australian Government to review this matter, particularly in light of Australia’s international legal obligations. The United States reserves its rights to challenge the consistency of these amendments with such obligations.

Clearly, as far as the US government is concerned, this matter is far from settled. This amendment will make it clear that, as far as Australia is concerned, nothing in the free trade agreement is to permit the practice of evergreening to occur. I commend the Australian Greens’ amendment to the chamber. Given that all of the amendment is based on statements that the government have made about the way in which they believe that the free trade agreement does not impact on our pharmaceutical benefits scheme and on our public health provisions, I look forward to the government’s support.

**Senator CONROY** (Victoria) (8.33 p.m.)—I indicate on behalf of the opposition that while I believe there is much merit in the Greens’ proposal it could potentially be quite far reaching and, as we were not consulted about the amendment prior to it being circulated, we unfortunately will not be able to give it support at this time. I do indicate that we believe there are many items of merit within the amendment.

**Senator BROWN** (Tasmania) (8.34 p.m.)—I wonder whether the opposition would like us to suspend proceedings so that there is time to look at this meritorious amendment from Senator Nettle. We would be prepared to do that and to hold this over until tomorrow—it is a very important amendment—so that it can be studied fully. The committee could then meet again in the morning to ensure the right outcome.

**Senator NETTLE** (New South Wales) (8.35 p.m.)—I would be interested to hear the minister’s view. He was on his feet to let us know the government’s position. Given the amendment is based on government statements I would be very interested to hear the minister’s view and the government’s position.

**Senator IAN CAMPBELL** (Western Australia—Minister for the Environment and Heritage) (8.35 p.m.)—I think the sentiments in the amendment are entirely admirable but I do not think it is appropriate to use the copyright bill to amend the Therapeutic Goods Act. I reassure the chamber that the government made it very clear that PBS pricing is not an FTA issue. We refused to talk about it in the FTA context and I think our actions during the federal election campaign
in relation to the 12½ per cent indicate our strong commitment to the PBS within the health system of Australia. Contrary to Senator Nettle’s view about the copayment policy, that is designed to ensure that the PBS is robustly financed as the Australian population ages and a larger proportion of it depends on the support of the PBS. We are strong supporters of that, and that is why I say that the sentiments in Senator Nettle’s motions are agreeable. But, as quite often is the case, I agree with Senator Conroy in relation to this.

Senator NETTLE (New South Wales) 
(8.36 p.m.)—There we have it: actions speak louder than words. Thank you both for your kind words and your sentiments. There is some support out there for public health. Unfortunately, it is not conveyed in the actions of either party in deciding to put forward the views, the sentiments, that they agree with. This should not impact on the primacy of public health in Australia. The Australian Greens amendment says, ‘Let’s say, once and for all, in our legislation that we are not going to allow this trade agreement to impact on our capacity to deliver quality public health services to all Australians.’ The amendment stipulates that we will commit ourselves to the primacy of public health, that we will commit ourselves to international agreements such as the Doha declaration on trade related issues and intellectual property rights. It says: ‘These are the things we abide by. Let’s put it in the legislation so then it is there and there can be no questions asked in the future.’ Unfortunately that is not a position that either of the two major parties are prepared to put forward.

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

The committee divided. [8.42 p.m.] 
(The Chairman—Senator J.J. Hogg)

Ayes……………… 3
Noes……………… 35
Majority………. 32

AYES
Brown, B.J. Lees, M.H.
Nettle, K. *

NOES
Barnett, G. Bishop, T.M.
Brandis, G.H. Buckland, G.
Carr, K.J. Chapman, H.G.P.
Colbeck, R. Collins, J.M.A.
Conroy, S.M. Coonan, H.L.
Denman, K.J. Eggleston, A. *
Faulkner, J.P. Fifield, M.P.
Forshaw, M.G. Hogg, J.J.
Johnston, D. Kemp, C.R.
Kirk, L. Lightfoot, P.R.
Ludwig, J.W. Lundy, K.A.
Marshall, G. McGauran, J.J.J.
McLucas, J.E. Moore, C.
O’Brien, K.W.K. Patterson, K.C.
Ray, R.F. Scullion, N.G.
Stephens, U. Tchen, T.
Watson, J.O.W. Webber, R.
Wong, P.

* denotes teller

Question negatived.

Senator NETTLE (New South Wales) 
(8.45 p.m.)—The Greens oppose items 11 and 13 in schedule 1 in the following terms: 
(1) Schedule 1, item 11, page 4 (line 32) to page 5 (before line 2), TO BE OPPOSED.
(2) Schedule 1, item 13, page 5 (line 7 to before line 9), TO BE OPPOSED.

The Australian Greens are opposed to the provisions in items 11 and 13 of schedule 1 of the bill which were the primary subject of the inquiry that occurred last night. The inquiry was agreed to by the Senate at 4.30 yesterday afternoon and it reported back here today. It was one of those 24-hour inquiries: ‘If you are in Canberra and have got your lobbyists ready, in 3½ hours you can appear before the committee and have something to say.’ A couple of people managed to come
before that inquiry. The committee heard the concerns of the Internet Industry Association and the Australian Digital Alliance. Their requests were for the removal of items 11 and 13 from the bill. They had not seen the items before; they had not been shown the items in the consultation process the government had engaged in with them in October. Those provisions will make it far more difficult for Internet service providers to operate in Australia because of the requirements to comply with take-down notices that are handed out not necessarily by copyright owners but by third parties involved.

The subject of the inquiry that occurred last night was the way in which these two items, 11 and 13, in the bill put more onerous obligations onto Internet service providers than exist in the United States and, in view of these groups that appeared before the committee, than are required by the text of the Australia-US free trade agreement. There were long discussions and there was much consternation from both major parties—it was not just the opposition who expressed concern about these two components of the bill; there were also government senators there last night who expressed concern. They asked the question: why can’t we just have the words in the trade agreement? Government senators were asking questions not just of the industry witnesses but also of the Attorney-General’s Department. They asked: ‘Why don’t we just have the words that are in the free trade agreement? Why do we need to create these new words and go further than is required in the text of the legislation or, indeed, than exists in US legislation? Why can’t we just have these words?’ The questions were not answered. I do not know if the minister has anything to add, but there was certainly no satisfaction with the responses or with the purpose of the Senate inquiry last night.

The Australian Greens’ proposals will mean that those items are taken out of the bill that the industry is concerned about, that go further than is required by our obligations under the free trade agreement and that go further than is required in the US. I have spoken about these already in my speech in the second reading debate. I commend the Greens’ proposals to the Senate.

Senator CONROY (Victoria) (8.48 p.m.)—Could I take up a number of points that Senator Nettle has just made. I really do want to highlight the farce that was that committee process. The Clerk advised some of my colleagues that this was going to be the world record shortest Senate inquiry. While we may have a bit of a chuckle about it, that is not something that we should be proud of. This was a situation where the government foisted the bill on us without notice. They foisted on us a committee hearing that was passed by the Selection of Bills Committee at 11.30 and by the parliament at 3.30, and a hearing was required to be held at 7.30 or eight o’clock that night. As Senator Nettle has indicated, very few people were able to attend. It is a miracle, in my view, that anybody was able to attend, and it is a credit to those people—who know when they are being dudded—that they were able to get here at all.

I think this is a very disturbing indication of the arrogance with which the government treat this chamber when it refuses to be a rubber stamp for the executive. It sends a very powerful signal right across the country about what the parliament, the Senate and Australians can expect from 1 July, when the government will be able to conduct these sorts of jumped-up star chamber inquiries as quickly as they want, to ram them through and treat this chamber with contempt. I hope the government reflect upon this. Senator Campbell, I think you have been the longest serving Manager of Government Business—
although I am not sure that is something you ought to proclaim proudly; I know you were very happy to pass it on—and I hope you reflect on this farce of a process. I hope you have the good grace, after 1 July, to stand up and be counted when it comes to these sorts of arguments so that we do not see an abuse of process and we allow the Senate chamber to do what it should do, which is to examine and scrutinise legislation. It was with a lot of goodwill that people cooperated to allow this committee hearing to go ahead, despite the fact that we were placed in an intolerable position. I wanted to take up those points that Senator Nettle made because I believe this is an indication of what the parliament will be subjected to under the new regime from 1 July.

On the substance of the Greens’ proposals, Senator Nettle is fully aware that they would successfully gut this bill and there really would not be much point in passing the rest of it. While I am probably a bit more sympathetic to copyright holders in this particular instance, I am not sure they were able to get their views across as strongly as they would have wanted to in the time permitted, so I am not sure that we got a balanced view on these sections. On that basis, Labor will be opposing the Greens’ proposals.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (8.52 p.m.)—Could I just make the point that it is a unique legislative process. It was a quick committee reference and we appreciate the cooperation of the senators who facilitated that reference and we appreciate that it was short notice for the stakeholders. Although it may have been a quick turnaround, in my own memory in this Senate the Labor Party when they were in power in 1990 brought the corporations legislation—you were probably on the committee, Mr Temporary Chairman Watson—before the Finance and Public Administration Committee. This is the Corporations Law that set up an entire new corporate regulatory structure, which has since been challenged in the High Court. I think Senator Conroy knows the rest of the history. The Labor Party in power had a one-night hearing into the entire Corporations Law—

Senator Conroy—On the same day?

Senator IAN CAMPBELL—On the same day and reported it back and passed it through the Senate with the cooperation of one very young and quite handsome 30-year-old senator!

Government senators interjecting—

Senator IAN CAMPBELL—He was then!

Senator Conroy—Are you talking about Senator Watson?

Senator IAN CAMPBELL—He was a pretty cute-looking little bloke this backbencher! That did occur. It was a one-night hearing and it was passed through the parliament the next day. The reference probably was not on that day—I am sure that the Clerk will send me a note in the morning reminding me exactly when it was referred. The hearing was held on one night and the bill was passed through the chamber the next day. So it is not entirely unprecedented, but clearly there are special circumstances here: the legislation has been introduced in a relatively late sitting because the election was in October and the Senate resumed only a few weeks after that. I am glad to know that the Senate has agreed it is desirable to pass this legislation before we adjourn in a couple of days time. I appreciate that cooperation.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that items 11 and 13 of schedule 1 stand as printed.

Question put.

The committee divided. [8.58 p.m.]
Tuesday, 7 December 2004  SENATE  119

(Chamber)

(The Chairman—Senator J.J. Hogg)

Ayes………………. 30
Noes………………. 2
Majority……….……. 28

AYES

Barnett, G.  Brandis, G.H.
Buckland, G.  Campbell, G.
Campbell, I.G.  Carr, K.J.
Chapman, H.G.P.  Colbeck, R.
Conroy, S.M.  Denman, K.J.
Eggleston, A. *  Fifield, M.P.
Forshaw, M.G.  Hogg, J.J.
Humphries, G.  Johnston, D.
Kirk, L.  Lightfoot, P.R.
Ludwig, J.W.  Lundy, K.A.
Marshall, G.  McGauran, J.J.J.
McLucas, J.E.  Moore, C.
Scullion, N.G.  Stephens, U.
Watson, J.O.W.  Webber, R.

NOES

Brown, B.J.  Nettle, K. *
* denotes teller

Question agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (9.01 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Senator Nettle—Mr Acting Deputy President, I ask that opposition to the bill by the Australian Greens and the Australian Democrats be recorded. An agreement was made with the whips tonight that I could—

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Is leave granted?

Senator Nettle—I do not think I need leave.

The ACTING DEPUTY PRESIDENT—You may not think you need leave, Senator Nettle, but I beg to differ.

Senator Ian Campbell—Mr Acting Deputy President, on a point of order: I am very happy to allow Senator Nettle to put her position—and I am sure Senator Brown can do so—but I think that under the standing order that Senator Nettle is using a senator is allowed to stand in their place and ask that their vote be recorded. I do not think that gives a senator the liberty to ask that another senator’s or another entire political party’s votes be recorded.

Senator George Campbell—On the same point of order, Mr Acting Deputy President: as I understand the position, the request from the Australian Greens is to indicate to the chamber the view that the Australian Democrats, if they were here, would have voted against the bill. The fact is that they are not here; they are outside the building, having their Christmas party. If they were serious about the bill they would be in this chamber recording their vote themselves. You cannot vote in absentia on a vote in the chamber. You can indicate how they might have voted if they had been here, but that is not recorded as a vote against the bill.

Senator Brown—I ask that my vote against the bill be recorded, and I think Senator Nettle has made it quite clear what the Democrats think.

Bill read a third time.

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

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Schools Assistance (Learning Together—Achievement Through
Choice and Opportunity) Bill 2004, informing the Senate that the House has disagreed to the amendments made by the Senate and desiring the reconsideration of the amendments.

Ordered that the message be considered in Committee of the Whole immediately.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (9.05 p.m.)—I move:

That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Senator CARR (Victoria) (9.05 p.m.)—We at least need an explanation as to why the government does not want to accept these very worthwhile amendments.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (9.05 p.m.)—It is so nice to be back debating the same issue! Senator Carr, the explanation is to be found in the second reading speech on this bill, the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004, it is to be found in the committee stage and in the debate in the other place should you want to look at it—I do not ever look there. Clearly, this is something on which we have different views. That is going to happen. I accept that we all want better educational outcomes; but there are many different paths you can take to get there. You do not agree with the one that we have chosen and it is your right to do so. You were successful in this place, but the government now comes back and says, ‘In the House of Representatives we found those changes unacceptable and we would like the bill in its original form.’

Senator BROWN (Tasmania) (9.07 p.m.)—I ask the minister: is there a message—that is, a written communication—from the House outlining the reasons for rejecting the amendments?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (9.07 p.m.)—I understand that there was a formal reason tabled and that would be available to you, as it would to anyone else who was interested in the debate.

Senator CARR (Victoria) (9.07 p.m.)—There is a simple matter here. We are seeking advice from the government as to what the reason is. Where is it? It is a simple question; I think we are entitled to a straightforward answer.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (9.07 p.m.)—I am happy to table the reasons given in the House of Representatives. It is a four-and-a-bit page document. I will incorporate it into Hansard if that is what Senator Carr would prefer. That would put the reasons on record. Would that be your preference, Senator? I seek leave to incorporate into Hansard part of a document entitled Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004: Schedule of the amendments made by the Senate to which the House of Representatives has disagreed.

Leave granted.

The section of the document read as follows—

Senate Amendments 1, 2 and 5

These amendments seek to insert a definition of ‘need’ into the Act. They also require States, Territories and non-government education authorities to commit to give priority in the allocation of funding according to need. The Government supports the provision of funding to schools on a
needs basis and this principle underpins Australian Government funding for schools.

The Australian Government funds non-government schools according to a formula which measures the socioeconomic status (SES) of the communities from which a school draws its students.

The SES funding model involves linking student residential addresses to Australian Bureau of Statistics (ABS) national Census data to obtain a socioeconomic profile of the school community (based on occupation, education and income) and measure its capacity to support the school. The SES approach, unlike the Education Resources Index (ERI) system which it replaced, is transparent and objective, based on independent data that are consistent for all schools.

One of the key principles that underpin the SES model is that private investment in education should not be discouraged, and therefore, it does not take into account a school’s private income from fees or any other sources. The amendment contradicts this principle.

To include a definition of “need” in the legislation, which covers a range of schools programmes, unnecessarily limits how need may be interpreted and could adversely affect the funding of schools. The definition of ‘need’ is very broad and potentially could make it difficult for States/systems to target funding for specific needs groups of students.

Any definition of need is best accommodated within specific programme guidelines for particular programmes, as is currently the case. The Australian Government provides funding for schools under the Capital Grants Programme and a number of targeted programmes such as the Literacy, Numeracy and Special Learning Needs Programme, the Country Areas Programme, the Languages Programme, and the English as a Second Language—New Arrivals Programme. Funding for these programmes are predominantly allocated according to need and educational disadvantage.

State and Territory government and non-government school education authorities are responsible for the detailed administration of the school funding programmes in their systems and schools. Under the current arrangements, school education authorities have the flexibility to make decisions on which schools have the greatest need for additional assistance, including for educationally disadvantaged students, and to determine appropriate funding amounts for those schools. Schools also have the flexibility to use funding to meet the needs of their students.

The Agreement conditions are also comprehensive and set out the expected outcomes and reporting and a commitment to meeting the National Goals for Schooling, which are already agreed by all governments.

In addition, the subject matter of the Bill as it currently stands has been the subject of consultations with all State and non-government education authorities, peak bodies and other major stakeholders. The Government is conscious of previous strong criticisms from State Governments and the non-government sector where it undertakes amendments to Commonwealth legislation which can have implications for government and non-government school authorities without the opportunity for prior detailed consultation on the form of procedures of this type and their implementation.

There has been no correspondingly extensive consultation with the education sector on the proposed amendment.

Accordingly the House of Representatives does not accept these amendments.

Senate Amendments 3 and 6

These amendments propose to change the wording on the commitment concerning principal autonomy to provide flexibility for system wide recruitment incentives particularly in hard to staff schools in isolated regions. The Government has already responded to this concern by including in the Bill a provision that a commitment to give the principal and governing body autonomy over matters including staffing should be “within a supportive framework of broad systemic policies” [Refer to Part 2, sections 14(k) and 31(k) of the Bill].

The proposed amendment is superfluous and does no more than express in different words the existing provision for teacher appointments to be made within a supportive framework of systemic

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policies. That provision recognises the need for school systems to implement policies and practices that ensure good teachers are available in the required numbers for all schools—especially in the case of rural and remote schools. The specific requirements in relation to this provision will be set out in the Regulations as part of the school performance reporting element and will reflect this consideration also.

Recent educational research indicates that highly effective schools have strong and effective school leaders who drive the development of school policies and practices. The provision (on school/principal autonomy) will strengthen the ability of school leaders to make effective teacher appointments for their schools.

Accordingly the House of Representatives does not accept these amendments.

Senate Amendments 4 and 7

These amendments propose to insert a number of principles for reporting on students’ learning and school performance. The Bill already contains a strong accountability and reporting framework with a focus on improving student outcomes. The educational interests of students are best served through commitment and focus to improving student outcomes.

Parents need student reports that are meaningful and use plain English enabling them to better assist their child’s learning and development. It’s time to place parents more firmly at the centre of schooling.

The Bill includes provisions for greater disclosure by schools of their performance. There is an urgent need for greater transparency and accountability from schools to parents and the community.

- School performance information is not readily accessible or meaningful and parents need better information to inform decisions about their child’s schooling;
- It is important that schools publish a broad range of information on their achievement and programmes so that parents can choose a school that best suits their child’s needs;
- It is important to keep a strong focus on outcomes, not just inputs. How many school students are achieving national literacy and numeracy benchmarks? What are the outcomes in senior secondary schools—retention rates and academic achievement?;
- Regulations accompanying the Bill will set out minimum requirements for school performance information. Schools will be able to inform parents and publish information of other their policies and programmes on offer.

An earlier report prepared by Professor Peter Cuttance and Shirley Stokes, Reporting on Student and School Achievement, surveyed over 500 parents to identify principles of best practice in reporting student and school achievement. These have played an important role in forming a stronger accountability and performance framework seen in the current legislation.

Accordingly the House of Representatives does not accept these amendments.

Senate Amendment 8

This amendment requires non-government schools to publicly report all sources of gross income received and all gross expenditure. The Australian Government strongly supports all educational authorities publishing the total amount of public funds that the school receives. The Australian Government has published the amount of general recurrent funding that every non-government school in Australia will receive each year from 2003-08.

The Australian Government does not believe it appropriate to require the publishing of the detailed financial accounts of non-government schools as they are independent entities. Further, such a requirement has not been discussed with the Catholic and Independent school sectors. The Australian Government believes that the sector should be consulted before new requirements are imposed on them.

Non-government schools provide detailed financial information to the Australian Government in order to ensure full accountability of the public funds that they receive from the Australian Government. Non-government school authorities must, among things, provide financial accountability each year, in the form of a certificate, signed by an accountant, to the effect that funds...
have been spent, or committed, for the purpose for which they were provided.

Accordingly the House of Representatives does not accept these amendments.

**Senate Amendment 9**

This amendment requires non-government schools to publish any exclusion policy and practices. As private entities it is the right of individual schools to implement whatever enrolment policies are in line with their educational philosophies. However, to be eligible for Australian Government funding, all non-government schools must meet the same obligations regardless of their particular religious or educational philosophy. It is also a condition of funding that the schools commit themselves to Australia’s National Goals for Schooling in the Twenty-First Century.

The National Goals include the provisions that “students’ outcomes from schooling are free from the effects of negative forms of discrimination based on sex, language, culture and ethnicity, religion or disability; and of differences arising from students’ socio-economic background or geographical location” and that “all students understand and acknowledge the value of cultural and linguistic diversity, and possess the knowledge, skills and understanding to contribute to, and benefit from, such diversity in the Australian community and internationally.”

Accordingly the House of Representatives does not accept these amendments.

**Senate Amendments 10 and 11**

These amendments seek to provide a process for system or state-wide priorities for the assessment of the allocation of capital grants for government and non-government schools; an explicit reference to the distribution of capital funding on a relative needs basis for schools, and require parents to be explicitly involved in the process of setting priorities for capital expenditure. These amendments are unnecessary. It is not necessary to legislate this level of detail in relation to programme administration and consultation. The Administrative Guidelines, which form part of the funding agreements specify detailed requirements for the Capital Grants in terms of allocating funding, assessment and reporting requirements.

Under these guidelines, the Block Grant Authorities (which administer the capital money for non-government schools) already determine the priorities for funding on the basis the relative educational disadvantage of the schools. In determining educational disadvantage, they take into account the SES score of the schools, number of isolated and special needs children and health and safety issues.

Accordingly the House of Representatives does not accept these amendments.

**Senate Amendment 12**

This amendment seeks a review of resources for all schools before 31 December 2005 including a report on the buildings, facilities and equipment available at every school in Australia. Australian Government capital funding for government schools has been maintained in real terms and increased in actual dollars. The principle responsibility for maintaining the fabric of Australia’s schools systems rests with State and Territory governments. The States and Territories have the major responsibility for State schools, which they own and manage. The Government encourages States to undertake proper planning for all their schools consistent with their responsibility for managing their school system. The undertaking of such a review on government schools would need to be considered by States and Territories.

In 2002, DEST published an analysis of non-government school infrastructure Taking Stock—Report of the Survey of Non-Government Schools Infrastructure in Australia 2000/2001. The report presents key findings from the National Survey of Non-Government Schools Infrastructure in 2000 and 2001. The survey collected a broad range of data that demonstrate sufficiency, condition and suitability of infrastructure in the non-government sector. This information has been valuable in informing procedures under the Capital Grants programme. In addition Block Grant Authorities have a sound knowledge and understanding of the state of school infrastructure in their respective regions.

Accordingly the House of Representatives does not accept these amendments.
Senate Amendment 13
This amendment seeks a review of the impact of the reforms enacted under the Bill to be completed before 30 June 2006. The Australian Government does not believe it should mandate such a significant review without the opportunity for detailed consultation on scope and processes with government and non-government school authorities and with other relevant agencies. Adding such amendments to this legislation without consultation is not the way to proceed.

The Australian Government is the single largest funder of school education. As such it has the right to set financial, policy and administrative directions. The Australian Government will exercise its leadership role in schooling in areas where national reform is required. This may involve consideration by Ministers through MCEETYA processes on specific matters. However the Australian Government has the right and the responsibility to attach conditions to its very significant schools funding to ensure that these important reforms are implemented.

Accordingly the House of Representatives does not accept these amendments.

Senator CARR (Victoria) (9.08 p.m.)—
The opposition is clearly very disappointed by the government’s shoddy response to this matter. It was obviously not particularly prepared to even come in here and argue a case. At least we have obliged the government to perfunctorily table its statements. It is an extraordinary proposition that, for a bill of some $32 billion in funding where the Senate moved some very reasonable amendments, the House unilaterally says, ‘We are not interested,’ and does not even bother to put a case to the Senate as to why that is. I think there is good cause for disappointment.

What we have here is a government that has seen quite extensive expansions in the schools program for particular schools. It has rejected funding on the basis of need. It has sought to extend a program for funding which, in terms of the proceedings put before this chamber and the Senate committee, has been demonstrably unfair. It has seen a quite elaborate expansion in the opportunities for those already wealthy and already privileged, and it will further entrench in the system a method of funding which will encourage the already wealthy and the already privileged to do exceptionally well.

The amendments that the Labor Party moved in this chamber sought to get the government to acknowledge that there is an opportunity here to actually address these fundamental principles of social justice and to put into a schools bill of this size an explicit definition of need and a requirement that we have a clear understanding that that is the basis on which schools should be funded. It is not on the basis of how well off you are; it is not on the basis of whether or not your dad has a lot of money in the bank. It is on the basis of actually trying to make sure that everyone in this country gets a fair go. It is quite apparent that the government is not interested in that. It is even not interested to the point where it has not actually come to this chamber with a view to arguing its case.

We have also sought, through these amendments, to provide a framework for school reporting that is, amongst other things, a requirement that reporting must be in the educational interests of students. Of course, this government has sought to make much of its capacity to tell the states how to run schools. It has gone to the point where it says, ‘We’ll provide more money for those schools that already have fees in excess of $20,000 a year. The schools have already been provided with Commonwealth subsidies so that there are boarding facilities for children’s pets. But we will make sure that we tell the states how to run a state school system as well.’ On both sides of the argument, on both sides of the ledger, the Commonwealth seeks to impose a policy which is essentially very unfair and very unreasonable.
and that stands against what parents actually want.

The Labor Party proposed, and this chamber accepted, a set of amendments to improve the framework for school reporting and to make sure that school reporting is actually in the educational interests of students. The government says, ‘We’re not actually interested in the argument about that.’ The Labor Party also sought to make sure that the overly prescriptive interventions by this government in the handling of state schools by school authorities, especially for teachers in hard to staff schools and hard to staff disciplines, were in fact removed so that genuine partnerships were developed within the education system. The Commonwealth also says, ‘We’re not interested in that.’ What the Commonwealth then says is, ‘We’ll give support and comfort to one particular denomination in the education system and we’ll make sure that the interests of a particular educational authority structure will be supported without reference to any other educational authority within the system.’ This is unique and unprecedented, but the government is not interested in discussing the implications of that new and extraordinarily prescriptive intervention in the education system of this country.

None of the things that the Senate proposed ought to be controversial. But, as we have seen, the government is not prepared to see reason and is pressing ahead with its position willy-nilly in the face of logic. We are now in the situation where a piece of legislation in front of us is, in fact, unsustainable. In the longer term the existing circumstances for a majority of non-government schools, which are not actually funded according to the stated policies of the government with regard to the SES model, will become even more acute. The increasingly divisive nature of this government’s policies will become apparent. It is quite clear to me that the arrogance of this government’s position is now transparent—we have an arrogant response from an arrogant government. By rejecting out of hand each and every one of the amendments put up by this chamber, the government is suggesting that it has this education bill absolutely right and that it does not need any amendment at all. We will wait and see about that. We will see whether or not that is the case. If it is anything like the higher education bill it will be only a matter of time before the government is back in this chamber seeking amendments because it knows that it cannot sustain the regime that it is imposing by this bill.

Labor is fundamentally opposed to the unfair funding increases contained in this bill. We will not let the government’s irresponsible and unjustifiable increases in funding to some of the wealthiest schools in the country get in the way of funding the 9,500 needy government and non-government schools in this country. We will not allow the government’s foolishness to stand in the way of the provision of education facilities for the millions of Australian students that require support from the Commonwealth government. That is the great irony of the situation: it is the poorest and the weakest in this country that require the Commonwealth to intervene effectively. It is a tragedy that this government sees fit to give aid and comfort to those already privileged and powerful and to insist upon entrenching that privilege.

As my colleague Jenny Macklin has indicated in the House, Labor will not be insisting on our amendments. The various schools need the money now; they need the money to flow before Christmas. The opposition will not stand in the way of the funding of needy government and non-government schools. The opposition, however, will certainly continue to put forward our view that the funding must be delivered on a fairer basis so that children in all schools, from all social classes
and from all communities are able to attract the support they need from the Commonwealth. That position will stand in sharp contrast to the position this government is now pursuing. We will argue that children in all schools, whether they be government or non-government schools, should be funded on the basis of need and that they should be able to look to the Commonwealth to get assistance for their education. All schools should be funded on the basis that all children should have equal opportunity. Unfortunately, this is an objective that will not be met through this legislation.

The TEMPORARY CHAIRMAN (Senator Watson)—For the benefit of Senator Carr, Senator Nettle and Senator Brown, I am advised that the reasons for the House of Representatives disagreeing with the Senate’s amendments have been circulated. They are found on about page 6 of a document entitled, *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004: Schedule of the amendments made by the Senate to which the House of Representatives has disagreed*. That is where the confusion may have arisen.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (9.17 p.m.)—Mr Temporary Chairman Watson, you saved me pointing that out to Senator Carr, who was not so much ranting and railing but offended that no reasons were given. In fact, when I inquired—

Senator Carr—You didn’t know!

Senator VANSTONE—that is right; I did not know. Frankly, I assumed—

Senator Carr—that I did?

Senator VANSTONE—No, that some reason would be available with a message, and apparently that is the case. I was inquiring into that when you were ranting and railing.

Senator Carr—I thought I wasn’t ranting and railing.

Senator VANSTONE—All right, Senator, you were putting your view. In any event, you were more interested in getting stuck into the government. Perhaps before you do that next time you might just check and see whether things have been made available to you.

Senator Carr—I asked three questions.

Senator VANSTONE—Mr Temporary Chairman, the honourable senator has had his moment and was left pretty much undisturbed to put his view. I would like to just briefly put mine. The first point I would like to make is that, presumably, we are all moderately adult in our mentality here. We understand the views of the opposition and the Greens, and they understand ours. They were put in this chamber and the House of Representatives disagreed. That was made clear and it has come back. If we were amused at the prospect of this whole edifice of parliament being here just for us, we could, if we wanted to, sit here and repeat all those arguments at vast expense to taxpayers. We could indulge ourselves. If that is what you want to do, you are welcome to do it.

I simply put this to you: this government believes that all kids should have equal opportunities, that some parents will decide that they want to send their kids to private schools and that the fees a school charges are not of themselves an indicator of the parents’ wealth. As I said last night, and I will briefly repeat the argument, you might find a family that either by luck or hard work has ended up a wealthy family and for them the fees are immaterial. But you also find at private schools families where that is not the case, families where the mother and/or the father are working, some of them in two jobs, in
order to meet those fee entitlements. The fees are not an indicator of a family's wealth. That was made very clear. What this government uses as an indicator of wealth are the SES social indicators by the postcodes of the students going to the schools.

I do not know that you could ever find a mechanism whereby somebody did not fall on the wrong side of the line. But to look at the fees charged is not a good way to do it, for the reason I have given you: you can find two parents that work extremely hard, sometimes in a couple of jobs, in order to meet that fee requirement. You sometimes find parents, for example, that extend the mortgage on their house because of the value they place on education. The fees are not an indicator of wealth. The payment of them might be an indicator of the effort and the risk that a family is prepared to take in order to send their children to a private school.

As to the national reporting requirements, we had that debate here last night. From my perspective and that of the government it is very clear that senators on the other side of this place would like the reporting requirements to focus on what goes in. Let us talk about what goes into the schools so that the teachers and the principals can yada, yada, yada at length. But there was a refusal to look at what comes out. My conclusion from that debate last night is that senators opposite are interested in the bureaucracy and the teachers, and we are interested in the parents and the students. We want information publicly available. The Democrats say, 'Oh no, you cannot make it publicly available; people might get the wrong idea.' That is an extraordinary view to put, that information about schools and the outcomes that they achieve should not be publicly available.

We stand very firmly in favour of saying to Australian families: we do not want to dictate what you do in terms of schooling. You might send your kids to a state school that is primarily funded by the state, although with significant contributions from the Commonwealth. So you will get taxpayer funding if you go to a public school. But we also say: if you choose to send your kids to a private school you will get a degree of taxpayer funding that will very largely come from the Commonwealth government. We do not think that you should say to kids: your parents are either hard workers or lucky so you are not getting anything from us. That is more of the lowest common denominator argument that we so often hear from those who are bereft of a capacity to see how to make this country grow. I just put that briefly on the record to indicate that the case has been put and it is understood. The issue here is that you do not agree with it. I understand that and I accept that, but rehashing those arguments is not going to change anything.

Senator BROWN (Tasmania) (9.23 p.m.)—What a pejorative dish-up that was to the chamber. By implication it gets stuck into and puts down the parents of the 70 per cent of kids who go to public schools in this country.

Senator Ian Campbell—It did not!

Senator BROWN—Yes, it did. It was laden in the words used and what Hansard will not record is the tone of voice from Minister Vanstone as she laid into parents and kids in the public school system. ‘Yada, yada, yada,’ she says of teachers—a disgraceful performance and delivery late at night in the chamber. It sums up what not just this minister but also this government thinks about the public school system and the teachers and the students in it: people who go to private schools are those with enterprise, those with go, those who work hard. By implication, read into it what you like.
about those who are in the public school sys-
tem. It was just a disgraceful delivery to the  
chamber.

Question agreed to.

Resolution reported; report adopted.

TAX LAWS AMENDMENT (SMALL  
BUSINESS MEASURES) BILL 2004  
First Reading

Bill received from the House of Represen-
tatives.

Senator IAN CAMPBELL (Western  
Australia—Minister for the Environment and  
Heritage) (9.26 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western  
Australia—Minister for the Environment and  
Heritage) (9.26 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

TAX LAWS AMENDMENT (SMALL  
BUSINESS MEASURES) BILL 2004

The Treasurer announced a package of taxation  
measures in the 2004-2005 Budget aimed at re-
ducing compliance costs for small business and  
providing greater flexibility to taxpayers in man-
aging their affairs. The package included three  
initiatives aimed at reducing GST compliance  
costs for small businesses.

This bill, similar in its terms to the Indirect Tax  
Legislation Amendment (Small Business Meas-
ures) Bill 2004 which lapsed when Parliament  
was prorogued for the last election, amends the  
GST law to give effect to these measures.

The first measure gives small businesses and non-
profit bodies that are voluntarily registered for the  
GST the option of reporting and paying GST on  
an annual basis. Businesses that take up this op-
tion will be able to prepare and lodge annual GST  
returns at the same time as they prepare their an-
nual income tax returns. A business will make a  
single payment of any GST owing at the time it  
lodges its returns with the Commissioner of Taxa-
tion.

The second initiative gives businesses with an  
anual turnover of $2 million or less the option to  
make annual apportionments of input tax credits  
relating to acquisitions used partly for business,  
and partly for non-business, purposes. For most  
the year, these businesses will disregard non-
business use of most of their acquisitions or im-
portations in determining the amount of input tax  
credit they can claim in their monthly or quarterly  
GST returns. They will then make a single ad-
justment after the end of the financial year. Busi-
nesses required to determine the extent of non-
business use of acquisitions or importations for  
income tax return purposes will be able to use the  
same determination for GST purposes.

The third initiative further reduces compliance  
costs for small businesses by simplifying the elec-
tion rules relating to the option to pay GST by  
instalments and to lodge an annual GST return.  
An eligible business will no longer be required to  
make and lodge an annual election with the  
Commissioner of Taxation. Once a valid election  
has been made it will remain in force until the  
business chooses to leave the instalment system  
or it is no longer eligible.

The annual lodgment and annual apportionment  
initiatives will apply from 1 October 2004 for  
entities with quarterly tax periods and 1 Novem-
ber 2004 for entities with monthly tax periods.  
The simplified GST instalment election initiative  
will apply from 1 July 2005.

Full details of the measures in this bill are con-
tained in the explanatory memorandum.

I commend this bill.

Senator STEPHENS (New South Wales)  
(9.27 p.m.)—The Tax Laws Amendment  
(Small Business Measures) Bill 2004 pro-
vides small business and non-profit bodies  
that voluntarily register for the GST the op-
tion to report and pay their GST on an annual
basis. It also allows for annual apportionment of creditable purchases of input tax credits and it removes the requirement for businesses to make annual elections to pay their GST in quarterly or monthly instalments. With respect to input tax credits, it means that the apportionment exercise can take place once a year rather than once a quarter and, once a small business elects to pay quarterly GST instalments, it does not need to keep doing it. This is a small, positive step for small business in the compliance nightmare of the GST.

Since the introduction of the GST in 2000 the Howard government have been forced to concede that the compliance costs for small businesses in particular are unacceptable and they have made several unsuccessful attempts to remedy this. The measures in this bill are further examples of the bandaid measures the Treasurer has put together to reduce the extraordinary amount of time and money that small business spends complying with the complexities of the Howard government’s GST reporting regime. Just last Monday the Australian Industry Group released a survey which indicated that the cost of compliance with government regulation is 4.85 hours per employee per month for small business. This compared with 0.78 hours per employee per month for large firms. For a firm employing 20 persons the estimated cost of compliance with government regulation was over $33,000 per year. This is consistent with the findings of the state Chamber of Commerce in New South Wales in 2003 showing that small businesses faced proportionately higher costs than large businesses. The government remains happy to rely on small business to be its unpaid tax collectors but will simply not act to decisively reduce the compliance costs that this involves. The burden of compliance is a hidden tax that the government imposes and there is now a pressing need to act to reduce this hidden tax burden.

The opposition has advocated a superior measure of GST payment for several years now. It is called the ratio method. The ratio method is elegant in its simplicity. It will eliminate the need for quarterly and annual GST reconciliations. Under Labor’s simpler BAS option, small businesses can easily adopt a simply calculated quarterly payment on their turnover. Each registered business using the ratio method would be given a GST ratio based on its own trading circumstances. The GST liability is calculated simply by multiplying the business turnover by this ratio. The method could not be simpler. Small businesses have to complete only one calculation and fill in two boxes on the BAS form. It will also provide a safe harbour from the potential costs arising from any tax audit for those adopting the new option. The new option will be completely voluntary. Small businesses can opt to remain in the current system without any change at all. The simpler BAS option will be individual or industry specific, based on reporting experience during the first two years of the GST, and employ a simplified ratio to turnover approach, with allowance for large or irregular business cost items. Labor will require that the simpler BAS option be revenue neutral and that it generate net compliance cost savings for small business.

For the purpose of illustration, let us assume that the ratio is 5.5 per cent, because ordinarily it will be somewhere between zero and 10 per cent once you net away the input tax credits that the business has typically claimed. Once the tax office issues that ratio, the small business need only multiply GST sales by that ratio—in this case, 5.5 per cent—which is a simple calculation, and remit that amount to the tax office. You could not get a simpler method of assessment, and no reconciliation is required by the business.
Let me take this opportunity to talk about the GST itself and the role that it plays in the government’s tax policy. We need to remember that this is the highest taxing government this nation has ever seen and, by an enormous margin, the highest taxing Treasurer that this nation has ever had. The tax take is $206 billion in 2004-05 and by next year total personal income tax will be up 80 per cent since 1996. Income taxes will continue to rise in every year of the forward estimates. The average taxpayer is already paying nearly $10,300 more tax every year under the Howard government, and by 2007-08 the amount of extra tax per taxpayer will be over $12,500. The tax to GDP ratio continues to rise to record levels, and part of this is the GST. GST revenue has escalated dramatically, now at $36 billion and rising to $43 billion over the forward estimates. This enormous Commonwealth tax is what is continuing to drive Australia’s tax to GDP ratio upward.

So when the government seeks to introduce measures to reduce GST compliance costs we need to get a sense of proportion of how much revenue is actually being raised for the government by business through the GST. This extraordinary growth in revenue means small business will suffer a proportional increase in the amount of resources devoted to compliance. In comparison to the magnitude of revenue raised, the government measures to reduce the cost burden on businesses are really very paltry indeed. While not declining to give the bill a second reading, Labor condemns the government for, firstly, not adequately addressing the significant burden placed on small business by the introduction of the GST and, secondly, failing to adopt Labor’s simpler BAS option that would allow small business to use an ATO determined ratio to calculate their quarterly GST payments with no annual or quarterly reconciliations, thus freeing small business owners of the burdensome compliance requirements of the current regime.

**Senator McGauran** (Victoria) (9.34 p.m.)—On behalf of Senator Murray of the Democrats, I seek leave to incorporate his speech in the second reading debate on the Tax Laws Amendment (Small Business Measures) Bill 2004. I believe the Labor Party whips have a copy.

Leave granted.

**Senator Murray** (Western Australia) (9.34 p.m.)—The incorporated speech read as follows—

The Tax Laws Amendment (Small Business Measures) Bill 2004 was originally introduced into the Senate as the Indirect Tax Legislation (Small Business Measures) Bill 2004 but lapsed when Parliament was prorogued due to the recent Federal election. It has come back with a new name but is substantially the same.

The first measure gives small businesses and not-for-profit bodies that are voluntarily registered for the GST the option of reporting and paying GST on an annual basis. Businesses that take up this option will be able to prepare and lodge annual GST returns at the same time as they prepare their annual income tax returns. A business will make a single payment of any GST owing at the time it lodges its returns with the Commissioner of Taxation. This seems a sensible proposal.

The second initiative gives businesses with an annual turnover of $2 million or less the option to make an annual apportionment of input tax credits relating to acquisitions used partly for business and partly for non-business purposes. Businesses required to determine the extent of non-business use of acquisitions or importations
for income tax return purposes will be able to use the same determination for GST purposes.

The third initiative aims to reduce compliance costs for small businesses by simplifying the election rules relating to the option to pay GST by instalments, and to lodge an annual GST return. An eligible business will no longer be required to make and lodge an annual election with the Commissioner of Taxation. Once a valid election has been made it will remain in force until the business chooses to leave the instalment system or it is no longer eligible.

The annual lodgement and annual apportionment initiatives will apply from 1 October 2004 for entities with quarterly tax periods and 1 November 2004 for entities with monthly tax periods.

Due to the delay in passing this Bill as a result of the Federal Election, the commencement date for the option to pay GST by instalments has been deferred from 1 July 2004 until 1 July 2005.

We will be supporting this Bill. It aims to reduce the compliance burden on small business and this is a principle that the Democrats support.

We have always supported a simple, efficient and fair tax system, but like every other political party that has had a hand in tax legislation, we continue to fail the simplicity test. However we continue to try hard on efficiency and fairness.

One of the tax areas that matters a great deal to small business is capital gains tax.

Capital gains tax was one of the tax subjects outlined in the Australian Chamber of Commerce and Industry’s Taxation Reform Blueprint, issued in November 2004.

The ACCI said:

“While the Australian Government substantially reduced CGT with reforms in 1999, other countries such as the UK and the US have since implemented CGT changes to attract greater investment. Australia’s CGT system is no longer competitive with these countries and is limiting the potential investment in research and development and in innovation.

“Therefore, it is necessary to revisit some of the alternative methods canvassed by the 1999 Ralph Review of Business Taxation but not accepted by the Government.”

On the 26 November Crikey picked up the ACCI agenda describing it as one of a number “of wizard wheezes:

• Further reductions in Capital Gains Taxes (CGT) to promote innovation and entrepreneurship including the introduction of a ‘stepped rate’ CGT where the percentage of gains subject to the tax reduces the longer an asset is held.”

Then they quoted ACCI chief executive, Peter Hendy, discussing the subject with finance correspondent, Stephen Long, on ABC AM:

“PETER HENDY: We need a capital gains tax regime like they have recently introduced in the UK, where you have a step-rate capital gains tax regime where you reduce the burden of tax the older an asset it is, because we need to boost private sector investment in research and development.

STEPHEN LONG: So you’re saying—introduce a new capital gains regime where the longer an asset was held, the less capital gains tax an organisation or an individual would pay?

HENDY: Yes —turn it more into a speculative gains tax, so the longer an asset is held, the lower the burden of taxation.

LONG: And presumably that would shift some of the investment out of property speculation into investment in industry?

HENDY: We think it would. We think it would actually decrease the amount of property speculation, it would actually put it to more productive uses that the money that’s being used in property speculation. . . put it into research and development and innovation investment.”

It is for this reason that we opposed the massive reduction in Capital Gains Tax back in 1999.

As any economist will tell you, by creating distortions in the tax system, you create distortions in the economy. We have witnessed this with the housing bubble in over the past four years.

I have spoken many times in this place about the tax distortion that has created the housing boom—the negative gearing rules, the capital gains discount and overly generous depreciation rules. Others have agreed with me.
Alan Kohler, writing in *The Age*, in an article titled ‘Blind Freddie can see why house prices have soared’ wrote:

“Five years ago, Treasurer Peter Costello told Australians: ‘work for a living and we’ll tax you at close to 50 cents in the dollar. Speculate and we’ll only take 25 cents. Not only that, but as a special deal—while stocks last—we’ll pay half your speculating costs.

Naturally 1 million Australians started speculating on real estate. When the money ran out, they borrowed more. Prices doubled, so did debt.

This is a succinct summary of the impact of the Government’s change to Capital Gains Tax.

They have been warned by the Productivity Council and the Reserve Bank that the rules should change but Treasurer Costello has done nothing.

He continues to stubbornly ignore the problems that an overheating housing market causes. In their ‘Taxation Reform Blueprint: A Strategy for the Australian Taxation System 2004 to 2014’, ACCI argue that Australia should have a stepped rate CGT.

In one respect perhaps this is not surprising. Corporate Australia did not benefit that much from the CGT discounts that were given to individuals and trusts.

In fact, due to the removal of indexation, corporate Australia is now faced with paying tax on increased notional capital gains albeit at lower tax rates.

The idea of a stepped-rate capital gains tax was a suggestion that the Democrats made at the time of the Ralph Review.

Following the Senate Finance and Public Administration Committee’s Inquiry into Business Taxation Reform Report, tabled in November 1999, the Democrats attempted to amend the Bill to introduce a stepped CGT rate.

Labor and the Coalition of course voted us down. How right we were!

Our basic proposition was that speculative short-term investment should attract a higher Capital Gains Tax than longer-term productive investment.

In my supplementary report in November 1999 I remarked that:

“The Democrats do not believe that the business tax package, as it stands, will be revenue neutral. We have concluded that the behavioural assumptions on the capital gains tax cuts provide for an over-optimistic estimate of likely revenue gains which knocks more than $2.5 billion out of the forward estimates, leaving the Budget in the red by around $1.49 billion over five years.

We also conclude that the capital gains tax cuts in their current form are likely to lead to considerable tax avoidance, more than that allowed for by Treasury.

As outlined in the main committee report, the key weakness in the revenue figuring behind the Ralph Report lies in the Capital Gains Tax proposals, particularly in the treatment of realisations.

The generosity of the lower capital gains tax is also likely to lead to an increase in tax avoidance, particularly because of the retention of a 100 per cent deduction for negative gearing despite only a 50 per cent capital gains tax. Professor Rick Krever, economist Dr John Edwards and US proponent of capital gains tax cuts, Alan Reynolds, in evidence, warned that this combination was likely to lead to an increase in tax avoidance. Dr Edwards warned that negative gearing was in fact on the rise in the equities market: negative gearing is now, even with the current capital gains tax, a hugely popular strategy. In most banking institutions, for example, marginal lending into equities is the most rapidly growing part of their business. You can see it in the housing finance figures. There are huge increases in individual credits lent on the security of houses which are going into the stock market or into other properties.

The Ralph Report, in dealing with the ability to negatively gear non-commercial losses, originally carved out a continuing exemption for rental properties, but not shares. The Government, in its Stage 2 response, broadened this out to also include shares, without any indication of why, or any adjustment of the revenue costing.

Professor Chris Evans in evidence suggested that even a slight movement in tax planning from earned income to capital gains would reduce the
revenue take considerably. He found that a one per cent movement of converting income to capital would cost $359 million in annual revenue, based on 1996-97 figures. In 1996-97, negative gearing cost the tax system around $937 million in tax foregone on losses on rental properties alone. Just a ten per cent increase in negative gearing would cost around $94 million a year. Professor Krever and Dr Edwards also warned that the tax arbitrage effect was likely to be higher than predicted by Treasury.

Given these sorts of risks, the Democrats believe that the tax arbitrage effect allowed for in the Ralph estimates of a maximum of $180 million a year in lost tax due to conversion of income to capital is likely be an understatement given the size of this capital gains tax cut. For the purposes of this exercise, we believe it would be prudent to increase the revenue lost allowance by at least 50 per cent.

The result of the changes to the realisation and tax arbitrage effects are included in the table below. The effect is to convert the capital gains tax measures from being net revenue positive to net negative, and the package as a whole from net positive to net negative.

The Democrats conclude that the capital gains tax gains to revenue have been overstated and that the loss to revenue has been understated. By correcting for these effects, we conclude that the package, rather than being revenue positive by $1.267 billion as claimed by the Government, is in fact revenue negative to the tune of $1.49 billion.”

So, almost exactly 5 years ago, the Democrats were warning that reducing capital gains tax would cause problems.

I must obviously acknowledge that the Australian economy has been extraordinarily successful in the past five years.

We have had increased employment, wage growth with low inflation and reasonably low real interest rates.

But it must be acknowledged that there are warning signs beginning to develop. Economic black clouds are on the horizon in the form of the massive current account deficit, high personal debt, linked to heavy property investment.

These need careful watching.

The Democrats warned that the changes to the capital gains tax system would cause problems.

We feel vindicated.

It would also be good to see the Government report on the difference between its 1999 forecasts, and what has actually transpired.

It would also be good to see them respond to the Democrats stepped capital gains tax proposal, now that the ACCI have taken it up. We urge the Government to simultaneously consider reforms to negative gearing to ensure that asset price bubbles do not become an ongoing feature of future economic cycles.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (9.35 p.m.)—I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

NATIONAL WATER COMMISSION BILL 2004

Second Reading

Debate resumed.

Senator STEPHENS (New South Wales) (9.36 p.m.)—The National Water Commission Bill 2004 establishes the National Water Commission and the Australian water fund. It was introduced into the House of Representatives on 18 November 2004. The National Water Commission, as contemplated in the significant June 2004 COAG agreement, will have two key responsibilities: firstly, assessing the implementation and promoting the objectives and outcomes of the National Water Initiative intergovernmental agreement; and, secondly, advising on financial assistance to be provided by the Commonwealth under components of the Australian water fund. Schedule C of the intergovernmental agreement outlines the institutional
arrangements of the National Water Commission, the role of which is to provide advice on national water issues and, in particular, to assist with the effective implementation of the National Water Initiative agreement.

The bill gives the National Water Commission the power to make recommendations for the government’s final decision concerning the allocation of the Australian water fund. This fund will predominantly be distributed through the Water Smart Australia program and the Raising National Water Standards program. Labor have concerns about this bill and are proposing some amendments, but we acknowledge the important advance that has been made through the cooperation of the state governments and the Commonwealth to produce the National Water Initiative.

Our water supplies have all but reached their limit of our abuse. Australia, like many nations, is facing a desperate future if we do not learn to manage and respect our water. We continue to endure the ravages of drought, and we are facing the significant challenge of climate change influencing the reliability of the resource into the future. As the population increases, our economy advances and the degradation of our river systems continues, our existing potable water supplies are strained, to say the very least.

In my state of New South Wales, we are facing some real challenges. The Nature Conservation Council of New South Wales recently reported that over 50 per cent of wetlands in inland New South Wales have disappeared. The amount of water reaching the sea has reduced by 80 per cent and native bird and fish numbers have declined significantly. Unchecked agricultural run-off has led to increased turbidity, a build-up of small particles of soil and other organic matter that blocks sunlight needed by aquatic plant life.

By 2020, drinking water in the major regional centre of Dubbo is expected to be unsuitable for consumption due to increasing salt loads in the Macquarie River in our central west. Any amount of salt in rivers will damage aquatic life and, when used for irrigation, it threatens agricultural production. A decline in native fish species has been compounded by the explosion in the number of introduced species, such as European carp, that thrive in the altered conditions and feed off aquatic plants and the eggs of native fish.

The issues we face in New South Wales are shared right across this country. We are all living with water restrictions and we understand that we can never return to the wasteful practices that were once so common. We must find a way to balance the needs of agricultural production, rural and regional economies, urban demand and the environment. Continued degradation of land and water resources will achieve none of these goals and will add to the crippling burden of uncertainty facing many in the community.

We have a great example of the near ruin of one of our rivers and the return of environmental flows to it—the once great Snowy River. The Snowy Mountains Scheme diverted 99 per cent of the water from the Snowy River and turned it inland to generate electricity and to use on the developing irrigation areas of the Murrumbidgee and Murray valleys. The Snowy River had been reduced to a creek for four decades as a result of this diversion. Then in August 2002, water was redirected from the Mowamba River weir back into the river. At present, it is at six per cent of its original flow. While enough water is now flowing to stop the decline, much more is needed to bring the river back to life. Eventually it is hoped that fish such as blackfish and bass will return. Water is being released from the Mowamba River weir upstream and, after work on the
Jindabyne Dam, 21 per cent of the flow will be restored over the next 10 years. It is expected that it will take at least this long before the river returns to working order. I read with interest in the *Canberra Times* recently the recollections of Mr Eccleston, who is aged 72. He remembers when the Snowy was alive and well. The article read:

Mr Eccleston remembers the Snowy mountain river, when platypuses rippled the surface with mysterious rings.

The swiftly flowing water was so clear it was a magical place for meeting friends and neighbours. Rapids tested the strongest swimmers.

Mr Eccleston despaired at the state of the river and the terrible impact it had had upon the little community of Dalgety. I am delighted to say that Dalgety now has something to celebrate with the Snowy flowing once again. The town held a festival last week to celebrate the river behaving like a river.

The case of Dalgety demonstrates how intertwined we are as people and as Australians with our environment and, in particular, our waterways. Without environmental flows, river systems begin to collapse. The impacts are felt not simply by the ecology of the rivers but in our communities. These effects are economic and social, direct and indirect. Rivers are part of our national identity and we need to do all we can to use our water more efficiently so that we are able to bring life back to our precious waterways.

I go now to the background of this bill and the developing of a national framework for water. The move towards a national approach to managing our water resources took a significant step in February 1994. The Council of Australian Governments agreed upon a strategic framework for necessary water reforms covering water pricing, institutional arrangements, sustainable water resource management and community consultation. Many years later and after much dragging of feet by the Howard government, COAG came together again to attempt the next step towards a truly national water initiative. In June this year, New South Wales, Victoria, Queensland, South Australia, the Northern Territory and the Australian Capital Territory signed the National Water Initiative agreement. The agreement builds on the 1994 COAG strategic framework to provide greater certainty for investment and the environment and to underpin the capacity of Australia’s water management regimes to deal with change responsibly and fairly. The National Water Initiative aims to develop a nationally compatible market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes. It is the National Water Commission that will drive the national water reform agenda.

In Australia, the responsibility for water resources rests with state governments. As such, any national response requires the collaboration of the states and a coordinated legislative approach. Since 1994, significant progress has been made by the states and territories towards more efficient and sustainable water management. However, in the past 10 years many factors have changed. There has been an increased demand for water, an increased understanding of the management needs of surface and groundwater systems, including their interconnection, and an enhanced understanding of the requirement for an effective and efficient water market. It was agreed by COAG that there was a need to refresh the 1994 reform agenda. New South Wales, Victoria, Queensland, South Australia, the Northern Territory and the ACT signed that national water agreement in June 2004. It built on that COAG strategic framework of 1994 to provide greater certainty for investment and the
environment. It was a significant step in national water reform.

In September 2004 the Howard government released its long-term water policy, *Securing Australia’s Water Future*. The centrepiece of the policy is the establishment of a $2 billion Australian water fund. Investments by the Australian water fund are to further the objectives of the Living Murray initiative and the National Water Initiative. The primary purpose of the water fund is to direct $1.6 billion over five years to water smart projects aimed at accelerating the implementation of new water technologies and practices. Two hundred million dollars is committed to recovering water for the Living Murray initiative. One hundred and sixty-seven million dollars is being committed to the cost of constructing the proposed Wimmera-Mallee pipeline in north-western Victoria. That pipeline is to replace open channel domestic and stock supply systems that are currently in operation. It will lift the capacity to measure, monitor and manage water resources. The fund will help to implement a nationally consistent system for collecting and processing water related data. There will be $200 million committed to rewarding communities that demonstrate a culture of water wise usage through the Water Wise Communities initiative.

With so much goodwill generated by the June COAG meeting, it was a shock to all state and territory governments when the Deputy Prime Minister, Mr Anderson, released the policy during the election campaign revealing that, of the total pledged for the fund, the Howard government expected the states to contribute $1.6 billion from funds allocated to them under the national Competition Principles Agreement. This is not what was agreed at the COAG meeting in June. The government did not signal its intentions then, preferring to wait until the cover of the election campaign to recant what was a monumental agreement. The state premiers wrote to the Prime Minister to announce that they would pull out of the National Water Initiative because of the federal government’s plan to withdraw the competition payments to pay for the water initiative promises. The premiers accused Mr Howard of breaching agreements reached at the COAG meeting and failing to consult on the future distribution of competition payments. They argued that the decision to divert competition payments breaches the national competition policy agreements. They said:

Your decision to fund the water policy by cutting at least $1.6 billion in competition payments to the States means you are effectively robbing the States to pay for your policy. In addition to this you seek additional payments from the States to fund the key projects promised in your policy.

This will put intolerable pressure on the delivery of key services by the States. It will inevitably have an impact on hospitals and schools. This is an unnecessary assault on State and Territory Budgets given the Commonwealth Pre-Election Economic and Fiscal Outlook (PEFO) released on 10 September 2004 showed a cumulative underlying surplus of over $25 billion over the forward estimates period.

Either this government is serious about water reform or it is not. I understand the Prime Minister has written again to the states and territories since the election wanting to revisit COAG arrangements. At this stage we are at a critical impasse in terms of this National Water Initiative. It is a tragedy for our waterways that the political goodwill was squandered so willingly by the government.

The Rural and Regional Affairs and Transport References Committee inquiry into rural water usage brought down a very specific report which urged collaborative action through COAG on the issue of water. We have yet to have a formal response from the government. Perhaps this is an example of actions speaking louder than words. Certainly the state and territory governments are...
committed. New South Wales, Queensland, Victoria, South Australia, the ACT and the Northern Territory signed the agreement. Western Australia and Tasmania have not because the federal government has tied the national water plan to the $500 million Living Murray initiative. Both the Western Australian and Tasmanian governments believe that the National Water Initiative is too skewed to the Murray-Darling region and does not focus on other problem areas.

The Western Australian government are also rightly concerned that the agreement offers little benefit to Western Australia and is not appropriate for their state. They argue that Western Australia is at a very different stage of the development and understanding of its water resources to many other areas of Australia, which brings with it a different set of priorities, issues, challenges and opportunities. They fear that the National Water Initiative may result in Western Australia having to commit to complex management, monitoring and planning before there is a need for this level of sophisticated management, given their state of development. There are likely to be significant disadvantages for Western Australians in being tied to such a highly prescriptive model or timetable. The Western Australian government feel it is important to ensure that Western Australia retains the flexibility to implement change in a way and time frame suited to its needs.

But none of this matters to the federal government, which is driven by an ideological position on federal intervention. It is truly a disgrace that a government so willing to go on a multibillion-dollar spending spree during the election campaign—a government happy to throw money around at a variety of other ventures—will not put up new funds to address the urgent issue of water in our nation. The New South Wales and Victorian state governments in particular have responded with urgency to the water shortages confronting those states. In 1995 the Murray-Darling Basin Ministerial Council—involving federal and state ministers from New South Wales, Victoria, South Australia and Queensland—announced a cap on diversions from rivers in the basin covering much of south-eastern Australia at 1993-94 levels in an attempt to ensure that adequate water remained in the rivers.

In 1995 the New South Wales government launched its water reform process in order to bring state laws up-to-date with the growing acceptance of the importance of the river systems to the health and sustainability of the environment and the community. This process culminated in the passing of the New South Wales Water Management Act 2000. The Water Management Act brought sweeping changes to legislation that had been in place since 1912. For the first time the role of the environment as a user of water was recognised, ensuring that all decisions taken to manage our river and creek systems and our groundwater resources must consider the needs of the environment. That act was followed this year by the Water Management Amendment Act 2004. This contained changes designed to be consistent with the National Water Initiative agreed to by COAG at its June meeting. So what does the National Water Commission Bill 2004 deliver for us? We are very concerned that there is such a lack of transparency in the processes in this bill. We will propose some amendments to improve the transparency aspects of the bill. We look forward to having the support of the minor parties and the consideration of those amendments in committee.

**Senator WEBBER** (Western Australia) (9.52 p.m.)—The National Water Commission Bill 2004, as has been outlined by my colleague, creates the National Water Commission, a new statutory commission that is to have two key aims: firstly, assessing the implementation and progress of the National
Water Initiative and, secondly, advising on the financial assistance to be provided under the Australian water fund. The simple fact is that, as far as water is concerned, Australia is living beyond its means. Our consumption of water is rapidly eating into our supply. The dams supplying our major cities are running at record low levels, the use of groundwater is seriously affecting the water table and the flow through our creeks, streams and rivers is vastly inadequate. Australia faces this water crisis largely as a result of past policies and inaction in the face of a changing climate—a matter that we have debated often in this chamber. There is no doubt that rainfall has the single largest influence on the availability of water for consumption. It is also clear that southern Australia is experiencing the prolonged below average rainfall that in some places, such as my home state of Western Australia, has taken place over many decades. Increasing population, new industries and more water intensive agriculture demonstrate that we have not adjusted quickly enough to these changes. We have continued, whether in the cities or in the bush, to consume water like there is indeed no tomorrow. The single greatest problem that we face is that we treat water as a single-use commodity. We turn on a tap, have a shower, use a washing machine or fill our pools, and once we have done all that we simply pull the plug.

Although our habits at a domestic level are slowly starting to change, over the last five years we have concentrated purely on the domestic consumption of water. Even though the domestic consumption of water is a minor section of overall consumption, most if not all government action to date has been aimed at the domestic consumer. Inefficient water consumers, such as industry and agriculture, have been immune to the restrictions that we all face, increased prices or requirements to actually recycle water. Now that we are at crisis point, the federal government wants to take a leadership role and invest significant funds to start to address this problem. Whilst this is a very good thing, one wonders about the wasted opportunities over the years to address our record levels of water consumption.

One example that springs readily to mind is rainwater tanks. I am sure that many of us can remember a time when many houses and sheds had attached rainwater tanks. Over time government agencies, in their desire to see all of us connected to scheme or town water because they had built these wonderful dams and had the capacity to charge us for the use of that resource, started to push us to stop using rainwater tanks because of contamination concerns. Of course, this had the desired aim in that people stopped using their rainwater tanks or no longer installed them as part of new residential developments. But now we are in the situation where various governments are offering rebates and other incentives to encourage households to again consider installing rainwater tanks. In fact, a recent study by the University of Newcastle concluded that a family living on the eastern coast of Australia that had a 10,000-kilolitre tank would meet 65 per cent of their annual water needs through the use of that tank. It needs to be pointed out that no longer are rainwater tanks large cylindrical structures that require a lot of space and are a potential eyesore. The newer products on the market these days are designed to sit next to the exterior wall of the house and do not extend beyond the eaves. They come in a variety of designs, shapes and sizes. You have to ask yourself whether the many and varied programs could be reduced to getting people in urban areas to install rainwater tanks.

As it is, what little rain there is that currently falls on the urban areas of Australia becomes stormwater and ultimately passes out to the sea, so surely a program that aimed
to at least use this water capacity in some way would be a major step forward. Indeed, just yesterday in the paper there was an article about two inventors who have designed a device that attaches to a hot water tap that stores and then blends the cold water in the pipe with the hot water as it comes through from the hot water system. This simple device—likely to cost in the vicinity of $300 to $500—would save some 25,000 litres per year in the average household. This method and many more would make a significant difference to water consumption within our domestic market.

However, the two major users of water—agriculture and industry—do not seem to attract the same level of regulation, encouragement or restriction. Why is more emphasis not put on industrial users recycling and reusing water? Water used in most industrial processes does not require the same water quality standards as are required for our domestic consumption. The question becomes one of providing sufficient incentive to industries to go down the path of water recycling and reuse. Perhaps a more realistic pricing structure for industrial consumers is also required. If industries can see the bottom line benefits of introducing recycling and reuse, then there is a significant opportunity for them to invest. As long as industries have access to cheap single use water, we should not be surprised that they will always choose that option.

Agriculture, water rights and water flows in our rivers have been areas that have attracted significant research and interest over the last few years. Indeed, to many urban Australians it appears that farmers having to give up rights to water is equated to compensation, which of course means that taxpayers' dollars are to be expended to get farmers to stop taking so much water out of our river system. Perhaps it will see the end of cotton and rice production in one of the driest countries on earth—Australia. It has always seemed to me to be counterproductive in a dry place to grow crops such as cotton and rice that require such huge amounts of water to thrive. Australian farmers are looking at innovative and efficient means of water usage, but we have to break the habits of lifetimes to ensure that our rivers regain an adequate flow. Most of us have been through studies early in high school that teach us the water is a closed system—there is no more or less water in the system at any one time than at any other. However, human consumption of water is reducing the amounts of fresh water, and with decreasing rainfall we can no longer afford to do nothing.

The bill will establish the National Water Commission as a Commonwealth statutory authority. The Commonwealth will nominate three commissioners and the states will nominate three commissioners. The commission will meet at least eight times per year. In fact, I trust that the commission will meet more than eight times a year as this issue is vital for the future of our country. Unless we can develop sustainable usage of fresh water we risk having a less affluent future. The Australian water fund will work with two main programs: water smart Australia and raising national water standards. The water smart Australia program will accelerate the development and uptake of smart technologies and practices in water use. We are told that competitive bidding will determine which projects are funded.

The National Water Commission will make recommendations to the minister, but like so many other programs there is to be a degree of flexibility with this program. It is all very well to talk about new technology and practices that may impact on improving water flows in our rivers but it can also be about improved water storage projects. It will be a program that those of us on this side of the Senate will pay close attention to.

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This government should not be in the business of disbursing $1.5 billion over five years through the Australian water fund unless there are some targets and firm guaranteed savings as the outcome. If some bright spark turns up with new technology that is funded and then found not to deliver the outcomes that were claimed, what action will be taken? Probably none. This program has the potential to be yet another exercise in picking winners, if we are all not careful. The Commonwealth had better put its money on sure things. I only hope that it will not be in the business of picking projects like the Asia Pacific Space Centre on Christmas Island that this year was meant to launch at least eight space rockets. That was another example of trying to pick winners that has failed spectacularly. It would be disappointing to all Australians to watch $1.5 billion being expended over five years on a bunch of projects that fail to deliver.

The other key area for the Australian water fund is the program called raising national water standards. We are told that this program will invest in Australia’s national capacity to measure, monitor and manage its water resources. This program will cost $200 million over five years. Its centrepiece is the introduction of a new rating system for household appliances—something that we already have in Western Australia. Yet again we are seeing that the approach to water management is to bash the domestic consumer over the head. One of the key problems with this national approach to water management—as has been outlined by my colleague Senator Stephens—is that two states, Tasmania and my home state of Western Australia, have not signed up to the policy. As a Western Australian, I can say that it is difficult to understand why these two states should sign up to the initiative. Like many other programs this one has a distinct flavour—and that is the Murray-Darling river system. Essentially, those states which have signed up have the Murray or the Darling flowing through them. It speaks volumes that those states that do not have these rivers have failed to sign up. The clear implication is that there is no pressing requirement to do so.

Water is a major concern to Western Australians and we have the Gallop government taking significant steps to solve our problems in Western Australia. Whether it is moving market gardeners off ground water mounds to reduce the outflow from ground water, the commissioning of a desalination plant or the feasibility study with private industry to investigate the possibilities of canals bringing water down from the north, the Gallop government have taken the lead. Why would they sign up to such an Eastern States-centric approach as is demonstrated in the Howard government’s approach to water management? For not much more than is planned to be expended over the five years, Tenix plans to move water from the northern rivers to Perth via a canal. The total cost of this project is only $2 billion—not much more than is planned for the Australian water fund.

The simple facts are these: Perth uses about 310 gigalitres of water per year and the Fitzroy River pushes 9,000 gigalitres out to sea each year. What has been the position of the Howard government on this approach? Western Australia will not sign up so they can go it alone! Going it alone is something that Western Australians are getting used to doing. So far we have introduced policies that have restricted water consumption in our domestic markets, we have moved agricultural producers off ground water mounds, we have looked at new and innovative ways to increase water supplies through existing methods and we are building a desalination plant. We are examining proposals to solve Perth’s water needs for the next century.
What is the benefit for Western Australia to sign up to this national approach when we are doing it ourselves without the need for the creation of a new water bureaucracy? For at the heart of the Howard approach to water management is the creation of a new bureaucracy—more bureaucrats dispensing more public moneys for projects that may or may not deliver. Over in Western Australia we are taking action, while the Howard approach is to fund projects that may or may not deliver. I support the approach of the current Western Australian government, which is working to solve its water management problems without the need to create a new bureaucracy. Over time I am sure that the people of Australia will see which approach will deliver a sustainable water future.

Senator LEES (South Australia) (10.07 p.m.)—The National Water Commission Bill 2004 establishes a new national body, the National Water Commission. The aim of this body is to facilitate and oversee water reform. Finally we are seeing people at government level and at all levels taking water seriously and valuing water properly, as it should be valued. This body has been put in place to ensure that all of us use water wisely. I support the bill as it is one way—perhaps now the only way—to ensure that we have the water that we need now and for the future. We need to ensure that our rivers and ground water systems are healthy and that we do not take more water than the particular system can sustainably provide. A whole raft of issues will be on the COAG table for debate, such as water efficiency and provision of water for domestic purposes, industry and agriculture. All of this will be scrutinised, and hopefully they will get the planning right this time. I will be moving an amendment that deals with opening up the process to ensure that we really do have the information we should have and that the public needs. I believe that, if we ensure that it really is a public and open process, we will get a much better result. I will talk more to that at a later date.

The key functions of the National Water Commission, which will be an independent statutory body, will be to assess the implementation and promotion of the National Water Initiative and to advise on which projects should receive financial assistance from the Commonwealth through the Australian water fund. I see this as the last throw of the dice for many of our river systems, in particular for the Murray-Darling Basin. If we do not get it right, we and in particular future generations will be in serious trouble. By no means is the Murray-Darling Basin the only river system that will be dealt with, but I do want to focus on it for a moment because it really is in serious trouble. I have spent quite an amount of time over the last few years travelling up and down the river, particularly the South Australian section, and it is in serious trouble. The red gums along the river, particularly those in South Australia around Chowilla—at the back of the locks, which are now preventing regular access to water for those trees—at the back of Banrock Station and basically all the way down the river are in serious trouble. They are sick, they are dying or they are dead.

They desperately need a drink. They could have had a drink in 2000. The decision was made then not to do that but to actually drop the levels of the locks so that the water flowed straight through. I still have not got a commitment from the government that, when we finally do get some rain, rather than dropping the weir and lock levels and pushing the water through we will have the locks raised. They have been upgraded to make sure that it can be done. We will have small floods produced to push the water out into the red gums.
A recent study shows that, just in the last 18 months, tree decline has increased substantially, from 51 per cent of all trees counted in 2002 being in trouble to 75.4 per cent of all trees counted in 2004. In places like Chowilla it is just a graveyard. I used a photo of one of the old trees there on my Christmas card about three years ago, and that tree has gone. This decline was found by researchers to be a ‘universally severe phenomenon’ across hundreds of kilometres of the flood plain. There really is no time left. We have to get water out to those trees in the next 15 to 18 months.

I also notice that there are algal blooms in the Darling already, and we are only just getting into summer. With the impact of the fires on the catchment areas and the reduced run-off that is expected this year, not to mention climate change itself, which is playing havoc with rainfall right across that part of the basin, we now do not have any other chance. If we do not get this right now, if this new body does not work with the Murray-Darling Basin Commission, with COAG and with all other authorities in all states—and it is unfortunate that Western Australia and Tasmania are not full partners to this—then I think that right across the basin we will have an economic disaster as well as an environmental one. We are already seeing that 500 gigalitres simply will not be enough, looking at the additional water use that has occurred just over the three years as more sleeper and dozer licences are woken across the basin. But at least if we can get that in place fairly quickly we can get some of the flooding that we need.

The primary objective of the National Water Initiative is to achieve sustainable use of water across Australia. The plan is to claw back any overallocated water and to ensure ecologically sustainable levels of extraction in all river systems, to put in place an open water accounting system that allows us to see what is happening to water and to acknowledge that landscapes require water to flourish. I want to talk about this accounting system for a moment because this is one of the issues that will make or break this whole process. In South Australia a few years back now the Loxton irrigation scheme was upgraded. There were promises about leaving water in rivers and promises, particularly to the locals, that what was saved would be allowed to flow in the Murray. Very soon we found that the state government had made the decision that that water could go out into the Barossa Valley, and it was piped out there. I commend those in the Barossa who operate the bill scheme for having now made the decision that they will go and source water on the open market rather than use that Loxton water. The priority in South Australia for many years has been to make money by selling water. It is one of the reasons that we have not had water restrictions in Adelaide as long as many other states have had water restrictions, particularly other capital cities. The South Australian government still requires SA Water to put several hundred million dollars a year into the public coffers to help with the budget bottom line. It makes it very difficult to honestly and openly put in place water-saving initiatives.

In talking with farmers up and down the river, I have heard that they want to see this work. Indeed, some of them say that they are prepared to sell a percentage of their water if they can see a public process, if they can be guaranteed that this water is not going to be on-sold and that it will be left in the river. One of the suggestions has been that we use the Net. We have got that facility to track where the water comes from, where it is stored and then, when it is used to top up a flood, that too is accounted for, so we can track exactly where water has been used for the environment. It is one of the reasons I will be moving my amendments, so that we
can get a process that farmers really do want to be a part of and that people have real confidence in.

Looking at this new body we are setting up with this bill, the National Water Commission, I see it does not really have any teeth. It is basically there only to assess, promote, advise and look at the funding of the National Water Initiative. The Murray-Darling Basin Commission also lacks teeth. So some of the questions we can put to the minister when we get into the committee stages of this bill relate to where the teeth are and how we are going to see that the decisions that have been made are actually enforced and the results are on the board. How do we make sure that water savings that are made through measures—some of which are already on the drawing board, such as piping the Darling Anabranch and Water Proofing Adelaide through recycling water and stormwater—will actually stay in the river? Again, we come back to an open accounting process or system.

There are some very good stories on recycling stormwater in Adelaide. Michell, the wool producers, used to use nine per cent of Adelaide’s water every day but, thanks to the Salisbury Council and their stormwater recycling program, Michell is basically totally off River Murray water. There is only a very end-of-stage process in one of their wool processing lines that uses any Murray water at all; the rest is all recycled stormwater. When they have got too much stormwater, they pump it into the underground aquifer for storage. It is the type of program that can make a difference. But if we are going to have SA Water, if any savings are made in Adelaide, going out and trying to resell or on sell that percentage of water that is saved, this is all going to be defeated and we are not going to get anywhere.

It is public accountability that will make or break this process. Through it we can see whether water savings have been made, where they can be made, where they will be made or should be made and where this saved water has gone. I think great pressure will be put on the Commonwealth to ensure all of this is an open and public process, as the public is now ready for water reform and certainly the farmers I have spoken to throughout the Murray-Darling Basin are ready for it.

**Senator BROWN (Tasmania) (10.16 p.m.)**—I congratulate the previous speakers for their contributions to this debate about one of the most important issues facing Australia now and one of the most important issues for the lives of everybody alive in this country in 2004. We all know the problems but we have to take them in concert with an increasing population, an increasing use of resources and, more particularly, the advent of global warming through the human use of resources. This threatens in the Murray-Darling Basin, for example, to reduce the flow of the rivers there by 30 per cent by mid-century—on top of everything we have at the moment. When you see the almost impossibility, according to conventional thinking, of taking 30 per cent of flow from current users and putting it back in for environmental use, and add to that global warming taking out 30 per cent of the natural flow over the next 40 or 50 years, you wonder how on earth the generations who will live in the Murray-Darling Basin and depend upon it in the middle of the century are going to look back on this debate in this parliament tonight. They will see how far short of the mark the legislation we are dealing with is compared to what is required from governments who have the long-term national interest in mind.
We are effectively establishing another bureaucracy, and it is to dispense money to unspecified projects to reach unspecified goals. It is all very nebulous. It is in many ways typical of the Howard government’s approach to the great environmental responsibilities it has, which is to say: ‘We’ll put in place a watchdog mechanism but we’re not going to put in place goals and commit ourselves to meeting those goals. We won’t sign the Kyoto protocol. We won’t commit to a time line for returning a proper environmental flow to the Murray River.’ There is massive environmental damage occurring in the meantime while this government effectively sits on its hands. There is the loss of species in the river, including fish species but going on to all the in-water species, and the massive damage to the riverine environment.

Senator Lees has just referred to the study showing the impact on the river red gums. It is a national calamity, and there is nothing in this bill to adequately deal with that. Senator Lees says action is required to get water to the dying red gums, the majority of them stressed and dying, this year. There is nothing in here to address that at all. The Prime Minister, the Minister for the Environment and Heritage and the cabinet are together turning their backs on those trees as they die and on the ecosystem which depends on those trees and which dies with them. It is grossly irresponsible for the Prime Minister and the cabinet to have turned their backs and to be a ‘do little’ government in the face of such a calamity. This is not something facing future generations; this is right now in front of our very eyes, described by scientists. And this government says: ‘We won’t deal with that. We’ll set up a commission with vague, nebulous guidelines but we will not deal with that immediate problem.’ If the government cannot deal with the immediate problem, how is it going to deal with the long-term and greater problem of looking to the health of the Murray-Darling and, indeed, of all the other river systems of this country?

The Greens have some amendments to try to rescue the ineptness of this legislation and the establishment of this superbureaucracy without the superpowers and discrete and specific goals that it should have. The first amendment requires the National Water Commission to meet specific goals for providing environmental water to really deal with the crisis that we have. Part (a) says that the National Water Commission will secure the entire 500 gigalitres required for the Living Murray First Step by 31 December 2005. That is 500 gigalitres when we are dealing here with a natural river flow in excess of 12,000 gigalitres. So we are dealing with something like four per cent of the natural flow being added to the Murray River through this first step. That is four per cent, when Senator Webber or earlier Senator Stephens was talking earlier about a minimal return of 28 per cent recognised as being required to go to the Snowy—and that took 10 years to get around to. We are talking about four per cent here as an emergency measure, and this government has not got it on the slate. It is looking at that somewhere out at 2010 or 2014.

Senator Lees has talked about her Christmas card of three years ago and the magnificent tree on it that is now dead. Add all the pictures you could take of the river red gums now and see where they will be in three years, let alone in 2014—and we do not know that 500 gigalitres is going to go anywhere near reversing the fortune, or misfortune, of the river red gums.

The Greens amendment effectively says that the Commonwealth and states agreed on the 500 gigalitres and committed $500 million in November 2003. A year later, in November 2004, they agreed on specific meas-
ures to secure and fund the first 240 gigalitres. But as things stand not one dollar will be spent and no water will flow because of the fight over competition payments. What is the National Water Commission going to do about that? It is being established under this legislation, but what is it going to do about the Prime Minister’s failure to get one drop of water returned to the river during his nine years in office? This Prime Minister has not returned one drop of water to the Murray-Darling to rescue this grand ecosystem which is dying in front of his face in the nine years he has sat in that chair in his office. It is a national disgrace.

The second part of the Greens amendment would secure an additional 2,500 gigalitres of water for the environment by December 2007—a minimum of 1,000 gigalitres for the Murray. This takes the Murray allocation to 1,500 gigalitres within three years. That is what the scientists retreated to saying was the minimum required to get an environmental rescue, environmental health, for the river. This would provide another 500 gigalitres for either the Murray or elsewhere in the basin—for example, the Macquarie Marshes. I will be asking the government about the plight of the Macquarie Marshes when we get to the committee stage.

I notice that there are no advisers in the box. I do not know whether there is anybody at the other end of the phone. I do not know whether there is anybody watching on television. I do not know whether the government gives a cuss at all about this. Certainly the minister is not here. The advisers are not here. Is there anybody at the other end of the phone? Who knows, because as far as the minister is concerned this bill does not matter. I have never seen a situation where a bill like this has been before the Senate and there are no advisers in the place and no minister to deal with it during the second reading debate, let alone the committee stage, which we may guess will be coming shortly.

The third part of the first tranche of amendments by the Greens is to return rivers and wetlands to environmentally sustainable extraction levels by 2010. The National Water Initiative commits to returning overallocated systems to environmentally sustainable extraction levels—but with no time line. The Australian Conservation Foundation, the Farmers Federation and the Banking Association agreed to do it by 2014. The government could not even follow through with that time line in this legislation—and this is the place to be laying down the directives to the National Water Commission. But it is not here, so the Greens are providing a time line which we think is minimal if you are really talking about environmental rescue of the Murray and the Darling.

The fourth part of the amendment is to give the Murray-Darling Basin Commission responsibility for managing environmental water in the Murray-Darling Basin—that is, the return of flow to the rivers. The management of environmental water should be in the hands of an organisation with environmental expertise.

The second amendment is to lift the entrenched secrecy which this legislation gives to the National Water Commission. Mr Acting Deputy President Sandy Macdonald, as you live in the basin, I know you will be concerned to see that everything is open and transparent to the public. The Greens amendment will provide you with the ability to support that. The amendment requires specific documents produced by the commission to be tabled in parliament when they are given to the minister and generally to operate in an open and transparent manner.

I will be asking the minister, if he appears, to explain the need to hide any matter that the National Water Commission is dealing
with. It is public money, public water and the national environment that we are dealing with and the public should know about it. According to the bill as written, the minister has complete control over all the information produced by the commission. The public do not get a go unless the minister deigns to release that information. That information includes the assessment of Australia’s water resources and their management, whether plans are consistent with the National Water Initiative and should be accredited, whether commitments under the National Water Initiative are being implemented, the monitoring of the impact of interstate trade in water access entitlements, assessing the performance of the water industry against national benchmarks, a comprehensive review of the National Water Initiative in 2010, and assessments of the implementation of the water reform framework. Is any senator going to say that any of those matters should be kept secret at ministerial discretion and, if so, why?

In relation to the 500 gigalitres for the Murray as agreed by the government—and specifically the first 240 gigalitres agreed with much fanfare last Friday week—I will be asking the minister, should he be here, when the works will begin and the water made available. Is there a seasonal requirement for when water needs to flow to the wetlands: for example, is it spring? If so, when is the latest that money has to be allocated in order for water to be available in spring 2005—or is it spring 2006? Some water will be released through policy decisions. Some requires infrastructure, such as the Wimmera-Mallee pipeline, which may take 12 to 18 months to complete, or more.

**Senator Kemp**—Tedious!

**Senator BROWN**—The minister interjects that this is tedious, because he is not interested. This is a tedious matter as far as the government is concerned.

**Senator Kemp**—Come on, Bob!

**Senator BROWN**—He is making the wrong call there, and it shows what the government thinks about this: it is all tedious, says the wrong minister in the chair for this legislation. ‘Tedious!’ says the government. But ‘extremely important and critical’ say the other senators who have contributed to the debate tonight.

The Independent report of the expert reference panel on environmental flows and water quality requirements for the River Murray system was finalised in 2002. It assessed the likelihood of having a healthy Murray River under different conditions, including environmental water allocations ranging from 350 gigalitres, with a low likelihood of a healthy Murray but some localised improvements, to 4,000 gigalitres, with a high likelihood of a healthy Murray. Remember that that is one-third of the natural flow. Fifteen hundred gigalitres was assessed as a moderate likelihood of a healthy Murray. A second more detailed report was constrained to look only at options up to 1,500 gigalitres, with a moderate chance for the river. I will be asking questions about these flows and how the assessment has been made, why the government believes 500 gigalitres is adequate in the coming period and what its target is going to be after that.

Another question the Senate must have answered is how much water is needed for the Darling, its tributaries and the dependent wetlands. Again, I refer to the absolute catastrophe of the Macquarie Marshes, one of the nation’s great waterbird breeding areas, reduced by half and enormously degraded by its having been simply robbed of the water that for thousands of years had flowed to it during flood periods. These are important matters and they require specific answers.
There will be some beating of the chest by the government about setting up this commission, this bureaucracy. But of itself it will do nothing in terms of that all-important, immediate and urgent critical need to return water to the river. That is going to be the test.

After nine years you would think the Prime Minister would have done something to make that return, but he has not. One can only conclude that the 70 per cent of users who take water for crops and for irrigation, including grass, have the power over the government; it is not game to take them on. One has to wonder whether the $2 billion being spoken about here for the National Water Commission would not be better spent, in concert with the states, to get rid of Cubbie Station, to get big returns back into the Darling and the Murray. Senator Lees has spoken about the way in which users of water along the Murray would not mind some of their water being bought back if they knew it was going to environmental management. But effectively there is nothing here to give rural water users, irrigators, any sort of real confidence that if they do the right thing the government will stand by them and do the right thing in return.

Senator MURPHY (Tasmania) (10.36 p.m.)—I intend to make only a brief contribution to the debate on the National Water Commission Bill 2004. I want to focus on clause 44 of the bill. In doing so I refer to the government’s explanatory memorandum on the bill and go to page 5 in the explanatory memorandum as it relates to the function of the National Water Commission. Its explanation of clause 7(1)(a) says:

Amongst other activities, the Commission could be expected to: undertake analysis; inform policy making by governments; help facilitate coordinated government action to achieve national outcomes; promote debate; enhance communication with (and between) communities, stakeholders and decision makers; and otherwise promote national water reform through initiatives and actions to advance the objectives and outcomes of the NWI.

I refer to the second reading speech of the Minister for Transport and Regional Services. At the end of it the minister says:

The National Water Commission will be instrumental in ensuring that water issues in Australia continue to capture the public’s imagination and energy in working towards practical water solutions. The importance of water to securing Australia’s economic and environmental future demands no less.

Clause 44 of the bill goes to the public availability of assessments by the National Water Commission. Clause 44 says:

(1) The NWC may make its assessments under paragraphs 7(2)(a), (g), (h) and (i) and 3(a) and (b) available to the public only with the agreement of the Minister.

(2) The NWC must not make any other advice or recommendation available to the public.

I am not sure how you actually intend to achieve national outcomes, promote debate and enhance communication with and between communities, stakeholders and decision makers if you are not making any information available. We should make this information available. Of course, the minister should reserve the right to direct the commission not to make things available, as is the case with some other government organisations, but the minister should then table an explanation in both houses of parliament as to why that direction has been given. There could be some good reason for giving the direction, but the minister should explain that. If we are to promote debate and, as was said at the end of the minister’s speech, agree on ‘the importance of water to securing Australia’s economic and environmental future demands no less’ and on the need to capture ‘the public’s imagination and energy in working towards practical water solutions’,
we should make information available. It should be a transparent process. If you are going to put $2 billion into it, it should be transparent.

We should have a process where people are able to see what this commission’s views are and what they recommend to the government. I will be moving an amendment to give effect to that. I will move that the commission will be required to make publicly available its assessments and recommendations within a period of six months after making those assessments and recommendations unless otherwise directed by the minister. The minister shall reserve the right to direct the commission not to make publicly available those assessments and recommendations, but the minister must then table an explanation for the reasons for taking that course of action in both houses of parliament. I think the public deserve no less if they are to be able to make an informed assessment as to whether this is actually going to work. They ought to have access to the information that this is going to generate, and that is what is important. I will move that amendment in the committee stage of the bill, and I hope the government will support it.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (10.41 p.m.)—I seek leave to incorporate a speech in the second reading debate from Senator Lyn Allison. I believe it has been circulated.

Leave granted.

Senator ALLISON (Victoria) (10.41 p.m.)—The incorporated speech read as follows—

There is little doubt that water use in both urban and rural areas is of primary importance to Australians and fundamental to establishing a sustainable and enjoyable standard of living in this country. Australia is a dry continent. Demands on water resources continue to rise with expanding populations, and with the expansion of agricultural land-use and efficiency.

At the time of its announcement the Australian Democrats welcomed the Coalition’s $2 billion Australian Water Fund, a policy made up substantially of initiatives recommended in the 2002 Democrats-initiated urban water Senate inquiry report and through the Senate inquiry into rural water use. The Democrats have for a long time now supported and promoted a national approach to water through the Council of Australian Governments to move Australia towards the end goal of sustainable use of water resources.

The Democrats have done much work on water use in the Senate and through its inquiry processes. Senator Aden Ridgeway chaired the inquiry into Rural Water Use, and I chaired the Senate Inquiry into Australia’s Urban Water Management. These two inquiries provided a clear basis for water reform strategy and as a result we will today move a second reading amendment urging the targets, recommendations and proposals that came out of the committee’s work will continue to be acted on. Two years after the urban water inquiry reported, I feel that we may be finally making headway towards best use of Australia’s precious water resources. The Water Efficiency Labelling scheme was a recommendation of the urban water inquiry and one the Democrats negotiated a year or so ago as part of the Measures for a Better Environment. I look forward to dealing with that bill early next year.

Considering the great importance of this issue, and the absolute necessity of bringing the states on board for all negotiations, the Democrats are concerned the Federal Government has attempted to steam-roll states regardless of whether agreement has been reached or not. This is amply demonstrated by the submissions received from state governments following the Democrats’ referral of the National Water Commission Bill to Senate Inquiry.

Despite the Federal Government’s efforts to curtail the inquiry by insisting on an extremely tight reporting date, state governments, farming bodies and conservation groups acted in record time to submit comments expressing concerns about the
reporting and decision-making procedures as drafted by the government in this bill.

As an example, I quote the Victorian Minister for Environment John Thwaites in a letter received by the Senate Environment Committee today when he says “The Victorian Government does not believe the Bill reflects the spirit of cooperation which resulted in the signing of the National Water Initiative by the Council of Australian Governments. The Victorian Government considers it imperative that the National Water Commission provides advice and reports direct to COAG following consultation with the States and Territories. And, not report direct to the Prime Minister as is currently proposed. “Minister Thwaites goes on to point out “the National Water Initiative Intergovernmental Agreement (clause 107) states that the National Water Commission reports to COAG will be publicly available”.

The Democrats are concerned the Howard Government is seeking to renege on that agreement through this bill. We do not believe that amendments made by the government in the House of Representatives will result in the appropriate level of transparency or spirit of cooperation and as such will present our own amendments to the Senate.

Wasteful water use practices have resulted in the degradation of many of our water resources, particularly in eastern, south-eastern and south-western Australia. The Democrats believe the establishment of a National Water Commission and commitment of funding to ensure the National Water Initiative is extremely important. At the time of the announcement of the Australian Water Fund, we were pleased to see recognition from the Federal Government of the need for a significant cultural shift in water use and management. We can only hope that state and Federal Governments adopt the second unanimously agreed recommendation from the Senate Inquiry into Rural Water, namely that COAG should negotiate an ongoing shared programme for funding the reforms in the Intergovernmental Agreement on a National Water Initiative.

We are concerned that this bill would make the Federal Minister the key conduit for advice and appears to have the discretion to act, or not act upon the NWC’s advice. We also note, that as drafted, the legislation stipulates that the Minister is not required to publish the National Water Commission’s advice or recommendations. Hardly in the spirit of the National Water Initiative which states the Commission’s reports will be publicly available.

Within the policy framework of the National Water Initiative, the Democrats are not satisfied with the lack of targets for environmental flows for the Murray Darling, and the significant delays in delivering funding and real outcomes toward recovery of the Murray Darling system. We urge the Federal Government to release funding from the Living Murray program to ensure actual on ground action that will release more water into the river and relieve its parched wetland ecosystems in the shortest possible timeframe.

The Australian Democrats recently called for the Federal Government to ensure Australia’s northern region’s water resources are properly assessed prior to any large-scale expansion farming or ranching activities. We urge the Government to keep a close watch on moves to establish large scale cotton crops in Northern Australia.

We have already seen our most productive agricultural area, the Murray-Darling basin, decimated due to misuse and misunderstanding of the water resources of the area. Australia must not make the same water use mistakes in the north, or we will be facing similar huge bills for reparation and arguments over water rights as we are seeing in the southern states.

Similarly, over the last few weeks, we have seen reports that Western Australia, which I remind the Government is yet to sign on to the National Water Initiative, is under pressure to implement plans to channel water from northern Australia. Coupled with expanding cattle-ranching and cotton-farming, the north’s biodiversity and water resources look like being under substantial pressure in the near future. The Murray Darling should not be the sole focus of efforts to move Australia towards sustainable use of water.

Once again I would like to express the great hopes the Australian Democrats hold for the National Water Initiative, and our eagerness to see it pass. However, without a cooperative approach to management of water resources, we fear the process will be stalled. We urge all governments to
work together towards a transparent, open and most importantly effective program to move Australia’s water use towards sustainable levels. I urge the Senate to re-visit the unanimously endorsed recommendations on water that have come out of the Senate inquiry process, in order to ensure they are implemented in the shortest possible timeframe.

**Senator STEPHENS (New South Wales)** (10.42 p.m.)—I move Labor’s second reading amendment:

At the end of the motion, add “, and condemns the Government for:

(a) its failure to take the threat of climate change to ongoing water supplies for both our farmers and our rivers seriously;

(b) its failure to deal with water issues with an appropriate sense of urgency, allowing the COAG water reform process of 1994 to stall, and failing to provide any environmental flows for the Murray River in over 8 years;

(c) its failure to adopt Labor’s national water policy framework, and ensure that Commonwealth funds are directed towards securing environmental flows; and

(d) its plan to fund the Australian Water Fund by taking money which the states have earmarked for essential services such as schools and hospitals”.

**Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage)** (10.43 p.m.)—In the first instance, I thank all honourable senators for their contributions to a very important debate on the National Water Commission Bill 2004. I listened as much as I could to the contributions. I think it is quite clear that all senators have identified the problems. Australia is a continent that is short of water in many places and abundant in it in other places. We are a nation that is challenged by how we deal with water. Many of the challenges are created because of the nature of Australia. Other challenges have been created because of how we have changed Australia during European occupation. European activities on the land have changed it, and there is no greater example of that than the Murray-Darling system, which is now a highly artificially controlled channel that happens to have some magnificent pieces of Australian wetlands and a range of other important pieces of landscape around and within the basin.

The government have recognised the need to address the water challenges. That is why we have established a $2 billion fund to work with the states and the Territory in addressing these problems. Senator Lees made reference to a number of problems within South Australia with regard to the plans and sometimes failures of the water authority there. I think water authorities across Australia have been challenged. We have pricing systems that create perverse outcomes. We have water authorities that make a lot of money from selling potable water which then gets pumped onto tennis courts, golf courses and a range of other places. At the same time we get potable water, flush it down our toilets and through our sewerage systems and straight out into the sea. We have what rational and sensible people looking at this nation would see as some very strange ways of dealing with a very scarce commodity. The National Water Initiative, to be supported by major investments through the national water fund, is without any doubt the largest and most ambitious program to address these challenges in Australia’s history.

During the election campaign the Australian Labor Party came up with a plan, for example, to put 1,500 gigalitres back into the Murray. Mr Garrett and Mr Latham stood on the banks of the Murray River and promised that they would find 1,500 gigalitres. They did not say where they would get it from. They did not say how they would do it. They had no detail. It made a nice photo opportu-
nity on the banks of the Murray in the middle of the election campaign, as did former Senator Graham Richardson, the then minister for the environment, and Mr Bob Hawke, the then Prime Minister, standing on the banks of the Murray in exactly the same spot promising to plant, I think, one billion trees. It was a promise that went the same way as Mr Hawke’s promise that no child would live in poverty. Promises made standing on the banks of the Murray will be treated with scorn by people who live in that basin and by all other Australians if they are not backed up by practical action and major investments.

The Labor Party has made criticisms. In the pious second reading amendment moved by the opposition we see criticism of the funding of the national water fund. The states—and Labor federally seems to be supporting them in this—say that the funds come from money earmarked by the states for other purposes. The hypocrisy of that statement is that during the election campaign the Australian Labor Party took exactly the same money and sought to spend it on other things. This money is not the states’ money. As the Labor Party knows full well, it comprises the competition payments, as they are called. The national competition policy concludes in 2006 and the competition payments are not scheduled after 2006. The states know that very well. The Labor Party knows that very well because it took the money to spend it on its own programs. You cannot have it both ways. The Commonwealth is using legitimate Commonwealth sources of funding to pay for a major and long overdue addressing of the water challenges of this nation. You cannot complain or challenge our source of funding when you were, during the election campaign, using that money for your own purposes.

The fact is that Australia needs this major investment. Australia must spend money on water. It has to be done in cooperation with the states and the territories through the COAG process and with the leadership of all governments. The investment is overdue. It is needed. If we are to hand this continent on to the next generation with a much more sustainable environment and with water supplies that are reliable in communities around Australia—keeping those communities alive—then this initiative is needed. The Commonwealth is very keen to see the commission established, the National Water Initiative put in place and the investments commenced. The Prime Minister made it clear that he wants 20 major projects going in the next year. We want to see the benefits of the initiatives. Those projects will do a lot of the things that all of the senators here have spoken about tonight. A lot of those investments are major capital investments. They are investments that water authorities in the past have been reluctant to put in place but they will be able to do it, as will other proponents, with the significant support provided by the Commonwealth government using taxpayers’ money. I commend the legislation to the Senate.

Question negatived.

Original question agreed to.

Bill read a second time.

Ordered that consideration of this bill in Committee of the Whole be made an order of the day for the next day of sitting.

**ADJOURNMENT**

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (10.51 p.m.)—I move:

That the Senate do now adjourn.

Curran, Mr Charles and Mrs Eva

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (10.51 p.m.)—Too often the works of great Australians receive
insufficient recognition. I would like tonight
to outline some of the achievements of my
friends Charles and Eva Curran. I rise to pay
tribute, in effect, to two remarkable Austra-
lians who just happen to be married to each
other. I have often thought that the ancient
words of the Roman poet Ovid best typify
the marriage of Charles and Eva. Ovid said:
If you would marry suitably, marry your equal.
Having recently attended their 40th wedding
anniversary, I know there could not be a
more apt phrase to describe their lifelong
companionship. Charles Curran is many
things: a devoted family man, a successful
businessman, a generous philanthropist, a
keen sportsman, a patron of the arts and,
perhaps most importantly, a loyal friend to
the many and varied people within his wide
orbit. The term ‘Renaissance man’ is an ap-
propriate description of Charles. It encom-
passes his passion for education and ad-
vancement, intrinsically describing his inter-
est in the advancement of business and learn-
ing.

Eva Curran is, like Charles, a person for
whom others have profound respect. Her role
as philanthropist, devoted parent, constant
friend and supporter of charitable causes is
widely admired. Together, they make true the
old adage that ‘the whole is greater than the
sum of its parts’. Theirs is an open-hearted
partnership that provides a role model for
others. It is the touchstone and the inspira-
tion for the magnificent contribution they
make to their community and to their nation.
The many impressive achievements of
Charles Curran in business are made more so
for being based on the highest ethical and
moral considerations. His success in a di-
verse range of industry sectors including
media, banking and insurance is built on
business acumen, a sharp intellect and a tire-
less work ethic. Some of the highlights of
Charles’s career include his chairmanship of
such diverse organisations as Perpetual Trus-
tees Australia, the Greater Union Organisa-
tion, the Medical Benefits Fund of Australia,
Capital Television Holdings Ltd, the New
South Wales Government Commission of
Audit and the Australian Wool Exchange.
Additionally, he has held a directorship of
QBE Insurance and is an international ad-
viser for Goldman Sachs. Charles has also
had a longstanding interest in agriculture,
particularly in the field of viticulture. He has
brought these interests to the fore on his
property Noojee Lea, at Canowindra, which
produces premium wine, under the Nassau
Estate label, and the finest merino wool.

In the Australian business community,
Charles Curran’s name is something of a
byword. His integrity has made him an ex-
ample to all who take executive and non-
executive roles within companies. Corporate
governance has benefited and will continue
to do so from his example in an era when
ethical behaviour is a much discussed attrib-
ute of good business. This integrity, exempli-
fied in the business world, is perhaps more
sharply seen in the activity of the Currans in
their charitable endeavours. In addition to
their financial contributions, Charles and Eva
devote their time to a variety of charitable
organisations by providing business and prac-
tical advice and activity. It is rare that
this couple, so self-sufficient, would ask any-
thing of their friends unless of course it is for
a beloved charity. They have no hesitation in
knocking on the doors of business and per-
sonal contacts in search of assistance for the
benefit and support of others.

Some of the charities that have particu-
larly benefited from Charles’s business acu-
men are the Royal Institute for Deaf and
Blind Children where he served as vice
president, St Vincent’s Hospital, the Sydney
Health Service, the Eastern Sydney Area
Health Service and the Garvan Institute of
Medical Research where he has served as a
past and present chairman. The support of
the Currans for specific health charities ema-
nates from the time-worn yet true phrase, ‘If
you don’t have your health, you don’t have
anything.’ They have taken this as their guide
and have espoused causes and supported ini-
tiatives that have seen the recovery and reha-
bilitation of innumerable sufferers. One spe-
cial example that I would like to dwell on
from the impressive list is the involvement of
Charles and Eva with St Vincent’s Hospital
and the Garvan Foundation. In 1984, the
Currans became aware of the critical state of
discretionary funds held by St Vincent’s
Hospital. Charles’s parents established the
Curran Foundation with an initial contribu-
tion of $500,000. Charles’s father, Paul, who
is still alive, recently celebrated his 90th
birthday.

Another substantial contribution of
$800,000 was later made to the foundation
by Charles which assisted the Garvan Foun-
dation Library, the Capital Appeal and the
Peter Wills Centre for Bio-Informatics. To-
day, the foundation has assets of $8 million
and has given $4.3 million in grants since its
establishment for the provision of medical
equipment and patient care facilities. Anyone
who knows this family is aware that they do
not give for self-aggrandisement but give in
the spirit of improving the lives of those less
fortunate.

With Australia as their first love, Charles
and Eva are also established citizens of the
world, spending considerable periods of time
abroad for business and charity. They have
combined their love of other cultures and
their philanthropic nature in their involve-
ment with the Australian Ireland Fund. This
fund has raised over $4.2 million to combat
terror and violence in Ireland. As chairman,
Charles Curran, with Eva’s enthusiastic sup-
port, embodies the spirit of improvement
through education and understanding. I re-
cently attended a function of the fund at
which Charles spoke about the projects that
the group are involved in. One of these pro-
jects was the establishment of the Sir War-
wick Fairfax Trust for Integrated Education
in Northern Ireland. Lady Mary Fairfax gen-
erously made the initial contribution of $1
million to the trust, with the goal being to
educate children, Catholic and Protestant, in
an integrated environment. Prejudice springs
from ignorance and missed opportunities in
education. The beneficiaries of this trust will
do much to consolidate the achievements of
the 1998 Peace Accord which has promised
so much. The contributions of Charles to his
immediate and wider community were offi-
cially recognised in 1987 when he was
awarded an Officer of the Order of Australia.

Yet another example of the extreme versa-
tility of Charles Curran is his fascination
with the sport of sailing. As skipper, crew
and owner, he has demonstrated his inability
to pursue a project as a half-measure. This
love of sport is not confined to sailing.
Charles has also served as a member of the
New South Wales Committee of the Austra-
lian Olympic Committee.

In addition to his impressive repertoire of
achievements and philanthropy, Charles also
has a real passion for the arts. Charles was
appointed a director of the National Gallery
of Australia Council in 2003. He was chosen
on the basis of his business skills and his
knowledge of finance. Sculptures by the Sea
at Bondi, an annual event featuring some of
the most creative and innovative artists in
Australia, benefited from his and Eva’s con-
siderable involvement. This exhibition is one
of the most widely visited annual events in
Sydney and truly delivers a burst of colour to
those who might not see how the arts speak
to all Australians in diverse ways.

The 40 years that Charles and Eva have
been married have seen them raise five de-
lightful and successful children, with seven
grandchildren to keep them forever young. From personal observation I know that family life for the Currans is filled with laughter, love and a refreshing tendency to rousing debate! One of their sons said recently:

It is through his role as a father that I think Dad has outshone his business and community achievements. He is, quite simply, an outstanding father. I remember as a young school boy, Dad arriving home late, very tired, but happy to help us with our homework.

Eva continues to play the pivotal roles of wife, mother, confidant and friend which have made the Curran marriage the focus of admiration, delight and a source of inspiration for their many friends. The diverse achievements of Charles and Eva Curran are remarkable, and the label of 'great Australians' sits comfortably on their shoulders. Those close to Charles and Eva marvel at their ability to manage such diverse activities in their sometimes hectic lives. They are never too busy to find time to catch up or to mentor the young and are the first at your door to share in both the good times and less fortunate times. I believe that the mutual respect they have for one another is the foundation for their many achievements and the basis of their successful and loving marriage. They regard everything they do as a work in progress. I am both honoured and privileged to have enjoyed their friendship for many years. On behalf of your many friends and admirers, I can think of no better gift than to wish you both sustained good health and continued success. Happy anniversary, Charles and Eva.

**Xstrata: Proposed Investment in Australia**

*Senator MARK BISHOP (Western Australia) (11.00 p.m.)*—I rise this evening to speak to the matter of the proposed takeover of WMC Resources Ltd by the Swiss based Xstrata plc. Senator Lightfoot has made some remarks in this place about Xstrata’s proposed investment in Australia. Whilst I do not seek to pre-empt the Foreign Investment Review Board’s review, there are aspects about Xstrata’s conduct at Windimurra in Western Australia and its general operation which should worry policy makers in Australia. There is a worldwide consolidation of resource companies under way and this trend is being replicated in Australia. Such consolidation increases the ability of large global resources companies to control global resources supply and therefore prices. Such control makes these companies extremely powerful.

Xstrata has been accused of involvement in activities to consolidate resources and control prices at a global level. The Windimurra mine saga lends considerable weight to that allegation. The Economics and Industry Standing Committee of the Western Australian parliament noted in their report on the mine that Xstrata claimed there were difficulties at Windimurra from the outset. Leaving aside Xstrata’s motives for buying into Windimurra, the company’s actions when it moved the mine from care and maintenance to closure are of great concern. Xstrata set out to make sure Windimurra could never again be used for the production of vanadium. Xstrata misled the Western Australian government, and therefore the public, about the cost of reopening Windimurra, and it imposed a financial penalty on its shareholders that was substantially higher than it needed to be.

In February 2003, Xstrata placed the mine on a care and maintenance basis yet publicly denied it had any intention of closure, until the shock announcement in May 2004. Yet on 24 March the Australian Pipeline Trust told the Australian Stock Exchange that it had been informed by Xstrata that it was closing Windimurra, and Xstrata sold the Windimurra plant to Fabcon Ltd in the first week of April. In addition to ensuring Fabcon did not sell the Windimurra plant to any-
one wishing to use it to produce vanadium, the method of selling the plant by first removing the crushing and grinding equipment minimised its value. Specifically, the contract between Xstrata and Fabcon explicitly precluded the sale of any equipment to an existing or potential vanadium producer. Such a proviso would, of course, render the plant and machinery most valuable as scrap metal and ensure it can never pose a competitive threat to Xstrata.

The committee also heard that some of the equipment used in the Windimurra operation was sent to Xstrata’s Rhovan operation in South Africa whilst the plant was on care and maintenance. So the evidence is that, once problems with the mine became apparent, instead of keeping the mine in care and maintenance until the price of vanadium improved—which it has done—Xstrata moved early to decommission the project. This was formally announced on 10 May 2004. It appears that, after decommissioning the plant and moving some of the plant and machinery to South Africa, Xstrata were not serious about divesting themselves of the mine through sale.

The committee heard that Xstrata wrote to four proponents and stipulated in their letter that offers would not be entertained unless they approached the capital cost of the major items at the site, nominated by Xstrata at around $80 million. It is interesting to note that the Western Australian committee found the asking price of $80 million was ‘inconsistent with the comparatively small return obtained through disposal of the project’s infrastructure assets and the $11 million cost to Xstrata for site rehabilitation’. It has been alleged but denied by Xstrata that their letter demanded full payment for the mine in an unreasonably short period of five days.

So what are we left with? We are left with a quick move by Xstrata to decommission the Windimurra project; the removal of plant and equipment from the site, apparently during care and maintenance; and, apparently, no serious attempt at achieving a sale to allow some other company to attempt to make a go of the project. Indeed in this context it is useful to refer to correspondence made public by the aforementioned committee of the Western Australian parliament. The report of that committee reveals the Leader of the Opposition in Western Australia and former Minister for Regional Development in the Court government, the Hon. Colin Barnett, wrote to Xstrata in May 2004 and said:

In February 2003, Xstrata announced that the operations at the mine would be suspended due to the collapse in world vanadium prices.

You advised me at the time that there was the very real prospect of the mine returning to full production once the price of vanadium had recovered.

Given the price of vanadium is now approximately five times higher than it was when the decision to suspend operations was made, I am concerned at reports that Xstrata believes the mine is ‘sub-economic’. In particular I am alarmed that the company may not be treating the mine on its true economic merit.

The people of Western Australia own the vanadium resources and Xstrata has been granted the right to develop this resource by the Government on behalf of the people of Western Australia.

WMC is a major Australian icon and employer. It is a major contributor to our economic wellbeing. Besides this, it operates the Olympic Dam site, the largest uranium ore body in the world. Australian uranium may be exported only for use in electricity generation and is subject to Australian and international safeguards for the prevention of nuclear proliferation. It is vital that the entity which controls the Olympic Dam uranium resource is a responsible, capable and ethical company. WMC has proven itself to be such a company. I am not sure, based on the Win-
dimurra saga, that we can be certain Xstrata is such a company. In light of the Windimurra saga, it is vital that the Howard government allows the Foreign Investment Review Board to thoroughly and independently review the bid from Xstrata for WMC.

Finally, after having some discussions with the government whip, I seek leave to table some correspondence from Mallesons Stephen Jaques on behalf of Xstrata plc and Xstrata Windimurra Pty Ltd to Mr John Bowler, a member of the Legislative Assembly of the Western Australian parliament.

Leave granted.

Senator MARK BISHOP—I will just make some brief points about that correspondence, which is now on the record. Firstly, I refer to members of parliament. In particular Mr Bowler, a member of the Western Australian parliament, has a duty when matters requiring attention are brought to his attention to disclose them publicly. It is entirely proper for such matters, when raised with him, to be raised within the Western Australian parliament and its committees. Secondly, when such matters are raised, they should not result in a heavy-handed response by companies that might choose to be offended by what has been raised, which are at best ambiguous responses or comments by a member of parliament—in this case, a member of the opposition in the Western Australian parliament and its committees. In passing I say that it would be much more helpful in a situation like this if Xstrata responded positively, as opposed to engaging in behaviour that might properly be interpreted in an adverse fashion.

Windschuttle, Mr Keith

Senator TCHEN (Victoria) (11.09 p.m.)—I rise tonight to speak about Mr Keith Windschuttle. I do not know Mr Windschuttle. I know of him, of course. If not yet famous, he is certainly well publicised as the antithesis of the black armband school of Australian history. I do not know Mr Windschuttle’s work either, never having read any of his books, of which I understand there was just one of note: The Fabrication of Aboriginal History, published in 2002, in which Mr Windschuttle apparently asserted that white settlement was not responsible for the disappearance of the Tasmanian Aboriginals since only 120 were killed and thus, ipso facto, there was no genocide.

As I have no personal knowledge of either Mr Windschuttle or his work, I make the point that nothing I say tonight about Mr Windschuttle or his work should be taken personally. It appears that Mr Windschuttle has just completed another book, called The White Australia Policy. As it was only launched last night, I could say that I remain in a blessed state of ignorance about Mr Windschuttle’s work. Not quite, however. In advance of the public launch of his new book, Mr Windschuttle wrote an opinion piece in the Australian newspaper on the same day but published in the morning. It was a very astute bit of publicity, actually. As I said, he is a very well-publicised scholar.

Mr Windschuttle’s piece in the Australian is entitled ‘White Australia’s myths’ and is about 1,200 words in length. I have read it. On the very safe rationale that scholarship is directly proportional to the number of words used to put across an idea, I assume that everything that Mr Windschuttle has to say about the White Australia Policy, including its rise and fall and the myths it created, in his no doubt substantial book has been equally well presented in this piece in the Australian. So I read it very carefully. It seems that Mr Windschuttle does not dispute that the White Australia Policy existed. Well, nobody would. Nor, it seems, does Mr Windschuttle dispute that the purpose of the Restrictive Immigration Act 1901—the legal face of the White Australia Policy—was to
close Australia to the migration of the so-called ‘coloured’ people for the next 65 years. Again, nobody would. What Mr Windschuttle does dispute is the belief that the White Australia Policy was an expression of racist social values. That is what Mr Windschuttle thinks is the great White Australia Policy myth.

To make it plural—two myths—Mr Windschuttle also asserts that the kidnapping of South Pacific Islanders to work the Queensland sugarcane fields did not happen. I am no student of Pacific history, so I will not comment on the historic truth of blackbirding. But I must confess that I am rather interested in Mr Windschuttle’s take on the White Australia Policy and the impact it had on its principal victims—the Chinese Australian community—which between the 1850s and the 1890s was, as Mr Windschuttle acknowledges, the ‘second biggest foreign-born population in Australia, exceeded only by those born in the British Isles’. I suspect that many Irish Australians would be affronted by Mr Windschuttle’s casual lumping of them together with others under British Isles. But I digress.

To be fair to Mr Windschuttle, it is quite obvious that his main purpose is to attack those academics who are his ideological opposite. These are the black armbanders, as he names them—Henry Reynolds, Andrew Markus, Richard Broome and Richard White, whose theses compare Australia at Federation ‘with the “master race” nationalism of Nazi Germany’, which is a plainly ridiculous thesis. One is almost grateful that Mr Windschuttle would take them on. But in the process of getting to his enemies, Mr Windschuttle goes way over the top to silliness.

Let me give just two examples. Mr Windschuttle asserts that the White Australia Policy could not have been racist, because ‘from 1788 onwards, the Australian colonies were always multiracial, with Maoris, Tahitians, Indians, Ceylonese, American negroes, West Indians, and Africans,’ and, of course, a plenitude of Chinese, not to mention the Irish. But who says a multiracial social would not be a racist society? Even Mr Windschuttle is not so rash as to assert this, but he implies it. And that is a flimsy foundation to build on.

As a second example, Mr Windschuttle asserts that mainstream Australian nationalism at Federation was not based on race because:

‘Australians ... owed loyalty to the British Empire, which specifically rejected the notion of hierarchies of race.’

The British Empire rejected the notion of hierarchies of race? I wonder which British Empire Mr Windschuttle means? What would Mahatma Gandhi, James Connolly or Lee Kuan Yew say about that? The reality is that the White Australia Policy was not only racist in discriminating against the so-called ‘coloured’ races, but it also discriminated against other European races. As late as the outbreak of World War II, the White Australia Policy was invoked as the ideal of keeping Australia: ‘Forever the home of the descendants of those people who came here ... to establish in the South Seas an outpost of the British race.’ That quote came from a speech by the then Prime Minister, Mr John Curtin.

The reality is that the Australia of today is entirely different from that of 1901. It is different from the Australia of the 1950s, when ‘two Wongs did not make a white’. It is different from the Australia of the 1970s, when the White Australia Policy had already seen the last of its days but multiculturalism—the idea of shared respect, shared fairness, shared benefits and shared responsibilities—was still an exotic concept. It is even differ-
ent from the Australia of the 1990s, when Mrs Hanson could profess to misunderstand this idea of multiculturalism and still gain a following.

As long as Mr Windschuttle’s only interest is to have a public stoush with his ideological enemies, I say good luck to him. However, if he has another agenda—to question the importance and relevance of multiculturalism to modern Australian society—then he should beware, because the truly egalitarian and civilised society that he tried to paint Australian society as being at the time of Federation has in fact been achieved today. But it is still a work in progress. And with Australia continuing to rely on immigration for growth and with a wider source of immigrants, we will continue to need to follow this process of mutual respect, mutual fairness, mutual sharing and mutual responsibility to ensure that our society can grow in prosperity and equality. The only danger we face is if people like Mr Windschuttle misunderstanding that. For what we cannot see in the mirror, we cannot see face to face either.

Eureka Stockade: 150th Anniversary

Senator FAULKNER (New South Wales) (11.17 p.m.)—‘We swear by the Southern Cross to stand truly by one another and fight to defend our rights and liberties.’ This was the oath of Eureka. Over the past few weeks we have seen the men of the Eureka Stockade turned into puppets for one contemporary cause after another—Labor, Liberal, unionists, entrepreneurs, democrats, radicals, Tories, workers or toffs. It seems the only Australian who does not want a part of the Eureka legend is the Prime Minister. I think he is more comfortable with the stars and stripes than the stars of the Southern Cross. But if the Prime Minister is disinterested in Eureka, he is about the only one. Eureka turns so readily to serve so many ideologies because it contains all of them and is none of them. Of a time before party politics, Eureka has been adopted by political parties across the spectrum.

The Eureka miners were no proto-proletariat wage-earning workers, but nor were they small businessmen and entrepreneurs. Indeed, they saw the businessmen of the goldfields as their enemies, making money off the diggers’ labour. When miner James Scobie tried to force his way into Bentley’s Hotel to get a drink after hours and died in the ensuing scuffle, the miners saw it as murder. James Bentley’s acquittal was one of the two October events that led to the 10,000-strong meeting at Bakery Hill. While they were in modern terms ‘self-employed’—although I wonder what men who took up arms against a licence fee would make of a BAS statement—they have been heroes to the union movement because they believed in the great truth of unionism: in unity is strength. So ‘self-employed’ does not tell the story of miners gathered 10,000-strong to ‘swear by the Southern Cross to stand truly by one another and fight to defend our rights and liberties’. And ‘self-employed’ is hardly a complete description of the beliefs and politics of men prepared to die for democracy.

Rather than businessmen or workers, the miners were adventurers and gamblers, staking their life savings and their lives on the hope of a rich strike. Many followed the gold fever around the world, which explains the multicultural and multiracial nature of the goldfields and of the men who swore that oath by the Southern Cross. At a time when the term ‘mixed marriage’ meant Catholic and Protestant, the miners had an Italian spokesman and gathered beneath a flag designed by a Canadian. The arrest of a non-English-speaking Armenian on trumped-up assault charges was the other grievance that triggered the Bakery Hill meeting. There was
a limit to the miners’ brotherhood, though. There were no Chinese miners in the stockade, and a variant of the Eureka flag would fly over the anti-Chinese rioters at Lambing Flats, embroidered ‘No Chinese’.

Last Friday, a descendant of one of the Eureka miners, Shane Howard, spoke proudly of his great-great-grandfather:

They were not a rabble—they were educated, literate men. And they had a real, true vision for democracy in this country.

Many miners, including the Ballarat Reform League’s leaders, were educated and literate. Some had given up professional careers to follow the call of gold. Some were educated by their own unstinting efforts, like so many radicals of the day, and some by the political campaigns on other goldfields in other countries. But the reform league was like any political body: there were plenty of members who were neither devoted to, nor even interested in, altruistically promoting the universal democratic rights of mankind. Quite possibly some of them were among the men who lay dead or dying on the Ballarat goldfield on 3 December 1854. They might have been attracted by the Ballarat Reform League’s demands for the abolition of licences, the reform of administration of the goldfields and a change to the laws governing Crown land, to make it easier for diggers to buy it. Lower tax and cheaper land might well be the root causes of most revolutions but they hardly make up a political ideology. There were many at Eureka who saw an opportunity for far-reaching social and political change: Californians and Frenchmen, convinced that the republic was finally coming to Australia, and British miners whose involvement with the Chartist movement—including three leaders of the Ballarat Reform League—contributed democratic demands, including manhood suffrage, abolition of the property qualifications for members of parliament and payment of members of parliament. Working men could never have been elected to parliament without those three reforms. Without them, the Labor Party would never have been possible. contemporaries understood the significance. The Sydney Morning Herald editorial on 13 December 1854 proclaimed:

Every loyal subject must rejoice in the prompt suppression of the Ballarat insurgents ... The rebels, for such as they were, extended their views beyond the grievances of a class and proposed to establish a new empire! A diggers’ empire! We imagine that the distressing consequences of this first appeal to arms will satisfy the working classes that it is not by such measures they can redress their wrongs.

And 50 years later the very same paper greeted the formation of the world’s first national labour government here in Australia by calling on the other parties to challenge it at once so that ‘government by the Labour minority may be rendered impossible from the outset’.

The Sydney Morning Herald did not regard the miners at Eureka as small businessmen in favour of small government. It viewed them as very much part of that dangerously revolutionary body, the working class, which must be excluded from government at all costs. So no matter how hard you try to take the politics, the republicanism, the democratic radicalism and the working-class rights out of Eureka they always find their way back in, just as no matter how hard you try to shoe-horn the miners into the box of proletariat or capitalist they always find their way back out. After all, Peter Lalor swore in the miners beneath the Southern Cross with an oath that still today rings with solidarity and the passion for justice. He went on to be a mine owner who used Chinese workers as strike breakers when his employees sought an eight-hour day. He also went on to vote against manhood suffrage as a member of the Victorian Legislative Assembly.
I do not think attempts to adopt and adapt Eureka to different causes will do it or us any lasting harm. We are, after all, acting in the fine tradition of the Eureka miners who chose ‘Vinegar Hill’ for the stockade password that last fatal night—no imported revolutionary slogan for them but the name of the place where convicts seeking freedom were gunned down in 1804. They united both Australia’s armed uprisings in one revolutionary thread with that simple decision. They rewrote an escape attempt by convict workers into a precursor of their own struggle. They hung Eureka forever on the memory of the political prisoners transported for their membership of the United Irishmen’s Society, a union of Irish Catholics and Irish Protestants seeking a united and independent Ireland.

As we do as they did and write our own Eureka, the caution I would give is that we should not ignore the stockade’s darker corners. If we turn a blind eye to the stains upon a past age, we will never learn to recognise the shadows on our own. If we can learn anything from the messy and malleable Eureka legend, it is that history is where we come from but it does not have to dictate what we are. Women’s role in politics and activism is no longer limited to stitching the banners men march beneath. Men and women of all backgrounds take their place by right both on the barricades and in the parliament. The spirit of the Eureka oath ‘to stand truly by one another and fight to defend our rights and liberties’ has only broadened with the passage of time. There is room for all of us beneath the Southern Cross.

Tasmania: Health

Senator BARNETT (Tasmania) (11.30 p.m.)—I rise tonight to say that recently I had the privilege of speaking at the Australian Medical Association of Tasmania cocktail party hosted by the President, Dr Michael Aizen, and the Executive Director, Rodney Cameron-Tucker. I spoke of the number of health initiatives relevant to Tasmania, some of the government achievements and challenges, and the reform options, including the need for a greater focus on prevention to move from a treating illness to a wellness focus and to highlight the merit of lifestyle changes.

I want to acknowledge up front that the general practitioner plays a pivotal role in caring for the health of all Australians, but I also want to say that the Australian government’s initiatives in Tasmania have been marked, because two years ago the Tasmanian medical school was under threat. Its viability was in question for a number of reasons, but this has now been reversed. One of the reasons is that the Australian government has earmarked $12 million for the enhancement of our medical school in Tasmania. The government has spent considerable funds on improving access for overseas trained doctors and providing doctors for rural and regional Tasmania. We have added 21 new medical places—from 61 to 82 in the school in Tasmania—and we have pumped an extra $220 million over the next five years into the state’s public hospital system, going from some $700 million to $920 million.

For Tasmanian GPs there is an incentive to bulk-bill and generally remain viable as a practice. We have lifted the incentive payments from $5 to $7.50 per consultation for concession card holders and children under 16 years of age. Of course, we are the only state in Australia where there is blanket coverage and I want to acknowledge and thank the federal Minister for Health and Ageing, Tony Abbott, for ensuring that that has occurred.

The RRMA rating has changed for West Tamar and New Norfolk. I acknowledge the efforts of Senator Shane Murphy in relation
to West Tamar and again thank Tony Abbott for his involvement in making that happen so that doctors can be available in rural and regional parts of the state. Certainly the support for doctors with increases in bulk-billing incentives has already paid dividends, with an increase in bulk-billing rates of 14.8 per cent to 63.2 per cent. That does not make it rosy but it is certainly a huge improvement on the previous situation.

The broad aim before the government is the health and wellbeing of all Australians, wherever they live. Since the Howard government has been in power, we have made significant improvements to the health care system. We have delivered on our commitment to strengthen Medicare through a $4 billion investment over five years and we have ensured greater access to affordable medicines by increasing PBS expenditure. It is now a sustainable arrangement. Where in 1990 it was about a $1 billion taxpayer investment, last year it was about $5 billion and next year, in the 2004-05 financial year, there will be an estimated $6.2 billion.

At the same time we have enhanced the cost effectiveness of the PBS through a public education campaign. That has been of help. We have helped with the increasing cost of diagnostic and specialist services by announcing 23 new Medicare eligible magnetic resonance imaging machines in underserviced locations throughout Australia. We fully realise the value of prevention and early detection. This is a key theme that I wish to stress. On our coming to government we found that the child immunisation rates were 53 per cent. Now over 90 per cent of children at 12 months of age are fully immunised. This is a fantastic health outcome. It could not have been achieved without the determined support of GPs and the Australian government.

In that vein we have also acted decisively on the childhood obesity front, with a $116 million package announced by the Prime Minister in June this year at my fourth forum on this issue since I became a senator in February 2002. I have held forums in Launceston, Hobart and Canberra. If you would just indulge me for a moment I would like to say that I helped convince McDonalds Australia chief, Guy Russo, to offer healthy food options and to label his food packaging with nutritional information. McDonalds is now doing both. I called for nutritional information on fast food packaging in mid-2002. The fast food industry response at the time was, ‘It is too hard and can’t be done.’ But two years later McDonalds is doing it. At the Hobart forum I held, McDonalds announced that they had cut back advertising to children by 40 per cent. At the Canberra forum they announced nutritional information on their labelling. I congratulate Guy Russo and McDonalds for their initiatives in the hope that the remainder of the fast food industry will follow suit shortly.

I also want to acknowledge and thank the Australian Association of National Advertisers for their work and effort in coming on board to address this obesity epidemic. I acknowledge the work of Ian Alwill, the President, and also the newly appointed Executive Director, Colin Segelov. I acknowledge all those who have been part of the solution and not part of the problem: the teachers, the health professionals, the nutritionists, the food and grocery manufacturers and many others.

A review of Australia’s national cervical screening program was released on 18 November 2004 and it confirms that Australia has one of the most successful cervical screening programs in the world. The Howard government has put in place a range of measures to build a strong private health insurance, with almost 8.7 million Australians,
or 43 per cent of the population, having private health insurance covering hospital treatment. Building on this, the government passed legislation just this week to change the private health insurance rebate. The changes will help to ensure that older Australians can continue to benefit from their private health insurance in retirement. The government is increasing the rebate from 30 to 35 per cent for people aged 65 to 69, and to 40 per cent for people aged 70 and over.

Some people may be aware that during the Select Committee on Medicare inquiry I joined my Senate colleagues on the committee Sue Knowles and Gary Humphries in calling for a general increase in the rebate because it helps to create more options for patients and acts as a buffer for the public hospital system. I am pleased that the government has applied that recommendation to assist older Australians with an increase in their private health insurance rebate. The government are now committed to delivering a health information network for all Australians and have allocated $128.3 million over four years for the implementation of HealthConnect. Tasmania was selected to be one of the first states to roll this initiative out state wide. Tasmania has a strong history in the e-health arena, with the MediConnect field test in the north and the flagship HealthConnect trial in the south.

The health priorities for this term of government are wide ranging, but I just want to comment on a few. The first is to improve access and affordability to medical care; the second is the research into, and prevention and treatment of, specific diseases that have an enormous impact on the community, such as cancer and diabetes; the third is to provide greater access to mental health care, particularly the burden of depression; and the fourth is to enhance the assistance that we currently provide to people with dementia and their carers.

The government announced that from 1 January 2005 the rebate for GP services would be increased from 85 per cent to 100 per cent of the Medicare schedule fee. This builds on the government’s Strengthening Medicare strategy. This is obviously well appreciated by GPs, and they know it will be of benefit to their patients. The coalition policy Round the Clock Medicare: Investing in After-hours GP Services is going to involve an expenditure of $429.6 million over four years for increased Medicare rebates for after-hours GP services and investing in both existing and new after-hours GP infrastructure. This initiative does build on the existing framework of the after-hours primary medical care program and is another step towards the government’s long-term goal of increasing access to convenient and quality GP services. I acknowledge the contribution of Dr John Davis and his organisation in Tasmania for the excellent work that they have done in providing after-hours care in our state.

Cancer care is a major cause of illness and death in Australia. Through our Strengthening Cancer Care measure, we will build on our investment in the care of those living with cancer by $140 million over four years. Ninety Australians each week die from bowel cancer. The Strengthening Cancer Care measure aims to reduce morbidity from bowel cancer in people aged 55 to 74. A national bowel cancer screening program will see Australians aged between 55 and 74 years directly invited to participate in bowel cancer screening. The measure also includes a campaign to encourage women to quit smoking during pregnancy and a national skin cancer awareness program. There will be further research on cancer and cancer care.

The government will be continuing its investment in helping people with mental health needs and has committed a further $110 million over four years. This will assist
in consolidating and expanding assistance to GPs in their management of patients with mental health needs.

I turn to diabetes, support for people with diabetes and diabetes research. It does affect the health of many Australians. There are 1.2 million Australians with type 2 diabetes and 140,000 people with type 1 diabetes. I am one of the latter. The disease may cause a range of serious complications, reduced quality of life and shortened life expectancy. I can assure you that I fight it daily with tenacity in the fields of exercise and diet. The Howard government established diabetes as a national health priority in 1996 and has introduced a range of activities and programs, including the GP incentive based National Integrated Diabetes Program, which has been very successful in improving the care of people with diabetes. Building on this, the government recently announced a further $25 million over four years on a range of diabetes initiatives which will help reduce the burden of diabetes on individuals and the community. So there will be funding for research into diabetes and expanded care programs for those with, or at risk of developing, the disease. Type 1 or juvenile diabetes imposes a very heavy load on families and support services, so an Australian centre of excellence will be established which will pursue research into pancreatic islet cell transplantation, which is a research avenue that could one day lead to a cure for type 1 diabetes. Diabetes is not simply a juvenile illness, as I have said. Mature onset diabetes, or type 2 diabetes, affects approximately 1.2 million Australians.

The government will also implement a Lift for Life program, which is an innovative program developed for older Australians with diabetes. It is designed to prevent and manage type 2 diabetes, and other chronic lifestyle related diseases, through strength training. It will be implemented in part by the International Diabetes Institute in Melbourne, which is headed up by the most competent and highly regarded Professor Paul Zimmett, who was involved in conducting the AusDiab study. I visited the institute just a week or two ago and was briefed on their latest research. I congratulate them on their efforts and their initiatives. I also acknowledge, in terms of research and initiatives to help people with diabetes, Dr Peter Little of Diabetes Australia, who has been recently re-elected as president, as well as Brian Conway, the executive director, and all their team. I acknowledge the work of the JDRF, the Juvenile Diabetes Research Foundation, for the work that they do, and the outgoing CEO, Sheila Royles. She has been a very strong and able advocate for her community. To Sue Alberti, who heads the organisation, who has a most compelling and emotional personal story to tell, I congratulate you for your leadership.

I want to acknowledge the work of the Parliamentary Diabetes Support Group, of which I am an executive member, along with Judi Moylan, who is the head of this group, Dr Mal Washer, Cameron Thompson and Dick Adams, a fellow Tasmanian. We have lobbied for and gained funding for things like the insulin pump consumables, which was in this year’s budget and was a $15.3 million initiative over four years to help support those people with type 1 diabetes, and we have gained funding for diabetes educators to be paid via a special Medicare item following a referral from the relevant GP.

The government has delivered an extra $2.2 billion over five years in the last budget for aged care, the largest single investment in aged care by an Australian government. In Tasmania the last federal budget provided an extra 635 aged care beds over the next three years and, in July this year, an investment of $13.5 million directly into that industry. Currently about 176,000 people are living with
dementia, and this will grow considerably in the next 20 years to approximately 283,000. The government has committed $203 million over four years to enhance the assistance that we currently provide to those with dementia by providing extra assistance to enable people with dementia to be cared for at home through 2,000 extra dementia-specific extended aged care at home packages. Making dementia a national health priority is a good move. I have outlined some of those key commitments and initiatives that we have focused on in this term, but I want to say that there are two areas of reform that we will be faced with in the near future. One relates to health service delivery reform and the other to the capability of our country to respond to emergencies.

Before concluding I want to make some comments with regard to prevention and the merits of it, and I hope that over time in this country we will move from a system of treating illness to a system of preventing illness. I believe in the merits of what is referred to as the ‘wellness revolution’. It is being promoted by the Complementary Healthcare Council, and I want to congratulate them on their initiatives and their proactive activities. Complementary and natural health care medicines in Australia have a very important role, and it does help the Australian community to focus on wellness rather than sickness. That sector does have a lot to offer. I have previously in this place supported the merits of establishing a centre for national health care. Indeed, I note that this is a key initiative of the Complementary Healthcare Council and some of those in the natural health care industry. It will help with research, education and encouraging greater awareness and understanding of the merits of the natural health care industry.

In conclusion, I want to say that the reforms before us will be challenging and they will be difficult, but that is what life is all about in this place and it is for us to pursue. I want to say that I fully support the Prime Minister’s initiative to set up the Andrew Podger AO review into health services delivery reform. I believe that is essential in terms of who does what and when it is provided. It will help us look at the optimum efficiencies and effectiveness of health service delivery for all Australians across the primary, acute, rehabilitation and aged care sectors and, in doing so, it will help clarify the responsibilities of each. The establishment of that inquiry is welcome. We have some challenges and issues before us but I think that, as a nation and in a cooperative spirit, we can tackle them and move in the right direction to deliver better and more affordable health care outcomes.

Senate adjourned at 11.47 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:


Airservices Australia—Corporate plan July 2004 to June 2009.


Department of Veterans’ Affairs—Data-matching program—Report on progress 2002-04.


High Court of Australia—Report for 2003-04.


Tabling
The following documents were tabled by the Clerk:

Civil Aviation Act—
Civil Aviation Regulations—
  Civil Aviation Amendment Order (No. 7) 2004.
  Civil Aviation Amendment Order (No. 9) 2004.
  Exemption No. CASA EX 40/2004.
  Instruments Nos CASA 546/04, CASA 547/04, CASA 551/04 and CASA 561/04.

Civil Aviation Safety Regulations—
  Civil Aviation Amendment Order (No. 10) 2004.


National Health Act—
  Declarations Nos PB 16 and PB 17 of 2004.

Determination—
  No. PB 18 of 2004.